

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



Department of the Treasury
Internal Revenue Service

Publication 3198 (07-1998)
Catalog Number 26722V

www.irs.ustreas.gov

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

To Sponsors of Master or Prototype Plans:

This information package contains samples of plan provisions that have been found to satisfy certain specific requirements of the Internal Revenue Code as amended through the Taxpayer Relief Act of 1997 (P.L. 105-34, that are effective no later than plan years beginning in 1998). Such language may or may not be acceptable in different plans depending on the context in which used. We have prepared this package to assist sponsors who are drafting or redrafting plans to conform to applicable law and regulations, and we hope that it will be a key factor in enabling us to process and approve master and prototype plans more quickly.

Name of Sponsor:

Type of Plan: Profit-sharing Money Purchase
 Target Benefit 401(k)
Form of Plan: Master Plan Prototype Plan

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

<u>PART I - ALL PLANS</u>	1
1. Definition of year of service	1
2. Definition of break in service	1
3. Definition of hour of service	1
4. Elapsed Time	4
5. Definition of plan year	5
6. Definition of compensation	6
7. Definition of earned income	8
8. Definition of disability	9
9. Definition of employee	10
10. Definition of leased employee	11
11. Definition of highly compensated employee	11
12. Definition of owner-employee	14
13. Definition of self-employed individual	14
14. Definition of normal retirement age	15
15. Definition of Benefiting	16
16. Definition of straight life annuity	16
17. Maximum age restrictions not permitted	16
18. Provisions for entry into participation	16
19. Eligibility computation periods	17
20. Use of computation periods	18
21. All years of service counted toward eligibility except after certain breaks in service	18
22. Eligibility Break in service - 1-year hold-out	19
23. Participation upon return to eligible class	20
24. Money purchase - definite contribution formula	20
25. Profit-sharing - definite allocation formula	21

26. Target Benefit plans stated benefit (Plans not providing for permitted disparity)	23
27. Target Benefit plans stated benefit (Plans providing for permitted disparity)	26
28. Target benefit plans - employer contributions . . .	37
29. Permitted Disparity	46
30. Accrual limitations based upon age not permitted .	51
31. Limitations on allocations	51
32. Control of trades or businesses by owner-employee .	61
33. Contribution increases - fully insured plans . . .	61
34. Separate accounts for each employee	62
35. Employee contributions - ACP test	63
36. Separate account, nondeductible employee contributions	63
37. Nonforfeitability of employee contributions	64
38. Deductible voluntary employee contributions . . .	64
39. Treatment and allocation of forfeitures	65
40. Forfeitures - withdrawal of employee contributions	65
41. Reinstatement of benefit	65
42. Joint & survivor annuity and preretirement survivor annuity requirements	66
43. Vesting on distribution before break in service (cash-outs)	74
44. Restrictions on immediate distributions - 411(a)(11)	76
45. Commencement of benefits - 401(a)(14)	78
46. Early retirement with age and service requirement .	78
47. Nontransferability of annuities - 401(g)	79
48. Conflicts with annuity contracts	79

49. Timing and modes of distribution - 401(a)(9)	79
50. Optional forms of benefit must be stated in plan	88
51. Direct Rollovers - IRC 401(a)(31)	89
52. Designation of vesting computation period	90
53. Full vesting upon Normal retirement age	91
54. Option vesting schedules must be at least as liberal as the applicable minimum vesting schedules	91
55. Crediting years of service - vesting - 411(a)(4)	92
56. Vesting Break in service - one year hold-out	92
57. Vesting Break in service - Rule of parity	93
58. Vesting for pre-break and post-break acct - 411(a)(6)(C)	93
59. Amendment of vesting schedule - 411(a)(10)	94
60. Amendments affecting vested and/or accrued benefits	95
61. Top-heavy definitions	96
62. Minimum allocation	99
63. Nonforfeitability of minimum allocation	100
64. Minimum vesting schedules	101
65. Incidental insurance provisions	102
66. Distribution of insurance contracts	103
67. Conflict with insurance contracts	103
68. Annual valuation of assets; allocation of trust earnings and losses	104
69. Treatment of insurance dividends or credits	104
70. Earmarked investments	104
71. Power to amend (sponsor)	105
72. Amendment by adopting employer	105
73. Vesting - plan termination	106

74. Vesting - complete discontinuance of contributions	106
75. Plan merger - maintenance of benefit	106
76. Inalienability of benefits	106
77. Loans to participants	107
78. Exclusive benefit	109
79. Treatment of insurance dividends	110
80. Failure of qualification	111
81. Master trust	111
82. Master trust - disqualification of plan	111
83. Crediting service with predecessor employer	112
84. Waiver of minimum funding standards	112
85. Additional adoption agreement requirements	112
PART II - STANDARDIZED PLANS	113
86. Coverage	113
87. Eligibility requirement not more favorable for highly compensated employees	114
88. Contribution formula	114
89. Reliance on opinion letter	115
PART III - PAIRED PLAN PROVISIONS	115
90. Minimum contributions in paired defined contribution plans	118
91. Permitted disparity in paired plans	118
PART IV - NONSTANDARDIZED PLAN PROVISIONS	118
92. Minimum age and service	118
93. Reliance on opinion letter	119
94. Election of total compensation	120

PART I - ALL PLANS

Definitions

1. Definition of year of service

1. Document Provision:

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

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

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

2. Definition of break in service

2. Document Provision:

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

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

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

3. Definition of hour of service

3. Document Provision:

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

Sample Plan Language:

Hour of service means:

(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 section 2530.200b-2 of the Department of Labor Regulations which is incorporated herein by this reference; and

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

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

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

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

a period beginning immediately following such birth or placement. The hours of service credited under this paragraph shall be credited (1) in the computation period in which the absence begins if the crediting is necessary to prevent a break in service in that period, or (2) in all other cases, in the following computation period.

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

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

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

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

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

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

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

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

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

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

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

4. Elapsed Time

4. Document Provision:

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

(Note to reviewer: Use of elapsed time eliminates or simplifies several plan provisions that would otherwise be required if hours of service are counted. The following definitions should replace the otherwise required year of service, break in service, and hour of service definitions.)

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

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

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

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

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

In the case of an individual who is absent from work for maternity or paternity reasons, the 12-consecutive month period beginning on the first anniversary of the first date of such absence shall not constitute a break in service.

For purposes of this paragraph, an absence from work for maternity or paternity reasons means an absence (1) by reason of the pregnancy of the individual, (2) by reason of the birth of a child of the individual, (3) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or (4) for purposes of caring for such child for a period beginning immediately following such birth or placement.

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

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

5. Definition of plan year

5. Document Provision:

Statement of Requirement: Definition of plan year.

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

Sample Adoption Agreement Language:

Plan year will mean:

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

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

6. Definition of compensation

6. Document Provision:

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

Sample Plan Language:

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

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

(Note to reviewer: Under certain circumstances other definitions of compensation may be used. However, compensation in standardized plans and plans that provide for permitted disparity, (other than any CODA portion of these plans), target benefit plans, and in determining top-heavy minimums must use one of the definitions provided in section 5.2 of LRM #31. For purposes of the preceding sentence, the safe harbor alternative definition of compensation contained in section 1.414(s)-1(c)(3) of the regulations may also be used. All plans must permit the employer to elect one of the definitions of compensation provided in section 5.2 of LRM #31 in the adoption agreement. See also LRMs #62, #88 and #94.)

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

For plan years beginning on or after January 1, 1989, and before January 1, 1994, the annual compensation of each participant taken into account for determining all benefits

provided under the plan for any plan year shall not exceed \$200,000. This limitation shall be adjusted by the Secretary at the same time and in the same manner as under section 415(d) of the Code, except that the dollar increase in effect on January 1 of any calendar year is effective for plan years beginning in such calendar year and the first adjustment to the \$200,000 limitation is effective on January 1, 1990.

For plan 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 plan year shall not exceed \$150,000, as adjusted for increases in the cost-of-living in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any determination period beginning in such calendar year.

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

If compensation for any prior determination period is taken into account in determining a participant's allocations for the current plan year, the compensation for such prior determination period is subject to the applicable annual compensation limit in effect for that prior period. For this purpose, in determining allocations in plan years beginning on or after January 1, 1989, the annual compensation limit in effect for determination periods beginning before that date is \$200,000. In addition, in determining allocations in plan years beginning on or after January 1, 1994, the annual compensation limit in effect for determination periods beginning before that date is \$150,000.

