

## Rev. Proc. 2004-56

### SECTION 1. PURPOSE

This Revenue Procedure provides model amendments that may be used

by a State or local government eligible employer (as defined in § 457(e)(1)(A) of the Internal Revenue Code) to amend or draft its eligible § 457(b) plan to reflect the requirements of § 457 and the regulations thereunder.

### SECTION 2. BACKGROUND AND GENERAL INFORMATION

.01 Section 457 applies to nonqualified deferred compensation plans established by State and local government and tax-exempt employers. Under § 457, eligible employers may establish three different types of plans or arrangements: (1) eligible plans established by State and local government entities (eligible § 457(b) governmental plans); (2) eligible plans established by other tax-exempt entities (eligible § 457(b) plans of tax-exempt entities); and (3) ineligible plans under § 457(f). Under the last sentence of § 457(b), the Commissioner may notify an eligible § 457(b) governmental plan that it is administered in a manner that is inconsistent with § 457(b).

.02 Final regulations under § 457 (T.D. 9075, 2003-39 I.R.B 608) were published in the Federal Register (68 FR 41230) on July 11, 2003. These regulations replaced existing final regulations that were published in the Federal Register on September 27, 1982 (47 FR 42335) (T.D.7836, 1982-2 C.B. 91). The final regulations provide guidance for complying with the changes made to § 457 by the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16 (EGTRRA), the Taxpayer Relief Act of 1997, Pub. L. No. 105-34 (TRA '97), and the Small Business Job Protection Act of 1996, Pub. L. No. 104-188 (SBJPA). The regulations also provide guidance on many non-EGTRRA issues, such as the tax treatment of excess deferrals, plan loans, plan terminations, and unforeseeable emergencies.

.03 Sections 615, 631, 632, 634, 635, 641, 646, 647, and 649 of EGTRRA made changes to eligible § 457(b) governmental plans, including increases in elective deferral limits, repeal of the rules coordinating the § 457 plan limits with contributions to certain other types of plans, catch-up contributions for individuals age 50 or over, extension of qualified domestic relation order rules to § 457 plans, rollovers to and from various types of eligible retirement plans, § 403(b) contracts

and individual retirement arrangements (IRAs), and transfers to purchase permissive service credits under governmental defined benefit plans.

.04 Rev. Proc. 98-41, 1998-2 C.B. 135, provided model amendments that may be used for eligible § 457(b) governmental plans to reflect the revisions made to § 457 by the SBJPA, including the requirement that eligible § 457(b) governmental plans hold all assets and income in trust for the exclusive benefit of participants and beneficiaries.

### SECTION 3. USE OF THE MODEL AMENDMENTS

Any State or local government employer may amend its eligible § 457(b) defined contribution governmental plan to comply with one or more of the changes made to § 457 by the SBJPA, TRA '97, EGTRRA, and the regulations issued under § 457 by adopting one or more of the Model Amendments contained in the Appendix to this revenue procedure. With respect to the benefit provisions relating to each of the Model Amendments, the Model Amendments have been prepared to conform with the applicable § 457(b) requirements, taking into account the general requirement that an eligible plan must include all of the material terms and conditions for benefits under the plan. For example, the Model Amendments do not incorporate the applicable legal requirements by reference, but instead describe those requirements in a manner intended to enable the plan administrator to implement the plan provisions on the basis of the language of the Model Amendments to the extent feasible.

The regulations provide that an eligible § 457(b) governmental plan may contain certain optional features not required for plan eligibility under § 457(b), such as in service distributions from rollover accounts, distributions for unforeseeable emergencies, loans, plan to plan transfers, and distributions of smaller accounts to eligible participants. Accordingly, these Model Amendments contain optional as well as required provisions that may be used in adopting an eligible § 457(b) governmental plan. However, if the optional provisions are used, the optional provisions must meet, in both form and operation, the relevant requirements under the

Code and the regulations, as well as operate in accordance with the terms of the plan.

## SECTION 4. RELIANCE BY EMPLOYERS ON MODEL AMENDMENTS

If an eligible governmental employer adopts one or more of these Model Amendments for its plan that is intended to be an eligible § 457(b) governmental plan, the plan will be treated as meeting the plan requirements for eligibility under § 457(b) with respect to these provisions. An employer may adopt the applicable Model Amendment provided in this revenue procedure on a word-for-word basis or adopt an Amendment that is substantially similar in all material respects. However, these Model Amendments are limited in scope. Therefore, use of the Model Amendments does not have the same status as a private letter ruling which provides that a plan is an eligible § 457(b) governmental plan. In addition, if an eligible governmental employer adopts one or more of the Model Amendments, the plan must be operated in accordance with the Model Amendments and must continue to satisfy in both form and operation any other requirements of § 457 in order to maintain eligibility. To the extent an employer's plan does not include the Model Amendments or an amendment that is substantially similar in all respects, an eligible governmental employer who requests a private letter ruling from the IRS on plan eligibility under § 457 must clearly highlight and describe in the written request how its plan provisions differ from the Model Amendments.

## SECTION 5. DATE AMENDMENTS ARE ADOPTED

Pursuant to this revenue procedure, for purposes of the last sentence of § 457(b), an eligible § 457(b) governmental plan will be treated as having adopted timely amendments to reflect the requirements of EGTRRA described in section 2.03 of this revenue procedure if the related Model Amendment, or any other amendment that satisfies that requirement, is adopted no later than December 31, 2005, the amendment is effective as of a date not later than the latest date permitted under § 457(b),

and the operation of the plan since that date is not inconsistent with the amendment.

## SECTION 6. AREAS NOT COVERED BY THIS REVENUE PROCEDURE

This revenue procedure does not apply to eligible § 457(b) plans of tax-exempt entities or ineligible plans under § 457(f).

## SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 98-41 is superseded.

## SECTION 8. COMMENTS REQUESTED

Treasury and IRS are interested in receiving comments on the Model Amendments contained in this revenue procedure and any other Model Amendments that interested parties believe should be added to this revenue procedure. Comments should be sent to the following address: Internal Revenue Service, Attn: CC:DOM:CORP:R (Section 457 Plans), Room 5201, P. O. Box 7604, Ben Franklin Station, Washington, DC 20044. Written comments may be hand delivered Monday through Friday between 8 a.m. and 4 p.m. to: Internal Revenue Service, Courier's Desk, Attn: CC:PA:RU (Section 457 Plans), 1111 Constitution Avenue, NW, Washington, DC 20224. Alternatively, written comments may be submitted electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting them directly to the IRS Internet site at [http://www.irs.gov/tax\\_regs/reglist.html](http://www.irs.gov/tax_regs/reglist.html). Comments should be received by November 30, 2004.

## SECTION 9. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1904.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the

collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is pursuant to § 457(b) of the Code and § 1.457-1 of the Income Tax Regulations. Sections 2.2, 2.4, and 2.6 of the Appendix to this revenue procedure deal with the election to defer compensation and the information that has to be provided to the administrator of the plan by a participant in the plan. Sections 5.2, 5.3, 5.4, 5.10 and 6.3 of the Appendix to this revenue procedure deal with the participant's rights to distribution and the notification that the participant must give to the administrator of the plan. Section 8.6 of the Appendix to this revenue procedure deals with the procedure that an administrator of a plan must follow when distributees cannot be located. This information is required to enable sponsors of plans of state or local governments described in this revenue procedure to make the necessary amendments to ensure compliance with the statutory requirements of § 457(b) and the regulations thereunder. The likely respondents are state or local governments.

The estimated total annual reporting and/or recordkeeping burden is 41,040 hours.

The estimated annual burden per respondent/recordkeeper varies from 3 to 8 hours, depending on individual circumstances, with an estimated average of 4 hours. The estimated number of respondents and/or recordkeepers is 10,260.

The estimated frequency of responses is occasional.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

## DRAFTING INFORMATION

The principal author of this revenue procedure is Vernon S. Carter of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt & Government Entities). For further information regarding this revenue procedure, contact Vernon S. Carter at (202) 622-6060 (not a toll-free call).

**APPENDIX FOR REVENUE PROCEDURE 2004-56**  
**MODEL AMENDMENTS**

**Note to sponsors:** The Model Amendments in this Appendix are designed for use by eligible governmental employers maintaining eligible § 457(b) defined contribution plans that permit employees to elect to defer compensation, that are maintained on the basis of the calendar year, and that provide for the use of one or more trusts to satisfy the requirements of § 457(g). In this Appendix presenting the Model Amendment language, the portions printed in italics are explanatory notes for the benefit of the §457(b) plan sponsor and are not to be included in the Model Amendments. In addition, certain items indicated by brackets can be filled in by the plan sponsor as required or as appropriate.

**MODEL AMENDMENT 1**

***Definition of Terms***

**Section 1**

**Definition of Terms Used in Model Amendments**

The following words and terms, when used in the Model Amendments, have the meaning set forth below and should be adopted as part of the corresponding Model Amendment, as identified at the end of each definition below and also as identified at the end of each Model Amendment.

1.1 “**Administrator**”: [Insert Identity of person, committee or organization appointed to administer the Plan]. **Note:** This definition is used in Model Amendments 2, 3, 4, 5, 6, and 8.

1.2 “**Account Balance**”: The bookkeeping account maintained with respect to each Participant which reflects the value of the deferred Compensation credited to the Participant, including the Participant’s Annual Deferrals, the earnings or loss of the Fund (net of Fund expenses) allocable to the Participant, any transfers for the Participant’s benefit, and any distribution made to the Participant or the Participant’s Beneficiary. If a Participant has more than one Beneficiary at the time of the Participant’s death, then a separate Account Balance shall be maintained for each Beneficiary. The Account Balance includes any account established under Section 6 for rollover contributions and plan-to-plan transfers made for a Participant, the account established for a Beneficiary after a Participant’s death, and any account or accounts established for an alternate payee (as defined in section 414(p)(8) of the Code). **Note:** This definition is used in Model Amendments 2, 3, 4, 5, 6, and 8.

**Note:** A plan is not required to maintain a separate account for each Beneficiary in order to satisfy section 401(a)(9), but this Model Amendment provides for such separate accounts so that installment payments are permitted to be made over each beneficiary’s life expectancy as permitted under § 1.401(a)(9)-8, A-2(a)(2) of the Income Tax Regulations. However, because, under the Model Amendment, each separate account is permitted to have only a single beneficiary, certain beneficiary designations are not permitted under the Model Amendment, such as a death benefit in the form of a fixed dollar payment that is not determined as of the date of death and that is not to be maintained in a separate account to which gains and losses are credited.

1.3 “**Annual Deferral**”: The amount of Compensation deferred in any year. **Note:** This definition is used in Model Amendments 2, 3, 4, 5, 6 and 7.

1.4 “**Beneficiary**”: The designated person (or, if none, the Participant’s estate) who is entitled to receive benefits under the Plan after the death of a Participant. **Note:** This definition is used in Model Amendments 2, 4, 5, 6 and 8.

1.5 “**Code**”: The Internal Revenue Code of 1986, as now in effect or as hereafter amended. All citations to sections of the Code are to such sections as they may from time to time be amended or renumbered. **Note:** This definition is used in Model Amendments 2, 3, 4, 5, 6, 7, and 8.

1.6 “**Compensation**”: All cash compensation for services to the Employer, including salary, wages, fees, commissions, bonuses, and overtime pay, that is includable in the Employee’s gross income for the calendar year, plus amounts that would be cash compensation for services to the Employer includable in the Employee’s gross income for the calendar year but for a compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer compensation under Section 3). **Note:** This definition is used in Model Amendments 2, 3, 4, and 5.

