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

To Providers of Pre-approved Plans:

This information package contains samples of plan provisions that have been found to satisfy certain requirements of the Internal Revenue Code, taking into account changes in the plan qualification requirements, regulations, revenue rulings, and other guidance in the 2020 Cumulative List of Changes in Plan Qualification Requirements (Notice 2020-14, 2020-13 I.R.B. 555). Such language may or may not be acceptable in different plans depending on the context in which used. For example, some language may not be required in a non-electing church plan or government plan. We have prepared this package to assist Providers 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 Pre-approved Plans more quickly.

Rev. Proc. 2017-41, 2017-29 I.R.B. 92, permits a Pre-approved Plan to use either of two formats: a single plan document or a basic plan document with an adoption agreement. See section 4.07(3) therein. This LRM reflects the latter format but recognizes that the former is also acceptable.

Plan provisions contained in this information package are arranged in three parts. Part I contains provisions generally applicable to all plans, Part II contains those provisions applicable to Standardized Plans and Part III contains those applicable to Nonstandardized Plans.

In addition to the provisions listed in Part II, certain provisions of the LRMs must be used for Standardized Plans. See generally section 5.16 of Rev. Proc. 2017-41 and *Plan Benefit Provisions* (before LRM # 23). These provisions are in LRMs #6 and #7 (requiring that a Standardized Plan use total compensation for benefits accrual purposes); LRM #29 (requiring a Standardized Plan to count all years of participation for accrual purposes, unless a participant terminates service with not more than 500 hours); LRM #43 (a Standardized Plan must make all optional benefit forms currently available to non-highly compensated employees); and LRMs #27C, #36, #39 and #102 (prohibition on employee contributions for Standardized Plans).

In addition to the provisions listed in Part III, certain provisions of the LRMs may be modified for Nonstandarized Plans. See section 5.15 of Rev. Proc. 2017-41 and *Plan Benefit Provisions* (before LRM # 23). These provisions are in LRM #6 (a Nonstandardized Plan may provide the Adopting Employer the option to select total compensation); LRMs # 8, #12 and #13 (these sections contain sample plan language that may be omitted in a Nonstandardized Plan that precludes participation by self-employed individuals); LRM #21 (a Nonstandardized Plan can utilize the one-year holdout rule of Code § 410(a)(5)(C)); LRM #29 (permitting a

Nonstandardized Plan to require a participant to complete a specified number of hours in order to earn a year of participation); and LRMs #27C, ##36-39 (employee contributions).

In addition to the provisions noted above and extant in Parts II and III, provisions applicable to Cash Balance Formulas are contained in LRM #26A (requiring that a Pre-approved Cash Balance Plan must provide that, at all times, any benefits accrued prior to adoption (and other benefits protected under Code § 411(d)(6)(B)) are protected). These provisions reflect modifications to Rev. Proc. 2017-41 made by Rev. Proc. 2018-21, 2018-14 I.R.B. 467. Note that although LRM #26A is itemized within provisions applicable to all plans, Standardized Plans are not permitted to contain a Cash Balance Formula.

Certain capitalized terms used throughout this document have meanings defined in section 4 of Rev. Proc. 2017-41.

08/07/2020

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PART I - ALL PLANS

DEFINITION PROVISIONS

1. Definition of year of service

Statement of Requirement: **Code §§ 410(a)(3)(A), 411(a)(5)(A)**

Document Provision: _____

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

Statement of Requirement: **DOL Reg. § 2530.200b-4(a)(1)**

Document Provision: _____

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

Statement of Requirement: **DOL Reg. § 2530.200b-2, § 2530.200b-3; Code §§ 410(a)(5)(E), 411(a)(6)(E); Rev. Proc. 2017-41, sec. 5.13**

Document Provision: _____

Sample Plan Language:

Hour of service means:

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

(2) Each hour for which an employee is paid, or entitled to payment, by the employer on account of a period of time during which no duties are performed (irrespective of whether the employment relationship has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty or leave of absence. No more than 501 hours of service will be credited under this paragraph for any single continuous period (whether or not such period occurs in a single computation period). Hours under this paragraph will be calculated and credited pursuant to DOL Reg. § 2530.200b-2 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 Code § 414(m)), a controlled group of corporations (under Code § 414(b)), or a group of trades or businesses under common control (under Code § 414(c)), of which the Adopting Employer is a member, and any other entity required to be aggregated with the employer pursuant to Code § 414(o). Hours of service will also be credited for any individual considered an employee for purposes of this plan under Code §§ 414(n) or 414(o).

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

(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

Statement of Requirement: **Reg. § 1.410(a)-7~~; §1.410(a)-7T~~, Rev. Proc. 2017-41, sec. 5.13**

Document Provision: _____

(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 #20 and #64.)

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

5. Definition of plan year

Document Provision: _____

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 means:

( ) 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

Statement of Requirement: **Code §§ 401(a)(17), 414(s), 415(c)(3); Reg. §§ 1.401(a)(4)-12, 1.401(a)(17)-1, 1.414(s)-1, 1.415(c)-2; Notice 2001-37, 2001-25 I.R.B. 1340; Notice 2001-56, 2001-38 I.R.B. 277; Rev. Rul. 2003-11, 2003-3 I.R.B. 285; Rev. Proc.~~ 2011-49, 2011-44~~ 2017-41, 2017-29 I.R.B. ~~608 sec. 4.09(3),~~92 secs. 5.~~03;~~15(1), 5.16(3); Notice 2010-15, 2010-6 I.R.B. 390**

Document Provision: _____

Sample Plan Language:

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

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to section 6.2 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 Plans ~~and plans that provide for permitted disparity~~ must be one of the definitions provided in section 6.2 of LRM #40. For purposes of the preceding sentence, the safe harbor alternative definition of compensation contained in Reg. § 1.414(s)-1(c)(3) may also be used. A plan will not fail to be a Standardized Plan if it uses a plan definition of compensation approved for

Standardized Plans but excludes from that definition differential wage payments under Code § 3401(h).~~All~~

Standardized Plans must permit the employer to elect one of the definitions of compensation provided in section 6.2 of LRM #40 in the adoption agreement~~. See also LRMs #70 and #108~~.)

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

~~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 §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 with or within 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 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 Code § 401(a)(17)(B).~~ For plan years beginning on or after January 1, 2002, the annual compensation of each participant taken into account in determining all benefits provided under the plan for any determination period shall not exceed $200,000, as adjusted for cost-of-living increases in accordance with Code § 401(a)(17)(B). The cost-of-living adjustment in effect for a calendar year applies to any determination period beginning with or within such calendar year.

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

If compensation for any prior determination period is taken into account in determining a participant's 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 in plan years beginning on or after January 1, 1989, and before January 1, 1994, the annual compensation limit in effect for determination periods beginning before January 1, 1989 is $200,000. In determining benefits in plan years beginning on or after January 1, 1994, and before January 1, 2002, the annual compensation limit in effect for determination periods beginning before January 1, 2002 is $150,000. In determining benefits in plan years beginning on or after January 1, 2002, the annual compensation limit in effect for determination periods beginning before that date is $200,000, or the amount specified by the employer in section _____ of the adoption agreement, if any.~~

~~**(Note to Reviewer: The paragraph above reflects the effective date of the increase in the section 401(a)(17) compensation limit made by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). In general, pre-approved plans were required to timely adopt a good faith plan amendment to make the EGTRRA increase effective for a plan year. See Notice 2001-42, 2001-2 C.B. 70. Accordingly, a pre-approved plan may be drafted to allow an adopting employer to select a later effective date for the increase to the section 401(a)(17) limit, as may be necessary.**~~

~~**The plan may also provide that the EGTRRA increase in the section 401(a)(17) compensation limit will be applied to increase benefits payable on or after January 1, 2002 to participants who separated from employment before that date. See Rev. Rul. 2003-11.**~~

~~**The blank should be filled in with the section of the adoption agreement where the employer may elect to apply the pre-EGTRRA limits on compensation to determination periods beginning before January 1, 2002, in determining benefits in plan years beginning after that date. See Notice 2001-56.)**~~

(Note to Reviewer: Code § 401(a)(17) limits compensation taken into account to $200,000 in determining contributions and benefit accruals and provides that this limit will be adjusted each year for cost of living increases. For 2020, the compensation limit was $285,000.)

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").)~~Reg. § 1.401(a)(17)-1(b)(3)(iii)(B).)

(Note to Reviewer: Code § 401(a)(17) limits compensation taken into account to $200,000 in determining contributions and allocations and provides that this limit will be adjusted each year for cost of living increases. For 2020, the compensation limit was $285,000. Reg. § 1.401(a)(4)-12 (see definition of "plan year compensation").)

Compensation

( ) shall not include employer contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the employee under Code §§ 125, 132(f)(4), 402(e)(3), 402(h) or 403(b).

In determining benefit accruals in plan years beginning after December 31, 2001, the annual compensation taken into account for determination periods beginning before January 1, 2002, shall be limited to: (check one)

( ) $200,000

( ) $150,000 for any determination period beginning in 1996 or earlier; $160,000 for any determination period beginning in 1997, 1998, or 1999; and $170,000 for any determination period beginning in 2000 or 2001.

If neither box is checked, the $200,000 limit shall apply.

7. Compensation formulas

Statement of Requirement: **Reg. § 1.401(a)(4)-3(e)(2); Rev. Proc. 2017-41, sec. 5.16(3))**

Document Provision: _____

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~~years (or 12-month periods) 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 election of the plan year or 12-month period for Compensation is made in LRM #6.)

(Note to reviewer: The plan may provide for an averaging period that consists of more than three years or may permit the employer to select 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's benefits 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 is 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 Reg. § 1.401(a)(4)-3(e)(2)(ii)(B).)

8. Definition of earned income

Statement of Requirement: **Code §§ 401(c)(2), 414(s); Reg. § 1.414(s)-1(b)(3); Rev. Proc. 2017-41, secs. 5.12(1), 5.16(1)**

Document Provision: _____

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 Code § 404.

Net earnings shall be determined with regard to the deduction allowed to the taxpayer by Code § 164(f).

(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

Statement of Requirement: **Code §§ 414(b), 414(c), 414(m), 414(n), 414(o); Rev. Proc. ~~2011-49 §~~ 2017-41, sec. 5.~~13~~12(1)**

Document Provision: _____

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 Code §§ 414(b), 414(c), 414(m) or 414(o).

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 Code §§ 414(n) or 414(o) of the Code.

10. Definition of leased employee

Statement of Requirement: **Code §§ 414(n), 414(q)**

Document Provision: _____

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 Code § 414(n)(6)(A)) 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: (1) such employee is covered by a money purchase pension plan providing: (i) a nonintegrated employer contribution rate of at least 10 percent of compensation, as defined in Code § 415(c)(3), but including amounts contributed pursuant to a salary reduction agreement which are excludable from the employee's gross income under Code §§ 125, 402(e)(3), 402(h) or 403(b), (ii) immediate participation, and (iii) full and immediate vesting; and (2) leased employees do not constitute more than 20 percent of the recipient's nonhighly compensated workforce.

11. Definition of highly compensated employee

Statement of Requirement: **Code § 414(q); Reg. § 1.414(q)-1T; Notice 97-45, 1997-33 I.R.B. 7**

Document Provision: _____

Sample Plan Language:

The term highly compensated employee means any employee who: (1) was a 5-percent owner at any time during the year or the preceding year, or (2) for the preceding year had compensation from the employer in excess of $80,000 ~~and~~(adjusted at the same time and in the same manner as under Code § 415(d)) and, if the employer so elects in the plan, 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.

~~The determination of whether a former employee is~~ 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 97-45. (Note to reviewer: The regulations under section~~.

Sample adoption agreement language:

( ) 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 (adjusted at the same time and in the same manner as under Code § 415(d)) 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 the employer does not make a top-paid group election.

( ) 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.

(Note to reviewer: Regulations promulgated under Code § 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~~,~~ (see Reg. § 1.414(q)-1T, A-4 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~~)~~ at the same time and in the same manner as under Code § 415(d)) for the look-back year is a highly compensated employee only if the employee was in the top-paid group for the look-back year. An employer may also make a calendar year data election for a determination year. The effect of this election is that the look-back year is the calendar year beginning with or within the look-back year. The plan may not use this election to determine whether employees are highly compensated employees on account of being 5-percent owners. These elections, once made, apply for all subsequent determination years unless changed by the employer.

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

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

~~**Sample adoption agreement language: (check one or both)**~~

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

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

12. Definition of owner-employee

Statement of Requirement: **Code § 401(c)(3); Rev. Proc. 2017-41, secs. 5.12(1), 5.16(1)**

Document Provision: _____

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

Statement of Requirement: **Code § 401(c)(l); Rev. Proc. 2017-41, secs. 5.12(1), 5.16(1)**

Document Provision: _____

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

Statement of Requirement: **Code § 411(a)(8); Reg. §§ 1.401(a)-1(b)(2), 1.411(a)-7(b)(1), 1.411(d)-4, Q&A-12; Notice 2007-69, 2007-35 I.R.B. 468; Rev. Proc. 2017-41, sec. 7.03(5)**

Document Provision: _____

~~**(Note to Reviewer: Under the provisions of regulations § 1.401(a)-1(b)(2), a plan's normal retirement age (NRA) cannot be earlier than what is reasonably representative of the typical retirement age for the industry in which the participants work. An NRA of 62 or older is deemed to satisfy this requirement. An NRA under 55 is presumed not to satisfy this requirement unless the Commissioner determines that the facts and circumstances show otherwise. Whether an NRA between 55 and 62 satisfies this requirement depends on facts and circumstances.**~~

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

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.

~~For purposes of section _______ of the plan, a plan amendment that raises the normal retirement age under the plan to comply with section 1.401(a)-1(b)(2) of the Treasury Regulations will not be treated as an amendment that decreases a participant's accrued benefit merely because the amendment eliminates a right the participant may have had to~~

~~receive a distribution prior to severance from employment on attainment of the normal retirement age under the prior plan terms. The preceding sentence applies only in the case of a plan amendment that is adopted after May 22, 2007 and on or before the last day of the applicable remedial amendment period under section 1.401(b)-1 of the Treasury Regulations with respect to the requirements of § 1.401(a)-1(b)(2) and (3). A participant who became or would have become eligible for payment of benefits at the normal retirement age under the prior plan terms, and who has severed from employment with the employer or employers maintaining the plan, continues to be eligible for payment at the same age and in at least the same amount as under the prior plan terms with respect to benefits accrued prior to the applicable amendment date.~~

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

Sample Adoption Agreement Language:

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

A.(   ) age _____ (not ~~to exceed 65). If the age selected is~~ less than 55 ~~or less than the earliest retirement age that~~, nor in excess of 65).

(No age less than 55 can be inserted. If an insertion is made that spans the range from ages 55 to less than age 62, no reliance will be afforded on the Opinion Letter issued to the plan that such age is reasonably representative of the typical retirement age for the industry in which the ~~plan~~ participants work~~, then, effective as of the date specified below, the normal retirement age shall be changed to the following~~ .)

B.(   ) the later ~~age:~~ of:

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

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

~~B.~~

~~(   ) the later of:~~

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

(i) age _____ (not less than 55, nor in excess of 65), or

~~(ii)~~ (ii) the _____ (not to exceed 5th) anniversary of the participation commencement date.

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

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

~~( ) the later of:~~

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

~~(ii) the _____ (not to exceed 5th) anniversary of the participation commencement date.~~

If, for plan years beginning before January 1, 1988, normal retirement age was determined with reference to the anniversary of the participation commencement date (more than 5 but not to exceed 10 years), the anniversary date for participants who first commenced participation under the plan before the first plan year beginning on or after January 1, 1988, shall be the earlier of (~~A~~1) 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~~2) the fifth anniversary of the first day of the first plan year beginning on or after January 1, 1988. The participation commencement date is the first day of the first plan year in which the participant commenced participation in the plan.

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

(Note to Reviewer: Under the provisions of Reg. § 1.401(a)-1(b)(2), a plan's normal retirement age (NRA) cannot be earlier than what is reasonably representative of the typical retirement age for the industry in which the participants work. An NRA of 62 or older is deemed to satisfy this requirement. An NRA under 55 is presumed not to satisfy this requirement unless the Internal Revenue Service determines that the facts and circumstances show otherwise. Whether an NRA from 55 and 62 satisfies this requirement depends on facts and circumstances.)

15. Definition of straight life annuity

Statement of Requirement: **Reg. § 1.401(a)(4)-12**

Document Provision: _____

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 PROVISIONS

16. Maximum age restrictions not permitted

Statement of Requirement: **Code § 410(a)(2)**

Document Provision: _____

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

17. Provisions for entry into participation

Statement of Requirement: **Code § 410(a)(4); Reg. § 1.410(a)-4(b)**

Document Provision: _____

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

Statement of Requirement: **DOL Reg. §§ 2530.202-2(a), 2530.202-2(b)**

Document Provision: _____

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

Statement of Requirement: **DOL Reg. § 2530.200b-4(a)(2)**

Document Provision: _____

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

Statement of Requirement: **Code §§ 410(a)(5)(A), 410(a)(5)(B), 410(a)(5)(D); Reg. § 1.410(a)-5**

Document Provision: _____

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 Code § 410(a)(l)(B)(i) eligibility requirements. See Code § 410(a)(5)(B).)

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

21. Eligibility break in service, one-year hold-out rule

Statement of Requirement: **DOL Reg. § 2530.200b-4(b)(l); Code§ 410(a)(5)(C)**

Document Provision: _____

(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

Statement of Requirement: Code § 410(a)(4)

Document Provision: _____

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 BENEFIT PROVISIONS

(Note to reviewer: All Standardized defined benefit plans must, by their terms, satisfy one of the design-based safe harbors in Reg. §§ 1.401(a)(4)-3(b)(3), 1.401(a)(4)-3(b)(4), or 1.401(a)(4)-3(b)(5). All Nonstandardized Plans ~~must either~~may provide plan language that automatically satisfies one of the design-based safe harbors in Reg. §§ 1.401(a)(4)-3(b)(3), 1.401(a)(4)-3(b)(4), or 1.401(a)(4)-3(b)(5), or provide a mechanism in the adoption agreement for the employer to select plan

language that does. (See sections 5.15(2) or 5.16(4) of Rev. Proc. ~~2011-49~~2017-41.) 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 Reg. § 1.401(a)(4)-13(c) with regard to such change. LRMs ## 23-25 provide sample plan language that satisfies these rules. All Standardized Plans must comply with LRMs ## 23-25; all other Nonstandardized Plans must provide these LRM provisions either automatically or by option.)

(Note to reviewer: No Code § 401(a)(4) failsafe language is allowed. The plan must pass nondiscrimination testing based on Reg. §§ 1.401(a)(4)-1 through 1.401(a)(4)-13.)

23. Fresh-start rules

Statement of Requirement: **Reg. § 1.401(a)(4)-13(c)**

Document Provision: _____

Sample Adoption Agreement Language:

The formula with wear-away and formula with extended wear-away fresh-start rules below take into account an employee's past service in determining the employee's benefit accruals under the plan; either of these rules may cause the plan to fail to satisfy the safe harbor for past service in Reg. § 1.401(a)(4)-5(a)(3). In the case of a plan that is exempt from Code § 412 pursuant to Code § 412(e)(3) ("section 412(e)(3) 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.

The accrued benefit of each participant in 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% accrual rule in section ____ of the plan, or if this plan satisfies the safe harbor for insurance contract plans in Reg. § 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.

(Note to reviewer: The first blank above should be filled in with the plan section that corresponds to the fractional accrual rule in LRM #31. The second blank above should be filled in with the plan section that corresponds to the 3% accrual rule in LRM #31.)

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% accrual rule in section ____ of the plan, or if this plan satisfies the safe harbor for insurance contract plans in Reg. § 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.

(Note to reviewer: The blank above should be filled in with the plan section that corresponds to the 3% accrual rule in LRM #31.)

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:

1. (   )   Code § 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.

2. ( ) 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 ~~MMDDYY~~______________ (enter a date no later than the end of the transaction period defined in Code § 410(b)(6)(C)(ii), 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 frozen accrued benefit.

The fresh-start date in connection with the transfer is: ~~DDMYY~~______________ (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~~this 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~~-start date will be the date designated above.

24. Determination of frozen accrued benefit

Statement of Requirement: Reg. § 1.401(a)(4)-13(c)

Document Provision: _____

(Note to reviewer: This LRM #24 does not apply to Code § 412(e)(3) 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 Code § 401(b) or Reg. § 1.401(a)(4)-11(g). 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 Code § 415, the participant's frozen accrued benefit will be increased for years after the latest fresh-start date to the extent permitted under Code § 415(d)(1). 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 Code § 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 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 0.5% 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

Statement of Requirement: **Reg. §§ 1.401(a)(4)-13(c)(5), 1.401(a)(4)-13(d), 1.401(a)(17)-1(e)**

Document Provision: _____

(Note to reviewer: In accordance with Reg. § 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 group will be increased after the fresh-start date to reflect any increases in such participants' compensation after that date. If the employer so elects, Reg. §§ 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 Reg. § 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 Reg. § 1.401(a)(4)-3(b). This LRM #25 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 Code § 412(e)(3) 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 Code § 410(b) 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 Code § 410(b) for any plan year if any one of the following requirements is satisfied:

(a) the fresh-start group satisfied the minimum coverage requirements of Code § 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 Reg. § 1.410(b)-2(b)(2) 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 Code § 410(b) (determined without regard to any of the special rules pertaining to certain dispositions or acquisitions provided in Code § 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 0.5% 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 1.4. Cash Balance Plans – With respect to plan years beginning after the plan's latest fresh start date, the current benefit formula will provide each participant in the fresh-start group an accrued benefit in the form of an annuity of not less than 0.5% of the participant's average annual compensation times the participant's years of service after the latest fresh-start date.

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 ~~or~~for past service in Reg. § 1.401(a)(4)-5(a)(3).

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 Primary Insurance Amount (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% 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 Code § 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 Code § 401(a)(17) participants will be determined in accordance with the special adjustment applicable to Code § 401(a)(17) participants in section 5 below.

Section 3.1. A Code § 401(a)(17) participant includes a Tax Reform Act of 1986 (TRA '86) Code § 401(a)(17) participant as well as an Omnibus Budget Reconciliation Act of 1993 (OBRA '93) Code § 401(a)(17) participant. A TRA '86 Code § 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 Code § 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 Code § 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

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 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

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 is the participant's average annual compensation as of the fresh-start date, determined in the same manner as the numerator.

(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.

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.

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

(d) Alternative adjustment

In lieu of applying the fractions in paragraphs 4(a) and 4(b) above, if the employer elects the Alternative Adjustment in the adoption agreement, 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 the Special Adjustment for Code § 401(a)(17) Participants is elected by the employer in the adoption agreement, the frozen accrued benefit of each Code § 401(a)(17) participant in the fresh-start group will be adjusted in accordance with the following method:

Code § 401(a)(17) participants who are OBRA '93 Code § 401(a)(17) participants only:

(1) Determine the frozen accrued benefit of each OBRA '93 Code § 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 Code § 401(a)(17) employee determined for the current year (as limited by Code § 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.

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

(1) Determine each TRA '86 Code § 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 Code § 401(a)(17) participant's average compensation determined for the current year (as limited by Code § 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 last day of the last plan year beginning before January 1, 1989.

(3) Determine the TRA '86 Code § 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 Code § 401(a)(17)

participant's average compensation determined for the current year (as limited by Code § 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 Code § 401(a)(17) participant's average compensation for the current year (as limited by Code § 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.

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

Sample Adoption Agreement Language:

If, as of the latest fresh-start 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 and elected by the employer below

( ) the provisions of sections 1.1 through 5 of __________ 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.

(Note to Reviewer: Insert plan section that corresponds to this LRM #25.)

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 Code § 401(a)(17) Participants

26. Current benefit formulas – plans not providing for permitted disparity and using the fractional accrual rule

Statement of Requirement: Code § 401(a)(4); Reg. § 1.401(a)(4)-3(b)(4)

Document Provision: _____

(Note to reviewer: This LRM #26 contains language that satisfies the requirements of the safe harbor contained in Reg. § 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.)

Sample Adoption Agreement Language:

<u>Unit Credit Plans:</u>

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 Code § 411(b)(1)(F)).

(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 in Reg. § 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__ % of average annual compensation (R1) per year for the first _____ years of credited service (y) and _____ % 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~~).~~, and such that R1 is not one-third larger than R2 nor is R2 one-third larger than R1).).

~~If Y is less than 33, R2 will be not less than:~~

~~(R1) (25-y) (but in no case less than 0),~~
~~33-y~~

~~and not greater than:~~

~~(R1)(44 - y)~~
~~33-y~~

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

(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: A Standardized Plan must structure the formula to meet the safe-harbor rules in Reg. §§ 1.401(a)(4)-3(b)(4)(i)(A) and 1.401(a)(4)-3(b)(4)(i)(B), and either Reg. § 1.401(a)(4)-3(b)(4)(i)(C)(*1*) or Reg. § 1.401(a)(4)-3(b)(4)(i)(C)(*2*).)

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 rule in LRM #31.)

~~26CB~~26A. Current benefit formulas – Cash Balance Plan

Statement of Requirement: **Code § 401(a)(4); Reg. §§ 1.401(a)(4)-3(b)(4), 1.401(a)(4)-12; Notice 96-8, 1996-6 I.R.B. 23; Final Regulations T.D. 9505, 2010-48 I.R.B. 755; T.D. 9693, 2014-41 I.R.B. 596; T.D. 9743, 2015-48 I.R.B. 679; Rev. Proc. 2017-41, secs. 5.18(1), 5.18(2), 6.02(21), 6.03(7)(a), 6.03(7)(b), 6.03(7)(d), 6.03(7)(e), 6.03(7)(g), 7.02(4); Rev. Proc. 2018-21, 2018-14 I.R.B. 467 sec. 3.01**

Document Provision: _____

(Note to reviewer: A Statutory Hybrid Plan benefit formula that is not a Cash Balance Formula, such as a formula under which benefits are determined by reference to the current value of an accumulated percentage of the participant's average compensation (Pension Equity Plan) may not be a Pre-approved Plan. Additionally, Variable Annuity Plans that include a variable annuity benefit formula as defined under Reg. § 1.411(a)(13)-1(d)(6) and plans that provide for accruals that are determined in whole or in part based on the value of, or rate of return on, identified assets, including plan assets, may not be a Pre-approved Plan.)

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

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

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

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

3. Principal Credits. At the end of each Principal Credit Period in which a Participant has earned a Year of Participation in accordance with section ___ of the Plan, a Principal Credit amount as set forth in the Adoption Agreement shall be determined as of the last day of the Principal Credit Period and credited to such Participant's Hypothetical Account Balance, whether or not the Participant remains an Employee as of that date. For purposes of determining the Principal Credit Period, if a Plan Year begins on the first day of a calendar month, a Plan Month is any calendar month. If the Plan Year begins on a day other than the first day of a calendar month, each Plan Month begins on the day of the calendar month that corresponds to the date of the calendar month that is the first day of the Plan Year. Thus, for example, if the first day of a Plan Year is January 15, then a Plan Month starts on the 15th of each calendar month. However, if a calendar month does not contain a day that corresponds to the day of the calendar month which is the first day of the Plan Year (for example, if a calendar month has

only 30 days and the first day of the Plan Year is the 31st day of a calendar month), then the first day of the Plan Month that begins during that calendar month is the last day of that calendar month. A Plan Quarter is a three-month period beginning on the first day of the first, fourth, seventh, or tenth Plan Month.