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

Sample Adoption Agreement Language:

Compensation shall be determined over the following determination period:

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

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

Compensation

- () shall include
- () shall not include

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

7. Definition of earned income

7. Document Provision:

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

Sample Plan Language:

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

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

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

8. Definition of disability

8. Document Provision:

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

Sample Plan Language:

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

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

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

Sample Adoption Agreement Language:

Contributions on behalf of disabled participants:

The employer

_____ will (check the line if the employer wants this option)

_____ will not (check the line if the employer does not want this option)

make contributions on behalf of disabled participants on the basis of the compensation each such participant would have received for the limitation year if the participant had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled.

Such imputed compensation for the disabled participant may be taken into account only if the participant is not a

highly compensated employee, and contributions made on behalf of such participant will be nonforfeitable when made.

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

9. Definition of employee

9. Document Provision:

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

Sample Plan Language:

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

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

10. Definition of leased employee

10. Document Provision:

Statement of Requirement: **Definition of leased employee, IRC 414(n), 414(q).**

Sample Plan Language:

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

Contributions or benefits provided a leased employee by the leasing organization which are attributable to services performed for the recipient employer shall be treated as provided by the recipient employer.

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

11. Definition of highly compensated employee

11. Document Provision:

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

Sample Plan Language:

Effective for years beginning after December 31, 1996, the term highly compensated employee means any employee who: (1) was a 5-percent owner at any time during the year or the preceding year, or (2) for the preceding year had compensation from the employer in excess of \$80,000 and, if the employer so elects, was in the top-paid group for the preceding year. The \$80,000 amount is adjusted at the same time and in the same manner as under section 415(d), except that the base period is the calendar quarter ending September 30, 1996.

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

A highly compensated former employee is based on the rules applicable to determining highly compensated employee status as in effect for that determination year, in accordance with section 1.414(q)-1T, A-4 of the temporary Income Tax Regulations and Notice 97-75.

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

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

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

An employer making one of the elections is not required also to make the other election. However, if both elections are made, the look-back year in determining the top-paid group must be the calendar year beginning with or within the look-back year. These elections must apply consistently to the determination years of all plans of the employer, except that the consistency requirement will not apply to determination years beginning with or within the 1997 calendar year, and for determination years beginning on or after January 1, 1998 and before January 1, 2000, satisfaction of the consistency requirement is determined without regard to any nonretirement plans of the employer.

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

Certain other transitional rules apply with respect to the consistency requirement. See Notice 97-45. For a plan year beginning on or after January 1, 1997 and before January 1, 1998 an employer may make a calendar year calculation election under section 1.414(q)-1T, A-14(b) of the temporary Income Tax Regulations and provided for in Notice 97-45 taking into account the statutory amendments made by the Small Business Job Protection Act of 1996 to section 414(q).

Sample adoption agreement language providing for options:
(check one or both)

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

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

12. Definition of owner-employee

12. Document Provision:

Statement of Requirement: **Definition of owner-employee,
IRC 401(c)(3).**

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

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

13. Definition of self-employed individual

13. Document Provision:

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

Sample Plan Language:

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

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

14. Definition of normal retirement age

14. Document Provision:

Statement of Requirement:	Definition of normal retirement age, IRC 411(a)(8); mandatory retirement age restrictions, Regs. 1.411(a)-7(b)(1).
----------------------------------	---

Sample Plan Language:

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

Sample Adoption Agreement Language:

For each participant normal retirement age is:

() Age _____ (not to exceed 65)

() The later of:

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

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

the first plan year beginning on or after January 1, 1988. The participation commencement date is the first day of the first plan year in which the participant commenced participation in the plan.

15. Definition of Benefiting

15. Document Provision:

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

Sample Plan Language:

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

16. Definition of straight life annuity

16. Document Provision:

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

Sample Plan Language:

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

Minimum Participation

17. Maximum age restrictions not permitted

17. Document Provision:

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

(Note to reviewer: The sponsor must delete any provision which restricts participation based on the attainment of a specified age, for service performed in plan years beginning on or after January 1, 1988.)

18. Provisions for entry into participation

18. Document Provision:

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

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

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

19. Eligibility computation periods

19. Document Provision:

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

Sample Plan Language:

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

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

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

20. Use of computation periods

20. Document Provision:

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

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

21. All years of service counted toward eligibility except after certain breaks in service

21. Document Provision:

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

Sample Plan Language:

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

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

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

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

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

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

22. Eligibility Break in service - 1-year hold-out

22. Document Provision:

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

(Nonstandardized plans only)

Sample Plan Language:

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

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

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

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

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

23. Participation upon return to eligible class

23. Document Provision:

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

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

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

Employer Contributions

24. Money purchase - definite contribution formula

24. Document Provision:

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

Sample Adoption Agreement Language:

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

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

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

25. Profit-sharing - definite allocation formula

25. Document Provision:

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

Sample Plan Language:

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

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

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

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

Target Benefit

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

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

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

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

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

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

(6) if permitted disparity is taken into account, contain a stated benefit formula that satisfies the requirements of 1.401(1)-3.

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

26. Target Benefit plans stated benefit (Plans not providing for permitted disparity)

26. Document Provision:

Statement of Requirement:

Target benefit plans - stated benefit, plans not providing for permitted disparity, IRC 401(a)(4); Regs. 1.401(a)(4)-8(b)(3).

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

Sample Adoption Agreement Language:

Flat Benefit

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

Unit Credit

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

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

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

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

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

(but in no case less than 0),

and not greater than:

$$(R1) (44-y).$$

Sample Plan Language:

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

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

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

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

(Note to reviewer: The plan may provide for a consecutive year period longer than three years, or provide an election in the Adoption Agreement to enable the employer to select the consecutive year period (not less than three years) over

which the participant's annual compensation will be averaged.)

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

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

27. Target Benefit plans stated benefit (Plans providing for permitted disparity)

27. Document Provision.

Statement of Requirement: Target benefit formula -- stated benefit - plans providing for permitted disparity, IRC 401(1), 401(a)(4); Regs. 1.401(a)(4)-8(b)(3), 1.401(1)-3.

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

Sample Plan Language:

Sample Adoption Agreement Language

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

[EXCESS BENEFIT PLANS]

(1) () Unit Credit

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

(a) _____% (base benefit percentage) times average annual compensation up to the integration level for the plan year times the participant's years of projected participation plus a benefit equal to _____% (excess benefit percentage, not to exceed the base benefit percentage by more than the maximum excess allowance) times average annual compensation in excess of the integration level for the plan year times the participant's years of projected participation. The maximum number of years of projected participation taken into account under this paragraph will be _____ (may not be less than 25 and may not exceed 35). However, the number of years of projected participation taken into account in the preceding sentence for any participant may not exceed the participant's cumulative permitted disparity limit.

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

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

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

Overall permitted disparity limit: Notwithstanding paragraphs (a) and (b) above, for any plan year this plan

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

(2) () Flat Benefit

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

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

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

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

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

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

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

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

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

[OFFSET PLANS]

(1) () Unit Credit

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

(a) _____ % (gross benefit percentage) times average annual compensation for the plan year times the participant's years of projected participation offset by _____ % (not to exceed the maximum offset allowance) times final average compensation up to the offset level times the participant's total years of projected participation. The maximum number of years of projected participation taken into account under this paragraph will be _____ (may not be less than 25 and may not exceed 35). However, the number of years of projected participation taken into account in the preceding sentence for any participant may not exceed the participant's cumulative permitted disparity limit. The participant's cumulative permitted disparity limit is equal to 35 minus: (1) the number of years the participant benefited or is treated as having benefited

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

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

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

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

(2) () Flat Benefit

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

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

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

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

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

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

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

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

(Note to reviewer: The blanks should be filled in with the Adoption Agreement section numbers which correspond to options 4 and 5 of section C of this LRM #23C.)

(Note to reviewer: Section 1.401(1)-3(e) of the regulations requires an adjustment to the 0.75 factor in the maximum excess or offset allowance with respect to benefits payable prior to a participant's social security retirement age using factors set forth in the regulations. The tables below incorporate these factors so that the appropriate reduction is reflected in the plan's stated benefit formula. To satisfy the requirements of section 1.401(a)(4)-8(b)(3) for target benefit plans that take into account permitted disparity, the 0.75-percent factor, as otherwise reduced, must be multiplied by a factor of 0.80. Table I below contains the reduction factors from Table IV of Regulations section 1.401(1)-3(e)(3) with respect to benefits commencing before a participant's normal retirement age, multiplied by a factor of 0.80. The use of certain integration (or offset) levels requires an additional reduction to the .75 factor (see, e.g., options 4 and 5 in section C. below). Table II below contains factors that are the product of the factors from Table I below and 0.80. Table II is to be used if the employer selects option 4 or 5 in section C below as an integration level (or offset level).)