1.7 “Employee”: Each natural person, whether appointed or elected, who is employed by the Employer as a common law employee, excluding any employee who is included in a unit of employees covered by a collective bargaining agreement that does not specifically provide for participation in the Plan. *Note: This definition is used in Model Amendments 2, 3, 4, and 6.*

*Note: A plan is not required to be offered to all employees and may provide for specific classes of employees to be excluded.*

1.8 “Employer”: [Name of State entity]. *Note: This definition is used in Model Amendments 2, 3, 4, 6, and 8.*

*Note: State means a State (treating the District of Columbia as a State as provided under § 7701(a)(10)), a political subdivision of a State, and any agency or instrumentality of a State.*

1.9 “Includible Compensation”: An Employee’s actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$200,000 (or such higher maximum as may apply under section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including an election to defer Compensation under Section 3). *Note: This definition is used in Model Amendment 3.*

1.10 “Normal Retirement Age”: Age 65. *Note: This definition is used in Model Amendments 3 and 5. See Note after Section 3.3.*

1.11 “Participant”: An individual who is currently deferring Compensation, or who has previously deferred Compensation under the Plan by salary reduction and who has not received a distribution of his or her entire benefit under the Plan. Only individuals who perform services for the Employer as an Employee may defer Compensation under the Plan. *Note: This definition is used in Model Amendments 2, 3, 4, 5, 6, 7, and 8.*

1.12 “Plan”: [INSERT NAME OF PLAN]. *Note: This definition is used in Model Amendments 2, 3, 4, 5, 6, 7 and 8.*

1.13 “Severance from Employment”: The term Severance from Employment means the date that the Employee dies, retires, or otherwise has a severance from employment with the Employer, as determined by the Administrator (and taking into account guidance issued under the Code). *Note: This definition is used in Model Amendments 2, 4, 5, and 6.*

1.14 “Trust Agreement”: The written agreement (or declaration) made by and between the Employer and the Trustee under which the Trust Fund is maintained. *Note: This definition is used in Model Amendment 7.*

1.15 “Trust Fund”: The trust fund created under and subject to the Trust Agreement. *Note: This definition is used in Model Amendments 2, 7, and 8.*

1.16 “Trustee”: The Trustee duly appointed and currently serving under the Trust Agreement. *Note: This definition is used in Model Amendments 4, 5, 7 and 8.*

1.17 “Valuation Date”: [Each business day/The last day of the calendar month/The last day of the calendar quarter/Each December 31]. *Note: This definition is used in Model Amendments 4 and 5.*

## **MODEL AMENDMENT 2** **Participation and Contributions**

### **Section 2** **Participation and Contributions**

2.1 **Eligibility**. Each Employee shall be eligible to participate in the Plan and defer Compensation hereunder immediately upon becoming employed by the Employer.

*Note: As indicated above, this Model Amendment assumes that the employer has a broad based plan with an immediate eligibility, that the plan is limited to elective contributions, and that the plan has no matching or other employer non-elective contributions.*

**2.2 Election Required for Participation.** An Employee may elect to become a Participant by executing an election to defer a portion of his or her Compensation (and have that amount contributed as an Annual Deferral on his or her behalf) and filing it with the Administrator. This participation election shall be made on the deferral agreement provided by the Administrator under which the Employee agrees to be bound by all the terms and conditions of the Plan. The Administrator may establish a minimum deferral amount, and may change such minimums from time to time. The participation election shall also include designation of investment funds and a designation of Beneficiary. Any such election shall remain in effect until a new election is filed.

**2.3 Commencement of Participation.** An Employee shall become a Participant as soon as administratively practicable following the date the Employee files a participation election pursuant to Section 2.2. Such election shall become effective no earlier than the calendar month following the month in which the election is made. A new Employee may defer compensation payable in the calendar month during which the Participant first becomes an Employee if an agreement providing for the deferral is entered into on or before the first day on which the Participant performs services for the Employer.

**2.4 Information Provided by the Participant.** Each Employee enrolling in the Plan should provide to the Administrator at the time of initial enrollment, and later if there are any changes, any information necessary or advisable for the Administrator to administer the plan, including, without limitation, whether the Employee is a participant in any other eligible plan under Code section 457(b).

**2.5 Contributions Made Promptly.** Annual Deferrals by the Participant under the Plan shall be transferred to the Trust Fund within a period that is not longer than is reasonable for the proper administration of the Participant's Account Balance. For this purpose, Annual Deferrals shall be treated as contributed within a period that is not longer than is reasonable for the proper administration if the contribution is made to the Trust Fund within 15 business days following the end of the month in which the amount would otherwise have been paid to the Participant.

**2.6 Amendment of Annual Deferrals Election.** Subject to other provisions of the Plan, a Participant may at any time revise his or her participation election, including a change of the amount of his or her Annual Deferrals, his or her investment direction and his or her designated Beneficiary. Unless the election specifies a later effective date, a change in the amount of the Annual Deferrals shall take effect as of the first day of the next following month or as soon as administratively practicable if later. A change in the investment direction shall take effect as of the date provided by the Administrator on a uniform basis for all Employees. A change in the Beneficiary designation shall take effect when the election is accepted by the Administrator.

**2.7 Leave of Absence.** Unless an election is otherwise revised, if a Participant is absent from work by leave of absence, Annual Deferrals under the Plan shall continue to the extent that Compensation continues.

**2.8 Disability.** A disabled Participant may elect Annual Deferrals during any portion of the period of his or her disability to the extent that he or she has actual Compensation (not imputed Compensation and not disability benefits) from which to make contributions to the Plan and has not had a Severance from Employment.

*Note: The following definitions from Model Amendment 1 are used in this Model Amendment 2: Administrator, Account Balance, Annual Deferral, Beneficiary, Employee, Participant, Plan, Severance from Employment, and Trust Fund.*

### **MODEL AMENDMENT 3** **Limitations on Amounts Deferred**

#### **Section 3** **Limitations on Amounts Deferred**

**3.1 Basic Annual Limitation.** The maximum amount of the Annual Deferral under the Plan for any calendar year shall not exceed the lesser of (i) the Applicable Dollar Amount or (ii) the Participant's Includible Compensation for the calendar year. The Applicable Dollar Amount is the amount established under section 457(e)(15) of the Code applicable as set forth below:

For the following years:	The Applicable Dollar Amount is:
2002	\$11,000
2003	\$12,000
2004	\$13,000
2005	\$14,000
2006 or thereafter	\$15,000 Adjusted for cost-of-living after 2006 to the extent provided under section 415(d) of the Code.

