

**SUNGARD CORBEL LLC**  
**401(k) PROFIT SHARING**  
**PLAN AND TRUST**  
**ADOPTION AGREEMENT GUIDE**



## SUNGARD CORBEL LLC

### 401(k) PROFIT SHARING PLAN AND TRUST

#### ADOPTION AGREEMENT GUIDE

This Adoption Agreement Guide is intended to assist you in completing the Adoption Agreement. It is intended to make this task as simple as possible, while at the same time pointing out the effect certain selections may have on the plan being adopted. The Basic Plan Document (BPD), including the Adoption Agreement, is a legal document and should be reviewed by your legal counsel or advisor prior to its execution.

#### GENERAL INFORMATION

A 401(k) plan is attractive to both employers and employees. Employees benefit because pre-tax or, if selected, Roth elective deferrals, are contributed to the plan on their behalf and accumulate in a tax-deferred or tax-free environment. This allows employees to accumulate significant retirement savings over time, which is especially attractive because of the restrictions imposed on making tax-deductible contributions to IRAs.

#### STANDARDIZED vs. NON-STANDARDIZED ADOPTION AGREEMENTS

You must decide whether to adopt a Standardized or Non-standardized Adoption Agreement. In most cases, you can adopt either a Standardized or Non-standardized Prototype and have reliance that the "form" of the plan satisfies the qualification requirements. Therefore, a determination letter generally does not need to be obtained from the IRS. In addition, by adopting a Standardized plan, you can be assured that by following the terms of the plan, you will be in compliance with the law. In order to ensure that compliance requirements are satisfied, a Standardized Adoption Agreement provides less flexible plan design options and more liberal rights for participants. On the other hand, a Non-standardized plan is more flexible but you might not have reliance that the plan will always be in compliance. Therefore, you must determine which Adoption Agreement is appropriate for your business. Some of the restrictions in a Standardized Adoption Agreement include:

**Eligible Employees:** All employees must be eligible to participate, except for certain union or nonresident alien employees. You cannot have, for example, a "salaried only" Standardized plan. However, the plan may still impose the statutory age and service restrictions for eligibility to join the plan. If you wish to exclude a "non-statutory" class of employees from participation, then you must use a Non-standardized Adoption Agreement. In addition, if there are two or more entities that are part of a controlled group or an affiliated service group, then the employees of all such entities must be eligible to participate in the plan under a Standardized Adoption Agreement. A single Adoption Agreement (Standardized or Non-standardized) cannot be adopted by two or more business entities unless the entities are part of a controlled group or an affiliated service group. The determination of whether two entities are part of a controlled group or an affiliated service group can be complex and should be made by someone with a thorough understanding of the rules. If two entities are not part of a controlled group or an affiliated service group but want to use the same plan document, then you must adopt a volume submitter plan or an individually designed plan.

**Compensation:** All compensation must be counted for benefit purposes. Commissions, bonuses, etc., may not be excluded. Exclusions are generally permitted on a Non-standardized Adoption Agreement.

**Contribution Allocations:** All active participants and participants who terminate employment during a plan year with more than 500 hours of service must share in allocations for the year. A Non-standardized Adoption Agreement can require that employees complete 1,000 hours of service and/or be employed on the last day of the plan year to share in allocations.

**USE OF BLANK LINES INCLUDING "DESCRIBE" or "OTHER" LINES**

The Adoption Agreement offers great design flexibility using only the check boxes. However, in some cases, it will be necessary for you to fill-in blank lines or to use one or more of the "describe" or "other" lines to achieve your desired result. Use care in the completion of a blank line (including a "describe" or "other" line) to supply necessary information for an election or to cover an unusual situation not addressed in the check-box elections. In most cases, these options have parameters associated with the completion of the blank lines. If you follow these parameters when completing the Adoption Agreement, then you continue to have reliance on the terms of the pre-approved plan.

**1. EMPLOYER'S NAME, ADDRESS, TELEPHONE NUMBER AND TIN**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Street

\_\_\_\_\_ City

\_\_\_\_\_ State

\_\_\_\_\_ Zip

Telephone: \_\_\_\_\_

Taxpayer Identification Number (TIN): \_\_\_\_\_

**1. EMPLOYER'S NAME, ADDRESS, TELEPHONE NUMBER AND TIN**

Enter your business's complete legal name, address, and taxpayer identification number. Since this information may be used in preparing a summary plan description and other important supporting documents, be careful to punctuate properly.

If more than one "Affiliated Employer" is adopting this plan, then this Question should be completed with the appropriate information for the principal business only. The other participating "Affiliated Employers" should sign a participation agreement. For purposes of this plan, the term "Affiliated Employer" is defined in the Basic Plan Document as two or more employers that are treated as a single employer for retirement plan purposes under the Internal Revenue (e.g., where the same individuals own two or more companies). The determination of whether employers are treated as a single employer can be extremely complex and should be made by someone who is familiar with the rules.

Enter your business's 9-digit Taxpayer Identification Number (TIN). Do not use the plan's trust identification number. Additionally, sole proprietors must apply for a separate TIN number. The IRS will not accept a Social Security number as a TIN.

**2. TYPE OF ENTITY**

- a.  Corporation (including Tax-exempt or Non-profit Corporation)
- b.  Professional Service Corporation
- c.  S Corporation
- d.  Limited Liability Company that is taxed as:
  - 1.  a partnership or sole proprietorship
  - 2.  a Corporation
  - 3.  an S Corporation
- e.  Sole Proprietorship
- f.  Partnership (including Limited Liability)
- g.  Other: \_\_\_\_\_ (must be a legal entity recognized under federal income tax laws)

**2. TYPE OF ENTITY**

Select the type of entity which best describes your business. The plan may be adopted by any corporate entity (regular or "S" corporation) or non-corporate entity, including a partnership, limited liability company (LLC), or sole proprietorship. The type of entity selected helps determine appropriate rules for administering the plan. For example, earned income must be used as the compensation for partners, sole proprietors and members of an LLC that is taxed as a partnership. For an S Corporation, the distributive share allocated to owners cannot be used as compensation for qualified plan purposes.

3. EMPLOYER'S FISCAL YEAR means the 12 consecutive month period:

a.  Beginning on \_\_\_\_\_ (e.g., January 1st)  
month day

and ending on \_\_\_\_\_  
month day

b.  Other: \_\_\_\_\_ (must be the period used for IRS reporting purposes)

**3. EMPLOYER'S FISCAL YEAR**

Enter the 12-month period utilized as your fiscal year.

4. AFFILIATED EMPLOYERS/PARTICIPATING EMPLOYERS. Is the Employer a member of a controlled group or an affiliated service group (within the meaning of Code Section 414(b), (c), or (o))?

a.  No.

b.  Yes, Employer is a member of (select all that apply):

1.  a controlled group

2.  an affiliated service group

**AND**, will any of the Affiliated Employers adopt the Plan as Participating Employers?

3.  Yes. (Complete a Participation Agreement for each Participating Employer.)

4.  No. (The Plan could fail to satisfy the Code Section 410(b) coverage rules.)

**4. AFFILIATED EMPLOYERS/PARTICIPATING EMPLOYERS.**

Indicate if your business is a member of a controlled group or an affiliated service group. If two or more businesses are "Affiliated Employers," then the businesses are treated as one employer for qualified retirement plan purposes. If using a Standardized Adoption Agreement, all Affiliated Employers must adopt the plan. If a Non-standardized Adoption Agreement is being used, all Affiliated Employers are not required to adopt the plan.

The determination of whether two or more entities are "Affiliated Employers" is critical. It can affect the plan design as well as whether the qualification requirements are satisfied. Unfortunately, making this determination can be extremely complex and, in many cases, it is recommended that an opinion be obtained from the IRS or an advisor. Make certain all Affiliated Employers who are adopting the plan either execute the last page of the Adoption Agreement or sign a participation agreement. A prototype generally cannot be used for a multiple employer plan which is a plan adopted by two or more employers that are not part of a controlled group or an affiliated service group.

For Standardized plans, the employees of all "Affiliated Employers" will generally be treated as eligible employees for purposes of the plan.

For Non-standardized plans, inclusion of the employees of all "Affiliated Employers" is optional.

**PLAN INFORMATION**

(An amendment to the Adoption Agreement is not needed solely to reflect a change in the information in Questions 9. through 11.)

5. PLAN NAME:

\_\_\_\_\_

**5. PLAN NAME**

Enter the name of the plan, which should be the name of your business followed by the type of plan (e.g. Company A 401(k) Plan); this should be the same for all documentation concerning the plan, including Form 5500. Since this information may be used in preparing the summary plan description and other important supporting documents, be careful to punctuate the plan name properly.

6. EFFECTIVE DATE

- a.  This is a new Plan effective as of \_\_\_\_\_ (hereinafter called the "Effective Date").
- b.  This is an amendment and restatement of a plan which was originally effective \_\_\_\_\_. The effective date of this amendment and restatement is \_\_\_\_\_ (hereinafter called the "Effective Date").
- c.  FOR EGTRRA RESTATEMENTS: This is an amendment and restatement to bring a plan into compliance with the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") and other legislative and regulatory changes. The Plan's original effective date was \_\_\_\_\_. Except as specifically provided in the Plan, the effective date of this amendment and restatement is \_\_\_\_\_ (hereinafter called the "Effective Date"). (May enter a restatement date that is the first day of the current Plan Year. The Plan contains appropriate retroactive effective dates with respect to provisions for the appropriate laws.)

**6. EFFECTIVE DATE**

If this is a new plan, then select option **a.** and enter the effective date of the plan. Salary deferrals may not be made prior to the later of the effective date of the plan or the date your business adopts the plan. If the effective date of the plan entered at option **a.** is earlier than the date deferrals are first permitted, then enter a special effective date for salary deferrals at option **27.I.**

Select option **b.** if the plan is being restated for a reason other than for EGTRRA (the "Economic Growth and Tax Relief Reconciliation Act of 2001") and other laws. Enter the original effective date of the plan and then the effective date of the restatement.

Select option **c.** if the plan is being restated to comply with EGTRRA. Enter the original effective date of the plan and then the effective date of the restatement. For example, if a calendar year plan is being restated in 2008, then the effective date of the restatement should be January 1, 2008.

7. PLAN YEAR means the 12 consecutive month period:

Beginning on \_\_\_\_\_ (e.g., January 1st)  
month                  day

and ending on \_\_\_\_\_  
month                  day

EXCEPT that there will be a Short Plan Year (if the effective date of participation is based on a Plan Year, then coordinate with Question 16.):

- a.  N/A
- b.  beginning on \_\_\_\_\_ (e.g., July 1, 2007)  
month                  day,                  year

and ending on \_\_\_\_\_  
month                  day,                  year

**7. PLAN YEAR**

The plan year is the period of plan operation and administration. In most plans, it coincides with your fiscal year. Note that for SIMPLE plans the plan year must be the calendar year. The plan year must generally be a 12-month period. However, a short plan year may occur when a new plan is established, when a plan year is changed, or when a plan is terminated.

8. VALUATION DATE means:
- a.  Every day that the Trustee (or Insurer), any transfer agent appointed by the Trustee (or Insurer) or the Employer, and any stock exchange used by such agent are open for business (daily valuation).
  - b.  The last day of each Plan Year.
  - c.  The last day of each Plan Year half (semi-annual).
  - d.  The last day of each Plan Year quarter.
  - e.  Other (specify day or days): \_\_\_\_\_ (must be at least once each Plan Year).

**8. VALUATION DATE**

The valuation date is used to determine account values for distributions and allocations. Regardless of any election in the Adoption Agreement, the Plan Administrator is permitted to have interim valuations provided they are done on a uniform and consistent basis. .

9. PLAN NUMBER assigned by the Employer
- a.  001
  - b.  002
  - c.  Other: \_\_\_\_\_

**9. PLAN NUMBER**

Every qualified plan must have a three-digit number which is used for identifying the plan when annual reporting (i.e., Form 5500) is done. If this is your only plan (and no plans have previously been maintained), select option **a.** (001). If not, select **b.** for 002 or enter the appropriate three-digit number at option **c.**

10. TRUSTEE(S) OR INSURER(S):
- a.  This Plan is funded exclusively with Contracts and the name of the Insurer(s) is:
 

(1) \_\_\_\_\_ (2) \_\_\_\_\_ (if more than 2, add names to signature page).

- b.  Individual Trustee(s) who serve as Trustee(s) over assets not subject to control by a corporate Trustee. (Add additional Trustees as necessary.)

Name(s)	Title(s)
_____	_____
_____	_____
_____	_____
_____	_____

- Address and Telephone number:
- 1.  Use Employer address and telephone number.
  - 2.  Use address and telephone number below:

Address: \_\_\_\_\_  
Street

\_\_\_\_\_

City
State
Zip

Telephone: \_\_\_\_\_

c.  Corporate Trustee

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Street

\_\_\_\_\_

City

\_\_\_\_\_

State

\_\_\_\_\_

Zip

Telephone: \_\_\_\_\_

**AND**, the Trustee shall serve as:

d.  a Directed (nondiscretionary) Trustee over all Plan assets except for the following:

\_\_\_\_\_

e.  a Discretionary Trustee over all Plan assets except for the following:

\_\_\_\_\_

**AND**, shall a separate trust agreement that is approved by the IRS for use with this Prototype Plan be used with this Plan?

f.  No.

g.  Yes.

**NOTE:** If Yes is selected, an executed copy of the trust agreement between the Trustee and the Employer must be attached to this Plan. The Plan and trust agreement will be read and construed together. The responsibilities, rights and powers of the Trustee shall be those specified in the trust agreement.

## 10. TRUSTEE(S) OR INSURER(S):

If the plan is funded exclusively with insurance contracts, list the name(s) of the insurer who issues the contracts.

An individual trustee may be an owner, an officer or other key employee of your business. It is advisable to name more than one trustee so that trustee functions can continue if one trustee is not available.

A corporate trustee is usually a bank, insurance company, or similar financial institution. It generally cannot be your business as an entity because state laws have restrictions on which types of business entities can serve as trustees.

The trustee may either be directed (option **d.**) or discretionary (option **e.**). A discretionary trustee has full authority to handle the investment of plan assets. A directed trustee does not have any discretionary authority with respect to the investment of the plan assets. Instead, a directed trustee must act solely at the direction of the plan administrator, the employer, a properly appointed investment manager, the participants, or a named fiduciary that has authority to direct the investments. This option will typically only be used where a financial institution is serving as trustee. The Adoption Agreement includes a line to indicate if a discretionary or directed trustee is only serving as trustee over a portion of the plan assets. For example, many corporate trustees will not serve as a directed trustee over real estate held by the plan. The directed corporate trustee would be selected (**d.**) and the blank line would be completed with "real property."

In some situations, a corporate trustee may require that its own trust agreement be used rather than the trust provisions contained in the Basic Plan Document. In this case, option **g.** should be selected. Only certain separate trusts were approved by the IRS to be used with this document. A list of the separate trusts that have been approved may be found at: <http://www.relius.net/News/Docs/EGTRRASeparateTrusts.doc>



11. PLAN ADMINISTRATOR'S NAME, ADDRESS AND TELEPHONE NUMBER:

(If none is named, the Employer will be the Plan Administrator.)

- a.  Employer (Use Employer address and telephone number).
- b.  Use name, address and telephone number below:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Street

\_\_\_\_\_

City State Zip

Telephone: \_\_\_\_\_

**11. PLAN ADMINISTRATOR'S NAME, ADDRESS AND TELEPHONE NUMBER**

The plan administrator performs the administrative functions for the plan. The plan administrator determines when an employee satisfies eligibility requirements and maintains records on the accounts of participants under the plan. Normally, you serve as the named administrator and you would contract with a third party to carry out many of the administrative functions. Option **a.** should be selected in this case. If someone else is the administrator, complete option **b.** in its entirety.

12. CONSTRUCTION OF PLAN

This Plan shall be governed by the laws of the state or commonwealth where the Employer's (or, in the case of a corporate Trustee (or Insurer), such Trustee's (or Insurer's)) principal place of business is located unless another state or commonwealth is specified:

\_\_\_\_\_

\_\_\_\_\_

**12. CONSTRUCTION OF PLAN**

In most cases, you will leave this option blank. The plan automatically provides that the plan provisions will be governed by the laws of the jurisdiction in which your principal office is located, or, if there is a corporate trustee or insurer, then the laws where the trustee or insurer will be used. Complete the blank line if another jurisdiction's laws are to be applied in the operation of the plan.

13. CONTRIBUTION TYPES

The following contributions are authorized under this Plan. The selections made below should correspond with the selections made under the Contributions and Allocations section of this Adoption Agreement.

- a.  Elective Deferrals (Section 401(k) Salary Reductions including Roth Contributions, if selected, at Question 27.)
- b.  SIMPLE 401(k) Contributions (Question 28.)
- c.  401(k) Safe Harbor Contributions (Match/Nonelective) (Question 29.)
- d.  Employer Matching Contributions (Question 30.)
- e.  Employer Nonelective Profit Sharing Contributions (includes Prevailing Wage Contributions) (Question 31.)
- f.  Rollover Contributions (Question 45.)
- g.  After-tax Voluntary Employee Contributions (Question 46.)
- h.  This is a frozen Plan effective: \_\_\_\_\_

**13. CONTRIBUTION TYPES**

This option allows the selection of the various types of contributions that will be offered under the plan. The specifications that you make here may be used as a guide for the proper completion of the Adoption Agreement.

If all contributions under the plan have ceased, then you should select option **h.** ("frozen plan"). This will result in 100% vesting of participant accounts and will prohibit new participants from becoming eligible to participate in the plan. Freezing a plan, however, is not a distributable event and the plan will remain intact until all benefits have been out in accordance with the plan (e.g., when a participant terminates employment).

**ELIGIBILITY REQUIREMENTS**

14. ELIGIBLE EMPLOYEES (Plan Section 1.25) means all Employees (including Leased Employees) EXCEPT for the following Employees: (select all that apply below)

**NOTE:** Unless otherwise specified in this Section, Elective Deferrals include Roth Elective Deferrals, after-tax voluntary Employee contributions, and Rollover Contributions; Matching includes QMACs; and Nonelective Profit Sharing includes QNECs. ADP/ACP safe harbor contributions and SIMPLE 401(k) contributions are subject to the exclusions for Elective Deferrals except as provided in Question 29.

	<b>All Contributions</b>		<b>Elective Deferrals</b>	<b>Matching</b>	<b>Nonelective Profit Sharing</b>
a. No Exclusions	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
b. Union Employees (as defined in Plan Section 1.25)	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
c. Nonresident Aliens (as defined in Plan Section 1.25)	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
d. Highly Compensated Employees	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
e. Leased Employees	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
f. Part-time/Temporary/Seasonal Employees. A part-time, temporary or seasonal Employee is an Employee whose regularly scheduled Service is less than _____ Hours of Service in the relevant eligibility computation period.	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
g. Other: _____ _____	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]

(must be definitely determinable, may not be based on age or length of service (except as provided in f. above), and, if using the average benefits test to satisfy Code Section 410(b) coverage testing, must be a reasonable classification)

**14. ELIGIBLE EMPLOYEES**

This Question defines the employees eligible to become plan participants.

**For Standardized plans**, the only employees who can be excluded are: (1) union employees where retirement benefits were the subject of good faith bargaining, and (2) employees who are non-resident aliens with no earned income from the United States.

**For Non-standardized plans**, you may exclude the various classes of employees listed under options **b.** through **f.** or exclude a class of employees not listed by naming that class at option **g.** The exclusion of any employee group, other than union employees and non-resident aliens, may result in failing to meet IRS requirements. This could occur if too many non-highly compensated employees were in the excluded group. The plan may use the same exclusions for all contributions, or different exclusions for elective deferrals, matching contributions or profit sharing contributions.

Note that the exclusion of part-time, temporary, and seasonal workers (option **f.**) is effective only to the extent that those workers do not complete a year of service. Under the terms of the Basic Plan Document, if they complete a year of service, then they become eligible to participate in the plan.

15. **CONDITIONS OF ELIGIBILITY (Plan Section 3.1)**

Any Eligible Employee will be eligible to participate in the Plan upon satisfaction of the following (select a. or all that apply in b. - l.):

**NOTE:** Unless otherwise specified in this Section, Elective Deferrals include Roth Elective Deferrals, after-tax voluntary Employee contributions, and Rollover Contributions; Matching includes QMACs; and Nonelective Profit Sharing includes QNECs. ADP/ACP safe harbor contributions and SIMPLE 401(k) contributions are subject to the conditions for Elective Deferrals except as provided in Question 29.

	<b>All Contributions</b>		<b>Elective Deferrals</b>	<b>Matching</b>	<b>Nonelective Profit Sharing</b>
a. No age or service required	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
b. Age 20 1/2	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
c. Age 21	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
d. Age _____ (may not exceed 21)	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
e. 6 months of service	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
f. 1 Year of Service	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
g. 2 Years of Service	N/A	<b>OR</b>	N/A	3. [ ]	4. [ ]
h. _____ (not to exceed 1,000) Hours of Service within _____ (not to exceed 12) consecutive months from the Eligible Employee's employment commencement date. If an Employee does not complete the stated Hours of Service during the specified time period, the Employee is subject to the 1 Year of Service requirement in f. above.	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
i. _____ (not to exceed 12) consecutive months of employment from the Eligible Employee's employment commencement date. If an Employee does not complete the stated number of months, the Employee is subject to the 1 Year of Service requirement in f. above.	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
j. Other: _____ _____	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]

(must be an age or service requirement that is definitely determinable and may not exceed age 21 and for Elective Deferrals, 1 Year of Service; for Employer matching and/or profit sharing contributions, may not exceed 2 Years of Service).

**NOTE:** For Employer matching and/or profit sharing contributions, if more than 1 Year of Service is selected, 100% immediate vesting is required.

**NOTE:** If the service requirement is or includes a fractional year, then an Employee will not be required to complete any specified number of Hours of Service to receive credit for such fractional year. If expressed in months of service, then an Employee will not be required to complete any specified number of Hours of Service in a particular month, unless selected in h. above. In both cases, the Plan must use the Elapsed Time method to determine service.

**NOTE:** Year of Service means Period of Service if Elapsed Time method is chosen.

**AND,** the service and/or age requirements specified above shall be waived in accordance with the following (leave blank if there are no waivers of conditions):

<b>All Contributions</b>	<b>Elective Deferrals</b>	<b>Matching</b>	<b>Nonelective Profit Sharing</b>
------------------------------	-------------------------------	-----------------	---------------------------------------

- k. If employed \_\_\_\_\_ 1.  **OR** 2.  3.  4.   
 on \_\_\_\_\_ the following  
 requirements will be waived. The waiver applies to any  
 Eligible Employee unless c. selected below. Such Employees  
 shall enter the Plan as of such date (select a. and/or b. AND c.  
 if applicable):
- a.  service requirement (will let part-time Eligible Employees into the Plan)
  - b.  age requirement
  - c.  waiver is for: \_\_\_\_\_ (e.g., employees of a  
 specific division or employees covered by a Code Section 410(b)(6)(C)  
 acquisition).
- l. If employed \_\_\_\_\_ 1.  **OR** 2.  3.  4.   
 on \_\_\_\_\_ the following  
 requirements will be waived. The waiver applies to any  
 Eligible Employee unless c. selected below. Such Employees  
 shall enter the Plan as of such date (select a. and/or b. AND c.  
 if applicable):
- a.  service requirement (will let part-time Eligible Employees into the Plan)
  - b.  age requirement
  - c.  waiver is for: \_\_\_\_\_ (e.g., employees of a  
 specific division or employees covered by a Code Section 410(b)(6)(C)  
 acquisition).

## 15. CONDITIONS OF ELIGIBILITY

The maximum age and service requirements for purposes of being eligible to make elective deferrals (and ADP safe harbor contributions) is age 21 and one year of service. The maximum age and service requirements for purposes of being eligible to receive any other contributions (e.g., matching or profit sharing contributions) is age 21 and two years of service. If more than one year of service is required to participate for these contributions, then immediate 100% vesting is required.

If an eligibility requirement of less than one year is selected (for example, 6 months of service), then hours of service are generally not counted in determining whether an employee fulfills this requirement. This could permit part-time employees to become participants under the plan. To avoid part-time employees from becoming plan participants, consider using an eligibility requirement of one year of service with the 1,000 Hour Method. Then, employees must complete 1,000 hours of service in a 12-month period to satisfy the eligibility service requirement. Alternatively, options **h.** and **i.** allow an employer to effectively exclude part-time employees from becoming participants by requiring a number of hours (not in excess of 1,000) within a set number of months (not in excess of 12). If an employee doesn't complete the requisite hours or service within the specified time following initial employment, then the employee will be subject to the one year of service rule (1,000 hours within 12 months).

The same eligibility requirements can be put in place for all contributions or different eligibility requirements for elective deferrals, matching contributions or profit sharing contributions based on the selections made for options **f.** and/or **g.**

Options **k.** and **l.** permit an employee who is not in an ineligible class of employees and is employed on a certain date to participate immediately, even if different standards are selected for future employees. This "open enrollment" feature should be selected with care as this could include part-time employees employed on the selected date. Options **k.** and **l.** are identical options. They are repeated in the Adoption Agreement in order to permit a different waiver to apply for different contribution sources. For example, option **k.** could be elected to permit a waiver for deferral purposes and option **l.** could be used to permit a different waiver for profit sharing purposes.

Note that no separate options are available with respect to ADP safe harbor contributions because all participants eligible to defer must generally be eligible to receive ADP safe harbor contributions. However, see Question 29 for some limited exceptions to this general rule (e.g., excluding Highly Compensated Employees or participants who do not have a year of service or are under age 21).

