

Defined Benefit 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 Gulf Opportunity Zone Act of 2005 (Pub. L. 109-135), as well as certain law changes under the Pension Protection Act of 2006 (Pub. L. 109-280), as described in Notice 2007-3, I.R.B. 2007-2 255, the 2006 Cumulative List of Changes in Plan Qualification Requirements. Such language may or may not be acceptable in different plans depending on the context in which used. We have prepared this package to assist sponsors who are drafting or redrafting plans to conform to applicable law and regulations, and we hope that it will be a key factor in enabling us to process and approve master and prototype plans more quickly.

Name
of
Sponsor: _____

Type of Plan: Flat Benefit

Unit Credit

Other (Specify) _____

Form of Plan: Master Plan

Prototype Plan

Underlined material reflects changes to the February, 2000 version of this LRM (as updated in June and July, 2001). Where a sample plan provision has been substantially revised, the entire provision has been underlined.

06-2007

PART I - ALL PLANS

Definitions

- LRM 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 #18, #19 and #58.)

- LRM 2 – Definition of Break in Service -

2. Document Provision:

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

Sample Plan Language:

Break in service means a 12- consecutive month period (computation period) during which the participant does not complete more than 500 hours of service with the employer.

(Note to reviewer: Computation periods may vary for eligibility and vesting purposes. See LRMs #18, #19 and #58.)

- LRM 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)**

Sample Plan Language:

Hour 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

- LRM 3 - Definition of Hour of Service -

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.

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

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

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

- LRM 3 – Definition of Hour of Service -

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.)

- LRM 4 – Elapsed Time

4. Document Provision:

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

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

- LRM 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.

- LRM 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; §1.415(c)-2; Notice 2001-37, 2001-1 C.B. 1340; Notice 2001-56, 2001-2 C.B. 277; Rev. Rul. 2003-11, 2003-1 C.B. 285; Rev. Proc. 2005-16, 2005-10 I.R.B. 674, sec. 4.10(3), 5.03.**

Sample Plan Language:

Compensation will mean compensation as that term is defined in section _____ of the plan and related elections in the adoption agreement. For any self-employed individual covered under the plan, compensation will mean earned income.

Except as provided elsewhere in this plan, compensation shall include only that compensation which is actually paid to the participant during the determination period, and the determination period shall be the period elected by the employer in the adoption agreement. If the employer makes no election, the determination period shall be the plan year.

(Note to reviewer: The blank should be filled in with the plan section number that corresponds to section 6.2 of LRM #40.)

(Note to reviewer: Under certain circumstances other definitions of compensation may be used. However, compensation used in determining

- LRM 6 – Definition of Compensation -

January 1, 1989 is \$200,000. In determining benefits in plan years beginning on or after January 1, 1994, and before January 1, 2002, the annual compensation limit in effect for determination periods beginning before January 1, 2002 is \$150,000. In determining benefits in plan years beginning on or after January 1, 2002, the annual compensation limit in effect for determination periods beginning before that date is \$200,000, or the amount specified by the employer in section _____ of the adoption agreement, if any .

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

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

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

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").)

- LRM 6 – Definition of Compensation -

Compensation

[] shall not include employer contributions made pursuant to a salary reduction agreement which are not includible in the gross income of the employee under sections 125, 132(f)(4), 402(e)(3), 402(h)(1)(B) or 403(b) of the Code.

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

\$200,000

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

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

- LRM Compensation Formulas -

7. Document Provision:

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

Sample Plan Language:

Average annual compensation. Average annual compensation means the average of a participant's annual compensation, as defined in section of the plan, over the three consecutive plan year period ending in the current year or in any prior year that produces the highest average. If a participant's entire period of service for the employer is less than three consecutive years, compensation is averaged on an annual basis over the participant's entire period of service.

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

(Note to reviewer: The plan may provide for an averaging period that consists of more than three years, or may permit the employer to select an alternative an alternate period (not less than three years).

(Note to reviewer: In an accumulation plan (a plan providing that the participant's total retirement benefit consists of the sum of the participant's benefits separately calculated for each plan year using compensation earned for the year), a participant's retirement benefit may be determined using a participant's annual compensation (as defined in LRM #6) in place of average annual compensation.)

(Note to reviewer: In the sample plan language above, the participant's compensation history consists of the participant's entire period of service. However, a participant's compensation history may be limited to a period no shorter than the averaging period, as long as it is continuous and ends in

- LRM 10 – Definition of Leased Employee -

10. Document Provision:

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

Sample Plan Language:

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

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

- LRM 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.

-LRM 11 – Definition of Highly Compensated Employee –

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: (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.

- LRM 12 – Definition of Owner-Employee

12. Document Provision:

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

Sample Plan Language:

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

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

- LRM 13 – Definition of Self – Employed Individual –

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

Sample Plan Language:

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

- LRM 14 – Definition of Normal Retirement Age -

first plan year beginning on or after January 1, 1988, shall be the earlier of (A) the tenth anniversary of the date the participant commenced participation in the plan (or such anniversary as had been elected by the employer, if less than 10) or (B) the fifth anniversary of the first day of the first plan year beginning on or after January 1, 1988. The participation commencement date is the first day of the first plan year in which the participant commenced participation in the plan.

If the age selected in B.(i) is less than 55 or less than the earliest retirement age that is reasonably representative of the typical retirement age for the industry in which the plan participants work, then, effective May 22, 2007, the normal retirement age shall be changed to the following later age:

() the later of:

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

(ii) the _____ (not to exceed 5th) anniversary of the participation commencement date. If, for plan years beginning before January 1, 1988, normal retirement age was determined with reference to the anniversary of the participation commencement date (more than 5 but not to exceed 10 years), the anniversary date for participants who first commenced participation under the plan before the first plan year beginning on or after January 1, 1988, shall be the earlier of (A) 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.

