

ORDINANCE NO. BL2015-1007

An ordinance amending Title 3, Chapter 3.30 of the Metropolitan Code relative to employee benefits in order to comply with federal requirements for qualified plans.

WHEREAS, the Metropolitan Government of Nashville and Davidson County has adopted a pension plan for its officers and employees; and

WHEREAS, the pension plan is intended to qualify for certain tax benefits under the Internal Revenue Code; and

WHEREAS, the Internal Revenue Code has been amended thus requiring amendments to the pension plan to maintain its tax qualified status; and

WHEREAS, the Internal Revenue Service has issued a favorable determination on the pension plan, contingent on the timely adoption of the amendments set forth in this ordinance; and

WHEREAS, Bryan, Pendleton, Swats & McAllister, the actuaries that provide services to the Metropolitan Employee Benefit Board, have determined that the required amendments to the pension plan will have no impact on the required annual funding and the ultimate cost of the benefits provided by the pension plan.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

SECTION 1. Chapter 3.30 is hereby amended by deleting Section 3.30.020 in its entirety and substituting in lieu thereof the following new Section 3.30.020:

3.30.020 BENEFIT Limitations Based On Code Section 415

- A. The limitations of this Section 3.30.020 shall apply to Limitation Years that begin more than 90 days after the close of the first regular legislative session of the council that begins on or after July 1, 2007, except as otherwise provided herein.
- B. The Annual Benefit otherwise payable to a member at any time shall not exceed the Maximum Permissible Benefit. If the benefit the member would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, the rate of accrual of such benefit shall be reduced so that the benefit does not exceed the Maximum Permissible Benefit.
- C. If the member is, or has ever been, a member in another qualified defined benefit plan maintained by the Employer, the sum of the member's Annual Benefits from all such plans may not exceed the Maximum Permissible Benefit. Where the member's employer-provided benefits under all such defined benefit plans (determined as of the same age) would exceed the Maximum Permissible Benefit applicable at that age, the Employer will reduce the rate of accrual in this Plan to the extent necessary so that the total Annual Benefit payable at any time under such plans will not exceed the Maximum Permissible Benefit.

D. The application of the provisions of this Section 3.30.020 shall not cause the Maximum Permissible Benefit for any member to be less than the member's accrued benefit under all the defined benefit plans of the Employer as of the end of the last Limitation Year beginning before July 1, 2007, under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007, satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to Code Section 415 in effect as of the end of the last Limitation Year beginning before July 1, 2007, as described in Section 1.415(a)-1(g)(4) of the Treasury Regulations.

E. Definitions. For purposes of this Section 3.30.020, the following terms shall be defined as follows:

1. "Annual Benefit" means a benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit shall be adjusted to an actuarially equivalent straight life annuity that begins at the same time as such other form of benefit and is payable on the first day of each month, before applying the limitations of this Section 3.30.020. For a member who has or will have distributions commencing at more than one Annuity Starting Date, the Annual Benefit shall be determined as of each such Annuity Starting Date (and shall satisfy the limitations of this Section 3.30.020 as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other Annuity Starting Dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to section 1.401(a)-20, Q&A 10(d), and with regard to section 1.415(b)1(b)(1)(iii)(B) and (C) of the Treasury Regulations.

No actuarial adjustment to the benefit shall be made for (i) survivor benefits payable to a surviving spouse under a qualified joint and survivor annuity to the extent such benefits would not be payable if the member's benefit were paid in another form; (ii) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or (iii) the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to Code Section 417(e)(3) and would otherwise satisfy the limitations of this Section 3.30.020, and the Plan provides that the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Section 3.30.020 applicable at the Annuity Starting Date, as increased in subsequent years pursuant to Code Section 415(d). For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

The determination of the Annual Benefit shall take into account Social Security supplements described in Code Section 411(a)(9) and benefits

transferred from another defined benefit plan, other than transfers of distributable benefits pursuant section 1.411(d)-4, Q&A-3(c) of the Treasury Regulations, but shall disregard benefits attributable to employee contributions or rollover contributions.

Effective for distributions in Plan Years beginning after December 31, 2003, the determination of actuarial equivalence of forms of benefit other than a straight life annuity shall be made in accordance with subsections a or b below.

