

## Rev. Proc. 2002-29

### SECTION 1. PURPOSE

This revenue procedure provides that qualified retirement plans generally must be amended by the end of the first plan year beginning on or after January 1, 2003, to the extent necessary to comply with final and temporary regulations under § 401(a)(9) of the Internal Revenue Code, relating to required minimum distributions. The revenue procedure contains model plan amendments that sponsors of master and prototype (M&P), volume submitter and individually designed plans may adopt to satisfy this requirement. The revenue procedure also provides that determination letter applications filed on or after the first day of the 2003 plan year will be reviewed with respect to whether the form of the plan satisfies the requirements of the final and temporary regulations under § 401(a)(9).

### SECTION 2. BACKGROUND

.01 Section 401(a)(9) provides rules for required minimum distributions from plans qualified under § 401(a). The rules also apply to § 403(b) annuity contracts, § 408 IRAs, § 408A Roth IRAs, and § 457 eligible deferred compensation plans.

.02 Proposed regulations (EE-113-82, 1987-2 C.B. 881) under § 401(a)(9) were published in the **Federal Register** on July 27, 1987, 52 FR 28070, and January 17, 2001, 66 FR 3928. The proposed regulations published in 2001 (the § 401(a)(9) 2001 Proposed Regulations) substantially simplified many of the rules in regulations that had been proposed in 1987 (the § 401(a)(9) 1987 Proposed Regulations) and also incorporated other guidance published after 1987, including guidance relating to the changes to § 401(a)(9) made by the Small Business Job Protection Act of 1996, Pub. L. 104-188 (SBJPA).

.03 The preamble to the § 401(a)(9) 2001 Proposed Regulations stated that taxpayers could rely on the § 401(a)(9) 1987 Proposed Regulations or the § 401(a)(9) 2001 Proposed Regulations for determining required minimum distributions for calendar year 2001 and subsequent calendar years prior to the effective date of the final regulations. The preamble also contained a model amendment that sponsors of qualified plans could adopt if they wished to apply the § 401(a)(9) 2001 Proposed Regulations in making all required minimum distributions for 2001 and subsequent calendar years prior to the effective date of the final regulations. After publication in the **Federal Register**, the model amendment was republished in Announcement 2001-18, 2001-1 C.B. 791, with minor corrections, and appeared (as corrected in the I.R.B.) in the preamble to the § 401(a)(9) 2001 Proposed Regulations (REG-130477-00; REG-130481-00, 2001-1 C.B. 865).

.04 An alternative model amendment was published in Announcement 2001-82, 2001-32 I.R.B. 123. This additional model amendment was provided in response to the concerns of qualified plan sponsors that intended to use the § 401(a)(9) 2001 Proposed Regulations for distributions for 2001 but made required minimum distributions for 2001 under the § 401(a)(9) 1987 Proposed Regulations prior to the date in 2001 on which the plan began operating under the § 401(a)(9) 2001 Proposed Regulations. The alternative model amendment in Announcement 2001-82 allowed required minimum distributions made for 2001 prior to the date in 2001 on which the

plan began operating under the § 401(a)(9) 2001 Proposed Regulations to be made under the § 401(a)(9) 1987 Proposed Regulations.

.05 The alternative model amendment in Announcement 2001–82 provided the following rules with respect to distributees who received 2001 required distributions prior to the date in 2001 on which the plan began operating under the § 401(a)(9) 2001 Proposed Regulations. If the total amount of 2001 required minimum distributions made to a participant prior to the date on which the plan began operating in accordance with the § 401(a)(9) 2001 Proposed Regulations equaled or exceeded the required minimum distributions determined under the § 401(a)(9) 2001 Proposed Regulations, then no additional distributions were required for that participant for 2001 on or after such date. If the total amount of 2001 required minimum distributions made to a participant prior to the date on which the plan began operating in accordance with the § 401(a)(9) 2001 Proposed Regulations was less than the amount determined under the § 401(a)(9) 2001 Proposed Regulations, then required minimum distributions for 2001 on and after such date would be determined so that the total amount of required minimum distributions for 2001 for that participant would be the amount determined under the § 401(a)(9) 2001 Proposed Regulations.