**3.2 Age 50 Catch-up Annual Deferral Contributions.** A Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Annual Deferrals, up to the maximum age 50 catch-up Annual Deferrals for the year. The maximum dollar amount of the age 50 catch-up Annual Deferrals for a year is as follows:

For the following years:	The maximum age 50 catch-up dollar amount is:
2002	\$1,000
2003	\$2,000
2004	\$3,000
2005	\$4,000
2006 or thereafter	\$5,000, adjusted for cost-of-living after 2006 to the extent provided under the Code.

**3.3 Special Section 457 Catch-up Limitation.** If the applicable year is one of a Participant's last 3 calendar years ending before the year in which the Participant attains Normal Retirement Age and the amount determined under this Section 3.3 exceeds the amount computed under Sections 3.1 and 3.2, then the Annual Deferral limit under this Section 3 shall be the lesser of:

(a) An amount equal to 2 times the Section 3.1 Applicable Dollar Amount for such year; or

(b) The sum of:

(1) An amount equal to (A) the aggregate Section 3.1 limit for the current year plus each prior calendar year beginning after December 31, 2001, during which the Participant was an Employee under the Plan, minus (B) the aggregate amount of Compensation that the Participant deferred under the Plan during such years, plus

(2) An amount equal to (A) the aggregate limit referred to in section 457(b)(2) of the Code for each prior calendar year beginning after December 31, 1978, and before January 1, 2002, during which the Participant was an Employee (determined without regard to Sections 3.2 and 3.3), minus (B) the aggregate contributions to Pre-2002 Coordination Plans for such years.

However, in no event can the deferred amount be more than the Participant's Compensation for the year. **Note:** This limitation is required because the Model Amendment is limited to elective contributions.

**Note:** Generally, for purposes of the special § 457 catch-up definition in Section 3.3, a plan must specify the normal retirement age under the plan. A plan may define normal retirement age as any age that is on or after the earlier of age 65 or the age at which participants have the right to retire and receive, under the basic defined benefit pension plan of the employer (or a money purchase pension plan in which the participant also participates if the participant is not eligible to participate in a defined benefit plan), immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age, and that is not later than age 70½. Alternatively, a plan may provide that a participant is allowed to designate a normal retirement age within these ages. For purposes of the special § 457 catch-up in Section 3.3, an entity sponsoring more than one eligible plan may not permit a participant to have more than one normal retirement age under the eligible plans it sponsors.

**Note:** Special rule for eligible plans of qualified police or firefighters. An eligible plan with participants that include qualified police or firefighters as defined under § 415(b)(2)(H)(ii)(I) of the Code may designate a normal retirement age for such qualified police or firefighters that is earlier than the earliest normal retirement age designated under the general rule above, but in no event may the normal retirement age be earlier than age 40. Alternatively, a plan may allow a qualified police or firefighter participant to designate a normal retirement age that is between age 40 and age 70½.

### **3.4 Special Rules.** For purposes of this Section 3, the following rules shall apply:

(a) *Participant Covered By More Than One Eligible Plan.* If the Participant is or has been a participant in one or more other eligible plans within the meaning of section 457(b) of the Code, then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Section 3. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.

(b) *Pre-Participation Years.* In applying Section 3.3, a year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year and (ii) Compensation deferred, if any, under the Plan during the year was subject to the Basic Annual Limitation described in Section 3.1 or any other plan ceiling required by section 457(b) of the Code.

(c) *Pre-2002 Coordination Years.* For purposes of Section 3.3(b)(2)(B), “contributions to Pre-2002 Coordination Plans” means any employer contribution, salary reduction or elective contribution under any other eligible Code section 457(b) plan, or a salary reduction or elective contribution under any Code section 401(k) qualified cash or deferred arrangement, Code section 402(h)(1)(B) simplified employee pension (SARSEP), Code section 403(b) annuity contract, and Code section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in section 501(c)(18) of the Code, including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 3.3(b)(2)(B) to the extent that the total of such contributions does not exceed the aggregate limit referred to in section 457(b)(2) of the Code for that year.

**Note:** See generally § 1.457–4(c)(3)(iv) of the Income Tax Regulations for rules relating to the application of the coordination limit for years prior to 2002 for purposes of determining the underutilized limit.

(d) *Disregard Excess Deferral.* For purposes of Sections 3.1, 3.2 and 3.3, an individual is treated as not having deferred compensation under a plan for a prior taxable year to the extent Excess Deferrals under the plan are distributed, as described in Section 3.5. To the extent that the combined deferrals for pre-2002 years exceeded the maximum deferral limitations, the amount is treated as an Excess Deferral for those prior years.

**3.5 Correction of Excess Deferrals.** If the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above, or the Annual Deferral on behalf of a Participant for any calendar year exceeds the limitations described above when combined with other amounts deferred by the Participant under another eligible deferred compensation plan under section 457(b) of the Code for which the Participant provides information that is accepted by the Administrator, then the Annual Deferral, to the extent in excess of the applicable limitation (adjusted for any income or loss in value, if any, allocable thereto), shall be distributed to the Participant. **Note:** See § 1.457–4(e)(1) of the Income Tax Regulations for the federal income tax treatment of a distribution of excess deferrals.

**Note:** See generally §§ 1.457–4 and 1.457–5 of the Income Tax Regulations for rules relating to limitations on contributions.

**3.6 Protection of Persons Who Serve in a Uniformed Service.** An Employee whose employment is interrupted by qualified military service under Code section 414(u) or who is on a leave of absence for qualified military service under Code section 414(u) may elect to make additional Annual Deferrals upon resumption of employment with the Employer equal to the maximum Annual Deferrals that the Employee could have elected during that period if the Employee’s employment with the Employer had continued (at the same level of Compensation) without the interruption or leave, reduced by the Annual Deferrals, if any, actually made for the Employee during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

**Note:** The following definitions from Model Amendment 1 are used in this Model Amendment 3: Administrator, Account Balance, Annual Deferral, Code, Compensation, Employee, Includible Compensation, Normal Retirement Age, Participant, and Plan.