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

A plan amendment that raises the plan's NRA pursuant to §1.401(a)-1(b)(2) does not violate §411(d)(6) merely because it eliminates the right to an in-service distribution prior to the amended NRA, provided the plan amendment is adopted after May 21, 2007, and within the plan's remedial amendment

- LRM 14 – Definition of Normal Retirement Age -

period under §1.401(b)-1 with respect to the requirements of §1.401(a)-1(b)(2) and (3). This relief does not apply to other requirements such as those of §§411(a)(9), 411(a)(10), 411(d)(6) (except as noted), and 4980F.)

- LRM 15 – Definition of Straight Life Annuity -

15. Document Provision:

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

Sample Plan Language:

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

- LRM 16 – Maximum Age Restrictions Not Permitted -

MINIMUM PARTICIPATION STANDARDS

16. Document Provision:

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

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

- LRM 17 – Provisions for Entry Into Participation -

17. 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.)

- LRM 18 - Eligibility Computation Periods -

18. Document Provision:

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

Sample Plan Language:

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

The succeeding 12-consecutive month periods commence with the first anniversary of the employee's employment commencement date.

(This paragraph is not applicable if the eligibility computation period shifts to the plan year.)

The succeeding 12-consecutive month periods commence with the first plan year which commences prior to the first anniversary of the employee's employment commencement date regardless of whether the employee is entitled to be credited with 1,000 hours of service during the initial eligibility computation period. An employee who is credited with 1,000 hours of service in both the initial eligibility computation period and the first plan year that commences prior to the first anniversary of the employee's initial eligibility computation period will be credited with two years of service for purposes of eligibility to participate.

(This paragraph is not applicable if succeeding eligibility computation periods commence on the 12-consecutive month anniversary of the employee's employment commencement date.)

- LRM 19 – Use of Computation Periods -

19. Document Provision:

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

Sample Plan Language:

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

- LRM 20 – All Years of Service Counted Toward Eligibility -

20. Document Provision:

Statement of Requirement: All years of service counted toward eligibility except after certain breaks in service, IRC §410(a)(5)(A), (B) & (D); Regs. §1.410(a)-5.

- LRM 20 – All Years of Service Counted Toward Eligibility -

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 accrued benefit derived from employer contributions, years of service before a period of consecutive 1-year breaks in service will not be taken into account in computing eligibility service if the number of consecutive 1-year breaks in service in such period equals or exceeds the greater of 5 or the aggregate number of years of service. Such aggregate number of years of service will not include any years of service disregarded under the preceding sentence by reason of prior breaks in service.

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

(Note to reviewer: For plan language meeting the requirements of the eligibility one year hold-out rule (IRC 410 (a) (5) (C)) , see LRM #21) .

- LRM 21 – Eligibility Break in Service – One Year Hold – Out Rule -

21 . 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

- LRM 21 – Eligibility Break in Service – One Year Hold-Out Rule -

necessary, plan years beginning with the plan year that includes the first anniversary of the reemployment commencement date.

(This paragraph is not applicable if the eligibility computation period is measured with reference to the employment commencement date.)

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

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

- LRM 22 – Participation Upon Return To Eligibility Class -

22. Document Provision:

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

Sample Plan Language:

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

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

PLAN BENEFITS

(Note to reviewer: All standardized defined benefit plans must, by their terms, satisfy one of the design-based safe harbors in section 1.401(a)(4)-3(b)(3), (4), or (5). All nonstandardized plans must either provide plan language that automatically satisfies one of the design-based safe harbors in section 1.401 (a) (4) -3 (b) (3) , (4) , or (5) of the regulations or provide a mechanism in the adoption agreement for the employer to select plan language that does. (See sections 4.10 and 5.04 of Rev. Proc. 2005-16.) LRM #26 provides sample benefit formulas that satisfy the design-based safe harbors of the regulations for plans that do not provide for permitted disparity. LRM #27 provides sample formulas that satisfy the design-based safe harbors of the regulations for plans that provide for permitted disparity.

A plan that changes its benefit formula or accrual method must, in order to satisfy the design-based safe harbors in the regulations, satisfy the fresh-

- LRM 22 – Participation Upon Return To Eligible Class -

start rules in §1.401(a)(4)-13(c) with regard to such change. LRM #23-25 provide sample plan language that satisfies these rules. All standardized plans must comply with LRM ##23-25; all other nonstandardized plans must provide these LRM provisions either automatically or by option.)

- LRM 23 – Fresh Start Rule –

23. Document Provision:

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

Sample Adoption Agreement Language:

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

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

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

1. [] Formula with wear-away – the greater of:
 - (a) the participant’s frozen accrued benefit, if any, and
 - (b) the participant’s accrued benefit determined with respect to the current benefit formula as applied to the participant’s total years of credited service under the plan.

2. [] Formula without wear-away – the sum of:
 - (a) the participant’s frozen accrued benefit, if any, and

- LRM 23 – Fresh Start Rule -

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

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

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

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

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

- () Members of an acquired group of employees

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

- LRM 23 – Fresh Start Rule -

The acquired group consists of:

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

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

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

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

- LRM 24 – Determination of Frozen Accrued Benefit -

24. Document Provision:

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

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

Sample Plan Language:

A participant's frozen accrued benefit is the amount of the participant's accrued benefit determined in accordance with the provisions of the plan applicable in the year containing the latest fresh-start date, determined as if the participant terminated employment with the employer as of the latest fresh-start date, (or the date the participant actually terminated employment with the employer, if earlier), without regard to any amendment made to the plan after that date other than amendments recognized as effective as of or before the date under section 401(b)

- LRM 24 – Determination of Frozen Accrued Benefit -

of the Internal Revenue Code or section 1.401(a)(4)-11(g) of the regulations. If the participant has not had a fresh-start, the participant's frozen accrued benefit will be zero.