- a. Benefit Forms Not Subject to Code Section 417(e)(3). The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection a if the form of the member's benefit is either (1) a nondecreasing annuity (other than a straight life annuity) payable for a period of not less than the life of the member (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or (2) an annuity that decreases during the life of the member merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in Code Section 401(a)(11)).
 - (i) Limitation Years beginning before July 1, 2007. For Limitation Years beginning before July 1, 2007, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the member's form of benefit computed using whichever of the following produces the greater annual amount: (A) the interest rate and mortality table (or other tabular factor) specified in Section 3.30.130 of the Plan for adjusting benefits in the same form; and (B) a 5-percent (5%) interest rate assumption and the applicable mortality table defined in Subsection F below for that Annuity Starting Date.
 - (ii) Limitation Years beginning on or after July 1, 2007. For Limitation Years beginning on or after July 1, 2007, the actuarially equivalent straight life annuity is equal to the greater of (A) the annual amount of the straight life annuity (if any) payable to the member under the Plan commencing at the same Annuity Starting Date as the member's form of benefit; and (B) the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the member's form of benefit, computed using a 5-percent (5%) interest rate assumption and the applicable mortality table defined in Subsection F below for that Annuity Starting Date.

- b. Benefit Forms Subject to Code Section 417(e)(3). The straight life annuity that is actuarially equivalent to the member's form of benefit shall be determined under this subsection b if the form of the member's benefit is other than a benefit form described in subsection a above. In this case, the actuarially equivalent straight life annuity shall be determined as follows:
- (i) Annuity Starting Date in Plan Years Beginning After 2005. If the annuity starting date of the member's form of benefit is in a Plan Year beginning after 2005, the actuarially equivalent straight life annuity is equal to the greatest of (A) the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the member's form of benefit, computed using the interest rate and the mortality table (or other tabular factor) specified in Subsection F below for adjusting benefits in the same form; (B) the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the member's form of benefit, computed using a 5.5-percent (5.5%) interest rate assumption and the applicable mortality table defined in Subsection F below; and (C) the annual amount of the straight life annuity commencing at the same annuity starting date that has the same actuarial present value as the member's form of benefit, computed using the applicable interest rate and the applicable mortality table defined in Subsection F below, divided by 1.05. Notwithstanding the foregoing, distributions made prior to the effective date of this Section 3.30.020 (as set forth in Subsection A above) for which the 5.5% interest rate assumption may have been applicable but was not applied, do not have to be recalculated.
- (ii) Annuity Starting Date in Plan Years Beginning in 2004 or 2005. If the Annuity Starting Date of the member's form of benefit is in a Plan Year beginning in 2004 or 2005, the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the member's form of benefit, computed using whichever of the following produces the greater annual amount: (A) the interest rate specified and the mortality table (or other tabular factor) specified in Subsection F below for adjusting benefits in the same form; and (B) a 5.5-percent (5.5%) interest rate assumption and the applicable mortality table defined in Subsection F below. Notwithstanding the foregoing, distributions made prior to the effective date of this Section 3.30.020 (as set forth in Subsection A above) for which the 5.5% interest rate assumption may have been applicable but was not applied, do not have to be recalculated.

If the Annuity Starting Date of the member's benefit is on or after the first day of the first plan year beginning in 2004 and before December 31, 2004, the application of this subsection b(ii) shall not cause the

amount payable under the member's form of benefit to be less than the benefit calculated under the Plan, taking into account the limitations of this Section 3.30.020, except that the actuarially equivalent straight life annuity is equal to the annual amount of the straight life annuity commencing at the same Annuity Starting Date that has the same actuarial present value as the participant's form of benefit, computed using whichever of the following produces the greatest annual amount:

- (a) the interest rate and the mortality table (or other tabular factor) specified in Section 3.30.130 of the Plan for adjusting benefits in the same form;
 - (b) the applicable interest rate and the applicable mortality table defined in Subsection F below; and
 - (c) the applicable interest rate defined in Section 3.30.130 of the Plan (as in effect on the last day of the last Plan Year beginning before January 1, 2004, under provisions of the Plan then adopted and in effect) and the applicable mortality table defined in Subsection F below.
2. "Annuity Starting Date" shall mean the first day of the first period for which an amount is paid as an annuity or any other form.
 3. "Compensation" shall mean, solely for purposes of this Section,
 - a. Wages, salaries and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the Employer to the extent that the amounts are includible in gross income (including but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits reimbursements, and expense allowances), and excluding the following:
 - (1) Employer contributions to a plan of deferred compensation (including a Code Section 457 plan) which are not includible in the employee's gross income for the taxable year in which contributed, or any distributions from a plan of deferred compensation; and
 - (2) Other amounts which received special tax benefits, including pick-up contributions, and contributions made by the Employer (whether or not under a salary reduction agreement) towards the purchase of an annuity described in Code Section 403(b) (whether or not the amounts are actually excludable from the gross income of the eligible employee).

- b. Notwithstanding subsection a above, effective January 1, 1998, Compensation shall include salary deferrals under Sections 401(k), 403(b), 457 and 125 of the Code, however contributions picked up by the Employer shall continue to be excluded.
- c. For limitation years beginning on and after January 1, 2001, for purposes of applying the limitations of this Section, compensation paid or made available during such Limitation Years shall include elective amounts that are not includible in the gross income of the eligible employee by reason of Code Section 132(f)(4).
- d. For Limitation Years beginning on or after July 1, 2007, Compensation for a Limitation Year shall also include Compensation paid by the later of 2½ months after an Employee's severance from employment with the Employer or the end of the Limitation Year that includes the date of the Employee's severance from employment with the Employer, if:
 - (1) the payment is regular Compensation for services during the Employee's regular working hours, or Compensation for services outside the Employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments, and, absent a severance from employment, the payments would have been paid to the Employee while the Employee continued in employment with the Employer; or,
 - (2) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued; or
 - (3) the payment is received by the Employee pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income.
- e. Any payments not described in subsection d above shall not be considered Compensation if paid after severance from employment, even if they are paid by the later of 2½ months after the date of severance from employment or the end of the Limitation Year that includes the date of severance from employment, except
 - (1) payments to an individual who does not currently perform services for the Employer by reason of qualified military service (within the meaning of Code section 414(u)(1)) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service; or

- (2) compensation paid to a member who is permanently and totally disabled, as defined in Code Section 22(e)(3), provided, salary continuation applies to all members who are permanently and totally disabled for a fixed or determinable period, or the member was not a highly compensated employee, as defined in Code Section 414(q), immediately before becoming disabled.
- f. Back pay, within the meaning of Section 1.415(c)-2(g)(8) of the Treasury Regulations, shall be treated as Compensation for the Limitation Year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.
- 4. "Defined Benefit Dollar Limitation" shall mean, effective for Limitation Years ending after December 31, 2001, one hundred sixty dollars (\$160,000), as automatically adjusted, effective January 1 of each year, by the Secretary of the Treasury under Code Section 415(d) in such manner as the Secretary shall prescribe, and payable in the form of a straight-life annuity. A limitation as adjusted under Code Section 415(d) will apply to Limitation Years ending with or within the calendar year for which the adjustment applies, but a member's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The automatic annual adjustment provided under Code Section 415(d) shall apply to members who have had a separation from employment.
- 5. "Employer" shall mean, for purposes of this Section 3.30.020, the Metropolitan Government of Nashville and Davidson County, Tennessee, and any agency that adopts this Plan.
- 6. "Limitation Year" shall mean the Plan Year. All qualified plans maintained by the Employer shall use the same Limitation Year. If the Limitation Year is amended to a different twelve (12) consecutive month period, then the new Limitation Year shall begin on a date within the Limitation Year in which the amendment is made.
- 7. "Maximum Permissible Amount" shall mean the Defined Benefit Dollar Limitation (adjusted where required and to the extent applicable pursuant to subsections a and b below).
 - a. Adjustment for Less Than 10 Years of Participation or Service. If the member has less than ten (10) Years of Participation in the Plan, the Defined Benefit Dollar Limitation shall be multiplied by a fraction (1) the numerator of which is the number of Years (or part thereof, but not less than one year) of Participation in the Plan, and (2) the denominator of which is 10. However, the adjustment made by the preceding sentence shall not apply for a member who becomes disabled by reason of personal injuries or sickness, or as a result of the death of the member, regardless of such member's Years of Participation.

b. Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62 or after Age 65. Effective for benefits commencing in Limitation Years ending after December 31, 2001, the Defined Benefit Dollar Limitation shall be adjusted if the Annuity Starting Date of the member's benefit is before age 62 or after age 65. If the Annuity Starting Date is before age 62, the Defined Benefit Dollar Limitation shall be adjusted under subparagraph b(1) below, as modified by subparagraph b(3). If the annuity starting date is after age 65, the Defined Benefit Dollar Limitation shall be adjusted under subparagraph b(2) below, as modified by subparagraph b(3).

(1) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement Before Age 62.

(A) Limitation Years Beginning Before July 1, 2007. If the Annuity Starting Date for the member's benefit is prior to age 62 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the member's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under subsection a above for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (i) the interest rate specified and the mortality table (or other tabular factor) specified in Section 3.30.130 of the Plan; or (ii) a five percent (5%) interest rate assumption and the applicable mortality table as defined in Subsection F below.

(B) Limitation Years Beginning on or After July 1, 2007.

(i) Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the member's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the member's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under subsection 7a above for years of participation less than 10, if required) with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for the Annuity

Starting Date as defined in Section 3.30.120 of the Plan (and expressing the member's age based on completed calendar months as of the Annuity Starting Date).

(ii) Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 62 and the Age of Benefit Commencement. If the Annuity Starting Date for the member's benefit is prior to age 62 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement, the Defined Benefit Dollar Limitation for the member's Annuity Starting Date is the lesser of the limitation determined under subsection b(1)(B)(i) above and the Defined Benefit Dollar Limitation (adjusted under subsection 7a for years of participation less than 10, if required) multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the plan at the member's Annuity Starting Date to the annual amount of the immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Section 3.30.020.

(C) Exception for qualified members. Notwithstanding the other provisions of this subsection (1), no age adjustment shall be made to the Defined Benefit Dollar Limitation for a member who has at least 15 years of service in the Plan as:

(i) a full-time employee of a governmental police or fire department providing police protection, firefighting services, or emergency medical services, or

(ii) a member of the Armed Forces of the United States.

(D) Exception for survivor and disability benefits. Notwithstanding the other provisions of this subsection (1), no age adjustment shall be made to the Defined Benefit Dollar Limitation for a member who becomes disabled by reason of personal injuries or sickness, or as a result of the death of the member.

(2) Adjustment of Defined Benefit Dollar Limitation for Benefit Commencement After Age 65.

(A) Limitation Years Beginning Before July 1, 2007. If the Annuity Starting Date for the member's benefit is after age 65 and occurs in a Limitation Year beginning before July 1, 2007, the Defined Benefit Dollar Limitation for the member's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight

life annuity commencing at the member's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under subsection 7a above for years of participation less than 10, if required) with actuarial equivalence computed using whichever of the following produces the smaller annual amount: (i) the interest rate and the mortality table (or other tabular factor) specified in Section 3.30.130; or (ii) a five-percent (5%) interest rate assumption and the applicable mortality table defined in Subsection F below.

(B) Limitation Years Beginning on or After July 1, 2007.

(i) Plan Does Not Have Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the Annuity Starting Date for the member's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the member's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the member's Annuity Starting Date that is the actuarial equivalent of the Defined Benefit Dollar Limitation (adjusted under subsection 7a above for Years of Participation less than 10, if required), with actuarial equivalence computed using a five percent (5%) interest rate assumption and the applicable mortality table for that Annuity Starting Date as defined in Subsection F below (and expressing the member's age based on completed calendar months as of the Annuity Starting Date).

(ii) Plan Has Immediately Commencing Straight Life Annuity Payable at Both Age 65 and the Age of Benefit Commencement. If the Annuity Starting Date for the member's benefit is after age 65 and occurs in a Limitation Year beginning on or after July 1, 2007, and the Plan has an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement, the Defined Benefit Dollar Limitation at the member's Annuity Starting Date is the lesser of the limitation determined under subsection b(2)(B)(i) and the Defined Benefit Dollar Limitation (adjusted under subsection 7a above for Years of Participation less than 10, if required) multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the member's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 65, both determined without applying the

limitations of this Section 3.30.020. For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the member's Annuity Starting Date is the annual amount of such annuity payable to the member, computed disregarding the member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical member who is age 65 and has the same accrued benefit as the member.