## **MODEL AMENDMENT 4**

### **Loans**

#### **Section 4**

##### **Loans**

**4.1 Loans.** A Participant who is an Employee may apply for and receive a loan from his or her Account Balance as provided in this Section 4. Any such loan may not be for an amount less than the minimum amount specified by the Administrator. If not specified by the Administrator, the minimum loan amount shall be [\$1,000].

**4.2 Maximum Loan Amount.** No loan to a Participant hereunder may exceed the lesser of:

(a) \$50,000, reduced by the greater of (i) the outstanding balance on any loan from the Plan to the Participant on the date the loan is made or (ii) the highest outstanding balance on loans from the Plan to the Participant during the one-year period ending on the day before the date the loan is approved by the Administrator (not taking into account any payments made during such one-year period), or

(b) one half of the value of the Participant's vested Account Balance (as of the Valuation Date immediately preceding the date on which such loan is approved by the Administrator).

For purposes of this Section 4.2, any loan from any other plan maintained by a participating employer shall be treated as if it were a loan made from the Plan, and the Participant's vested interest under any such other plan shall be considered a vested interest under this Plan; provided, however, that the provisions of this paragraph shall not be applied so as to allow the amount of a loan under this Section 4.2 to exceed the amount that would otherwise be permitted in the absence of this paragraph.

**4.3 Terms of Loan.** The terms of the loan shall:

(a) require level amortization with payments not less frequently than quarterly throughout the repayment period, except that alternative arrangements for repayment may apply in the event that the borrower is on an *bona fide* unpaid leave of absence for a period not to exceed one year for leaves other than a qualified military leave within the meaning of section 414(u) of the Code or for the duration of a leave which is due to qualified military service;

(b) require that the loan be repaid within five years unless the Participant certifies in writing to the Administrator that the loan is to be used to acquire any dwelling unit which within a reasonable time is to be used (determined at the time the loan is made) as a principal residence of the Participant; and

(c) provide for interest at a rate equal to one percentage point above the prime rate as published in the [*Insert name of a nationally recognized newspaper that publishes the prime rate daily*] on the first business day of the month in which the loan is approved by the Administrator.

#### **4.4 Security for Loan; Default.**

(a) *Security.* Any loan to a Participant under the Plan shall be secured by the pledge of the portion of the Participant's interest in the Plan invested in such loan.

(b) *Default.* In the event that a Participant fails to make a loan payment under this Section 4 within 90 days after the date such payment is due, a default on the loan shall occur. In the event of such default, (i) all remaining payments on the loan shall be immediately due and payable, (ii) effective as of the first day of the calendar month next following the month in which any such loan default occurs, the interest rate for such loan shall be (if higher than the rate otherwise applicable) the rate being charged on loans from the Plan that are approved by the Administrator in the month in which such default occurs, (iii) no contributions shall be made on such Participant's behalf prior to the first payroll period that follows by 12 calendar months the date of repayment in full of such loan, and (iv) the Participant shall be permanently ineligible for any future loans from the Plan.

In the case of any default on a loan to a Participant, the Administrator shall apply the portion of the Participant's interest in the Plan held as security for the loan in satisfaction of the loan on the date of Severance from Employment. In addition, the Administrator shall take any legal action it shall consider necessary or appropriate to enforce collection of the unpaid loan, with the costs of any legal proceeding or collection to be charged to the Account Balance of the Participant.

Notwithstanding anything elsewhere in the Plan to the contrary, in the event a loan is outstanding hereunder on the date of a Participant's death, his or her estate shall be his or her Beneficiary as to the portion of his or her interest in the Plan invested in such loan (with the Beneficiary or Beneficiaries as to the remainder of his or her interest in the Plan to be determined in accordance with otherwise applicable provisions of the Plan).

**4.5 Repayment.** The Participant shall be required, as a condition to receiving a loan, to enter into an irrevocable agreement authorizing the Employer to make payroll deductions from his or her Compensation as long as the Participant is an Employee and to transfer such payroll deduction amounts to the Trustee in payment of such loan plus interest. Repayments of a loan shall be made by payroll deduction of equal amounts (comprised of both principal and interest) from each paycheck, with the first such deduction to be made as soon as practicable after the loan funds are disbursed; provided however, that a Participant may prepay the entire outstanding balance of his loan at any time (but may not make a partial prepayment); and provided, further, that if any payroll deductions cannot be made in full because a Participant is on an unpaid leave of absence or is no longer employed by a participating employer (that has consented to make payroll deductions for this purpose) or the Participant's paycheck is insufficient for any other reason, the Participant shall pay directly to the Plan the full amount that would have been deducted from the Participant's paycheck, with such payment to be made by the last business day of the calendar month in which the amount would have been deducted.

*Note:* Loans are not required to be repaid by payroll withholding. See § 1.457-6(f)(2) of the Income Tax Regulations for additional rules that may apply if loans are not repaid by payroll withholding.

*Note:* See § 1.72(p)-1 of the Income Tax Regulations for the federal income tax treatment of loans generally.

*Note:* The following definitions from Model Amendment 1 are used in this Model Amendment 4: Administrator, Account Balance, Code, Compensation, Employee, Employer, Severance from Employment, Participant, Plan, Trustee and Valuation Date.

## **MODEL AMENDMENT 5** **Distribution of Benefits**

### **Section 5** **Benefit Distributions**

**5.1 Benefit Distributions At Retirement or Other Severance from Employment.** Upon retirement or other Severance from Employment (other than due to death), a Participant is entitled to receive a distribution of his or her Account Balance under any form of distribution permitted under Section 5.3 commencing at the date elected under Section 5.2. If a Participant does not elect otherwise, the distribution shall be paid as soon as practicable following Normal Retirement Age or, if later, following retirement or other Severance from Employment and payment shall be made in [quarterly] [monthly] installments of the minimum annual payments described in paragraph (b) of Section 5.3.