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

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

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

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

(Note to Reviewer: The blank above should be filled in with the section that corresponds to section 26A.I.B.(1) of the sample adoption agreement language of this LRM #26A.)

If a Plan provides for the crediting of interest more frequently than annually (for example, daily, monthly or quarterly), then the Plan must determine each periodic interest credit using an Interest Crediting Rate that is no greater than a pro rata portion of the applicable annual Interest Crediting Rate, as specified in section ____ of the Adoption Agreement. However, a Plan that credits interest daily is not treated as providing an above market rate of return merely because the Plan determines each daily Interest Credit using a daily Interest Crediting Rate that is 1/360 of the applicable annual Interest Crediting Rate. For purposes of determining the Interest Credit Period, a Plan Month and Plan Quarter are determined in the same manner as for the Principal Credit Period.

(Note to reviewer: The first blank above should be filled in with the section number corresponding to section 26A.I.B.(3) of the sample adoption agreement language of this LRM #26A.)

If an Actual Rate of Return is elected in the adoption agreement, the Interest Crediting Rate applied to a Participant's beginning Hypothetical Account Balance for each Interest Credit Period shall be the Actual Rate of Return on the aggregate assets of the Plan for that period, including both positive and negative returns. If the use of Actual Rate of Return is elected in the adoption agreement, plan assets must be diversified so as to minimize the volatility of returns in accordance with Reg. § 1.411(b)(5)-1(d)(5)(ii)(A). The Actual Rate of Return, which includes both realized and unrealized gains and losses, will be calculated as provided in the Adoption Agreement. Additionally, the employer may elect in the adoption agreement for purposes of the first Plan Year only of the Plan that the Interest Crediting Rate for such Plan Year shall be the fixed rate specified in the Adoption Agreement and then for all subsequent Plan Years will be the Actual Rate of Return.

If a cumulative floor is selected under section ____ of the Adoption Agreement, a Participant's Hypothetical Account Balance as of the annuity starting date as of which the distribution of the Participant's entire remaining vested benefit under the Cash Balance Formula commences is equal to the greater of (~~a~~1) the Hypothetical Account Balance determined using the actual Interest Crediting Rate(s) that applied during the guarantee period, or (~~b~~2) the Hypothetical Account Balance determined as if the plan had used a fixed annual Interest Crediting Rate equal to the rate selected in section _____ of the Adoption Agreement for the guarantee period. For this purpose, the guarantee period is the period beginning on the date selected in section ____ of the Adoption Agreement and ending on the annuity starting date as of which the distribution of the Participant's entire remaining vested benefit under the Cash Balance Formula commences, and the cumulative floor is applied taking the value of any previous distributions into account. The annual rate selected for the cumulative floor cannot be greater than 3%.

(Note to reviewer: The blanks above should be filled in with the section corresponding to section 26A.I.B.(5) of the sample adoption agreement language of this LRM #26A.)

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

(Note to reviewer: The blank above should be filled in with the section corresponding to section 26A.I.B.(6) of the sample adoption agreement language of this LRM #26A.)

6. Interest Credit after Plan Termination. For Interest Credit Periods after the termination of the Plan, the Interest Crediting Rate used to determine accrued benefits under the Plan shall be equal to the average of the Interest Crediting Rates used under the Plan during the 5-year period ending on the date of Plan termination~~.~~ as required under Reg. § 1.411(b)(5)-1(e)(2)(ii).

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

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

   (1) The Participant's Prior Accrued Benefit, equal to the Participant's Accrued Benefit for Years of Service before the Effective Date of the Conversion Amendment, determined under the pre-amendment terms of the Plan, plus

   (2) The Participant's Accrued Benefit for Years of Service after the Effective Date of the Conversion Amendment, determined under the terms of the Plan after the Effective Date of the Conversion Amendment. For this purpose, the Effective Date of the Conversion Amendment is the date indicated in section ____ of the Adoption Agreement, as modified by the definition of Conversion Amendment in paragraph 7.

(Note to reviewer: The blank above should be filled in with the section that corresponds to section 26A.II of the sample adoption agreement language~~.)~~ in this LRM #26A. An Opinion Letter will not be issued for a plan that uses an opening hypothetical account balance as described in Reg. § 1.411(b)(5)-1(c)(3) to meet the requirements of Reg. § 1.411(b)(5)-1(c).)

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

Conversion Amendment. Under Reg. § 1.411(b)(5)-1(c)(4), whether an amendment is a Conversion Amendment with respect to a participant is determined on a participant-by-participant basis. An amendment (including multiple amendments) is a Conversion Amendment with respect to a participant if it meets two criteria: (1) The amendment reduces or eliminates the benefits that, but for the amendment, the participant would have accrued after the effective date of the amendment under a benefit formula that is not a Cash Balance Formula and under which the participant was accruing benefits prior to the amendment; and (2) After the effective date of the amendment, all or a portion of the participant's benefit accruals under the plan are determined under a Cash Balance Formula.

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

(Note to reviewer: Provisions for Offsets of benefits accrued under another plan may not be included in a Pre-approved Plan unless it meets the following requirements:

(1) The Offset is applied on an accumulated basis at the participant's annuity starting date, rather than offsetting each year's Principal Credit by that year's accruals or contributions under the offsetting plan;

(2) If plan provisions are consistent with treatment of the Cash Balance Formula as a lump sum-based benefit formula under Reg. § 1.411(a)(13)-1(d)(3), then the offsetting plan is a defined contribution plan and the Offset is applied by subtracting the account balance under the defined contribution plan from the hypothetical account balance under the Cash Balance Formula prior to converting the balance to an annuity benefit;

(3) The Offset meets the safe-harbor requirements of Reg. § 1.401(a)(4)-8(d) (except that the Offset can be computed by subtracting the account balance under the offsetting plan from the hypothetical account balance under the Cash Balance Formula), including the requirement that the offsetting plan may not be a Code § 401(k) plan or a Code § 401(m) plan;

(4) For the purpose of determining the amount of the Offset against any defined benefit formula, the Offset reflects the value of any distributions from the offsetting plan made prior to the participant's annuity starting date under the Cash Balance Plan;

(5) The Offset is applied on a uniform basis for all participants;

(6) The plan provides a minimum accrued benefit to participants (expressed as a lifetime annuity commencing at normal retirement age) of no less than 0.5% of compensation for each year of credited service, which is not reduced by the Offset applied to other formulas under the plan;

(7) Accrued benefits, considered in conjunction with defined contribution accounts subject to any Offset, meet nondiscrimination requirements; and

(8) The amount of the Offset, including any procedures and actuarial assumptions for converting a defined benefit contribution account balance (under a specifically-named defined contribution plan) to an annuity amount, is definitely determinable.)

Sample Adoption Agreement Language:

26A.I. ESTABLISHMENT OF HYPOTHETICAL CASH BALANCE ACCOUNT

A. Principal Credits

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

( ) Each Plan Year

( ) Each Plan Quarter

( ) Each Plan Month

( ) Each calendar year

( ) Each calendar quarter

( ) Each calendar month

(2) Principal Credits shall be determined as follows:

Any schedule of Principal Credits must comply with the 133⅓% rule under Code § 411(b)(1)(B) , taking into account the minimum Interest Credits guaranteed under the options chosen in section ___ of the Adoption Agreement. For this purpose, a plan for which the Interest Credit could be negative is permitted to assume that the Interest Credits for the current and future years will be equal to zero.

Any schedule of graded Principal Credits designed by an Adopting Employer via completing blanks in the Adoption Agreement (even where parameters have been included) will not afford the employer reliance from the opinion letter that such schedule satisfies the 133⅓% accrual rule of Code § 411(b)(1)(B). An Adopting Employer will have reliance with respect to the 133⅓% accrual rule of Code § 411(b)(1)(B) if the schedule of graded Principal Credits used by the employer was specified and reviewed by the Service during the opinion letter process.

(Note to reviewer: The blank should be filled in with the section number corresponding to section 26A.I.B.(4) of the sample adoption agreement language of this LRM #26A.)

a. ( ) Each Participant's Hypothetical Account Balance will be credited with ______% (percentage) of Compensation earned by the Participant during each Principal Credit Period.

b. ( ) Each Participant's Hypothetical Account Balance will be credited with $______ (dollars) for each Principal Credit Period.

c. ( ) Each Participant's Hypothetical Account Balance will be credited with the greater of:

_______% (percentage) of Compensation or

$_______ (dollars)

for each Principal Credit Period.

d. ( ) Each participant's Hypothetical Account Balance will be credited with the lesser of:

_______% (percentage) of Compensation or

$_______ (dollars)

for each Principal Credit Period.

e. ( ) Schedule of graded Principal Credits

Each Participant's Hypothetical Account Balance will be credited with an amount for each Principal Credit Period, determined in accordance with the following table:

For range based on: [ ] Age [ ] Credited Service [ ] Age plus Credited Service	The Principal Credit is shown below, determined as: [ ] A dollar amount [ ] A percentage of Compensation earned by the participant during the Principal Credit Period
Under ________	__________
From ______ to ________	__________
From ______ to ________	__________
_______ and over	

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

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

(Example: For a plan that provides Principal Credits equal to 3.0% of Compensation for the first 10 years of Credited Service, 3.5% for 11-20 years of Credited Service, and 4.0% thereafter, the table would be completed as shown below:

For range based on: *[ ] Age* *[x] Credited Service* *[ ] Age plus Credited Service*	*The Principal Credit is shown below, determined as:* *[ ] A dollar amount* *[x] A percentage of Compensation earned by the participant during the Principal Credit Period*

From __0__ to __10__ Years	*____3.0%___*
From __11__ to __20_ _ Years	*____3.5%___*
21 years and over	*____4.0%___)*

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

~~f. ( ) participant groups~~

~~Each Participant group shall receive the following amount for each Principal Credit Period. Define the objective criteria for determining the make-up of each Participant group. Neither the objective criteria nor the formulas for each Participant group may be subject to employer discretion, which would cause the plan to fail to provide a definitely determinable benefit.~~

~~(i) Group One: Defined as: __________________________________~~
~~[Insert formula for Group One]~~

~~(ii) Group Two: Defined as: __________________________________~~
~~[Insert formula for Group Two]~~

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

(Note to reviewer: Different schedules for different participant groups following the above general format may be specified as an addendum to the Adoption Agreement. Describe the objective criteria for determining the make-up of each Participant group. Criteria may not be subject to employer discretion, which would cause the plan to fail to have definitely determinable benefits. The plan's Participant groups may not be structured to limit participation to only the shortest service and lowest paid NHCEs while excluding other NHCEs.)

(3) Adjustment of Principal Credit

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

( ) Is

( ) Is not

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

(Note to reviewer: The blank should be filled in with the section number of the plan corresponding to LRM #29. However, if the Principal Credit Period is less than one

year, the above language should be adjusted accordingly. Any participant who earns a year of participation must receive a Principal Credit for that year based on their total service for that year.)

B. Interest Credits

(1) Interest Credits shall be allocated at the end of each Interest Credit Period, which is:

( ) Each Plan Year

( ) Each Plan Quarter

( ) Each Plan Month

( ) Each calendar year

( ) Each calendar quarter

( ) Each calendar month

( ) Each day

(2) If a Participant's annuity starting date occurs before the end of an Interest Credit Period, the Interest Credit for the partial Interest Credit Period:

( ) Will be zero.

( ) Will be determined on a pro rata basis, reflecting the portion of the Interest Credit Period before the Participant's annuity starting date.

(3) If interest is credited more frequently than annually, Interest Credits for the Interest Credit Period are determined:

( ) If credited monthly, the annual rate divided by ( ) 12, or ( ) the rate determined as if interest were compounded twelve times each year.

( ) If credited quarterly, the annual rate divided by ( ) 4, or ( ) the rate determined as if interest were compounded four times each year.

( ) If credited daily the annual rate divided by ( ) 365, ( ) 360, or ( ) the rate determined as if interest were compounded daily.

(4) The annual Interest Crediting Rate is as follows:

a. ( ) The discount rate on 3-month Treasury Bills plus ______ [0 to 175 basis points] with an annual floor of ______% [floor may not exceed 5%]

b. ( ) The discount on _____-month Treasury Bills [specify duration, not to exceed 12 months] plus _______ [0 to 150] basis points with an annual floor of ______% [floor may not exceed 5%]

c. ( ) The yield on 1-year Treasury Constant Maturities plus ______ [0 to 100 basis points] with an annual floor of ______% [floor may not exceed 5%]

d. ( ) The yield on ____-year Treasury Bonds [specify duration, not to exceed 3 years] plus _______ [0 to 50] basis points with an annual floor of ______% [floor may not exceed 5%]

e. ( ) The yield on ___-year Treasury Bonds [specify duration, not to exceed 7 years], plus _______ [0 to 25] basis points with an annual floor of ______% [floor may not exceed 5%]

f. ( ) The yield on ___-year Treasury Bonds [specify duration, not to exceed 30 years], with an annual floor of ______% [floor may not exceed 5%]

g. ( ) The third segment rate described below, with an annual floor of ______% [floor may not exceed 4%]

h. ( ) The second segment rate described below, with an annual floor of ______% [floor may not exceed 4%]

i. ( ) The first segment rate described below with an annual floor of ______% [floor may not exceed 4%]

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

The segment rate chosen shall be:

( ) The segment rate defined under Code § 430(h)(2)(C),

( ) Reflecting

( ) Not reflecting

the adjustment for 25-year average interest rates under Code § 430(h)(2)(C)(iv)

( ) The segment rate defined under Code § 417(e)(3)(D).

~~i. The segment rate is determined as of the:~~

~~( ) first~~

~~( ) second~~

~~( ) third~~

~~( ) fourth~~

~~( ) fifth~~

~~calendar month preceding the first day of the:~~

~~( ) Plan Year~~

~~( ) Interest Credit Period~~

j. ( ) The cost-of-living increase determined equal to the percentage change in the ___________ from the date of the preceding ~~year~~increase,

~~plus _____ basis points [basis points cannot exceed 300]~~

~~minus ______ basis points~~

~~with an annual floor of _______ percent [floor may not exceed 5% and may not be less than zero]~~

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

( ) plus _____ basis points [basis points cannot exceed 300]

( ) minus ______ basis points

( ) with an annual floor of _______% [floor may not exceed 5% and may not be less than zero]

If any rate in a. through j. is chosen, complete the following:

The Interest Crediting Rateis determined as of the:

( ) first

( ) second

( ) third

( ) fourth

( ) fifth

calendar month preceding the first day of the:

( ) Plan Year

( ) Interest Credit Period

k. ( ) The Actual Rate of Return on the aggregate assets of the Plan

If k. is chosen, complete the following:

i. The Actual Rate of Return will be determined to the following number of decimals:

( ) none (e.g., 1% or 3%)

( ) one decimal (e.g., 1.2% or 2.7%)

( ) two decimals (e.g., 1.24% or 2.75%)

ii. Employer contributions (excluding a contribution receivable) will be included based on the actual date of such contribution(s), with weighting for the period of time between the contribution date and the end of the Interest Credit Period based on the number of:

( ) days

( ) whole plan months

( ) whole calendar months

( ) nearest plan months

( ) nearest plan quarters

( ) nearest calendar months

( ) nearest calendar quarters

Additionally, in calculating the Actual Rate of Return, only distributions of benefits made during the Interest Credit Period will be reflected, and contributions receivable as of the last day of the plan year shall be treated:

( ) as if they were made as of the last day of the plan year, or

( ) as if they were made on the day each amount was actually contributed

iii. Distributions of benefits will be included in the calculation of the Actual Rate of Return with weighting for the period of time between the actual date of distribution and the end of the Interest Credit Period based on the number of:

( ) days

( ) whole plan months

( ) whole calendar months

( ) nearest plan months

( ) nearest plan quarters

( ) nearest calendar months

( ) nearest calendar quarters

iv. The following Plan expenses incurred for the Interest Credit Period will be included:

( ) Investment expenses paid from the Plan's Trust

( ) Administrative expenses paid from the Plan's Trust

( ) Administrative and investment expenses paid by the Plan's Trust

( ) Administrative and investment expenses paid by the Plan's Trust except: _______________ (insert description of excluded expenses)

( ) No administrative or investment expenses

v. For purposes of the first Plan Year only of the Plan, the Interest Crediting Rate shall be:

( ) 4%

( ) 5%

( ) 6%

( ) Not applicable

~~k.~~l. ( ) Annual fixed rate of ________% interest [must not exceed 6% annually]

~~l.~~m. ( ) The lesser of the following rates:

____,

or

____:

Describe rates in enough detail so that the plan will provide a definitely determinable benefit. At least one of the rates must be a rate described in section _____ of the Adoption Agreement. However, to qualify for the ~~pre-~~Nonstandardized Pre-approved Plan Program, the rate cannot be based on ~~the actual return on plan assets or a subset of plan assets~~an

Actual Rate of Return (as described in Reg. § 1.411(b)(5)-1(d)(5)(ii)) ~~or~~for a subset of plan assets, the rate of return on a ~~RIC~~regulated investment company (as described in Reg. § 1.411(b)(5)-1(d)(5)(iv~~)) .~~)), subject to participant choice, or any rate that does not meet the requirements of Reg. § 1.411(b)(5)-1(d).

(Note to reviewer: The last blank above should be filled in with the section corresponding to section 26A.I.B.(4) of the sample adoption agreement language of this LRM #26A.)

(5) Cumulative Floor. As of the annuity starting date as of which a distribution of a Participant's entire remaining vested benefit under the Cash Balance Formula commences, the Participant's Hypothetical Account Balance is the greater of (~~a~~1) the Hypothetical Account balance determined using the actual Interest Crediting Rate(s) that applied during the guarantee period, and (~~b~~2) the Hypothetical Account Balance determined as if the plan had used a fixed annual Interest Crediting Rate equal to _____% [specify rate no greater than 3%] for the Guarantee Period. For this purpose, the Guarantee Period is the period beginning on __________ [date the cumulative floor began to apply to the plan] and ending on the annuity starting date as of which a distribution of the Participant's entire remaining vested benefit under the Cash Balance Formula commences, and the cumulative floor is applied taking the value of any previous distributions into account.

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

(Note to reviewer: If a Cash Balance Plan has already established an Interest Crediting Rate, that rate cannot be changed in a way that could potentially reduce the future Interest Credits applying to a participant's Hypothetical Account Balance already earned as of the date of the amendment without protecting the cash balance account as required under Code § 411(d)(6). However, if a plan's Interest Crediting Rate exceeded a market rate of return as defined in Reg. § 1.411(b)(5)-1(d), the rate may be reduced using the transition Regulations as provided in Reg. § 1.411(b)(5)-1(e)(3)(iv), provided the amendment was made before the effective dates outlined in Reg. § 1.411(b)(5)-1(f)(2)(i)(B)(*1*) or Reg § 1.411(b)(5)-1(f)(2)(i)(B)(*3*). Generally, this means that in order to qualify for relief from Code § 411(d)(6), a transitional amendment must be made before the first day of the plan year beginning on or after January 1, 2017, or as late as January 1, 2019 in the case of certain collectively bargained plans.)

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

( ) This requirement applies only to distributions made on or after ________ [Insert date, no later than June 29, 2005, or the date the Plan became a Cash Balance Plan, if later.]

26A.II. CONVERSION AMENDMENT

( ) If the Plan has been amended to convert the benefit formula from a non-Cash Balance Formula to a Cash Balance Formula as described in section ____ of the Plan document, enter the Conversion Amendment Effective Date: ____________.

[This date is the effective date of a Plan amendment that reduces or eliminates future benefits that Participants would have accrued under a non-cash-balance formula, and provides for them to begin accruing benefits under a Cash Balance Formula, instead.

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

27. Current benefit formulas – plans providing for permitted disparity

Statement of Requirement: **Code §§ 401(a)(4), 401(a)(5), 401(l), 411(b)(1); Reg. §§ 1.401(a)(4)-3, 1.401(l~~)~~)-1, 1.401(l)-3**

Document Provision: _____

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 Code § 411(b)(1)(F), may not be less than 25).

(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.)

(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 Code § 411(b)(1)(F), 133 1/3% 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% of 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 Code § 411(b)(1)(F), 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 Code § 411(b)(1)(F), 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

4. ( ) 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 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 Code § 411(b)(1)(F), may not be less than 25).

(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 Code § 411(b)(1)(F), 133 1/3% 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% 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 Code § 411(b)(1)(F), 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 Code § 411(b)(1)(F), 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.

5. ( ) 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 LRM #14 and LRM #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: Reg. § 1.401(l)-3(e) requires an adjustment 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 so that the appropriate reduction is reflected in the plan's benefit formula. Table I below contains the reduction factors from Table IV of Reg. § 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, for example., 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 Reg. § 1.401(l)-3(e)(3), 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 Tables I, II and, III in Reg. § 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 ____% (insert a percentage that is greater than 100% but ~~not greater~~less than or equal to 150% of each participant's covered compensation for the current year, ~~and~~but 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: A Pre-approved Plan may contain integration levels (or offset levels), not specified above that require greater reductions in the 0.75% 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 Sandardized Plans that provide for disparity must meet the permitted disparity requirements of Code § 401(l) in form (see Reg. § 1.401(a)(4)-3(b)(6)(ii~~)) and nonstandardized plans that provide for disparity must generally allow the option of satisfying Code § 401(l) in form,~~)), these plans may not allow the employer to elect the intermediate amount integration level (or offset level) under Reg. § 1.401(l)-3(d)(5~~) ,~~), as that option requires the employer to demonstrate compliance with the demographic requirements of Reg. § 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:

(1) ____% per year, or

(2) the percentage adjustment to Social Security benefits for the year under Social Security Act § 215(i)(2)(A).

27A. Definitions – plans providing for permitted disparity

Statement of Requirement: **Reg. §§ 1.401(l)-1(c), 1.401(a)(4)-13(c)**

Document Provision: _____

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 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 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~~

( ) second prior plan year

(Note to reviewer: A plan must generally provide that an employee's covered compensation is automatically adjusted for each plan year. However, a plan may use an amount of covered compensation for employees equal to each employee's covered compensation, as defined in Reg. § 1.401(l)-1(c)(7)(i) or Reg. § 1.401(l)-1(c)(7)(ii), 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 plan year that begins 5 years before the current plan year. 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 three-consecutive year period ending with or within the plan year. If a participant's entire period of employment with the employer is less than three-consecutive years, compensation is averaged on an annual basis over the participant's entire period of employment. Compensation for any year in excess of the taxable wage base in effect at the beginning of such year 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 Social Security Act § 230 at the beginning of the plan year.

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

Statement of Requirement: **Reg. § 1.401(l)-3(e)**

Document Provision: _____

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 Code § 401(l). All benefit accruals for years for which the plan does not provide for the disparity permitted under Code § 401(l) 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: Reg. § 1.401(l)-3(e) 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 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 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	0.584	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 Reg. § 1.401(l)-3(e)(3), 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 Tables I, II or III in Reg. § 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~~1) is payable under the plan solely on account of a participant's disability, as determined by the Social Security Administration, (~~ii~~2) terminates no later than the participant's normal retirement age, (~~iii~~3) 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~~4) upon attainment of early or normal retirement age, the participant receives a benefit that satisfies the accrual and vesting rules of Code § 411 (and the regulations thereunder) without taking into account the disability benefits made up to that age.

27C. Employee contributions – plans providing for permitted disparity

Statement of Requirement: Reg. §§ 1.401(l)-3(h), 1.401(a)(4)-6

Document Provision: _____

(Note to reviewer: A ~~Pre-approved~~Nonstandardized Plan that provides for permitted disparity may not provide for mandatory employee contributions that are not allocated to a separate account. See *Employee Contribution Provisions* and LRM #s 102-104.)

27D. Permitted disparity with respect to

employer-provided benefit - fully insured

Statement of Requirement: **Code §§ 412(e)(3); Reg. § 1.401(a)(4)-3(b)(5); Rev. Proc. 2017-41, sec. 6.03(15)**

Document Provision: _____

(Note to reviewer: If a defined benefit plan is a fully insured plan within the meaning of Code § 411(b)(1)(F) and Code § 412(e)(3) (LRM #32), the plan satisfies the permitted disparity rules of Code § 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 Code § 412(e)(3) plans.)

27E. Integration with Social Security

Statement of Requirement: **Code §401(a)(5)(D); Reg. §1.401(a)(5)-1(e)**

Document Provision: _____

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~~1) 50% of the participant's projected primary insurance amount, multiplied by (~~b~~2) 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 Code § 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 Code § 125, Code § 402(e)(3), Code § 402(h), or Code § 403(b).

(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 6% 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 actuarially 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).

28. Benefit increase - fully insured plans, insured preretirement death benefits

Statement of Requirement: **Code § 401(a)(4); Rev. Rul. 69-251, 1969-1 C.B. 127**

Document Provision: _____

(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 preretirement death benefit under a contract, if the minimum increase in face amount does not exceed $1,000. These minimums are also applicable to insured preretirement death benefits (but not retirement benefits) under non-fully insured plans. Such a plan may require a minimum, not exceeding $1,000, before it will provide or increase an insured preretirement death benefit. For example, if the preretirement 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 (accrual computation period)

Statement of Requirement: **Reg. §§ 1.401(a)(26)-6(b)(7), 1.410(b)-6(f); DOL Reg. § 2530.204-2; Rev. Proc. 2017-41, sec. 5.16(1)**

Document Provision: _____

Sample Plan Language~~:~~ (Standardized Plan):

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

~~**Provision #1**~~

~~Year of participation~~ shall mean a plan year during which ~~a participant either completes~~an employee is eligible to participate in the plan.

Optional Plan Language (Standardized Plans)

However, if elected in the adoption agreement, a year of participation does not include a plan year in which an employee who is eligible to participate terminates service with not more than 500 hours of service ~~during the plan year or is employed~~and is not an active employee on the last day of the plan year.

~~**Provision #2**~~

Sample Adoption Agreement Language (Standardized Plan)::

1. A year of participation

   ( ) will

   ( ) will not

include a plan year in which an employee who is eligible to participate terminates service with not more than 500 hours of service and is not an active employee on the last day of the plan year.

(Note to reviewer: A plan may provide options as to whether some or all of the employees described in Code § 410(a)(1) or Code § 410(b)(3) are excluded, provided that the criteria for excluding employees therein apply uniformly to all employees.)

Sample Plan Language (Nonstandardized Plan):

Year of participation shall mean a plan year during which the participant completes ~~2,000~~ the number of hours of service for a full year of service, as described in section 2. of the adoption agreement. If the participant either completes more than ~~500~~ the minimum number of hours of service, as described in section 3. of the adoption agreement, during the plan year ~~or is employed on the last day of the plan year~~ but has less than ~~2,000~~ the number of hours of service ~~during the plan~~for a full year of service, as described in section 2. of the adoption agreement, such participant shall receive an accrual for such year which bears the same ratio to a full accrual as the number of hours of service the participant actually completes bears to ~~2,000~~the number of hours of service for a full year of service, as described in section 2. of the adoption agreement. 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~~ the number of hours of service for a full year of service, as described in section 2. of the adoption agreement.

~~**(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.)**~~

Sample Adoption Agreement Language (Nonstandardized plan):

1. The number of hours of service required for a full year of service in a plan year is:

   ______

2. The minimum number of hours of service to receive partial credit in a plan year is: _____ (must be no more than 1,000)

(Note to reviewer: A Nonstandardized Plan may require, as an option in the adoption agreement, ~~up~~that a participant must complete a specified number of hours in order to ~~1,000 hours of service.~~earn a year of participation, if it also provides appropriate partial credit in accordance with DOL Reg. § 2530-204-2.)