.06 In order for a qualified plan sponsor to use either the original model amendment in Announcement 2001–18 or the alternative model amendment in Announcement 2001–82, the plan sponsor was required to adopt the amendment by the deadline for amending its plan for GUST. See Rev. Proc. 2001–55, 2001–49 I.R.B. 552.

.07 Final and temporary regulations (T.D. 8987, 2002–19 I.R.B. 852) under § 401(a)(9) were published in the Federal Register on April 17, 2002, 74 FR 18987 (the § 401(a)(9) Final and Temporary Regulations). The § 401(a)(9) Final and Temporary Regulations generally adopt the simplifications proposed in 2001 and provide additional simplifications. The § 401(a)(9) Final and Temporary regulations apply for determining required minimum distributions for calendar years beginning on or after January 1, 2003.

For determining required minimum distributions for calendar year 2002, taxpayers may rely on the § 401(a)(9) Final and Temporary Regulations, the § 401(a)(9) 2001 Proposed Regulations, or the § 401(a)(9) 1987 Proposed Regulations.

.08 Section 401(b) and the regulations thereunder provide a remedial amendment period during which an amendment to a disqualifying provision may be made retroactively effective, under certain circumstances, to comply with the requirements of § 401(a). Section 1.401(b)–1(b) provides that a disqualifying provision includes an amendment to an existing plan that causes the plan to fail to satisfy the requirements of § 401(a). Notice 2001–42, 2001–30 I.R.B. 70, provides a remedial amendment period under § 401(b) ending not prior to the last day of the first plan year beginning on or after January 1, 2005, in which any needed retroactive amendment with regard to the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, (EGTRRA), may be adopted. The availability of this remedial amendment period is conditioned on the adoption of a good faith EGTRRA plan amendment no later than the later of: (i) the end of the plan year in which the EGTRRA change in the qualification requirement is required to be, or is optionally, put into effect under the plan; or (ii) the end of the GUST remedial amendment period for the plan.

.09 Rev. Proc. 2000–20, 2000–1 C.B. 553, as modified by Rev. Proc. 2000–27, 2000–1 C.B. 1272, Notice 2001–42, 2001–30 I.R.B. 70, and Rev. Proc. 2001–55, contains the Service’s procedures for issuing opinion letters regarding the acceptability of the form of M&P plans.

.10 Rev. Proc. 2002–6, 2002–1 I.R.B. 203, contains the Service’s procedures for issuing determination letters on the qualified status of employee plans under §§ 401(a), 403(a), 409 and 4975(e)(7) of the Code and the exempt status of related trusts or custodial accounts under § 501(a).

.11 Section 1.401(a)(9)–1, Q&A–3, describes the provisions that a plan must contain in order to satisfy § 401(a)(9). The plan must generally set forth the statutory rules of § 401(a)(9), including the incidental death benefit requirement in § 401(a)(9)(G), and must provide that distributions must be made in accordance

with the § 401(a)(9) Final and Temporary Regulations. The plan must provide that its provisions reflecting § 401(a)(9) override any inconsistent distribution options in the plan and must include such other provisions as the Commissioner may prescribe in guidance published in the Internal Revenue Bulletin.

### SECTION 3. REQUIRED PLAN AMENDMENTS

.01 In general, qualified plans must be amended by the last day of the first plan year beginning on or after January 1, 2003, to the extent necessary to comply with the requirements of the § 401(a)(9) Final and Temporary Regulations. Whether and the extent to which a particular plan must be amended depends on the plan’s current terms. Any plan amendments for the § 401(a)(9) Final and Temporary Regulations must apply in determining required minimum distributions under the plan for calendar years beginning on or after January 1, 2003. If a plan sponsor begins operating its plan under the § 401(a)(9) Final and Temporary Regulations on a date in 2002, then the amendments must also apply in determining required minimum distributions under the plan for 2002 that are made on or after such date, although the amendments are not required to be adopted before the last day of the first plan year beginning on or after January 1, 2003.