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

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

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

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

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

-LRM 25 – Adjustments to Frozen -Accrued Benefit -

25. Document Provision:

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

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

Sample Plan Language:

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

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

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

- LRM 25 – Adjustments to Frozen Accrued Benefit -

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

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

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

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

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

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

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

Section 1.3 . Flat Benefit Plans -- With respect to plan years beginning after the plan's latest fresh-start date, the current benefit formula will provide each participant a benefit of not less than 25% of the participant's average annual compensation. If a participant will have less than 50 years of service under the plan after the latest fresh-start date through the year the participant attains normal retirement age (or current age, if later), then such minimum percentage will be reduced by multiplying it by the following ratio:

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

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

Section 2.1 If this plan was a defined benefit excess plan as of the latest fresh-start date, the frozen accrued benefit of each participant in the fresh-start group will be increased, to the extent necessary, if any, so that the base benefit percentage, determined with reference to all of the participant's years of credited

- LRM 25 – Adjustments to Frozen Accrued Benefit -

service as of the latest fresh-start date, is not less than 50 percent of the excess benefit percentage as of the latest fresh-start date, determined with reference to all of the participant's years of credited service as of the latest fresh-start date. For this purpose, a defined benefit excess plan is a defined benefit plan under which the rate at which employer-provided benefits are determined with respect to average annual compensation above the integration level under the plan is greater than the rate at which employer-provided benefits are determined with respect to average annual compensation at or below the integration level.

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

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

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

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

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

- LRM 25 – Adjustments to Frozen Accrued Benefit -

(a) Old compensation fraction

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

(b) New compensation fraction

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

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

(c) Reconstructed compensation fraction

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

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

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

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

- LRM 25 – Adjustments to Frozen Accrued Benefit -

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

(d) Alternative adjustment

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

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

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

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

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

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

- LRM 25 – Adjustments to Frozen Accrued Benefit -

The denominator of the fraction is the participant's average compensation for the last day of the plan year beginning before January 1, 1989, using the definition and compensation formula in effect last day of the last plan year beginning before January 1, 1989.

- (3) Determine the TRA '86 section 401(a)(17) participant's frozen accrued benefit as of the last day of the last plan year beginning before January 1, 1994.
- (4) Subtract the amount determined in step 2 from the amount determined in step 3.
- (5) Adjust the amount in step 4 by multiplying it by the following fraction (not less than 1). The numerator of the fraction is the TRA '86 section 401(a)(17) participant's average compensation determined for the current year (as limited by section 401(a)(17)), using the same definition and compensation formula in effect as of the last day of the last plan year beginning before January 1, 1994. The denominator of the fraction is the participant's average compensation for the last day of the plan year beginning before January 1, 1994, using the definition and compensation formula in effect as of the last day of the last plan year beginning before January 1, 1994.
- (6) Adjust the amount in step 1 by multiplying it by the following fraction (not less than 1). The numerator of the fraction is the TRA '86 section 401(a)(17) participant's average compensation for the current year (as limited by section 401(a)(17)), using the same definition of compensation and compensation formula in effect as of the last day of the last plan year beginning before January 1, 1989. The denominator of the fraction is the participant's average compensation for the last day of the last plan year beginning before January 1, 1989, using the definition and compensation formula in effect as of the last day of the last plan year beginning before January 1, 1989.
- (7) Add the amounts determined in step 5, and the greater of steps 6 or 2.

Sample Adoption Agreement Language:

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

[] Old compensation fraction

[] New compensation fraction

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

- LRM 25 – Adjustments to Frozen Accrued Benefit -

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

() 1989

() 1990

() 1991

() 1992

() 1993

() 1994

Alternative adjustment

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

-LRM 26 – Plan Benefits-Plans Not Providing For Permitted Disparity -

26. Document Provision:

Statement of Requirement: **Current benefit formulas -- Plans not providing for permitted disparity and using the fractional accrual rule, IRC 401(a)(4); Regs. 1.401 (a) (4) -3 (b) (4) .**

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

Unit Credit Plans

Sample Adoption Agreement Language:

Each participant will receive a benefit payable at normal retirement age equal to _____ % of average annual compensation for each year of credited service up to a maximum of _____ (no less than 25) years of credited service. This benefit is

- LRM 26 – Plan Benefits – Plans Not Providing For Permitted Disparity -

accrued under the fractional accrual rule in section _____ with the plan (other than plans that satisfy section 411(b)(1)(F) of the Internal Revenue Code).

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

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

Sample Adoption Agreement Language:

Each participant shall receive a benefit payable at normal retirement age equal to _____ % of average annual compensation (R1) per year for the first _____ years of credited service (y) and _____ % of average annual compensation (R2) per year for the next _____ years of credited service (such that the total years of credited service taken into account under R1 and R2 is not less than 33).

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

$$\frac{(R1) (25-y) \text{ (but in no case less than 0)}}{33-y}$$

and not greater than $\frac{(R1)(44 - y)}{33-y}$.

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

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

Flat Benefit Plans:

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

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

- LRM 27 – Plan Benefits – Plans Providing For Permitted Disparity -

27. Document Provision.

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

Sample Adoption Agreement Language:

EXCESS BENEFIT PLANS

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

(1) () Unit credit:

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

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

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

- LRM 27 - Plan Benefits – Plans Providing for Permitted Disparity -

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

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

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

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

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

(2) () Flat Benefit

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

- LRM 27 - Plan Benefits – Plans Providing for Permitted Disparity -

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

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

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

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

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

If this cumulative disparity adjustment is applicable, the participant's benefit will be increased as follows:

- (A) Subtract the participant's base benefit percentage from the participant's excess benefit percentage (after modification in accordance with the paragraphs preceding this cumulative disparity adjustment).
- (B) Divide the result in (A) by the participant's years of credited service under the plan projected to the later of normal retirement age or current age, not to exceed 35 years of credited service .

- LRM 27 - Plan Benefits – Plans Providing for Permitted Disparity -

- (C) Multiply the result in (B) by the number of years by which the participant's cumulative disparity years exceed 35.
- (D) Add the result in (C) to the participant's base benefit percentage determined prior to this cumulative disparity adjustment.