(Note to reviewer: The sample plan language above provides that years of participation are determined based on the plan year. A Nonstandardized 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, by election in the adoption agreement.)

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

(Note to reviewer: A Standardized Plan generally may not deny an accrual to an employee eligible to participate merely because the employee is not an active employee on the last day of the plan year or has failed to complete a specified number of hours of service during the year. However, a Standardized Plan may deny an accrual to an employee who is eligible to participate if the employee terminates service during the plan year with not more than 500 hours of service and is not an active employee on the last day of the plan year.)

30. Definition of year of credited service

Statement of Requirement: **Code §§ 401(a)(4), 401(l)**

Document Provision: _____

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

Statement of Requirement: Code §§ 411(a)(7), 411(b); Reg. §§ 1.401(a)-1(b)(1), 1.411(a)-7(a)(1), 1.411(b)-1; Rev. Proc. 2017-41, secs. 6.03(7)(f), 6.03(15)

Document Provision: _____

(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 Code § 411(b). 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 – 133⅓% 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 133⅓% of the annual rate at which he or she could accrue benefits for any prior plan year. Pre-approved Cash Balance Plans must meet this rule exclusively. See LRM #26A.)

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% of the normal retirement benefit, multiplied by the number of years of participation (not in excess of 33⅓), 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 5-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).)

Provision #4 – Cash Balance Plan

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

(Note to reviewer: The first blank above should be filled in with the section number of the plan corresponding to LRM #41 and the second blank should be filled in with the section number of the plan corresponding to LRM #42.)

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

Fully-Insured Code § 412(e)(3) Plans

(Note to reviewer: A fully insured plan under Code §412(e)(3) that is a Statutory Hybrid Plan may not be a Pre-approved plan. See Revenue Procedure 2017-41, sections 6.03(7)(f) and 6.03(15))

(Note to reviewer: Because of the potential for discrimination, fully-insured plans under Code § 412(e)(3) in the Pre-approved plans program must satisfy the safe harbor for Code § 412(e)(3) plans contained in Reg. § 1.401(a)(4)-3(b)(5). In general, to be eligible for this safe harbor, a Code § 412(e)(3) plan must:

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

(2) constitute an insurance contract plan within the meaning of Code § 412(e)(3) (see LRM #32);

(3) incorporate the Code § 412(e)(3) 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 Reg. § 1.401(a)(4)-3(b)(4)(i)(C)(1) (safe harbor for unit credit plans using fractional accrual rule) or Reg. § 1.401(a)(4)-3(b)(4)(i)(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 Reg. § 1.401(l)-3, and the 0.75% maximum excess or offset allowance is reduced by multiplying the factor by an additional 0.80 (see LRM #27D))**

~~31CB. Formula to determine accrued benefit~~

~~**Document Provision: _____**~~

~~**Statement of Requirement:**~~ ~~**IRC §§ 411(a)(7), 411(b); Reg. §§ 1.401(a)-1(b)(1), 1.411(a)-7(a)(1), 1.411(b)-1**~~

~~**Sample Plan Language:**~~

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

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

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

32. Fully-insured section 412(e)(3) plan rules

Statement of Requirement: **Code §§ 401(a)(4), 404(a)(2), 403(a), 411(b)(l)(F), 412(e)(3); Reg. § 1.401(a)(4)-3(b)(5); Rev. Proc. 2017-41, secs. 6.03(7)(f), 6.03(15))**

Document Provision: _____

Sample Plan Language:

(Note to Reviewer: This LRM #32 contains miscellaneous definitions and rules applicable to fully-insured Code § 412(e)(3) plans. A statutory hybrid plan that is funded exclusively through insurance contracts described in Code § 412(e)(3) may not be a Pre-approved Plan.

Section A provides the definition of frozen projected benefit. This definition must be contained in all fully-insured Code § 412(e)(3) plans and must be provided in lieu of LRM #24 (definition of frozen accrued benefit). ~~Sponsors~~Providers 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 restrictions 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 Code § 411(b)(1)(F) for fully insured Code § 412(e)(3) 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 Code § 415, the participant's frozen projected benefit will be increased for years after the latest fresh-start date to the extent permitted under Code § 415(d)(1). 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 Code § 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 0.5% 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(e)(3) PLAN ACCRUAL RULES:

This plan is funded exclusively by the purchase of individual insurance contracts, except for any top-heavy side-fund trust maintained for purposes of meeting the minimum benefit requirements of Code § 416(c). Contracts 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 (1) 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 (2) no rights under such contracts had been subject to a security interest at any time, and (3) 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 side fund trust

without affecting the plan's status as satisfying the above described fully insured requirement. See Reg. § 1.416-1, Q&A M-17 and LRM #70.)

33. Pre-ERISA accrued benefits

Statement of Requirement: **Code § 411(b)(l)(D); Reg. § 1.411(b)-1(c)**

Document Provision: _____

For plan years beginning before Code § 411 is applicable, 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 Code § 411 is less than that provided by article ____ such difference shall be accrued in accordance with article ____.

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

34. Definition of normal retirement benefit

Statement of Requirement: **Code § 411(a)(9); Reg. § 1.411(a)-7(c)**

Document Provision: _____

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~~Provider should insert the section number of the plan that corresponds to LRM #70.)

35. Accrual limitations based upon age not permitted

Statement of Requirement: **Code § 411(b)(1)(H); Reg. § 1.411(b)-1(d)(3)**

Document Provision: _____

(Note to reviewer: The ~~sponsor~~Provider 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 CONTRIBUTION PROVISIONS

36. Nondeductible voluntary employee contributions

Statement of Requirement: **Reg. §§ 1.401(k)-3(c)(6)(v); 1.401(m)-1(a)(3)(i)**

Document Provision: _____

(Note to reviewer: A ~~defined benefit~~Standardized Pre-approved Plan may not provide for ~~employee contributions, effective for years beginning after the date the plan is restated for EGTRRA. A nonstandardized plan may continue to provide an~~nondeductible voluntary employee~~-derived benefit based on prior mandatory~~ contributions. ~~See LRM #102 - #104.~~ A ~~standardized or nonstandardized~~Nonstandardized Pre-approved Plan may ~~maintain separate accounts~~provide for ~~prior~~nondeductible voluntary employee contributions. For years in which a plan has accepted (or currently accepts) voluntary contributions, the plan must include the applicable provisions of the CODA LRM relating to the requirements of Code § 401(m).)

(Note to reviewer: LRMs #37 and #38 are required if the plan previously accepted (or currently accepts) nondeductible voluntary employee contributions.)

(Note to reviewer: Effective January 1, 2020 (or earlier if elected by the employer), a defined benefit plan that accepts nondeductible voluntary contributions may no longer suspend or preclude an employee from making voluntary contributions on account of having taken a hardship distribution from a § 401(k) plan of the employer. See Reg. § 1.401(k)-3(c)(6)(v) after amendment on September 23, 2019 by T.D. 9875, 2019-41 I.R.B. 856. An employer could elect to eliminate an existing employee's suspension effective with the issuance of proposed regulations on November 14, 2018. Whether effective on January 1, 2020, or made effective earlier, if plan provisions preclude employee contributions on account of hardship, an interim amendment is required no later than December 31, 2021. See Rev. Proc. 2020-9, 2020-02 I.R.B. 294.)

37. Separate account for nondeductible voluntary employee contributions

Statement of Requirement: **Code § 411(d)(5); Reg. § 1.411(c)-1(b); Rev.**

Rul. 80-155, 1980-1 C.B. 84

Document Provision: _____

Sample Plan Language:

~~The plan administrator will not accept nondeductible employee contributions in plan years beginning after the date the plan is restated for the Economic Growth and Tax Relief Reconciliation Act of 2001, as indicated in the adoption agreement.~~ A separate account shall be maintained for ~~the~~prior (or current) nondeductible voluntary employee contributions of each participant ~~made in plan years beginning on or before this date~~. 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

Statement of Requirement: Code § 411(a)(1)

Document Provision: _____

Sample Plan Language:

Nondeductible employee voluntary contributions (as adjusted for investment experience) shall be nonforfeitable at all times.

39. Deductible voluntary employee contributions

Statement of Requirement: Code § 219

Document Provision: _____

(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~~Prior contributions 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 contributions 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.

(Note to reviewer: The Provider should insert the appropriate section of the plan which provides for joint and survivorship provisions in conformity with LRM #46.)

40. Limitation on benefits

Statement of Requirement: **Code § 415; Reg. §§ 1.415(a)-1, 1.415(b)-1, 1.415(b)-2, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1, 1.415(j)-1; Notice 2001-37, 2001-25 I.R.B. 1340; Notice 2001-42, 2001-30 I.R.B. 70; Notice 2004-78, 2004-48 I.R.B. 879; Notice 2007-7, 2007-5 I.R.B. 395; Notice 2010-15, 2010-6 I.R.B. 390; Rev. Rul. 2001-51, 2001-2 C.B. 427; Rev. Rul. 2001-62, 2001-2 C.B. 632; Rev. Rul. 2002-27, 2002-1 C.B. 925; Rev. Rul. 2007-67, 2007-48 I.R.B. 1047; Rev. Rul. 2012-4, 2012-8 I.R.B. 386; Rev. Proc. 2017-41, secs. 5.05, 5.06, 6.03(11); Prop. Reg. § 1.415(c)-2(g)(9)**

Document Provision: _____

Sample Plan Language:

Article _____: Limitation on Benefits

Section 1. The limitations of this article shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein.

(Note to Reviewer: The effective date in section 1 is the date that the final regulations under Code § 415 generally apply to a plan. The final regulations include a grandfather rule for benefits accrued prior to the effective date. See section 4 below and Reg. § 1.415(a)-1(g).)

Section 2. The Annual Benefit otherwise payable to a participant under the plan at any time shall not exceed the Maximum Permissible Benefit. If the benefit the participant would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, the benefit shall be limited (or the rate of accrual reduced) to the extent necessary so that the benefit does not exceed the Maximum Permissible Benefit.

Section 3. If the participant is, or has ever been, a participant in another qualified defined benefit plan (without regard to whether the plan has been terminated) maintained by the employer or a predecessor employer, the sum of the participant's Annual Benefits from all such plans may not exceed the Maximum Permissible Benefit. Where the participant's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the Maximum Permissible Benefit applicable at that age, the employer shall choose in section **______** of the adoption agreement the method by which the plans will limit a participant's benefit accrual in such cases.

(Note to Reviewer: The above blank should be filled in with the section number of the adoption agreement where the employer has stated the order and manner in which benefits will be limited (without involving employer discretion) when an employee with benefits under more than one defined benefit plan of the employer (as defined in section 6.5 of this LRM #40) or a predecessor employer has a total benefit under all such defined benefit plans that exceeds the Maximum Permissible Benefit (this language is not provided). If the employer maintains more than one defined benefit plan covering some of the same participants, the employer must request a determination letter in order to have reliance with respect to the requirements of Code § 415. See sections 5.05 and 5.06 of Rev. Proc. 2017-41, and paragraph A of the sample adoption agreement provisions of this LRM #40.)

Section 4. The application of the provisions of this article shall not cause the Maximum Permissible Benefit for any participant to be less than the participant's accrued benefit under all the defined benefit plans of the employer or a predecessor employer as of the end of the last Limitation Year beginning before July 1, 2007, under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Code § 415 in effect as of the end of the last Limitation Year beginning before July 1, 2007, as described in Reg. § 1.415(a)-1(g)(4).

(Note to Reviewer: Reg. § 1.415(c)-2(f) requires that the definition of compensation used in applying the limitations of Code § 415 not reflect compensation for a year that is in excess of the limitation of Code § 401(a)(17) that applies to that year (see section 6.7 of this LRM #40). Plan provisions will not be treated as failing to satisfy this rule merely because the benefit calculated as of the end of the last Limitation Year beginning before July 1, 2007, under provisions of the plan adopted and in effect before April 5, 2007, the plan's definition of compensation used for purposes of the limitations of Code § 415(b)(1)(B) reflects compensation for a year in excess of the limitation of Code § 401(a)(17) that applies to that year.)

Section 5. The limitations of this article shall be determined and applied taking into account the rules in section 7.

Section 6. Definitions.

Section 6.1. Annual Benefit: A benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this article. For a participant who has or will have distributions commencing at more than one annuity starting date, the Annual Benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this article as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to Reg. § 1.401(a)-20, Q&A 10(d), and with regard to Regs. §§ 1.415(b)-1(b)(1)(iii)(B) and 1.415(b)-1(b)(1)(iii)(C).

No actuarial adjustment to the benefit shall be made for (1) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the participant's benefit were paid in another form; (2) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and post-retirement medical benefits); or (3) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code § 417(e)(3) and would otherwise satisfy the limitations of this article, and the plan provides that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this article applicable at the annuity starting date, as increased in subsequent years pursuant to Code § 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the Annual Benefit shall take into account social security supplements described in Code § 411(a)(9) and benefits transferred from another defined benefit plan, other than transfers of distributable benefits pursuant Reg. § 1.411(d)-4, Q&A-3(c), but shall disregard benefits attributable to employee contributions or rollover contributions.

Effective for distributions in plan years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with section 6.1(a) or section 6.1(b).

(a) Benefit Forms Not Subject to Code § 417(e)(3): The straight life annuity that is actuarially equivalent to the participant's form of benefit shall be determined under this section 6.1(a) if the form of the participant's benefit is either (1) a nondecreasing annuity (other than a straight life 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 (2) an annuity that 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 benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code § 401(a)(11)).

   (i) Limitation Years beginning before July 1, 2007. For Limitation Years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit computed using whichever of the following produces the greater annual amount: (1) the interest rate specified in section _____ of the plan and the mortality table (or other tabular factor) specified in section _____ of the plan for adjusting benefits in the same form; and (2) a 5% interest rate assumption and the applicable mortality table defined in section _______ of the plan for that annuity starting date.

(Note to Reviewer: The 1st and 2nd blanks above should be filled in with the section numbers of the plan that specify, respectively, the interest rate and mortality table for such actuarial equivalence. The 3rd blank above should be filled in with the section number of the plan that specifies the applicable mortality table and that corresponds to section 3 of LRM #42.)

(ii) Limitation Years beginning on or after July 1, 2007. For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of (1) the annual amount of the straight life annuity (if any) payable to the participant under the plan commencing at the same annuity starting date as the participant's form of benefit; and (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using a 5% interest rate assumption and the applicable mortality table defined in section _______ of the plan for that annuity starting date.

(Note to Reviewer: The blank above should be filled in with the section number of the plan that specifies the applicable mortality table and that corresponds to section 3 of LRM #42.)

(b) Benefit Forms Subject to Code § 417(e)(3): The straight life annuity that is actuarially equivalent to the participant's form of benefit shall be determined under this paragraph if the form of the participant's benefit is other than a benefit form described in section 6.1(a). In this case, the actuarially equivalent straight life annuity shall be determined as follows:

(i) Annuity Starting Date in Plan Years Beginning After 2005. If the annuity starting date of the participant's benefit occurs during a plan year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of (1) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using the interest rate specified in section _____ of the plan and the mortality table (or other tabular factor) specified in section _____ of the plan for adjusting benefits in the same form; (2) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using a 5.5% interest rate assumption and the applicable mortality table defined in section _______ of the plan; and (3) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using the applicable interest rate defined in section _____ of the plan and the applicable mortality table defined in section _______ of the plan, divided by 1.05.

However, effective for benefits with annuity starting dates during limitation years beginning after December 31, 2008, paragraph (b)(i)(3) of this section does not apply to a plan maintained by an eligible employer under Code § 408(p)(2)(C)(i) (generally, an employer that had no more than 100 employees who received at least $5,000 of compensation from the employer during the preceding year).

(Note to Reviewer: The 1st and 2nd blanks above should be filled in with the section numbers of the plan that specify, respectively, the interest rate and mortality table specified for such actuarial equivalence. The 3rd blank above should be filled in with the section number of the plan that specifies the applicable mortality table and that corresponds to section 3 of LRM #42. The 4th and 5th blanks above should be filled in with the section numbers of the plan that specify, respectively, the applicable interest rate and applicable mortality table and that correspond, respectively, to sections 2 and 3 of LRM #42.)

(ii) Annuity Starting Date in Plan Years Beginning in 2004 or 2005. If the annuity starting date of the participant's form of benefit is in a plan year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using whichever of the following produces the greater annual amount: (1) the interest rate specified in section _____ of the plan and the mortality table (or other tabular factor) specified in section _____ of the plan for adjusting benefits in the same form; and (2) a 5.5% interest rate assumption and the applicable mortality table defined in section _______ of the plan.

(Note to Reviewer: The 1st and 2nd blanks above should be filled in with the section numbers of the plan that specify, respectively, the interest rate and mortality table specified for such actuarial equivalence. The 3rd blank above should be filled in with the section number of the plan that specifies the applicable mortality table and that corresponds to section 3 of LRM #42.)

If the annuity starting date of the participant's benefit is on or after the first day of the first plan year beginning in 2004 and before December 31, 2004, the application of this section 6.1(b)(ii) shall not cause the amount payable under the participant's form of benefit to be less than the benefit calculated under the plan, taking into account the limitations of this article, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using whichever of the following produces the greatest annual amount:

I. the interest rate specified in section _____ of the plan and the mortality table (or other tabular factor) specified in section _____ of the plan for adjusting benefits in the same form (as provided under the terms of the plan in effect as of the date of the distribution);

(Note to Reviewer: The two blanks above should be filled in with the section numbers

of the plan that specify, respectively, the interest rate and mortality table specified for such actuarial equivalence.)

II. the applicable interest rate defined in section _____ of the plan and the applicable mortality table defined in section _______ of the plan (as provided under the terms of the plan in effect as of the date of the distribution); and

(Note to Reviewer: The two blanks above should be filled in with the section numbers of the plan that specify, respectively, the applicable interest rate and the applicable mortality table and that correspond respectively, to section 2 and 3 of LRM #42.)

III. the applicable interest rate defined in section _____ of the plan (as in effect on the last day of the last plan year beginning before January 1, 2004, under provisions of the plan then adopted and in effect) and the applicable mortality table defined in section _______ of the plan.

(Note to Reviewer: The two blanks above should be filled in with the section numbers of the plan that specify, respectively, the applicable interest rate and the applicable mortality table and that correspond respectively, to section 2 and 3 of LRM #42.)

(Note to Reviewer: Section 6.1(b)(ii) reflects the amendment to Code § 415(b)(2)(E)(ii) made by the Pension Funding Equity Act of 2004 (PFEA '04) § 101(b)(4) and the transition rule under PFEA '04 § 101(d)(3), as described in Notice 2004-78. PFEA '04 § 101(c)(1) provides relief from the requirements of Code § 411(d)(6) and Employee Retirement Income Security Act of 1974 (ERISA) § 204(g) for plan amendments adopted pursuant to PFEA '04 § 101 (as amended by Workers' § 103(a) of WRERA) that are timely adopted and complied with in operation as of the effective date of the amendment. Notice 2004-78, 2004-48 I.R.B. 879 Q&A 6 provides, in part, that this relief applies to a plan amendment for PFEA '04 § 101(b)(4) that reflects an alternative, reasonable interpretation of the transition rule in PFEA '04 § 101(d)(3), but that results in a lower distribution amount, as well as to a plan amendment that does not implement PFEA '04 § 101(d)(3).)

Section 6.2. Compensation: As elected by the employer in section _____ of the adoption agreement, Compensation shall mean one of the following:

(Note to Reviewer: The blank should be filled in with the section number of the adoption agreement where the employer selects the definition of compensation that will be used for purposes of the plan's Code § 415 limitations and that corresponds to paragraph D of the sample adoption agreement provisions of this LRM #40.)

(a) Information required to be reported under Code §§ 6041, 6051, and 6052 (wages, tips, and other compensation as reported on Form W-2). Compensation is defined as wages, within the meaning of Code § 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 Code §§ 6041(d), 6051(a)(3), and 6052. Compensation shall be determined without regard to any rules under Code § 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 Code § 3401(a)(2)).

(b) Code § 3401(a) wages. Compensation is defined as wages within the meaning of Code § 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 Code § 3401(a)(2)).

(c) Code § 415 safe-harbor compensation. Compensation is defined as wages, differential wage payments under Code § 3401(h) made after December 31, 2008, 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 includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in Reg. § 1.62-2(c)), and excluding the following:

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

(Note to Reviewer: The blank should be filled in with the section number of the adoption agreement where the employer may elect to include in compensation distributions from a nonqualified unfunded plan of deferred compensation that are includible in gross income. See paragraph D of the sample adoption agreement provisions of this LRM #40.)

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

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

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

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

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

Except as provided herein, for Limitation Years beginning after December 31, 1991, compensation for a Limitation Year is the compensation actually paid or made available during such Limitation Year. If elected by the employer in section _____ of the adoption agreement, compensation for a Limitation Year shall include amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates, provided the amounts are paid during the first few weeks of the next Limitation Year, the amounts are included on a uniform and consistent basis with respect to all similarly situated employees, and no compensation is included in more than one Limitation Year.

(Note to Reviewer: The blank above should be filled in with the section of the adoption agreement where the employer may elect to include compensation earned in the limitation year but not paid in that limitation year solely because of the timing of pay periods and pay dates. See paragraph E of the sample adoption agreement provisions of this LRM #40.)

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

(Note to Reviewer: The blank should be filled in with the section number of the adoption agreement where the employer may specify an effective date that is before the first limitation year beginning on or after July 1, 2007 for including certain post-severance compensation in the plan's definition of compensation. See paragraph F of the sample adoption agreement provisions of this LRM #40.)

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

(Note to Reviewer: The blank should be filled in with the section number of the adoption agreement where the employer may elect to include in compensation certain post-severance pay for unused accrued leave as well as post-severance payments from

a nonqualified unfunded plan of deferred compensation. See paragraph G of the sample adoption agreement provisions of this LRM #40.)

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

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

Any payments not described above shall not be considered compensation if paid after severance from employment, even if they are paid by the later of 2 ½ months after the date of severance from employment or the end of the Limitation Year that includes the date of severance from employment, except, (1) if elected by the employer in section _____ of the adoption agreement, payments to an individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of Code § 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service; or (2) if elected by the employer in section _____ of the adoption agreement, compensation paid to a participant who is permanently and totally disabled, as defined in Code § 22(e)(3), provided, as elected by the employer in section _____ of the adoption agreement, salary continuation applies to all participants who are permanently and totally disabled for a fixed or determinable period, or the participant was not a highly compensated employee, as defined in Code § 414(q), immediately before becoming disabled.

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

(Note to Reviewer: The 1st and 2nd blanks should be filled in with the section numbers of the adoption agreement where the employer may elect to include in compensation certain salary continuation payments to individuals in qualified military service and to individuals who are permanently and totally disabled, respectively. The 3rd blank should be filled in with the section of the adoption agreement where the employer elects whether the inclusion in compensation of salary continuation payments to permanently and totally disabled participants, if applicable, shall apply with respect to all such participants or with respect to all such participants who were not highly compensated employees immediately before becoming disabled. See sections H and I of the sample adoption agreement provisions of this LRM #40.)

For Limitation Years beginning after December 31, 1997, compensation paid or made available during such Limitation Year shall include amounts that would otherwise be included in Compensation but for an election under Code § 125(a), Code § 402(e)(3), Code § 402(h)(1)(B), Code § 402(k), or Code § 457(b).

For Limitation Years beginning after December 31, 2000, or such earlier effective date as the employer specifies in section _____ of the adoption agreement, Compensation shall also include any elective amounts that are not includible in the gross income of the employee by reason of Code § 132(f)(4).

(Note to Reviewer: The blank should be filled in with the section number of the adoption agreement where the employer may specify an earlier effective date, pursuant to a prior plan amendment, for including Code § 132(f)(4) amounts in Compensation. See section J of the sample adoption agreement provisions of this LRM #40.)

If elected by the employer in section _____ of the adoption agreement, for Limitation Years beginning after December 31, 2001 or such earlier effective date as the employer specifies in section _____ of the adoption agreement, Compensation shall also include deemed Code § 125 compensation. Deemed Code § 125 compensation is an amount that is excludable under Code § 106 that is not available to a participant in cash in lieu of group health coverage under a Code § 125 arrangement solely because the participant is unable to certify that he or she has other health coverage. Amounts are deemed Code § 125 compensation only if the employer does not request or otherwise collect information regarding the participant's other health coverage as part of the enrollment process for the health plan.

(Note to Reviewer: The 1st blank should be filled in with the section number of the adoption agreement where the employer may elect to include deemed Code § 125 compensation in Compensation. See paragraph K of the sample adoption agreement provisions of this LRM #40. The 2nd blank should be filled in with the section number of the adoption agreement where the employer may elect to specify an earlier effective date, pursuant to prior plan amendment, for including deemed Code § 125 compensation in Compensation. See paragraph L of the sample adoption agreement provisions of this LRM #40.)

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

(Note to Reviewer: This election is provided as a rule of administrative convenience for purposes of determining who is a key employee for purposes of Code § 416 and who is a highly compensated employee as defined in Code § 414(q). The blank should be filled in with the section number of the adoption agreement where the employer may elect to exclude non-participant compensation. See paragraph M of the sample adoption agreement provisions of this LRM #40.)

(Note to Reviewer: For plans that are sponsored by Indian tribal governments, effective for taxable years ending on or after November 15, 2013, proposed regulations clarify that compensation received by Indian tribal members for services rendered in performing certain fishing rights-related activities may be treated as compensation for purposes of applying Code § 415 limitations, even though these

payments might otherwise be excludible from gross income. These regulations clarify that exclusion notwithstanding, fishing rights-related income is includible in Code § 415 compensation and amounts may be contributed to a qualified retirement plan based on this income. Under these regulations, fishing rights-related activity with respect to Indian tribes includes any activity directly related to (1) harvesting, processing or transporting fish harvested in the exercise of a recognized fishing right of the tribe; or (2) selling such fish but only if substantially all of such harvesting was performed by members of such tribe.)

Section 6.3. Defined Benefit Compensation Limitation: 100% of a participant's High Three-Year Average Compensation, payable in the form of a straight life annuity.

If elected by the employer in section _____ of the adoption agreement, in the case of a participant who has had a severance from employment with the employer, the Defined Benefit Compensation Limitation applicable to the participant in any Limitation Year beginning after the date of severance shall be automatically adjusted by multiplying the limitation applicable to the participant in the prior Limitation Year by the annual adjustment factor under Code § 415(d) that is published in the Internal Revenue Bulletin. The adjusted compensation limit shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year.

(Note to Reviewer: The blank should be filled in with the section number of the adoption agreement where the employer may elect whether to provide automatic adjustments under Code § 415(d) of the compensation limit for participants who have had a severance from employment with the employer. See paragraph N of the sample adoption agreement provisions of this LRM #40.)

In the case of a participant who is rehired after a severance from employment, the Defined Benefit Compensation Limitation is the greater of 100% of the participant's High Three-Year Average Compensation, as determined prior to the severance from employment, as adjusted pursuant to the preceding paragraph, if applicable; or 100% of the participant's High Three-Year Average Compensation, as determined after the severance from employment under section 6.7.

Section 6.4. Defined Benefit Dollar Limitation: Effective for Limitation Years ending after December 31, 2001, the Defined Benefit Dollar Limitation is $160,000, automatically adjusted under Code § 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to Limitation Years ending with or within the calendar year of the date of the adjustment, but a participant's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The employer shall elect in section _____ of the adoption agreement whether the automatic annual adjustment of the Defined Benefit Dollar Limitation under Code § 415(d) shall apply to participants who have had a separation from employment.