Normal Retirement

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

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

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

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

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

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

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

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

(Note to reviewer: An M&P plan may contain integration levels (or offset levels) not specified above that require greater reductions in the 0.75-percent factor. A plan that

allows the employer to elect such integration levels must ensure that the maximum excess or offset allowance is appropriately limited. Section 9.039 of Rev. Proc. 89-9 requires M&P plans that provide for disparity to meet the permitted disparity requirements of section 401(l) in form. Therefore M&P plans may not allow the employer to elect the intermediate amount integration level (or offset level) under section 1.401(l)-3(d)(5), as that option requires the employer to demonstrate compliance with the demographic requirements of section 1.401(l)-3(d)(8).)

Sample Plan Language:

D. Definitions

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

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

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

2. Average annual compensation. Average annual compensation is the average of a participant's annual

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

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

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

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

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

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

(Note to reviewer: The blank above should be filled in with the section of the Adoption Agreement that corresponds with the Sample Adoption Agreement Language immediately following this Definitions section D.)

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

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

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

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

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

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

Sample Adoption Agreement Language:

Covered compensation will be determined based on the following year:

[] current year.

[] _____ year (may be the covered compensation for a plan year earlier than the current plan year, provided the earlier plan year is the same for all participants and is

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

28. Target benefit plans - employer contributions

28. Document Provision:

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

Sample Plan Language:

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Accumulate the initial theoretical reserve determined in (i) and the employer contribution (as limited by section 415 of the Code, but without regard to any required minimum contributions under section 416) for each

plan year beginning in year 1 up through the last day of the current plan year (excluding contribution(s) (if any) for the current plan year) using the plan's interest assumption in effect for each such year. In any plan year following the plan year in which the participant attains normal retirement age, the accumulation is calculated assuming an interest rate of 0%.

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

Sample Adoption Agreement Language:

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

() 7.50%

() 8.00%

() 8.50%

(Note to reviewer: A sponsor who wishes to provide additional interest rates to those above in determining the annual employer contribution necessary to fund participants' stated benefits for plan years beginning before January 1, 1994, may do so if the plan:

- 1) limits their use to plan years beginning before 1994;
- 2) provides a mechanism for the adopting employer to designate any interest rates and mortality tables used in those years; and
- 3) provides that the additional interest rates are no less than 5% and no greater than 6%, as required by section 3.03 of Revenue Ruling 76-464, 1976-2 C.B. 115.)

TABLE I: Present value factors (See * below)

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

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

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

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

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

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

TABLE II: Amortization factors

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

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

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

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

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

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

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

29. Permitted Disparity
29. Document Provision:

Statement of Requirement: Permitted disparity.
IRC 401(l), 401(a)(5);
Regs 1.401(l)-2, 1.401-
1(b)(1)(ii), 1.401(a)(26)-
6(b)(7), 1.410(b)-6(f).

Profit-sharing plan:

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

Sample Plan Language:

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

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

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

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

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

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

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

Overall permitted disparity limits

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

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

participant has not benefited under a defined benefit or target benefit plan for any year beginning on or after January 1, 1994, the participant has no cumulative disparity limit.

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

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

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

(a) 2.7%

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

If the Integration Level

is more than _____ but not more than _____ the applicable percentage is:

\$0	X*	2.7%
X* of TWB	80% of TWB	1.3%
80% of TWB	Y**	2.4%

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

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

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

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

Sample Adoption Agreement Language:

The integration level is equal to:

() Taxable wage base

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

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

Money purchase plan

Sample Adoption Agreement Language:

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

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

Overall permitted disparity limit:

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

Cumulative permitted disparity limit: Effective for plan years beginning on or after January 1, 1995, the cumulative permitted disparity limit for a participant is 35 total cumulative permitted disparity years. Total cumulative permitted years means the number of years credited to the

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

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

The integration level is equal to:

- () Taxable wage base
- () \$_____ (a dollar amount less than the taxable wage base)
- () _____% of TWB (not to exceed 100%)

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

(a) 5.7%

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

(i) If the integration level:

is more than but not more than the applicable percentage is:

\$0	X*	5.7%
X* of TWB	80% of TWB	4.3%
80% of TWB	Y**	5.4%

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

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

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

30. Accrual limitations based upon age not permitted

30. Document Provision:

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

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

31. Limitations on allocations

31. Document Provision:

Statement of Requirement: **Limitation on allocations, IRC 415; Regs. 1.415-1 through 1.415-10; Rev. Proc. 89-9, 9.0317; Notice 83-10, 1983-1 C.B. 536; Notice 87-21, 1987-1 C.B. 458.**

Sample Plan Language:

Article_____ Limitation on Allocations

Section 1.1. If the participant does not participate in, and has never participated in another qualified plan maintained by the employer or a welfare benefit fund, as defined in section 419(e) of the Code maintained by the employer, or an individual medical account, as defined in section 415(1)(2) of the Code, maintained by the employer, or a simplified employee pension, as defined in section 408(k) of the Code, maintained by the employer, which provides an annual addition as defined in section 5.1, the amount of annual additions which may be credited to the participant's account for any limitation year will not exceed the lesser of the maximum permissible amount or any other limitation contained in this plan. If the employer contribution that would otherwise be contributed or allocated to the participant's account would cause the annual additions for the limitation year to exceed the maximum permissible amount, the amount contributed or allocated will be reduced so that the annual additions for the limitation year will equal the maximum permissible amount.

Section 1.2. Prior to determining the participant's actual compensation for the limitation year, the employer may determine the maximum permissible amount for a participant on the basis of a reasonable estimation of the participant's

compensation for the limitation year, uniformly determined for all participants similarly situated.

Section 1.3. As soon as is administratively feasible after the end of the limitation year, the maximum permissible amount for the limitation year will be determined on the basis of the participant's actual compensation for the limitation year.

Section 1.4. If pursuant to section 1.3 or as a result of the allocation of forfeitures, there is an excess amount the excess will be disposed of as follows:

(a) Any nondeductible voluntary employee contributions (plus attributable earnings), , to the extent they would reduce the excess amount, will be returned to the participant;

(b) If after the application of paragraph (a) an excess amount still exists, any elective deferrals (plus attributable earnings), to the extent they would reduce the excess amount, will be distributed to the participant;

(c) If after the application of paragraph (b) an excess amount still exists, and the participant is covered by the plan at the end of the limitation year, the excess amount in the participant's account will be used to reduce employer contributions (including any allocation of forfeitures) for such participant in the next limitation year, and each succeeding limitation year if necessary.

(d) If after the application of paragraph (b) an excess amount still exists, and the participant is not covered by the plan at the end of a limitation year, the excess amount will be held unallocated in a suspense account. The suspense account will be applied to reduce future employer contributions for all remaining participants in the next limitation year, and each succeeding limitation year if necessary.

(e) If a suspense account is in existence at any time during a limitation year pursuant to this section, it will not participate in the allocation of investment gains and losses. If a suspense account is in existence at any time during a particular limitation year, all amounts in the suspense account must be allocated and reallocated to participants' accounts before any employer or any employee contributions may be made to the plan for that limitation year. Excess amounts may not be distributed to participants or former participants.

Section 2.1. This section applies if, in addition to this plan, the participant is covered under another qualified master or prototype defined contribution plan maintained by the employer, a welfare benefit fund maintained by the employer, an individual medical account maintained by the employer, or a simplified employee pension maintained by the employer, that provides an annual addition as defined in section 5.1, during any limitation year. The annual additions which may be credited to a participant's account under this plan for any such limitation year will not exceed the maximum permissible amount reduced by the annual additions credited to a participant's account under the other qualified master and prototype defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions for the same limitation year. If the annual additions with respect to the participant under other qualified master and prototype defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions maintained by the employer are less than the maximum permissible amount and the employer contribution that would otherwise be contributed or allocated to the participant's account under this plan would cause the annual additions for the limitation year to exceed this limitation, the amount contributed or allocated will be reduced so that the annual additions under all such plans and funds for the limitation year will equal the maximum permissible amount. If the annual additions with respect to the participant under such other qualified master and prototype defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions in the aggregate are equal to or greater than the maximum permissible amount, no amount will be contributed or allocated to the participant's account under this plan for the limitation year.