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

OFFSET PLANS

(1) () Unit benefit:

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

(a)(i) _____ % (gross benefit percentage) times average annual compensation for the plan year times each year of credited service offset by _____ % (offset percentage – not to exceed the maximum offset allowance) times final average annual compensation up to the offset level times each year of credited service. The offset percentage for any participant shall not exceed one-half of the gross benefit percentage, multiplied by a fraction (not to exceed one), the numerator of which is the participant's average annual compensation, and the denominator of which is the participant's final average compensation up to the offset level. The maximum number of years of credited service taken into account under this paragraph will be _____ (may not exceed 35, and, if benefits after the latest fresh-start date are determined under the fractional accrual rule in section _____ of the plan or the plan satisfies section 411(b)(1)(F) of the Internal Revenue Code, may not be less than 25).

- LRM 27 - Plan Benefits – Plans Providing for Permitted Disparity -

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

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

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

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

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

Overall permitted disparity limit: For any plan year this plan benefits any participant who benefits under another qualified plan or simplified employee pension maintained

- LRM 27 - Plan Benefits – Plans Providing for Permitted Disparity -

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

(2) () Flat Benefit

_____ % (gross benefit percentage) times average annual compensation offset by _____ % (offset percentage -- not to exceed the maximum offset allowance) times final average compensation up to the offset level. The offset percentage for any participant shall not exceed one-half of the gross benefit percentage, multiplied by a fraction (not to exceed one), the numerator of which is the participant's average annual compensation, and the denominator of which is the participant's final average compensation up to the offset level.

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

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

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

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

Cumulative permitted disparity adjustment: If the number of the participant's cumulative permitted disparity years exceeds 35, the offset percentage will be further adjusted as provided below. A participants cumulative disparity years

- LRM 27 - Plan Benefits – Plans Providing for Permitted Disparity -

consist of the sum of: (1) the total years of credited service a participant is projected to have earned under this plan by the end of the plan year containing the participant's normal retirement age and subsequent years of credited service, if any, (the total not to exceed 35), and (2) the number of years credited to the participant for purposes of the benefit formula or the accrual method under the plan under one or more other qualified plans or simplified employee pensions maintained by the employer (other than years counted in (1), and not including any years credited to the participant under such other qualified plans or simplified employee pension after the participant has earned 35 years of credited service under this plan). For purposes of determining the participant's cumulative permitted disparity limit, all years ending in the same calendar year are treated as the same year.

If this cumulative disparity adjustment is applicable, the offset percentage will be further adjusted as follows:

- (A) Divide the offset percentage (after modification in accordance with the paragraphs preceding this cumulative disparity adjustment) by the participant's years of credited service under this plan projected to the later of normal retirement age or current age, not to exceed 35 years of credited service.
- (B) Multiply the result in (A) by the number of years by which the participant's cumulative disparity years exceed 35.
- (C) Subtract the result in (B) from the offset percentage determined prior to this cumulative disparity adjustment.

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

- LRM 27 - Plan Benefits – Plans Providing for Permitted Disparity -

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

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

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

Table I

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

Table

Normal Form of Benefit					
Life annuity + year certain	Adjustment NRA	Life annuity	Life annuity +	Life annuity +	Life annuity +
		1.00	0.97	0.91	0.84
			5 year certain	10 year certain	15 year certain
0.40665		0.520	0.504	0.473	0.437
0.379 64		0.486	0.471	0.442	0.408
0.351 63		0.450	0.437	0.410	0.378
0.324 62		0.416	0.404	0.379	0.349
0.298 61		0.382	0.370	0.347	0.321
0.270 60		0.346	0.336	0.315	0.291
0.257 59		0.330	0.320	0.300	0.277
0.243 58		0.312	0.303	0.284	0.262
0.230 57		0.294	0.286	0.268	0.247
0.217 56		0.278	0.269	0.253	0.233
0.203 55		0.260	0.252	0.237	0.218

- LRM 27 - Plan Benefits – Plans Providing For Permitted Disparity -

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

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

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

- (1) () such participant's covered compensation for the plan year.
- (2) () the greater of \$10,000 or one-half of the covered compensation of any person who attains social security retirement age during the calendar year in which the plan year begins.
- (3) () \$ _____ (a single dollar amount not to exceed the greater of \$10,000 or one-half of covered compensation of any person who attains social security retirement age during the calendar year in which the plan year begins).
- (4) () \$ _____ (a single dollar amount that exceeds the greater of \$10,000 or one-half of covered compensation of any person who attains social security retirement age during the calendar year in which the plan year begins, but not to exceed the greater of \$25,450 or 150% of the covered compensation of an individual attaining social security retirement age in the current plan year.
- (5) () a uniform percentage equal to _____% (greater than 100 percent but not greater than 150 percent of each participant's covered compensation for the current year, and in no event in excess of the taxable wage base [for excess plans], or final average compensation. [for offset plans])

- LRM 27 - Plan Benefits – Plans Providing for Permitted Disparity -

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

(Note to reviewer: An M&P plan may contain integration levels (or offset levels), not specified above that require greater reductions in the 0.75-percent factor. A plan that allows the employer to elect such integration levels must ensure that the maximum excess or offset allowance is appropriately limited. Because standardized plans that provide for disparity must meet the permitted disparity requirements of section 401(l) in form (see section 1.401(a)(4)-3(b)(6)(ii)) and nonstandardized plans that provide for disparity must generally allow the option of satisfying section 401(l) in form, these plans may not allow the employer to elect the intermediate amount integration level (or offset level) under section 1.401(l)-3(d)(5), as that option requires the employer to demonstrate compliance with the demographic requirements of section 1.401(l)-3(d)(8).)

(optional provision:)

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

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

- (a) _____ % per year, or
- (b) the percentage adjustment to social security benefits for the year under section 215(i)(2)(A) of the Social Security Act.