.02 If a plan sponsor begins operating its plan under the § 401(a)(9) Final and Temporary Regulations on a date in 2002 and prior to such date the plan sponsor has made required minimum distributions for 2002 under the § 401(a)(9) 1987 Proposed Regulations or the § 401(a)(9) 2001 Proposed Regulations, then the plan must also be amended to provide the transitional rule for 2002 required minimum distributions that is set forth in section 1.2 of the model amendments in the Appendix to this revenue procedure.

.03 Every M&P plan must allow the M&P plan sponsor to amend the plan on behalf of all adopting employers so that changes in the Code, regulations, revenue rulings, other statements published by the Internal Revenue Service, or corrections of prior approved plans may be applied to all employers who have adopted the plan. Therefore, by December 31, 2003, every sponsor of an M&P plan must amend its

plan to the extent necessary to comply with the requirements of the § 401(a)(9) Final and Temporary Regulations and must furnish copies of the amendments to all employers who have adopted the plan. A favorable opinion letter may not be relied upon after December 31, 2003, unless the M&P plan sponsor satisfies this requirement.

.04 Practitioners that sponsor volume submitter plans generally are not authorized to amend the plan on behalf of adopting employers. In this case, employers that have adopted the plan must individually amend their plans by the last day of the first plan year beginning on or after January 1, 2003, to the extent necessary to comply with the requirements of the § 401(a)(9) Final and Temporary Regulations. Nevertheless, volume submitter practitioners must amend their specimen plans for the § 401(a)(9) Final and Temporary Regulations by December 31, 2003, so that the amendments will apply to future adopters of the plan. A favorable advisory letter may not be relied upon after December 31, 2003, unless the volume submitter practitioner satisfies this requirement.

.05 Until further notice, sponsors of pre-approved plans are not required to request opinion or advisory letters that consider whether their plans satisfy the requirements of the § 401(a)(9) Final and Temporary Regulations. However, opinion and advisory letter applications filed on or after January 1, 2003, will be reviewed with respect to whether the form of the plan satisfies these requirements. Opinion and advisory letter applications filed before January 1, 2003, will be reviewed with respect to whether the form of the plan satisfies the requirements of the § 401(a)(9) Final and Temporary Regulations if a plan amendment to comply with the § 401(a)(9) Final and Temporary Regulations is submitted in conjunction with and at the same time as the request for the opinion or advisory letter.

.06 Determination letter applications for individually designed plans filed on or after the first day of the first plan year beginning on or after January 1, 2003, will be reviewed with respect to whether the form of the plan satisfies the requirements of the § 401(a)(9) Final and Temporary Regulations. Determination letter applications for individually designed

plans filed before the first day of the first plan year beginning on or after January 1, 2003, will be reviewed with respect to whether the form of the plan satisfies the requirements of the § 401(a)(9) Final and Temporary Regulations if a plan amendment to comply with the § 401(a)(9) Final and Temporary Regulations is submitted in conjunction with and at the same time as the request for the determination letter. In both cases, determination letters issued for such applications may be relied on with respect to the requirements of the § 401(a)(9) Final and Temporary Regulations. Determination letters issued for pre-approved plans may be relied on with respect to the requirements of the § 401(a)(9) Final and Temporary Regulations if those requirements were considered in issuing the opinion or advisory letter.

.07 If a plan is timely amended to comply with the § 401(a)(9) Final and Temporary Regulations and, as a result of the amendment, there is a disqualifying provision under § 401(b), the remedial amendment period with respect to the disqualifying provision will end at the end of the EGTRRA remedial amendment period. Therefore, an application for a determination letter regarding the effect of the plan amendment need not be filed earlier than the last day of the EGTRRA remedial amendment period. The timely adoption of the appropriate model amendment in the Appendix will provide reliance, without the need to request a letter, that the plan has been amended to comply with the § 401(a)(9) Final and Temporary Regulations and will not result in a disqualifying provision.