(Note to Reviewer: The blank should be filled in with the section number of the adoption agreement where the employer may elect whether to provide automatic

adjustments under Code § 415(d) of the dollar limit for participants who have had a severance from employment with the employer. See paragraph O of the sample adoption agreement provisions of this LRM #40.)

~~**(Note to Reviewer: Section 6.4 reflects the increase to the defined benefit dollar limit of Code § 415(b)(1)(A) that was made by the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). The EGTRRA increases to the limitations under Code § 415(b) (which are reflected in this section 6.4 and in sections 6.9(b) and 7.(b) of this LRM #40) were effective for limitation years ending after December 31, 2001. Plans could have continued the effect of the pre-EGTRRA limits after this date, although this could have affected other qualification requirements. See Rev. Rul. 2001-51. In certain cases where a plan incorporated the Code § 415 limits by reference, the Code § 415 limits under the plan increased automatically without a plan amendment. However, Pre-approved plans may not incorporate the Code § 415 limits by reference. Pre-approved plans, therefore, generally had to be timely amended in good faith in order to apply the EGTRRA increases for a limitation year. See Notice 2001-42 and Rev. Rul. 2001-51, Q&A 2 and 13. Accordingly, a Pre-approved plan may allow an adopting employer to specify in the adoption agreement a later effective date for the EGTRRA increases under the plan that is no earlier than the first limitation year for which the increased limits were timely adopted. Plans were also permitted to limit the EGTRRA increase to the limitations under Code § 415 to participants with post-EGTRRA service. See Rev. Rul. 2001-51, Q&A 12. Accordingly, a Pre-approved plan may also allow an adopting employer to provide in the adoption agreement that the EGTRRA increases under the plan are limited to participants with a post-EGTRRA hour of service, provided this is consistent with any earlier good faith EGTRRA plan amendment.)**~~

(Note to Reviewer: In certain cases where a plan incorporated the Code § 415 limits by reference, these limits increased automatically without a plan amendment. However, Pre-approved plans may not incorporate the Code § 415 limits by reference. Plan terms must preclude the possibility that a Code § 415 limitation violation could occur.)

Section 6.5. 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 Code § 414(b), as modified by Code § 415(h)), all commonly controlled trades or businesses (as defined in Code § 414(c), as modified, except in the case of a brother-sister group of trades or businesses under common control, by Code § 415(h)), or affiliated service groups (as defined in Code § 414(m)) of which the Adopting Employer is a part, and any other entity required to be aggregated with the employer pursuant to Code § 414(o).

Section 6.6. Formerly Affiliated Plan of the Employer: A plan that, immediately prior to the cessation of affiliation, was actually maintained by the employer and, immediately after the cessation of affiliation, is not actually maintained by the employer. For this purpose, cessation of affiliation means the event that causes an entity to no longer be considered the employer, such as the sale of a member of a controlled group of corporations (as defined in Code § 414(b), as modified by Code § 415(h)) to an unrelated corporation, or that causes a plan to not actually be maintained by the employer, such as transfer of plan sponsorship outside a controlled group.

Section 6.7. High Three-Year Average Compensation: The average compensation for the three consecutive years of service (or, if the participant has less than three consecutive years of service, the participant's longest consecutive period of service, including fractions of years, but not less than one year) 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 is rehired by the employer after a severance from employment, the participant's high three-year average compensation shall be calculated by excluding all years for which the participant performs no services for and receives no compensation from the employer (the break period) and by treating the years immediately preceding and following the break period as consecutive. A participant's compensation for a year of service shall not include compensation in excess of the limitation under Code § 401(a)(17) that is in effect for the calendar year in which such year of service begins.

(Note to Reviewer: The blank should be filled in with the section number of the adoption agreement where the employer selects the 12-consecutive month period that will be used as a year of service for purposes of calculating a participant's high three-year average compensation. See paragraph C of the sample adoption agreement provisions of this LRM#40.)

(Note to Reviewer: Reg. § 1.415(c)-2(f) requires that the definition of compensation used in applying the limitations of Code § 415 not reflect compensation for a year that is in excess of the limitation of Code § 401(a)(17) that applies to that year. Plan provisions will not be treated as failing to satisfy this rule merely because the benefit calculated as of the end of the last Limitation Year beginning before July 1, 2007, under provisions of the plan adopted and in effect before April 5, 2007, the plan's definition of compensation used for purposes of the limitations of Code § 415(b)(1)(B) reflects compensation for a year in excess of the limitation of Code § 401(a)(17) that applies to that year.)

Section 6.8. Limitation Year: A calendar year, or the 12-consecutive month period elected by the employer in section ______ of the adoption agreement. All qualified plans maintained by the employer must use the same Limitation Year. If the Limitation Year is amended to a different 12-consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

(Note to Reviewer: The blank should be filled in with the section number of the adoption agreement that corresponds to paragraph B of the sample adoption agreement provisions of this LRM #40.)

Section 6.9. Maximum Permissible Benefit: The lesser of the Defined Benefit Dollar Limitation or the Defined Benefit Compensation Limitation (both adjusted where required, as provided below).

(a) Adjustment for Less Than 10 Years of Participation or Service: If the participant has less than 10 years of participation in the plan, the Defined Benefit Dollar Limitation shall be multiplied by a fraction -- (1) the numerator of which is the number of Years (or part thereof, but not less than one year) of Participation in the plan, and (2) the denominator of which is 10. In the case of a participant who has less than ten Years of Service with the employer, the Defined Benefit Compensation Limitation shall be multiplied by a fraction -- (1) the numerator of which is the number of Years (or part thereof, but not less than one year) of Service with the employer, and (2) the denominator of which is 10.

(b) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62 or after Age 65: Effective for benefits commencing in Limitation Years ending after December 31, 2001, the Defined Benefit Dollar Limitation shall be adjusted if the annuity starting date of the participant's benefit is before age 62 or after age 65. If the annuity starting date is before age 62, the Defined Benefit Dollar Limitation shall be adjusted under section 6.9(b)(i), as modified by section 6.9(b)(iii). If the annuity starting date is after age 65, the Defined Benefit Dollar Limitation shall be adjusted under section 6.9(b)(ii), as modified by section 6.9(b)(iii).

(Note to Reviewer: See the 2nd note to reviewer following section 6.4 of this LRM #40.)

(i) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62:

I. Limitation Years Beginning Before July 1, 2007.
If the annuity starting date for the participant's benefit is prior to age 62 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under section 6.9(a) for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified in section _____ of the plan and the mortality table (or other tabular factor) specified in section _____ of the plan; or (2) a 5% interest rate assumption and the applicable mortality table as defined in section _____ of the plan.

(Note to Reviewer: The 1st and 2nd blanks above should be filled in with the section numbers of the plan that specify, respectively, the interest rate and mortality table (or other tabular factor) used to determine actuarial equivalence under the plan for early retirement purposes. The 3rd blank above should be filled in with the section number of the plan that specifies the applicable mortality table and that corresponds to section 3 of LRM #42.)

II. Limitation Years Beginning on or After July 1, 2007.

A. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under section 6.9(a) for years of participation less than 10, if required) with actuarial equivalence computed using a 5% interest rate assumption and the applicable mortality table for the annuity starting date as defined in section _______ of the plan (and expressing the participant's age based on completed calendar months as of the annuity starting date).

(Note to Reviewer: The blank above should be filled in with the section number of the plan that specifies the applicable mortality table and that corresponds to section 3 of LRM #42.)

B. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the annuity starting date for the participant's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the participant's annuity starting date is the lesser of the limitation determined under section 6.9(b)(i)II.A. and the Defined Benefit Dollar Limitation (adjusted under section 6.9(a) for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the participant's annuity starting date to the annual amount of the immediately commencing straight life annuity under the plan at age 62, both determined without applying the limitations of this article.

C. Notwithstanding any other provisions of this section 6.9(b)(i), the age-adjusted dollar limit applicable to a participant shall not decrease on account of an increase in age or the performance of additional services.

(ii) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age 65:

I. Limitation Years Beginning Before July 1, 2007. If the annuity starting date for the participant's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar

Limitation (adjusted under section 6.9(a) for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (1) the interest rate specified in section _____ of the plan and the mortality table (or other tabular factor) specified in section _____ of the plan; or (2) a 5% interest rate assumption and the applicable mortality table as defined in section _____ of the plan.

(Note to Reviewer: The 1st and 2nd blanks above should be filled in with the section numbers of the plan that specify, respectively, the interest rate and mortality table (or other tabular factor) used to determine actuarial equivalence under the plan for delayed retirement purposes. The 3rd blank above should be filled in with the section number of the plan that specifies the applicable mortality table and that corresponds to section 3 of LRM #42.)

II. Limitation Years Beginning on or After July 1, 2007.

A. Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the participant's annuity starting date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the participant's annuity starting date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under section 6.9(a) for years of participation less than 10, if required), with actuarial equivalence computed using a 5% interest rate assumption and the applicable mortality table for that annuity starting date as defined in section _______ of the plan (and expressing the participant's age based on completed calendar months as of the annuity starting date).

(Note to Reviewer: The blank above should be filled in with the section number of the plan that specifies the applicable mortality table and that corresponds to section 3 of LRM #42.)

B. Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the annuity starting date for the participant's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the participant's annuity starting date is the lesser of the limitation determined under section 6.9(b)(ii)II.A. and the Defined Benefit Dollar Limitation (adjusted under section 6.9(a) for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the plan at the participant's annuity starting date to the annual amount of the adjusted immediately commencing straight life annuity under the plan at age 65, both determined without applying the limitations of this article. For this purpose, the adjusted immediately commencing straight life annuity under the plan at the participant's annuity starting date is the annual amount of such annuity payable to the participant, computed disregarding the participant's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the plan at age 65 is the annual amount of such annuity that would be payable under the plan to a hypothetical participant who is age 65 and has the same accrued benefit as the participant.

(Note to Reviewer: If the plan permits an employer to select a normal retirement age (NRA) less than 65, the plan's provisions regarding actuarial increases for deferred benefits must be coordinated with the age adjustments in section 6.9(b) of this LRM #40 to ensure that the plan does not violate Code § 401(a). Such a violation may be avoided if the plan provides for payment of benefits at NRA, despite continued employment, or if the plan already provides for the suspension of benefits in accordance with Code § 411(a)(3)(B). See Q&A-4 of Rev. Rul. 2001-51, 2001-2 C.B. 427, section 4 of LRM #42, and LRM #55.)

(iii) Notwithstanding the other requirements of this section 6.9(b), in adjusting the Defined Benefit Dollar Limitation for the participant's annuity starting date under sections 6.9(b)(i)I., 6.9(b)(i)II.A., 6.9(b)(ii)I., or 6.9(b)(ii)II.A., no adjustment shall be made to reflect the probability of a participant's death between the annuity starting date and age 62, or between age 65 and the annuity starting date, as applicable, if benefits are not forfeited upon the death of the participant prior to the annuity starting date. To the extent benefits are forfeited upon death before the annuity starting date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the participant's death if the plan does not charge participants for providing a qualified preretirement survivor annuity, as defined in Code § 417(c), upon the participant's death.

(c) Minimum benefit permitted: 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 Maximum Permissible Benefit if:

(i) the retirement benefits payable for a Limitation Year under any form of benefit with respect to such participant under this plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the employer do not exceed $10,000 multiplied by a fraction – (1) the numerator of which is the participant's number of Years (or part thereof, but not less than one year) of Service (not to exceed 10) with the employer, and (2) the denominator of which is 10; and

(ii) the employer (or a predecessor employer) has not at any time maintained a defined contribution plan in which the participant participated (for this purpose, mandatory employee contributions under a defined benefit plan, individual medical accounts under Code § 401(h), and accounts for postretirement medical benefits established under Code § 419A(d)(1) are not considered a separate defined contribution plan).

Section 6.10. Predecessor Employer: If the employer maintains a plan that provides a benefit which the participant accrued while performing services for a former employer, the former employer is a predecessor employer with respect to the participant in the plan. A former entity that antedates the employer is also a predecessor employer with respect to a participant if, under the facts and circumstances, the employer constitutes a continuation of all or a portion of the trade or business of the former entity.

Section 6.11. Severance from Employment: An employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan. An employee does not have a severance from employment if, in connection with a change of employment, the employee's new employer maintains the plan with respect to the employee.

Section 6.12. 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 Code § 415(c)(3)(C)(i) 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 than the last day of such accrual computation period. In no event shall more than one Year of Participation be credited for any 12-month period.

Section 6.13. Year of Service: For purposes of section 6.7, the participant shall be credited with a Year of Service (computed to fractional parts of a year) for each accrual computation period for which 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, taking into account only service with the employer or a predecessor employer.

Section 7. Other Rules.

Section 7.1. Benefits Under Terminated Plans. If a defined benefit plan maintained by the employer has terminated with sufficient assets for the payment of benefit liabilities of all plan participants and a participant in the plan has not yet commenced benefits under the plan, the benefits provided pursuant to the annuities purchased to provide the participant's benefits under the terminated plan at each possible annuity starting date shall be taken into account in applying the limitations of this article. If there are not sufficient assets for the payment of all participants' benefit liabilities, the benefits taken into account shall be the benefits that are actually provided to the participant under the terminated plan.

Section 7.2. Benefits Transferred From the Plan. If a participant's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan maintained by the employer and the transfer is not a transfer of distributable benefits pursuant to Reg. § 1.411(d)-4, Q&A-3(c), the transferred benefits are not treated as being provided under the transferor plan (but are taken into account as benefits provided under the transferee plan). If a participant's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan that is not maintained by the employer and the transfer is not a transfer of distributable benefits pursuant to Reg. § 1.411(d)-4, Q&A-3(c), the transferred benefits are treated by the employer's plan as if such benefits were provided under annuities purchased to provide benefits under a plan maintained by the employer that terminated immediately prior to the transfer with sufficient assets to pay all participants' benefit liabilities under the plan. If a participant's benefits under a defined benefit plan maintained by the employer are transferred to another defined benefit plan in a transfer of distributable benefits pursuant to Reg. § 1.411(d)-4, Q&A-3(c), the amount transferred is treated as a benefit paid from the transferor plan.

Section 7.3. Formerly Affiliated Plans of the Employer. A formerly affiliated plan of an employer shall be treated as a plan maintained by the employer, but the formerly affiliated plan shall be treated as if it had terminated immediately prior to the cessation of affiliation with sufficient assets to pay participants' benefit liabilities under the plan and had purchased annuities to provide benefits.

Section 7.4. Plans of a Predecessor Employer. If the employer maintains a defined benefit plan that provides benefits accrued by a participant while performing services for a predecessor employer, the participant's benefits under a plan maintained by the predecessor employer shall be treated as provided under a plan maintained by the employer. However, for this purpose, the plan of the predecessor employer shall be treated as if it had terminated immediately prior to the event giving rise to the predecessor employer relationship with sufficient assets to pay participants' benefit liabilities under the plan, and had purchased annuities to provide benefits; the employer and the predecessor employer shall be treated as if they were a single employer immediately prior to such event and as unrelated employers immediately after the event; and if the event giving rise to the predecessor relationship is a benefit transfer, the transferred benefits shall be excluded in determining the benefits provided under the plan of the predecessor employer.

Section 7.5. Aggregation of employer's plans. In accordance with Code § 415(f), all of the employer's defined benefit plans are to be treated as one defined benefit plan for purposes of applying the limitations under Code § 415(b) and all of the employer's defined contribution plans are to be treated as one defined contribution plan for purposes of applying the limitations under Code § 415 (c).

Section 7.6. Special Rules. The limitations of this article shall be determined and applied taking into account the rules in Reg. §§ 1.415(f)-1(d), 1.415(f)-1(e), and

1.415(f)-1(h).

Section 7.~~6~~7. Aggregation with Multiemployer Plans.

(a) If the employer maintains a multiemployer plan, as defined in Code § 414(f), and the multiemployer plan so provides, only the benefits under the multiemployer plan that are provided by the employer shall be treated as benefits provided under a plan maintained by the employer for purposes of this article.

(b) Effective for Limitation Years ending after December 31, 2001, a multiemployer plan shall be disregarded for purposes of applying the compensation limitation of sections 6.3 and 6.9(a) to a plan which is not a multiemployer plan.

(Note to Reviewer: See the 2nd note to reviewer following section 6.4 of this LRM #40.)

Sample Adoption Agreement Language:

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

(Note to Reviewer: If the employer (or a predecessor employer) maintains or has ever maintained another defined benefit plan, the employer must provide language that will assure (without involving employer discretion) that the Maximum Permissible Benefit is never exceeded. In the alternative, the employer may identify the other plan that will provide suitable language so that the Maximum Permissible Benefit is never exceeded.)

B. The Limitation Year is the following 12-consecutive month period: ____________.

C. For purposes of calculating the participant's High Three-Year Average Compensation, a year of service is the following 12-consecutive month period: _____________.

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

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

( ) Code § 3401(a) wages

( ) Code § 415 safe-harbor compensation

(Note to reviewer: As added by the Heroes Earnings Assistance and Relief Tax Act (HEART Act), Code § 3401(h) provides that a differential wage payment shall be treated as a payment of wages under Code § 3401(a) for a payment made after December 31, 2008. Also, these payments must be treated as compensation for purposes of applying the Code, but they are not required to be treated as compensation for purposes of determining contributions and benefits under a plan. See Notice 2010-15, 2010-6 I.R.B. 390 Q&A-9 for guidance.)

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

( ) shall

( ) shall not

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

E. Amounts earned but not paid during the Limitation Year solely because of the timing of pay periods and pay dates

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

( ) shall not be included in compensation for the Limitation Year.

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

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

G. Compensation

( ) shall

( ) shall not

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

H. Compensation

( ) shall

( ) shall not

include amounts paid to an individual who does not currently perform services for the employer by reason of qualified military service to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.

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

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

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

J. (Complete this section if the plan was previously amended to include transportation subsidies under Code § 132(f)(4) in Compensation for Limitation Years beginning before January 1, 2001.)

Compensation shall also include any elective amounts that are not includible in the gross income of the employee by reason of Code § 132(f)(4) for Limitation Years beginning after _____. (Enter the effective date of the prior amendment, which may not be earlier than December 31, 1997.)

K. Compensation

( ) shall

( ) shall not

include deemed Code § 125 compensation.

L. (Complete this section if the plan was previously amended to include deemed Code § 125 compensation in the plan's definition of Compensation for Limitation Years beginning before January 1, 2002.)

Compensation shall also include deemed Code § 125 compensation for Limitation Years beginning after _____. (Enter the effective date of the prior amendment, which may be no earlier than December 31, 1997.)

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

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

N. In the case of a participant who has had a severance from employment with the employer, the Defined Benefit Compensation Limitation applicable to the participant in any Limitation Year beginning after the date of severance (check one)

( ) shall

( ) shall not

be automatically adjusted under Code § 415(d).

O. In the case of a participant who has had a severance from employment with the employer, the Defined Benefit Dollar Limitation applicable to the participant in any Limitation Year beginning after the date of severance (check one)

( ) shall

( ) shall not

be automatically adjusted under Code § 415(d).

P. In the event that the Employer maintains multiple plans, the following provisions will apply to the extent necessary to satisfy Code § 415.

____

(Note to reviewer: The space provided should be completed by the Adopting Employer to add such plan provisions necessary to satisfy Code § 415 and preclude the possibility that the limitations therein could be exceeded by the required aggregation of multiple plans.)

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

Statement of Requirement: **Reg. § 1.401-1(b)(1)(i); Rev. Proc. 2017-41, sec. 6.03(10))**

Document Provision: _____

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 Code § 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.)

(Note to reviewer: Governmental defined benefit plans that include "deferred

retirement option plan" features, or similar provisions in which a participant earns additional benefits for continued employment post-normal retirement age in the form of credits to a separate account (including a cash balance account or other arrangement) under the same plan are not eligible to receive an Opinion Letter as a Pre-approved Plan.)

42. Definite benefit

Statement of Requirement: **Code §§ 401(a)(25), 411(a)(11), 411(a)(13), 411(b)(5)(A)(iv), 417(e)(3); Reg. §§ 1.401-1(b)(l)(i), 1.411(a)-11(d), 1.411(a)(13)-1(b)(4), 1.411(a)(13)-1(d), 1.417(e)-1(d); Rev. Rul. 79-90, 1979-1 C.B. 155; Rev. Rul. 2007-67, 2007-48 I.R.B. 1047; Notice 2008-85, 2008-42 I.R.B. 905 (as updated); Notice 2017-60, 2017-43 I.R.B. 365 (as updated)**

Document Provision: _____

Sample Plan Language:

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

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

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

(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRM #27B. References to permitted disparity under Code § 401(l) and the adjustments under LRM #27B do not apply to Cash Balance Formulas.)

Notwithstanding the preceding paragraph, for purposes of determining the amount of a distribution in a form other than an annual benefit that is non-decreasing for the life of the Participant or, in the case of a qualified preretirement 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 Code § 417(e)(3), if it produces a benefit greater than that determined under the preceding paragraph. This paragraph shall not apply with respect to benefits attributable to a Cash Balance Formula, except:

(a) To the extent elected in section ___ of the Adoption Agreement, or

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

(b) For plan years that begin on or after January 1, 2016 if the Cash Balance Formula is not a lump-sum based formula as defined in Reg. § 1.411(a)(13)-1(d)(3), taking into account the additional requirements for lump-sum based plans in that section for plan years that begin on or after the effective date specified in Reg. § 1.411(a)(13)-1(e)(2)(ii)(A) or Reg. § 1.411(a)(13)-1(e)(2)(ii)(B) as applicable (generally, for plan years beginning on or after January 1, 2017, or as late as January 1, 2019 for certain collectively bargained plans).

For plan years beginning on or after January 1, 2016, if the plan provides for both a Cash Balance Formula and a formula that is not a Cash Balance Formula:

(a) If the participant's accrued benefit equals the greater of the accrued benefit under the Cash Balance Formula and the accrued benefit under the non-Cash Balance Formula, the participant's lump sum payment must be no less than the greater of (1) the Hypothetical Account Balance as of the annuity starting date or (2) the present value of the accrued benefit determined under the non-Cash Balance Formula using the applicable interest and mortality rates under Code § 417(e)(3).

(b) If the participant's accrued benefit equals the sum of the accrued benefit under the Cash Balance Formula and the accrued benefit under the non-Cash Balance Formula, the participant's lump sum payment must be no less than the sum of (1) the Hypothetical Account Balance as of the annuity starting date and (2) the present value of the accrued benefit determined under the non-Cash Balance Formula using the applicable interest and mortality rates under Code § 417(e)(3).

(c) If the participant's accrued benefit equals the lesser of the accrued benefit under the Cash Balance Formula and the accrued benefit under the non-Cash Balance Formula, the participant's lump sum payment must be no less than the lesser of (1) the Hypothetical Account Balance as of the annuity starting date or (2) the present value of the accrued benefit determined under the non-Cash Balance Formula using the applicable interest and mortality rates under Code § 417(e)(3).

The ~~preceding two paragraphs~~provisions in this section 1 will not apply to the extent they would cause the Plan to fail to satisfy the requirements of section ____ or ____ of the Plan.

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

Section 2. For Plan Years beginning before January 1, 2008, the applicable interest rate is the rate of interest on 30-year Treasury securities as specified by the Commissioner for the lookback month for the stability period specified in the Adoption Agreement. For Plan Years beginning on or after January 1, 2008, the applicable interest rate is defined as the adjusted first, second and third segment rates described in Code § 417(e)(3), as specified by the Commissioner for the lookback month for the stability period specified in the Adoption Agreement. For this purpose, the segment rates are the spot segment rates that would be determined for the applicable month under Code § 430(h)(2)(C) without the 24~~-~~-month averaging under Code § 430(h)(2)(D), and determined without regard to the adjustment for the 25-year average segment rates provided in Code § 430(h)(2)(C)(iv). For distributions with annuity starting dates occurring during plan years beginning on or after January 1, 2008, and before January 1, 2012, these segment rates are adjusted by blending with the rate of interest for 30-year Treasury securities under the transition percentages specified in Code § 417(e)(3)(D)(iii).

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

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

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

Section 3. For Plan Years beginning before January 1, 2008, the Code § 417 applicable mortality table is set forth in Rev. Rul. 2001-62, 2001-2 C.B. 632. For Plan Years beginning on or after January 1, 2008, the Code § 417(e)(3) applicable mortality table is the applicable mortality table specified for the calendar year in which the stability period specified in the adoption agreement begins. ~~The applicable mortality tables are set forth in Reg. § 1.430(h)(3)-1 and related guidance.~~

However, for purposes of applying the limitation on benefits in section ___ of the plan, the applicable mortality table in ~~Reg. § 1.430(h)(3)-1 is not effective (and Rev.~~Rev. Rul. 2001-62, 2001-2 C.B. 632 continues to apply for years beginning before January 1, 2009, unless an earlier date is elected by the employer in the Adoption Agreement.

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

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

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

(Note to reviewer: The sponsor may include language that provides for a reduction to the post-normal retirement age benefit accrual otherwise required under Code § 411(b)(1)(H) to the extent permitted under Proposed Reg. § 1.411(b)-2(b)(4). But see LRM #51 for special rules on the interaction of certain actuarial increases with Code § 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 section 3 of this LRM #42, and any other plan sections for which a different set of actuarial assumptions is used.)

1. Interest rate: _________% ~~(must be between 7 ½% 8 ½% if the plan provides for permitted disparity under Code § 401(l))~~

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

Preretirement: _________________

Post-retirement: _________________

Note that for plan years that begin on or after the effective date specified in Reg.§ 1.411(a)(13)-1(e)(2)(ii)(A) or Reg.§ 1.411(a)(13)-1(e)(2)(ii)(B) as applicable (generally, for plan years beginning on or after January 1, 2017, or as late as January 1, 2019 for certain collectively bargained plans), if the accrued benefit attributable to the Cash Balance Formula is determined using assumptions that are not considered reasonable – including assumptions that produce a subsidized accrued benefit – the Cash Balance Formula is not considered a lump-sum based formula. If that is the case, the lump sum payment must be no less than the present value of the accrued benefit using the applicable interest and mortality rates under Code § 417(e)(3) (see section _____ of the Adoption Agreement).

(Note to reviewer: The blank above should be filled in with the section of the Adoption Agreement that corresponds to section 3 below.)

(Note to reviewer: Additional sections may be added to the Adoption Agreement to provide for the use of different assumptions for different purposes, as long as the objective criteria for applying each set of assumptions is defined in a way that is definitely determinable and not subject to employer discretion.)

2. With respect to benefits determined under a Cash Balance Formula, Actuarial Equivalence will be applied to:

   ( ) The Participant's Hypothetical Account Balance

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

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

   ( ) Will

   ( ) Will not

   be determined using the applicable mortality table and applicable interest rate under Code § 417(e)(3), if this produces a benefit greater than the Hypothetical Account Balance (if the benefit is paid in the form of a lump sum payment) or the benefit determined using the actuarial equivalence assumptions specified in item 1 above (if the benefit is paid in a form other than a lump sum payment).

(Note to reviewer: The following optional provision allows the Adopting Employer to indicate, in a manner that satisfies the definitely determinable benefits requirement of Reg. § 1.401-1(b)(1)(i), that actuarial equivalence will be determined with

reference to a specified insurance or annuity contract. This option is not available ~~for plans~~in conjuction with a Cash Balance Formula.)