- LRM 27A – Definitions – Plans Providing For Permitted Disparity -

27A. Document Provision:

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

Sample Plan Language:

1. Covered compensation. A participant's covered compensation for a plan year is the average (without indexing) of the taxable wage bases in effect for each calendar year during the 35-year period ending with the last day of the

- LRM 27A – Definitions – Plans Providing for Permitted Disparity -

calendar year in which the participant attains (or will attain) social security retirement age. No increase in covered compensation shall decrease a participant's accrued benefit under the plan.

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

(Note to reviewer: The blank above should be filled in with the section of the Adoption Agreement that corresponds with the sample adoption agreement language immediately following this Definitions section of LRM #27A.)

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

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

Sample Adoption Agreement Language:

Covered compensation will be determined based on the following year:

[] current plan year

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

Sample Plan Language:

2. Final average compensation.

[OFFSET PLANS ONLY]

- LRM 27A – Definitions – Plans Providing for Permitted Disparity -

A participant's final average compensation is the average of the participant's annual compensation, as defined in section ____ of the plan, from the employer for the 3-consecutive year period ending with or within the plan year. If a participant's entire period of employment with the employer is less than three consecutive years, compensation is averaged on an annual basis over the participant's entire period of employment. Compensation for any year in excess of the taxable wage base in effect at the beginning of such year shall not be taken into account.

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

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

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

- LRM 27B – Adjustments for Benefits -

27B. Document Provision:

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

Section 1.

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

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

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

- LRM 27B – Adjustments for Benefits -

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

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

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

(Note to reviewer: Section 1.401(I)-3(e) of the regulations requires a reduction in the 0.75 factor in the maximum excess or offset allowance with respect to benefits payable prior to a participant's social security retirement age using factors set forth in the regulations. The tables below incorporate these factors.)

Table I

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

Table II

Life annuity + year certain	Normal Form of Benefit			
	Life	Life annuity + 5 year certain	Life annuity + Life 10 year certain	annuity + 15 year certain 20
Adjustment 0.78	1.00	0.97	0.91	0.84
Age at which benefits commence				
70	0.838	0.813	0.763	0.704
0.654				
69	0.760	0.737	0.692	0.638
0.593				
68	0.690	0.670	0.628	0.580
0.539				
67	0.627	0.608	0.571	0.527
0.489				

-LRM 27B, Adjustments For Benefits -

66	0.571	0.554	0.520	0.480
0.446				
65	0.520	0.504	0.473	0.437
0.406				
64	0.486	0.471	0.442	0.408
0.379				
63	0.450	0.437	0.410	0.378
0.351				
62	0.416	0.404	0.379	0.349
0.324				
61	0.382	0.370	0.347	0.321
0.298				
60	0.346	0.336	0.315	0.291
0.270				
59	0.330	0.320	0.300	0.277
0.257				
58	0.312	0.303	0.284	0.262
0.243				
57	0.294	0.286	0.268	0.247
0.230				
56	0.278	0.269	0.253	0.233
0.217				
55	0.260	0.252	0.237	0.218
0.203				

- LRM 27B – Adjustments for Benefits -

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

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

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

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

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

- LRM 27C – Employee Contributions -

27C. Document Provision.

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

- LRM 27C – Employee Contributions -

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

- LRM – 27D – Permitted Disparity with Respect to Employer Provided Benefits -

LRM 27D. Document Provision.

Statement of Requirement: Permitted disparity with respect to employer-provided benefits - Fully insured § 412(i) plans, Regs. §1.401(a)(4)-3(b)(5), Rev. Proc. 2005-16, §6.03(16).

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

- LRM 27E - Integration with Social Security –

27E. Document Provision.

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

Sample Plan Language:

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

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

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

Section 2. As of a plan year, the final pay limitation will not be applied to the extent that its application would result in a decrease in a participant's accrued benefit as of the close of the immediately preceding plan year, or to the extent that its

- LRM 27E – Integration with Social Security -

application would provide a participant with an employer-provided accrued retirement benefit that is lower than the section 416 minimum benefit required to be provided under the plan with respect to top-heavy plan years and accrued by the participant as of the current plan year.

Section 3. Definitions

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

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

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

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

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

- LRM 27E – Integration with Social Security -

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

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

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

- LRM 27F – Retroactive Amendments -

27F. Document Provision.

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

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

- LRM 27F – Retroactive Amendments –

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

Sample Plan Language:

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

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

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

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

- LRM 28 – Benefit Increase – Fully Insured Plans -

28. Document Provision:

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

(Note to reviewer: A fully insured plan may provide that the amount of retirement benefit provided by insurance or annuity contracts will not be provided or increased until the participant's compensation is large enough to provide or increase the retirement benefit by a specified minimum amount. This minimum amount can be no greater than \$120 per year or \$10 per month. It can also be expressed in terms of an increase in the face amount of the pre-retirement death benefit under a contract, if the minimum increase in face amount does not exceed \$1,000. These minimums are also applicable to insured pre-retirement death benefits (but not retirement benefits) under nonfully insured plans. Such a plan may require a minimum, not exceeding \$1,000, before it will provide or increase an insured pre-retirement death benefit. For example, if the pre-retirement death benefit is 100 times the anticipated monthly pension, no more than \$10 per month anticipated monthly pension can be required as a pre-condition for insuring that death benefit.)

- LRM 29 – Definition of Year of Participation –

29. Document Provision:

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

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

Sample Plan Language:

Provision #1

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

Provision #2

Year of participation shall mean a plan year during which the participant completes 2,000 hours of service. If the participant either completes more than 500 hours of service during the plan year or is employed on the last day of the plan year but has less than 2,000 hours of service during the plan year, such participant shall receive an accrual for such year which bears the same ratio to a full accrual as the number of hours the participant actually completes bears to 2,000. Such participant's benefit for such partial year shall be based upon the compensation the participant would have earned if the participant had completed 2,000 hours of service.