.08 The Appendix provides two model plan amendments to facilitate the amendment of qualified plans to comply with the requirements of the § 401(a)(9) Final and Temporary Regulations. The model amendments may be adopted by M&P plans sponsors and volume submitter practitioners and also by sponsors of individually designed plans. The model amendments are “snap-on” amendments designed to work with a plan’s existing minimum distribution provisions by superseding those that are inconsistent with the provisions of the model amendment and retaining those (such as the plan’s definition of required beginning date) that are not inconsistent. Plans that

are amended to adopt the model amendments must retain their existing required minimum distribution provisions in order to have reliance that the form of the plan has been properly amended to comply with the § 401(a)(9) Final and Temporary Regulations. Adoption of one of the model amendments will not amend a plan for the changes to § 401(a)(9) made by § 1404 of SBJPA or to provide that 2001 or 2002 required minimum distributions will be determined in accordance with the § 401(a)(9) 2001 Proposed Regulations.

The first model amendment is for defined contribution plans. The second model amendment is for defined benefit plans. A plan sponsor or a sponsor of a pre-approved plan that timely adopts the appropriate model amendment verbatim (or with only minor changes) will have reliance that the form of its plan satisfies the requirements of the § 401(a)(9) Final and Temporary Regulations, and the adoption of the model amendment will not adversely affect the plan sponsor’s reliance on a favorable determination, opinion or advisory letter, or cause a pre-approved plan to be treated as an individually designed plan. For this purpose, changes to either of the model amendments to incorporate the adoption agreement elective provisions into the body of the amendment or to remove the elective provisions in favor of the default rules in the body of the amendment are minor changes.

#### SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2000–20 and Rev. Proc. 2002–6 are modified.

#### SECTION 5. EFFECTIVE DATE

This revenue procedure is effective June 17, 2002.

#### DRAFTING INFORMATION

The principal authors of this revenue procedure are James Flannery and Steven Linder of Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans’ taxpayer assistance telephone service at 1–877–829–5500 between the hours of 8:00 a.m. and 6:30 p.m. Eastern

time, Monday through Friday (a toll-free number). Mr. Flannery and Mr. Linder may be reached at 1-202-283-9888 (not a toll-free call).

## APPENDIX — MODEL AMENDMENTS

The following are model plan amendments that sponsors of pre-approved plans and sponsors of individually designed plans may adopt to comply with the § 401(a)(9) Final and Temporary Regulations. Except as provided below, a plan that is amended to adopt one of the model amendments will satisfy, in form, the requirements of § 401(a)(9) and the § 401(a)(9) Final and Temporary Regulations in determining required minimum distributions for calendar years beginning on or after January 1, 2003 (as well as required minimum distributions for calendar year 2002 made on or after the date the plan sponsor begins to operate its plan in accordance with the § 401(a)(9) Final and Temporary Regulations). Adoption of the model amendments will not amend a plan to reflect the change to the definition of required beginning date in § 401(a)(9)(C) that was made by § 1404 of SBJPA or to provide the actuarial adjustment that may be required in a defined benefit plan that is so amended. A plan sponsor that wishes to amend its plan to reflect the provisions of § 1404 of SBJPA must do so through a separate amendment. Consequently, the model amendments may not be relied upon with respect to whether a plan's definition of required beginning date is correct or whether a defined benefit plan makes the correct actuarial adjustment required by § 401(a)(9)(C)(iii). Adoption of the model amendments also will not amend a plan to provide that 2001 or 2002 required minimum distributions will be determined in accordance with the § 401(a)(9) 2001 Proposed Regulations. A plan sponsor that has operated its plan in accordance with the § 401(a)(9) 2001 Proposed Regulations must adopt the model amendment in Announcement 2001-18 or the alternative model amendment in Announcement 2001-82 within the plan's GUST remedial amendment period. Plans that are amended to adopt the model amendments must retain their existing required minimum distribution provisions in order to have reliance that the form of

the plan has been properly amended to comply with the § 401(a)(9) Final and Temporary Regulations.