Section 2.2. Prior to determining the participant's actual compensation for the limitation year, the employer may determine the maximum permissible amount for a participant in the manner described in section 1.2.

Section 2.3. As soon as is administratively feasible after the end of the limitation year, the maximum permissible amount for the limitation year will be determined on the basis of the participant's actual compensation for the limitation year.

Section 2.4. If, pursuant to section 2.3 or as a result of the allocation of forfeitures, a participant's annual additions under this plan and such other plans would result in an excess amount for a limitation year, the excess amount

will be deemed to consist of the annual additions last allocated, except that annual additions attributable to a simplified employee pension will be deemed to have been allocated first, followed by annual additions to a welfare benefit fund or individual medical account, regardless of the actual allocation date.

Section 2.5. If an excess amount was allocated to a participant on an allocation date of this plan which coincides with an allocation date of another plan, the excess amount attributed to this plan will be the product of,

(a) the total excess amount allocated as of such date, times

(b) the ratio of (i) the annual additions allocated to the participant for the limitation year as of such date under this plan to (ii) the total annual additions allocated to the participant for the limitation year as of such date under this and all the other qualified master or prototype defined contribution plans.

Section 2.6. Any excess amount attributed to this plan will be disposed in the manner described in section 1.4.

Section 3. If the participant is covered under another qualified defined contribution plan maintained by the employer which is not a master or prototype plan, annual additions which may be credited to the participant's account under this plan for any limitation year will be limited in accordance with sections 2.1 through 2.6 as though the other plan were a master or prototype plan unless the employer provides other limitations in section _____ of the adoption agreement.

Section 4. If the employer maintains, or at any time maintained, a qualified defined benefit plan (other than paired plan #_____) covering any participant in this plan, the sum of the participant's defined benefit plan fraction and defined contribution plan fraction will not exceed 1.0 in any limitation year. The annual additions which may be credited to the participant's account under this plan for any limitation year will be limited in accordance with section _____ of the adoption agreement.

Section 5. Definitions.

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

- (a) employer contributions;
- (b) employee contributions;
- (c) forfeitures;
- (d) amounts allocated, after March 31, 1984, to an individual medical account, as defined in section 415(1)(2) of the Code, which is part of a pension or annuity plan maintained by the employer are treated as annual additions to a defined contribution plan. Also amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in section 419A(d)(3) of the Code, under a welfare benefit fund, as defined in section 419(e) of the Code, maintained by the employer are treated as annual additions to a defined contribution plan; and
- (e) allocations under a simplified employee pension.

For this purpose, any excess amount applied under sections 1.4 or 2.6 in the limitation year to reduce employer contributions will be considered annual additions for such limitation year.

Section 5.2. Compensation: One of the following as elected by the employer in the adoption agreement:

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

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

as the exception for agricultural labor in section 3401(a)(2)).

(3) 415 safe-harbor compensation. Compensation is defined as wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan to the extent that the amounts are includable in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements or other expense allowances under a nonaccountable plan (as described in 1.62-2(c)), and excluding the following:

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

(b) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

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

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

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

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

Notwithstanding the preceding sentence, compensation for a participant in a defined contribution plan who is permanently and totally disabled (as defined in section 22(e)(3) of the Internal Revenue Code) is the compensation such participant would have received for the limitation year if the participant had been paid at the rate of compensation paid immediately before becoming permanently and totally disabled; for limitation years beginning before January 1, 1997, but not for limitation years beginning after December 31, 1996, such imputed compensation for the disabled participant may be taken into account only if the participant is not a highly compensated employee (as defined in section _____ of the plan) and contributions made on behalf of such participant are nonforfeitable when made.

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

For limitation years beginning after December 31, 1997, for purposes of applying the limitations of this article, compensation paid or made available during such limitation year shall include any elective deferral (as defined in Code section 402(g)(3)), and any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125 or 457.

Section 5.3. Defined benefit fraction: A fraction, the numerator of which is the sum of the participant's projected annual benefits under all the defined benefit plans (whether or not terminated) maintained by the employer, and the denominator of which is the lesser of 125 percent of the dollar limitation determined for the limitation year under sections 415(b) and (d) of the Code or 140 percent of the highest average compensation, including any adjustments under section 415(b) of the Code.

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

Section 5.4. Defined contribution dollar limitation:
\$30,000, as adjusted under section 415(d).

Section 5.5. Defined contribution fraction: A fraction, the numerator of which is the sum of the annual additions to the participant's account under all the defined contribution plans (whether or not terminated) maintained by the employer for the current and all prior limitation years (including the annual additions attributable to the participant's nondeductible employee contributions to all defined benefit plans, whether or not terminated, maintained by the employer, and the annual additions attributable to all welfare benefit funds, individual medical accounts, and simplified employee pensions, maintained by the employer), and the denominator of which is the sum of the maximum aggregate amounts for the current and all prior limitation years of service with the employer (regardless of whether a defined contribution plan was maintained by the employer). The maximum aggregate amount in any limitation year is the lesser of 125 percent of the dollar limitation determined under sections 415(b) and (d) of the Code in effect under section 415(c)(1)(A) of the Code or 35 percent of the participant's compensation for such year.

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

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

Section 5.6. Employer: For purposes of this article, employer shall mean the employer that adopts this plan, and all members of a controlled group of corporations (as defined in section 414(b) of the Code as modified by section 415(h)), all commonly controlled trades or businesses (as

defined in section 414(c) as modified by section 415(h)) or affiliated service groups (as defined in section 414(m)) of which the adopting employer is a part, and any other entity required to be aggregated with the employer pursuant to regulations under section 414(o) of the Code.

Section 5.7. Excess amount: The excess of the participant's annual additions for the limitation year over the maximum permissible amount.

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

Section 5.9. Limitation year: A calendar year, or the 12-consecutive month period elected by the employer in section _____ of the adoption agreement. All qualified plans maintained by the employer must use the same limitation year. If the limitation year is amended to a different 12-consecutive month period, the new limitation year must begin on a date within the limitation year in which the amendment is made.

Section 5.10. Master or prototype plan: A plan the form of which is the subject of a favorable opinion letter from the Internal Revenue Service.

Section 5.11. Maximum permissible amount: The maximum annual addition that may be contributed or allocated to a participant's account under the plan for any limitation year shall not exceed the lesser of:

(a) the defined contribution dollar limitation, or

(b) 25 percent of the participant's compensation for the limitation year.

The compensation limitation referred to in (b) shall not apply to any contribution for medical benefits (within the meaning of section 401(h) or section 419A(f)(2) of the Code) which is otherwise treated as an annual addition under section 415(l)(1) or 419A(d)(2) of the Code.

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

Number of months in the short limitation year

12

Section 5.12. Projected Annual Benefit: The annual retirement benefit (adjusted to an actuarially equivalent straight life annuity if such benefit is expressed in a form other than a straight life annuity or qualified joint and survivor annuity) to which the participant would be entitled under the terms of the plan assuming:

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

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

Sample Adoption Agreement Language:

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

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

() The provisions of section 2.1 through 2.6 of Article _____ will apply as if the other plan were a master or prototype plan.

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

B. If the participant is or has ever been a participant in a defined benefit plan (other than paired plan #_____) maintained by the employer:

(Note to reviewer: The sponsor should leave space for the adopting employer to provide language which will satisfy the limitation for defined contribution plans in section 415(c) of the Code and the 1.0 limitation of section 415(e) of the Code. Such language must preclude employer discretion. See section 1.415-1 of the regulations for guidance.)

C. Compensation will mean all of each participant's:

- () Wages, tips, and other compensation as reported on Form W-2
- () Section 3401(a) wages
- () 415 safe-harbor compensation

For limitation years beginning after December 31, 1997, for purposes of applying the limitations of this article, compensation paid or made available during such limitation year shall include any elective deferral (as defined in Code section 402(q)(3)), and any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125 or 457.

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

32. Control of trades or businesses by owner-employee

32. Document Provision:

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

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

33. Contribution increases - fully insured plans

33. Document Provision:

Statement of Requirement: Contribution increases -- fully insured plans, Rev. Rule 69-251; insured pre-retirement death benefits, IRC 401(a)(4).