- (3) Notwithstanding the other requirements of this subsection 7b, no adjustment shall be made to the Defined Benefit Dollar Limitation to reflect the probability of a member's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the member prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the member's death if the Plan does not charge members for providing a qualified preretirement survivor annuity, as defined in Code Section 417(c) upon the member's death.

c. Minimum benefit permitted. Notwithstanding anything else in this definition to the contrary, the benefit otherwise accrued or payable to a member under this Plan shall be deemed not to exceed the Maximum Permissible Benefit if:

- (1) the retirement benefits payable for a Limitation Year under any form of benefit with respect to such member under this Plan and under all other defined benefit plans (without regard to whether a plan has been terminated) ever maintained by the Employer do not exceed \$10,000 multiplied by a fraction (A) the numerator of which is the member's number of Years (or part thereof, but not less than one year) of Service (not to exceed 10) with the Employer, and (B) the denominator of which is 10; and
- (2) the Employer has not at any time maintained a defined contribution plan in which the member participated (for this purpose, mandatory employee contributions under a defined benefit plan, individual medical accounts under Code Section 401(h), and accounts for postretirement medical benefits established under Code Section 419A(d)(1) are not considered a separate defined contribution plan).

8. "Year of Participation" shall mean each accrual computation period (computed to fractional parts of a year) for which the following conditions are met: (a) the

member is credited with at least the number of hours of service for benefit accrual purposes, required under the terms of the Plan in order to accrue benefit service, and (b) the member is included as a member under the eligibility provisions of the plan for at least one day of the period of benefit service. If these two conditions are met, the portion of a Year of Participation credited to the member shall equal the amount of benefit service credited to the member for such accrual computation period. A member who is permanently and totally disabled within the meaning of Section 415(c)(3)(C)(i) of the Code for an accrual computation period shall receive a Year of Participation with respect to that period. In addition, for a member to receive a Year of Participation (or part thereof) for an accrual computation period, the Plan must be established no later than the last day of such accrual computation period. In no event will more than one Year of Participation be credited for any twelve (12) month period.

- F. Actuarial equivalence. All actuarial equivalence determinations in this Section 3.30.020 shall be made in accordance with this subsection F. For actuarial equivalence unrelated to this Section and the requirements of Section 415 of the Code, see Section 3.30.40 of the Plan.

Actuarial equivalence determinations include: adjustment for early payment; adjustment for delayed payment; adjustment for payment in a form other than a life annuity; computation of the benefit attributable to employee contributions; and all other determinations of a similar nature, as required by context.

1. On or After January 1, 2000, through December 31, 2007

With respect to Participants whose termination of employment is on or after January 1, 2000, and for benefits commencing on or before December 31, 2007, the actuarial equivalent value of any distribution other than a non-decreasing annuity form of payment (as defined in the Treasury Regulations issued pursuant to Code Section 417(e)) shall be determined using the GATT interest rate and GATT mortality table described below:

Interest: With respect to any single sum payment, the GATT interest rate is the annual rate of interest on 30-year Treasury securities for the second full month prior to the first day of the Plan Year in which such single sum payment is made. For the purposes of determining an actuarial equivalent amount (other than nondecreasing life annuities payable for a period not less than the life of a Participant or, in the case of a pre-retirement survivor annuity, the life of the surviving spouse) the GATT interest rate shall be the annual interest rate on 30-year Treasury securities determined as of the second full month prior to the first day of the Plan Year in which the Annuity Starting Date occurs.

Mortality: The prevailing Internal Revenue Service Commissioners' standard table (described in Code Section 807(d)(5)(A), without regard to

any other subparagraphs of Code Section 807(d)(5)) used to determine reserves for group annuity contracts issued on the date as of which the present value is being determined (which as of the effective date of Section is the table prescribed in Rev. Rul. 2001-62).