## MODEL PLAN AMENDMENT 1 — DEFINED CONTRIBUTION PLANS

### Article \_\_\_\_\_. MINIMUM DISTRIBUTION REQUIREMENTS.

#### Section 1. General Rules

1.1. Effective Date. Unless an earlier effective date is specified in the adoption agreement, the provisions of this article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

1.2. Coordination with Minimum Distribution Requirements Previously in Effect. If the adoption agreement specifies an effective date of this article that is earlier than calendar years beginning with the 2003 calendar year, required minimum distributions for 2002 under this article will be determined as follows. If the total amount of 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this article equals or exceeds the required minimum distributions determined under this article, then no additional distributions will be required to be made for 2002 on or after such date to the distributee. If the total amount of 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this article is less than the amount determined under this article, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this article.

1.3. Precedence. The requirements of this article will take precedence over any inconsistent provisions of the plan.

1.4. Requirements of Treasury Regulations Incorporated. All distributions required under this article will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code.

1.5. TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this article, distributions may be made under a designation made before

January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that relate to section 242(b)(2) of TEFRA.

#### Section 2. Time and Manner of Distribution.

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

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

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

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

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

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

For purposes of this section 2.2 and section 4, unless section 2.2(d) applies, distributions are considered to begin on the participant's required beginning date. If section 2.2(d) applies, distributions are

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

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

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

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

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

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

3.2. Lifetime Required Minimum Distributions Continue Through Year of Par-

ticipant's Death. Required minimum distributions will be determined under this section 3 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the participant's date of death

### Section 4. Required Minimum Distributions After Participant's Death.

4.1. Death On or After Date Distributions Begin.

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

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

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

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

(b) No Designated Beneficiary. If the participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the participant's death, the minimum amount that will be distributed for each distribution calendar

year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the participant's remaining life expectancy calculated using the age of the participant in the year of death, reduced by one for each subsequent year.

4.2. Death Before Date Distributions Begin.

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

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

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

### Section 5. Definitions.

5.1. Designated beneficiary. The individual who is designated as the beneficiary under section \_\_\_\_\_ of the plan and is the designated beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

5.2. Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the

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

5.3. Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.

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

5.5 Required beginning date. The date specified in section \_\_\_\_\_ of the plan.

*Adoption Agreement*

(Check and complete section 1 below if any required minimum distributions for the 2002 distribution calendar year were made in accordance with the § 401(a)(9) Final and Temporary Regulations.)

Section 1. Effective Date of Plan Amendment for Section 401(a)(9) Final and Temporary Treasury Regulations.

\_\_\_\_\_. Article \_\_\_\_\_, Minimum Distribution Requirements, applies for

purposes of determining required minimum distributions for distribution calendar years beginning with the 2003 calendar year, as well as required minimum distributions for the 2002 distribution calendar year that are made on or after \_\_\_\_\_.

(Check and complete any of the remaining sections if you wish to modify the rules in sections 2.2 and 4.2 of Article \_\_\_\_\_ of the plan.)

Section 2. Election to Apply 5-Year Rule to Distributions to Designated Beneficiaries.

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

This election will apply to:

- \_\_\_\_\_ All distributions.
- \_\_\_\_\_ The following distributions:  
\_\_\_\_\_.

Section 3. Election to Allow Participants or Beneficiaries to Elect 5-Year Rule.

\_\_\_\_\_ Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in sections 2.2 and 4.2 of Article \_\_\_\_\_ of the plan applies to distributions after the death of a participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under section 2.2 of Article \_\_\_\_\_ of the plan, or by September 30 of the calendar year which contains the fifth anniversary of the participant's (or, if applicable, surviving spouse's) death. If

neither the participant nor beneficiary makes an election under this paragraph, distributions will be made in accordance with sections 2.2 and 4.2 of Article of the plan and, if applicable, the elections in section 2 above.

Section 4. Election to Allow Designated Beneficiary Receiving Distributions Under 5-Year Rule to Elect Life Expectancy Distributions.

\_\_\_\_\_ A designated beneficiary who is receiving payments under the 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003, or the end of the 5-year period.