16. **EFFECTIVE DATE OF PARTICIPATION (ENTRY DATE) (Plan Section 3.2)**  
 An Eligible Employee who has satisfied the eligibility requirements will become a Participant in the Plan as of the date selected below:

**NOTE:** Option e. below can only be selected when eligibility is six months of service or less and age is 20 1/2 or less. However, options e.3 and e.4 may be selected when eligibility is 1 1/2 Years of Service or less and age is 20 1/2 or less and the Plan provides for 100% vesting.

**NOTE:** Unless otherwise specified in this Section, Elective Deferrals include Roth Elective Deferrals, after-tax voluntary Employee contributions, and Rollover Contributions; Matching includes QMACs; and Nonelective Profit Sharing includes QNECs. ADP/ACP safe harbor contributions and SIMPLE 401(k) contributions are subject to the provisions for Elective Deferrals except as provided in Question 29.

	<b>All Contributions</b>		<b>Elective Deferrals</b>	<b>Matching</b>	<b>Nonelective Profit Sharing</b>
a. Date requirements met	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
b. First day of the month coinciding with or next following date requirements met	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
c. First day of the quarter coinciding with or next following date requirements met	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
d. First day of Plan Year or first day of 7th month of Plan Year coinciding with or next following date requirements met	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
e. First day of Plan Year coinciding with or next following date requirements met	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]
f. First day of Plan Year in which requirements met	N/A	<b>OR</b>	N/A	3. [ ]	4. [ ]
g. First day of Plan Year nearest date requirements met	N/A	<b>OR</b>	N/A	3. [ ]	4. [ ]
h. Other: _____	1. [ ]	<b>OR</b>	2. [ ]	3. [ ]	4. [ ]

provided that an Eligible Employee who has satisfied the maximum age (21) and service requirements (1 Year (or Period) of Service (or more than 1 year if full and immediate vesting)) and who is otherwise entitled to participate, shall commence participation no later than the earlier of (a) 6 months after such requirements are satisfied, or (b) the first day of the first Plan Year after such requirements are satisfied, unless the Employee separates from service before such participation date.

**16. EFFECTIVE DATE OF PARTICIPATION**

The effective date of participation or entry date is primarily a matter of plan design and administrative efficiency. By having an eligible employee participate in the plan as of a single effective date, maximum administrative efficiency is accomplished. However, most 401(k) profit sharing plans have more frequent entry dates, at least for elective deferral purposes.

Any option selected where an employee enters during a plan year (as opposed to retroactively or prospectively to the first day of a plan year) should be coordinated with the question on compensation recognition. If compensation is recognized for the entire year (rather than for the time the employee is a participant), then entering the plan during the plan year will have no effect on a participant's allocation for the initial year of participation. However, if compensation is recognized only while an employee is a participant in the plan, then the selection will affect the allocation that the participant will receive for the initial year of participation.

You can select one entry date for all contributions or allow for different entry dates for elective deferrals, matching contributions or profit sharing contributions.

- a. This option provides for immediate entry into the plan upon satisfaction of the eligibility requirements.
- b. This option brings employees into the plan on the first day of the month coinciding with or next following completion of the eligibility requirements if you want to make elective deferrals available to employees as soon as administratively feasible after satisfying such age or service requirements.
- c. This option provides for quarterly entry dates. This option is frequently elected for purposes of making elective deferrals.
- d. This option provides for two entry dates per year; the first day of the plan year coinciding with or next following satisfaction of the eligibility requirements or the earlier of the first day of the seventh month of the plan year.
- e. This option provides for a single, prospective entry date. Although this approach is often desirable to facilitate plan administration, it may only be used if the age requirement is 20 1/2 or less, and the service requirement is six months or less (or, for the profit sharing and traditional matching contribution components of the plan, one and one-half years of service (or less) with full and immediate vesting).
- f. This option provides for a single, prospective entry date that is retroactive to the first day of the plan year in which the eligibility requirements were met. This option may not be used for purposes of elective deferrals since a participant cannot make deferrals retroactively.
- g. This option also provides for a single entry date. However, an employee's entry date will depend upon when during the plan year the employee first satisfies the eligibility requirements. Employees who satisfy the eligibility requirements within the first six months of the plan year will participate retroactively as of the first day of the plan year in which the requirements were met, while those satisfying the requirements during the last six months of the plan year will enter as of the first day of the following plan year. Because of the potential to have a retroactive entry date, this option may not be used for purposes of elective deferrals (a participant cannot make deferrals retroactively).
- h. Specify any entry date or dates, provided that an Eligible Employee who has satisfied the maximum age (21) and service requirements (one (1) Year or Period of Service (or more than one (1) year if full and immediate vesting)) and who is otherwise entitled to participate, shall commence participation no later than the earlier of (a) 6 months after such requirements are satisfied, or (b) the first day of the first Plan Year after such requirements are satisfied. If a participant in a calendar year plan satisfies the eligibility requirements before July 1, then the participant would need to enter the plan no later than six months after the date the conditions were met. If the participant satisfies the eligibility requirements during the last six months of the year then the participant would need to enter the plan no later than the following January 1<sup>st</sup>. Many plans provide for January 1<sup>st</sup> and July 1<sup>st</sup> entry dates (option **d.**) as this would always ensure that a participant enters the plan no later than the maximum period permitted by law.

## SERVICE

### 17. RECOGNITION OF SERVICE WITH OTHER EMPLOYERS (Plan Sections 1.60 and 1.85)

- a.  No service with other Employers shall be recognized.

**OR**, service with the designated employers and purposes is recognized as follows (attach an addendum to the Adoption Agreement if more than 3 employers):

Eligibility	Vesting	Contribution Allocation
-------------	---------	-------------------------

- b.  Employer name: \_\_\_\_\_
- c.  Employer name: \_\_\_\_\_
- d.  Employer name: \_\_\_\_\_
- e.  Limitations: \_\_\_\_\_     
 (e.g., credit service with X only on/following 1/1/07 or credit all service  
 with entities the Employer acquires after 12/31/06).

**NOTE:** If the other Employer(s) maintained this qualified Plan, then Years (and/or Periods) of Service with such Employer(s) must be recognized pursuant to Plan Sections 1.60 and 1.85 regardless of any selections above

## 17. RECOGNITION OF SERVICE WITH OTHER EMPLOYERS

If you are maintaining the plan of a predecessor employer, then service with the predecessor must be recognized. For example, if you were a sole proprietor, incorporated, and then established the plan, you might want to recognize service while you operated a sole proprietorship. If your business is part of a controlled group or an affiliated service group, then all service with these related employers must be recognized. Both of these are automatically provided for in the Basic Plan Document.

In all other cases, service with a predecessor employer may be recognized for eligibility, contribution allocation, and/or vesting purposes provided (1) the predecessor employer whose service is recognized is specified in the plan, (2) all employees with service with the predecessor employer are treated uniformly and (3) discrimination in favor of highly compensated employees does not occur. This situation could occur on account of a merger, acquisition, spin-off, change in company name or other change in the structure of an organization. For example, a business may have been unincorporated and operated several years as a sole proprietorship or partnership. In a later year, the business is incorporated and a plan is established. The corporate employer may recognize an employee's service while the business was unincorporated. Such service may be for all plan purposes or may only apply for specific purposes (e.g., vesting) or for specific periods of time (e.g., by entering a limitation at e., such as only service after a specified date). If service will be recognized for more than 3 employers, then Appendix A to the Adoption Agreement may be used to specify additional employers.

## 18. SERVICE CREDITING METHOD (Plan Sections 1.60 and 1.85)

**NOTE:** If no selections are made in this Section, then the Hours of Service method will be used (with actual Hours of Service) and the provisions set forth in the definition of Year of Service in Plan Section 1.85 will apply.

- a.  **Elapsed Time Method** (Period of Service applies instead of Year of Service) shall be used for the following purposes (select all that apply):
1.  all purposes. (If selected, skip to Question 19.)
  2.  eligibility to participate.
  3.  vesting.
  4.  sharing in allocations or contributions.
- b.  **Hours of Service Method** shall be used for the following purposes (select all that apply):
1.  eligibility to participate in the Plan. The eligibility computation period after the initial eligibility computation period shall:
    - a.  shift to the Plan Year.
    - b.  be based on each anniversary of the date the Employee first completes an Hour of Service.
  2.  vesting. The vesting computation period shall be:
    - a.  the Plan Year.
    - b.  the date an Employee first performs an Hour of Service and each anniversary thereof.
  3.  sharing in allocations or contributions (the computation period shall be the Plan Year).

**AND,** the following Hour of Service alternatives will apply (select all that apply):

4.  **Equivalency Method.** Instead of using actual Hours of Service, Hours of Service will be determined using the method selected below. Such method will apply to:
  - a.  all Employees.
  - b.  Employees for whom records of actual Hours of Service are not maintained or available (e.g., salaried employees).

## ON THE BASIS OF:

- c.  days worked (10 hours per day).
- d.  weeks worked (45 hours per week).
- e.  semi-monthly payroll periods worked (95 hours per semi-monthly pay period).
- f.  months worked (190 hours per month).
- g.  bi-weekly payroll periods worked (90 hours per bi-weekly pay period).

5.  **Number of Hours of Service Required.** Year of Service means the applicable computation period during which an Employee has completed at least \_\_\_\_\_ (not to exceed 1,000) Hours of Service.

**18. SERVICE CREDITING METHOD**

For purposes of eligibility, vesting and benefit accrual, the plan must define how service is credited.

Under the hour of service method of crediting service, completion of 1,000 hours of service during a 12-month period equals a year of service. Under the elapsed time method, an employee's eligibility, vesting and benefit accrual are NOT based upon the actual completion of a specified number of hours of service. Instead, the computation of service is based upon the total period of that has elapsed while the employee is employed with you. Use of the elapsed time method lessens the administrative burden of counting hours of service. However, the elapsed time method allows part-time employees to receive the same credit for service as full-time employees.

If the plan uses the 1000 Hour Method for all purposes, then Question 18 may generally be skipped. However, some may prefer to complete Question 18 so that the plan specifications are easily identified by looking at the Adoption Agreement.

- a. An elapsed time method where a participant's service is taken into account as of the date the participant first performs an hour of service until the date the participant's employment terminates. Select **a.1.** if the plan always used the elapsed time method for all purposes, or select one or two of **a.2, a.3** or **a.4** for specific purposes and answer **b.** for those purposes for which the hour of service method applies.
- b. A period of 12 consecutive months in which an employee completes a specified number of hours of service (not in excess of 1,000). Most plans calculate years of service for eligibility, vesting and benefit accruals using this method. For eligibility purposes, if an employee does not complete the requisite hours of service during the initial 12-month period beginning on the date of hire, then a choice is given to base subsequent computation periods on either anniversaries of date of hire (option **b.1.b**) or on plan years (option **b.1.a**). For administrative ease, most plans shift to the plan year after the initial computation period. For vesting purposes, the plan can base the 12-month period either on the Plan Year (option **b.2.a**) or the date of hire and anniversaries of date of hire (option **b.2.b**).
- b.4. Under the Hour of Service method, the determination of whether a participant has a year of service is usually based on the actual counting of hours of service during the applicable 12-consecutive month computation period. In lieu of counting actual hours of service, you can use equivalencies for crediting hours of service during computation periods. Equivalencies can apply to all employees (option **b.4.a**) or can be used for salaried employees, and hours can actually be counted for hourly employees (option **b.4.b**). Specify the equivalency to be used at **b.4.c** through **b.4.g**.
- b.5. A year of service under the Hour of Service method is generally 1,000 hours of service. This option permits a lesser number of hours to be specified in defining a year of service. This option is commonly used in businesses where employees typically work less than 1,000 hours of service during a year.

**VESTING**

19. VESTING OF PARTICIPANT'S INTEREST (Plan Section 6.4(b))
- a.  N/A. No Employer profit sharing or matching contributions are subject to a vesting schedule (skip to Question 23).
  - b.  100% for those Participants employed on \_\_\_\_\_ (enter date). For those Participants hired after such date, the vesting provisions selected below apply.



c.  The vesting provisions selected below apply.

**Vesting for Employer Nonelective Profit Sharing Contributions.**

- d.  N/A. No Employer profit sharing contributions are subject to a vesting schedule (skip to g.).
- e.  100% vesting. Participants are 100% vested in Employer profit sharing contributions upon entering Plan. (Required if eligibility requirement is greater than 1 Year (or Period) of Service.)
- f.  The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the Elapsed Time method is selected), applies to Employer profit sharing contributions:
  - 1.  6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80% ; 6 years-100%
  - 2.  4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
  - 3.  5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
  - 4.  3 Year Cliff: 0-2 years-0%; 3 years-100%
  - 5.  7 Year Graded: 0-2 years-0%; 3 years-20%; 4 years-40%; 5 years-60%; 6 years-80% ; 7 years-100%
  - 6.  5 Year Cliff: 0-4 years-0%; 5 years-100%
  - 7.  Other - Must be at least as liberal as either 5. or 6. above in each year without switching between the two schedules; or, if the following applies to any Employer matching contributions, as liberal as either 1. or 4. above in each year without switching between the two schedules:

Service	Percentage
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%

**Vesting for Employer Matching Contributions.**

- g.  N/A. There are no Employer matching contributions subject to a vesting schedule.
- h.  The schedule in e. or f.1 – f.4 above shall also apply to Employer matching contributions.
- i.  100% vesting. Participants are 100% vested in Employer matching contributions upon entering Plan. (Required if eligibility requirement is greater than 1 Year (or Period) of Service.)
- j.  The following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the Elapsed Time method is selected), applies to Employer matching contributions:
  - 1.  6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80% ; 6 years-100%
  - 2.  4 Year Graded: 1 year-25%; 2 years-50%; 3 years-75%; 4 years-100%
  - 3.  5 Year Graded: 1 year-20%; 2 years-40%; 3 years-60%; 4 years-80%; 5 years-100%
  - 4.  3 Year Cliff: 0-2 years-0%; 3 years-100%
  - 5.  Other - Must be at least as liberal as either 1. or 4. above in each year without switching between the two schedules:

Service	Percentage
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%

**19. VESTING OF PARTICIPANT'S INTEREST**

As a result of the Pension Protection Act of 2006 (PPA), a plan's vesting schedule must generally be at least as liberal as 3-year cliff (100% after 3 years) or 6-year graded (20% after 2 years, plus 20% for each subsequent year). However, the Adoption Agreement keeps the 5-year cliff and 7-year graded schedules for transition purposes; and a PPA compliant schedule will be selected when the plan is amended to conform to the PPA. The Adoption Agreement allows for different choices for vesting of matching and profit sharing contributions. The plan automatically provides for full vesting of those amounts that must be fully vested under the law (e.g., elective deferrals, qualified non-elective contributions, and safe harbor contributions).

Regardless of the vesting schedule selected in this section, if a plan is top-heavy, then a vesting schedule that satisfies the top-heavy rules must be used (see Question 20). In light of the minor differences between the normal vesting schedules and the top-heavy vesting schedules, for plans that are likely to be top-heavy from inception, it is advisable to

select a regular vesting schedule that satisfies the top-heavy vesting requirements (i.e., options **f.1**, **f.2**, **f.3**, or **f.4**). With this approach, an alternative top-heavy vesting schedule will not be required, and option **a.** can be selected at Question 20.

20. TOP-HEAVY VESTING (Plan Section 6.4(d))

If this Plan becomes a Top-Heavy Plan, the following vesting schedule, based on a Participant's Years of Service (or Periods of Service if the Elapsed Time method is selected) shall be as follows:

- a.  N/A (the regular vesting schedule already satisfies one of the minimum top-heavy schedules).
- b.  6 Year Graded: 0-1 year-0%; 2 years-20%; 3 years-40%; 4 years-60%; 5 years-80% ; 6 years-100%
- c.  3 Year Cliff: 0-2 years-0%; 3 years-100%
- d.  Other - Must be at least as liberal as either b. or c. above in each year without switching between the two schedules. (If a different top-heavy schedule applies to different contribution sources, attach an addendum specifying the schedule that applies to each source):

Service	Percentage
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%

**20. TOP-HEAVY VESTING SCHEDULE**

A top-heavy plan is a plan in which, as of the last day of the preceding plan year (for a new plan, the last day of the first plan year), the total of the accounts of all key employees exceeds 60% of the total of the accounts of all employees. If the plan is top-heavy, then more rapid vesting may be required.

For any year in which the plan is top-heavy, a vesting schedule that is at least as liberal as 3-year cliff (100% after 3 years) or 6-year graded (20% after 2 years, plus 20% for each subsequent year) must be used. Once the plan becomes top-heavy, the accelerated vesting schedule will apply to all account balances credited during prior non-top-heavy years. If the plan ceases to be top-heavy, the plan will continue to use the top-heavy vesting schedule unless a specific plan amendment is made to change back to a non-top-heavy vesting schedule. If this type of amendment is made, then anyone with three years of vesting service as of the change has the right to continue to use the old top-heavy vesting schedule.

You must complete this section regardless of whether or not the plan is currently top-heavy. If the plan's regular schedule already complies with the top-heavy rules, N/A (option a.) may be selected. As a result of changes in the law (EGTRRA and PPA), most plans going forward will already have a vesting schedule that satisfies the top-heavy requirements.

21. EXCLUDED VESTING SERVICE

- a.  No exclusions.
- b.  Service prior to the initial Effective Date of the Plan or a predecessor plan.
- c.  Service prior to the computation period in which an Employee attains age 18.

**21. EXCLUDED VESTING SERVICE**

In determining a participant's vested percentage, certain years of vesting service may be excluded. The years that may be excluded are those years prior to the original effective date of the plan, and those years prior to the plan year in which the participant attains age 18.

Vesting must be based on total years of vesting service, not on years of plan participation. If years of vesting service prior to the effective date are not excluded, then participants who were employed prior to the original effective date and whose pre-plan service was significant could be fully vested upon entry into the plan.

22. VESTING FOR DEATH AND TOTAL AND PERMANENT DISABILITY

Regardless of the vesting schedule, Participants shall become fully Vested upon (select a. or all that apply of b. and c.):

- a.  N/A. Apply vesting schedule, or all contributions to the Plan are fully Vested.
- b.  Death.
- c.  Total and Permanent Disability.

**22. VESTING FOR DEATH AND TOTAL AND PERMANENT DISABILITY**

The law does not require full vesting upon death or total and permanent disability. Therefore, these options provide for electing full vesting due to these events.

**RETIREMENT AGES**

23. NORMAL RETIREMENT AGE ("NRA") (Plan Section 1.52) means the:
- date of a Participant's \_\_\_\_\_ birthday (not to exceed 65th).
  - later of a Participant's \_\_\_\_\_ birthday (not to exceed 65th) or the \_\_\_\_\_ (not to exceed 5th) anniversary of the first day of the Plan Year in which participation in the Plan commenced.

**23. NORMAL RETIREMENT AGE**

The plan provides two options for normal retirement age: an age-only option or an age and plan participation option. The age may not exceed 65. Since a participant will become fully vested upon attainment of normal retirement age, it may be desirable to require a specified period of plan participation before a participant may become fully vested. This would prevent accelerated vesting for someone who is close to, or over, age 65 when becoming a participant. The maximum participation requirement that the plan may impose is five (5) years.

24. NORMAL RETIREMENT DATE (Plan Section 1.53) means the:
- Participant's NRA.
- OR (select one)
- first day of the month coinciding with or next following the Participant's NRA.
  - first day of the month nearest the Participant's NRA.
  - Anniversary Date coinciding with or next following the Participant's NRA.
  - Anniversary Date nearest the Participant's NRA.

**24. NORMAL RETIREMENT DATE**

Normal retirement date is the actual date when a participant may terminate employment and receive retirement benefits. It is tied to the normal retirement age previously selected and should be determined according to each particular employer's needs. Option **a.** is both the most cumbersome to employers and the most flexible to employees in that a participant may commence retirement on the very date the participant achieves normal retirement age. Therefore, this option permits normal retirement to commence on any day of the year. Options **b. – e.** are less flexible to employees since they restrict normal retirement date to one of the twelve first days of the month or to the single plan anniversary date (which is the last day of the plan year). Under options **b.** or **d.**, a participant must wait for the first day of the month or anniversary date coincident with or following attainment of normal retirement age (whichever is applicable) to retire. This option will always result in a participant retiring after reaching normal retirement age. Under options **c.** or **e.**, the participant will have a normal retirement date closest to attainment of normal retirement age. This could result in a normal retirement date preceding or following a participant's normal retirement age.

25. EARLY RETIREMENT DATE (Plan Section 1.21)
- N/A. No Early Retirement provision provided.
  - Early Retirement Date means the:
    - date on which a Participant satisfies the Early Retirement requirements.
    - first day of the month coinciding with or next following the date on which a Participant satisfies the Early Retirement requirements.
    - Anniversary Date coinciding with or next following the date on which a Participant satisfies the Early Retirement requirements.

**AND**, the Early Retirement requirements are:

- Participant attains age \_\_\_\_\_.  
**AND**, completes.... (leave blank if not applicable)
  - at least \_\_\_\_\_ Years (or Periods) of Service for vesting purposes.
  - at least \_\_\_\_\_ Years (or Periods) of Service for eligibility purposes.

**AND**, shall a Participant become fully Vested upon attainment of the Early Retirement Date?

- Yes.

6.  No.

**25. EARLY RETIREMENT DATE**

Early retirement provisions can impact a plan in three possible ways. First, the plan can provide for 100% vesting upon attaining the plan's early retirement age (option **b.5.**). Second, the plan can permit distributions upon early retirement. This would only have an effect on plans that restrict the ability to receive distributions upon a regular termination of employment. Lastly, a plan can provide that any conditions for receiving allocations under the plan are waived if a participant terminates employment due to retirement.

**COMPENSATION**

26. COMPENSATION (Plan Section 1.14) with respect to any Participant means:

- a.  Wages, tips and other compensation on Form W-2.
- b.  Section 3401(a) wages (wages for withholding purposes).
- c.  415 safe harbor compensation.

COMPENSATION shall be based on the following determination period:

- d.  the Plan Year.
- e.  the Fiscal Year coinciding with or ending within the Plan Year.
- f.  the calendar year coinciding with or ending within the Plan Year.

**NOTE:**The Limitation Year for Code Section 415 purposes shall be the same as the determination period for Compensation unless an alternative period is specified: \_\_\_\_\_ (must be a consecutive twelve month period).

ADJUSTMENTS TO COMPENSATION. Compensation shall be adjusted by (select all that apply):

**NOTE:** Elective Deferrals include Roth Elective Deferrals, Matching includes QMACs, and Nonelective Profit Sharing includes QNECs unless specified otherwise. ADP safe harbor matching contributions are subject to the provisions for Employer matching contributions.

	<b>All Contributions</b>		<b>Elective Deferrals</b>		<b>Matching</b>		<b>Nonelective ADP Profit Sharing</b>		<b>Safe Harbor Nonelective</b>
g. No Adjustments	1. <input type="checkbox"/>	<b>OR</b>	2. <input type="checkbox"/>		3. <input type="checkbox"/>		4. <input type="checkbox"/>		5. <input type="checkbox"/>
h. including Salary Deferrals (401(k), 125, 132(f), 403(b), SEP, 414(h) pickup, & 457)	1. <input type="checkbox"/>	<b>OR</b>	2. <input type="checkbox"/>		3. <input type="checkbox"/>		4. <input type="checkbox"/>		5. <input type="checkbox"/>
i. excluding reimbursements or other expense allowances, fringe benefits (cash or non-cash), moving expenses, deferred compensation (other than deferrals specified in h. above) and welfare benefits.	1. <input type="checkbox"/>	<b>OR</b>	2. <input type="checkbox"/>		3. <input type="checkbox"/>		4. <input type="checkbox"/>		5. <input type="checkbox"/>
j. excluding Compensation paid during the determination period while not a Participant in the component of the Plan for which the definition applies.	1. <input type="checkbox"/>	<b>OR</b>	2. <input type="checkbox"/>		3. <input type="checkbox"/>		4. <input type="checkbox"/>		5. <input type="checkbox"/>
k. excluding Compensation paid during the determination period while not a Participant in <i>any</i> component of the Plan for which the definition applies.	1. <input type="checkbox"/>	<b>OR</b>	2. <input type="checkbox"/>		3. <input type="checkbox"/>		4. <input type="checkbox"/>		5. <input type="checkbox"/>
l. excluding overtime	1. <input type="checkbox"/>	<b>OR</b>	2. <input type="checkbox"/>		3. <input type="checkbox"/>		4. <input type="checkbox"/>		5. <input type="checkbox"/>
m. excluding bonuses	1. <input type="checkbox"/>	<b>OR</b>	2. <input type="checkbox"/>		3. <input type="checkbox"/>		4. <input type="checkbox"/>		5. <input type="checkbox"/>

n. excluding commissions 1.  **OR** 2.  3.  4.  5.

o. Other: \_\_\_\_\_

(e.g., describe Compensation from the elections available above or a combination thereof as to a Participant group (e.g., no exclusions as to Division A Employees and exclude bonuses as to Division B Employees); and/or describe another exclusion (e.g., exclude shift differential pay)).

**NOTE:** Options l.4., m.4., n.4., or o.4. may not be selected if an integrated allocation formula is selected (i.e., if 31.f. is selected). In addition, if l., m., n., or o. is selected, the definition of Compensation could violate the nondiscrimination rules.

**NOTE:** If the post-severance compensation provisions of the proposed Code Section 415 regulations were used, complete Appendix A (Special Effective Dates and Other Permitted Elections).