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

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

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

Contract name/number: ___________________

Company that issued the contract: _____________________

Date of issuance: _____________________

If the insurance or annuity contract specifies different interest and mortality assumptions for different purposes under the contract, the assumptions that will be used to determine actuarial equivalence under the plan are those assumptions specified under the contract for purposes of determining: _______________________ (e.g., the amount of benefits payable in different forms under the contract or the cash surrender value of the contract).

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

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

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

( ) one calendar month

( ) one Plan Quarter

( ) one calendar quarter

( ) one Plan Year

( ) one calendar year

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

( ) first

( ) second

( ) third

( ) fourth

( ) fifth

calendar month preceding the first day of the stability period.

D. For purposes of applying the limitation on benefits under section ___ of the plan, the applicable mortality table ~~in Reg. § 1.430(h)(3)-1~~under Rev. Rul. 2001-62, 2001-2 C.B. 632 is effective for benefits with annuity starting dates occurring during the first year beginning on or after January 1, 2009, unless an earlier date is elected below:

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

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

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

43. Optional forms of benefit must be stated in the plan

Statement of Requirement: **Code §§ 401(a)(4), 411(d)(6) and 417(g); Reg. §§ 1.401(a)(4)-4, 1.411(d)-4; Notice 97-75, 1997-51 I.R.B. 18; Notice 2008-30, 2008-12 I.R.B. 638; Rev. Proc. ~~2011-49, 4.09~~2017-41, sec. 5.16(5)**

Document Provision: _____

Sample Plan Language:

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

____

(Note to reviewer: Effective for plan years beginning on or after December 31, 2007,

all plans must include a qualified optional survivor annuity (QOSA), which is an annuity for the life of the participant with a survivor annuity for the life of the spouse (see LRM #46). The QOSA must provide a survivor benefit of:

- **75%, if the plan's qualified joint and survivor annuity provides a survivor benefit of less than 75% of the annuity payable during the joint lives of the participant and spouse, or**

- **50%, if the plan's qualified joint and survivor annuity provides a survivor benefit of 75% or more of the annuity payable during the joint lives of the participant and spouse.**

If a plan already includes an optional joint and survivor annuity that satisfies the QOSA requirements, no change is required.)

(Note to reviewer: The availability of each optional form of benefit must not be subject to employer discretion. In addition, each optional form of benefit provided under a Standardized Plan (other than any that has been prospectively eliminated) must be currently available to all employees benefiting under the plan. This is the case regardless of whether a particular form of benefit is the actuarial equivalent of any other optional form of benefit under the plan.)

(Note to reviewer: Code § 411(d)(6) prevents a plan from retroactively reducing or eliminating optional forms of benefits and any other Code § 411(d)(6) protected benefits with respect to benefits attributable to service before the amendment, except as expressly provided under Reg. § 1.411(d)-4 (see LRM #66)).

(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% owner) who attained age 70½ after a specified year has relief from the applicable sections of Code § 401(a)(4) under Notice 97-75. An optional form of benefit available to a 5% 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

Statement of Requirement:	**Code §§ 411(a)(11), 417(e), 401(a)(31)(B); Reg. §§ 1.411(a)-7(d)(4), 1.417(e)-1(d); Notice 2005-5, 2005-3 I.R.B. 337**

Document Provision: _____

(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.

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

If elected by the employer in the adoption agreement, a participant's vested accrued benefit shall not include the portion that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Code §§ 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).

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 Code § 411(c)(2)(C). 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.

Sample Adoption Agreement Language:

Treatment of Rollovers in Application of Involuntary Cashout Provisions:

(Note to reviewer: Section 4 of LRM #54 is an optional provision that provides that the plan will accept direct rollovers from a qualified defined contribution plan maintained by the employer in order to obtain an additional annuity. Section 4 of LRM #54 also provides that rollover contributions will not be excluded in determining the value of the participant's nonforfeitable accrued benefit for purposes of the plan's involuntary cash-out and consent rules. Therefore, if the provision in section 4 of LRM #54 is included as an option in the plan, the following sample adoption agreement language should be modified to provide that the election therein does not apply to an employer who elects the direct rollover option.)

The employer:

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

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

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

with respect to participants who separated from service after:

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

45. Restrictions on immediate distributions

Statement of Requirement: **Code §§ 411(a)(11), 417(e)(2); Reg. §§ 1.401(a)-20, 1.411(a)-11, 1.417(a)(3)-1, 1.417(e)-1; Notice 2007-7, 2007-5 I.R.B. 395; Proposed Reg. § 1.411(a)-11**

Document Provision: _____

Sample Plan Language:

If either the value of a participant's vested accrued benefit derived from employer and employee contributions exceeds $5,000 or there are remaining payments to be made with respect to a particular distribution option that previously commenced, and the 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 180-day period ~~(90-day period for plan years beginning before January 1, 2007)~~ 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 and~~, for plan years beginning after December 31, 2006,~~ the consequences of failing to defer any distributions. 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 Code § 417(a)(3).

The notification shall be provided no less than 30 days and no more than 180 days ~~(90 days for notices given in plan years beginning before January 1, 2007)~~ prior to the annuity starting date. 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 Code §§ 401(a)(11) and 417 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 Code § 401(a)(9) or Code § 415.

Present value shall be determined in accordance with section _____ of the plan. If elected by the employer in the adoption agreement, a participant's vested accrued benefit shall not include the portion that is attributable to rollover contributions (and earnings allocable thereto) within the meaning of Code §§ 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).

(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRM #42. The election refers to the election in the sample adoption agreement provisions of LRM #44.)

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.

46. Joint and Survivor Annuity, Qualified Optional Survivor Annuity, and Preretirement Survivor Annuity requirements

Statement of Requirement: **Code §§ 401(a)(11), 417; Reg. §§ 1.401(a)-20, 1.417(e)-1; 1.417(a)(3)-1, Notice 2007-7, 2007-5 I.R.B. 395; Notice 2008-30; 2008-12 I.R.B. 638; Notice 2014-19, 2014-17 I.R.B. 979; Notice 2015-86, 2015-52 I.R.B. 887; Rev. Rul. 2013-17, 2013-38 I.R.B. 201**

Document Provision: _____

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 to other participants as provided in section 7.

Section 2. Required Forms of Annuity.

Section 2.1. Qualified Joint and Survivor Annuity. Unless an optional form of benefit is selected pursuant to a qualified election within the 180-day period ~~(90-day period for plan years beginning before January 1, 2007)~~ ending on the annuity starting date, a married participant's vested 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 2.2. Qualified Optional Survivor Annuity. ~~For plan years beginning after December 31, 2007,~~ If a married participant elects to waive the qualified joint and survivor annuity, the participant may elect the qualified optional survivor annuity at any time during the applicable election period.

Section 3. Qualified Preretirement Survivor Annuity.

Section 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.

Section 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.

Section 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.)

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

Section 4. Definitions.

Section 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 the participant attains age 35, the election period with respect to benefits accrued prior to separation 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.

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

Section 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, if applicable, 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.

Section 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% and not more than 100% 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).

(Note to reviewer: If the language in parentheses is used, a provision should be added to the adoption agreement to enable the employer to elect the percentage of the survivor annuity, which cannot be less than 50% nor more than 100%. This language is not provided.)

Section 4.5. Qualified Optional Survivor Annuity: An immediate annuity for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and which is the actuarial equivalent of the normal form of benefit. If the percentage of the qualified joint and survivor annuity is less than 75%, the applicable percentage is 75%. If the percentage of the qualified joint and survivor annuity is greater than or equal to 75%, the applicable percentage is 50%.

Section 4.6. Spouse (surviving spouse): The spouse or surviving spouse of the participant, provided that a former spouse will be treated as the spouse or surviving spouse and a current spouse will not be treated as the spouse or surviving spouse to the extent provided under a qualified domestic relations order as described in Code § 414(p).

Section 4.7. 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 blanks 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 after an employee separates from service and begins receiving benefit payments, the recommencement of benefit payments after the suspension is not treated as a new annuity starting date. 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 commencement of benefit payments shall be treated as the employee's annuity starting date.

Section 4.8. 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.

Section 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 180 days ~~(90 days for notices given in plan years beginning before January 1, 2007)~~ prior to the annuity starting date a written explanation of: (i) the terms and conditions of ~~a~~the 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 as provided in Reg. § 1.417(a)(3)-1.

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 receive 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.

Section 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 the participant attains age 35, 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.

Section 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.

(Note to reviewer: The following section is optional.)

Section 6. Retroactive Annuity Starting Date

Section 6.1. If elected by the employer in the Adoption Agreement, the participant may elect a retroactive annuity starting date. A retroactive annuity starting date shall mean an annuity starting date affirmatively elected by a participant that occurs on or before the date the written explanation required in section 5.1 of this article is provided to the participant. A participant cannot elect a retroactive annuity starting date that precedes the date upon which the participant could have otherwise started receiving benefits under the terms of the plan in effect as of the retroactive annuity starting date. Future periodic payments with respect to a participant who elects a retroactive annuity starting date must be the same as the future periodic payments, if any, that would have been paid with respect to the participant had payments actually commenced on the retroactive annuity starting date.

The participant must receive a make-up payment to reflect any missed payment or payments for the period from the retroactive annuity starting date to the date of the actual make-up payment (adjusted for interest at the rate specified in section _____ of the Adoption Agreement from the date the missed payments(s) would have been made to the date of the actual make-up payment). Annuity payments that otherwise satisfy the requirements of a qualified joint and survivor annuity under section 4.4 of this article will not fail to be treated as a qualified joint and survivor annuity for purposes of section _____ because a retroactive annuity starting date is elected and a make-up payment is made.

(Note to reviewer: The 1st blank should be filled in with the section number of the adoption agreement where the employer specifies the rate of interest used to determine actuarial equivalence of benefits. The 2nd blank should be filled in with the section number of the plan which corresponds to section 6.1 of LRM #40.)

Section 6.2. The participant's spouse (including an alternate payee who is treated as a spouse under a qualified domestic relation order as described in Code § 414(p), determined as if the date distributions commence were the participant's annuity starting date, shall consent to the distribution in a manner that would satisfy the requirements of section 4.3 of this article. The spousal consent requirement of this section 6.2 does not apply if the amount of such spouse's survivor annuity payments under the retroactive annuity starting date election is no less than the amount that the survivor payments to such spouse would have been under an optional form of benefit that would satisfy the requirements to be a qualified joint and survivor annuity under section 4.4 of this article and that has an annuity starting date after the date the explanation required by section 5.1 of this article was provided.

If the participant's spouse as of the retroactive annuity starting date would not be the participant's spouse determined as if the date distributions commence was the participant's annuity starting date, consent of that former spouse is not needed to waive the qualified joint and survivor annuity with respect to the retroactive annuity starting date, unless otherwise provided under a qualified domestic relations order as described in Code § 414(p).

Section 6.3. The written explanation required by section 5.1 shall be provided no less than 30 days and no more than 180 days ~~(90 days for notices given in plan years beginning before January 1, 2007)~~ before the date of the first payment of benefits pursuant to the retroactive annuity starting date, and the election to receive the distribution shall be made after the written explanation is provided and on or before the date of the first payment.

Section 6.4, When the date the distribution commences is substituted for the annuity starting date for all purposes (including for purposes of determining the applicable interest rate under section _____ of the plan and the applicable mortality table under section _____ of the plan), the distribution (including interest adjustments) must satisfy the requirements of section _____. However, if the date the distribution commences is 12 months or less from the retroactive annuity starting date and the form of the benefit would have been excepted from Code § 417(e)(3) if the distribution had actually commenced on the retroactive annuity starting date, the requirement to apply section _____ as of the date the distribution commences does not apply. The benefit determined as of the retroactive annuity starting date must satisfy the requirements of section _____ with the applicable interest rate and the applicable mortality table determined as of that date.

(Note to reviewer: The first two blanks above should be filled in with the sections of the plan that specify the applicable interest rate and applicable mortality table that correspond to section 2 and 3 of LRM # 42. The remaining blanks should be filled in with the section number of the plan that corresponds to LRM # 40.)

In the case of a form of benefit that would have been subject to Code § 417(e)(3) if distributions had commenced as of the retroactive annuity starting date, the distribution shall be not less than the benefit produced by applying the applicable interest rate under section _____ and the applicable mortality table under section _____ determined as of the date the distribution actually commences to the annuity form that corresponds to the annuity form that was used to determine the benefit amount as of the retroactive annuity starting date. The benefit determined as of the retroactive annuity starting date must satisfy the requirements of Code § 417(e)(3) with the applicable interest rate and the applicable mortality table determined as of that date.

(Note to reviewer: The blanks above should be filled in with the section numbers of the plan which correspond to section 2 of LRM # 42 and section 3 of LRM # 42.)

(Note to reviewer: If a plan does provide for a retroactive annuity starting date, it may impose conditions on the availability of a retroactive annuity starting date in addition to those imposed by this section 6, provided that imposition of those additional conditions does not violate any of the rules applicable to qualified plans.)

Sample Adoption Agreement Language:

(Note to reviewer: Section 4 of LRM #54 is an optional provision that provides that the plan will accept direct rollovers from a qualified defined contribution plan maintained by the employer in order to obtain an additional annuity. If the provision in section 4 of LRM #54 is included as an option in the plan, the following sample adoption agreement language should be modified to conform to the requirement of section 4 of LRM #54 that a participant may not elect a retroactive annuity starting date with respect to the benefit attributable to any rollover contribution.)

The plan: (Select one of the following options.)

2. ( ) will

3. ( ) will not

allow participants to elect retroactive annuity starting dates in accordance with section

_____.

(Note to reviewer: The blank should be filled in with the section number of the plan that corresponds to section 6 of LRM # 46.)

Section 7. Transitional Rules.

Section 7.1. 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.

Section 7.2. Any living participant not receiving benefits on August 23, 1984, who was credited with at least one hour of service under this plan or a predecessor plan on or after September 2, 1974, and who is not otherwise credited with any service in a plan year beginning on or after January 1, 1976, must be given the opportunity to have his or her benefits paid in accordance with section 7.4 of this article.

Section 7.3. The respective opportunities to elect (as described in sections 7.1 and 7.2 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.

Section 7.4. Any participant who has elected pursuant to section 7.2 of this article and any participant who does not elect under section 7.1 or who meets the requirements of section 7.1 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:

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

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

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

   (iv) 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 before the annuity starting date.

(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.

For purposes of this section 7.4:

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

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

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

(iii) the date the participant begins participation.

(2) Qualified joint and survivor annuity is an annuity for the life of the participant with a survivor annuity for the life of the spouse as described in section 4.4 of this article.

(Note to reviewer: Effective June 26, 2013, any retirement plan qualification rule that applies because a participant is married must be applied with respect to a participant who is married to an individual of the same sex. See Notice 2015-86, 2015-52, I.R.B. 887, Notice 2014-19, 2014-17 I.R.B. 979, Rev. Rul. 2013-17, 2013-38 I.R.B. 201, and the decision in *U.S. v Windsor*, 570 U.S. 12 (2013). For example, a participant in a plan subject to the rules of Code § 401(a)(11) who is married to a same-sex spouse cannot waive a QJSA without obtaining spousal consent pursuant to Code § 417. A retirement plan will not be treated as failing to meet the requirements of Code § 401(a) merely because it did not recognize the same-sex spouse of a participant as a spouse before June 26, 2013. A retirement plan will not be treated as failing to meet the requirements of Code § 401(a) merely because the plan, prior to September 16, 2013, recognized the same-sex spouse of a participant only if the participant was domiciled in a state that recognized same-sex marriages. However, effective September 16, 2013, a marriage of same-sex individuals must be recognized if it was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize

the validity of same-sex marriages.

A plan may recognize same sex-spouses as of a date prior to June 26, 2013. However, recognizing same-sex spouses for some or all purposes under a plan prior to June 26, 2013 may trigger requirements that are difficult to implement retroactively and may create unintended consequences. Therefore, except as provided in Q&A-3 of Notice 2014-19, no reliance will be afforded under the Opinion Letter issued to the plan with respect to the recognition of same-sex spouses prior to June 26, 2013, for various compliance purposes, such as whether benefits under the plan are nondiscriminatory. See, for example, Sections 7.01 and 7.02 of Rev. Proc. 2017-41.

In general, the deadline for adopting any amendments to reflect the decision in *Windsor*, Rev. Rul. 2013-17 and Notice 2014-19 was December 31, 2014. However, certain amendments could be made after December 31, 2014. See Q&As 3, 4 and 5 of Notice 2015-86.

See the Note to Reviewer at LRM #51 for additional provisions affected by guidance interpreting the Windsor decision.)

47. Commencement of benefits

Statement of Requirement: **Code § 401(a)(14); Reg. § 1.411(a)-11(c)(7)**

Document Provision: _____

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

Statement of Requirement: **Code § 401(a)(14)**

Document Provision: _____

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

Statement of Requirement: **Reg. § 1.401(a)-20, Q&A-2**

Document Provision: _____

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

Statement of Requirement: **Code § 401(g)**

Document Provision: _____

Sample Plan Language:

Any annuity contract distributed by the plan must be nontransferable.

51. Timing and modes of distribution

Statement of Requirement: **Code § 401(a)(9); Reg. §§ 1.401(a)(9)-1, 1.401(a)(9)-2, 1.401(a)(9)-3, 1.401(a)(9)-4, 1.401(a)(9)-5, 1.401(a)(9)-6, 1.401(a)(9)-7, 1.401(a)(9)-8, 1.401(a)(9)-9; 1.411(d)-4, Q&A 10; Announcement 97-24, 1997-11 I.R.B. 24; Rev. Rul. 2013-17, 2013-38 I.R.B. 201; Notice 2014-19, 2014-17 I.R.B. 979; Notice 2015-86, 2015-52 I.R.B. 887**

Document Provision: _____

Sample Plan Language:

Article ____. DISTRIBUTION REQUIREMENTS.

Section 1. General Rules.

Section 1.1. Precedence. 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.

Section 1.2. Requirements of Regulations Incorporated. All distributions required under this article shall be determined and made in accordance with Code § 401(a)(9), including the incidental death benefit requirement in Code § 401(a)(9)(G), and the regulations thereunder.

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

(a) the life of the participant,

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

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

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

Section 2. Time and Manner of Distribution.

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

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

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

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

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

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

For purposes of this section 2.2 and section 5, unless section 2.2(d) applies, distributions are considered to begin on the participant's required beginning date. If section 2.2(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under section 2.2(a). If distributions under an annuity meeting the requirements of this article commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under section 2.2(a)), the date distributions are considered to begin is the date distributions actually commence.

Section 2.3. Forms of Distribution. Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with sections 3, 4, and 5 of this article. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code § 401(a)(9) and Reg. § 1.401(a)(9)-6. Any part of the participant's interest which is in the form of an individual account described in Code § 414(k) will be distributed in a manner satisfying the requirements of Code § 401(a)(9) and Reg. § 1.401(a)(9)-6 that apply to individual accounts.

Section 3. Determination of Amount to be Distributed Each Year.

Section 3.1. General Annuity Requirements. 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:

(a) the annuity distributions will be paid in periodic payments made at uniform intervals not longer than one year;

(b) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in section 4 or 5;

(c) once payments have begun over a period, the period will be changed only in accordance with section 6 of this article;

(d) payments will either be nonincreasing or increase only as follows:

  (i) by an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index for a 12-month period ending in the year during which the increase occurs or a prior year;

  (ii) by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index since the annuity starting date, or if later, the date of the most recent percentage increase;

(Note to Reviewer: If the plan provides the cumulative increase to the annuity described in (ii) above, it may not provide an actuarial increase to reflect the fact that increases were not provided in the interim years.)

(iii) by a constant percentage of less than 5% per year, applied not less frequently than annually;

(iv) as a result of dividend or other payments that result from actuarial gains, provided:

I. actuarial gain is measured not less frequently than annually,

II. the resulting dividend or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured),

III. the actuarial gain taken into account is limited to actuarial gain from investment experience,

IV. the assumed interest rate used to calculate such actuarial gains is not less than 3%, and

V. the annuity payments are not increased by a constant percentage as described in (3) of this section 3.1(d);

(v) to the extent of the reduction in the amount of the participant's payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the beneficiary whose life was being used to determine the distribution period described in section 4 dies or is no longer the participant's beneficiary pursuant to a qualified domestic relations order within the meaning of Code § 414(p);

(vi) to provide a final payment upon the participant's death not greater than the excess of the actuarial present value of the participant's accrued benefit (within the meaning of Code § 411(a)(7)) calculated as of the annuity starting date using the applicable interest rate defined in section _____ of the plan and the applicable mortality table defined in section _____ of the plan (or, if greater, the total amount of employee contributions) over the total of payments before the participant's death;

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

(vii) to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the participant's death; or

(viii) to pay increased benefits that result from a plan amendment.

Section 3.2. Amount Required to be Distributed by Required Beginning Date and Later Payment Intervals. The amount that must be distributed on or before the participant's required beginning date (or, if the participant dies before distributions begin, the date distributions are required to begin under section 2.2(a) or (b)) is the payment that 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. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's required beginning date.

Section 3.3. Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such benefit accrues.

Section 4. Requirements For Annuity Distributions That Commence During Participant's Lifetime.

Section 4.1. Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse. 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 non-spouse 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 Reg. § 1.401(a)(9)-6, Q&A 2(c)(2), in the manner described in Reg.§ 1.401(a)(9)-6, Q&A 2(c)(1), to determine the applicable percentage. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a non-spouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

Section 4.2. Period Certain Annuities. Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in Reg. § 1.401(a)(9)–9, Q&A-2 for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in Reg. § 1.401(a)(9)–9, Q&A-2 plus the excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this section 4.2, or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in Reg. § 1.401(a)(9)–9, Q&A-3, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

Section 5. Requirements For Minimum Distributions After the Participant's Death.

Section 5.1. Death After Distributions Begin. If the participant dies after distribution of his or her interest begins in the form of an annuity meeting the requirements of this article, the remaining portion of the participant's interest will continue to be distributed over the remaining period over which distributions commenced.

Section 5.2. Death Before Distributions Begin.

(a) Participant Survived by Designated Beneficiary. Except as provided in the adoption agreement, if the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in section 2.2(a) or (b), over the life of the designated beneficiary or over a period certain not exceeding:

  (i) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or

  (ii) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

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

(c) Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the participant dies before the date distribution of his or her interest begins, the participant's surviving spouse is the participant's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this section 5 will apply as if the surviving spouse were the participant, except that the time by which distributions must begin will be determined without regard to section 2.2(a).

Section 6. Changes to Annuity Payment Period.

Section 6.1. Permitted Changes. An annuity payment period may be changed only in association with an annuity payment increase described in 3.1(d) of this article or in accordance with section 6.2.

Section 6.2. Reannuitization. An annuity payment period may be changed and the annuity payments modified in accordance with that change if the conditions in section 6.3 are satisfied and:

(a) the modification occurs when the participant retires or in connection with a plan termination;

(b) the payment period prior to modification is a period certain without life contingencies; or

(c) the annuity payments after modification are paid under a qualified joint and survivor annuity over the joint lives of the participant and a designated beneficiary, the participant's spouse is the sole designated beneficiary, and the modification occurs in connection with the participant's becoming married to such spouse.

Section 6.3. Conditions. The conditions in this section 6.3 are satisfied if:

(a) the future payments after the modification satisfy the requirements of Code § 401(a)(9), Reg. § 1.401(a)(9)-13, and this article (determined by treating the date of the change as a new annuity starting date and the actuarial present value of the remaining payments prior to modification as the entire interest of the participant);

(b) for purposes of Code §§ 415 and 417, the modification is treated as a new annuity starting date;

(c) after taking into account the modification, the annuity (including all past and future payments) satisfies the requirements of Code § 415 (determined at the original annuity starting date, using the interest rates and mortality tables applicable to such date); and

(d) the end point of the period certain, if any, for any modified payment period is not later than the end point available to the employee at the original annuity starting date under Code § 401(a)(9) and this article.

Section 7. Payments to a Surviving Child.

Section 7.1. Special rule. For purposes of this article, payments made to a participant's surviving child until the child reaches the age of majority (or dies, if earlier) shall be treated as if such payments were made to the surviving spouse to the extent the payments become payable to the surviving spouse upon cessation of the payments to the child.

Section 7.2. Age of majority. For purposes of this section, a child shall be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26. In addition, a child who is disabled within the meaning of Code § 72(m)(7) when the child reaches the age of majority shall be treated as having not reached the age of majority so long as the child continues to be disabled.

Section 8. Definitions.

Section 8.1. Actuarial gain. The difference between an amount determined using the actuarial assumptions (i.e., investment return, mortality, expense, and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced and such amount determined using actuarial assumptions used in calculating payments at the time the actuarial gain is determined.

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

(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 Reg. § 1.401(a)(9)-4, Q&A-1.)

Section 8.3. 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 2.2.

Section 8.4. Eligible cost-of-living index. An index described in paragraphs (b)(2), (b)(3) or (b)(4) of Reg. § 1.401(a)(9)–6, Q&A-14.

Section 8.5. Life expectancy. Life expectancy as computed by use of the Single Life Table in Reg. § 1.401(a)(9)–9, Q&A-1.

Section 8.6. Required beginning date.

(a) The required beginning date is one of the following as selected by the employer in section _____ of the adoption agreement:

(Note to Reviewer: The blank should be filled in with the section number of the adoption agreement corresponding to section 3 of the sample adoption agreement provisions of this LRM #51.)

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

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

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

(b) If elected by the employer in section _____ of the adoption agreement, any participant (other than a 5-percent owner) may elect by April 1 of the calendar year following the calendar year in which the participant attains age 70½ to defer distributions until April 1 of the calendar year following the calendar year in which the participant retires. If no such election is made the participant will begin receiving distributions by April 1 of the calendar year following the year in which the participant attained age 70½.

(Note to Reviewer: The blank should be filled in with the section number of the adoption agreement corresponding to section 4(a) of the sample adoption agreement provisions of this LRM.)

~~(c) If elected by the employer in section _____ of the adoption agreement, any participant (other than a 5-percent owner) attaining age 70½ in years prior to 1997 may elect to stop distributions and recommence by April 1 of the calendar year following the year in which the participant retires.~~

~~**(Note to Reviewer: The blank should be filled in with the section number of the adoption agreement corresponding to section 4(b) of the sample adoption agreement provisions of this LRM.)**~~

~~To satisfy the Joint and Survivor Annuity Requirements described in Article ____, the requirements in Notice 97-75, Q&A-8, must be satisfied for any participant who elects to stop distributions, including the requirement that such distributions stop before the end of the plan's remedial amendment period under § 401(b) for changes in plan qualification requirements made by the Small Business Job Protection Act of 1996. There is either (as elected by the employer in section _______ of the adoption agreement):~~

~~**(Note to Reviewer: The 1st blank should be filled in with the article of the plan corresponding to LRM #46. The 2nd blank should be filled in with the section number of the adoption agreement corresponding to section 4(b) of the sample adoption agreement provisions of this LRM.)**~~

~~(1) a new annuity starting date upon recommencement, or~~

~~(2) no new annuity starting date upon recommencement.~~

~~(d)~~(c) Except with respect to a 5% owner, a participant's accrued benefit will be actuarially increased to take into account the period after age 70½ in which the participant does not receive any benefits under the plan. The actuarial increase will begin on April 1 following the calendar year in which the employee attains age 70½ (January 1, 1997 in the case of an employee who attains age 70½ prior to 1996), and will end on the date on which benefits commence after retirement in an amount sufficient to satisfy Code § 401(a)(9). The amount of actuarial increase payable as of the end of the period for actuarial increases will be no less than the actuarial equivalent of the participant'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 under this section is not in addition to the actuarial increase required for that same period under Code § 411 to reflect the delay in payments after normal retirement, except that the actuarial increase required under this section will be provided even during the period during which an employee is in service under ERISA § 203(a)(3)(B). For purposes of Code § 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 Code § 411(b)(1)(H), the actuarial increase required under this article will reduce the benefit accrual otherwise required under Code § 411(b)(1)(H)(i), except that the rules on the suspension of benefits are not applicable.