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

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

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

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

- LRM 30 – Definition of Year of Credited Service -

30. Document Provision:

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

Sample Plan Language:

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

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

- LRM 31 – Formula to Determine Accrued Benefit -

31. Document Provision:

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

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

Sample Plan Language

Provision #1

- 133 1/3% Rule:

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

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

- LRM 31 – Formula to Determine Accrued Benefit -

Provision #2

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

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

A participant's accrued benefit at any time shall equal 3 percent of the normal retirement benefit, multiplied by the number of years of participation (not in excess of 33-1/3), including years after normal retirement age. For purposes of determining accrued benefits, the normal retirement benefit is the benefit to which the participant would be entitled if participation commenced at the earliest possible entry age for any individual who is or could be a participant under the plan and if the participant served continuously until the earlier of age 65 or the normal retirement age under this plan. The normal retirement benefit to which a participant would be entitled shall be determined as if the participant continued to earn annually the average rate of compensation earned during the five (5) consecutive years of service for which such participant's compensation was the highest.

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

Provision #3

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

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

A participant's accrued benefit at any time equals the product of the normal retirement benefit multiplied by a fraction, the numerator of which is the number of years of credited service at such time, and the denominator of which is the number of years of credited service the participant would have at the later of the year containing the participant's normal retirement age or the current year. However, if this plan has had a fresh-start, and after the latest fresh-start date, the fresh-start rule used under the plan is the formula with wear-away, the amount in the preceding sentence will not be less than the participant's frozen accrued benefit. If this plan has had a fresh-start, and after the latest fresh-start

- LRM 31 – Formula to Determine Accrued Benefit -

date, the fresh-start rule used under the plan is the formula with extended wear-away, in determining the participant's accrued benefit with respect to years of credited service after the latest fresh-start date under the formula without wear-away, the numerator in the fraction above will be limited to the participant's years of credited service after the latest fresh-start date. When determining the accrued benefit, the normal retirement benefit is the annual benefit to which the participant would be entitled if the participant continues to earn annually until the later of the year containing the participant's normal retirement age or the current year, the participant's current average annual compensation. This rate of compensation is computed on the basis of average annual compensation taken into account under the plan (but not to exceed the ten years of service immediately preceding the determination).

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

Fully-Insured Section 412(i) Plans

See Rev. Proc. 2005-16, 6.03(16)

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

- 1) satisfy the accrual rule of Code section 411(b)(1)(F) (see LRM #32);**
- 2) constitute an insurance contract plan within the meaning of Code section 412(i) (see LRM #32);**
- 3) incorporate the section 412(i) fresh-start rule in LRM #23 and the definition of frozen projected benefit in LRM #32.**
- 4) contain a benefit formula that would satisfy the requirements of either Regulations section 1.401(a)(4)- 3 (b) (4) (i) (C) (1) (safe harbor for unit credit plans using fractional accrual rule) or (C) (2) (safe harbor for flat benefit plans) if the participant's stated normal retirement benefit accrued ratably over each employee's period of plan participation through normal retirement age.**
- 5) provide that the scheduled premium payments under an individual or group insurance contract used to fund an employee's normal retirement benefit are level annual payments to normal retirement age (see LRM #32);**

- LRM 31 – Formula to Determine Accrued Benefit -

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

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

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

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

- LRM 32 Section 412(i) Plan Rules –

32. Document Provision:

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

Sample Plan Language:

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

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

- LRM 32 – Section 412 (i) Plans Rules -

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

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

Sample Plan Language:

[A. DEFINITION OF FROZEN PROJECTED BENEFIT]:

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

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

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

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

If the plan provides a new optional form of benefit with respect to a participant's frozen projected benefit, such new optional form of benefit will be provided with respect to each participant's entire projected benefit ,and the participant's

- LRM 32 – Section 412(i) Plan Rules -

projected benefit minus the participant's frozen projected benefit will be equal to at least .5% times the participant's years of service after the fresh-start date, up to and including the year the participant attains normal retirement age (or current age, if later).

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

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

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

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

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

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

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

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

- LRM 32 – Section 412(i) Plan Rules -

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

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

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

- LRM 33 – Pre-ERISA Accruals -

33. Document Provision:

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

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

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

- LRM 34 – Definition of Normal Retirement Benefit –

34. Document Provision:

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

- LRM 34 – Definition of Normal Retirement Benefit -

Sample Plan Language:

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

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

- LRM 35 – Accrual Limitations Based Upon Age Not Permitted -

35. Document Provision:

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

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

Sample Plan Language:

If as a result of additional benefit accruals after a participant attains normal retirement age the accrued benefit of such participant would exceed the limitations under section _____ of the plan for the Limitation Year, immediately before the additional benefit accrues that would cause such participant's benefit to exceed the limitations of section _____ of the plan, payment of benefits to such participant will be suspended in accordance with section _____ of the plan, if applicable; otherwise, distribution of the participant's benefit will commence.

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

- LRM 36 – Contributions Subject to ACP Test -

EMPLOYEE CONTRIBUTIONS

36. Document Provision:

Statement of Requirement: **M&P DB Plan May Not Provide for Employee Contributions, Rev. Proc. 2005-16, §6.03(10).**

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

(Note to reviewer: The following LRM provisions #37 and #38 are required if the plan previously accepted nondeductible voluntary employee contributions.)

- LRM 37 – Separate Account – Employee Contributions -

37. Document Provision:

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

Sample Plan Language:

The plan administrator will not accept nondeductible employee contributions in plan years beginning after the date the plan is restated for the Economic Growth and Tax Relief Reconciliation Act of 2001, as indicated in the adoption agreement. A separate account shall be maintained for the nondeductible voluntary employee contributions of each participant made in plan years beginning on or before this date. The assets of the plan will be valued annually at fair market value as of the last day of the plan year. On such date, the earnings and losses of the plan attributable to the accumulated nondeductible voluntary contributions will be allocated to each participant's nondeductible voluntary contributions account in the ratio that such account balance bears to all such account balances.