## 26. COMPENSATION

Benefits under the plan are generally based on compensation. The Adoption Agreement provides three base definitions of compensation. Regardless of the election made in the Adoption Agreement, for sole proprietors, partners and members of an LLC that is taxed as a partnership, the Basic Plan Document automatically provides that earned income is used for all plan purposes for those individuals. Note that for shareholders of an S Corporation, the distributive share of the corporation's earnings cannot be considered compensation for plan purposes. Also, the Basic Plan Document limits the amount of Compensation that may be taken into account for purposes of the plan. This limit is \$230,000 in 2008 and may be adjusted for future cost of living adjustment increases.

The three base definitions of compensation are:

- a. Gross wages subject to income tax which are reportable on Form W-2, Wage and Tax Statement. This is the most common selection because the data is easy to obtain.
- b. Wages subject to income tax withholding. This option excludes certain taxable fringe benefits provided by an employer that are not subject to withholding, such as group-term life insurance over \$50,000.
- c. Code § 415 safe harbor compensation. This is similar to gross wages subject to income taxes (option a.) except that it excludes certain taxable fringe benefits and nonqualified unfunded deferred compensation. This option is rarely used.

You must elect one of the following three available 12-month periods on which compensation will be determined. This is referred to as the "determination period." The election made in this section will apply for purposes of defining compensation that is used to determine allocations or benefits. In addition, it will generally be used to define the limitation year (which is the measuring period for applying the Code § 415 limits).

The three available "determination periods" are:

- d. The Plan Year. This is the most common selection. This election may be made even if the Plan Year is not a calendar year and compensation is defined as W-2 compensation. In such case, compensation would include items that are paid at any time during the Plan Year and are reportable on a W-2 (regardless of the calendar year they are reportable in). You should be careful in making this selection if there is a short Plan Year (e.g., when a new short Plan Year is created or when there is an amendment changing Plan Years). This results in a short "determination period" and will require a pro-rata reduction in the annual compensation limit. One way to avoid this reduction in the limit is to select that compensation is based on the calendar year ending within the plan year (option f. below).

- e. The Fiscal Year. Determining compensation on your business' fiscal year is the least common selection. One reason is because for purposes of the 401(k) plan tests, compensation must be based on the plan year or calendar year ending within the plan year. If compensation is based on a fiscal year that is not the plan year or calendar year, then you will need to provide two different sets of data – one for determining compensation for allocations or contributions and the other for purposes of performing the nondiscrimination tests that apply to deferrals and matching contribution contributions (these are referred to as the ADP and ACP tests).
- f. The Calendar Year. This is the second most common selection. It is typically used where the plan year is not a calendar year, and you may find that it is easier to provide compensation data for the calendar year (such as when W-2 wages are used). This election is also used where a new plan is established with an initial short Plan Year followed by calendar year Plan Years. Since the calendar year is always 12 months long, no reduction in the annual compensation limit would be needed because there is no short compensation “determination period” even though the initial plan year is not 12 months long.

Once a base definition and determination period have been selected, certain adjustments to the definition of compensation may be made. In a **Standardized** Adoption Agreement, the only adjustments that are permitted are those that can be made without causing any potential discrimination issues. In a **Non-standardized** Adoption Agreement where you have not elected an integrated allocation, certain types of compensation may be excluded (for example, commissions, bonuses and/or overtime), provided discrimination in favor of highly compensated employees does not occur. The determination of whether a definition of compensation is discriminatory can be complex. For this reason, most plans do not provide for the exclusion of items that could potentially cause the definition to be discriminatory. The Adoption Agreement permits different adjustments to be made for purposes of elective deferrals, matching contributions, profit sharing contributions and ADP safe harbor nonelective contributions (the safe harbor matching contributions are governed by the selections under matching contributions). It is fairly common to have adjustments for the elective deferral and matching component of a plan. For example, you might want to allocate a profit sharing contribution on gross wages but only permit participants to defer out of base compensation (i.e., compensation excluding bonuses, commissions and overtime).

- g. Select this option if no adjustments will be made for the specified type of contribution.
- h. None of the base definitions of compensation (i.e., W-2 wages, wages for withholding, or 415 compensation) include elective deferrals to certain plans that defer or reduce compensation (such as a cafeteria plan or a 401(k) plan). Option **h.1** will add these items to the definition of compensation. This option may be desired if you want to make a profit sharing contribution and not reduce a participant's share of the contribution because of deferrals to the 401(k) plan (i.e., you want to allocate profit sharing contributions based on gross compensation). However, if a participant is earning much more than the annual compensation limit (i.e., \$230,000 in 2008), then the addition of these items will have no impact on such participant. Rather, it will only increase the compensation of those participants who earn less than the dollar limit.  
  
Note that regardless of whether you make this election, these amounts must be included for certain purposes, such as for purposes of determining top-heavy minimum benefits.
- i. This option provides for the exclusion of moving expense reimbursements, fringe benefits and non-qualified deferred compensation. This option is frequently used as many employers only want to base benefits on regular compensation that excludes these taxable benefits.
- j., k. You may also elect to exclude compensation earned while an employee was not a participant in a particular component of the plan (option **j.**) or in *any* component of the plan (option **k.**). If the entry date for the plan is the first day of the plan year for all purposes, then it does not matter if this selection is made. This option only becomes relevant when employees may become, or cease to be, participants during a plan year. In making this selection, consideration should be given to the data that will need to be obtained to determine compensation.

The distinction between options **j.** and **k.** are where a plan has different mid-year entry dates for different contribution sources. For example, suppose there are monthly entry dates for elective deferrals and semi-annual entry dates for profit sharing contributions. Option **j.** would provide that each respective entry date is used for each contribution source (compensation prior to the monthly entry is disregarded for elective deferrals and compensation prior to the semi-annual entry is disregarded for profit sharing purposes). Option **k.**, however, would only exclude compensation prior to the earliest entry date under the plan (regardless of the source). Thus, compensation would be excluded prior to the monthly entry date for both elective deferrals and profit sharing contributions).



- i. – o. These options may only be elected for Non-standardized plans where an employer has not elected an integrated allocation. These options permit the exclusions of any types of specified compensation for any of the specified types of contributions.

## CONTRIBUTIONS AND ALLOCATIONS

### 27. SALARY REDUCTION ARRANGEMENT - ELECTIVE DEFERRALS (Plan Section 12.2)

- A. **Deferral Limit.** Each Participant may elect to have Compensation deferred by:
- up to \_\_\_\_\_%.
  - from \_\_\_\_\_% to \_\_\_\_\_%.
  - up to the maximum amount allowed by law (i.e., Code Sections 402(g) and 415).
- B. **Additional deferral limits.** Regardless of the above limits, the following apply (select all that apply):
- No additional limits.
  - A Participant may make a separate election to defer up to \_\_\_\_\_% of any bonus.
  - For Participants who are Highly Compensated Employees determined as of the beginning of a Plan Year, then instead of 27.A applying, the deferral limit is (must be equal to or lower than limit selected in 27.A):
    - \_\_\_\_\_% of Compensation.
    - the percentage equal to the deferral limit in effect under Code Section 402(g)(3) for the calendar year that begins with or within the Plan Year divided by the annual compensation limit in effect for the Plan Year under Code Section 401(a)(17).
    - other: \_\_\_\_\_ (e.g., must be a specific limit that only applies to some or all HCEs).
- C. **Catch-Up Contributions.** May eligible Participants make Catch-Up Contributions?
- No (skip to D. below)
  - Yes
 

**AND, Catch-Up Contributions**

    - will be taken into account in applying any matching contribution under the Plan.
    - will not be taken into account in applying any matching contribution under the Plan (may not be selected if this Plan provides for ADP safe harbor contributions).

Special Effective Date. Is there a special effective date for the Catch-Up Contribution provisions?

    - No.
    - Yes, the effective date of the Catch-Up Contribution provisions is \_\_\_\_\_ (enter special effective date or, if this is an EGTRRA restatement, enter the date (not earlier than January 1, 2002) when Catch-Up Contributions were first permitted).

**AND, if the amount of Elective Deferrals that may be made to the Plan is limited in A. and/or B. above, are Catch-Up Contributions aggregated with other Elective Deferrals in applying such limits?**

    - No or N/A. There are no limits or Catch-Up Contributions may be made in addition to any imposed limits.
    - Yes. (If selected, the limits in A. and/or B. must not be less than 75% of Compensation.)
- D. **Roth Contributions.** May Participants designate all or a portion of their Elective Deferrals as Roth Elective Deferrals?
- No.
  - Yes.
 

Special Effective Date. Is there a special effective date for the Roth Elective Deferral provisions?

    - No.
    - Yes, the effective date of the Roth Elective Deferral provisions is \_\_\_\_\_ (enter special effective date or, if this is an EGTRRA restatement, enter the date (not earlier than January 1, 2006) when Roth Elective Deferrals were first permitted).
- E. **Special Effective Date.** Is there a special effective date for the salary deferral component of the Plan?
- No.
  - Yes, the effective date of the salary deferral component of the Plan is \_\_\_\_\_ (enter month day, year; may not be earlier than the date on which the Employer first adopts the salary deferral component of the Plan).
- F. **Deferral Modifications.** (Optional: the Administrator may adopt procedures that override any elections in this section without a formal Plan amendment.)

- m.  PARTICIPANTS MAY commence salary deferrals on the effective date of participation and on \_\_\_\_\_ (must be at least once each calendar year).

Participants may modify salary deferral elections:

- n.  As of each payroll period  
 o.  On the first day of each month  
 p.  On the first day of each Plan Year quarter  
 q.  On the first day of the Plan Year or the first day of the 7th month of the Plan Year  
 r.  Other: \_\_\_\_\_ (must be at least once each calendar year)

G. **Automatic Deferral Provisions.** Shall Participants who do not affirmatively elect to receive cash or have a specified amount of Compensation contributed to the Plan automatically have Compensation deferred?

- s.  No  
 t.  Yes, subject to the following provisions:

**Special Effective date** of the automatic deferral provisions:

1.  N/A. New Plan or provisions were in effect prior to this restatement (skip to 3. below).  
 2.  The provisions are first effective as of:  
 a.  the date of this restatement.  
 b.  Other: \_\_\_\_\_.

**Application to new Participants.** The automatic deferral provisions apply to:

- c.  Employees who become Participants on or after the effective date of the automatic deferral provisions.  
 d.  Participants who were hired on or after the effective date of the automatic deferral provisions.

**Application to existing Participants.** The automatic deferral provisions apply to those Participants in the Plan as of the effective date of the automatic deferral provisions in accordance with the following (select one):

- e.  **All Participants.** All Participants, regardless of any prior Salary Reduction Agreement.  
 f.  **Election of at least automatic deferral amount.** All Participants, except those who have a Salary Reduction Agreement in effect on the automatic deferral provisions effective date, provided the Elective Deferral amount under the Agreement is at least equal to the automatic deferral amount.  
 g.  **No existing Salary Reduction Agreement.** All Participants, except those who have a Salary Reduction Agreement in effect on the automatic deferral provisions effective date (regardless of the Elective Deferral amount under that Agreement).

**Type of Elective Deferral.** The automatic deferral shall be a Pre-Tax Elective Deferral unless selected below:

3.  The automatic deferral shall be a Roth Elective Deferral (may only be selected if Roth Elective Deferrals are permitted at 27.D above).

**Initial automatic deferral amount.** Each Participant who is subject to the automatic deferral provisions will have Compensation deferred by the following amount unless otherwise elected by the Participant:

4.  \_\_\_\_\_% of Compensation for each payroll period.  
 5.  \$\_\_\_\_\_ for each payroll period.

**Escalation of deferral amount.**

6.  N/A (no escalation)  
 7.  The initial automatic deferral amount shall increase as elected below:  
 a.  \_\_\_\_\_% of Compensation per year up to a maximum of \_\_\_\_\_% of Compensation.  
 b.  \$\_\_\_\_\_ per year up to a maximum of \$\_\_\_\_\_.  
 c.  in accordance with the following schedule:

<u>Plan Year of application to a Participant</u>	<u>Automatic Deferral Amount</u>
1 - 2	3%
3	4%
4	5%
5 and thereafter	6%

- d.  Other: \_\_\_\_\_

**Timing of escalation.** The escalation provision above shall apply as of:

- e.  N/A (7.c. selected or entry at 7.d. includes timing provision).
- f.  Each anniversary of the Participant's date of hire.
- g.  Each anniversary of the Participant's Entry Date.
- h.  The first day of each Plan Year.
- i.  The first day of each calendar year.
- j.  Other: \_\_\_\_\_

## 27. SALARY REDUCTION ARRANGEMENTS - ELECTIVE DEFERRALS

a.-c. A variety of alternatives exist for determining the elective deferral options that will be provided to each employee. This is basically a function of employer preference. Option **c.** is the most flexible, since no specified range or limit for elective deferrals is provided. With this option, a participant could conceivably reduce gross compensation by up to 100% (less payroll taxes), the only constraints being the Code limit (which is \$15,500 in 2008)). However, the flexibility offered to each employee under this option could make it more difficult to satisfy the 401(k) test.

e. This selection allows a participant to make a separate elective deferral election with respect to any bonuses given during the plan year. If not selected, any bonuses will be subject to the same deferral election that applies to other compensation (unless compensation for deferral purposes is defined to exclude bonuses).

f. This option is useful for relatively small employers that have more than one highly compensated employee. Option **f.** limits deferrals of highly compensated employees to a percentage equal to the current Code limit divided by the current compensation limit. This may be helpful because it prevents all highly compensated employees from deferring a percentage in excess of the percentage of the person who defers and is paid the maximum annual limits.

h. If elected, employees who are eligible to make salary reduction contributions to the plan and who are projected to attain age 50 before the end of a calendar year will be eligible to make catch-up contributions as of the January 1st of that calendar year.

Catch-up contributions may (option **h.1.**) or may not (option **h.2.**) be aggregated with other elective deferrals for purposes of applying any matching contribution formula under the plan. Caution must be exercised in the operation of the plan if they are not taken into account for matching contribution purposes (**h.2.**) since, in many cases, the determination of whether an elective deferral is not known until after the end of the plan year. If matching contributions are actually allocated throughout the plan year, then it could result in qualification issues.

If the plan is an ADP safe harbor plan, then catch-up contributions must be taken into account in applying the matching contribution formula under the plan and **h.1** must be selected. In many cases, this may have little or no impact on plans that also satisfy the ACP test safe harbor provisions. This is because elective deferrals over 6% must be disregarded in applying the matching contribution formula, and in many cases the catch-up contributions will be over the 6% limit (and thus will not be matched).

If catch-up contributions are permitted, then the law requires that they be universally available to all participants who are eligible to make elective deferrals. This requirement is satisfied if catch-up contributions may be made regardless of any plan imposed limitation on elective deferrals (i.e., if **h.5** is elected). If a plan imposes a limitation on the amount of deferrals that may be made (at Question **27.a** or **27.b**), then as long as the limitation is at least 75% of compensation, **h.6** may be elected. This is typically used where a payroll provider is only able to impose general limitations on the amount of elective deferrals that may be made under the plan and cannot distinguish among participants who are or are not catch-up eligible.

- j. Beginning in 2006, employers have been able to permit participants to make Roth 401(k) deferrals to their plan. With a Roth 401(k) deferral, a participant must pay current income tax on the deferral contribution. The deferrals and, in most cases, the earnings on the deferrals are not subject to federal income taxes when distributed. In order for the earnings to be distributed tax-free, there must be a qualified distribution from the Roth 401(k) deferral account.

In order to be a qualified distribution, the distribution must occur after one of the following: (1) attainment of age 59½, (2) disability, or (3) death. In addition, the distribution must occur after the expiration of a 5-year participation period. The 5-year participation period is the 5-year period beginning on the calendar year in which the participant first makes a Roth 401(k) contribution to the plan (or to another 401(k) plan or 403(b) plan if such amount was rolled over into the plan) and ending on the last day of the calendar year that is 5 years later. If a distribution from the Roth 401(k) deferral account is not a qualified distribution, the earnings distributed with the Roth 401(k) deferrals will be taxable to the participant at the time of distribution (unless rolled over to a Roth IRA or other 401(k) plan or 403(b) plan that will accept the rollover). In addition, in some cases, there may be a 10% excise tax on the earnings that are distributed.

Roth 401(k) deferrals are generally treated in the same manner as traditional pre-tax 401(k) deferrals (other than their tax treatment). As such, they are always fully vested and are subject to the same distribution restrictions that apply to other elective deferrals. You may, however, wish to treat Roth deferrals differently than traditional pre-tax elective deferrals for purposes of in-service and hardship distributions and loans. While not very common, this is done to ensure that the distribution is a qualified distribution.

- l. This option provides for the implementation of the elective deferral feature of the plan at a later date than the effective date of the plan (i.e., where the effective date of the plan is a retroactive date). For example, a new plan may be established late in a year with a retroactive effective date to allow for a profit sharing contribution for an entire 12-month Plan Year. However, elective deferrals cannot be made prior to the date the plan is actually adopted so you would need to indicate a special effective date for purposes of making elective deferrals.
- m. Commence elective deferral elections: The plan must specify rules governing when participants may commence elective deferral elections. Normally, the date for commencing elective deferrals should be tied to the Effective Date of Participation option selected. For example, if there are 12 entry dates (the first day of each month), then participants should be able to commence elective deferrals as of any entry date. Therefore, you should consider entering "the first day of each month" in the first blank space to indicate when elective deferrals may commence.
- n. – r. Modifications can be permitted as frequently as you desire. It is a function of administrative preference. For example, if changes will be permitted only twice each year, then you might consider entering "each January 1st and July 1st." The plan always permits employees to stop deferrals at any time.
- t. Employers who wish to increase participation in a non-safe harbor 401(k) plan may use an "automatic deferral" feature. Under this provision, amounts are automatically deferred (based on the percentage or dollar amount specified in the Adoption Agreement) from a participant's pay unless the participant makes an affirmative election to defer a different percentage. Employees must be given the option to have no deferrals taken out of their paycheck. It is important that participants be notified of this provision, because once deferrals are made to the plan, they are subject to the distribution restrictions of the plan.

28. SIMPLE 401(k) PLAN ELECTION (Plan Section 13.1)

Shall the SIMPLE 401(k) provisions of Article XIII apply?

- a.  No.
- b.  Yes, the SIMPLE 401(k) provisions will apply. The Plan Year must be the calendar year and the Employer must be an "eligible employer" as defined in Plan Section 13.1(b)(1). (If selected, then skip to 34).

**28. SIMPLE 401(k) PLAN ELECTION**

A SIMPLE 401(k) plan is a 401(k) plan that includes certain "SIMPLE" provisions. In general, only employers who have 100 or fewer employees who earned at least \$5,000 in compensation the preceding year can establish a SIMPLE plan. The SIMPLE plan allows participants to contribute to the plan on a pre-tax basis up to \$10,500 (for 2008). However, unlike a traditional 401(k) plan, you are required to make certain contributions on behalf of the participants. Because of these required contributions, the SIMPLE plan is not subject to most compliance testing.

To be exempt from these rules, you must contribute either a matching contribution or a qualified non-elective contribution (QNEC). The matching contribution is a "dollar-for-dollar" contribution that matches the first 3% of each participating employee's pre-tax elective deferrals. Alternatively, you may elect to make a QNEC equal to 2% of compensation for each eligible employee who has earned at least \$5,000 for the year. This QNEC contribution must be made even for those who have chosen not to participate in making their own contributions to the plan. While a SIMPLE plan is easy to administer, the disadvantage is that the only employer contribution that may be made to a SIMPLE plan is the 3% matching contribution or the alternative 2% of compensation contribution. No other contributions, such as profit sharing contributions, may be made to the SIMPLE plan or to any other qualified plan.

29. 401(k) SAFE HARBOR PROVISIONS (Plan Section 12.8)  
Will the ADP and/or ACP test safe harbor provisions be used? (select a., b., or c.)

**NOTE:** If the Employer wants the discretion to determine whether the provisions will apply on a year-by-year basis, then the Employer may either select 29.a. (No) OR 29.b. or 29.c. and option 29.e.2.

- a.  No. (If selected, skip to Question 30.)  
 b.  Yes, but only the ADP (and NOT the ACP) test safe harbor provisions will be used.  
 c.  Yes, both the ADP and ACP test safe harbor provisions will be used.  
 IF c. is selected, does the Plan permit Employer matching contributions in addition to any safe harbor contributions selected in d. or e. below?  
 1.  No or N/A. Any Employer matching contributions, other than any safe harbor matching contributions selected in d. below, will be suspended in any Plan Year in which the safe harbor provisions are used.  
 2.  Yes, the Employer may make Employer matching contributions in addition to any ADP test safe harbor matching contributions selected in d. below. (If selected, complete the provisions of the Adoption Agreement relating to Employer matching contributions (i.e., Question 30.) that will apply in addition to any selections made in d. below. Also, no allocation conditions may be imposed at 30.F.)

THE EMPLOYER WILL MAKE THE FOLLOWING ADP TEST SAFE HARBOR CONTRIBUTION FOR THE PLAN YEAR:

**NOTE:** The ACP test safe harbor is automatically satisfied if the only matching contribution made to the Plan is either (1) a Basic Matching Contribution or (2) an Enhanced Matching Contribution that does not provide a match on Elective Deferrals in excess of 6% of Compensation.

- d.  Safe Harbor Matching Contribution (select 1. or 2. **AND** one from 3. - 6.)  
 1.  **Basic Matching Contribution.** The Employer will make matching contributions to the account of each "eligible Participant" in an amount equal to the sum of 100% of the amount of the Participant's Elective Deferrals that do not exceed 3% of the Participant's Compensation, plus 50% of the amount of the Participant's Elective Deferrals that exceed 3% of the Participant's Compensation but do not exceed 5% of the Participant's Compensation.  
 2.  **Enhanced Matching Contribution.** The Employer will make matching contributions to the account of each "eligible Participant" in an amount equal to the sum of:  
 a.  \_\_\_\_\_% (may not be less than 100%) of the Participant's Elective Deferrals that do not exceed \_\_\_\_\_% (may not be less than 3%; if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation, plus  
 b.  \_\_\_\_\_% of the Participant's Elective Deferrals that exceed \_\_\_\_\_% of the Participant's Compensation but do not exceed \_\_\_\_\_% (if over 6% or if left blank, the ACP test will still apply) of the Participant's Compensation.

**NOTE:** a. and b. must be completed so that, at any rate of Elective Deferrals, the matching contribution is at least equal to what the matching contribution would be if the Employer were making Basic Matching Contributions (as defined in 29.d.1. above), but the rate of match cannot increase as deferrals increase. For example, if a. is completed to provide a match equal to 100% of deferrals up to 4% of Compensation, then b. need not be completed.

**AND**, the safe harbor matching contribution will be determined on the following basis (and Compensation for such purpose will be based on the applicable period):

3.  the entire Plan Year.
4.  each payroll period.
5.  all payroll periods ending with or within each month.
6.  all payroll periods ending with or within each Plan Year quarter.

e.  **Safe Harbor Nonelective Contributions** (select one)

1.  **Fixed.** The Employer will make a Safe Harbor Nonelective Contribution to the account of each "eligible Participant" in an amount equal to \_\_\_\_\_% (may not be less than 3%) of the Employee's Compensation for the Plan Year.
2.  **Discretionary ("maybe").** The Employer may elect to make a Safe Harbor Nonelective Contribution after a Plan Year has commenced in accordance with the provisions of Plan Section 12.8(h). If this option e.2. is selected, the Safe Harbor Nonelective Contribution will be required only for a Plan Year for which the Plan is amended to provide for such contribution and the appropriate supplemental notice is provided to Participants.
3.  **Other Plan.** The Employer will make a Safe Harbor Nonelective Contribution to another defined contribution plan maintained by the Employer (specify the name of the other plan): \_\_\_\_\_.

FOR PURPOSES OF THE ADP test safe harbor contribution, the term "eligible Participant" means any Participant who is eligible to make Elective Deferrals with the following exclusions:

f.  N/A. No exclusions.

g.  Exclusions (select all that apply, if any):

1.  Highly Compensated Employees.
2.  Employees who have not satisfied the greatest minimum age and service conditions permitted under Code Section 410(a) (i.e., age 21 and 1 Year of Service), with the following deemed effective date of participation:
  - a.  The first day of the Plan Year in which the requirements are met.
  - b.  Other: \_\_\_\_\_ (no later than the earlier of (a) 6 months after such requirements are satisfied, or (b) the first day of the first Plan Year after such requirements are satisfied).
3.  Other: \_\_\_\_\_ (must be a Highly Compensated Employee or an Employee who can be excluded under the permissive or mandatory disaggregation rules of Regulations Sections 1.401(k)-1(b)(4) and 1.401(m)-1(b)(4)).

**SPECIAL EFFECTIVE DATE OF ADP AND ACP TEST SAFE HARBOR PROVISIONS**

h.  N/A.

i.  The ADP and ACP test safe harbor provisions are effective for Plan Years beginning on or after:

\_\_\_\_\_ (enter the first day of the Plan Year for which the provisions are effective and, if necessary, enter any other special effective dates that apply with respect to the provisions).

## 29. 401(K) SAFE HARBOR PROVISIONS

401(k) safe harbor provisions are referred to as ADP and/or ACP test safe harbor rules. Under these safe harbor rules, if certain contributions and conditions are met, then the plan is not subject to the annual nondiscrimination tests that apply to deferrals and/or matching contributions (referred to as the ADP and ACP tests). In addition, if the only contributions made to the plan satisfy the ADP and ACP test safe harbor rules, then the plan is not subject to the top-heavy requirements. However, even if the plan is still subject to the top-heavy requirements, the safe harbor contributions can be used to satisfy the top-heavy minimum contribution requirement.