**5.2 Election of Benefit Commencement Date.** A Participant may elect to commence distribution of benefits at any time after retirement or other Severance from Employment by a notice filed at least [30 days] before the date on which benefits are to commence. However, in no event may distribution of benefits commence later than the date described in Section 5.8.

**5.3 Forms of Distribution.** In an election to commence benefits under Section 5.2, a Participant entitled to a distribution of benefits under this Section 5 may elect to receive payment in any of the following forms of distribution:

(a) a lump sum payment of the total Account Balance or

(b) annual installment payments through the year of the Participant's death, the amount payable each year equal to a fraction of the Account Balance equal to one divided by the distribution period set forth in the Uniform Lifetime Table at section 1.401(a)(9)-9, A-2, of the Income Tax Regulations for the Participant's age on the Participant's birthday for that year. If the Participant's age is less than age 70, the distribution period is 27.4 plus the number of years that the Participant's age is less than age 70. At the Participant's election, this annual payment can be made in monthly or quarterly installments. The Account Balance for this calculation (other than the final installment payment) is the Account Balance as of the end of the year prior to the year for which the distribution is being calculated. Payments shall commence on the date elected under Section 5.2. For any year, the Participant can elect distribution of a greater amount (not to exceed the amount of the remaining Account Balance) in lieu of the amount calculated using this formula.

Alternatively, if the Beneficiary with respect to the Participant's Account Balance is a natural person, at the Beneficiary's election, distribution can be made in annual installments (calculated in a manner that is similar to installments under Section 5.3) with the distribution period determined under this paragraph. If the Beneficiary is the Participant's surviving spouse, the distribution period is equal to the Beneficiary's life expectancy using the single life table in section 1.401(a)(9)-9, A-1, of the Income Tax Regulations for the spouse's age on the spouse's birthday for that year. If the Beneficiary is not the Participant's surviving spouse, the distribution period is the Beneficiary's life expectancy determined in the year following the year of the Participant's death using the single life table in section 1.401(a)(9)-9, A-1, of the Income Tax Regulations for the Beneficiary's age on the Beneficiary's birthday for that year, reduced by one for each year that has elapsed after that year. For any year, a Beneficiary can elect distribution of a greater amount (not to exceed the amount of the remaining Account Balance) in lieu of the amount calculated using this formula.

**Note:** *A plan is not required to include the particular forms of payment that are in Section 5.3 and Section 5.4, and may include additional forms of payment so long as the material terms and conditions for those other forms are set forth in the plan and the additional forms of payment satisfy the requirements of § 401(a)(9) of the Code.*

**5.5 Account Balances of \$5,000 or Less.** Notwithstanding Sections 5.2, 5.3 and 5.4, if the amount of a Participant's Account Balance is not in excess of \$5,000 (or the dollar limit under section 411(a)(11) of the Code, if greater) on the date that payments commence under Section 5.3 or on the date of the Participant's death, then payment shall be made to the Participant (or to the Beneficiary if the Participant is deceased) in a lump sum equal to the Participant's Account Balance as soon as practicable following the Participant's retirement, death, or other Severance from Employment.

**5.6 Amount of Account Balance.** Except as provided in Section 5.3, the amount of any payment under this Section 5 shall be based on the amount of the Account Balance on the preceding Valuation Date.

**5.7 Revocation of Prior Election.** Any election made under this Section 5 may be revoked at any time.

**5.8 Latest Distribution Date.** In no event shall any distribution under this Section 5 begin later than the later of (a) April 1 of the year following the calendar year in which the Participant attains age 70½ or (b) April 1 of the year following the year in which the Participant retires or otherwise has a Severance from Employment. If distributions commence in the calendar year following the later of the calendar year in which the Participant attains age 70½ or the calendar year in which the Severance from Employment occurs, the distribution on the date that distribution commences must be equal to the annual installment payment for the year that the Participant has a Severance from Employment determined under paragraph (b) of Section 5.3 and an amount equal to the annual installment payment for the year after Severance from Employment determined under paragraph (b) of Section 5.3 must also be paid before the end of the calendar year of commencement.

**5.9 In-Service Distributions From Rollover Account.** If a Participant has a separate account attributable to rollover contributions to the plan, the Participant may at any time elect to receive a distribution of all or any portion of the amount held in the rollover account.

**Note:** *A plan is not required to permit in-service distribution from a rollover account. See Rev. Rul. 2004-12, 2004-7 I.R.B. 478.*

#### **5.10 Unforeseeable Emergency Distribution.**

(a) **Distribution.** If the Participant has an unforeseeable emergency before retirement or other Severance from Employment, the Participant may elect to receive a lump sum distribution equal to the amount requested or, if less, the maximum amount determined by the Administrator to be permitted to be distributed under this Section 5.10.

(b) *Unforeseeable emergency defined.* An unforeseeable emergency is defined as a severe financial hardship of the Participant resulting from: an illness or accident of the Participant, the Participant's spouse, or the Participant's dependent (as defined in section 152(a)); loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); the need to pay for the funeral expenses of the Participant's spouse or dependent (as defined in section 152(a) of the Code); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. For example, the imminent foreclosure of or eviction from the Participant's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Except as otherwise specifically provided in this Section 5.10, neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency.

(c) *Unforeseeable emergency distribution standard.* A distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the plan.

(d) *Distribution necessary to satisfy emergency need.* Distributions because of an unforeseeable emergency may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

**5.11 Mandatory Distributions for Certain Account Balances of \$5,000 or Less.** At the direction of the Administrator, a Participant's total Account Balance shall be paid in a lump sum as soon as practical following the direction if (a) the total Account Balance does not exceed \$5,000 (or the dollar limit under section 411(a)(11) of the Code, if greater), (b) the Participant has not previously received a distribution of the total amount payable to the Participant under this Section 5.11 and (c) no Annual Deferral has been made with respect to the Participant during the two-year period ending immediately before the date of the distribution.