Section 8.7. 5% owner. A participant is treated as a 5% owner for purposes of this article if the participant is a 5% owner as defined in Code § 416 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% owner under this article, they must continue to be distributed, even if the participant ceases to be a 5% owner in a subsequent year.

Section 9. TEFRA section 242(b)(2) Elections.

Section 9.1. 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% owner, who has made a designation under Act § 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (a "§ 242(b)(2) election") may be made in accordance with all of the following requirements (regardless of when such distribution commences):

(Note to Reviewer: The blank above should be filled in with the section number of the plan corresponding to LRM #46.)

(a) The distribution by the plan is one which would not have disqualified such plan under Code § 401(a)(9) 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.

Section 9.2. 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.

Section 9.3. 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 9.1(a) and (e).

Section 9.4. If a designation is revoked any subsequent distribution must satisfy the requirements of Code § 401(a)(9) and the Regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code § 401(a)(9) and the Regulations thereunder, but for the § 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).

Section 9.5. In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Reg. § 1.401(a)(9)-8, Q&A-14 and Q&A-15 shall apply.

Sample Adoption Agreement Language:

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

(Note to Reviewer: The blank above should be filled in with the section number of the plan that corresponds to this LRM #51.)

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

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

This election applies to:

( ) All distributions.

( ) The following distributions: ________________________.

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

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

(Note to Reviewer: The blanks in sections 1 and 2 above should be filled in with the section number of the plan that corresponds to this LRM #51.)

Section 3. Required Beginning Date.

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

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

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

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

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

Section 4. Participant Elections to Defer ~~or Stop~~ Distributions.

(d) ( ) any participant may elect by April 1 of the calendar year following the year in which the participant attains age 70½ 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 attains age 70½.

~~(e) ( ) 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)~~

~~(iv) ( ) a new annuity starting date upon recommencement, or~~

~~(v) ( ) no new annuity starting date upon recommencement.~~

(Note to reviewer: Effective June 26, 2013, any retirement plan qualification rule that applies because a participant is married must be applied with respect to a participant who is married to an individual of the same sex. See Notice 2015-86, Notice 2014-19, Rev. Rul. 2013-17, and the decision in *U.S. v. Windsor*, 570 U.S. 12 (2013). For example, under the required minimum distributin rules of § 401(a)(9) and the rollover rules of § 402(c), certain options are provided for a surviving spouse that are not available to a non-spouse beneficiary. These options must be provided to a same-sex spouse.

For a fuller description of the guidance interpreting the *Windsor* decision, see the Note to Reviewer at LRM # 46.)

52. Incidental insurance provisions and definitely determinable retirement benefits

Statement of Requirement: Reg. § 1.401-1(b)(1)(i); **Rev. Rul. 60-83, Rev. Rul. 74-307, Rev. Rul. 83-53, Rev. Rul. 85-15**

Document Provision: _____

(Note to reviewer: The following sample language is an example of an incidental preretirement death benefit which is definitely determinable. A preretirement 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 preretirement 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) 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 preretirement 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).

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

Statement of Requirement: **Reg. § 1.401(a)-1(b)(l)(i)**

Document Provision: _____

Sample Plan Language:

Benefits will be paid only at normal retirement age, or on death, disability, termination of employment, plan termination, or attainment of age 62.

54. Direct rollovers

Statement of Requirement: **Code §§ 401(a)(9), 401(a)(31), 402(c), 411(c)(2); Reg. §§ 1.401(a)(31)-1, 1.402(c)-2, 1.411(c)-1(c); Rev. Rul. 76-47, 1976-1 C.B. 109; Rev. Rul. 78-202, 1978-1 C.B. 124; Rev. Rul. 89-60, 1989-1 C.B. 113; Rev. Rul. 2004-12, 2004-1 C.B. 478; Rev. Rul. 2012-4, 2012-8 I.R.B. 386; Notice 2001-57, 2001-2 C.B. 279; Notice 2005-5, 2005-3 I.R.B. 337; Notice 2007-7, 2007-1 C.B. 395; Notice 2008-30, 2008-1 C.B. 638; Notice 2009-68, 2009-2 C.B. 423; Notice 2013-74, 2013-52 I.R.B. 819; Notice 2014-19, 2014-17 I.R.B. 979; Notice 2015-86; Notice 2018-74, 2018-40 I.R.B. 529; Rev. Proc. 2017-41, secs. 6.02, 6.03(8)**

Document Provision: _____

Sample Plan Language:

Article ____: Direct Rollovers

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

Section 2. Definitions.

Section 2.1. Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under § 401(a)(9) of the Internal Revenue Code; 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.

A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to (1) a traditional individual retirement account or annuity described in § 408(a) or (b) of the Code (a "traditional IRA") or a Roth individual retirement account or annuity described in § 408A (a "Roth IRA"); or (2) to a qualified defined contribution, defined benefit, or annuity plan described in § 401(a) or § 403(a) or to an annuity contract described in § 403(b), if such plan or contract provides for separate accounting for amounts so transferred (including interest thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(Note to reviewer: If an employer has chosen a required beginning date under § 401(a)(9) of the Code, described in LRM #51, section 8.6(a)(1) (April 1 of the calendar year following the calendar year in which the participant reaches age 70½), the statutory required beginning date (described in LRM #51, 8.6(a)(3)) applies for other purposes, including the participant's required beginning date for purposes of an eligible rollover distribution under § 402(c).)

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

(Note to Reviewer: The Protecting Americans from Tax Hikes provisions of the Consolidated Appropriations Act of 2016, Pub. L. 114-113, (the PATH Act) expands portability of retirement assets by permitting taxpayers to roll over assets from traditional and SEP IRAs, as well as from employer-sponsored retirement plans, such as a 401(k), 403(b), or 457(b) plan, into a SIMPLE IRA plan. Thus, after the effective date of these changes in the PATH Act, a qualified plan can provide for a direct rollover to a SIMPLE IRA. However, the following restrictions apply: (1) the provision does not allow SIMPLE IRAs to accept rollovers from Roth IRAs or designated Roth accounts, (2) the change applies only to rollovers made after the two-year period beginning on the date the participant first participated in their employer's SIMPLE IRA plan, (3) the law applies to rollovers from other plans to SIMPLE IRAs that are made after December 18, 2015, the date of enactment, and (4) the one-per-year limitation that applies to IRA-to-IRA rollovers applies to rollovers from a traditional, SIMPLE, or SEP IRA into a SIMPLE IRA.)

(Note to Reviewer: See LRM #46 regarding application of guidance interpreting the Windsor decision to the rollover rules of Code § 402(c).)

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 § 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. ~~For distributions occurring in plan years beginning after December 31, 2009 (or in any earlier plan year beginning after December 31, 2006 as may be specified in the adoption agreement),~~ A distributee also includes the participant's nonspouse designated beneficiary under section ______ of the plan. In the case of a nonspouse beneficiary, the direct rollover may be made only to a traditional IRA or Roth IRA that is established on behalf of the designated beneficiary and that will be treated as an inherited IRA pursuant to the provisions of § 402(c)(11). Also, in this case, the determination of any required minimum distribution under § 401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395.

(Note to reviewer: The blank above should be filled in with the section number of the plan corresponding to section 8.2 of LRM #51.)

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

Section 3. Automatic Rollovers:

In the event of a mandatory distribution greater than $1,000 ~~made on or after March 28, 2005~~, in accordance with the provisions of section _____ of the plan, if the participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive the distribution directly, then the plan administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the plan administrator. For purposes of determining whether a mandatory distribution is greater than $1000, the portion of the participant's distribution attributable to any rollover contribution is included.

(Note to Reviewer: The blank above should be filled in with the plan section number which corresponds to the mandatory distributions provisions of LRM #44.)

~~**Sample Adoption agreement language:**~~

~~For purposes of section _____ of the plan, a nonspouse designated beneficiary may elect a direct rollover of an eligible rollover distribution that occurs on or after _________________(enter a date no earlier than January 1, 2007 and no later than first day of the first plan year beginning after December 31, 2009).~~

~~**(Note to Reviewer: The first blank above should be filled in with the plan section number which corresponds to the direct rollover provisions of this LRM #54.)**~~

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

(Note to Reviewer: If an employer intends that this plan will accept rollovers from defined contribution plans to increase the annuity benefits otherwise payable under the plan, the plan must specifically provide for such rollovers, and must specify the types of rollover contributions it will accept and from which type of plans. The plan must also define how the rollover amounts are converted to additional annuity benefits for the participant and a surviving spouse, and other provisions necessary for benefits under the plan to be definitely determinable with respect to such rollovers.

Rev. Rul. 2012-4 describes certain provisions that apply when a defined benefit plan accepts rollover contributions under certain conditions. The following section consists of optional language to be added to the plan and adoption agreement if the plan will accept rollover contributions consistent with Rev. Rul. 2012-4.)

Section 4. Rollovers from other plans of the employer

(a) If provided by the employer in the adoption agreement, effective ______ (enter a date no earlier than January 1, 2013), the plan will accept direct rollovers made on behalf of participants of this plan to be used to increase the annuity otherwise payable under this plan. If so provided, the plan will accept direct rollover contributions (excluding amounts attributable to after-tax employee contributions and distributions from designated ROTH accounts) from the qualified defined contribution plan(s) of the employer specified in the adoption agreement. However, the plan will not accept any rollovers under this section during a period when the plan's Adjusted Funding Target Attainment Percentage (as defined in § 1.436-1(j)(1) of the Income Tax Regulations) is less than 60%.

(b) The amount of the benefit derived from a rollover under this section shall be payable in addition to the benefits otherwise payable under the plan, and shall be computed as follows:

(i) STEP ONE – Add interest, compounded annually, to the amount rolled over, 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 date the rollover is received by the plan to the annuity start date.

(ii) STEP TWO – Convert the amount in step 1 into an actuarially equivalent annuity in the form of payment properly elected by the participant (with spousal consent if required) in accordance with Article ___ of the plan using the § 417 applicable interest and mortality rates under section ____ of the plan.

(Note to reviewer – the first blank should be filled in with the plan article number that corresponds to LRM #46, and the second blank should be filled in with the section number that corresponds to LRM #42.)

(c) A participant shall be 100% vested in his or her accrued benefit derived from any amount rolled over into the plan under this section.

(d) If a participant who rolls over an amount under this section dies before the annuity based on the rollover amount commences, a death benefit shall be payable in addition to any death benefits otherwise payable under the plan. Such benefit shall be payable as follows:

(i) If the participant is married at the time of death and did not make a qualified election (as defined in section 4.3 of Article ___) to waive the qualified preretirement survivor annuity, a benefit payable to the participant's surviving spouse in the same form and commencing on the same date as the qualified preretirement survivor annuity under section 3 of Article ___ of the plan, except that the amount of the benefit shall be determined in accordance with paragraph (b) of this section, using the form of benefit and the age of the surviving spouse at the annuity starting date.

(ii) If the participant is not married at the time of death or made a qualified election (as defined in section 4.3 of Article ___) to waive the qualified preretirement survivor annuity in section 3 of Article ___ of the plan, a benefit payable to the participant's designated beneficiary determined under section 4(d)(i) of this Article as if the beneficiary were the participant's surviving spouse. However, if the designated beneficiary is not the participant's surviving spouse, the full value of the benefit must be paid to the designated beneficiary within 5 years after the death of the participant, unless the benefit is paid in the form of an annuity payable over the life of the designated beneficiary that begins within one year after the death of the participant. The amount of the benefit shall be determined in accordance with paragraph (b) of this section, using the form of benefit and the age of the beneficiary at the annuity starting date.

(Note to reviewer – the blanks in paragraph (d) should be filled in with the plan article number that corresponds to LRM #46.)

(e) The benefit attributable to any rollover contribution shall not be disregarded when determining whether the value of the participant's benefit exceeds $5,000, for purposes of applying the provisions of section ___ of the plan to determine whether the participant (and the participant's spouse or the survivor, if applicable) must consent to the distribution of the participant's benefit.

(Note to reviewer – the above blank should be filled in with the plan article number that corresponds to LRM #45.)

(f) A participant may not elect a retroactive annuity starting date under section ____ of the plan with respect to the benefit attributable to any rollover contribution.

(Note to reviewer – if the plan provides for retroactive annuity starting dates, the above blank should be filled in with the plan section number that corresponds to section 6 of LRM #46. If the plan does not provide for retroactive annuity starting dates, paragraph (f) above should not be included in the plan.)

Sample Adoption Agreement Language:

Acceptance of Direct Rollovers:

( ) If checked, the employer elects that the plan will accept a direct rollover made on behalf of a participant of this plan from a qualified defined contribution plan maintained by the employer in order to obtain an additional annuity, subject to the provisions of section ____ of the plan. However, a rollover cannot be accepted during a period when the Adjusted Funding Target Attainment Percentage for the plan year is less than 60%. For this purpose, the plan will accept a direct rollover of an eligible rollover distribution (excluding amounts attributable to after-tax employee contributions and distributions from designated Roth accounts), from:

(Note to reviewer: The blank in the preceding paragraph should be filled in with the section number of the plan corresponding to this LRM 54.)

(Note to reviewer – a list of qualified defined contribution plans sponsored by the employer from which direct rollovers will be accepted should appear here.)

55. Suspension of benefits

Statement of Requirement: **Code §§ 411(a)(3)(B), 411(d)(6); Reg. §§ 1.411(d)-3(a)(3), 1.411(d)-4, 1.401(a)(9)-6, Q&A-7 and Q&A-9; DOL Reg. § 2530.203-3**

Document Provision: _____

Sample Plan Language:

(Note to reviewer: The accrued benefit in a defined benefit plan of an employee (other than a 5% owner) 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. No suspension of benefits is allowed with respect to this actuarial increase. See LRM #51.)

Section _____: Suspension of Benefits.

(a) 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 as described in DOL Reg. § 2530.203-3(c) ("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.

(b) 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.

(c) Notification. No payment shall be withheld by the plan pursuant to this section unless the plan notifies the employee by personal delivery, first class mail, or other delivery method permitted under DOL Reg. § 2530.203-3, 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 DOL Reg. § 2530.203-3. 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.

(d) Amount suspended.

(i) 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.

(ii) 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.

(e) 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 Reg. § 2530.203-3. However, these additional provisions must be in strict compliance with the said regulation and must apply only with respect to future accruals.)

Sample Adoption Agreement Language (for new plans, and for existing plans restating an identical suspension of benefits option):

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

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

( ) all participants in the plan.

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

(Note to reviewer: The 1st blank should be filled in with the section number of the plan corresponding to LRM #42. The 2nd blank should be filled in with the section number of the plan corresponding to LRM #40.)

An Adopting Employer may select one of these options only if the plan is a new plan or an existing plan restating an identical suspension of benefits option.

Sample Adoption Agreement Language (for existing plans that are adding or expanding a suspension of benefits option):

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

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

( ) employees who commence participation in the Plan on or after the later of the adoption date or the effective date of the suspension of benefit rules in section ____ of the Plan.

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

( ) the portion of participants' Code § 411(d)(6) protected benefits (within the meaning of Reg. § 1.411(d)-4, Q&A 1(a)) that accrue after the later of the adoption date or effective date of the suspension of benefit rules in section ____ of the Plan.

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

An Adopting Employer may select either of these options if the employer is adding a suspension of benefits option to an existing plan or expanding an existing suspension of benefits option.

~~56. [RESERVED]~~

56. Bifurcated distribution options

Statement of Requirement: **Code §§ 411(d)(6), 417(e); Reg. § 1.417(e)-1(d); Rev. Proc. 2016-37; Notice 2017-44, 2017-36 I.R.B. 226**

Document Provision: _____

(Note to reviewer: The sample plan language may be added to a plan in order to implement one of the two methods described in Reg. § 1.417(e)-1(d)(7) for computing the amount to be paid to a participant who elects to receive their accrued benefit in an optional form of payment consisting partially of an annuity and partially of a more accelerated form of payment: (1) the explicit bifurcation method or (2) the implicit bifurcation method.)

Sample Plan Language:

Section 1. Explicit Bifurcation Method

Effective for annuity starting dates on or after the date specified in the adoption agreement, if a participant so elects, the participant's accrued benefit will be divided and distributed according to the elections described in the adoption agreement.

If a participant elects to divide his or her accrued benefit, the amount of the distribution payable with respect to each specified portion of the accrued benefit is determined in accordance with the method for calculating the amount of a distribution payable in the optional form elected for that portion as if that portion were the participant's entire accrued benefit.

Section 2. Implicit Bifurcation Method

Effective for annuity starting dates on or after the date specified in the adoption agreement, if a participant so elects, the participant will receive a portion of his or her accrued benefit in the form of a lump sum distribution as described in the adoption agreement. The remainder of the participant's accrued benefit not payable in the form of a lump sum distribution, expressed in the normal form of benefit commencing when the participant attains normal retirement age (or at the current date, if later) will be equal to the excess of:

(1) The participant's total accrued benefit expressed in that form; over

(2) The annuity payable in that form that is actuarially equivalent to the lump sum distribution, determined using the applicable interest rate under Reg. § 1.417(e)-1(d)(2) and the applicable mortality table under Reg. § 1.417(e)-1(d)(3).

If a participant elects to receive a portion of his or her accrued benefit in the form of a lump sum distribution, then the amount of the distribution payable with respect to the remainder of the benefit is determined in accordance with the method for calculating the amount of a distribution payable in the optional form elected for that remainder as if that remainder were the participant's entire accrued benefit.

Sample Adoption Agreement Language:

1. Participants

   ( ) will

   ( ) will not

   be permitted to divide their accrued benefit and choose different forms of payment for each portion of their accrued benefit, subject to the effective date and conditions set forth below.

2. If a participant elects to divide his or her benefit under this section, the portions of the accrued benefit will be determined using the following method:

   ( ) Explicit Bifurcation Method

   ( ) Implicit Bifurcation Method

   Note: See Reg. § 1.417(e)-1(d)(7) for restrictions on the use of the Implicit Bifurcation Method. For example, the Explicit Bifurcation Method must be used when the lump sum distribution option was discontinued under the plan and is available only to the extent protected under Code § 411(d)(6), or if the plan permits a lump sum distribution of the entire accrued benefit.

3. Explicit Bifurcation Method

Effective for annuity starting dates on or after ________________, a participant may elect to divide his or her accrued benefit to the following extent:

Note: If the plan previously permitted participants to choose different forms of payment and applied the applicable interest and mortality rates under Code § 417(e)(3) to the full distribution, the prior benefits must be protected under Code § 411(d)(6) unless the effective date above is on or before December 31, 2017.

( ) The participant may elect a lump sum distribution of any portion of the accrued benefit, with the remaining portion of the accrued benefit payable in an annuity form described in section _____.

( ) The participant may elect a lump sum distribution only of the portion of the accrued benefit earned:

( ) prior to _____________, or

( ) on or after ______________,

with the remaining portion of the accrued benefit payable in an annuity form described in section _____.

( ) The participant may elect a lump sum distribution for ___% of the accrued benefit payable with the remaining portion of the accrued benefit payable in an annuity form described in section ____.

( ) The participant may elect a lump sum distribution up to ___% of the accrued benefit with the remaining portion of the accrued benefit payable in an annuity form described in section _____.

(Note to Reviewer: If the plan applies different adjustment factors to different portions of the accrued benefit for early retirement, optional forms of payment, etc., then the plan provisions or the participant election must specify which portion of the accrued benefit is payable as a lump sum distribution in order to determine which factors apply to the remaining portion of the accrued benefit. See Reg. § 1.417(e)-1(d)(7)(iii)(D).)

(Note to reviewer: The last blanks in each option above should correspond to LRM # 43.)

4. Implicit Bifurcation Method

Effective for annuity starting dates on or after _____________, a participant may elect to receive a portion of his or her accrued benefit in the form of a lump sum distribution as described below.

Note: If the plan previously permitted participants to choose different forms of payment and applied the applicable interest and mortality rates under Code § 417(e)(3) to the full distribution, the prior benefits must be protected under Code § 411(d)(6) unless the effective date above is on or before December 31, 2017.

( ) A participant may elect a lump sum distribution up to $_______, with the remaining portion of the accrued benefit payable in an annuity form described in section ____

(Note to reviewer: The second blank above should correspond to LRM # 43.)

(Note to reviewer: Other options may be specified for the division of benefits under either the Explicit Bifurcation Method or Implicit Bifurcation Method, but they must meet the requirements of Reg. § 1.417(e)-1(d)(7) and be described in a way that is definitely determinable.)

57. Pre-termination restrictions

Statement of Requirement: Reg. § 1.401(a)(4)-5(b); Rev. Rul. 92-76

Document Provision: _____

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 Code § 401(a)(4).

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 Reg. § 1.411(a)-7(c)(4)(ii)), 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~~formerly defined in Code § 412(l)(7), (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 $5,000.

(Note to reviewer: For purposes of the preceding paragraph, any reasonable and consistent method may be used for determining the value of current liabilities and the value of plan assets. See Reg. § 1.401(a)(4)-5(b)(3)(v).)

For purposes of this section, benefit includes loans in excess of the amount set forth in Code § 72(p)(2)(A), 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.

(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% of the restricted amount, (2) providing a bank letter of credit in an amount equal to at least 100% of the restricted amount, or (3) posting a bond equal to at least 100% 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 this LRM #57.)

The escrow arrangement may provide that an employee may withdraw amounts in excess of 125% of the restricted amount. If the market value of the property in an escrow account falls below 110% 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% 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% 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.

57A. Limitations on the accrual and payment of benefits under certain underfunded single employer defined benefit plans

Statement of Requirement: **Code § 436; Reg. § 1.436-1; Notice 2011-3, 2011-2 I.R.B. 263; Notice 2011-96, 2011-52 I.R.B. 915; Notice 2012-46, 2012-30 I.R.B. 86; Notice 2012-61, 2012-42 I.R.B. 479; Notice 2012-70, 2012-51 I.R.B. 712; Notice 2014-53, 2014-43 I.R.B. 737; Cooperative and Small Employer Charity Pension Flexibility Act, Pub. L. 113-97; Highway and Transportation Funding Act of 2015, Pub. L. 114-21**

Document Provision: _____

Sample plan language:

Article _____: Limitations on the Accrual and Payment of Benefits When the Plan Is Underfunded or When the Plan Sponsor Is In Bankruptcy

Section 1. Limitations Applicable If the Plan's Adjusted Funding Target Attainment Percentage Is Less Than 80%, But Not Less Than 60%. Notwithstanding any other provisions of the plan, if the plan's adjusted funding target attainment percentage for a plan year is less than 80% (or would be less than 80% to the extent described in Section 1(b) below) but is not less than 60%, then the limitations set forth in this Section 1 apply.

(a) 50% Limitation on Single Sum Payments, Other Accelerated Forms of Distribution, and Other Prohibited Payments. A participant or beneficiary is not permitted to elect, and the plan shall not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an annuity starting date on or after the applicable § 436 measurement date, and the plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment, unless the present value of the portion of the benefit that is being paid in a prohibited payment does not exceed the lesser of:

   (i) 50% of the present value of the benefit payable in the optional form of benefit that includes the prohibited payment; or

   (ii) 100% of the PBGC maximum benefit guarantee amount (as defined in Reg. § 1.436-1(d)(3)(iii)(C)).

   The limitation set forth in this Section 1(a) does not apply to any payment of a benefit which under Code § 411(a)(11) may be immediately distributed without the consent of the participant. If an optional form of benefit that is otherwise available under the terms of the plan is not available to a participant or beneficiary as of the annuity starting date because of the application of the requirements of this Section 1(a), the participant or beneficiary is permitted to elect to bifurcate the benefit into unrestricted and restricted portions (as described in Reg. § 1.436-1(d)(3)(iii)(D)). The participant or beneficiary may also elect any other optional form of benefit otherwise available under the plan at that annuity starting date that would satisfy the

50%/PBGC maximum benefit guarantee amount limitation described in this Section 1(a), or may elect to defer the benefit in accordance with any general right to defer commencement of benefits under the plan.

If elected by the employer in the adoption agreement, during a period when this Section 1(a) applies to the plan, participants and beneficiaries are permitted to elect payment in any optional form of benefit otherwise available under the plan that provides for the current payment of the unrestricted portion of the benefit (as described in Reg. § 1.436-1(d)(3)(iii)(D)), with a delayed commencement for the restricted portion of the benefit (subject to other applicable qualification requirements, such as Code §§ 411(a)(11) and 401(a)(9)).

(b) Plan Amendments Increasing Liability for Benefits. No amendment to the plan that has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable shall take effect in a plan year if the adjusted funding target attainment percentage for the plan year is:

(i) Less than 80%; or

(ii) 80% or more, but would be less than 80% if the benefits attributable to the amendment were taken into account in determining the adjusted funding target attainment percentage.

The limitation set forth in this Section 1(b) does not apply to any amendment to the plan that provides a benefit increase under a plan formula that is not based on compensation, provided that the rate of such increase does not exceed the contemporaneous rate of increase in the average wages of participants covered by the amendment.

Section 2. Limitations Applicable If the Plan's Adjusted Funding Target Attainment Percentage Is Less Than 60%. Notwithstanding any other provisions of the plan, if the plan's adjusted funding target attainment percentage for a plan year is less than 60% (or would be less than 60% to the extent described in Section 2(b) below), then the limitations in this Section 2 apply.

(a) Single Sums, Other Accelerated Forms of Distribution, and Other Prohibited Payments Not Permitted. A participant or beneficiary is not permitted to elect, and the plan shall not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an annuity starting date on or after the applicable Code § 436 measurement date, and the plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment. The limitation set forth in this Section 2(a) does not apply to any payment of a benefit which under Code § 411(a)(11) may be immediately distributed without the consent of the participant.

(b) Shutdown Benefits and Other Unpredictable Contingent Event Benefits Not Permitted to Be Paid. An unpredictable contingent event benefit with respect to an unpredictable contingent event occurring during a plan year shall not be paid if the adjusted funding target attainment percentage for the plan year is:

(i) Less than 60%; or

(i) 60% or more, but would be less than 60% if the adjusted funding target attainment percentage were redetermined applying an actuarial assumption that the likelihood of occurrence of the unpredictable contingent event during the plan year is 100%.

(c) Benefit Accruals Frozen. Benefit accruals under the plan shall cease as of the applicable Code § 436 measurement date. In addition, if the plan is required to cease benefit accruals under this Section 2(c), then the plan is not permitted to be amended in a manner that would increase the liabilities of the plan by reason of an increase in benefits or establishment of new benefits.

Section 3. Limitations Applicable If the Plan Sponsor is in Bankruptcy. Notwithstanding any other provisions of the plan, a participant or beneficiary is not permitted to elect, and the plan shall not pay, a single sum payment or other optional form of benefit that includes a prohibited payment with an annuity starting date that occurs during any period in which the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, except for payments made within a plan year with an annuity starting date that occurs on or after the date on which the plan's enrolled actuary certifies that the plan's adjusted funding target attainment percentage for that plan year is not less than 100%. In addition, during such period in which the plan sponsor is a debtor, the plan shall not make any payment for the purchase of an irrevocable commitment from an insurer to pay benefits or any other payment or transfer that is a prohibited payment, except for payments that occur on a date within a plan year that is on or after the date on which the plan's enrolled actuary certifies that the plan's adjusted funding target attainment percentage for that plan year is not less than 100%. The limitation set forth in this Section 3 does not apply to any payment of a benefit which under Code § 411(a)(11) may be immediately distributed without the consent of the participant.