The safe harbor contribution must be either: (1) a non-elective contribution equal to 3% of compensation, or (2) a matching contribution that is at least as great as 100% of a participant's elective deferrals that do not exceed 3% of compensation, plus 50% of the elective deferrals between 3% and 5% of compensation (this matching formula is referred to as a "Basic Matching Contribution" and any other formula that is at least as great as this formula is referred to as an "Enhanced Matching Contribution"). Regardless of which contribution is made, it must be fully vested and is subject to distribution restrictions that are similar to those that apply to elective deferrals.

In order to satisfy the ACP test safe harbor, the plan must make one of the safe harbor contributions described above. In addition, there are several other requirements that apply. No matching contribution under the plan can be made with respect to elective deferrals that exceed 6% of a participant's compensation, and the rate of matching contributions cannot increase as the rate of deferrals increases. In addition, if the plan permits a discretionary matching contribution to be made to the plan, then the maximum dollar amount of the discretionary match for any participant cannot exceed

4% of the participant's compensation. Note that the plan is always subject to the ACP test (i.e., the ACP test) if after-tax voluntary employee contributions are permitted.

Starting in 2008, a plan may contain another type of safe harbor, called a Qualified Automatic Contribution Arrangement ("QACA").

- a. This should be selected if the 401(k) safe harbor contributions will not be used.
- b. Select this option if the ADP, but not the ACP safe harbor options will be used. Most employers that have plans with matching contributions will want to use both the ADP and ACP safe harbor provisions. In which case, option **c.** (described below) should be selected. Employers will typically be an ADP safe harbor but not an ACP safe harbor (option **b.**) when there are matching contributions subject to allocation conditions (such as the completion of 1,000 hour of service during the year or employment on the last day of the year).
- c. Select this option if both the ADP and ACP safe harbor provisions will be used.  
 Option **c.1** is used to specify whether any other matching contributions specified in the Adoption Agreement are suspended when the plan is meeting the ACP safe harbor provisions. If **c.2** is selected (i.e., other matching contributions are permitted), then the ACP safe harbor rules apply (i.e., deferrals in excess of 6% of compensation will not be taken into account in applying any matching contribution and the overall limit on a discretionary matching contribution is 4% of compensation).
- d.1. Select this if the plan will provide the "Basic Matching Contribution."
- d.2. Select this if the plan will provide an "Enhanced Matching Contribution." An "Enhanced Matching Contribution" must be at least as great as the matching contribution that would be made under the "Basic Matching Contribution." For example, a matching contribution equal to 100% of all elective deferrals is an "Enhanced Matching Contribution." Note that this example would not satisfy the ACP test safe harbor. In order to do so, it would need to be a matching contribution equal to 100% of all elective deferrals that do not exceed 6% of compensation.
- d.3. Regardless of which safe harbor matching contribution is made, a selection at **d.3** must be made. This election determines the basis for making the matching contribution. If the match is based on the plan year, then you may be required to "true up" the matching contribution at the end of the year. For example, assume constant compensation during the plan year and suppose a plan provides an "Enhanced Matching Contribution" equal to 100% of deferrals that do not exceed 4% of compensation. If this is based on the plan year, then a participant who defers 8% of compensation for 6 months and 0% for the remaining 6 months of the plan year is entitled to a matching contribution on all deferrals because the deferrals for the entire plan year do not exceed 4% of annual compensation. If the match is based on pay periods, then the deferrals in excess of 4% of compensation during each pay period for the first 6 months will not be matched. Note that if the match is based on a period other than the Plan Year, then you must deposit the matching contribution at least quarterly.
- e.1. This option should be selected if you will make the nonelective safe harbor contribution. Option **e.1** provides that the nonelective safe harbor contribution will be made to this plan.
- e.2. This option should be selected if the plan is using the "maybe" approach (whereby you retain the discretion to provide the 3% nonelective contribution provided a "maybe" notice is provided to participants before the Plan Year begins and, if you decide to make the contribution, a supplemental notice to participants is provided **and** you amend the plan to provide the contribution).
- e.3. Option **e.3** should be selected if the nonelective contribution is being made to another plan. Typically, this is used where you sponsor a money purchase pension plan. The plan to which the contribution is made would need to fully vest the contribution and impose the applicable distribution restrictions.

- g.1. In general, the safe harbor contribution must be made for all participants who are eligible to defer under the plan. However, certain employees may be excluded, but only to the extent permitted by regulations. Option **g.1** permits highly compensated employees to be excluded.
- g.2. Option **g.2** excludes employees who have not completed one year of service (or period of service if the elapsed time method is used) or attained age 21 from receiving the safe harbor contributions. If **g.2** is elected, then there are 2 consequences to the plan:
- (1) the plan is not a safe harbor plan with respect to those excluded employees and an ADP or ACP test would need to be satisfied for that group. However, typically these individuals are non-highly compensated employees and the ADP and ACP tests would automatically be satisfied. This exception is based on regulatory "disaggregation" provisions, and you are not free to divide the group however it likes, e.g., by imposing only a six month service requirement for the ADP safe harbor group, and
- (2) the exemption from the top-heavy rules (where a plan only consists of elective deferrals and ADP and ACP safe harbor contributions) would not apply.
- Options **g.2.a** and **g.2.b** are used to specify a hypothetical entry date for those employees who satisfy 1 year of service and attain age 21 and are then eligible to receive the safe harbor contribution. The selections should be coordinated with the selections made in compensation. For example, if compensation does not exclude compensation prior to a participant's entry date, then a participant would be entitled to the annual safe harbor contribution even though the requirements (1 year/age 21) are met during the Plan Year.
- h. Option **h.** permits other employees to be excluded, such as union employees. This also is based on regulatory "disaggregation" provisions, i.e., an employer is not free to select any "group" it would like to exclude.
- j. This option is used to specify special effective dates for the 401(k) safe harbor provisions. For example, an employer might want to establish a 401(k) plan effective in the middle of a year, but does not want the safe harbor provisions to be effective until the beginning of the next plan year.

30. EMPLOYER MATCHING CONTRIBUTIONS (Plan Section 12.1(a)(2))

**NOTE:** Regardless of any selection below, if the ACP test safe harbor is being used (i.e., Question 29.c. is selected), then the Plan automatically provides that only Elective Deferrals up to 6% of Compensation are taken into account in applying the match set forth below and that the maximum discretionary matching contribution that may be made on behalf of any Participant is 4% of Compensation.

A. **Matching Formula.**

- a.  N/A. There will not be any Employer matching contributions (skip to Question 31.).
- b.  The Employer ... (select 1. or 2.)
1.  may make matching contributions equal to a discretionary percentage, to be determined by the Employer, of the Participant's Elective Deferrals.
  2.  will make matching contributions equal to \_\_\_\_\_% (e.g., 50) of the Participant's Elective Deferrals, plus:
    - a.  N/A.
    - b.  an additional matching contribution of a discretionary percentage, to be determined by the Employer, but not to exceed \_\_\_\_\_% (leave blank if not applicable) of Compensation.

**AND**, in determining the Employer matching contribution above, only Elective Deferrals up to the percentage or dollar amount specified below will be matched: (select 3. and/or 4. OR 5.)

3.  \_\_\_\_\_% of a Participant's Compensation.
4.  \$\_\_\_\_\_.
5.  a discretionary percentage of a Participant's Compensation or a discretionary dollar amount, the percentage or dollar amount to be determined by the Employer on a uniform basis for all Participants.



- c.  The Employer may make matching contributions equal to a discretionary percentage, to be determined by the Employer, of each tier, to be determined by the Employer, of the Participant's Elective Deferrals.
- d.  The Employer will make matching contributions equal to a uniform percentage of each tier of each Participant's Elective Deferrals, determined as follows:  
**NOTE:** Fill in only percentages or dollar amounts, but not both. If percentages are used, each tier represents the amount of the Participant's applicable contributions that equals the specified percentage of the Participant's Compensation (add additional tiers if necessary):

Tiers of Contributions (indicate \$ or %)	Matching Percentage
First _____	_____ %
Next _____	_____ %
Next _____	_____ %
Next _____	_____ %

- e.  The Employer will make matching contributions equal to a uniform percentage of each Participant's Elective Deferrals based on the Participant's Years of Service (or Periods of Service if the Elapsed Time method is selected), determined as follows (add additional tiers if necessary):

Service	Matching Percentage
_____	_____ %
_____	_____ %
_____	_____ %

For purposes of the above matching contribution formula, a Year (or Period) of Service means a Year (or Period) of Service for:

1.  vesting purposes.
2.  eligibility purposes.

**NOTE:** If c., d., or e. above is selected, the Plan may violate the Code Section 401(a)(4) nondiscrimination requirements if the rate of Employer matching contributions increases as a Participant's Elective Deferrals or Years (or Periods) of Service increase.

- B. **Matching Limit.** The Employer matching contribution made on behalf of any Participant for any Plan Year will not exceed:
  - f.  N/A. No limit on the amount of matching contribution.
  - g.  \$\_\_\_\_\_.
  - h.  \_\_\_\_\_% of Compensation.
- C. **Period of Determination.** The matching contribution formula will be applied on the following basis (and any Compensation or dollar limitation used in determining the match will be based on the applicable period):
  - i.  the Plan Year.
  - j.  each payroll period.
  - k.  all payroll periods ending within each month.
  - l.  all payroll periods ending with or within each Plan Year quarter.
  - m.  N/A, the Plan only provides for discretionary matching contributions (i.e., b.1. or c. is selected above).

**NOTE:** For any discretionary match, the Employer shall determine the calculation methodology at the time the matching contribution formula is determined.

- D. **QMACs.** Shall the Employer matching contributions be Qualified Matching Contributions?
  - n.  Yes, ALL Employer matching contributions will be fully Vested, subject to restrictions on withdrawals as set forth in the Plan and may be used in either the ADP or ACP test.
  - o.  No.
- E. **Additional Matching Contributions.** Will there be matching contributions in addition to the above (e.g., if there is a match made on a periodic basis as well as a match based on the end of the Plan Year)?
  - p.  No.
  - q.  Yes. Specify the additional matching contribution by attaching an addendum to the Adoption Agreement that duplicates this entire Question 30.

- F. **Allocation Conditions.** Select r. OR s. and all that apply of t., u., or v. **Note:** If the ACP test safe harbor provision is used (Question 29.c.), no conditions (option r. below) must be selected.

- r.  **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status at the end of the Plan Year. (skip to next Question.)
- s.  **Conditions for Participants NOT employed at the end of the Plan Year.**
1.  A Participant must complete more than \_\_\_\_\_ (not to exceed 500) Hours of Service (or \_\_\_\_\_ (not to exceed 3) months of service if the Elapsed Time method is selected).
  2.  A Participant must complete a Year of Service (or Period of Service if the Elapsed Time method is selected). (Could cause the Plan to violate coverage requirements under Code Section 410(b).)
  3.  Participants will NOT share in the allocations, regardless of service. (Could cause the Plan to violate coverage requirements under Code Section 410(b).)
  4.  Participants will share in the allocations, regardless of service.
  5.  Other: \_\_\_\_\_ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the Elapsed Time method is elected)).
- t.  **AND, Waiver of conditions for Participants NOT employed at the end of the Plan Year.** Participants who are not employed at the end of the Plan Year due to the following shall be eligible to share in the allocations regardless of the above conditions (select all that apply):
1.  Death.
  2.  Total and Permanent Disability.
  3.  Early or Normal Retirement.
- u.  **Conditions for Participants employed at the end of the Plan Year.** (Options 2. and 3. could cause the Plan to violate coverage requirements under Code Section 410(b).)
1.  No service requirement.
  2.  A Participant must complete a Year of Service (or Period of Service if the Elapsed Time method is selected).
  3.  A Participant must complete at least \_\_\_\_\_ (not to exceed 1,000) Hours of Service during the Plan Year.
- v.  **Code Section 410(b) fail-safe.** If s.2. or 3. and/or u.2. or 3. is selected, shall the Code Section 410(b) ratio percentage fail-safe provisions apply (Plan Section 12.3(f))?
1.  No or N/A.
  2.  Yes, the Plan must satisfy the ratio percentage test of Code Section 410(b).

### 30. FORMULA FOR DETERMINING EMPLOYER MATCHING CONTRIBUTION

Matching contributions are a very popular feature of 401(k) plan design. The availability of a matching contribution is a strong incentive for employees to participate in the elective deferral portion of the plan, thereby making it easier to pass the ADP test. The Adoption Agreement questions provide various plan design options that you can utilize to tailor the matching contribution program to fit its specific needs.

- a. This option should be selected if you do not wish to make matching contributions (or if the plan is a 401(k) safe harbor plan, and the plan does not have any matching contributions other than any ADP test safe harbor matching contributions).
- b.1. If this option is selected, then you have the discretion to determine the amount, if any, of matching contributions that will be made to the plan.
- b.2. If this option is selected, then you will be obligated each year to make a matching contribution equal to the stated percentage of elective deferrals. In addition, option **b.2.b** can be selected if you want to commit to a required matching contribution but also have the flexibility to have an additional discretionary matching contribution.
- b.3.-5. These options provide a limit on the deferrals that will be matched. For example, if a 100% matching contribution was selected, then you may want to set a cap for this match at 6% of compensation in order to control plan costs. If the plan is using the ACP test safe harbor provisions, then option **b.3** should be selected with a percentage not greater than 6%.

- c. If this option is selected, then you may make discretionary matching contributions based on each step-rate or tier of deferrals. For example, in one year you might determine the matching contribution to be 100% of deferrals up to 3% of compensation and 50% of deferrals between 3% and 8% of compensation. In a Standardized Adoption Agreement, the rate of match may not increase as a participant's deferrals increase. In a Non-standardized Adoption Agreement, if the rate of match increases as a participant's deferrals increase, then an additional test must be applied to determine whether the rate of match is discriminatory (all rights, benefits and features under the plan must be nondiscriminatory).
- d. This option should be selected if you wish to provide a step-rate matching contribution program. Under this approach, you may provide for differing matching contribution dollar amounts or percentages based upon each participant's total elective deferrals as compared to compensation. For example, an employer may wish to match 100% of each participant's elective deferrals that do not exceed 2% of compensation plus 50% of the elective deferrals which are between 2% and 4% of compensation. In a Standardized Adoption Agreement, the rate of match may not increase as a participant's deferrals increase. In a Non-standardized Adoption Agreement, if the rate of match increases as a participant's deferrals increase, then an additional nondiscrimination test must be applied to determine whether the rate of match is discriminatory (all rights, benefits and features under the plan must be nondiscriminatory).
- e. This option should be selected if you wish to provide a step-rate matching contribution program based on length of service. Under this approach, you may provide for differing matching contribution dollar amounts or percentages based upon each participant's length of service. If **e.** is selected, then **e.1** or **e.2** must be selected to define the service used to determine the matching contribution.
- g. – h. If this option is selected, then employer matching contributions on behalf of a participant will not exceed a stated dollar amount or stated percentage of compensation. This is a design feature to control costs.
- i.-m. This election determines the basis for making the matching contribution. If the match is based on the plan year, then you may be required to "true up" the matching contribution at the end of the year. For example, assume constant compensation during the Plan Year and suppose a plan provides a matching contribution equal to 100% of deferrals that do not exceed 4% of compensation. If this is based on the plan year, then a participant who defers 8% of compensation for 6 months and 0% for the remaining 6 months of the plan is entitled to a matching contribution on all deferrals because the deferrals for the entire plan year do not exceed 4% of compensation. If the match is based on pay periods, then the deferrals in excess of 4% of compensation during each pay period for the first 6 months will not be matched. If matching contributions are based on a period other than the plan year, then the selections at options **s.** and **t.** should be coordinated with the operation of the plan. For example, if matching contributions are based, *and deposited*, on a payroll basis, then requiring a participant to complete a certain amount of service during the year to receive the matching contribution could be problematic if the participant ultimately does not receive the requisite service but already has matching contributions allocated to the account.
- n. – o. You may wish to have the matching contribution applied toward satisfying the ADP test. This type of contribution is referred to as a Qualified Matching Contribution (QMAC). QMACs must be 100% vested and are generally subject to the same withdrawal restrictions that apply to elective deferrals. If this option is selected, the elective deferrals and employer matching contribution may (but are not required to) be combined to perform the ADP test. In such case, a separate ACP test would not be required. However, the disadvantage of combining both contribution sources into the ADP test is that in many plans it will be harder to pass the ADP test.
- p. – q. Option **q.** allows you to specify an additional matching contribution by repeating all items in Question 30. This would typically be used in situations where you want one matching contribution to be made to all participants who defer, but also wants to provide for an additional matching contribution for those employed at the end of the plan year (such as an additional discretionary matching

contribution). Question 30 would be completed for the general match and then option **q.** would be selected to provide for the additional match by completing the same Questions again.

- r. – v. Once you have decided to include matching contributions in the plan, then the criteria for receiving the contribution must be specified in the plan. The various options provided are a result of design alternatives which take into account concerns about complying with the minimum coverage requirements. If the match is being determined, or made, on a basis that is more frequent than the plan year (e.g., for each pay period), the conditions imposed in this section should be carefully considered. For example, if matching contributions are based, and deposited, on a payroll basis, then requiring a participant to complete a certain amount of service during the year to receive the matching contribution could be problematic if the participant ultimately does not receive the requisite service but already has matching contributions allocated to the account.

Qualified plans must not discriminate in favor of highly compensated employees nor be operated in such a way that they principally benefit only highly compensated employees. The Plan has to pass the test designed to ensure that a sufficient number of non-highly compensated employees are benefiting under the plan.

"Benefiting" means that employees must be eligible to receive a matching contribution if they were eligible to defer an amount to the plan (regardless of whether they actually defer). However, a participant may be excluded for testing purposes if the participant is not actively employed on the last day of the plan year and failed to complete more than 500 hours of service (or three consecutive months of service if the elapsed time method is being used) prior to terminating employment. Plans that provide the traditional approach of requiring 1,000 hours of service and/or last day employment to receive an allocation can still satisfy the requirements.

A **Standardized** plan provides that all active participants (i.e., those employed on the last day of the plan year) must share in allocations regardless of the number of hours of service credited during the year. With regard to participants who terminated service during the year, the Standardized plan provides two alternative approaches. The most generous approach allows all participants who have terminated employment during the year to share in allocations without regard to the number of hours of service completed during the year. Alternatively, the plan can require that participants who terminated employment during the year must complete more than 500 hours of service (or three consecutive months of service if the elapsed time method is being used) in the year in which service terminated, in order to share in the allocation. The net result is that, in a Standardized plan, the only class of participants who can be excluded from the group sharing in allocations are those who terminated during the year without completing more than 500 hours of service (or three consecutive months of service if the elapsed time method is being used). This exclusion applies to individuals who are participants in the plan (i.e., the plan can still impose an age and/or service requirement to initially become a participant in the plan).

In a **Non-standardized** plan, employment on the last day of the plan year and the completion of at least 1,000 hours of service (or a period of service if the elapsed time method is being used) may still be selected as a condition for sharing in allocations. However, selecting either of these options could (as explained above) operationally result in a violation of the tests. Therefore, more administrative oversight would generally be necessary to prevent a violation of these coverage tests.

- v.1 If **v.1** is selected, the plan will not use the fail-safe provision. The advantage is that the plan has more flexibility in running the coverage tests that apply to the plan. If the plan fails coverage, then adjustments will be needed pass coverage. The adjustments must be made in accordance with strict rules found in Treasury regulations.
- v.2. If option **v.2** allows the use of a fail-safe provision. Under this provision, the plan must pass coverage using only one of the two permitted methods. While this limits flexibility in satisfying the test, it makes the administration of the test (and the correction if the test is failed) much easier.

31. FORMULA FOR DETERMINING EMPLOYER PROFIT SHARING CONTRIBUTION (Plan Section 12.1(a)(3))  
(d. may be selected in addition to b. or c.)
- a.  N/A. No Employer Profit Sharing Contributions may be made (other than top-heavy minimum contributions) (skip to Question 33.)
  - b.  Discretionary contribution, to be determined by the Employer.
  - c.  Fixed contribution equal to \_\_\_\_\_% of Compensation of Participants eligible to share in allocations.
  - d.  Prevailing Wage Contribution. The Employer will make a Prevailing Wage Contribution on behalf of each Participant who performs services subject to the Service Contract Act, Davis-Bacon Act or similar Federal, State, or Municipal Prevailing Wage statutes. The Prevailing Wage Contribution shall be an amount equal to the balance of the fringe benefit payment for health and welfare for each Participant (after deducting the cost of cash differential payments for the Participant) based on the hourly contribution rate for the Participant's employment classification, as designated on Schedule A as attached to this Adoption Agreement. The Prevailing Wage Contribution shall not be subject to any age or service requirements set forth in Question 15. nor to any service or employment conditions set forth in Question 32. and will be 100% Vested.

**AND**, is the Prevailing Wage Contribution considered a Qualified Nonelective Contribution?

1.  Yes.
2.  No.

**AND**, shall the Prevailing Wage Contribution made on behalf of a Participant for a Plan Year reduce (offset) other Employer contributions allocated or contributed on behalf of such Participant for the Plan Year?

3.  No, the Prevailing Wage Contribution will be in addition to other Employer contributions.
4.  Yes, in accordance with the following: (1) if the Prevailing Wage Contribution is a Qualified Nonelective Contribution as selected above, then it will offset any ADP test safe harbor contribution, and (2) if the Prevailing Wage Contribution is not a Qualified Nonelective Contribution as selected above, then it will offset any other Employer contributions under the Plan (other than any ADP test safe harbor contributions).

**AND**, shall Highly Compensated Employees be excluded from receiving a Prevailing Wage Contribution?

5.  Yes.
6.  No.

#### CONTRIBUTION ALLOCATIONS

If b. or c. above is selected, the Employer profit sharing contribution for a Plan Year will be allocated as follows:

- e.  **NON-INTEGRATED ALLOCATION**
  1.  In the same ratio as each Participant's Compensation bears to the total of such Compensation of all Participants.
  2.  In the same dollar amount to all Participants (per capita).
  3.  In the same dollar amount per Hour of Service completed by each Participant.
  4.  In the same proportion that each Participant's points bears to the total of such points of all Participants. A Participant's points with respect to any Plan Year shall be computed as follows (select all that apply):
    - a.  \_\_\_\_\_ point(s) shall be allocated for each Year of Service (or Period of Service if the Elapsed Time method is selected). However, the maximum Years (or Periods) of Service taken into account shall not exceed \_\_\_\_\_ (leave blank if no limit on service applies).
    - b.  \_\_\_\_\_ point(s) shall be allocated for each full \$\_\_\_\_\_ (may not exceed \$200) of Compensation.
    - c.  \_\_\_\_\_ point(s) shall be allocated for each year of age as of the end of the Plan Year.

**AND**, if 31.e.4.a. above is selected, Year of Service (or Period of Service if applicable), means:

- d.  Service for eligibility purposes.
- e.  Service for vesting purposes.

- f.  **INTEGRATED (PERMITTED DISPARITY) ALLOCATION**

In accordance with Plan Section 4.3(b)(2) based on a Participant's Compensation in excess of:

1.  The Taxable Wage Base.
2.  \_\_\_\_\_% (not to exceed 100%) of the Taxable Wage Base. (see Note below)
3.  80% of the Taxable Wage Base plus \$1.00.
4.  \$\_\_\_\_\_ (not greater than the Taxable Wage Base). (see Note below)

**NOTE:** The integration percentage of 5.7% shall be reduced to:

1. 4.3% if 2. or 4. above is more than 20% and less than or equal to 80% of the Taxable Wage Base.
2. 5.4% if 3. is selected or if 2. or 4. above is more than 80% of the Taxable Wage Base.

g.  **NON-SAFE HARBOR ALLOCATION METHODS**1.  **Grouping Method.** Pursuant to Plan Section 4.3(b)(3)(vi), the classifications are (select a. or b.):a.  Each Participant constitutes a separate classification.b.  Participants will be divided into the following classifications with the same allocation ratio (the classifications should be such that resulting allocations are provided in a definite predetermined formula that complies with Regulation Section 1.401-1(b)(1)(ii)):

Classification A shall consist of: \_\_\_\_\_.

Classification B shall consist of: \_\_\_\_\_.

Classification C shall consist of: \_\_\_\_\_.

Classification D shall consist of: \_\_\_\_\_.

Additional Classifications: \_\_\_\_\_ (specify the classifications).

**NOTE:** If a. or b. is selected, then the number of allocation rates must not exceed the maximum allowable number of allocation rates permitted under Plan Section 4.3(b)(3)(vii). HCEs may each be in separate allocation groups. The grouping of eligible NHCEs must be done in a reasonable manner and should reflect a reasonable classification in accordance with Regulation Section 1.410(b)-4(b). In the case of Self-Employed Individuals (i.e., sole proprietors or partners), the allocation method should not be such that a cash or deferred election is created for a Self-Employed Individual as a result of application of the allocation method.

2.  **Age-Weighted Method.** The Schedule of Age-Weighted Allocation Factors is set forth in attached Exhibit A (which is hereby incorporated by reference and made a part of the Plan) and shall be based on the following interest rate (if no selection is made, c. shall be deemed to have been selected):a.  7.5% interestb.  8.0% interestc.  8.5% interest**31. FORMULA FOR DETERMINING EMPLOYER PROFIT SHARING CONTRIBUTION**

- a. Choose this option if no profit sharing component will be available in the plan and skip to Question 33.
- b. Option **b.** provides for a discretionary profit sharing contribution that is determined on a year-to-year basis at your discretion.
- c. Option **c.** provides a fixed contribution, and thus represents a required contribution until such time that the plan is amended to provide otherwise.
- d. Option **d.** provides that a Prevailing Wage Contribution can be made to the plan for government contract employees subject to prevailing wage laws (e.g., the federal prevailing wage law under the Davis-Bacon Act). If selected, then the amount of the Prevailing Wage Contributions that will be made to the plan must be specified in an attachment to the Adoption Agreement and labeled as Attachment A. In addition, the following may be elected in the Adoption Agreement:
- d.1. This option provides that the Prevailing Wage Contribution will be treated as a Qualified Non-Elective Contribution (QNEC). Since the Prevailing Wage Contribution is already fully vested, the only disadvantage to making the contribution a QNEC is that it will generally be subject to the same restrictions as elective deferrals. But the advantage of making it a QNEC is that the contribution can be used in the ADP or ACP tests.
- d.4. This option provides that the Prevailing Wage Contribution will offset any contribution that would otherwise be made on behalf of a participant, including any ADP test safe harbor contributions or profit sharing contributions. Many employers only want employees subject to prevailing wage laws to receive the greater of the prevailing wage contribution or the profit sharing contribution that is made

on behalf of all other eligible participants. If option **d.3** is selected (i.e., there is no offset), then any profit sharing contributions will be in addition to the prevailing wage contributions.