*Note: This Model Amendment (Section 5.11) may be adopted for a § 457(b) plan to provide for the mandatory de minimis distribution option permitted under § 457(e)(9)(A) of the Code. If it wishes, the plan sponsor may also substitute in the following Model Amendments a consistent figure lower than \$5,000 in place of "\$5,000 (or the dollar limit under § 411(a)(11) of the Code, if greater)." In addition, the plan may allow participants to choose whether or not they wish to receive payment under this provision.*

## 5.12 Rollover Distributions.

(a) A Participant or the surviving spouse of a Participant (or a Participant's former spouse who is the alternate payee under a domestic relations order, as defined in section 414(p) of the Code) who is entitled to an eligible rollover distribution may elect, at the time and in the manner prescribed by the Administrator, to have all or any portion of the distribution paid directly to an eligible retirement plan specified by the Participant in a direct rollover.

(b) For purposes of this Section 5.12, an eligible rollover distribution means any distribution of all or any portion of a Participant's Account Balance, except that an eligible rollover distribution does not include (a) any installment payment under Section 5.3 for a period of 10 years or more (b) any distribution made under Section 5.10 as a result of an unforeseeable emergency, or (c) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9). In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.

*Note: Section 402(f) and § 457(e)(16)(B) of the Code require a plan administrator to provide a written explanation to any recipient of an eligible rollover distribution. The written explanation must cover the direct rollover rules, the mandatory income tax withholding on distributions not directly rolled over, the tax treatment of distributions not rolled over (including the special tax treatment available for certain lump sum distributions), and when distributions may be subject to different restrictions and tax consequences after being rolled over. Section 402(f) provides that this explanation must be given within a reasonable period of time before the plan makes an eligible rollover distribution. See Notice 2002-3, 2002-1 C.B. 289 that contains a Safe Harbor Explanation that plan administrators may provide to recipients of eligible rollover distributions from employer plans in order to satisfy the notice requirement.*

**Note:** In determining the portion of any distribution that is a required minimum distribution for a year and thus not an eligible rollover distribution, for any participant who, during the calendar year of distribution, is age 70½ or older and who has had a Severance from Employment, the amount of the minimum annual installment payment described in paragraph (b) of Section 5.3 may be treated as the amount of the required minimum distribution. For distributions to a surviving spouse, any distribution made before the calendar year in which the participant would have attained age 70½ is not a required minimum distribution. For the calendar year in which the participant would have attained age 70½ or any later year, the amount of the minimum annual installment payment described in paragraph (b) of Section 5.3 may be treated as the amount of the required minimum distribution.

**Note:** See generally § 1.457–6 of the Income Tax Regulations for rules relating to restrictions on distributions.

**Note:** The following definitions from Model Amendment 1 are used in this Model Amendment 5: Administrator, Account Balance, Annual Deferral, Beneficiary, Code, Normal Retirement Age, Participant, Plan, Severance from Employment, and Valuation Date.

## **MODEL AMENDMENT 6** **Rollovers to the Plan and Transfers**

### **Section 6** **Rollovers to the Plan and Transfers**

#### **6.01 Eligible Rollover Contributions to the Plan.**

(a) A Participant who is an Employee and who is entitled to receive an eligible rollover distribution from another eligible retirement plan may request to have all or a portion of the eligible rollover distribution paid to the Plan. The Administrator may require such documentation from the distributing plan as it deems necessary to effectuate the rollover in accordance with section 402 of the Code and to confirm that such plan is an eligible retirement plan within the meaning of section 402(c)(8)(B) of the Code.

(b) For purposes of Section 6.01(a), an eligible rollover distribution means any distribution of all or any portion of a Participant's benefit under another eligible retirement plan, except that an eligible rollover distribution does not include: (1) any installment payment for a period of 10 years or more, (2) any distribution made as a result of an unforeseeable emergency or other distribution which is made upon hardship of the employee, or (3) for any other distribution, the portion, if any, of the distribution that is a required minimum distribution under section 401(a)(9) of the Code. In addition, an eligible retirement plan means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, a qualified trust described in section 401(a) of the Code, an annuity plan described in section 403(a) or 403(b) of the Code, or an eligible governmental plan described in section 457(b) of the Code, that accepts the eligible rollover distribution.

(c) The Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is not an eligible governmental plan under section 457(b) of the Code. In addition, the Plan shall establish and maintain for the Participant a separate account for any eligible rollover distribution paid to the Plan from any eligible retirement plan that is an eligible governmental plan under section 457(b) of the Code.

**6.02 Plan-to-Plan Transfers to the Plan.** At the direction of the Employer, the Administrator may permit a class of Participants who are participants in another eligible governmental plan under section 457(b) of the Code to transfer assets to the Plan as provided in this Section 6.02. Such a transfer is permitted only if the other plan provides for the direct transfer of each Participant's interest therein to the Plan. The Administrator may require in its sole discretion that the transfer be in cash or other property acceptable to the Administrator. The Administrator may require such documentation from the other plan as it deems necessary to effectuate the transfer in accordance with section 457(e)(10) of the Code and section 1.457–10(b) of the Income Tax Regulations and to confirm that the other plan is an eligible governmental plan as defined in section 1.457–2(f) of the Income Tax Regulations. The amount so transferred shall be credited to the Participant's Account Balance and shall be held, accounted for, administered and otherwise treated in the same manner as an Annual Deferral by the Participant under the Plan, except that the transferred amount shall not be considered an Annual Deferral under the Plan in determining the maximum deferral under Section 3.

## **6.03 Plan-to-Plan Transfers from the Plan.**

(a) At the direction of the Employer, the Administrator may permit a class of Participants and Beneficiaries to elect to have all or any portion of their Account Balance transferred to another eligible governmental plan within the meaning of section 457(b) of the Code and section 1.457–2(f) of the Income Tax Regulations. A transfer is permitted under this Section 6.03(a) for a Participant only if the Participant has had a Severance from Employment with the Employer and is an employee of the entity that maintains the other eligible governmental plan. Further, a transfer is permitted under this Section 6.03(a) only if the other eligible governmental plan provides for the acceptance of plan-to-plan transfers with respect to the Participants and Beneficiaries and for each Participant and Beneficiary to have an amount deferred under the other plan immediately after the transfer at least equal to the amount transferred.