(Note to reviewer: Rev. Rul. 69-251 provides that a plan will not be considered discriminatory if the amount of retirement benefit provided by insurance or annuity contracts will not be increased until the basic compensation is large enough to increase the retirement benefit 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 a policy, if the minimum increase in the face amount does not exceed \$1,000. This is also applicable to insured pre-

retirement death benefits. A plan may require a minimum before it will provide an insured pre-retirement death benefit. Such minimum cannot exceed \$1,000. For example, if the pre-retirement death benefit is 100 times the anticipated monthly pension, no more than \$10 per month anticipated monthly pension can be required as a precondition for insuring that death benefit.)

34. Separate accounts for each employee

34. Document Provision:

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

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

Employee Contributions

(Note to reviewer: Pursuant to Revenue Procedures 89-9, section 9.0315 and 90-21, section 5.06, plans may provide for contributions that are subject to the special nondiscrimination requirements of section 401(m) only if the plan includes a qualified CODA under section 401(k) or if the plan either designates the sponsoring organization as plan administrator or obligates the sponsoring organization to (1) maintain records that enable it to monitor adopting employers' compliance with the requirements of section 401(m); (2) perform the section 401(m) actual contribution percentage test for adopting employers on an annual basis; and (3) notify adopting employers if they are required to correct excess aggregate contributions. The following LRM provision #35 applies to plans which are precluded from providing for employee contributions, but which permitted employee contributions for plan years beginning after December 31, 1986, or which may be adopted as amendments to plans which permitted such contributions. LRM provisions #36 and #37 are required for plans which have ever permitted such employee contributions. LRM #38 is required if the plan permitted deductible employee contributions prior to January 1, 1987.)

35. Employee contributions - ACP test

35. Document Provision:

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

Sample Plan Language:

This plan will not accept nondeductible employee contributions and matching contributions for plan years beginning after the plan year in which this plan is adopted by the employer. Employee contributions for plan years beginning after December 31, 1986, together with any matching contributions as defined in section 401(m) of the Code, will be limited so as to meet the nondiscrimination test of section 401(m).

(Note to reviewer: The following LRM provisions #36 and #37 are required if the plan permitted nondeductible employee contributions prior to the first plan year after the plan year in which the employer adopts this plan.)

36. Separate account, nondeductible employee contributions
36. Document Provision:

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

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

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

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

37. Nonforfeitability of employee contributions
37. Document Provision:

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

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

38. Deductible voluntary employee contributions

38. Document Provision:

Statement of Requirement: Deductible voluntary
employee contributions,
IRC 219.

Sample Plan Language:

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

Forfeiture

39. Treatment and allocation of forfeitures

39. Document Provision:

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

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

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

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

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

40. Forfeitures - withdrawal of employee contributions

40. Document Provision:

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

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

41. Reinstatement of benefit

41. Document Provision:

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

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

Distribution

42. Joint & survivor annuity and preretirement survivor annuity requirements

42. Document Provision:

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

Sample Plan Language:

Article _____. JOINT AND SURVIVOR ANNUITY REQUIREMENTS.

Section 1. The provisions of this article shall apply to any participant who is credited with at least one hour of service with the employer on or after August 23, 1984, and such other participants as provided in section 7.

Section 2. Qualified Joint and Survivor Annuity.

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

Section 3. Qualified Preretirement Survivor Annuity.

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

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

Section 4. Definitions.

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

Pre-age 35 waiver: A participant who will not yet attain age 35 as of the end of any current plan year may make a special qualified election to waive the qualified preretirement survivor annuity for the period beginning on the date of such election and ending on the first day of the plan year in which the participant will attain age 35. Such election shall not be valid unless the participant receives a written explanation of the qualified preretirement survivor annuity in such terms as are comparable to the explanation required under section 5.1. Qualified preretirement survivor annuity coverage will be automatically reinstated as of the first day of the plan

year in which the participant attains age 35. Any new waiver on or after such date shall be subject to the full requirements of this article.

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

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

Any consent by a spouse obtained under this provision (or establishment that the consent of a spouse may not be obtained) shall be effective only with respect to such spouse. A consent that permits designations by the participant without any requirement of further consent by such spouse must acknowledge that the spouse has the right to limit consent to a specific beneficiary, and a specific form of benefit where applicable, and that the spouse voluntarily elects to relinquish either or both of such rights. A revocation of a prior waiver may be made by a participant without the consent of the spouse at any time before the commencement of benefits. The number of revocations shall not be limited. No consent obtained under this provision shall be valid unless the participant has received notice as provided in section 5 below.

4.4. Qualified joint and survivor annuity: An immediate annuity for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent and not more than 100 percent of the amount of the

annuity which is payable during the joint lives of the participant and the spouse and which is the amount of benefit which can be purchased with the participant's vested account balance. The percentage of the survivor annuity under the plan shall be 50% (unless a different percentage is elected by the employer in the adoption agreement).

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

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

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

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

Section 5. Notice Requirements.

5.1. In the case of a qualified joint and survivor annuity, the plan administrator shall no less than 30 days and no more than 90 days prior to the annuity starting date provide each participant a written explanation of: (i) the terms and conditions of a qualified joint and survivor annuity; (ii) the participant's right to make and the effect of an election to waive the qualified joint and survivor annuity form of benefit; (iii) the rights of a participant's spouse; and (iv) the right to make, and the effect of, a revocation of a previous election to waive the qualified joint and survivor annuity.

The annuity starting date for a distribution in a form other than a qualified joint and survivor annuity may be less than 30 days after receipt of the written explanation described

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

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

5.2. In the case of a qualified preretirement survivor annuity as described in section 3 of this article, the plan administrator shall provide each participant within the applicable period for such participant a written explanation of the qualified preretirement survivor annuity in such terms and in such 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 from service in the case of a participant who separates from service before attaining age 35.

For purposes of applying the preceding paragraph, a reasonable period ending after the enumerated events described in (ii), (iii) and (iv) is the end of the two-year period beginning one year prior to the date the applicable event occurs, and ending one year after that date. In the

case of a participant who separates from service before the plan year in which age 35 is attained, notice shall be provided within the two-year period beginning one year prior to separation and ending one year after separation. If such a participant thereafter returns to employment with the employer, the applicable period for such participant shall be redetermined.

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 no increase in cost, or decrease in benefits to the participant may result from the participant's failure to elect another benefit.

Section 6. Safe harbor rules.

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

requirements of section 401(a)(11) and section 417 of the Code. If this section 6 is operative, then the provisions of this article, other than section 7, shall be inoperative.

6.2. The participant may waive the spousal death benefit described in this section at any time provided that no such waiver shall be effective unless it satisfies the conditions of section 4.3 (other than the notification requirement referred to therein) that would apply to the participant's waiver of the qualified preretirement survivor annuity.

6.3. For purposes of this section 6, vested account balance shall mean, in the case of a money purchase pension plan or a target benefit plan, the participant's separate account balance attributable solely to accumulated deductible employee contributions within the meaning of section 72(o)(5)(B) of the Code. In the case of a profit-sharing plan, vested account balance shall have the same meaning as provided in section 4.7.

Section 7. Transitional Rules.

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.

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.

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.

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:

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

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

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

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

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

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

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

43. Vesting on distribution before break in service (cash-outs)

43. Document Provision:

Statement of Requirement: Vesting on distribution before break in service, cash-outs; Regs. 1.411(a)-6(c)(1)(ii), 1.411(a)-7(d)(4) and (5); IRC 411(a)(11).

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

Provision #1

If an employee terminates service, and the value of the employee's vested account balance derived from employer and employee contributions is not greater than \$5,000, the employee will receive a distribution of the value of the entire vested portion of such account balance and the nonvested portion will be treated as a forfeiture. For purposes of this section, if the value of an employee's vested account balance is zero, the employee shall be deemed to have received a distribution of such vested account balance. A participant's vested account balance shall not include accumulated deductible employee contributions within the meaning of section 72(o)(5)(B) of the Code for plan years beginning prior to January 1, 1989.