## CONTRIBUTION ALLOCATIONS

The plan must specify how contributions are allocated to the accounts of participants who are eligible to share in allocations.

- e.1. This option provides that the employer contribution is allocated based on compensation.
- e.2. This option provides that the employer contribution is allocated in an equal dollar amount.
- e.3. This option provides that the contribution is allocated pro-rata based on each participant's hours of service completed during the plan year.
- e.4. This option is only available in the Non-standardized Adoption Agreement and provides for an allocation based on points. Under a point method of allocating contributions, a participant is given points based on age, compensation, and/or service. While the point allocation method is a type of safe harbor allocation method for nondiscrimination purposes, **it still requires that a nondiscrimination test be performed each year.** An allocation will be nondiscriminatory under the point allocation method if two requirements are satisfied:

(1) The allocation formula must be a single uniform formula weighted for service, age and/or compensation. In addition, if the formula credits points for compensation, then the points must be credited based on increments of compensation that are no more than \$200 (i.e., points could not be credited for each full \$1,000 of compensation).

(2) The average of the allocation rates for highly compensated participants must not exceed the average of the allocation rates for non-highly compensated participants.

- f. If selected, employer contributions are allocated on an integrated basis. Integration permits contributions to be weighted in favor of participants who earn more than the Social Security Taxable Wage Base. This is known as "permitted disparity." It is permitted because the percentage of compensation that an employer contributes to Social Security is larger for participants who earn less than the Taxable Wage Base than for participants who earn more than the Taxable Wage Base. Accordingly, the maximum disparity (the integration percentage) is generally limited to the lesser of:
  - the base contribution percentage (i.e., the percentage with respect to total compensation), or
  - the greater of: (1) 5.7%, or (2) the percentage rate of tax attributable to the old age insurance portion of Social Security (this percentage is not expected to exceed 5.7% for some time and is therefore of little relevance to current plan design).

Provisions establishing the amount of the covered wage base to be used for integration purposes (referred to as the "Integration Level") can be either a stated dollar amount, a percentage of the Taxable Wage Base in effect as of the beginning of the applicable plan year, or can "float" with the maximum Taxable Wage Base in effect as of the beginning of the applicable plan year. If the Integration Level selected is less than the Taxable Wage Base and greater than 20% of the Taxable Wage Base in effect as of the beginning of the applicable plan year, then a reduction is required in the 5.7% above to either 5.4% or 4.3% depending on the integration level selected (it is 5.4% if the Integration Level is more than 80% of the Taxable Wage Base and it is 4.3% if the Integration Level is more than 20% but not in excess of 80% of the Taxable Wage Base).

If a Standardized Adoption Agreement is being used, then only one plan maintained by you can provide for permitted disparity. If a Non-standardized Adoption Agreement is being used, then two plans of an employer can provide for permitted disparity provided that in the aggregate, the limits



described above are not exceeded. In addition, if one of the plans is a defined benefit plan, then there are cumulative limits (described in the Basic Plan Document) that must be satisfied.

- g. The Non-standardized Adoption Agreement provides for various non-safe harbor allocation methods. Before deciding to use one of these methods, a careful analysis should be made in order to determine whether it is appropriate for your business. These methods typically use a combination of age and/or compensation to base allocations. The result is that typically the older employees receive a larger allocation when compared to younger employees with the same compensation.
- g.1. The “grouping method” (also known as “cross-testing” or “new comparability”) may require complex annual testing and should therefore only be selected with the advice of your plan advisor.
- g.2. An age-weighted profit sharing plan uses age and compensation as the basis for determining contribution allocations. Just like option **g.1** above, this type of allocation is tested for nondiscrimination on the basis of the benefits that will ultimately be provided. However, unlike option **g.1**, this allocation method does not maximize the use of all available nondiscrimination options that may be applied. Thus, many practitioners find this method to be slightly easier to administer.

32. **REQUIREMENTS TO SHARE IN ALLOCATIONS OF EMPLOYER PROFIT SHARING CONTRIBUTION AND FORFEITURES** (select a. OR b. and all that apply of c., d., or e.)

- a.  **No conditions.** All Participants share in the allocations regardless of service completed during the Plan Year or employment status at the end of the Plan Year. (skip to next Question.)
- b.  **Conditions for Participants NOT employed at the end of the Plan Year.**
  - 1.  A Participant must complete more than \_\_\_\_\_ (not to exceed 500) Hours of Service (or \_\_\_\_\_ (not to exceed 3) months of service if the Elapsed Time method is selected).
  - 2.  A Participant must complete a Year of Service (or Period of Service if the Elapsed Time method is selected). (Could cause the Plan to violate coverage requirements under Code Section 410(b).)
  - 3.  Participants will NOT share in the allocations, regardless of service. (Could cause the Plan to violate coverage requirements under Code Section 410(b).)
  - 4.  Participants will share in the allocations, regardless of service.
  - 5.  Other: \_\_\_\_\_ (must be definitely determinable, not subject to Employer discretion and may not require more than one Year of Service (or Period of Service if the Elapsed Time method is elected)).
- c.  **AND, Waiver of conditions for Participants NOT employed at the end of the Plan Year.** Participants who are not employed at the end of the Plan Year due to the following shall be eligible to share in the allocations regardless of the above conditions (select all that apply):
  - 1.  Death.
  - 2.  Total and Permanent Disability.
  - 3.  Early or Normal Retirement.
- d.  **Conditions for Participants employed at the end of the Plan Year.** (Options 2. and 3. could cause the Plan to violate coverage requirements under Code Section 410(b).)
  - 1.  No service requirement.
  - 2.  A Participant must complete a Year of Service (or Period of Service if the Elapsed Time method is selected).
  - 3.  A Participant must complete at least \_\_\_\_\_ (not to exceed 1,000) Hours of Service during the Plan Year.
- e.  **Code Section 410(b) fail-safe.** If b.2. or 3. and/or d.2. or 3. is selected, shall the Code Section 410(b) ratio percentage fail-safe provisions apply (Plan Section 4.3(m))?
  - 1.  No or N/A.
  - 2.  Yes, the Plan must satisfy the ratio percentage test of Code Section 410(b).

**32. REQUIREMENTS TO SHARE IN ALLOCATIONS OF EMPLOYER PROFIT SHARING CONTRIBUTION AND FORFEITURES**

This Question sets forth the conditions for receiving an allocation of profit sharing contributions and forfeitures. The various options provided are a result of design alternatives which take into account concerns about complying with the coverage requirements.

Qualified plans must not discriminate in favor of highly compensated employees nor be operated in a way that they principally benefit only highly compensated employees. The plan has to pass a coverage test which is designed to

ensure that a sufficient number of non-highly compensated employees are benefiting under the plan.

"Benefiting" means that employees must receive a share of the employer contribution or a share of the forfeiture of non-vested benefits for the year. However, a participant may be excluded for testing purposes if the participant is not actively employed on the last day of the plan year and failed to complete more than 500 hours of service (or three consecutive months of service if the elapsed time method is being used) prior to terminating employment. Plans that provide the traditional approach of requiring 1,000 hours of service and/or last day employment to receive an allocation can still satisfy the requirements.

A **Standardized** plan provides that all active participants (i.e., those employed on the last day of the plan year) must share in allocations regardless of the number of hours of service credited during the year. With regard to participants who terminated service during the year, the Standardized plan provides two alternative approaches. The most generous approach allows all participants who have terminated employment during the year to share in allocations without regard to the number of hours of service completed during the year. Alternatively, the plan can require that participants who terminated employment during the year must complete more than 500 hours of service (or three consecutive months of service if the elapsed time method is being used) in the year in which service terminated, in order to share in the allocation. The net result is that, in a Standardized plan, the only class of participants who can be excluded from the group sharing in allocations are those who terminated during the year without completing more than 500 hours of service (or three consecutive months of service if the elapsed time method is being used). This exclusion applies to individuals who are participants in the plan (i.e., the plan can still impose an age and/or service requirement to initially become a participant in the plan).

In a **Non-standardized** plan, employment on the last day of the plan year and the completion of at least 1,000 hours of service (or a period of service if the elapsed time method is being used) may still be selected as a condition for sharing in allocations. However, selecting either of these options could (as explained above) operationally result in a violation of the tests. Therefore, more administrative oversight would generally be necessary to prevent a violation of these tests.

- e.1 If **e.1** is selected, the plan will not use the fail-safe provision. The advantage is that the plan has more flexibility in running the coverage tests that apply to the plan. If the plan fails coverage, then adjustments will be needed pass coverage. The adjustments must be made in accordance with strict rules found in Treasury regulations.
- e.2. If option **e.2** allows the use of a fail-safe provision. Under this provision, the plan must pass coverage using only one of the two permitted methods. While this limits flexibility in satisfying the test, it makes the administration of the test (and the correction if the test is failed) much easier.

33. FORFEITURES (Plan Sections 1.34 and 4.3(e))

- A. **Timing of Forfeiture.** Except as provided in Plan Section 1.34, a Forfeiture will occur (if no selection is made, b. will apply):
  - a.  N/A. (May only be selected if all contributions are fully Vested; skip to Question 34.).
  - b.  As of the earlier of (1) the last day of the Plan Year in which the Former Participant incurs five (5) consecutive 1-Year Breaks in Service, or (2) the distribution of the entire Vested portion of the Participant's Account.
  - c.  As of the last day of the Plan Year in which the Former Participant incurs five (5) consecutive 1-Year Breaks in Service.

**AND**, the Forfeiture will be disposed of in:

  - d.  The Plan Year in which the Forfeiture occurs.
  - e.  The Plan Year following the Plan Year in which the Forfeiture occurs.
- B. **Plan Expenses.** May Forfeitures first be used to pay any administrative expenses?
  - f.  Yes.
  - g.  No.

**C. Use of Forfeitures.**

Forfeitures attributable to amounts other than Employer matching contributions will be:

- h.  added to any Employer discretionary contribution (e.g., matching or profit sharing) and allocated in the same manner.
- i.  used to reduce any Employer contribution (e.g., matching, profit sharing or ADP test safe harbor contribution).
- j.  added to any Employer matching contribution and allocated as an additional matching contribution.
- k.  allocated to all Participants eligible to share in the allocations of profit sharing contributions or Forfeitures in the same proportion that each Participant's Compensation for the Plan Year bears to the Compensation of all Participants for such year.
- l.  other: \_\_\_\_\_ (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion; e.g., Forfeitures attributable to transferred balances from Plan X are allocated as additional discretionary contributions only to former Plan X Participants).

Forfeitures of Employer matching contributions will be:

- m.  N/A. Same as above or no Employer matching contributions.
- n.  used to reduce the Employer matching contribution.
- o.  added to any Employer matching contribution and allocated as an additional matching contribution.
- p.  added to any Employer discretionary profit sharing contribution.
- q.  used to reduce any Employer contribution (e.g., matching, profit sharing or ADP test safe harbor contribution).
- r.  other: \_\_\_\_\_ (describe the treatment of Forfeitures in a manner that is definitely determinable and not subject to Employer discretion; e.g., Forfeitures attributable to transferred balances from Plan X are allocated as additional discretionary contributions only to former Plan X Participants).

**33. FORFEITURES**

The first part of this Question addresses the timing of forfeitures.

- a. This option is for a plan that only provides fully vested contributions. Note that all plans have forfeitures (e.g., if there are lost participants) and the Basic Plan Document contains language to address forfeitures if this option (N/A) is selected.
- b. This option provides that a forfeiture will occur on the earlier of the date on which a participant incurs 5 consecutive 1-year breaks-in-service or upon the distribution of the participant's interest in the plan. For purposes of these rules, a zero percent vested participant is treated as having received a distribution of the participant's vested account balance (i.e., zero) in the year of termination, causing the forfeiture to occur at that time. The advantage of this option is that if the plan terminates before a participant has incurred 5 consecutive 1-year breaks-in-service, then the participant no longer has an interest in the plan that must be fully vested. The disadvantage of this option is that if the participant is reemployed prior to incurring 5 consecutive 1-year breaks-in-service, then the participant has the right to pay back the distribution (or is deemed to have paid back the distribution if there was an automatic forfeiture of a zero percent vested participant). In the event the distribution is paid back, then the entire forfeited amount must be restored. Under the terms of the plan, current year forfeitures can be used to restore the account, but if they are not sufficient, then you will be required to make a contribution to restore the account.
- c. This option provides for a forfeiture only when a participant incurs 5 consecutive 1-year breaks-in-service. The advantage of this provision is that the buy-back rules described above do not apply. The disadvantage of this provision is that if the plan terminates, all participants who have not had their account balances forfeited become fully vested.
- d. – e. The IRS generally does not allow forfeitures to be held in a suspense account. Rather, they must generally be disposed of in accordance with the terms of the plan. The IRS does, however, permit a slight delay in the disposition of forfeitures. Option **d.** requires the plan administrator to apply all forfeitures by the end of the plan year in which such forfeitures occur. Option **e.** requires the plan administrator to apply all forfeitures during the plan year that follows the plan year in which such forfeitures occur.
- g. This option provides for use of forfeitures to first pay any plan administrative expenses. The plan

always permits plan expenses to be paid from the plan assets. This election merely provides that to the extent expenses are to be paid from the plan assets (rather than be paid directly by you), then forfeitures will first be used to pay these expenses.

- h. - r. These elections provide for the disposition of any forfeitures that remain after applying other plan provisions (such as option **g.** above). The Adoption Agreement provides the ability to differentiate between the treatment of forfeitures arising from your profit sharing contributions and those relating to matching contributions. The IRS generally does not impose any limitations on the use of forfeitures attributable to one contribution source from being used towards another contribution source. While this section includes specific options, the “other” elections may be used to cover situations where there is no specific option that meets the needs of your business.

For forfeitures of contributions (other than matching contributions):

- h. If selected, then forfeitures during the year are added to any employer discretionary contribution permitted under the plan (including discretionary matching contributions). This option is recommended when the plan provides for an integrated (permitted disparity) allocation.
- i. If selected, then forfeitures will be used to reduce any employer contribution (including a safe harbor contribution). This option will help you reduce the cost of any contributions required under the plan, and is best used when the plan is designed with required contributions. If the forfeiture is being used to reduce a discretionary contribution and you do not want to make a discretionary contribution, then you must declare a discretionary contribution equal to the amount of the forfeitures.
- j. This option will allow forfeitures arising from contributions other than matching contributions to be allocated as additional matching contributions under the plan. If selected, then the forfeitures are treated as matching contributions for all purposes.
- k. This option allocates forfeitures pro-rata based on compensation.
- l. Any other allocation method may be specified as long as it is definitely determinable and not subject to employer discretion.

For forfeitures attributable to matching contributions:

- n. This option provides that forfeitures are used to reduce any employer matching contributions under the plan. If the plan only permits discretionary matching contributions, then you must declare a discretionary matching contribution that is at least equal to the amount of the forfeitures.
- o. This option will allow forfeitures arising from matching contributions to be allocated as additional matching contributions under the plan. If selected, then the forfeitures are treated as matching contributions and must be tested in the ADP/ACP test. If the plan only permits discretionary matching contributions, then this option can be selected.
- p. Under this option, forfeitures of matching contributions will be added to any employer discretionary contributions and allocated in the same manner as the contribution to which they are added.
- q. If selected, then forfeitures will be used to reduce any employer contribution. This option will help you reduce the cost of any contributions required under the plan, and is best used when the plan is designed with required contributions.
- r. Any other allocation method may be specified as long as it is definitely determinable and not subject to employer discretion.

34. ALLOCATION OF EARNINGS (Plan Section 4.3(c))

Allocation of earnings with respect to amounts which are not subject to Participant investment direction and which are contributed to the Plan after the previous Valuation Date will be determined:

- a.  N/A. All assets in the Plan are subject to Participant investment direction.
- b.  by using a weighted average based on the amount of time that has passed between the date a contribution or distribution is made and the prior Valuation Date.
- c.  by treating one-half of all such contributions as being a part of the Participant's nonsegregated account balance as of the previous Valuation Date.
- d.  by using the method specified in Plan Section 4.3(c) (balance forward method).
- e.  other: \_\_\_\_\_ (must be a definite predetermined formula that is not based on Compensation, that satisfies the nondiscrimination requirements of Regulation Section 1.401(a)(4)-4, and that is applied uniformly to all Participants).

### 34. ALLOCATION OF EARNINGS

This Question applies to amounts that are *NOT* subject to participant investment direction. If there are amounts not subject to participant investment direction, then one of the options at **b. – e.** must be selected. Option **b.** provides for a time weighted allocation. This option should be considered if contributions are made throughout the year. Alternatively, option **c.** is another method of allocating earnings when contributions and distributions are made throughout the year. Option **d.** provides for the traditional balance forward method of allocating earnings. Lastly, option **e.** can be used to specify any other method of allocating earnings or to specify different methods for different sources of contributions.

35. TOP-HEAVY MINIMUM ALLOCATION  
The minimum allocation requirements for any Top-Heavy Plan Year shall be applied (select one):
- a.  Only to Non-Key Employee Participants.
  - b.  To both Non-Key and Key Employee Participants.

### 35. TOP-HEAVY MINIMUM ALLOCATION

If a plan is top-heavy, then the law requires that non-key employees who are employed at the end of a plan year receive certain minimum contributions. Many employers may also want to provide these minimum contributions to the key employees. If this is desired, option **b.** should be elected; otherwise, option **a.** should be elected.

## DISTRIBUTIONS

36. FORM OF DISTRIBUTIONS (Plan Sections 6.5 and 6.6)  
Distributions under the Plan may be made in (select all that apply)
- a.  Lump-sums.
  - b.  Substantially equal installments.
  - c.  Partial withdrawals, provided the minimum withdrawal is \$\_\_\_\_\_ (leave blank if no minimum).
  - d.  Partial withdrawals or installments are only permitted for required minimum distributions under Code Section 401(a)(9).
  - e.  Other: \_\_\_\_\_ (must be definitely determinable and not subject to Employer discretion).

**AND**, pursuant to Plan Section 6.13, the Qualified Joint and Survivor Annuity and Qualified Pre-Retirement Survivor Annuity provisions:

- f.  **Do not apply.** No annuities are allowed (Plan Section 6.13(b) will apply and the joint and survivor rules of Code Sections 401(a)(11) and 417 will not apply to the Plan). (skip to m. and n.)
- g.  **Apply.** Annuities are the normal form of distribution. Plan Section 6.13 will not apply and the joint and survivor rules of Code Sections 401(a)(11) and 417 will automatically apply. The Pre-Retirement Survivor Annuity (minimum spouse's death benefit) will be equal to:
  - 1.  100% of a Participant's interest in the Plan.
  - 2.  50% of a Participant's interest in the Plan.
  - 3.  \_\_\_\_\_% (may not be less than 50%) of a Participant's interest in the Plan.
- h.  **Apply if annuity is selected by Participant.** Annuities are allowed but are not the normal form of distribution. Plan Section 6.13(c) will apply and the joint and survivor rules of Code Sections 401(a)(11) and 417 will apply only if an annuity form of distribution is selected by a Participant.

**AND**, if g. or h. is selected, the normal form of the Qualified Joint and Survivor Annuity will be a joint and 50% survivor annuity unless otherwise selected below:

- i.  N/A.
- j.  Joint and 100% survivor annuity.
- k.  Joint and 75% survivor annuity.
- l.  Joint and 66 2/3% survivor annuity.

**NOTE:** If only a portion of the Plan assets may be distributed in an annuity form of payment, then select both f. AND g. and specify the assets that are subject to the joint and survivor annuity provisions: \_\_\_\_\_ (e.g., the money purchase pension plan that was merged into this Plan).

**AND,** distributions may be made in:

- m.  Cash only.
- n.  Cash only (except for insurance contracts, annuity contracts or Participant loans).
- o.  Cash or property, except that the following limitation(s) apply: \_\_\_\_\_ (leave blank if there are no limitations on property distributions).

### 36. FORM OF DISTRIBUTION

This Question determines the forms of distribution that are permitted under the plan. Care must be taken in making selections in this Question because some of the options create "protected benefits" for participants. Many of these "protected benefits" (which generally relate to the timing or form of a distribution) that are included in a plan cannot be taken away from participants at a later time.

- a. If selected, then lump-sum distributions are permitted. Most plans permit lump-sum distributions either as the only method of distribution or as an alternative to other forms of distributions.
- b. If selected, then uniform installment payments are permitted. The installment period may not be longer than the participant's (and if applicable, the participant's beneficiary's) life expectancy.
- c. This option permits partial withdrawals from accounts. It should be selected if you do not want to force participants to withdraw their entire account (if a lump-sum distribution is permitted) or have their account paid in uniform installments or annuity payments (if installments or annuities are permitted).
- d. This option permits partial withdrawals only for required minimum distributions under Code § 401(a)(9). This option should be selected if the only other form of distribution permitted under the plan is a lump-sum and you want to permit participants who are subject to required minimum distributions to be able to take out more than just the minimum distribution, but not the entire account.

In certain situations, a profit sharing or 401(k) plan is not required to permit distributions in the form of an annuity. But if annuity distributions are permitted, then the plan would be required to provide certain qualified joint and survivor annuity options (referred to as the QJSA rules). Under the QJSA rules, a participant's benefit under the plan will be paid as a single life annuity if the participant is unmarried or as a joint and survivor annuity if married. A participant can elect an alternative form of payment (e.g., a lump-sum) if the plan permits alternative forms of payments. But, under the Basic Plan Document, the spouse of the participant (if married) must consent to the alternative form of payment. In addition, if the QJSA rules apply, then if a participant dies before receiving benefits, the spouse of such married participant must be entitled to at least 50% of the participant's accounts in the plan (this is referred to as the Qualified Pre-Retirement Survivor Annuity or QPSA).

In general, a profit sharing or 401(k) plan is not subject to the QJSA rules if a participant does not elect an annuity form of payment and the plan provides that upon the participant's death, 100% (rather than the minimum 50%) of the participant's vested interest in the plan be paid to the participant's spouse.

In determining whether a participant has a surviving spouse for purposes of applying the death benefit rules, a participant is treated as being married if the participant is married on date of death. (The plan does not provide for the "one-year marriage rule." Under the "one-year marriage rule" a plan may be written to provide that a participant is deemed to be unmarried if the participant dies within one year of getting married.)

- f. Select this option in each of two situations. In the first situation, select this option if no annuity distributions are permitted. In the second situation, select this option if annuity forms of distributions are permitted for some, but not all of the assets in a plan (e.g., amounts attributable to a money purchase plan that was merged into this plan). In that case, select both options f. and g. (see below for a further explanation).

- g.** Select this option if annuities are the normal form of distribution, in which case, the QJSA rules will apply to the plan. Under these provisions, the normal form of distribution will be a qualified joint and survivor annuity in the case of a married participant and a single life annuity in the case of an unmarried participant. If the plan does not provide for annuities, then the selection for lump-sum only or lump-sum and installments will determine what distribution forms will be available.

Alternatively, in the situation where the QJSA rules are to apply only to certain assets in the plan (as in the case of a money purchase plan that was merged into this plan, and there are to be no QJSA rules applied to remaining assets, then this option should be selected in conjunction with option **f.**

- g.1.-3.** The Basic Plan Document provides that 100% of the participant's vested interest in the plan is used to provide a death benefit. Under the law, the Qualified Pre-Retirement Survivor Annuity (QPSA) that must be paid to the surviving spouse is only required to be 50% of the participant's vested interest in the plan. However, many plans provide that 100% be paid to the spouse (option **g.1**). If the plan only provides the minimum 50% QPSA (option **g.2**), then the participant can designate any beneficiary he or she wants for the other 50% without the need to obtain spousal consent.

- h.** The Code is structured so that the joint and survivor annuity rules apply if a participant **ELECTS** an annuity. Option **g.** above automatically provides an annuity form of payment unless a participant elects otherwise. Option **h.** provides that annuities are offered as an alternative form of payment that a participant may elect. Thus, the QJSA provisions only become effective if a participant actually **ELECTS** an annuity as a form of payment. The participant may elect a lump-sum or installments without needing to waive the QJSA form of benefit and without spousal consent. However, if the participant wanted an annuity form of payment, then it would be a QJSA unless the spouse consents to an alternative form of annuity (such as a single life annuity).

Select this option **h.** if annuities are permitted at the option of participants, but are not the normal form of distribution.

Once it has been determined that annuities are permitted, the Qualified Joint and Survivor Annuity (QJSA) and the Qualified Pre-Retirement Survivor Annuity (QPSA) must be defined.