(b) Upon the transfer of assets under this Section 6.03, the Plan's liability to pay benefits to the Participant or Beneficiary under this Plan shall be discharged to the extent of the amount so transferred for the Participant or Beneficiary. The Administrator may require such documentation from the receiving plan as it deems appropriate or necessary to comply with this Section 6.03 (for example, to confirm that the receiving plan is an eligible governmental plan under paragraph (a) of this Section 6.03, and to assure that the transfer is permitted under the receiving plan) or to effectuate the transfer pursuant to section 1.457–10(b) of the Income Tax Regulations.

**Note:** See § 1.457–10(b)(4) of the Income Tax Regulations for rules relating to plan-to-plan transfers among eligible governmental plans of the same employer (and, for this purpose, the employer is not treated as the same employer if the participant's compensation is paid by a different entity).

## **6.04 Permissive Service Credit Transfers.**

(a) If a Participant is also a participant in a tax-qualified defined benefit governmental plan (as defined in section 414(d) of the Code) that provides for the acceptance of plan-to-plan transfers with respect to the Participant, then the Participant may elect to have any portion of the Participant's Account Balance transferred to the defined benefit governmental plan. A transfer under this Section 6.04(a) may be made before the Participant has had a Severance from Employment.

(b) A transfer may be made under Section 6.04(a) only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code.

**Note:** See generally § 1.457–10(b) and (e) of the Income Tax Regulations for rules relating to transfers and rollovers, including rules permitting in service transfers among eligible § 457(b) governmental plans of the same employer.

**Note:** The following definitions from Model Amendment 1 are used in this Model Amendment 6: Administrator, Account Balance, Beneficiary, Code, Employee, Employer, Participant, Plan, and Severance from Employment.

## **MODEL AMENDMENT 7**

### **Trust Funds**

#### **Section 7**

#### **Trust Funds**

The following Model Amendments may be used to reflect the mandatory trust requirement applicable to eligible plans of state and local government entities under § 457(g) of the Code. Plan assets may instead be invested in whole or in part in annuity contracts or custodial accounts, in which case additional requirements will apply. See § 1.457–8 of the Income Tax Regulations.

**Trust Fund.** All amounts of Annual Deferrals, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held and invested in the Trust Fund in accordance with this Plan and the Trust Agreement. The Trust Fund, and any subtrust established under the Plan, shall be established pursuant to a written agreement that constitutes a valid trust under the law of [INSERT NAME OF STATE]. The Trustee shall ensure that all investments, amounts, property, and rights held under the Trust Fund are held for the exclusive benefit of Participants and their Beneficiaries. The Trust Fund shall be held in trust pursuant to the Trust Agreement for the exclusive benefit of Participants and their Beneficiaries and defraying reasonable expenses of the Plan and of the Trust Fund. It shall be impossible, prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries, for any part of the assets and income of the Trust Fund to be used for, or diverted to, purposes other than for the exclusive benefit of Participants and their Beneficiaries.

**Note:** See generally § 1.457–8 of the Income Tax Regulations for rules relating to funding.

**Note:** The following definitions from Model Amendment 1 are used in this Model Amendment 7: Annual Deferral, Beneficiary, Code, Participant, Plan, Trust Agreement, Trust Fund, and Trustee.

## **MODEL AMENDMENT 8**

### **Miscellaneous**

*The following provisions are optional provisions that are not required to be adopted.*

#### **Section 8**

##### **Miscellaneous**

**8.1 Non-Assignability.** Except as provided in Section 8.2 and 8.3, the interests of each Participant or Beneficiary under the Plan are not subject to the claims of the Participant’s or Beneficiary’s creditors; and neither the Participant nor any Beneficiary shall have any right to sell, assign, transfer, or otherwise convey the right to receive any payments hereunder or any interest under the Plan, which payments and interest are expressly declared to be non-assignable and non-transferable.

**8.2 Domestic Relation Orders.** Notwithstanding Section 8.1, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a Participant is made pursuant to the domestic relations law of any State (“domestic relations order”), then the amount of the Participant’s Account Balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the Participant is eligible for a distribution of benefits under the Plan. The Administrator shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order.

**Note:** See generally § 414(p) of the Code and § 1.457–10(c) of the Income Tax Regulations for rules regarding domestic relations orders.

**8.3 IRS Levy.** Notwithstanding Section 8.1, the Administrator may pay from a Participant’s or Beneficiary’s Account Balance the amount that the Administrator finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

**8.4 Mistaken Contributions.** If any contribution (or any portion of a contribution) is made to the Plan by a good faith mistake of fact, then within one year after the payment of the contribution, and upon receipt in good order of a proper request approved by the Administrator, the amount of the mistaken contribution (adjusted for any income or loss in value, if any, allocable thereto) shall be returned directly to the Participant or, to the extent required or permitted by the Administrator, to the Employer.

**8.5 Payments to Minors and Incompetents.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Administrator, benefits will be paid to such person as the Administrator may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

**8.6 Procedure When Distributee Cannot Be Located.** The Administrator shall make all reasonable attempts to determine the identity and address of a Participant or a Participant’s Beneficiary entitled to benefits under the Plan. For this purpose, a reasonable attempt means (a) the mailing by certified mail of a notice to the last known address shown on [Insert Name of the Employer]’s or the Administrator’s records, (b) notification sent to the Social Security Administration or the Pension Benefit Guaranty Corporation (under their program to identify payees under retirement plans), and (c) the payee has not responded within 6 months. If the Administrator is unable to locate such a person entitled to benefits hereunder, or if there has been no claim made for such benefits, the Trust Fund shall continue to hold the benefits due such person.

**Note:** The following definitions from Model Amendment 1 are used in this Model Amendment 8: Administrator, Account Balance, Beneficiary, Employer, Participant, Plan, Trust Fund, and Trustee.