For plan years beginning on or after January 1, 2015 (January 1, 2016 for plans maintained pursuant to one or more collectively bargained agreement), the adjusted funding target attainment percentage used to apply the special restrictions during bankruptcy must be determined without taking into account the interest rate stabilization provisions of Code § 430(h)(2)(C)(iv).

Section 4. Provisions Applicable After Limitations Cease to Apply.

(a) Resumption of Prohibited Payments. If a limitation on prohibited payments under Section 1(a), Section 2(a), or Section 3 applied to the plan as of a Code § 436 measurement date, but that limit no longer applies to the plan as of a later Code § 436 measurement date, then that limitation does not apply to benefits with annuity starting dates that are on or after that later Code § 436 measurement date.

In addition, if elected by the employer in the adoption agreement, after the Code § 436 measurement date on which the limitation on prohibited payments under Section 1(a) ceases to apply to the plan, any participant or beneficiary who had an annuity starting date within the period during which that limitation applied to the plan is permitted to make a new election (within 90 days after the Code § 436 measurement date on which the limit ceases to apply or, if later, 30 days after receiving notice of the right to make such election) under which the form of benefit previously elected is modified at a new annuity starting date to be changed to a single sum payment for the remaining value of the participant or beneficiary's benefit under the plan, subject to the other rules in this section of the plan and applicable requirements of Code § 401(a), including spousal consent.

Furthermore, if elected by the employer in the adoption agreement, after the Code § 436 measurement date on which the limitation on prohibited payments under Section 2(a) ceases to apply to the plan, any participant or beneficiary who had an annuity starting date within the period during which that limitation applied to the plan is permitted to make a new election (within 90 days after the Code § 436 measurement date on which the limit ceases to apply or, if later, 30 days after receiving notice of the right to make such election) under which the form of benefit previously elected is modified at a new annuity starting date to be changed to a single sum payment for the remaining value of the participant or beneficiary's benefit under the plan, subject to the other rules in this section of the plan (including Section 1(a)) and applicable requirements of Code § 401(a), including spousal consent.

(b) Resumption of Benefit Accruals. If a limitation on benefit accruals under Section 2(c) applied to the plan as of a Code § 436 measurement date, but that limitation no longer applies to the plan as of a later Code § 436 measurement date, then benefit accruals shall resume prospectively and that limitation does not apply to benefit accruals that are based on service on or after that later Code § 436 measurement date, except as otherwise provided under the plan. The plan shall comply with the rules relating to partial years of participation and the prohibition on double proration under Department of Labor Regulations §§ 2530.204-2(c) and (d).

In addition, if elected by the employer in the adoption agreement, benefit accruals that were not permitted to accrue because of the application of Section 2(c) shall be restored when that limitation ceases to apply if the continuous period of the limitation was 12 months or less and the plan's enrolled actuary certifies that the adjusted funding target attainment percentage for the plan year would not be less than 60% taking into account any restored benefit accruals for the prior plan year.

(c) Shutdown and Other Unpredictable Contingent Event Benefits. If an unpredictable contingent event benefit with respect to an unpredictable contingent event that occurs during the plan year is not permitted to be paid after the occurrence of the event because of the limitation of Section 2(b), but is permitted to be paid later in the same plan year (as a result of additional contributions or pursuant to the enrolled actuary's certification of the adjusted funding target attainment percentage for the plan year that meets the requirements of Reg. § 1.436-1(g)(5)(ii)(B)), then that unpredictable contingent event benefit shall be paid, retroactive to the period that benefit would have been payable under the terms of the plan (determined without regard to Section 2(b)). If the unpredictable contingent event benefit does not become payable during the plan year in accordance with the preceding sentence, then the plan is treated as if it does not provide for that benefit.

(d) Treatment of Plan Amendments That Do Not Take Effect. If a plan amendment does not take effect as of the effective date of the amendment because of the limitation of Section 1(b) or Section 2(c), but is permitted to take effect later in the same plan year (as a result of additional contributions or pursuant to the enrolled actuary's certification of the adjusted funding target attainment percentage for the plan year that meets the requirements of Reg. § 1.436-1(g)(5)(ii)(C)), then the plan amendment must automatically take effect as of the first day of the plan year (or, if later, the original effective date of the amendment). If the plan amendment cannot take effect during the same plan year, then it shall be treated as if it were never adopted, unless the plan amendment provides otherwise.

Section 5. Notice Requirement. See ERISA § 101(j) and Notice 2012-46 and any related published guidance issued by the Internal Revenue Service for rules requiring the plan administrator of a single employer defined benefit pension plan to provide a written notice to participants and beneficiaries within 30 days after certain specified dates if the plan has become subject to a limitation described in Section 1(a), Section 2, or Section 3.

Section 6. Methods to Avoid or Terminate Benefit Limitations. See Code §§ 436(b)(2), (c)(2), (e)(2), and (f) and Reg. § 1.436-1(f) for rules relating to employer contributions and other methods to avoid or terminate the application of the limitations set forth in Sections 1 through 3 for a plan year. In general, the methods a plan sponsor may use to avoid or terminate one or more of the benefit limitations under Sections 1 through 3 for a plan year include employer contributions and elections to increase the amount of plan assets which are taken into account in determining the adjusted funding target attainment percentage, making an employer contribution that is specifically designated as a current year contribution that is made to avoid or terminate application of certain of the benefit limitations, or providing security to the plan.

Section 7. Special Rules.

(a) Rules of Operation for Periods Prior to and After Certification of Plan's Adjusted Funding Target Attainment Percentage.

(i) In general, Code § 436(h) and Reg. § 1.436-1(h) set forth a series of presumptions that apply (1) before the plan's enrolled actuary issues a certification of the plan's adjusted funding target attainment percentage for the plan year and (2) if the plan's enrolled actuary does not issue a certification of the plan's adjusted funding target attainment percentage for the plan year before the first day of the 10th month of the plan year (or if the plan's enrolled actuary issues a range certification for the plan year pursuant to Reg. § 1.436-1(h)(4)(ii) but does not issue a certification of the specific adjusted funding target attainment percentage for the plan by the last day of the plan year). For any period during which a presumption under Code § 436(h) and Reg. § 1.436-1(h) applies to the plan, the limitations under Sections 1 through 3 are applied to the plan as if the adjusted funding target attainment percentage for the plan year were the presumed adjusted funding target attainment percentage determined under the rules of Code § 436(h) and Reg. §§ 1.436-1(h)(1), (2), or (3). These presumptions are set forth in Sections 7(a)(ii) through (iv).

(ii) Presumption of Continued Underfunding Beginning First Day of Plan Year. If a limitation under Sections 1 through 3 applied to the plan on the last day of the preceding plan year, then, commencing on the first day of the current plan year and continuing until the plan's enrolled actuary issues a certification of the adjusted funding target attainment percentage for the plan for the current plan year, or, if earlier, the date Section 7(a)(iii) or Section 7(a)(iv) applies to the plan:

(1) The adjusted funding target attainment percentage of the plan for the current plan year is presumed to be the adjusted funding target attainment percentage in effect on the last day of the preceding plan year; and

(2) The first day of the current plan year is a Code § 436 measurement date.

(iii) Presumption of Underfunding Beginning First Day of 4th Month. If the plan's enrolled actuary has not issued a certification of the adjusted funding target attainment percentage for the plan year before the first day of the 4th month of the plan year and the plan's adjusted funding target attainment percentage for the preceding plan year was either at least 60% but less than 70% or at least 80% but less than 90%, or is described in Reg. § 1.436-1(h)(2)(ii), then, commencing on the first day of the 4th month of the current plan year and continuing until the plan's enrolled actuary issues a certification of the adjusted funding target attainment percentage for the plan for the current plan year, or, if earlier, the date Section 7(a)(iv) applies to the plan:

(1) The adjusted funding target attainment percentage of the plan for the current plan year is presumed to be the plan's adjusted funding target attainment percentage for the preceding plan year reduced by 10 percentage points; and

(2) The first day of the 4th month of the current plan year is a Code § 436 measurement date.

(iv) Presumption of Underfunding on and After First Day of 10th Month. If the plan's enrolled actuary has not issued a certification of the adjusted funding target attainment percentage for the plan year before the first day of the 10th month of the plan year (or if the plan's enrolled actuary has issued a range certification for the plan year pursuant to Reg. § 1.436-1(h)(4)(ii) but has not issued a certification of the specific adjusted funding target attainment percentage for the plan by the last day of the plan year), then, commencing on the first day of the 10th month of the current plan year and continuing through the end of the plan year:

(1) The adjusted funding target attainment percentage of the plan for the current plan year is presumed to be less than 60%; and

(2) The first day of the 10th month of the current plan year is a Code § 436 measurement date.

(b) New Plans, Plan Termination, Certain Frozen Plans, and Other Special Rules.

(i) First 5 Plan Years. The limitations in Section 1(b), Section 2(b), and Section 2(c) do not apply to a new plan for the first 5 plan years of the plan, determined under the rules of Code § 436(i) and Reg. § 1.436-1(a)(3)(i).

(ii) Plan Termination. The limitations on prohibited payments in Section 1(a), Section 2(a), and Section 3 do not apply to prohibited payments that are made to carry out the termination of the plan in accordance with applicable law. Any other limitations under this section of the plan do not cease to apply as a result of termination of the plan.

(iii) Exception to Limitations on Prohibited Payments Under Certain Frozen Plans. The limitations on prohibited payments set forth in Sections 1(a), 2(a), and 3 do not apply for a plan year if the terms of the plan, as in effect for the period beginning on September 1, 2005, and continuing through the end of the plan year, provide for no benefit accruals with respect to any participants. This Section 7(b)(iii) shall cease to apply as of the date any benefits accrue under the plan or the date on which a plan amendment that increases benefits takes effect.

(iv) Special Rules Relating to Unpredictable Contingent Event Benefits and Plan Amendments Increasing Benefit Liability. During any period in which none of the presumptions under Section 7(a) apply to the plan and the plan's enrolled actuary has not yet issued a certification of the plan's adjusted funding target attainment percentage for the plan year, the limitations under Section 1(b) and Section 2(b) shall be based on the inclusive presumed adjusted funding target attainment percentage for the plan, calculated in accordance with the rules of Reg. § 1.436-1(g)(2)(iii).

~~(c) Special Rules Under PRA 2010.~~

~~(d) Payments Under Social Security Leveling Options. For purposes of determining whether the limitations under Section 1(a) or 2(a) apply to payments under a social security leveling option within the meaning of § 436(j)(3)(C)(i) of the Internal Revenue Code, the adjusted funding target attainment percentage for a plan year shall be determined in accordance with the "Special Rule for Certain Years" under § 436(j)(3) of the Internal Revenue Code and any Treasury Regulations or other published guidance thereunder issued by the Internal Revenue Service.~~

~~(e) Limitation on Benefit Accruals. For purposes of determining whether the accrual limitation under Section 2(c) applies to the plan, the adjusted funding target attainment percentage for a plan year shall be determined in accordance with the "Special Rule for Certain Years" under § 436(j)(3) of the Internal Revenue Code (except as provided under section 203(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, if applicable).~~

~~(f)~~(c) Interpretation of Provisions. The limitations imposed by this section of the plan shall be interpreted and administered in accordance with Code § 436 and Reg. § 1.436-1.

Section 8. Definitions. The definitions in the following Regulations apply for purposes of Sections 1 through 7:

(a) Reg. § 1.436-1(j)(1) defining adjusted funding target attainment percentage;

(b) Reg. § 1.436-1(j)(2) defining annuity starting date;

(c) Reg. § 1.436-1(j)(6) defining prohibited payment;

(d) Reg. § 1.436-1(j)(8) defining a Code § 436 measurement date; and

(e) Reg. § 1.436-1(j)(9) defining an unpredictable contingent event and an unpredictable contingent event benefit.

(Note to reviewer: The following provision should be included in the plan if the plan may be adopted as a multiple employer plan.)

Section 9. Multiple Employer Plans. The adoption agreement shall indicate if the plan is a multiple employer plan and whether Code § 413(c)(4)(A) applies to the plan. If Code § 413(c)(4)(A) applies to the plan, this Article shall apply separately to each employer under the plan as if each such employer maintained a separate plan. If Code § 413(c)(4)(A) does not apply to the plan, this Article shall apply as if all participants in the plan were employed by a single employer.

Section 10. Effective Date. Unless a different effective date is specified in the adoption agreement, this Article is effective for plan years beginning on or after January 1, 2008.

(Note to reviewer: Code § 436 is generally effective for plan years beginning on or after January 1, 2008. However, later effective dates apply to certain collectively bargained, eligible cooperative, eligible charity, Pension Benefit Guaranty Corporation (PBGC) settlement plans, and government contractor plans described in sections 103(c)(2), 104(c), 104(d), 105, and 106, respectivelyof the Pension Protection Act of 2006 (PPA '06), as amended by the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010). In these cases, the appropriate effective date should be specified in the adoption agreement. See the sample adoption agreement language following this note to reviewer.

Additionally, the Cooperative and Small Employer Charity Pension Flexibility Act amended Code § 436 to allow an exemption to all plans defined under Code § 414(y). However, a Cooperative and Small Employer Charity Plan that is in funding restoration status is subject to restrictions on certain amendments increasing benefits, adding new benefits, changing the rate of benefit accruals, or changing the rate at which benefits become nonforfeitable (see Code § 433(j)(2)).

The sample plan language reflects the requirements of the final Reg. § 1.436-1 issued on October 15, 2009. For plan years beginning before January 1, 2010, a plan sponsor may have operated its plan in reliance on the proposed Regulations or on Notices 2008-21 and 2008-73. If the plan's operation in plan years beginning on or after January 1, 2008, but before January 1, 2010, was not consistent with the sample

plan language but satisfies the rules in either the Proposed Regulations or the Final Regulations under Code § 436, or another reasonable interpretation of Code § 436 , the plan sponsor should specify in the adoption agreement that the provisions of this article are effective for plan years beginning on or after January 1, 2010, and the requirements of Code § 436 are incorporated by reference in the terms of the plan for earlier plan years beginning on or after January 1, 2008. See the following sample adoption agreement language.)

Sample Adoption Agreement Language:

Effective Date of the Limitations of Code § 436 With Respect to the Plan

(Select One)

1. ( ) Article _____ of the plan is effective for plan years beginning on or after January 1, 2008.
2. ( ) Article _____ of the plan is effective for plan years beginning on or after January 1, 2010. The requirements of Code § 436 are hereby incorporated by reference in the plan for plan years beginning on or after January 1, 2008 and before January 1, 2010.
3. ( ) The plan is a collectively bargained plan that is maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before January 1, 2008. Article _____ of the plan is effective for plan years beginning on or after ____________ (insert date which is the earlier of (a) January 1, 2010, or (b) the later of the date on which the last of such collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after August 17, 2006), or the first day of the first plan year to which the requirements of Code § 436 would otherwise apply to the plan.)
4. ( ) The plan is an eligible cooperative plan within the meaning of section 104(c) of PPA ’06 that was in existence on July 26, 2005 and was an eligible cooperative plan for its plan year which includes that date. Article _____ of the plan is effective for plan years beginning on or after _____(Insert date which is the earlier of (a) January 1, 2017, or (b) the later of the first day of the first plan year the plan ceases to be an eligible cooperative plan or the first day of the first plan year to which the requirements of Code § 436 would otherwise apply to the plan.)
5. ( ) The plan is an eligible charity plan within the meaning of section 104(d) of PPA ’06, as amended by PRA ’10 that was in existence on July 26, 2005 and was an eligible charity plan for its plan year which includes that date. Article _____of the plan is effective for plan years beginning on or after ______(Insert date which is the earlier of (a) January 1, 2017, or (b) the later of the first day of the first plan year the plan ceases to be an eligible charity plan or the first day of the first plan year to which the requirements of Code § 436 would otherwise apply to the plan.) The plan sponsor elects that Article _____ of the plan (check one)
   ( ) is

( ) is not

also effective for any plan year beginning on or after January 1, 2008 but before January 1, 2009.

6. ( ) The plan is a Cooperative and Small Employer Charity plan within the meaning of Code § 414(y). Article _____ of the plan does not apply to this plan unless it ceases to be a Cooperative and Small Employer Charity plan.

~~6.~~7.( ) The plan is a PBGC settlement plan within the meaning of section 105 of PPA '06 that was in existence on July 26, 2005 and was a PBGC settlement plan as of that date. Article _____ of the plan is effective for plan years beginning on or after January 1, 2014.

~~7.~~8.( ) The plan is an eligible government contractor plan within the meaning of section 106 of PPA '06. Article _____ of the plan is effective for plan years beginning on or after the earliest of January 1, 2011, the first day of the first plan year for which the plan ceases to be an eligible government contractor plan, and the first day of the first plan year beginning on or after the effective date of the Cost Accounting Standards Pension Harmonization Rule.

Employer Elections Regarding the Limitations of Code § 436

1. ( ) If checked, the employer elects that, during a period when Section 1(a) of Article _____ applies to the plan, participants and beneficiaries are permitted to elect payment in any optional form of benefit otherwise available under the plan that provides for the current payment of the unrestricted portion of the benefit, with a delayed commencement for the restricted portion of the benefit, as provided in Section 1(a) of Article _____ of the plan. This election is effective:

(Check one)

( ) As of the effective date of Article __ of the plan.

( ) For plan years beginning on or after ____________________
(Enter the first day of the plan year for which the election is effective.)

2. ( ) If checked, the employer elects that, after the Code § 436 measurement date on which the limitation on prohibited payments under Section 1(a) of Article _____ ceases to apply to the plan, any participant or beneficiary who had an annuity starting date within the period during which that limitation applied to the plan is permitted to make a new election under which the form of benefit previously elected is modified at a new annuity starting date to be changed to a single sum payment for the remaining value of the participant or beneficiary's benefit under the plan, as provided in Section 4(a) of Article _____ of the plan. This election is effective:

(Check one)

( ) As of the effective date of Article __ of the plan.

( ) For plan years beginning on or after ____________________
(Enter the first day of the plan year for which the election is effective.)

3. ( ) If checked, the employer elects that, after the Code § 436 measurement date on which the limitation on prohibited payments under Section 2(a) of Article _____ ceases to apply to the plan, any participant or beneficiary who had an annuity starting date within the period during which that limitation applied to the plan is permitted to make a new election under which the form of benefit previously elected is modified at a new annuity starting date to be changed to a single sum payment for the remaining value of the participant or beneficiary's benefit under the plan, as provided in Section 4(a) of Article _____ of the plan. This election is effective:

(Check one)

( ) As of the effective date of Article __ of the plan.

( ) For plan years beginning on or after ________________________
(Enter the first day of the plan year for which the election is effective.)

4. ( ) If checked, the employer elects that benefit accruals that were not permitted to accrue because of the application of Section 2(c) of Article _____ shall be restored when that limitation ceases to apply if the continuous period of the limitation was 12 months or less and the plan's enrolled actuary certifies that the adjusted funding target attainment percentage for the plan year would not be less than 60% taking into account any restored benefit accruals for the prior plan year. This election is effective:

(Check one)

( ) As of the effective date of Article __ of the plan.

( ) For plan years beginning on or after ________________________
(Enter the first day of the plan year for which the election is effective.)

(Note to reviewer: The following provision should be included in the adoption agreement if the plan may be adopted as a multiple employer plan.)

Multiple employer plans check one:

( ) The plan is a multiple employer plan to which Code § 413(c)(4)(A) applies, including a plan for which the election described in Code § 413(c)(4)(B) has been made. Therefore, Article _____ of the plan applies separately to each employer under the plan, as if each such employer maintained a separate plan.

( ) The plan is a multiple employer plan to which Code § 413(c)(4)(A) does not apply. Therefore, Article _____ of the plan applies as if all participants in the plan were employed by a single employer.

(Note to reviewer: The blanks above should be filled in with the corresponding plan section, except as otherwise indicated.)

VESTING PROVISIONS

58. Designation of vesting computation period

Statement of Requirement: **Code § 411(a)(5)(A); DOL Reg. § 2530.200b-1**

Document Provision: _____

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. Breaks in service and years of service must be measured on the same computation period

Statement of Requirement: **DOL Reg. § 2530.200b-4(a)(3)**

Document Provision: _____

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 attainment of normal retirement age

Statement of Requirement: **Code § 411(a); Prop. Reg. § 1.401(a)-1(b)(2)(v)**

Document Provision: _____

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.)

(Note to reviewer: Proposed regulations provide safe harbors and other rules regarding normal retirement age under a § 414(d) governmental pension plan. See LRM #14.)

61. Optional vesting schedules must be at least as favorable as the applicable minimum vesting schedules

Statement of Requirement: **Code §§ 411(a)(2), 411(a)(13)(B), and 416(b)(1); Notice 2007-6, 2007-1 C.B. 272.**

Document Provision: _____

(Note to reviewer: If the plan allows for vesting schedules other than those provided in the Code (i.e. § 411(a)(2) for regular schedules and § 416(b)(1) for top-heavy schedules; see LRM #73), the optional schedules must be at least as favorable as the statutory schedules. For Cash Balance plans, § 411(a)(13)(B) requires an employee who has completed at least ~~as favorable as~~3 years of service to have a nonforfeitable right to 100 percent of the ~~applicable minimum vesting schedules (~~employee's accrued benefit derived from ~~CB)~~employer contributions.)

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

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

62. Crediting years of service - vesting

Statement of Requirement: **Code § 411(a)(4)**

Document Provision: _____

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 (mark all that apply):

4. ( ) Years of service before age 18,

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

6. ( ) Years of service before the employer maintained this plan or a predecessor plan,

7. ( ) Years of service before January l, 1971, unless the employee has at least 3 years of service after December 31, 1970, and

8. ( ) 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, because of an employee's separation or failure to complete a required period of service within a specified period of time, 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 holdout

Statement of Requirement: Code § 411(a)(6)(B)

Document Provision: _____

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 Code § 411(b)(1)(F) may use the break in service rule of Code § 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

Statement of Requirement: **Code § 411(a)(6)(D)**

Document Provision: _____

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

Statement of Requirement: **Code § 411(a)(10), § 411(d)(6); Reg. § 1.411(a)-8(c)(l), § 1.411(a)-8T, § 1.411(d)-3(a)(3); Rev. Proc. 2017-41, sec. 5.04**

Document Provision: _____

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, in the case of an employee who is a participant as of the later of the date such amendment or change 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 or change. Furthermore, 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:

(1) 60 days after the amendment is adopted;

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

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

With respect to benefits accrued as of the later of the adoption or effective date of the amendment, the vested percentage of each participant will be the greater of the vested percentage under the old vesting schedule or the vested percentage under the new vesting schedule.

66. Amendments affecting accrued benefits

Document Provision: _____

Statement of Requirement: **Code § 411(d)(6); Reg. §§ 1.411(d)-3, 1.411(d)-4; Rev. Rul. 81-12, 1981-1 C.B. 228; Rev. Proc. 2017-41, secs. 5.04 and 5.18(1)**

Document Provision: _____

Sample Plan Language:

No amendment to the plan (including a change in the actuarial basis for determining optional or early retirement benefits) shall be effective to the extent that it has the effect of decreasing a participant's accrued benefit. For purposes of this paragraph, a plan amendment that has the effect of (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (2) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the pre-amendment conditions for the subsidy. Notwithstanding the preceding sentences, a participant's accrued benefit, early retirement benefit, retirement-type subsidy, or optional form of benefit may be reduced to the extent permitted under Code § 412(~~c)(8) (for plan years beginning on or before December 31, 2007) or Code § 412(d)(2) (for plan years beginning after December 31, 2007), or to the extent permitted under Reg.~~d)(2) or Reg. §§ 1.411(d)-3 and 1.411(d)-4.

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

(Note to reviewer: Plans may provide for an exception from the general prohibition against the elimination or restriction of optional forms for certain elective transfers. If a plan provides for the elimination or restriction of optional forms for elective transfers made on or after January 1, 2002, the plan must also provide that where the participant is eligible to receive an immediate distribution of the participant's entire nonforfeitable accrued benefit in a single-sum distribution that would consist entirely of an eligible rollover distribution under Code § 401(a)(31), such transfer will be accomplished as a direct rollover under Code § 401(a)(31). See LRM #54 and Reg. §§ 1.411(d)-4, Q&A-3(a)(4), (c)(1)(ii).)

~~66CB. Amendments affecting accrued benefits (from CB)~~

~~Statement of Requirement:~~ **~~Code § 411(d)(6); Reg. §§ 1.411(d)-3 and 1.411(d)-4; Rev. Rul. 81-12, 1981-1 C.B. 228.~~**

~~Sample Plan Language:~~

~~No amendment to the plan (including a change in the actuarial basis for determining optional or early retirement benefits) shall be effective to the extent that it has the effect of decreasing a participant's Accrued Benefit. For purposes of this paragraph, a plan amendment that has the effect of (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (2) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the pre-amendment conditions for the subsidy. Notwithstanding the preceding sentences, a participant's Accrued Benefit, early retirement benefit, retirement-type subsidy, or optional form of benefit may be reduced to the extent permitted under IRC § 412(c)(8) (for plan years beginning on or before December 31, 2007) or IRC § 412(d)(2) (for plan years beginning after December 31, 2007), or to the extent permitted under Reg. §§ 1.411(d)-3 and 1.411(d)-4.~~

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

~~(Note to reviewer: Plans may provide for an exception from the general prohibition against the elimination or restriction of optional forms for certain elective transfers. If a plan provides for the elimination or restriction of optional forms for elective transfers made on or after January 1, 2002, the plan must also provide that where the participant is eligible to receive an immediate distribution of the participant's entire nonforfeitable Accrued Benefit in a single-sum distribution that would consist entirely of an eligible rollover distribution under IRC § 401(a)(31), such transfer will~~

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

(Note to reviewer: For benefits based on a Cash Balance Formula, the right to interest credits in the future that are not conditioned on future service constitutes a Code § 411(d)(6) protected benefit. Unless otherwise specifically provided by law, an amendment to the plan to change the Interest Crediting Rate must satisfy ~~IRC § 411(d)(6),~~Code § 411(d)(6) with respect to a participant's hypothetical account balance accrued as of the date of the amendment, if the revised rate could result in interest credits that are smaller as of any date after the applicable amendment date. See Reg. § 1.411(b)(5)-1(e)(3).)

67. Forfeitures - withdrawal of employee contributions

Statement of Requirement: **Code § 401(a)(19)**

Document Provision: _____

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

Statement of Requirement: **Reg. § 1.411(a)-4(b)(6)**

Document Provision: _____

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

69. Top-heavy definitions

Statement of Requirement: **Code § 416; Notice 2001-56, 2001-2 C.B. 277; Notice 2001-57, 2001-2 C.B. 279; Rev. Proc. 2017-41, secs. 5.05 and 5.07**

Document Provision: _____

(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 other provisions of this LRM #69. A deemed top-heavy plan contains a single benefit structure that satisfies the requirements of Code §§ 416(b) and (c) for each plan year without regard to whether the plan is top-heavy.)

Sample Plan Language:

Section(s) _____ will apply for purposes of determining whether the plan is a top-heavy plan under § 416(g) of the Internal Revenue Code ~~for plan years beginning after December 31, 2001~~, and whether the plan satisfies the minimum benefits requirements of section § 416(c) for such years. If the plan is top-heavy in a plan year, the provisions of section(s) _____ will supersede any conflicting provisions in the plan or adoption agreement.