- i.- l.** Most plans provide that the QJSA is a joint and 50% survivor annuity. This means that the monthly survivor annuity for a spouse is 50% of the monthly amount paid to the participant. For example, under a joint and 50% survivor annuity, if a participant receives \$1,000 each month for life, then upon death, the participant's spouse will receive \$500 each month for life. If the same benefit were provided as a joint and 100% survivor annuity and the payments are \$900 each month for the participant's life, then upon the participant's death, the participant's spouse would receive \$900 for life. If the QJSA will be the joint and 50% survivor annuity, select option **i.** Otherwise, select the desired percentage. Regardless of the percentage elected, the participant can elect an alternative form of joint and survivor annuity distribution.

If annuity forms of distributions are permitted for some, but not all of the assets in a plan, then select options **f.** and **g.** and specify in the Note below option **l.** which assets are subject to the QJSA rules. This situation typically occurs when the plan assets include amounts transferred or merged into a profit sharing or 401(k) plan. While a profit sharing or 401(k) plan is not required to provide annuity forms of distributions, money purchase plans are required to provide annuity forms of distributions. This rule still applies even though the money purchase assets have been transferred (other than by a direct or indirect rollover) to a profit sharing or 401(k) plan.

- m. - n.** Plan distributions may be made in cash only or in cash or in property (i.e., in kind). The ability to receive an in-kind distribution from a plan is a protected "optional form of benefit." This means that its availability may not be subject to employer discretion, and as a general rule, may not be eliminated with respect to benefits which had previously accrued. Consequently, many new plans may not want to provide for an in-kind distribution option. If the plan already permits in-kind distributions, then

regulations permit the plan to be amended to limit in-kind distributions to property allocated to a participant's account as of the date of the amendment. Accordingly, the Basic Plan Document automatically provides that if in-kind distributions are permitted, then the distribution is limited to property allocated to a participant's account as of the date of the amendment. This option is typically selected when the plan wants to permit a distribution of securities (rather than requiring that they be liquidated into cash before making a distribution).

37. **CONDITIONS FOR DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT.** Distributions upon termination of employment pursuant to Plan Section 6.4(a) will not be made unless the following conditions have been satisfied:

**A. Accounts in excess of \$5,000.**

- a.  Distributions may be made as soon as administratively feasible following termination of employment.
- b.  Distributions may be made as soon as administratively feasible after the Participant has incurred \_\_\_\_\_ 1-Year Break(s) in Service (or Period(s) of Severance if the Elapsed Time method is selected).
- c.  Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following termination of employment.
- d.  Distributions may be made as soon as administratively feasible after the last day of the Plan Year quarter coincident with or next following termination of employment.
- e.  Distributions may be made as soon as administratively feasible after the Valuation Date coincident with or next following termination of employment.
- f.  Distributions may be made as soon as administratively feasible after \_\_\_\_\_ months have elapsed following termination of employment.
- g.  No distributions may be made until a Participant has reached Early or Normal Retirement Date.
- h.  Other: \_\_\_\_\_ (must be objective conditions which are ascertainable and are not subject to Employer discretion except as otherwise permitted in Regulation Section 1.411(d)-4 and may not exceed the limits of Code Section 401(a)(14) as set forth in Plan Section 6.7).

**B. Accounts of \$5,000 or less.**

- i.  Same as above.
- j.  Distributions may be made as soon as administratively feasible following termination of employment.
- k.  Distributions may be made as soon as administratively feasible after the Participant has incurred \_\_\_\_\_ 1-Year Break(s) in Service (or Period(s) of Severance if the Elapsed Time method is selected).
- l.  Distributions may be made as soon as administratively feasible after the last day of the Plan Year coincident with or next following termination of employment.
- m.  Other: \_\_\_\_\_ (must be objective conditions which are ascertainable and are not subject to Employer discretion except as otherwise permitted in Regulation Section 1.411(d)-4 and may not exceed the limits of Code Section 401(a)(14) as set forth in Plan Section 6.7).

- C. Participant consent (i.e., involuntary cash-outs).** Should vested account balances less than a certain dollar threshold be automatically distributed without Participant consent (mandatory distributions)?

**NOTE:** The Plan provides that distributions of amounts of \$5,000 or less do not require spousal consent and are only paid as lump-sums.

**NOTE:** If this is an EGTRRA restatement and there are special effective dates for the Participant consent provisions, complete n. or o. based on the current Plan provisions and complete q. or r. below.

- n.  No, Participant consent is required for all distributions.
- o.  Yes, Participant consent is required only if the distribution is over:
  - 1.  \$5,000
  - 2.  \$1,000
  - 3.  \$\_\_\_\_\_ (less than \$1,000)

**NOTE:** If 2. or 3. is selected, rollovers will be included in determining the threshold for Participant consent.

**AND,** if this is an EGTRRA restatement, the following apply:

- p.  N/A. Not an EGTRRA restatement.
- q.  Provisions above at n. or o. apply to distributions made on or after March 28, 2005.
- r.  Provisions above at n. or o. are effective for distributions made on or after \_\_\_\_\_ (enter a date later than March 28, 2005). The following applies to distributions prior to such date but after March 28, 2005:
  - 1.  No mandatory distributions.
  - 2.  Participant consent is required only if the distribution is over:



- a.  \$5,000
- b.  \$1,000
- c.  \$\_\_\_\_\_ (less than \$1,000)

D. **Exclusion of rollovers in determination of \$5,000 threshold.** In determining the \$5,000 threshold (or other dollar threshold in C. above) for the timing of distributions, form of distributions, or consent rules, effective for distributions made after December 31, 2001, rollover contributions will be:

- s.  included.
- t.  excluded.

### 37. CONDITIONS FOR DISTRIBUTIONS UPON TERMINATION OF EMPLOYMENT

- a.– m. The options in this Question address the timing of payments from the plan. The initial options are divided based on whether the amount to be distributed is more or less than \$5,000. This is because many plans provide for earlier distributions of smaller amounts (i.e., those that are \$5,000 or less) in order to eliminate these smaller accounts from the plan. The law accommodates this by providing certain exceptions from the consent rules for these smaller amounts (the consent rules are also addressed in this Question 37). Note that the elections relating to amounts over \$5,000 are generally considered protected benefits. This means that in many cases, the plan cannot be amended to make the rules more restrictive.
- a. This option allows a terminated participant to elect to have benefits distributed within a reasonable time after employment terminates.
  - b. This option gives a terminated participant the right to elect to have benefits distributed after a specified number of 1-year breaks-in-service have occurred. For employers who are concerned about participants terminating employment just to qualify for a distribution, this option imposes a waiting period that might be an attractive alternative.
  - c. This option gives a participant the right to elect to have benefits distributed on or after the last day of the plan year following termination of employment. This choice may be desirable if you want to allow participants the opportunity to withdraw their benefits soon after employment terminates but, for administrative simplicity, would like to make all distributions at the same time.
  - d. This option gives a participant the right to elect to have benefits distributed on or after the last day of the plan year quarter following termination of employment. This choice may be desirable if an employer wants to allow participants the opportunity to withdraw their benefits soon after employment terminates but, for administrative simplicity, would like to limit such distributions until after the plan's contributions and earnings for the quarterly valuation period have been allocated.
  - e. This option gives a participant the right to elect to have benefits distributed on or after the valuation date following termination of employment. This choice may be desirable if an employer wants to allow participants the opportunity to withdraw their benefits soon after employment terminates but, for administrative simplicity, would like to limit such distributions until after the plan's earnings for the valuation period have been allocated.
  - f. This option gives a participant the right to elect to have benefits distributed after a stated period of months following termination of employment. This choice may be desirable if you want to allow participants the opportunity to withdraw their benefits soon after employment terminates but does not want them to have the money immediately.
  - g. This option allows only participants who terminate employment after reaching early or normal retirement age to have benefits distributed. The effect of this selection is to delay the distribution of benefits to a participant who terminates for other reasons until the occurrence of an event which would otherwise authorize distribution (i.e., the participant's death, disability, or attainment of the early or normal retirement date).

- h. You may wish to add other criteria that must be satisfied in order to receive a distribution after termination of employment. For example, some plans permit distributions of elective deferrals upon termination of employment but impose a waiting period before distributions of other amounts may be made. Be careful when completing this option. IRS Regulations mandate that any conditions placed upon an alternative form of distribution (such as this) must be specifically set forth in the plan, must be objective (i.e., may not be subject to your discretion) and, in operation, must not discriminate in favor of highly compensated employees.
- i. – m. These elections apply to distributions of amounts that are \$5,000 or less. The explanations of the options are the same as the corresponding options in **a. - h.** above.
- n. – r. These options set forth the rules regarding participant consent. Participant consent (and in plan's subject to the QJSA rules, spousal consent), is generally required if the distribution is more than \$5,000. For amounts of \$5,000 or less, the plan is permitted to force distributions (referred to as mandatory or automatic distributions) without the participant's consent. Regardless of the elections made in the Adoption Agreement, the Basic Plan Document provides with respect to amounts that are \$5,000 or less, spousal consent is not required and the only form of distribution is a lump-sum.
- n. Select this if the plan does not provide for involuntary cash-outs. Participant consent will be required for all distributions.
- o. If **37.o** is selected, then participant consent is required if the distribution is less than the applicable dollar threshold. An election must then be made to indicate the mandatory distribution threshold (\$5,000, \$1,000, or less than \$1,000). If a plan provides for an involuntary cash-out and the amount distributed is more than \$1,000, then the law requires that the amount be transferred to an IRA if the participant does not make an affirmative election with respect to the distribution.
- o.1. If selected, then the automatic IRA rollover rule will apply if the amount of the distribution exceeds \$1,000. If the amount is \$1,000 or less, then absent an affirmative election from the participant, a distribution will be made to the participant (less applicable withholding). Participant consent to a distribution will be required if the amount of the distribution is more than \$5,000.
- o.2. This reduces the threshold to \$1000, and exempts the plan from the automatic IRA rollover rules. Participant consent to a distribution will be required if the amount is more than \$1,000.
- o.3. This reduces the threshold to an amount less than \$1000, and exempts the plan from the automatic IRA rollover rules. Participant consent to a distribution will be required if the amount is more than the specified amount.
- p.-r. The automatic IRA rollover provisions of the law became effective with respect to distributions made on or after March 28, 2005. In some cases, an employer may have lowered the plan's mandatory distribution threshold to \$1,000 in order to avoid being subject to the new rule. However, many practitioners have become more comfortable with the rules and may have recommended that employers amend their plans to raise the mandatory distribution threshold back to \$5,000. Options **r.** is designed to accommodate such a change. Complete option **o.** based on the provisions going forward and use option **r.** to reflect the provisions in effect as of March 28, 2005.
- s. – t. Beginning in 2002, rollovers may be disregarded in determining whether the mandatory distribution threshold has been exceeded. For example, if a plan provides for mandatory distributions of amounts that do not exceed \$5,000, then if option **t.** is elected, the amount of a participant's rollover account would be disregarded in determining whether a mandatory distribution of the participant's entire interest in the plan must be made (including the rollover account). However, for purposes of applying the automatic IRA rollover rules (applicable to mandatory distributions of amounts over \$1,000), the entire amount being distributed is taken into account. Therefore, if lowering the mandatory distribution threshold to avoid application of the automatic IRA rollover rules, then make the election to include rollovers in determining the mandatory distribution threshold.

38. DISTRIBUTIONS UPON DEATH (Plan Section 6.8(b)(2))  
Distributions upon the death of a Participant prior to receiving any benefits shall:
- a.  be made pursuant to the election of the Participant or Beneficiary.
  - b.  begin within 1 year of death for a designated Beneficiary and be payable over the life (or over a period not exceeding the life expectancy) of such Beneficiary, except that if the Beneficiary is the Participant's spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2.
  - c.  be made within 5 (or if lesser \_\_\_\_\_) years of death for all Beneficiaries.
  - d.  be made within 5 (or if lesser \_\_\_\_\_) years of death for all Beneficiaries, except that if the Beneficiary is the Participant's spouse, begin prior to December 31st of the year in which the Participant would have attained age 70 1/2 and be payable over the life (or over a period not exceeding the life expectancy) of such surviving spouse.

### 38. DISTRIBUTIONS UPON DEATH

If a participant dies before distributions have commenced, and the Qualified Pre-Retirement Survivor Annuity (if the plan is subject to these joint and survivor annuity rules) form of payment has been waived, then the participant's remaining interest in the plan must generally be distributed under either the "5-year rule" or the "1-year rule" as explained below.

Under the "5-year rule," distribution of the entire remaining interest of the participant must be made by December 31st of the calendar year that contains the 5th anniversary of the participant's death. Any method of distribution which is otherwise permitted under the terms of the plan may be utilized, provided the entire amount has been distributed by this deadline. Under the "1-year rule," distributions must begin no later than December 31st of the calendar year following the calendar year of death and may be made over the beneficiary's life expectancy. Also under this rule, a special "spousal exception" applies which extends the required beginning date for distributions to a surviving spouse until December 31st of the calendar year in which the participant would have attained age 70 1/2. Distributions may then be paid over any period not exceeding the surviving spouse's life expectancy. Please note that the "1-year rule" permits payments to be made over a period of time. Therefore, it generally should not be selected if the plan limits the distribution options to lump-sums only.

This Adoption Agreement question offers four choices for post-death distributions, all variations of the "5-year rule" and the "1-year rule."

- a. Allows the participant or beneficiary to elect whether post-death distributions will be made pursuant to the "5-year rule" or the "1-year rule" (including the spousal exception). However, the election must be made no later than the date by which distributions are required to begin under the "1-year rule" (or the "5-year rule," if earlier, and the surviving spouse is the designated beneficiary). If no election is made, the "5-year rule" will apply for all beneficiaries. This option can present difficult administrative problems in overseeing these election procedures.
- b. Post-death distributions to all beneficiaries must be made under the "1-year rule." However, the spousal exception will apply, allowing the surviving spouse to extend the date by which distributions must begin.
- c. Post-death distributions to all beneficiaries must be made under the "5-year rule" or a lesser period specified in the Adoption Agreement. This option is the easiest to administer because it requires that death benefits be paid out by the end of the specified period. This option should be selected if the plan only permits lump-sum distributions.
- d. Post-death distributions to all beneficiaries, other than to a surviving spouse, will be made under the "5-year rule" or a lesser period specified in the Adoption Agreement. If the surviving spouse is the designated beneficiary, then the "1-year rule" will apply, including the spousal exception.

39. **HARDSHIP DISTRIBUTIONS** (Plan Sections 6.12 and/or 12.9)
- a.  Hardship distributions are NOT permitted.
  - b.  Hardship distributions are permitted from the following Participant Accounts:
    1.  All Accounts.
    2.  Only from the following Accounts (select all that apply):
      - a.  Pre-Tax Elective Deferral Account.
      - b.  Roth Elective Deferral Account.
      - c.  Account(s) attributable to Employer matching contributions.
      - d.  Account attributable to Employer profit sharing contributions.
      - e.  Rollover Account.
      - f.  Transfer Account.
      - g.  Other: \_\_\_\_\_ (specify account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion).

**NOTE:** Distributions from a Participant's Elective Deferral Account are limited to the portion of such account attributable to such Participant's Elective Deferrals (and earnings attributable thereto up to December 31, 1988). Hardship distributions are NOT permitted from a Participant's Qualified Nonelective Contribution Account (including any 401(k) Safe Harbor Contributions) or Qualified Matching Contribution Account.

**AND**, shall the safe harbor hardship rules of Plan Section 12.9 apply to hardship distributions made from all Accounts? (**NOTE:** The safe harbor hardship rules automatically apply to hardship distributions of Elective Deferrals.)

3.  No or N/A. The provisions of Plan Section 6.12 apply to hardship distributions from all Accounts other than a Participant's Elective Deferral Account.
4.  Yes. The provisions of Plan Section 12.9 apply to all hardship distributions.

**AND**, the following limitations apply to hardship distributions :

5.  N/A. No additional limitations.
6.  Additional limitations (select all that apply):
  - a.  The minimum amount of a distribution is \$ \_\_\_\_\_ (may not exceed \$1,000).
  - b.  No more than \_\_\_\_\_ distribution(s) may be made to a Participant during a Plan Year.
  - c.  Distributions may only be made from accounts which are fully Vested.
  - d.  A Participant does not include a former Employee at the time of the hardship distribution.
  - e.  Hardship distributions may be made subject to the following provisions: \_\_\_\_\_ (must be definitely determinable and not subject to Employer discretion).

### 39. **HARDSHIP DISTRIBUTION**

The Adoption Agreement provides you with a choice as to the accounts from which a hardship withdrawal may be made. Generally, hardship distributions which are made from a participant's elective deferral account will be limited to the employee's elective deferrals. No earnings on such elective deferrals may be distributed on account of hardship. Also, any qualified matching contributions, qualified non-elective contributions, and ADP/ACP safe harbor contributions are generally not available for a hardship distribution.

In order for a participant to qualify for a "hardship" distribution, the participant must satisfy both a "financial need" test as well as a "resources" test. The financial need test looks at the reason for the distribution, while the resources test examines whether the participant could satisfy the need other than by withdrawing funds from the plan. In each case, the determination of whether the test is passed is to be based upon either: (1) an examination of all relevant facts and circumstances, or (2) the "safe harbor" standards set forth in the 401(k) Regulations. The safe harbor standards always apply to hardship distributions of elective deferrals. Distributions from other accounts can either be subject to the same safe harbor standards (option **b.4**) or facts and circumstances (option **b.3**). The safe harbor standards are restrictive; however, by following these rules, the administrator can be assured that a proper hardship distribution has been made.

In determining which approach to utilize, the safe harbor standards are attractive because they provide you with the certainty of knowing that withdrawals made pursuant to the standards will be considered hardship withdrawals by the IRS. On the other hand, some of the safe harbor requirements may be unnecessarily restrictive and difficult to administer. While the facts and circumstances approach provides flexibility, the plan could be disqualified for making an impermissible distribution. Thus, you may prefer to use the safe harbor standards because of the certainty they

provide.

- 6.a. This option imposes a minimum dollar amount on a hardship withdrawal. This prevents participants from submitting requests for small amounts, thereby helping to keep plan costs down.
- 6.b. This option limits the number of withdrawals during a Plan Year, thereby helping to keep plan costs down.
- 6.c. These options can restrict hardship distributions to fully vested accounts. If hardship distributions are permitted from a partially vested account, then a formula set forth in the plan must be used to determine a partially vested participant's remaining interest in the plan.
- 6d. This option allows former employees who still have accounts in the plan to take hardship distributions.
- 6.e. This option may be used to impose additional restrictions on hardship distributions. These restrictions must be definitely determinable and not subject to employer discretion, and must be nondiscriminatory in operation.

40. IN-SERVICE DISTRIBUTIONS (Plan Section 6.11)

- a.  In-service distributions are NOT permitted (except as otherwise selected for Hardship Distributions).
- b.  In-service distributions may be made to a Participant who has not separated from service provided any of the following conditions have been satisfied (select all that apply):
  - 1.  the Participant has attained age \_\_\_\_\_.
  - 2.  the Participant has reached Normal Retirement Age.
  - 3.  the Participant has been a Participant in the Plan for at least \_\_\_\_\_ years (may not be less than five (5)).
  - 4.  the amounts being distributed have accumulated in the Plan for at least 2 years.

**NOTE:** Distributions from a Participant's Elective Deferral Account, Qualified Matching Contribution Account and Qualified Nonelective Contribution Account (including 401(k) safe harbor contributions) are subject to restrictions and generally may not be distributed prior to age 59 1/2.

**AND**, in-service distributions are permitted from the following Participant Accounts:

- 5.  All Accounts.
- 6.  Only from the following Accounts (select all that apply):
  - a.  Pre-Tax Elective Deferral Account.
  - b.  Roth Elective Deferral Account.
  - c.  Account(s) attributable to Employer matching contributions (includes safe harbor match).
  - d.  Account attributable to Employer profit sharing contributions.
  - e.  Qualified Nonelective Contribution Account (includes safe harbor nonelective).
  - f.  Rollover Account.
  - g.  Transfer Account.
  - h.  Other: \_\_\_\_\_ (specify account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion).

**AND**, the following limitations apply to in-service distributions :

- 7.  N/A. No additional limitations.
- 8.  Additional limitations (select all that apply):
  - a.  The minimum amount of a distribution is \$\_\_\_\_\_ (may not exceed \$1,000).
  - b.  No more than \_\_\_\_\_ distribution(s) may be made to a Participant during a Plan Year.
  - c.  Distributions may only be made from accounts which are fully Vested.
  - d.  Distributions from the Roth Elective Deferral Account (40.b.5. or b.6.b. selected), may only be made if the distribution is a "qualified distribution."
  - e.  In-service distributions may be made subject to the following provisions: \_\_\_\_\_ (must be definitely determinable and not subject to discretion).

**40. IN-SERVICE DISTRIBUTIONS**

This Question allows the plan to make pre-retirement distributions at a specified age, after a set number of years of plan participation, or after the amount requested has been in the plan for a set number of years. However, such

distributions are taxable to the participant receiving the distribution and, if made prior to age 59 1/2, may result in an additional 10% penalty tax. This option increases the plan's flexibility. However, because the participant controls the decision on whether to take a pre-retirement distribution (you have no discretion to deny a request), permitting pre-retirement distributions might encourage participants to view the plan more as a savings account (from which withdrawals can be taken) and less as a retirement plan. This could make the plan more costly to administer. The desires of the key employees or owners must be balanced against these concerns. It should be noted that in-service distributions prior to 59 1/2 are generally not permitted from a participant's elective deferrals, any qualified matching contributions, qualified non-elective contributions, ADP/ACP safe harbor contributions, and any earnings from these contributions.

- 8.a. This option imposes a minimum dollar amount on an in-service distribution. This prevents participants from submitting requests for small amounts, thereby helping to keep plan costs down.
- 8.c. This option restricts in-service distributions to fully vested accounts. If in-service distributions are permitted from a partially vested account, then a formula set forth in the plan must be used to determine a partially vested participant's remaining interest in the plan.
- 8.d. Non-taxable distributions of Roth amounts are only allowed if the distribution is "qualified." In order to for a Roth distribution to be a "qualified" distribution, the distribution must occur after one of the following: (1) attainment of age 59½, (2) disability, or (3) death. In addition, the distribution must occur after the expiration of a 5-year participation period. The 5-year participation period is the 5-year period beginning on the calendar year in which the participant first makes a Roth 401(k) contribution to the plan (or to another 401(k) plan or 403(b) plan if such amount was rolled over into the plan) and ending on the last day of the calendar year that is 5 years later. If a distribution from the Roth 401(k) deferral account is not a qualified distribution, the earnings distributed with the Roth 401(k) deferrals will be taxable to the participant at the time of distribution (unless rolled over to a Roth IRA or other 401(k) plan or 403(b) plan that will accept the rollover). In addition, in some cases, there may be a 10% excise tax on the earnings that are distributed.
- 8.e. This option may be used to impose additional restrictions on in-service distributions. These restrictions must be definitely determinable and not subject to employer discretion, and must be nondiscriminatory in operation.

#### NONDISCRIMINATION TESTING

##### 41. HIGHLY COMPENSATED EMPLOYEE (Plan Section 1.38)

The top-paid group election and the calendar year data election are not used unless selected below (the selections made for the latest year will continue to apply to subsequent Plan Years unless the Plan is amended):

- a.  **The Top-Paid Group Election** will be used for Plan Years beginning on or after \_\_\_\_\_.
- b.  **The Calendar Year Data Election** will be used for Plan Years beginning on or after \_\_\_\_\_.

#### 41. HIGHLY COMPENSATED EMPLOYEE

The law requires that certain rules must be followed by qualified plans, and some of the tests to prove that the rules are followed are based which employees are "highly compensated employees." Highly compensated employees (HCEs) are employees who are more than 5% owners in the testing year or the preceding year or employees who earn more than \$80,000, as indexed, in the twelve-month period preceding the testing year.

- a. One option available to you is to limit the group of employees who earn more than \$80,000 (as adjusted for cost of living increases – e.g., for 2008 the limit is \$105,000) to the "top-paid group." The top-paid group consists of the number of employees who are in top 20% of your business's nonexcludable employees when ranked by compensation. The effect of this election is that in some cases it will reduce the number of employees who are HCEs.
- b. Another option available is called the calendar year data election. Generally, the look-back period is the twelve month period immediately preceding the testing year. However, if a plan has a non-calendar plan year, then you may elect to treat the look-back period as the calendar year beginning in

the twelve month period preceding the testing year. The calendar year data election may simplify administration in situations where your business (or affiliated entities) maintain plans which have different plan years, since the look-back year would then be the same for all plans. In all cases, however, if the election is made, it must be applied consistently to all plans maintained by your business (or affiliated entities).

42. ADP AND ACP TESTS (Plan Sections 12.4 and 12.6)

**NOTE:** The selections made below for the latest year will continue to apply to subsequent Plan Years unless the Plan is amended.

- A. **ADP Test.** The ADP ratio for Nonhighly Compensated Employees will be based on the following:
- a.  N/A. This Plan satisfies the ADP test safe harbor rules for all Participants for all Plan Years to which this Plan applies.
  - b.  **Prior Year Testing Method.** The prior year ratio will be used for Plan Years beginning on or after \_\_\_\_\_ . If this selection is made for the first year the Code Section 401(k) feature is added to this Plan (unless this Plan is a successor plan), then for the first Plan Year only, the amount taken into account as the ADP of Nonhighly Compensated Employees for the preceding Plan Year will be:
    1.  N/A (Effective date of prior year testing is after effective date of Code Section 401(k) feature.)
    2.  3%
    3.  the actual percentage for the initial Plan Year.
  - c.  **Current Year Testing Method.** The current year ratio will be used for Plan Years beginning on or after \_\_\_\_\_ .
- B. **ACP Test.** The ACP ratio for Nonhighly Compensated Employees will be based on the following:
- d.  N/A. This Plan satisfies the ACP test safe harbor rules for all Participants for all Plan Years to which this Plan applies.
  - e.  **Prior Year Testing Method.** The prior year ratio will be used for Plan Years beginning on or after \_\_\_\_\_ . If this selection is made for the first year the Code Section 401(m) feature is added to this Plan (unless this Plan is a successor plan), then for the first Plan Year only, the amount taken into account as the ACP of Nonhighly Compensated Employees for the preceding Plan Year will be:
    1.  N/A (Effective date of prior year testing is after effective date of Code Section 401(m) feature.)
    2.  3%
    3.  the actual percentage for the initial Plan Year.
  - f.  **Current Year Testing Method.** The current year ratio will be used for Plan Years beginning on or after \_\_\_\_\_ .