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

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

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

Provision #2

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

- (1) A separate account will be established for the participant's interest in the plan as of the time of the distribution, and
- (2) At any relevant time the participant's nonforfeitable portion of the separate account will be equal to an amount ("X") determined by the formula:

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

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

44. Restrictions on immediate distributions - 411(a)(11)

44. Document Provision:

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

Section 1. If the value of a participant's vested account balance derived from employer and employee contributions exceeds (or at the time of any prior distribution (1) in plan years beginning before August 6, 1997, exceeded \$3,500 or (2) in plan years beginning after August 5, 1997, exceeded) \$5,000, and the account balance 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 account balance. The consent of the participant and the participant's spouse shall be obtained in writing within the 90-day period ending on the annuity starting date. The annuity starting date is the first day of the first period for which an amount is paid as an annuity or any other form. The plan administrator shall notify the participant and the participant's spouse of the right to defer any distribution until the participant's account balance is no longer immediately distributable. Such notification shall include a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the plan in a manner that would satisfy the notice requirements of section 417(a)(3), and shall be provided no less than 30 days and no more than 90 days prior to the annuity starting date. However, distribution may commence less than 30 days after the notice described in the preceding sentence is given, provided the distribution is one to which sections 401(a)(11) and 417 of the Internal Revenue Code do not apply, the plan administrator clearly informs the participant that the participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option), and the participant,

after receiving the notice, affirmatively elects a distribution.

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

(Note to reviewer: The above language in parenthesis, beginning with furthermore, is applicable only if the plan provides the safe harbor requirements of section 6 of LRM #42.)

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

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

45. Commencement of benefits - 401(a)(14)

45. Document Provision:

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

Sample Plan Language:

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

- (1) the participant attains age 65 (or normal retirement age, if earlier);
- (2) occurs the 10th anniversary of the year in which the participant commenced participation in the plan; or,
- (3) the participant terminates service with the employer.

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

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

46. Early retirement with age and service requirement

46. Document Provision:

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

Sample Plan Language:

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

47. Nontransferability of annuities - 401(g)

47. Document Provision:

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

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

48. Conflicts with annuity contracts

48. Document Provision:

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

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

49. Timing and modes of distribution - 401(a)(9)

49. Document Provision:

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

Sample Plan Language:

Article _____. DISTRIBUTION REQUIREMENTS.

Section 1. General Rules.

1.1. Subject to Article ____, Joint and Survivor Annuity Requirements, the requirements of this article shall apply to any distribution of a participant's interest and will take precedence over any inconsistent provisions of this plan. Unless otherwise specified, the provisions of this article apply to calendar years beginning after December 31, 1984.

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

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

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

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

Section 4. Determination of amount to be distributed each year. If the participant's interest is to be distributed in other than a single sum, the following minimum distribution rules shall apply on or after the required beginning date:

4.1. Individual account.

(a) If a participant's benefit is to be distributed over (1) a period not extending beyond the life expectancy of the participant or the joint life and last survivor expectancy of the participant and the participant's designated beneficiary or (2) a period not extending beyond the life expectancy of the designated beneficiary, the amount required to be distributed for each calendar year, beginning with distributions for the first distribution calendar year, must at least equal the quotient obtained by dividing the participant's benefit by the applicable life expectancy.

(b) For calendar years beginning before January 1, 1989, if the participant's spouse is not the designated beneficiary, the method of distribution selected must assure that at least 50% of the present value of the amount available for distribution is paid within the life expectancy of the participant.

(c) For calendar years beginning after December 31, 1988, the amount to be distributed each year, beginning with distributions for the first distribution calendar year shall not be less than the quotient obtained by dividing the participant's benefit by the lesser of (1) the applicable life expectancy or (2) if the participant's spouse is not the designated beneficiary, the applicable divisor determined from the table set forth in Q&A-4 of section

1.401(a)(9)-2 of the proposed regulations. Distributions after the death of the participant shall be distributed using the applicable life expectancy in section 4.1(a) above as the relevant divisor without regard to Proposed Regulations section 1.401(a)(9)-2.

(d) The minimum distribution required for the participant's first distribution calendar year must be made on or before the participant's required beginning date. The minimum distribution for other calendar years, including the minimum distribution for the distribution calendar year in which the employee's required beginning date occurs, must be made on or before December 31 of that distribution calendar year.

4.2. Other forms.

(a) If the participant's benefit is distributed in the form of an annuity purchased from an insurance company, distributions thereunder shall be made in accordance with the requirements of section 401(a)(9) of the Code and the proposed regulations thereunder.

Section 5. Death Distribution Provisions.

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

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

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

(b) if the designated beneficiary is the participant's surviving spouse, the date distributions are required to begin in accordance with (a) above shall not be earlier than the later of (1) December 31 of the calendar year

immediately following the calendar year in which the participant died and (2) December 31 of the calendar year in which the participant would have attained age 70½.

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

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

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

Section 6. Definitions

6.1. Applicable life expectancy. The life expectancy (or joint and last survivor expectancy) calculated using the attained age of the participant (or designated beneficiary) as of the participant's (or designated beneficiary's) birthday in the applicable calendar year reduced by one for each calendar year which has elapsed since the date life expectancy was first calculated. If life expectancy is being recalculated, the applicable life expectancy shall be the life expectancy as so recalculated. The applicable calendar year shall be the first distribution calendar year, and if life expectancy is being recalculated such succeeding calendar year.

6.2. Designated beneficiary. The individual who is designated as the beneficiary under the plan in accordance

with section 401(a)(9) and the proposed regulations thereunder.

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

6.3. 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 5 above.

6.4. Life expectancy. Life expectancy and joint and last survivor expectancy are computed by use of the expected return multiples in Tables V and VI of section 1.72-9 of the Income Tax Regulations.

Unless otherwise elected by the participant (or spouse, in the case of distributions described in section 5.2(b) above) by the time distributions are required to begin, life expectancies shall be recalculated annually. Such election shall be irrevocable as to the participant (or spouse) and shall apply to all subsequent years. The life expectancy of a nonspouse beneficiary may not be recalculated.

6.5. Participant's benefit.

(a) The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date.

(b) Exception for second distribution calendar year. For purposes of paragraph (a) above, if any portion of the minimum distribution for the first distribution calendar year is made in the second distribution calendar year on or before the required beginning date, the amount of the minimum distribution made in the second distribution calendar year shall be treated as if it had been made in the immediately preceding distribution calendar year.

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

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

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

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

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

(b) any participant attaining age 70½ in years prior to 1997 may elect to stop distributions and recommence by the April 1 of the calendar year following the year in which the participant retires. There is either (as elected by the employer in section _____ of the adoption agreement)

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

(ii) no new annuity starting date upon
recommencement.

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

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

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

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

6.7 5-percent owner. A participant is treated as a 5-percent owner for purposes of this section if such participant is a 5 percent owner as defined in section 416 of the Code at any time during the plan year ending with or within the calendar year in which such owner attains age 70½.

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

Sample Adoption Agreement Language:

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

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

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

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

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

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

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

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

Section 7. Transitional Rule

7.1. Notwithstanding the other requirements of this article and subject to the requirements of Article _____, Joint and Survivor Annuity Requirements, distribution on behalf of any employee, including a 5-percent owner, may be made in

accordance with all of the following requirements (regardless of when such distribution commences):

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

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

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

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

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

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

7.3. For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the employee, or the beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections 7.1(a) and (e).

7.4. If a designation is revoked any subsequent distribution must satisfy the requirements of section 401(a)(9) of the Code and the proposed regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy section 401(a)(9) of the

Code and the proposed regulations thereunder, but for the section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements in section 1.401(a)(9)-2 of the proposed regulations. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life). In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Q&A J-2 and Q&A J-3 shall apply.

50. Optional forms of benefit must be stated in plan

50. Document Provision:

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

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

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

In addition, each optional form of benefit provided under a plan must be made available to all participants on a nondiscriminatory basis (i.e., they must not discriminate in favor of the highly compensated group). This is the case regardless of whether a particular form of benefit is the actuarial equivalent of any other optional form of benefit under the plan. Note: Section 411(d)(6) prevents a plan from retroactively reducing or eliminating optional forms of benefits and any other "section 411(d)(6) protected benefits".)

(Note to reviewer: An employer that decides to eliminate the availability of a preretirement optional form of benefit (defined in LRM 49) for a participant (other than a 5 percent owner) who attains age 70½ after a specified year has relief from the applicable sections of 401(a)(4) under Notice 97-75. An optional form of benefit available to a 5 percent owner at age 70½ and retirement and to other

participants only at retirement will be treated as the same optional form of benefit for purposes of testing the nondiscriminatory availability of benefits, rights, and features. Additional relief is provided as stated in Notice 97-75.)

51. Direct Rollovers - IRC 401(a)(31)

51. Document Provision:

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

Sample Plan Language:

Article ____: Direct Rollovers

Section 1. This Article applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this part, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution that is equal to at least \$500 paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

Section 2. Definitions

Section 2.1. Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Internal Revenue Code; the portion of any other distribution(s) that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution(s) that is reasonably expected to total less than \$200 during a year.