MODEL PLAN AMENDMENT 2 — DEFINED BENEFIT PLANS

Article \_\_\_\_\_. MINIMUM DISTRIBUTION REQUIREMENTS.

Section 1. General Rules

1.1. Effective Date. Unless an earlier effective date is specified in the adoption agreement, the provisions of this article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

1.2. Coordination with Minimum Distribution Requirements Previously in Effect. If the adoption agreement specifies an effective date of this article that is earlier than calendar years beginning with the 2003 calendar year, required minimum distributions for 2002 under this article will be determined as follows. If the total amount of 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this article equals or exceeds the required minimum distributions determined under this article, then no additional distributions will be required to be made for 2002 on or after such date to the distributee. If the total amount of 2002 required minimum distributions under the

plan made to the distributee prior to the effective date of this article is less than the amount determined under this article, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this article.

1.3. Precedence. The requirements of this article will take precedence over any inconsistent provisions of the plan.

1.4. Requirements of Treasury Regulations Incorporated. All distributions required under this article will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code.

1.5. TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this article, other than section 1.4, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that relate to section 242(b)(2) of TEFRA.

## Section 2. Time and Manner of Distribution.

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

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

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

(b) If the participant's surviving spouse is not the participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the designated beneficiary will

begin by December 31 of the calendar year immediately following the calendar year in which the participant died.

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

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

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

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

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

3.1. General Annuity Requirements. If the participant's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:

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

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

(c) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

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

(1) by an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

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

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

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

3.2. Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the participant's required beginning date (or, if the participant dies before distributions begin, the date distributions are required to begin under section 2.2(a) or (b)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit

accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's required beginning date.

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

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

4.1. Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse. If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspouse beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspouse beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

4.2. Period Certain Annuities. Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the

participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this section 4.2, or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

#### Section 5. Requirements For Minimum Distributions Where Participant Dies Before Date Distributions Begin.

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

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

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

5.2. No Designated Beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the partici-

participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

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

#### Section 6. Definitions.

6.1. Designated beneficiary. The individual who is designated as the beneficiary under section \_\_\_\_\_ of the plan and is the designated beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

6.2. Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to section 2.2.

6.3 Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.

6.4. Required beginning date. The date specified in section \_\_\_\_\_ of the plan.

#### *Adoption Agreement*

(Check and complete section 1 below if any required minimum distributions for the 2002 distribution calendar year were made in accordance with the § 401(a)(9) Final and Temporary Regulations.)

Section 1. Effective Date of Plan Amendment for Section 401(a)(9) Final and Temporary Treasury Regulations.

\_\_\_\_\_ Article \_\_\_\_\_, Minimum Distribution Requirements, applies for purposes of determining required minimum distributions for distribution calendar years beginning with the 2003 calendar year, as well as required minimum distributions for the 2002 distribution calendar year that are made on or after .

(Check and complete any of the remaining sections if you wish to modify the rules in sections 2.2 and 5 of Article \_\_\_\_\_ of the plan.)

Section 2. Election to Apply 5-Year Rule to Distributions to Designated Beneficiaries.

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

This election will apply to:

\_\_\_\_\_ All distributions.

\_\_\_\_\_ The following distributions:

\_\_\_\_\_.

Section 3. Election to Allow Participants or Beneficiaries to Elect 5-Year Rule.

\_\_\_\_\_ Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in sections 2.2 and 5 of Article \_\_\_\_\_ of the plan applies to distributions after the death of a participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under section 2.2 of Article \_\_\_\_\_ of the plan, or by September 30 of the calendar year which contains the fifth anniversary of the participant's (or, if applicable, sur-

ving spouse's) death. If neither the participant nor beneficiary makes an election under this paragraph, distributions will be made in accordance with sections 2.2 and 5 of Article \_\_\_\_\_ of the plan and, if applicable, the elections in section 2 above.

Section 4. Election to Allow Designated Beneficiary Receiving Distributions Under 5-Year Rule to Elect Life Expectancy Distributions.

\_\_\_\_\_ A designated beneficiary who is receiving payments under the 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003, or the end of the 5-year period.