- LRM 38 – Nonforfeitability of Employee Contributions -

38. Document Provision:

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

- LRM 38 – Nonforfeitability of Employee Contributions -

Sample Plan Language:

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

- LRM 39 – Deductible Voluntary Employee Contributions -

39. Document Provision:

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

(Note to reviewer: The following provision is required if the plan permitted deductible employee contributions prior to January 1, 1987.)

Sample Plan Language:

The plan administrator will not accept deductible employee contributions which are made for a taxable year beginning after December 31, 1986. Contributions made prior to that date will be maintained in a separate account which will be nonforfeitable at all times. The assets of the plan will be valued annually at fair market value as of the last day of the plan year. On such date, the earnings and losses of the plan attributable to the accumulated deductible voluntary contribution will be allocated to each participant's deductible voluntary contributions account in the ratio that such account balance bears to all such account balances. No part of the deductible voluntary contribution account will be used to purchase life insurance. Subject to section joint and survivor annuity requirements (if applicable), the participant may withdraw any part of the deductible voluntary contribution account by making a written application to the plan administrator.

- LRM 40 – Section 415 Limitation on Benefits -

40. Document Provision:

Statement of Requirement: **Limitation on benefits, IRC §415; Regs. §§1.415(a)-1, 1.415(b)-1, 1.415(c)-1, 1.415(c)-2, 1.415(d)-1, 1.415(f)-1, 1.415(g)-1 and 1.415(j)-1; Notice 99-44, 1999-2 C.B.326; Notice 2001-37, 2001-1 C.B. 1340; Notice 2001-42, 2001-2 C.B. 70; Notice 2004-78, 2004-2 C.B. 879; Rev. Rul. 2001-51, 2001-2 C.B. 427; Rev. Rul. 2001-62, 2001-2 C.B. 632; Rev. Rul. 2002-27, 2002-1 C.B. 925; Rev. Proc. 2005-16, 2005-1 C.B. 674, sections 5.06 and 6.03(13); Rev. Proc. 2007-44, 2007-28 I.R.B, section 5.**

Sample Plan Language:

Article _____ : Limitation on Benefits

- LRM 40 – Section 415 Limitation on Benefits -

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

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

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

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

(Note to Reviewer: The above blank should be filled in with the section number of the adoption agreement where the employer has stated the order and manner in which benefits will be limited (without involving employer discretion) when an employee with benefits under more than one defined benefit plan of the employer (as defined in section 6.5 of this LRM) or a predecessor employer has a total benefit under all such defined benefit plans that exceeds the Maximum Permissible Benefit. (This language is not provided.) If the employer maintains more than one defined benefit plan covering some of the same participants, the employer must request a determination letter in order to have reliance with respect to the requirements of § 415. See sections 5.06, 19.01(1) and 19.02(1) of Rev. Proc. 2005-16 and paragraph A of the sample adoption agreement provisions of this LRM.)

Section 4. The application of the provisions of this article shall not cause the Maximum Permissible Benefit for any participant to be less than the participant's accrued benefit under all the defined benefit plans of the employer or a

- LRM 40 – Section 415 Limitation on Benefits -

predecessor employer as of the end of the last Limitation Year beginning before July 1, 2007 under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to § 415 of the Internal Revenue Code in effect as of the end of the last Limitation Year beginning before July 1, 2007, as described in § 1.415(a)-1(g)(4) of the Income Tax Regulations.

(Note to Reviewer: Section 1.415(c)-2(f) of the Income Tax Regulations requires that the definition of compensation used in applying the limitations of § 415 not reflect compensation for a year that is in excess of the limitation of § 401(a)(17) that applies to that year. See section 6.7 of this LRM #40. Plan provisions will not be treated as failing to satisfy the requirements of the last sentence of the preceding paragraph merely because, under provisions of the plan adopted and in effect before April 5, 2007, the plan's definition of compensation used for purposes of the limitations of § 415(b)(1)(B) reflects compensation for a year in excess of the limitation of § 401(a)(17) that applies to that year. However, for any participant with benefits grandfathered under section 4 of this LRM #40, the plan's provisions regarding post-NRA accruals and actuarial increases for deferred benefits must be coordinated with the limitations of this article to ensure that the plan does not violate § 401(a). Such a violation may be avoided if the plan provides for payment of benefits at NRA, despite continued employment, or if the plan already provides for the suspension of benefits in accordance with § 411(a)(3)(B). See Q&A-4 of Rev. Rul. 2001-51 and LRMs # 35, #42 - section 4, and #55.)

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

Section 6. Definitions.

Section 6.1. Annual Benefit: A benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this article. For a participant who has or will have distributions commencing at more than one annuity starting date, the Annual Benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations

- LRM 40 – Section 415 Limitation on Benefits -

of this article as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to § 1.401(a)-20, Q&A 10(d), and with regard to § 1.415(b)-1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.

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

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

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

(a) Benefit Forms Not Subject to § 417(e)(3): The straight life annuity that is actuarially equivalent to the participant's form of benefit shall be determined under this section 6.1(a) if the form of the participant's benefit is either (1) a nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or (2) an annuity that decreases during the life of the participant merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in § 401(a)(11)).

- LRM 40 – Section 415 Limitation on Benefits -

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

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

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

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

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

(i) Annuity Starting Date in Plan Years Beginning After 2005. If the annuity starting date of the participant's form of benefit is in a plan year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of (I) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of

- LRM 40 – Section 415 Limitation on Benefits -

benefit, computed using the interest rate specified in section _____ of the plan and the mortality table (or other tabular factor) specified in section _____ of the plan for adjusting benefits in the same form; (II) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using a 5.5 percent interest rate assumption and the applicable mortality table defined in section _____ of the plan; and (III) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using the applicable interest rate defined in section _____ of the plan and the applicable mortality table defined in section _____ of the plan, divided by 1.05.