Section 2.2. Eligible retirement plan: An eligible retirement plan is an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code,

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

Section 2.3. Distributee: A distributee includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

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

Vesting Provisions

52. Designation of vesting computation period

52. Document Provision:

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

Sample Plan Language:

Provision #1

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

Provision #2

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

53. Full vesting upon Normal retirement age

53. Document Provision:

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

Sample Plan Language:

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

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

54. Document Provision:

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

(Note to reviewer: If the plan provides vesting schedules other than those given in the Code (411(a)(2) for regular schedules; 416(b)(1) for top-heavy schedules (see LRM #59), the optional schedules must be at least as favorable as the statutory schedules.)

55. Crediting years of service - vesting - 411(a)(4)

55. Document Provision:

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

Sample Adoption Agreement Language:

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

- () Years of service before age 18;
- () Years of service during a period for which the employee made no mandatory contributions;
- () Years of service before the employer maintained this plan or a predecessor plan;
- () Years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970;

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

56. Vesting Break in service - one year hold-out

56. Document Provision:

Statement of Requirement: Vesting break in service -
1-year hold out,
IRC 411(a)(6)(B).

Sample Plan Language:

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

57. Vesting Break in service - Rule of parity

57. Document Provision:

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

Sample Plan Language:

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

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

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

58. Vesting for pre-break and post-break acct - 411(a)(6)(C)

58. Document Provision:

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

Sample Plan Language:

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

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

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

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

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

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

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

59. Amendment of vesting schedule - 411(a)(10)

59. Document Provision:

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

Sample Plan Language:

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

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

- (1) 60 days after the amendment is adopted;
- (2) 60 days after the amendment becomes effective; or
- (3) 60 days after the participant is issued written notice of the amendment by the employer or plan administrator.

60. Amendments affecting vested and/or accrued benefits

60. Document Provision:

Statement of Requirement: **Amendments affecting vested
and/or accrued benefits,
IRC 411(a)(10)(A), 411(d)(6).**

Sample Plan Language:

No amendment to the plan shall be effective to the extent that it has the effect of decreasing a participant's accrued benefit. Notwithstanding the preceding sentence, a participant's account balance may be reduced to the extent permitted under section 412(c)(8) of the Code. For purposes of this paragraph, a plan amendment which has the effect of decreasing a participant's account balance or eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing an accrued benefit. Furthermore, if the

vesting schedule of a plan is amended, in the case of an employee who is a participant as of the later of the date such amendment is adopted or the date it becomes effective, the nonforfeitable percentage (determined as of such date) of such employee's employer-derived accrued benefit will not be less than the percentage computed under the plan without regard to such amendment.

Top-heavy Provisions

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

Sample Plan Language:

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

61. Top-heavy definitions

61. Document Provision:

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

Sample Plan Language:

(i) Key employee: Any employee or former employee (and the beneficiaries of such employee) who at any time during the determination period was an officer of the employer if such individual's annual compensation exceeds 50 percent of the dollar limitation under section 415(b)(1)(A) of the Code, an owner (or considered an owner under section 318 of the Code) of one of the ten largest interests in the employer if such individual's compensation exceeds 100 percent of the dollar limitation under section 415(c)(1)(A) of the Code, a 5-percent owner of the employer, or a 1-percent owner of the employer who has an annual compensation of more than \$150,000. Annual compensation means compensation as defined in section ____ of the adoption agreement, but including amounts contributed by the employer pursuant to a salary reduction agreement which are excludable from the employee's gross income under section 125, section 402(e)(3), section 402(h)(1)(B) or section 403(b) of the Code. The determination period is the plan year containing the determination date and the 4 preceding plan years.

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

The determination of who is a key employee will be made in accordance with section 416(i)(1) of the Code and the regulations thereunder.

(ii) Top-heavy plan: For any plan year beginning after December 31, 1983, this plan is top-heavy if any of the following conditions exists:

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

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

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

(iii) Top-heavy ratio:

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

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

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

The accrued benefit of a participant other than a key employee shall be determined under (a) the method, if any, that uniformly applies for accrual purposes under all defined benefit plans maintained by the employer, or (b) if

there is no such method, as if such benefit accrued not more rapidly than the slowest accrual rate permitted under the fractional rule of section 411(b)(1)(C) of the Code.

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

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

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

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

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

Sample Adoption Agreement Language:

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

Interest rate: _____ % Mortality table:

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

62. Minimum allocation

62. Document Provision:

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

Sample Plan Language:

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

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

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

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

(4) The provision in (1) above shall not apply to any participant to the extent the participant is covered under any other plan or plans of the employer 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: Provision (4) above may cause the plan to fail to satisfy the uniformity requirement of Regulations

section 1.401(a)(4)-2(b)(2)(ii) for plans using a design-based safe harbor, even though all other requirements of the safe harbor are met.)

Sample Adoption Agreement Language:

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

63. Nonforfeitability of minimum allocation

63. Document Provision:

Statement of Requirement: **Nonforfeitability of minimum allocation, IRC 416(c).**

Sample Plan Language:

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

64. Minimum vesting schedules

64. Document Provision:

Statement of Requirement: **Minimum vesting schedules, IRC 416(b).**

Sample Plan Language:

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

Sample Adoption Agreement Language:

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

- () 100% vesting after _____ (not to exceed 3 years) of service.
- () _____% (not less than 20) vesting after 2 years of service.
- () _____% (not less than 40) vesting after 3 years of service.
- () _____% (not less than 60) vesting after 4 years of service.
- () _____% (not less than 80) vesting after 5 years of service.
- () 100% vesting after 6 years of service.

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

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

Death Benefits

65. Incidental insurance provisions

65. Document Provision:

Statement of Requirement: **Incidental insurance provisions, Rev. Rul. 61-164.**

Sample Plan Language:

(a) Ordinary life - For purposes of these incidental insurance provisions, ordinary life insurance contracts are contracts with both nondecreasing death benefits and nonincreasing premiums. If such contracts are purchased, less than $\frac{1}{2}$ of the aggregate employer contributions allocated to any participant will be used to pay the premiums attributable to them.

(b) Term and universal life - No more than $\frac{1}{4}$ of the aggregate employer contributions allocated to any participant will be used to pay the premiums on term life insurance contracts, universal life insurance contracts, and

all other life insurance contracts which are not ordinary life.

(c) Combination - The sum of $\frac{1}{2}$ of the ordinary life insurance premiums and all other life insurance premiums will not exceed $\frac{1}{4}$ of the aggregate employer contributions allocated to any participant.

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

66. Distribution of insurance contracts

66. Document Provision:

Statement of Requirement: **Distribution of insurance contracts, Rev. Rul. 60-84.**

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

67. Conflict with insurance contracts

67. Document Provision:

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

Sample Plan Language:

The trustee, if the plan is trustee, or custodian, if the plan has a custodial account, shall apply for and will be the owner of any insurance contract purchased under the terms of this plan. The insurance contract(s) must provide that proceeds will be payable to the trustee (or custodian, if applicable), however the trustee (or custodian) shall be required to pay over all proceeds of the contract(s) to the participant's designated beneficiary in accordance with the distribution provisions of this plan. A participant's spouse will be the designated beneficiary of the proceeds in all circumstances unless a qualified election has been made in accordance with section _____, Joint and Survivor Annuity Requirements, if applicable. Under no circumstances shall the trust (or custodial account) retain any part of the proceeds. In the event of any conflict between the terms of this plan and the terms of any insurance contract purchased hereunder, the plan provisions shall control.

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

Investment Provisions

68. Annual valuation of assets; allocation of trust earnings and losses

68. Document Provision:

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

Sample Plan Language:

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

69. Treatment of insurance dividends or credits

69. Document Provision:

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

Sample Plan Language:

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

70. Earmarked investments

70. Document Provision:

Statement of Requirement: Earmarked investments, Rev. Rul. 70-370.

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

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

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

Amendment and Termination

71. Power to amend (sponsor)

71. Document Provision:

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

Sample Plan Language: The sponsoring organization may amend any part of the plan. For purposes of sponsoring organization amendments, the mass submitter shall be recognized as the agent of the sponsoring organization. If the sponsoring organization does not adopt the amendments made by the mass submitter, it will no longer be identical to or a minor modifier of the mass submitter plan.