(Note to reviewer: The blanks should be filled in with the section numbers that correspond to the requirements of LRMs #69-73.)

(a) Key employee: Key employee means any employee or former employee (including any deceased employee) who at any time during the plan year that includes the determination date is an officer of the employer having an annual compensation greater than $130,000 (as adjusted under § 416(i)(1) of the Code ~~for plan years beginning after December 31, 2002~~), a 5-percent owner of the employer, or a 1-percent owner of the employer having an annual compensation of more than $150,000. For purposes of this paragraph (a), annual compensation means compensation within the meaning of section _______ of the plan and related elections in the adoption agreement.

(Note to reviewer: The blank should be filled in with the section of the plan that corresponds to section 6.2 of LRM #40.)

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

(b) Top-heavy plan: For any plan year beginning after December 31, 1983, this plan is top-heavy if any of the following conditions exists:

(i) 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.

(ii) 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.

(iii) 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.

(c) Top-heavy ratio:

(i) 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 Code § 408(k)) 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 1-year period ending on the determination date(s)) (5-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability), and the denominator of which is the sum of the present value of accrued benefits of all employees as of the determination date(s) (including any part of any accrued benefits distributed in the 1-year period ending on the determination date(s)) (5-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability), determined in accordance with Code § 416 and regulations thereunder.

(ii) 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 (i) 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 (i) 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 Code § 416 and regulations thereunder. The account balances in a defined contribution plan in both the numerator and denominator of the top-heavy ratio are increased for any distribution of an account balance made in the 1-year period ending on the determination date (5-year period ending on the determination date in the case of a distribution made for a reason other than severance from employment, death or disability).

(iii) For purposes of (i) and (ii) 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 Code § 416 and regulations thereunder for the first and second plan years of a defined benefit plan. The account balances and accrued benefits of a participant (1) who is not a key employee but who was a key employee in a prior year, or (2) who has not been credited with at least one hour of service with any employer maintaining the plan at any time during the 1-year period 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 Code § 416 and 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 Code § 411(b)(1)(C).

(d) 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 Code §§ 401(a)(4) and 410.

(e) 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 plan year containing the determination date or any of the four preceding plan years (regardless of whether the plan has terminated), and (2) any other qualified plan of the employer which enables a plan described in (l) to meet the requirements of Code §§ 401(a)(4) or 410.

(f) 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.

(g) 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.

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

Sample Adoption Agreement Language:

A. 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

Statement of Requirement: **Code § 416(c); Reg. § 1.416-1; Rev. Proc. 2017-41, sec. 5.07**

Document Provision: _____

Sample Plan Language:

(1) Notwithstanding any other provision in this plan except (3), (4), (5), and (6) 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 2% 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 5-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 plan and related elections in the adoption agreement, as limited by Code § 401(a)(17).

(Note to reviewer: The blank should be filled in with the section number of the plan that corresponds to section 6.2 of LRM #40.)

(3) No accrual shall be provided pursuant to (1) above for a year in which the plan does not benefit any key employee or former key employee.

(4) 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% of the participant's highest average compensation for the five consecutive years for which the participant had the highest compensation.

(5) 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.

(Note to reviewer: The blank above should be filled in with the section number of the adoption agreement corresponding to the sample adoption agreement provision B. at the end of this LRM #70.)

(Note to reviewer: Provision (5) above may cause the plan to fail to satisfy the uniformity requirement under Reg. § 1.401(a)(4)-3(b)(2), even though all other requirements applicable to the regulatory safe harbors are met.)

(6) 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.

Sample Adoption Agreement Language:

A. For purposes of minimum top-heavy accruals, each non-key employee will accrue a minimum benefit of _____% (not less than 2%) of compensation for each year the plan is top-heavy.

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

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

Name of the other plan: _________________

Minimum benefit that will be provided under such other plan: ______________

Employees who will receive the minimum benefit under such other plan:
____

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

Statement of Requirement: **Code § 416; Reg. § 1.416-1**

Document Provision: _____

Sample Plan Language:

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

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

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

72. Nonforfeitability of minimum accrued benefit

Statement of Requirement: Code § 416(c)

Document Provision: _____

Sample Plan Language:

The minimum accrued benefit required ~~(~~for purposes of this section must be nonforfeitable 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~~)(1)(A) or ~~411(a)(3)(D)~~(b)(1)(B).

(Note to reviewer: In general, these citations refer to the schedules of ~~the Internal Revenue Code.~~3-year cliff vesting and 6-year graded vesting.)

73. Minimum vesting schedules

Statement of Requirement: Code §§ 411(a)(13)(B) and 416(b); Notice 2007-6; Rev. Proc. 2017-41, sec. 5.07

Document Provision: _____

Sample Plan Language:

For any plan year in which this plan is top-heavy, one of the minimum vesting schedules as elected by the employer in the adoption agreement will automatically apply to the plan. The minimum vesting schedule applies to all accrued benefits within the meaning of Code § 411(a)(7) except those attributable to employee contributions, including benefits accrued before the effective date of Code § 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 (mark one and fill in the blanks):

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

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

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

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

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

( ) 100% vesting after 6 years of service.

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

(Note to reviewer: The blank should be filled in with the section number which corresponds to LRM #65.)

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

AMENDMENT AND TERMINATION PROVISIONS

74. Provider power to amend

Statement of Requirement: **Rev. Proc. ~~2011-49 § 5.01, § 8, § 12.04~~2017-41, sec. 5.03**

Document Provision: _____

Sample Plan Language:

The ~~sponsor~~Provider, as defined in section 4.08 of Rev. Proc. 2017-41, may amend any part of the plan. However, for purposes of reliance on an Opinion ~~or determination~~ Letter, the ~~sponsor~~Provider will no longer have the authority to amend the plan on behalf of the employer as of the date (1) the employer amends the plan to incorporate a type of plan described in section 6.03 ~~or~~of Rev. Proc. ~~2011-49~~2017-41 that is not permitted under the Pre-approved Plan program, or (2) the Internal Revenue Service notifies the employer, in accordance with section ~~24.03~~8.06(3) of Rev. Proc. ~~2011-49~~2017-41, that the plan is an individually designed plan due to the nature and extent of employer amendments to the plan.

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

75. Amendment by Adopting Employer

Statement of Requirement: **Rev. Proc. ~~2011-49, §§~~2017-41, sec. 5.~~02~~05, sec. 8.01 and ~~21, Rev. Proc. 2007-44, § 19.~~ sec. 8.03**

Document Provision: _____

Sample Plan Language:

The employer may (1) change the choice of options in the adoption agreement; (2) specify or change the effective date of a provision as permitted under the plan; (3) add overriding language in the adoption agreement when such language is necessary to satisfy § 415 or § 416 of the Code because of the required aggregation of multiple plans; (~~3~~4) amend administrative provisions of the ~~trust or custodial document in the case of a nonstandardized plan and, in the case of any~~ plan~~, make more limited amendments~~ such as ~~the name~~provisions relating to investments, plan claims procedures, and employer contact information provided the amended provisions are not in conflict with any other provision of the plan~~, employer, trustee or custodian, plan administrator~~ and ~~other fiduciaries, the trust year, and the name of any pooled trust in which the plan's trust will participate; (4) add certain~~do not cause the plan to fail to qualify under § 401; (5) adopt sample or model plan amendments published by the Internal Revenue Service~~,~~ which ~~specifically~~ provide that their adoption will not ~~cause the plan to be treated as individually designed. Additionally, a plan will not be treated as individually designed if~~result in the employer losing reliance on the Opinion Letter; (6) amend to adjust for limitations provided under §§ 415, 402(g), 401(a)(17) and 414(q)(1)(B) to reflect annual cost of living increases, other than to add automatic cost-of-living adjustments to the plan; (7) make interim amendments or discretionary amendments that are related to a change in qualification requirements, and (8) make amendments necessary pursuant to resolving a compliance deficiency pursuant to a closing agreement under the ~~Audit Closing Agreement Program or a compliance statement under the Voluntary Correction Program has been issued with respect to the employer's plan with regard to the amendment. The sponsor's or employer's adoption of certain interim or discretionary amendments also will not cause the~~

~~employer's plan to be considered an individually designed plan.~~ Employee Plans Compliance Resolution System. An employer that amends the plan for any other reason will ~~be considered to~~ no longer have ~~an individually designed plan. However, such employer may (depending on the nature of the amendments adopted) continue to be treated as a pre-approved plan for purposes of eligibility for the six-year remedial amendment cycle, as described in Rev. Proc. 2007-44 or its successors.~~reliance on the Opinion Letter.

(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 Pre-approved 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

Statement of Requirement: **Code § 411(d)(3), Reg. §§ 1.411(a)-4(a), 1.411(a)-4T**

Document Provision: _____

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 Code § 411 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

Statement of Requirement: **Code §§ 401(a)(12), 414(l); Reg. § 1.414(l)-1**

Document Provision: _____

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

Statement of Requirement: **Code §§ 401(a)(13), 414(p)**

Document Provision: _____

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 Code § 414(p) or a 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 Code § 414(p).)

79. Loans to participants

Statement of Requirement: **Code §§ 72(p), 401(a)(13), 412(e)(3)(F), 4975(d)(1), 4975(f)(6), 417(f)(5); Reg. §§ 1.72(p)-1 and 1.401(a)-20, Q&A 24; DOL Reg. § 2550.408(b)-1; Rev. Proc. 96-49, 1996-2 C.B. 369; Notice 2001-57**

Document Provision: _____

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

Sample Plan Language:

(1) Loans shall be made available to all participants and beneficiaries on a reasonably equivalent basis. Notwithstanding the preceding sentence, if this plan is a fully insured section 412(e)(3) 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 180-day period ~~(90-day period for plan years beginning before January 1, 2007)~~ 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) Loan repayments will be suspended under this plan as permitted under Code § 414(u)(4).

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 Code § 72(p) will not be considered with respect to the issuance of a favorable opinion letter. In order to

assist ~~sponsors~~Providers in drafting provisions to comply with Code § 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 1-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 Code §§ 414(b), 414(c), 414(m) or 414(o) 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

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

Document Provision: _____

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 Code § 412(e)(3) 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(e)(3) 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 Code § 404, 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

Statement of Requirement: Rev. Proc. 2017-41, secs. 7.03(1), 8.06 and 8.07

Document Provision: _____

Sample Plan Language:

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

~~82. Master trust or custodial account~~

~~**Statement of Requirement: Rev. Proc. 2011-49, § 4.01**~~

~~**(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~~

~~**Statement of Requirement: Rev. Rul. 71-461, 1971-2 C.B. 227**~~

~~**Sample Plan Language:**~~

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

82. RESERVED

83. RESERVED

84. Crediting service with predecessor employer

Statement of Requirement: **Code § 414(a)**

Sample Plan Language:

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

85. ~~[RESERVED]~~ Conflicting trust provisions

Statement of Requirement: **Rev. Proc. 2017-41, secs. 5.09 and 7.03(6)**

Document Provision: _____

Sample Plan Language:

In the event of any conflict between the terms of this plan and any conflicting provision contained in any associated trust, custodial account document or any document that is incorporated by reference, the terms of this plan will govern.

(Note to reviewer: Each Pre-approved Plan must contain a statement that the provisions of the plan override any conflicting provision contained in trust or custodial account documents used with the plan.)

(Note to reviewer: No reliance is afforded to any provisions contained in any documents referenced outside the plan or adoption agreement, as applicable, such as a collective bargaining agreement. Opinion Letters will be caveated to this effect.)

86. Conflict with insurance contracts

Statement of Requirement: **Reg. § 1.401-1(a)(3)(iii); Rev. Proc. 2017-41, sec. 7.03(6)**

Document Provision: _____

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 and other credits, fully-insured plans

Statement of Requirement: **Reg. § 1.404(a)-8; Rev. Rul. 60-33**

Document Provision: _____

(Note to reviewer: All Code § 412(e)(3) plans (whether trusteed or non-trusteed) must include this provision. In addition, all non-trusteed 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 purposes 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), above;

(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

Statement of Requirement: **Rev. Proc. ~~2011-49,~~ 2017-41, secs. 5.10, 5.11~~, 5.12; Rev. Proc. 2013-6, 2013-1 I.R.B. 198, § 8~~**

Document Provision: _____

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

(Note to reviewer: Plans cannot include blanks or fill-in provisions for the employer to complete, unless the provisions have parameters that preclude the employer from completing the provisions in a manner that could violate the qualification requirements.)

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

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

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

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

(4) The employer must complete a new adoption agreement upon first adoption of the plan. Additionally, upon any modification to a prior election, making of new elections, or restatement of the plan, a new adoption agreement or signature page and plan document must be completed.

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

The above signature requirement may be satisfied by an electronic signature that reliably authenticates and verifies the adoption of the adoption agreement, or restatement, amendment, or modification thereof, by the employer.)

89. USERRA – military service credit

Statement of Requirement: **Code §§ 401(a)(37) and 414(u); Rev. Proc. 96-49, 1996-2 C.B. 369; Rev. Proc. ~~2011-49, 6.03(17),~~2017-41, 2017-29 I.R.B. 92 §5.14, Notice 2010-15, 2010-6 I.R.B. 390**

Document Provision: _____

Sample Plan Language:

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

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

89A. Multiple employer plans

Statement of Requirement: **Code § 413(c); Reg. § 1.413-2**

Document Provision: _____

(Note to reviewer: A Pre-approved Plan, including a Standardized Plan, may allow for the plan to be adopted as a multiple employer plan, that is, to be adopted as a non-collectively bargained single plan benefitting the employees of two or more employers who are not treated as a single employer under Code §§ 414(b), (c), (m), or (o). To do this, the plan must include, as an addendum to the adoption agreement, a participation agreement to be signed by any employer that adopts the plan, other than the "lead" employer that signs the adoption agreement. The participation

agreement must provide that the participating employer agrees to be bound by the terms of the plan and trust as adopted by the lead employer, including any amendments thereto and any elections made by the lead employer, except to the extent the participation agreement allows for, and the participating employer makes, separate elections with respect to its employees.

The exclusive benefit requirement is applied to a multiple employer plan by treating all employees of all participating employers as if they were the employees of the same employer. In addition, the minimum participation requirements of Code § 410(a) and the minimum vesting requirements of Code § 411 are applied as if all participating employers were a single employer, and service for any employer counts as service for all. If the adoption agreement indicates that Code § 413(c)(4)(A) applies to the plan, the limitation on accrual and payment of benefits under Code § 436 applies separately to each employer under the plan as if each such employer maintained a separate plan. If Code § 413(c)(4)(A) does not apply to the plan, Code § 436 applies as if all participants in the plan were employed by a single employer.

The limitations of Code § 415 (annual benefits) are applied to the plan as a whole, rather than on an employer-by-employer basis. Likewise, if a participant is both a 5% owner and an employee of any participating employer in the year the employee reaches age 70½, then the employee's required beginning date is April 1 of the following year.

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

Sample plan language:

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

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

Except to the extent that the participation agreement allows, and the participating employer makes, separate elections with respect to its employees, the participating employer shall be bound by the terms of the plan and trust, including amendments thereto and any elections made by the Adopting Employer. The limitations under the plan relating to the requirements of Code § 415 shall be applied to the plan as a whole. The requirements of Code §§ 410(b), 401(a)(4), 414(q), and 416 shall be applied separately to each participating employer. For purposes of determining a participant's required beginning date for minimum required distributions, a participant shall be considered a 5% owner in a year in which the participant is both a 5% owner and an employee of a participating employer. If the adoption agreement indicates that Code § 413(c)(4)(A) applies to the plan, the limitation on accrual and payment of benefits under Code § 436 applies separately to each employer under the plan as if each such employer maintained a separate plan. If Code § 413(c)(4)(A) does not apply to the plan, Code § 436 applies as if all participants in the plan were employed by a single employer.

Sample Adoption Agreement Language:

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

( ) Yes

( ) No

Participation agreement:

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

(Note to reviewer: The withdrawal of a participating employer from a multiple employer plan is not a plan termination which allows distributions to be made to participants in the plan. Instead, a plan termination for distribution purposes occurs when the entire plan terminates. See Code § 413(c)(3) and Reg. § 1.413-2(a)(3)(iii). Plan provisions cannot provide that upon withdrawal of a participating employer, assets will be distributed as if it were a single employer plan termination. Instead, a withdrawing employer is required to establish a plan as part of a spinoff transaction within the meaning of Reg. § 1.414(l)-1(b)(4) and transfer assets into it; then, if desired, terminate the spinoff plan.)

Part II - STANDARDIZED PLANS

(Note to reviewer: All Standardized defined benefit plans must, by their terms, satisfy 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 one of the design-based safe harbors or provide a mechanism in the adoption agreement for the employer to select plan language that does. (See section 4.10 and 5.04 of Rev. Proc. 2011-49.)~~Reg. § 1.401(a)(4)-3(b). 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.)

~~(Note to reviewer: Paired plans are discontinued as a separate category of pre-approved plans. See Rev. Proc. 2011-49.)~~

90. Coverage

Statement of Requirement: **Code § 410(b); Rev. Proc. ~~2011-49, § 4.10~~2017-41, sec. 5.16(1)**

Document Provision: _____

Sample Adoption Agreement Language:

Each employee will be eligible to participate in this plan in accordance with section _____, except the following (check and fill blanks for all that apply):

( ) 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 Reg. § 1.410(b)-9. For this purpose, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives of the employer.

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

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

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

91. Eligibility requirements not more favorable for highly compensated

Statement of Requirement: **Reg. § 1.401(a)(4)-4; Rev. Proc. ~~2011-49, § 4.10~~ 2017-41, sec. 5.16(2) and (6)**

Document Provision: _____

(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: Any past service credit under a Standardized Plan must meet the safe harbor in Reg. § 1.401(a)(4)-5(a)(3).)

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

92. Reliance on Opinion Letter

Statement of Requirement: **Rev. Proc. ~~2013-6, 2013-1~~ 2017-41, 2017-29 I.R.B. ~~198, Rev. Proc. 2011-49, sec.~~92, sections 5.~~10~~08, 5.~~11, 6, 19~~16(6), 7.01, and 8.03**

Document Provision: _____

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

Sample Adoption Agreement Language:

An Adopting Employer may rely on the Opinion Letter issued to this plan by the Internal Revenue Service as evidence that the plan is qualified under Code § 401, only if (a) the plan has a currently valid Opinion Letter, (b) the employer's plan is identical to the Pre-Approved Plan, (c) coverage and contributions or benefits under the employer's plan are not more favorable for highly compensated employees than for other employees, and (d) the employer has not amended the plan other than to choose from among options provided under the plan or to make limited amendments consistent with maintaining a Pre-Approved Plan.

An Adopting Employer may rely on the Opinion Letter with respect to the minimum participation requirements of Code § 401(a)(26) only if the plan satisfies the requirements of Code § 401(a)(26) with respect to its prior benefit structure (or is deemed to satisfy Code § 401(a)(26) pursuant to regulations thereunder).

An Adopting Employer may not rely on the Opinion Letter with respect to: (a) whether the timing of any amendment to the plan (or series of amendments) satisfies nondiscrimination requirements (except with respect to plan amendments granting past service that meet the applicable safe harbor and are not part of a pattern of amendments that significantly discriminates in favor of highly compensated employees); (b) whether the plan satisfies the effective availability requirement with respect to any benefit, right, or feature; or (c) whether the plan meets the requirements of Code §§ 415 and 416 if the employer maintains or has at any maintained at any time, another plan that was qualified or determined to be qualified and that covers or covered some of the same participants. The employer may not rely on the Opinion Letter in certain other circumstances specified in the Opinion Letter issued with respect to the plan and in Rev. Proc. 2017-41.

(Note to reviewer: Reg. § 1.401(a)(4)-5 provides rules for determining whether the timing of a plan amendment or series of amendments has the effect of discriminating significantly in favor of current or former highly compensated employees. In general, the Opinion Letter issued to a Standardized Plan may not be relied on as to whether a plan complies with these rules, except and to the extent that a plan amendment grants prior service credit for benefit accrual purposes, and otherwise meets the safe harbor for certain grants of benefits for past periods provided at Reg. § 1.401(a)(4)-5(a)(3). Additionally, an Opinion Letter issued to a Standardized Plan cannot be relied upon as to whether the employer complies with Reg. § 1.401(a)(4)-4(c), requiring that benefits, rights and features provided under the plan cannot be discriminatory and must be effectively available to non-highly compensated employees.)

93. – 101. [RESERVED]

PART III - NONSTANDARDIZED PLAN PROVISIONS

102. Employee mandatory contributions

Statement of Requirement: **Code § 411(c)(2)(C); Reg. § 1.401(a)(4)-6 ~~; Rev. Proc. 2011-49, § 6.03(10)~~**

Document Provision: _____

(Note to reviewer: A Pre-approved Standardized defined benefit ~~pre-approved~~ plan may not provide for ~~employee~~ mandatory employee contributions. A plan provision requiring ~~employee~~such contributions must be deleted, effective no later than for plan years beginning after the date of restatement of the plan for EGTRRA~~.)~~ or the date that the plan is first restated as a Pre-approved Plan, if later. A Pre-approved Nonstandardized defined benefit plan may provide for mandatory employee contributions.

Sample Plan Language~~:~~ (for Standardized Plans):

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

~~102CB. Employee mandatory contributions~~

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

~~**Document Provision: _____**~~

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

~~**Sample Plan Language:**~~

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

103. Accrued benefit derived from mandatory employee contributions

Statement of Requirement: **Code §§ 401(a)(4), 411(c)(2); Reg. § 1.401(a)(4)-6, § 1.411(c)-1(C); Rev. Rul. 76-47, Rev. Rul. 78- 202; Rev~~. Proc. 2011-49, § 6.03(10)~~ Rul. 89-60**

Document Provision: _____

(Note to reviewer: The following ~~provision is~~ provisions are needed if the plan previously required (or is a Nonstandardized Plan that currently requires) mandatory employee contributions.)

Sample Plan Language:

The employee~~-purchased-~~provided 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~~any 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% of the Federal mid-term rate (as in effect under Code § 1274 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 Code § 417(e)(3) (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 four will be converted into the normal form of benefit using the interest rate that would be used under the plan under Code § 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.

(Note to reviewer: Under Rev. Proc. 2000-20, a predecessor to Rev. Proc. ~~2011-49,~~2017-41, a Pre-approved defined benefit ~~plans were~~plan was permitted to accept

mandatory employee contributions, if the ~~plans provide~~plan provided the minimum benefit described in Reg. § 1.401(a)(4)-6(b)(3)(ii). The following paragraph satisfies that requirement.)

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 ceased 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 Reg. § 1.401(a)(4)-6(b)(5).)

104. Nonforfeitability of mandatory employee contributions

Statement of Requirement: **Code § 411(a)(l)**

Document Provision: _____

Sample Plan Language:

A participant's accrued benefit derived from mandatory employee contributions shall be nonforfeitable at all times.

105. Minimum age and service

Statement of Requirement: **Code § 410(a)(1)(A); Reg. § 1.410(a)-3(a); Rev. Proc. 2017-41, sec. 5.16(1)**

Document Provision: _____

Sample Adoption Agreement Language:

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

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

(ii) 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: Code § 410(a) provides the minimum age and service requirements applicable to plans, generally requiring that no more than one year of service can be required for eligibility. However, Code § 410(a)(1)(B)(iii) allows a plan to require up to two years of service for eligibility if a participant's right to his or her accrued benefit under the plan is completely nonforfeitable after entry. Thus, any eligibility condition requiring more than one year of service (but no more than two) would require full and immediate vesting.)

(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 Code § 410(b) and the ~~anti-discrimination~~nondiscrimination tests of Code § 401(a)(4~~) and the participation test of 401(a)(26~~).)

106. ~~Election of safe harbor nondiscrimination rules~~

~~**Statement of Requirement: Code § 401(a)(4); Reg. § 1.401(a)(4)-3(b)**~~

~~**Document Provision: _____**~~

~~**(Note to reviewer: A nonstandardized plan may satisfy the general nondiscrimination test of Reg. § 1.401(a)(4)-3(c); 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.)**~~

~~107.~~ Reliance on Opinion Letter

Statement of Requirement: **Rev. Proc. ~~2013-6, Rev. Proc. 2011-49, §~~2017-41, sec. 5.~~10, § 5.11, 6, 19~~08, 7.02, 8.03**

Document Provision: _____

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

Sample Adoption Agreement Language:

An Adopting Employer may rely on the Opinion Letter issued to this Plan by the Internal Revenue Service as evidence that the plan is qualified under Code § 401 only if (a) the plan has a currently valid Opinion Letter, (b) the Employer's plan is identical to the Pre-Approved Plan, and (c) the employer has not amended the plan other than to choose from among options provided under the plan or to make limited amendments consistent with maintaining a Pre-Approved Plan.

An Adopting Employer may not rely on an Opinion Letter with respect to compliance with (a) the nondiscrimination requirements of Code §§ 401(a)(4), 401(l), 410(b), or 414(s); or (b) the limitations on benefits and contributions and top-heavy plan requirements under Code §§ 415 and 416, where the Employer maintains or has ever maintained another plan covering the same participants.

An Adopting Employer may rely on the Opinion Letter with respect to the minimum participation requirements of Code § 401(a)(26) and the minimum coverage requirements of Code § 410(b) if all nonexcludable employees benefit under the plan, and/or the plan satisfies the requirements of Code § 401(a)(26) with respect to its prior benefit structure (or is deemed to satisfy Code § 401(a)(26) pursuant to regulations thereunder).

~~The adopting employer may rely on an opinion letter issued by the Internal Revenue Service as evidence that the plan is qualified under § 401 of the Internal Revenue Code only to the extent provided in Rev. Proc. 2011-49, as modified by section 8 of Rev. Proc. 2013-6.~~

~~The~~An Adopting Employer of a plan that contains a Cash Balance Formula with a structure of Principal Credits that increase with age, service, or any other measure during a participant's employment may not rely on the Opinion Letter with respect to the requirements of Code § 411(b)(1).

An Adopting Employer may not rely on the Opinion Letter in certain other circumstances ~~or with respect to certain qualification requirements,~~ which are specified in the Opinion Letter issued with respect to the plan and in Rev. ~~Proc. 2011-49, as modified by section 8 of Rev. Proc. 2013-6~~Proc. 2017-41.

~~In order to have reliance in such circumstances or with respect to such qualification requirements, application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service.~~

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

(Note to reviewer: If the plan provides benefits using one of the design-based safe harbors in Reg. §§ 1.401(a)(4)-3(b)(3), (4), or (5), and the plan defines compensation using a definition that satisfies Reg. § 1.414(s)-1(c), then the employer may rely on the Opinion Letter issued to a Nonstandardized Plan with respect to the nondiscriminatory amounts requirement under Code § 401(a)(4). See LRM #6 and LRM #108.)

107. Election of total compensation

Statement of Requirement: **Rev. Proc. ~~2011-49~~2017-41, § 5.~~03~~15(1)**

Document Provision: _____

(Note to reviewer: The plan and/or adoption agreement must allow the employer the option to select total compensation as the compensation to be used in determining benefits. See LRM #6 for the acceptable definitions of compensation.)

~~109~~108. Repetitive amendment

Statement of Requirement: **Reg. § 1.~~401~~411(d)-4, Q&A A-1(~~b~~c)(1)**

Document Provision: _____

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

END OF DEFINED BENEFIT PLAN LRMs