42. ADP AND ACP TESTS

The selections you make in this section impact the nondiscrimination tests that apply to the plan. Your plan advisor should help you select the correct option for your plan.

MISCELLANEOUS

43. LOANS TO PARTICIPANTS (Plan Section 7.6)

- a.  Loans are NOT permitted.
- b.  Loans are permitted.

43. LOANS TO PARTICIPANTS

Whether to permit loans to participants should be determined only after carefully analyzing the requirements of the Department of Labor (DOL) Regulations as well as potential tax implications.

Generally, ERISA permits loans to be made to participants and beneficiaries as an exception to the "prohibited transaction" rules, provided that there is a loan program that satisfies certain specific criteria. The written participant loan program requirement is not satisfied merely by completing the Adoption Agreement. A separate written participant loan program must be adopted if loans are permitted by the plan.

- a. No loans to participants or beneficiaries will be permitted. For amended and restated plans, loans to participants are not "protected benefits" under Code § 411(d)(6). Therefore, a plan that has permitted

loans in the past may be amended to prohibit any future loans from being made. Any outstanding loans will remain in effect. If using the Relius Documents system, then Question 125 of the Checklist Addendum may be used to add language to the SPD to cover this situation.

- b. Loans will be permitted. Section A. of Appendix B. to the Adoption Agreement may be used to specify the parameters of the loan program (such as minimum and maximum loan amounts).

44. DIRECTED INVESTMENTS (Plan Section 4.10)

- a.  Participant directed investments are NOT permitted.
- b.  Participant directed investments are permitted for:
1.  All Accounts.
  2.  The following Participant Accounts (select all that apply):
    - a.  Pre-Tax Elective Deferral Account.
    - b.  Roth Elective Deferral Account.
    - c.  Account(s) attributable to Employer matching contributions (includes safe harbor match).
    - d.  Account attributable to Employer profit sharing contributions.
    - e.  Qualified Nonelective Contribution Account (includes safe harbor nonelective).
    - f.  Rollover Account.
    - g.  Transfer Account.
    - h.  Voluntary Contribution Account.
    - i.  Other: \_\_\_\_\_ (specify account(s) and conditions in a manner that is definitely determinable and not subject to Employer discretion).

**AND**, is it intended that the Plan comply with ERISA Section 404(c) with respect to the accounts subject to Participant investment direction?

3.  No.
4.  Yes.

**44. DIRECTED INVESTMENTS**

If directed investments are permitted (other than loans being treated as directed investments), then option **b.** must be selected and the accounts subject to investment direction must be specified.

- b.3. - 4. ERISA Section 404(c) provides that the plan fiduciaries responsible for the management of plan assets are not liable for investment losses due solely to the exercise of investment direction by participants. The DOL has issued regulations detailing the requirements that must be satisfied in order for the fiduciaries to be relieved of this liability. While a plan is not required to satisfy ERISA Section 404(c), if the plan intends to comply with respect to all or a portion of the plan assets, then option **d.** should be selected.

If a participant does not direct the investment of his or her account balance, then DOL regulations permit default investments to be selected. These are referred to as Qualified Default Investment Alternatives (QDIAs). Following these rules gives protection to plan fiduciaries for investing money into the QDIAs. While there is no language that needs to be in the plan document for QDIAs, notices to participants are required.

45. ROLLOVERS (Plan Section 4.6)

- a.  Rollovers will NOT be accepted by this Plan.
- b.  Rollovers will be accepted by this Plan, subject to approval by the Administrator.

**AND**, if b. is selected, rollovers may be accepted from all Participants who are Employees as well as the following (select all that apply):

1.  Eligible Employees who are not Participants.
2.  Participants who are Former Employees.

**AND**, distributions from a Participant's Rollover Account may be made:

3.  at any time.
4.  only when the Participant is otherwise entitled to a distribution under the Plan.



**45. ROLLOVERS**

The Plan can elect to accept rollovers from other qualified retirement plans. Permitting rollovers will require a separate accounting of the rollovers. This may require more administrative oversight and cost. Also, rollovers by participants must be done within very strict time-frames. For these reasons, the plan advisor should always be involved if a rollover is contemplated.

An eligible rollover distribution is generally any distribution except: (1) an age 70 1/2 required minimum distribution; (2) a distribution which is a series of substantially equal payments made (a) over the life or life expectancy of the participant (or joint lives or life expectancies of the participant and his or her beneficiary); or (b) over a specified period of 10 or more years; or (3) any hardship distribution. An employee who receives an eligible rollover distribution from an eligible retirement plan will be allowed to roll it over tax-free. In order to accept a rollover contribution of Roth elective deferrals, the plan must provide for Roth elective deferrals.

Rollovers may be permitted from **participants** only, which is option **b.** (i.e., after they have satisfied the plan's eligibility requirements and actually entered the plan), from **eligible employees** (option **b.1**) (even prior to becoming a participant), or from participants who are former employees (i.e., terminated employees who still have account balances in the plan). Many employers want to accept rollovers from eligible employees in order to accommodate new employees who want to rollover funds from a plan of a prior employer even though they are not yet eligible to participate in the plan.

Once a rollover is made, the Plan may allow a participant to withdraw the money at any time (option **b.3**) or only withdraw it as is otherwise provided under the normal distributable events permitting payouts under the plan (termination of employment, retirement, death or disability) (option **b.4**).

**46. AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS (Plan Section 4.8)**

- a.  After-tax voluntary Employee contributions are NOT permitted.
- b.  After-tax voluntary Employee contributions are permitted.

**46. AFTER-TAX VOLUNTARY EMPLOYEE CONTRIBUTIONS**

You may allow participants to make voluntary after-tax employee contributions (there are not the same as Roth elective deferrals). Though these contributions allow participants to increase their retirement benefits since these amounts will accumulate in a tax-deferred environment, the attractiveness of after-tax employee voluntary contributions has been diminished due to the availability of Roth deferrals and because there is matching testing to be done on these contributions.

**EGTRRA TRANSITION RULES**

Questions 47 – 51 apply to plans that are being restated for EGTRRA. IF THE PLAN IS NOT BEING ADOPTED TO COMPLY WITH CHANGES IN THE LAW (EGTRRA), THESE QUESTIONS DO NOT APPLY.

When the plan is being restated to conform to the changes in the law, it must reflect the retroactive effective date of the changes. Even though interim “good-faith” amendments have been adopted to reflect the changes in the law, the restatement of the plan for EGTRRA is needed to ensure that the terms of the plan are qualified. Questions 47 – 51 should be answered based on the provisions elected in the interim “good-faith” amendments that have already been adopted.

These Questions are designed so that in most cases, no answer is required. This is because the Adoption Agreement applies the changes in the law based on the most common selections.

- 47. **MINIMUM DISTRIBUTIONS.** The Code Section 401(a)(9) Final and Temporary Treasury Regulations apply for purposes of determining required minimum distributions for calendar years beginning with the 2002 calendar year unless otherwise selected below (leave blank if not applicable):
  - a.  Apply the 2001 Proposed Code Section 401(a)(9) Regulations to all minimum distributions for the 2002 distribution calendar year.

- b.  Apply the 1987 Proposed Code Section 401(a)(9) Regulations to all minimum distributions for the 2002 distribution calendar year.
- c.  Other: \_\_\_\_\_ (specify the date the Final and Temporary Regulations were first applied; e.g., the Final and Temporary Regulations only apply to distributions for the 2002 distribution calendar year that are made on or after a specified date *within* 2002 or the Plan's initial Effective Date if later).

Required minimum distributions for calendar year 2001 were made in accordance with Code Section 401(a)(9) and the 1987 Proposed Regulations, unless selected below:

- d.  Required minimum distributions for 2001 were made pursuant to the proposed Regulations under Code Section 401(a)(9) published in the Federal Register on January 17, 2001 (the "2001 Proposed Regulations").

#### 47. MINIMUM DISTRIBUTIONS

The IRS issued numerous versions of Regulations for required minimum distributions (RMD) that were ultimately finalized in 2002. These Regulations simplified the RMD rules and were generally more favorable to participants receiving RMDs. The Adoption Agreement should reflect the version of the Regulations that were used in 2001 and in 2002. The default is that the 2002 Final Regulations were used for all distributions made in 2002. For 2001 distributions, the default is that the 1987 regulations were used rather than 2001 Proposed Regulations.

48. EXCLUSION OF ROLLOVERS. If rollovers are excluded in determining whether the mandatory distribution threshold (e.g., \$5,000) is met for the timing of distributions, form of distributions, or consent rules, then such provision is effective for distributions made after December 31, 2001, unless an alternative effective date is selected below (leave blank if not applicable):
- a.  Rollover contributions will be excluded only with respect to distributions made after \_\_\_\_\_ (Enter a date no earlier than December 31, 2001 or the Plan's initial Effective Date if later.)
- b.  Rollover contributions will only be excluded with respect to Participants who separated from service after \_\_\_\_\_. (Enter a date. The date may be earlier than December 31, 2001.)

#### 48. EXCLUSION OF ROLLOVERS

As addressed in Question 37, beginning in 2002 the plan had the option to exclude rollover contributions in applying the \$5,000 threshold for the form, timing and consent requirements pertaining to distributions. If rollovers are excluded (Question 37.t) for distributions made after December 31, 2001 then leave this Question blank. If they were excluded as of a different effective date, then enter the applicable date.

49. VESTING SCHEDULE FOR EMPLOYER MATCHING CONTRIBUTIONS. The vesting schedule set forth herein for Employer matching contributions will apply to all Employer matching contributions subject to a vesting schedule unless selected below (leave blank if not applicable):
- a.  The vesting schedule will only apply to Employer matching contributions made in Plan Years beginning after December 31, 2001 (the prior schedule will apply to Employer matching contributions made in prior Plan Years). The prior vesting schedule is \_\_\_\_\_ (enter the vesting schedule that applied prior to January 1, 2002; such schedule must satisfy 5-year cliff or 7-year graded and must provide for a top-heavy minimum schedule).

#### 49. VESTING SCHEDULE FOR EMPLOYER MATCHING CONTRIBUTIONS

Beginning in 2002, matching contributions were required to be vested based on a schedule that was at least as great as 6-year graded or 3-year cliff. The default provision is to apply the schedule (if the plan did not already satisfy the schedule) to matching contributions made both old and new contributions (but only if a participant completed an hour of service after December 31, 2001). If, however, the plan only applied the new schedule to contributions made after December 31, 2001, then option a. should be elected and the blank should be completed with the vesting schedule that applies to the contributions made before 2002.

50. SUSPENSION PERIOD DUE TO HARDSHIP DISTRIBUTIONS. If the Plan provides for hardship distributions upon satisfaction of the safe harbor standards, then the reduction from 12 months to 6 months following a hardship distribution applies to hardship distributions made after December 31, 2001 unless otherwise selected below (leave blank if not applicable):
- a.  With regard to hardship distributions made *during* 2001, a Participant was prohibited from making Elective Deferrals and employee contributions under this and all other plans until the later of January 1, 2002, or 6 months after receipt of the distribution.

**50. SUSPENSION PERIOD DUE TO HARDSHIP DISTRIBUTIONS**

Prior to 2002, if a participant received a hardship distribution under the safe harbor hardship standards, then the participant was required to suspend making elective deferrals for 12 months. EGTRRA lowered the suspension period to 6 months effective for distributions made after December 31, 2001. If the plan applied a later effective date, then **a.** should be elected and the effective date of the change must be entered in the blank line.

51. FINAL 401(k)/401(m) REGULATIONS. The provisions of the final Regulations under Code Sections 401(k) and 401(m) apply to the Plan with respect to the first Plan Year beginning after December 31, 2005 unless an earlier Plan Year is otherwise selected below (leave blank if not applicable).
- a.  The final Regulations are effective for Plan Years beginning on or after \_\_\_\_\_ (may not be earlier than the first day of the Plan Year that ends after December 29, 2004).

**51. FINAL 401(k)/401(m) REGULATIONS**

All plans with 401(k) and/or 401(m) provisions were required to be updated (generally) in 2006 to reflect the final 401(k) and 401(m) regulations. Those regulations were required to be effective for Plan Years beginning after December 31, 2005. If the plan applied the regulations prior to that date, then select **a.** and enter the effective date in the blank line.

**APPENDIX A  
SPECIAL EFFECTIVE DATES AND OTHER PERMITTED ELECTIONS**

**A. Special effective dates.** The following special effective dates apply: (Select a. or all that apply at b. - f. )

- a.  N/A. No special effective dates selected below.
- b.  **Employer Matching Contributions.** The Employer Matching Contribution provisions under Question 30. are effective: \_\_\_\_\_.
- c.  **Employer Profit Sharing Contributions.** The Employer Profit Sharing Contribution provisions under Questions 31. and 32. are effective: \_\_\_\_\_.
- d.  **Distribution elections.** The distribution elections under Questions \_\_\_\_\_ (Choose 36. - 40. as applicable) are effective: \_\_\_\_\_.
- e.  **401(k) current/prior year testing.** The current/prior year testing elections under Question 42. are effective: \_\_\_\_\_.
- f.  **Other special effective date(s):** \_\_\_\_\_.  
For periods prior to the above-specified special effective date(s), the Plan terms in effect prior to its restatement under this Adoption Agreement will control for purposes of the designated provisions. A special effective date may not result in the delay of a Plan provision beyond the permissible effective date under any applicable law.

These questions are designed to provide effective dates for the above provisions that are different from the effective date at Question 6, which affects the entire adoption agreement. These options may be used to specify either a retroactive effective date or a prospective effective date. Complete these as appropriate.

**B. Other Permitted Elections.** Select a. or any of the following elections that apply at b. - o.:

- a.  N/A. No other elections selected below.
- b.  **Deemed 125 compensation** (Plan Sections 1.14 and 1.37). Deemed 125 compensation shall be included in Compensation and 415 Compensation effective as of Plan Years and Limitation Years beginning on or after \_\_\_\_\_ (insert the later of January 1, 1998, or the first day of the first Plan Year the Plan used this definition).

Deemed 125 compensation is allowed under a plan under Revenue Ruling 2002-27. Note that this is very limited in its application. It only applies if you sponsor an arrangement in which an employee can elect cash in lieu of health coverage only if proof of other coverage is furnished. A standard "cafeteria plan" is not this type of arrangement. See Revenue Ruling 2002-27 for further details.

- c.  **Reemployed after 1-Year Break in Service ("rule of parity" provisions)** (Plan Section 3.5(d)). The "rule of parity" provisions in Plan Section 3.5(d) shall not apply for (select one or both):
1.  Eligibility purposes.
  2.  Vesting purposes.

Generally, when a former employee is rehired, all prior service counts for purposes of the qualified. There is a very limited exception to this general rule (the exception is referred to as the "rule of parity"). Some plans may want to automatically recognize a former employee's prior service (options **c.1** and **c.2**). This avoids the need to determine whether the rule of parity would even apply.

- d.  **Matching contributions not used to satisfy top-heavy contribution** (Plan Section 4.3(j)). Employer matching contributions shall *not* be taken into account for purposes of satisfying the minimum contribution requirements of Code Section 416(c)(2) and the Plan.

The plan provides that all matching contributions are used to determine whether the top-heavy contribution requirements are met. This option should be elected if the plan is to be operated by disregarding matching contributions for purposes of determining whether the top-heavy minimum contribution has been made.

- e.  **Beneficiary if no beneficiary elected by Participant** (Plan Section 6.2(e)). In the event no valid designation of Beneficiary exists, then in lieu of the order set forth in Plan Section 6.2(e), the following order of priority will be used:

\_\_\_\_\_  
 \_\_\_\_\_  
 (specify an order of beneficiaries; e.g., children per stirpes, parents, and then step-children)..

The plan provides that if a participant has failed to designate a beneficiary, and if the plan does not otherwise control the disposition of the participant's death benefits (e.g., spousal death benefits), then the distribution is made in the following order: to the participant's surviving spouse; the participant's children, including adopted children, per stirpes; the participant's surviving parents, in equal shares; or the participant's estate. This option **e.** should be completed if you want to specify a different order.

- f.  **Distribution from partially Vested account** (Plan Section 6.5(h)). In lieu of the formula set forth in Plan Section 6.5(h), a separate account shall be established for the Participant's interest in the Plan as of the time of the distribution, and at any relevant time the Participant's Vested portion of the separate account will be equal to an amount determined as follows:  $P (AB \text{ plus } (R \times D)) - (R \times D)$  where R is the ratio of the account balance at the relevant time to the account balance after distribution and the other terms have the same meaning as in Plan Section 6.5(h).

When a participant receives, or is deemed to receive, an in-service distribution from a partially vested account balance, then a formula must be used to determine the participant's vested account due to increases in the participant's vested percentage. The most common formula is in the Basic Plan Document; if you want to use the alternative formula, then selection option f. This alternative method requires a separate accounting method that is **not** supported by most administrative software systems.

- g.  **Common, collective or pooled trust funds** (Plan Sections 7.2(c)(5) and/or 7.3(b)(6)). The name(s) of the common, collective or pooled trust funds available under the Plan is (are): \_\_\_\_\_.

This item should be completed when you wish to specify the name of the common, collective or pooled trust funds available under the plan. Your plan advisor will let you know if this option needs to be completed.

- h.  **411(d)(6) protected benefits** (Plan Section 8.1(b)). The following are Code Section 411(d)(6) protected benefits that are preserved under this Plan: \_\_\_\_\_ (specify the protected benefits and the accrued benefits that are subject to the protected benefits).

In restating a plan, care must be taken not to remove any protected benefits. This item allows you to itemize all the plan benefits or features that must be retained under the restated plan.

- i.  **415 Limits when 2 defined contribution plans are maintained** (Plan Section 4.4). If any Participant is covered under another qualified defined contribution plan maintained by the Employer, other than a "master or prototype plan," or if the Employer maintains a welfare benefit fund, as defined in Code Section 419(e), or an individual medical account, as defined in Code Section 415(l)(2), under which amounts are treated as "annual additions" with respect to any Participant in this Plan, then the provisions of Plan Section 4.4(b) will apply as if the other plan were a "master or prototype plan" unless otherwise specified below:
1.  Specify, in a manner that precludes Employer discretion, the method under which the plans will limit total "annual additions" to the "maximum permissible amount" and will properly reduce any "excess amounts": \_\_\_\_\_

If you maintain more than one defined contribution plan, then your plan advisor can assist you with determining whether this option must be completed.

- j.  **Top-heavy duplications when 2 defined contribution plans are maintained** (Plan Section 4.3(f)). When a Non-Key Employee is a Participant in this Plan and another defined contribution plan maintained by the Employer, indicate which method shall be utilized to avoid duplication of top-heavy minimum benefits:
1.  N/A. The Employer does not maintain another qualified defined contribution plan.
  2.  The full top-heavy minimum will be provided in each plan.
  3.  A minimum, non-integrated contribution of 3% of each Non-Key Employee's 415 Compensation shall be provided in the Money Purchase Plan (or other plan subject to Code Section 412).
  4.  Specify the method under which the Plans will provide top-heavy minimum benefits for Non-Key Employees that will preclude Employer discretion and avoid inadvertent omissions, including any adjustments required under Code Section 415: \_\_\_\_\_.

**NOTE:** If 3. or 4. is selected and both plans do not benefit the same Participants, then the uniformity requirement of the Regulations under Code Section 401(a)(4) may be violated.

If you maintain more than one defined contribution plan, then your plan advisor can assist you with determining whether this option must be completed.

- k.  **Top-heavy duplications when a defined benefit plan is maintained** (Plan Section 4.3(i)). When a Non-Key Employee is a Participant in this Plan and a non-frozen defined benefit plan maintained by the Employer, indicate which method shall be utilized to avoid duplication of top-heavy minimum benefits: (If 2., 3., 4., or 5. is selected, 6. must be completed.)
1.  N/A.
  2.  The full top-heavy minimum will be provided in each plan (if selected, Plan Section 4.3(i) shall not apply).
  3.  5% defined contribution minimum.
  4.  2% defined benefit minimum.
  5.  Specify the method under which the Plans will provide top-heavy minimum benefits for Non-Key Employees that will preclude Employer discretion and avoid inadvertent omissions: \_\_\_\_\_.

**NOTE:** If 3., 4., or 5. is selected and the defined benefit plan and this Plan do not benefit the same Participants, the uniformity requirement of the Regulations under Code Section 401(a)(4) may be violated.

**AND,** the "present value" (Plan Section 9.2) for top-heavy purposes shall be based on:

6.  Interest Rate: \_\_\_\_\_  
Mortality Table: \_\_\_\_\_
7.  The interest rate and mortality table specified to determine "present value" for top-heavy purposes in the defined benefit plan.

If you maintain a defined benefit plan, then your plan advisor can assist you with determining whether this option must be completed.

- l.  **Recognition of Service with other employers** (Plan Sections 1.60 and 1.85). Service with the following employers (in addition to those specified at Question 17.) will be recognized as follows:

	<b>Eligibility</b>	<b>Vesting</b>	<b>Contribution Allocation</b>
1. <input type="checkbox"/> Employer name: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. <input type="checkbox"/> Employer name: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. <input type="checkbox"/> Employer name: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. <input type="checkbox"/> Limitations: _____ (e.g., credit service with X only on/following 1/1/07 or credit all service with entities the Employer acquires after 12/31/06)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

This Question allows for recognition of service with employers that could not be listed at Question 17 (i.e., when more than 3 employers need to be listed).

- m.  **Post-severance Compensation (Code Section 415)** (Plan Section 1.14(e)). The post-severance Compensation provisions of the Proposed 415 Regulations shall apply to this Plan for Limitation Years and Plan Years beginning prior to July 1, 2007 and on or after \_\_\_\_\_ (may not be earlier than 2005). Specify any special rules that apply to the application of the Proposed 415 Regulations (e.g., whether the Regulations apply solely for 415 Compensation or for Compensation used for benefit or allocation purposes) \_\_\_\_\_.

This item should be completed if the plan adopted (in its operation) the post-severance provisions of the proposed 415 regulations. Most plans did not use these provisions. Instead, most plans only used the provisions of the final 415 regulations. The final 415 regulations must still be reflected in a separate amendment.

n.  **Pre-amendment vesting schedule** (Plan Section 6.4(g)).

The vesting schedule has been amended to a less favorable schedule and the following schedule applies to Participants who elected, pursuant to Plan Section 6.4(g), to continue vesting under the pre-amendment schedule (may only enter the vesting schedule in the Plan prior to the amendment):

<u>Service</u>	<u>Percentage</u>
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%
_____	_____%

If the plan's vesting schedule has been amended *to a more restrictive schedule*, then the vested percentage that any participant had achieved as of the time the schedule was amended must be maintained. Also, by law, participants with three years of service as of the time the schedule is amended have a right to elect to either remain under the plan's prior vesting schedule or to be subject to the new vesting schedule. Therefore, if the new vesting schedule selected is less favorable (either on an overall basis or even in any one year) than the schedule in existence prior to the amendment, then enter the pre-amended schedule in this section.

o.  Minimum distribution transitional rules (Plan Section 6.8(e)(5))

**NOTE:** This Section does not apply to (1) a new Plan or (2) an amendment or restatement of an existing Plan that never contained the provisions of Code Section 401(a)(9) as in effect prior to the amendments made by the Small Business Job Protection Act of 1996 (SBJPA).

The "required beginning date" for a Participant who is not a "five percent (5%) owner" is:

1.  April 1st of the calendar year following the year in which the Participant attains age 70 1/2. (The pre-SBJPA rules continue to apply.)
2.  April 1st of the calendar year following the later of the year in which the Participant attains age 70 1/2 or retires (the post-SBJPA rules), with the following exceptions (select one or both and if no election is made, both will apply effective as of January 1, 1996):
  - a.  A Participant who was already receiving required minimum distributions under the pre-SBJPA rules as of \_\_\_\_\_ (not earlier than January 1, 1996) was allowed to stop receiving distributions and have them recommence in accordance with the post-SBJPA rules. Upon the recommencement of distributions, if the Plan permits annuities as a form of distribution then the following apply:
    1.  N/A. Annuity distributions are not permitted.
    2.  Upon the recommencement of distributions, the original Annuity Starting Date will be retained.
    3.  Upon the recommencement of distributions, a new Annuity Starting Date is created.
  - b.  A Participant who had not begun receiving required minimum distributions as of \_\_\_\_\_ (not earlier than January 1, 1996) was allowed to defer commencement of distributions until retirement. The option to defer the commencement of distributions applied to all such Participants unless elected below:
    1.  The in-service distribution option was eliminated with respect to Participants who attained age 70 1/2 in or after the calendar year that began after the later of (1) December 31, 1998, or (2) the adoption date of the amendment and restatement to bring the Plan into compliance with SBJPA.

This Question applies to any plan that included the required minimum distribution provisions prior to the changes made by the Small Business Job Protection Act of 1996. *The elections made in this section should reflect the plan provisions in the plan that is being restated onto this document.*



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**APPENDIX B**  
**ADMINISTRATIVE ELECTIONS**

The following are optional administrative provisions. The Administrator may implement procedures that override any elections in this section without a formal Plan amendment. In addition, modifications to this Appendix B will not affect an Employer's reliance on an IRS opinion letter or determination letter.