72. Amendment by adopting employer

72. Document Provision:

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

Sample Plan Language:

The employer may (1) change the choice of options in the adoption agreement, (2) add overriding language in the adoption agreement when such language is necessary to satisfy section 415 or section 416 of the Code because of the required aggregation of multiple plans, and (3) add certain model amendments published by the Internal Revenue Service which specifically provide that their adoption will not cause the plan to be treated as individually designed. An employer that amends the plan for any other reason, including a waiver of the minimum funding requirement under section 412(d) of the Code, will no longer participate in this master or prototype plan and will be considered to have an individually designed plan.

73. Vesting - plan termination

73. Document Provision:

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

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

74. Vesting - complete discontinuance of contributions

74. Document Provision:

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

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

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

75. Plan merger - maintenance of benefit

75. Document Provision:

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

Sample Plan Language:

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

Miscellaneous Plan Provisions

76. Inalienability of benefits

76. Document Provision:

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

Sample Plan Language:

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

(Note to reviewer: The sample provision requires the plan administrator to comply with a domestic relations order entered before January 1, 1985, regardless of whether payment of benefits pursuant to the order has commenced as of such date. The plan may provide instead that a domestic relations order entered before January 1, 1985, will be treated as a qualified domestic relations order if payment of benefits pursuant to the order has commenced as of such date, and may be treated as a qualified domestic relations order if payment of benefits has not commenced as of such date, even though the order does not satisfy the requirements of section 414(p).)

77. Loans to participants

77. Document Provision:

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

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

Sample Plan Language:

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

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

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

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

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

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

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

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

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

(Note to reviewer: No spousal consent is required for the use of the account balance as security for a plan loan to the participant under a safe harbor profit-sharing plan.

(Note to reviewer: Section 72(p) of the Code provides that certain plan loans are treated as distributions. Compliance

with section 72(p) is not required for plan qualification. Therefore, any plan provision dealing with section 72(p) will not be considered with respect to the issuance of a favorable opinion letter. However, in order to assist sponsors in drafting provisions to comply with section 72(p), the following language is provided.)

Sample Plan Language:

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

78. Exclusive benefit

78. Document Provision:

Statement of Requirement: **Exclusive benefit, IRC
401(a)(2); Rev. Rul. 91-4,
1991-3 I.R.B. 7.**

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

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

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

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

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

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

79. Treatment of insurance dividends

79. Document Provision:

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

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

Sample Plan Language:

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

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

80. Failure of qualification

80. Document Provision:

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

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

81. Master trust

81. Document Provision:

Statement of Requirement: Master trust, Rev. Proc. 89-9, 3.01.

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

82. Master trust - disqualification of plan

82. Document Provision:

Statement of Requirement: Master trust - disqualification of plan, Rev. Rul. 71-461.

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

83. Crediting service with predecessor employer

83. Document Provision:

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

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

84. Waiver of minimum funding standards

84. Document Provision:

Statement of Requirement: Waiver of minimum funding standards, Rev. Rul. 78-223; Rev. Proc. 89-9, 5.02.

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

85. Additional adoption agreement requirements

85. Document Provision:

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

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

(1) The adoption agreement must contain a statement that failure to properly fill out the adoption agreement may result in disqualification of the plan.

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

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

PART II - STANDARDIZED PLANS

86. Coverage

86. Document Provision:

Statement of Requirement: Coverage, Rev. Proc. 89-9, 3.081.

Sample Adoption Agreement Language:

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

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

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

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

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

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

87. Eligibility requirement not more favorable for highly compensated employees

87. Document Provision:

Statement of Requirement:

Eligibility requirements not more favorable for highly compensated, Regs. 1.401(a)(4)-4; Rev. Proc. 89-9, 3.082.

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

88. Contribution formula

88. Document Provision:

Statement of Requirement: Contribution formula, Regs. 1.401(a)(4)-2(b)(2); Rev. Proc. 89-9, 3.084.

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

89. Reliance on opinion letter

89. Document Provision:

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

Sample Adoption Agreement Language:

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

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

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

PART III - PAIRED PLAN PROVISIONS

Statement of Requirement: Rev. Proc. 89-9, 3.09,4.05(2),
(3) and (7).

A. General Instructions

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

If you are pairing two defined contribution plans by themselves (i.e., without a defined benefit plan), refer only to the Defined Contribution Specific Instructions which begin immediately below. If you are pairing a defined benefit plan with one or two defined contribution plans, refer to the Defined Benefit Specific Instructions that are contained in Part III of the Defined Benefit Listing of Required Modifications (LRM)

B. Uniformity Requirement:

The designed-based safe harbors under regulations sections 1.401(a)(4)-2 and -3 require that defined contribution plans provide a uniform allocation formula and that defined benefit plans provide a uniform benefit formula. In order to assure that paired plans will continue to provide uniform allocation or benefit formulas when they become top-heavy, paired plans must include language that will comply with one of the following two options (Option A and Option B) by no later than the first day of the first plan year beginning

after December 31, 1993: Plan language complying with one of the following options may be included in the basic plan document. Alternatively, the plan may allow the employer to elect in the adoption agreement which of the two options will apply to the employer's plan.

(a) Option A -- A plan can provide the full top-heavy minimum in each of the paired plans.

(b) Option B -- A plan can include language requiring that each of the paired plans benefits the same participants and that one of the paired plans will provide the top-heavy minimum. Pursuant to regulations section 1.410(b)-3, an employee benefits under a plan for the plan year if and only if the employee receives an allocation or an accrual for that plan year, or in the case of a plan subject to section 401(k) or 401(m), an employee is eligible to make elective deferrals or to make employee contributions. Therefore, to benefit the same employees, the employer must make identical minimum participation requirement elections (minimum age and service, and entry date) and coverage elections (excludable employees under regulations section 1.410(b)-6 including employees who are not employed on the last day of the plan year and who have not completed more than 500 hours of service) in all paired plans. The sponsor must have restricting language in the adoption agreement to ensure that the employer makes identical elections.

(Note to reviewer: If this option is provided in the adoption agreement or basic plan document, Option A must also be provided as a default. See sample adoption agreement language below.)

Sample Adoption Agreement Language:

If the employees who benefit in this plan are identical to the employees who benefit in each plan paired with this plan, section _____ of the plan applies; otherwise section _____ of the plan applies.

(Note to reviewer: The first blank should be filled in with the plan section number corresponding to LRM #90(b); the second blank should be filled in with the plan section number corresponding to LRM #90(a).)

DEFINED CONTRIBUTION SPECIFIC INSTRUCTIONS

(Note to reviewer: LRM #90(a) provides for Option A (top-heavy minimum is provided in each paired plan.) LRM #90(b)

provides for Option B (top-heavy minimum is provided in one designated paired plan.)

90. Minimum contributions in paired defined contribution plans

90. Document Provision:

Statement of Requirement: Minimum contributions in paired defined contribution plans, Rev. Proc. 89-9, 3.09, 4.05(2),7.03

Sample Plan Language:

(a) When the paired plans are top-heavy, the top-heavy requirements set forth in section _____ of the plan shall apply.

(Note to reviewer: The blank should be filled in with the plan section number corresponding to LRMs #61-64.)

(b) When the paired plans are top-heavy _____ will provide a minimum contribution to each non-key employee which is equal to 3% of such employee's compensation.

(Note to reviewer: The blank should be filled in with the plan designated to provide the minimum. Alternatively, the sponsor may allow the employer to select in the adoption agreement which plan will provide the minimum.)

91. Permitted disparity in paired plans

91. Document Provision:

Statement of Requirement: Permitted disparity in paired plans, Rev. Proc. 89-9, 3.09, 4.052, 7.03.

(Note to reviewer: Only one of the paired plans may allow for permitted disparity.)

PART IV - NONSTANDARDIZED PLAN PROVISIONS

92. Minimum age and service

92. Document Provision:

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

Sample Adoption Agreement Language:

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

- (1) Attained the age of ____ (cannot exceed 21)
- (2) Completed ____ year(s) of service

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

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

(Note to reviewer: A nonstandardized plan may exclude additional categories of employees from participation; however, the plan must satisfy on a continuing basis the coverage tests of 410(b), the nondiscrimination tests of 401(a)(4) and the participation test of 401(a)(26).

93. Reliance on opinion letter

93. Document Provision:

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

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

Sample Adoption Agreement Language:

The adopting employer may not rely on an opinion letter issued by the National Office of the Internal Revenue Service as evidence that the plan is qualified under section 401 of the Internal Revenue Code. In order to obtain reliance with respect to plan qualification, the employer must apply to the appropriate Key District Office for a determination letter.