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

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

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

If the annuity starting date of the participant's benefit is on or after the first day of the first plan year beginning in 2004 and before December 31, 2004, the application of this section 6.1(b)(ii) shall not cause the amount payable under the

- LRM 40 – Section 415 Limitation on Benefits -

participant's form of benefit to be less than the benefit calculated under the plan, taking into account the limitations of this article, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the participant's form of benefit, computed using whichever of the following produces the greatest annual amount:

(I) the interest rate specified in section _____ of the plan and the mortality table (or other tabular factor) specified in section _____ of the plan for adjusting benefits in the same form;

(Note to Reviewer: The two blanks above should be filled in with the section numbers of the plan that specify, respectively, the interest rate and mortality table specified for such actuarial equivalence.)

(II) the applicable interest rate defined in section _____ of the plan and the applicable mortality table defined in section _____ of the plan; and

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

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

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

(Note to Reviewer: Section 6.1(b)(ii) reflects the amendment to § 415(b)(2)(E)(ii) made by § 101(b)(4) of the Pension Funding Equity Act of 2004 and the transition rule under § 101(d)(3) of PFEA '04, as described in Notice 2004-78. Section 101(c)(1) of PFEA '04 provides relief from the requirements of § 411(d)(6) of the Code and § 204(g) of ERISA for plan amendments adopted pursuant to § 101 of PFEA '04 that are timely adopted and complied with in operation as of the effective date of the amendment. Q&A 6 of Notice 2004-78 provides, in part, that this relief applies to a plan amendment for §

- LRM 40 Section 415 Limitation on Benefits -

101(b)(4) of PFEA '04 that reflects an alternative, reasonable interpretation of the transition rule in § 101(d)(3) of PFEA '04, but that results in a lower distribution amount, as well as to a plan amendment that does not implement § 101(d)(3) of PFEA '04.)

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

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

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

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

(c) 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 includible in gross income (including, but not limited to, commissions paid salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in § 1.62-2(c) of the Income Tax Regulations), and excluding the following:

- LRM 40 Section 415 Limitation on Benefits -

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

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

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

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

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

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

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

Except as provided herein, for Limitation Years beginning after December 31, 1991, compensation for a Limitation Year is the compensation actually paid or made available during such Limitation Year. If elected by the employer in section _____ of the adoption agreement, compensation for a Limitation Year shall include amounts earned but not paid during the Limitation Year solely because of the

- LRM 40 – Section 415 Limitation on Benefits -

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

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

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

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

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

(Note to Reviewer: The blank should be filled in with the section number of the adoption agreement where the employer may elect to include in compensation certain post-severance pay for unused accrued leave as well as post-severance payments from a nonqualified unfunded plan of deferred compensation. See paragraph G of the sample adoption agreement provisions of this LRM.)

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

- LRM 48 – Early Retirement with Age and Service Requirement -

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.

- LRM 49 Conflicts with Annuity Contracts -

49. Document Provision:

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

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

- LRM 50 – Nontransferability of Annuities -

50. Document Provision:

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

Sample Plan Language:

Any annuity contract distributed herefrom must be nontransferable.

- LRM 51 – Timing and Modes of Distribution – 401(a)(9) -

51. Document Provision:

Statement of Requirement: **Timing and modes of distribution, IRC § 401(a)(9); Regs. § 1.401(a)(9); Regs. § 1.411(d)-4, Q&A 10, Announcement 97-24, 1997- 11 I.R.B. 24, Notice 97-75, 1997- 2 C.B. 337.**

Sample Plan Language:

Article ____ . DISTRIBUTION REQUIREMENTS.

Section 1. General Rules.

1.1. Precedence and Effective Date. 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, 2002.

- LRM 59 – BIS and YOS Must be Measured on the Same Computation Period -

59. Document Provision:

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

Sample Plan Language :

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

- LRM 60 – Full Vesting Upon Normal Retirement Age -

60. Document Provision:

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

Sample Plan Language:

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

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

- LRM 61 – Optional Vesting Schedules -

61. Document Provision:

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

(Note to reviewer: If the plan provides vesting schedules other than those given in the Code (411(a)(2) for regular schedules; 416(b)(1) for top-heavy schedules, See LRM 64), the optional schedules must be at least as favorable as the statutory schedules.

- LRM 62 – Crediting Years of Service – Vesting -

62. Document Provision:

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

- LRM 82 – Master Trust or Custodial Account -

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

- LRM 83 – Master Trust – Disqualification of Plan -

83. Document Provision:

Statement of Requirement: **Master trust - disqualification of plan.
Rev. Rul. 71-461, 1971-2 C.B. 227.**

Sample Plan Language:

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

- LRM 84 – Crediting Service with Predecessor Employer -

84. Document Provision:

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

Sample Plan Language:

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

85. [RESERVED]

- LRM 86 – Conflict with Insurance Contracts –

86. Document Provision:

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

Sample Plan Language :

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

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

- LRM 87 – Treatment of Insurance Dividends – Fully – Insured Plans -

87. Document Provision :

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

– LRM 107 – Reliance on Opinion Letter –

107. Document Provision:

Statement of Requirement: Reliance, Rev. Proc. 2007-6, Rev. Proc. 2005-16, §5.10, §5.11, 6, 19.

(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 rely on an opinion letter issued by the Internal Revenue Service as evidence that the plan is qualified under § 401 of the Internal Revenue Code only to the extent provided in Rev. Proc. 2005-16.

The employer may not rely on the opinion letter in certain other circumstances or with respect to certain qualification requirements, which are specified in the opinion letter issued with respect to the plan and in Rev. Proc. 2005-16.

In order to have reliance in such circumstances or with respect to such qualification requirements, application for a determination letter must be made to Employee Plans Determinations of the Internal Revenue Service.

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

- LRM 108- Election of Total Compensation -

108. Document Provision:

Statement of Requirement: Election of total compensation. Rev. Proc. 2005-16, §5.03.

(Note to reviewer: The plan and/or adoption agreement must allow the employer the option to select total compensation as the compensation to be used in determining benefits. See LRM #6 for the acceptable definitions of compensation.)