- A. **Loan Limitations. Note:** the separate loan program required by the DOL will override any inconsistent selections made below. (complete only if loans to Participants are permitted)
- a.  N/A. No loan limitations selected below.
  - b.  Limitations (select all that apply):
    1.  Loans will be treated as Participant directed investments.
    2.  Loans will only be made for hardship or financial necessity (as defined in the loan program).
    3.  The minimum loan will be \$ \_\_\_\_\_ (may not exceed \$1,000).
    4.  A Participant may only have \_\_\_\_\_ (e.g., one (1)) loan(s) outstanding at any time.
    5.  All outstanding loan balances will become due and payable in their entirety upon the occurrence of a distributable event (other than satisfaction of the conditions for an in-service distribution (including a hardship distribution), if applicable).
    6.  Loans are repaid by (if left blank, then payroll deduction applies):
      - a.  payroll deduction
      - b.  ACH (Automated Clearing House)
      - c.  check
    7.  Loans will only be permitted from the following Participant Accounts (select all that apply or leave blank if no limitations apply):
      - a.  Pre-Tax Elective Deferral Account.
      - b.  Roth Elective Deferral Account.
      - c.  Account(s) attributable to Employer matching contributions (includes safe harbor match).
      - d.  Account attributable to Employer profit sharing contributions.
      - e.  Qualified Nonelective Contribution Account (includes safe harbor nonelective).
      - f.  Rollover Account.
      - g.  Transfer Account.
      - h.  Voluntary Contribution Account.
      - i.  Other: \_\_\_\_\_
- AND**, if loans are restricted to certain accounts, the limitations of Code Section 72(p) and the adequate security requirement of the DOL Regulations will be applied:
- j.  by determining the limits by only considering the restricted accounts.
  - k.  by determining the limits taking into account a Participant's entire interest in the Plan.

If loans are permitted pursuant to Question 43, then further loan provisions can be specified.

- b.1. Most plans provide that loans are participant directed investments. Under the DOL Regulations, if a participant loan is treated as a directed investment of that participant's account, then the plan does not have to be concerned with the loss of income to the plan in the event of a loan default by the participant. If the loan is a general trust investment (i.e., not a directed investment), then the loan default would result in a loss in income to the trust and harm other participants' accounts. The trustee would have to take action to preserve plan assets and take all reasonable actions to collect on the loan.
- b.2. The plan may be designed to restrict loans only to requests made due to hardship or financial necessity. This could reduce the number of plan loans.
- b.3. Imposing a \$1,000 minimum will prevent the plan from making small loans, which will help reduce costs.

- b.4. A limit may be placed on the number of outstanding loans that a participant may have. This common plan design helps keep plan costs down and helps avoid participants viewing the plan as a financial institution. If such a limitation is imposed, then the plan should be prepared to address refinancing and/or prepayment of existing loans in order to obtain a new loan.
- b.5. Select this option if the loan will become due and payable upon the occurrence of a distributable event (such as termination of employment, disability or death). At that time, an offset of the participant's account can be made. However, this option can be detrimental to participants because it accelerates the loan thereby increasing the likelihood of default on the loan with adverse tax consequences to the participant. If this option is chosen, then appropriate language needs to be added in the promissory note to ensure that it is enforceable.
- b.6. Select how the loan will be paid back, either by payroll deduction, ACH (Automated Clearinghouse), and/or check.
- b.7. The contribution sources of a loan may be limited by making appropriate selections at **b.7**. Most plans do not impose a limit on the contribution source that may be used for a loan. If a plan does impose such limits, then **b.7.j** or **b.7.k** should also be selected. Loans must generally be limited to the lesser of \$50,000 or 1/2 of a participant's vested interest under the plan. If option **b.7.j** is selected, then these limits will be applied by only looking at the contribution sources that loans are permitted to be made from. If option **b.7.k** is selected, then the limits will be applied by looking at all accounts. Once the maximum loan limit has been determined, then the loan will be further limited if the accounts from which the loan can actually be made are less than the maximum loan amount.

For example, assume the plan limits loans to a participant's elective deferral account. A participant has an elective deferral account equal to \$50,000 and a vested profit sharing account equal to \$50,000. If option **b.7.j** is selected, then the maximum loan is \$25,000 (50% of the elective deferral account. If option **b.7.k** is selected, then the maximum loan is \$50,000 (50% of the entire interest in the plan (\$100,000) is \$50,000 and that is not more than the amount in the participant's elective deferral account).

**B. Life Insurance.** (Plan Section 7.5)

- a.  Life insurance may not be purchased.
- b.  Life insurance may be purchased...
1.  at the option of the Administrator.
  2.  at the option of the Participant.

**AND**, the purchase of initial or additional life insurance will be subject to the following limitations:

3.  N/A. No limitations.
4.  Limitations (select all that apply):
  - a.  Each initial Contract will have a minimum face amount of \$\_\_\_\_\_.
  - b.  Each additional Contract will have a minimum face amount of \$\_\_\_\_\_.
  - c.  The Participant has completed \_\_\_\_\_ Years (or Periods) of Service.
  - d.  The Participant has completed \_\_\_\_\_ Years (or Periods) of Service while a Participant in the Plan.
  - e.  The Participant is under age \_\_\_\_\_ on the Contract issue date.
  - f.  The maximum amount of all Contracts on behalf of a Participant may not exceed \$\_\_\_\_\_.
  - g.  The maximum face amount of any life insurance Contract will be \$\_\_\_\_\_.

A retirement plan may purchase life insurance on the lives of participants in order to provide death benefits under the plan. However, providing death benefits must be "incidental" to the primary purpose of the plan, which is to accumulate money for retirement. As such, there are limits on the amount of plan contributions that can be used to purchase life insurance on behalf of a participant. For term or universal life insurance, no more than 25% of the aggregate contributions to a participant's account can be used. For ordinary whole life insurance, the limit is increased to 50%. Note that the purchase of life insurance on behalf of a participant results in current taxable income to the participant.

If life insurance purchases are authorized, they may be made at the option of the administrator (option **b.1**) or at the option of participants (option **b.2**). Administrative control (option **b.1**) may be more desirable and easier for larger plans.

Various limitations may be placed on either the initial purchase of the life insurance contracts or for additional purchases on behalf of a participant. A minimum face amount for initial or additional purchases is advisable depending on the underwriting requirements of the insurance company from which contracts will be purchased. In addition, you might require participants to complete a designated number of years of service or years of plan participation before life insurance can be purchased. However, care must be taken to ensure that any service or participation requirement does not discriminate in favor of highly compensated employees. Additional limitations include a maximum age requirement after which additional life insurance contracts will not be purchased, and a maximum amount of insurance that will be purchased.

- C. **Plan Expenses.** Will the Plan assess against an individual Participant's account certain Plan expenses that are incurred by, or are attributable to, a particular Participant based on use of a particular Plan feature?
- a.  No.
  - b.  Yes.

A plan can allocate certain expenses, such as distribution and QDRO expenses, to the participant who is receiving the distribution or obtaining the divorce, rather than allocating the expense among all participants. A plan can also to allocate to former-employee participants their share of the plan's administration expenses even though you are paying for administration expenses of the current-employee participants.

- D. **Rollover Limitations.** Will the Plan accept rollover contributions and/or direct rollovers of distributions from the sources specified below?
- a.  No.
  - b.  Yes.

**AND**, indicate the sources of rollovers that will be accepted (select all that apply)

1.  **Direct Rollovers.** The Plan will accept a direct rollover of an eligible rollover distribution from: (Check each that applies or none.)
  - a.  a qualified plan described in Code Section 401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), excluding after-tax employee contributions.
  - b.  a qualified plan described in Code Section 401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan), including after-tax employee contributions.
  - c.  a plan described in Code Section 403(a) (an annuity plan), excluding after-tax employee contributions.
  - d.  a plan described in Code Section 403(a) (an annuity plan), including after-tax employee contributions.
  - e.  a plan described in Code Section 403(b) (a tax-sheltered annuity), excluding after-tax employee contributions.
  - f.  a plan described in Code Section 403(b) (a tax-sheltered annuity), including after-tax employee contributions.
  - g.  if this Plan permits Roth Elective Deferrals, a Roth elective deferral account from (select all that apply):
    1.  a qualified plan described in Code Section 401(a).
    2.  a plan described in Code Section 403(b) (a tax-sheltered annuity).
2.  **Participant Rollover Contributions from Other Plans (i.e., not via a direct plan-to-plan transfer).** The Plan will accept a contribution of an eligible rollover distribution: (Check each that applies or none.)
  - a.  a qualified plan described in Code Section 401(a) (including a 401(k) plan, profit sharing plan, defined benefit plan, stock bonus plan and money purchase plan).
  - b.  a plan described in Code Section 403(a) (an annuity plan).
  - c.  a plan described in Code Section 403(b) (a tax-sheltered annuity).
3.  **Participant Rollover Contributions from IRAs:** The Plan will accept a rollover contribution of the portion of a distribution from a traditional IRA that is eligible to be rolled over and would otherwise be includible in gross income. Rollovers from Roth IRAs or a Coverdell Education Savings Account (formerly known as an

Education IRA) are not permitted because they are not traditional IRAs. A rollover from a SIMPLE IRA is allowed if the amounts are rolled over after the individual has been in the SIMPLE IRA for at least two years.

Under EGTRRA, many types of rollovers into plans are now allowed. This Question allows you to specify which rollovers will be accepted by the plan. Question 45 must be selected to select options here.

**THE FOLLOWING QUESTIONS ARE ONLY APPLICABLE IF THE RELIUS DOCUMENTS SYSTEM IS BEING USED TO GENERATE AN SPD OR OTHER PLAN RELATED FORMS.**

**70. Complete information for the Affiliated Employers who are adopting the Plan as Participating Employers?**

(skip to 100 if 4a or 4b4 have been selected)

a.  No (skip to 100)

b.  Yes

**AND**, (select all that apply)

1.  list the Participating Employers in the SPD and Notice to Interested Parties

2.  include Participation Agreements for Affiliated/Participating Employers

**71. FIRST AFFILIATED EMPLOYER INFORMATION**

a. Name \_\_\_\_\_

b. Address (Street) \_\_\_\_\_

1. City \_\_\_\_\_

2. State \_\_\_\_\_

3. Zip \_\_\_\_\_

c. Telephone \_\_\_\_\_

d. Taxpayer Identification Number (TIN) \_\_\_\_\_

e. Fiscal Year \_\_\_\_\_

**EFFECTIVE DATE(S)**

f.  NEW PLAN. The Participating Employer's adoption of this Plan constitutes the adoption of a new plan by the Participating Employer, effective as of: \_\_\_\_\_.

g.  RESTATEMENT. The Participating Employer's adoption of this Plan constitutes the adoption of an amendment and restatement of the Plan and effective as of: \_\_\_\_\_

with the Participating Employer having originally commenced participation in the Plan effective as of: \_\_\_\_\_.

h.  RESTATEMENT AND MERGER. The Participating Employer's adoption of this Plan constitutes the amendment and restatement of the Participating Employer's plan known as: \_\_\_\_\_

1. and originally effective: \_\_\_\_\_

2. which plan is being merged into this Plan effective as of: \_\_\_\_\_.

i.  CESSATION. The Participating Employer is ceasing its participation in the Plan effective as of: \_\_\_\_\_.

j.  SPECIAL EFFECTIVE DATES: \_\_\_\_\_.

**ALLOCATION OF CONTRIBUTIONS AND FORFEITURES**

(for Non-standardized plans only)

Contributions and Forfeitures will be allocated together for Participating Employers unless an election is made below (select k. or all that apply at l. - m.)

k.  N/A.

l.  Contributions made by a Participating Employer will only be allocated to Participants employed by such Participating Employer.

m.  Forfeitures of amounts attributable to a Participating Employer will only be used for the benefit of the Participants of such Participating Employer.

Many of the remaining Questions are elections related to PPA (the Pension Protection Act of 2006). These elections are used to generate summary plan descriptions and forms that reflect the current operation of the plan. The system will NOT generate a PPA amendment at this time. This is because the PPA amendment is not required until the last day of the 2009 plan year and it is expected that there will be further guidance from government agencies regarding many of the PPA provisions as well as technical correction legislation.

**100. PPA Optional Elections**

Update Summary and Forms for the Optional PPA Provisions

- a.  No
- b.  Yes, include the following (select all that apply)
  1.  Hardship distributions shall be allowed for beneficiaries (See IRS Notice 2007-7) (applies only for 401(k) or profit sharing plan if hardship distributions are permitted)
  2.  Direct rollover of distributions shall be allowed for nonspouse beneficiaries
  3.  Pre-retirement distributions shall be allowed for participants at age 62 (applies only for money purchase and target benefit plans)

**AND**, if In-Service distributions have NOT been selected on the Adoption Agreement, complete the following selections.

In-service distributions are permitted from the following Participant Accounts:

- a.  All Accounts.
- b.  Only from the following Accounts (select all that apply):
  1.  Account attributable to Employer contributions.
  2.  Rollover Account.
  3.  Transfer Account.
  4.  Other: \_\_\_\_\_(specify account(s) and conditions)

**AND**, the following limitations apply to in-service distributions

- c.  N/A. No additional limitations.
- d.  Additional limitations (select all that apply):
  1.  The minimum amount of a distribution is \$\_\_\_\_\_ (may not exceed \$1,000).
  2.  No more than \_\_\_\_\_ distribution(s) may be made to a Participant during a Plan Year.
  3.  Distributions may only be made from accounts which are fully Vested.
4.  In-service distributions may be made subject to the following provisions: \_\_\_\_\_ (must be definitely determinable and not subject to discretion).

**101. PPA Vesting Schedule**

Use the default schedule (6 year graded schedule if the plan currently has a graded schedule that does not satisfy PPA or a 3 year cliff schedule if the plan currently has a cliff schedule that does not satisfy PPA) (skip if 401(k) plan does NOT provide for employer profit sharing contributions)

- a.  N/A. Schedule satisfies PPA. (skip next question)
- b.  Yes. Use default schedule
- c.  No. Use the following schedule
  1.  3 year cliff
  2.  6 year graded schedule
  3.  Other (must be at least as liberal as 1. or 2. above)
    - a.  Years of Service \_\_\_\_\_
      1. Nonforfeitable Percentage \_\_\_\_\_%
    - b.  Years of Service \_\_\_\_\_
      1. Nonforfeitable Percentage \_\_\_\_\_%
    - c.  Years of Service \_\_\_\_\_
      1. Nonforfeitable Percentage \_\_\_\_\_%
    - d.  Years of Service \_\_\_\_\_
      1. Nonforfeitable Percentage \_\_\_\_\_%
    - e.  Years of Service \_\_\_\_\_
      1. Nonforfeitable Percentage \_\_\_\_\_%

If a new PPA vesting schedule is selected, does the new schedule apply to all contributions regardless of when made? (NOTE: The PPA vesting schedule will only apply to Participants who complete an hour of service in a Plan Year after December 31, 2006.)

- d.  Yes, new vesting schedule applies to all prior and future contributions
- e.  No, prior vesting schedule applies to contributions made in Plan Years prior to 2007 and new vesting schedule applies to contributions made in Plan Years after December 31, 2006

**Beginning in 2007, profit sharing contributions must vest under a schedule that is at least as liberal as a 6-year graded schedule or a 3-year cliff schedule. If option d. is selected then the schedule will apply to all profit sharing contributions under the plan. If option e. is selected, then the schedule will only apply to future contributions. The vesting schedule set forth in the Adoption Agreement would apply to the prior profit sharing contributions.**

**102. Final 415 Regulations - Optional Elections**

In lieu of the default provisions provided in Section 2.1 of the Amendment for the Final 415 Regulations, the following apply: (select all that apply; if no selections are made, then the defaults apply)

**415 Compensation.** (select all that apply):

- a.  Exclude leave cashouts and deferred compensation (Section 3.3(b))
- b.  Include military continuation payments (Section 3.3(c))
- c.  Include disability continuation payments (Section 3.3(d)):
  - 1.  For Nonhighly Compensated Employees only
  - 2.  For all participants and the salary continuation will continue for the following fixed or determinable period:  
\_\_\_\_\_
- d.  Apply the administrative delay ("first few weeks") rule (Section 3.4)

**Plan Compensation.** (select all that apply):

**NOTE:** For 401(k) Plans, Elective Deferrals include Roth Elective Deferrals, Matching includes QMACs, and Nonelective includes QNECs unless specified otherwise. ADP safe harbor matching contributions are subject to the provisions for Employer matching contributions. For all Plans other than 401(k) plans, do not make any selections at 1. – 4. in the table below.

- e.  Default provisions apply
  - 1.  Elective Deferrals
  - 2.  Matching
  - 3.  Nonelective Profit
  - 4.  ADP Safe Harbor Nonelective
- f.  No change from existing Plan provisions
  - 1.  Elective Deferrals
  - 2.  Matching
  - 3.  Nonelective Profit
  - 4.  ADP Safe Harbor Nonelective
- g.  Exclude all post-severance compensation
  - 1.  Elective Deferrals
  - 2.  Matching
  - 3.  Nonelective Profit
  - 4.  ADP Safe Harbor Nonelective
- h.  Exclude post-severance regular pay
  - 1.  Elective Deferrals
  - 2.  Matching
  - 3.  Nonelective Profit
  - 4.  ADP Safe Harbor Nonelective
- i.  Exclude leave cashouts and deferred compensation
  - 1.  Elective Deferrals
  - 2.  Matching
  - 3.  Nonelective Profit
  - 4.  ADP Safe Harbor Nonelective
- j.  Include military continuation payments
  - 1.  Elective Deferrals
  - 2.  Matching
  - 3.  Nonelective Profit
  - 4.  ADP Safe Harbor Nonelective
- k.  Include disability continuation payments:
  - a.  For Nonhighly Compensated Employees only
  - b.  For all participants and the salary continuation will continue for the following fixed or determinable period:  
\_\_\_\_\_

**FOR**

- 1.  Elective Deferrals
- 2.  Matching
- 3.  Nonelective Profit
- 4.  ADP Safe Harbor Nonelective
- l.  Other \_\_\_\_\_ (describe)

**Plan Compensation Special Effective Date.** The definition of Plan Compensation is modified as set forth herein effective as of the same date as the 415 Compensation change is effective unless otherwise specified:

m.  \_\_\_\_\_ (enter the effective date)

**Your plan advisor should select the options at this question.**

**112. QDIA. Include Qualified Default Investment Alternative?**

(skip if plan does NOT provide for directed investments)

a.  No (401(k) - skip to 114; all others - skip to 120)

b.  Yes

The QDIA(s) are: (leave blank if these will be completed in participant notices at a later time)

1.  The primary QDIA \_\_\_\_\_ (insert name of the QDIA)

2.  The capital preservation QDIA for first 120 days is: \_\_\_\_\_ (insert the name of QDIA)

AND, participants are allowed to elect out of the default investment (leave blank if this will be completed in participant notices at a later time):

3.  at any time.

4.  quarterly.

5.  Other: \_\_\_\_\_ (must be at least quarterly)

Satisfying the QDIA (Qualified Default Investment Alternative) regulations will provide fiduciary protection in a plan that has participant investment direction, whether or not the plan is an automatic enrollment deferral plan. Your plan or financial advisor should be able to assist with the completion of this Question.

**113. EACA. Include Eligible Automatic Contribution Arrangement ?**

(skip if 401k plan does NOT provide for QDIA)

a.  No

b.  Yes (select Yes if plan has QACA and wants to permit 90-day refunds)

Special Effective Date

1.  N/A. Same as Plan Effective Date or Restatement Effective Date

2.  Special effective date: \_\_\_\_\_

AND, should plan permit participant refunds within 90-days of first automatic deferral?

3.  Yes

4.  No

Beginning in 2008, an eligible ACA ("EACA") that satisfies the Qualified Default Investment Alternative regulations may provide for a 90-day permissive withdrawal period for newly enrolled participants who do not wish to make automatic deferrals. Also, the time period to make corrective distributions without the 10% employer excise tax is extended from 2 1/2 months to 6 months.

**114. QACA. Include Qualified Automatic Contribution Arrangement?**

a.  No (skip to 120)

b.  Yes

Special Effective Date

1.  N/A. Same as Plan Effective Date or Restatement Effective Date.

2.  Special effective date: \_\_\_\_\_

**Contribution** (select c. or d.)

c.  Safe Harbor matching contribution equal to...

(select 1. or 2. AND one from 3. - 6.)

1.  the sum of 100% of Participant's Elective Deferrals that do not exceed 1% of Participant's Compensation, plus 50% of Participant's Elective Deferrals that exceed 1% of Participant's Compensation but do not exceed 6% of Participant's Compensation.

2.  the sum of:

a.  \_\_\_\_\_% (may not be less than 100%) of Participant's Elective Deferrals that do not exceed \_\_\_\_\_% of the Participant's Compensation, plus

b.  \_\_\_\_\_% of Participant's Elective Deferrals that exceed \_\_\_\_\_% of Participant's Compensation but do not exceed \_\_\_\_\_% of the Participant's Compensation.

**AND**, the safe harbor matching contribution will be determined on the following basis (and Compensation for such purpose will be based on the applicable period):

3.  the entire Plan Year.
  4.  each payroll period.
  5.  all payroll periods ending with or within each month.
  6.  all payroll periods ending with or within the Plan Year quarter.
- d.  Safe Harbor nonelective contribution (select 1. or 2.)
1.  3% of each Participant's Compensation.
  2.  The Employer may make a Safe Harbor Nonelective Contribution pursuant to a supplemental notice & amendment.

**Vesting**

- e.  100% immediate vesting
- f.  100% after two years

**And, if f. selected, were any non-QACA ADP test safe harbor contributions ever made to the plan?**

- g.  No
- h.  Yes

**For Purposes Of The ADP Test safe harbor contribution**, the term "eligible Participant" means any Participant who is eligible to make Elective Deferrals with the following exclusions :

- i.  N/A. No exclusions.
- j.  Exclusions (select all that apply, if any):
1.  Highly Compensated Employees.
  2.  Employees who have not satisfied the greatest minimum age and service conditions permitted under Code Section 410(a) (i.e., age 21 and 1 Year of Service), with the following effective date of participation:
    - a.  The first day of the Plan Year in which the requirements are met.
    - b.  Other: \_\_\_\_\_
  3.  Other: \_\_\_\_\_

**Does the plan already include** automatic deferral provisions that are compatible with QACA?

- k.  Yes (skip to 115)
- l.  No (complete automatic deferral provisions below) (must be selected if 27s AND 114b have been selected)

**The automatic deferral provisions apply to:**

1.  Application to new Participants
  - a.  Employees who become Participants on or after the effective date of the automatic deferral provisions.
  - b.  Participants who were hired on or after the effective date of the automatic deferral provisions.
2.  Application to existing Participants (those Participants in the Plan as of the effective date of the automatic deferral provisions)
  - a.  All Participants. All Participants, regardless of any prior Salary Reduction Agreement.
  - b.  Election of at least automatic deferral amount. All Participants, except those who have a Salary Reduction Agreement in effect on the automatic deferral provisions effective date, provided the Elective Deferral amount under the Agreement is at least equal to the automatic deferral amount.
  - c.  No existing Salary Reduction Agreement. All Participants, except those who have a Salary Reduction Agreement in effect on the automatic deferral provisions effective date (regardless of the Elective Deferral amount under the Agreement).

**Type of Elective Deferral.** The automatic deferral shall be a Pre-Tax Elective Deferral unless selected below:

3.  The automatic deferral shall be a Roth Elective Deferral (may only be selected if Roth Elective Deferrals are permitted).

**Initial automatic deferral amount.** Each Participant who is subject to the automatic deferral provisions will have Compensation deferred by the following amount unless otherwise elected by the Participant:

4.  \_\_\_\_\_% of Compensation for each payroll period.
5.  \$\_\_\_\_\_ for each payroll period.

**Escalation of deferral amount.**

6.  N/A (no escalation)
7.  The initial automatic deferral amount shall increase as elected below:
- a.  \_\_\_\_\_% of Compensation per year up to a maximum of
    1. \_\_\_\_\_% of Compensation.
  - b.  \$\_\_\_\_\_ per year up to a maximum of
    1. \$\_\_\_\_\_.



- c.  in accordance with the following schedule:

<u>Plan Year of participation</u>	<u>Automatic Deferral Amount</u>
1 - 2	3%
3	4%
4	5%
5 and thereafter	6%

- d.  Other: \_\_\_\_\_ (for each year must not be less than % in c. above).

**Timing of escalation.** The escalation provision above shall apply as of:

- e.  N/A (7.c selected or entry at 7.d includes timing provision).  
 f.  Each anniversary of the Participant's date of hire.  
 g.  Each anniversary of the Participant's Entry Date.  
 h.  The first day of each Plan Year.  
 i.  The first day of each calendar year.  
 j.  Other: \_\_\_\_\_

A Qualified Automatic Contribution Arrangement (QACA) is an ACA with additional features that allow the plan to avoid ADP and possibly ACP testing through a new "safe harbor." The QACA may also be an EACA, with the 90-day refund feature.

A QACA must provide that participants are automatically enrolled using a rate of at least 3% during their first plan year and the next following year. In subsequent years, unless participants elect otherwise, deferrals must increase at a rate of at least 1% annually, up to at least 6% (but not more than 10%).

A QACA must also provide for either a 3% nonelective contribution or a matching contribution equal to at least 100% of the 1st 1% contributed, and at least 50% of the next 5% contributed. The employer contribution may be subject to a 2-year cliff vesting schedule, but is subject to the same distribution restrictions that apply to safe harbor contributions.