2. On or After January 1, 2008

Notwithstanding the foregoing, with respect to benefits commencing on or after January 1, 2008, the amount of a single sum distribution (or the amount of distributions in any form other than a nondecreasing annuity) shall not be less than such amount determined using the applicable mortality table and the applicable interest rate. For annuity starting dates occurring on or after January 1, 2008, "applicable mortality table" means the mortality table prescribed by the Secretary of the Treasury pursuant to Code Section 417(e)(3)(B) for the Plan Year containing the Annuity Starting Date and "applicable interest rate" means the adjusted first, second, and third segment rates applied under the rules similar to the rules of Code Section 430(h)(2)(C) for the November which precedes the Plan Year that includes the annuity starting date. For this purpose, the first, second, and third segment rates are the first, second, and third segment rates which would be determined under Code Section 430(h)(2)(C) if:

- a. Code Section 430(h)(2)(D) were applied by substituting the average yields for the month described in clause (2) below for the average yields for the 24-month period described in such section, and
- b. Code Section 430(h)(2)(G)(i)(II) were applied by substituting "Section 417(e)(3)(A)(ii)(II) (as in effect for the plan year beginning in 2007)" for "Section 412(b)(5)(B)(ii)(II)," and
- c. The applicable percentage under Code Section 430(h)(2)(G) is treated as being 20% in 2008, 40% in 2009, 60% in 2010, and 80% in 2011.

In the event this Section is amended, the actuarial equivalent of a member's accrued benefit on or after the date of change shall be determined (unless otherwise permitted by law or Treasury Regulation) as the greater of (1) the actuarial equivalent of the accrued benefit as of the date of change computed on the old basis, or (2) the actuarial equivalent of the total accrued benefit computed on the new basis.

- G. Notwithstanding any provision of this Section 3.30.020, the application of this Section shall be subject to such rules as may be prescribed by the Secretary of the Treasury.

SECTION 2. Chapter 3.30 is hereby amended by deleting Section 3.30.030 in its entirety and substituting in lieu thereof the following new Section 3.30.030:

3.30.030 Limitation On Earnings.

- A. For purposes of computing any benefit under the plan or any contribution made to the plan, there shall be a limit on the amount of compensation that may be considered in any plan year for any member. The limit shall be the amount specified in this section as described below. The limit contained in this Section 3.30.030 shall apply to earnings as defined in Section 3.08.010 and to compensation as defined in Section 3.30.020.
- B. Increase in Compensation Limit.
 - 1. Increase in Limit. The annual compensation of each noneligible member taken into account in determining benefit accruals in any plan year beginning after December 31, 2001, shall not exceed \$200,000. Annual compensation means compensation during the plan year or such other consecutive twelve-month period over which compensation is otherwise determined under the plan (the determination period). For purposes of determining benefit accruals in a plan year beginning after December 31, 2001, the annual compensation limit for noneligible members under this section for determination periods beginning before January 1, 2002, shall be two hundred thousand dollars. Notwithstanding the foregoing, in the case of an eligible member, the annual compensation limit of Code Section 401(a)(17) shall not apply to the extent that the application of the limitation would reduce the amount of compensation that was allowed to be taken into account under the plan as in effect on July 1, 1993. For these purposes, an eligible member is an individual who first became a member in the plan prior to the first day of the first plan year beginning after the earlier of: (i) the last day of the plan year by which a plan amendment to reflect the amendments made by Section 13212 of the Omnibus Budget Reconciliation Act of 1993 is both adopted and effective; or (ii) December 31, 1995.
 - 2. Cost-of-Living Adjustment. The two hundred thousand dollar limit on annual compensation in subsection (1) above shall be adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.

SECTION 3. Chapter 3.30 is hereby amended by deleting Section 3.30.050 in its entirety and substituting in lieu thereof the following new Section 3.30.050:

3.30.050 Minimum Distributions.

A. General Rules.

1. Precedence and Effective Date. Subject to the optional form of benefits permitted under the terms of the plan, the requirements of this Section 3.30.050 shall apply to any distribution of a Member's interest and will take precedence over any inconsistent provisions of this Plan. Unless otherwise specified, the provisions of this Section 3.30.050 apply to calendar years beginning after December 31, 2002.
2. Requirements of Regulations Incorporated. All distributions required under this Section 3.30.050 shall be determined and made in accordance with Code Section 401(a)(9), including the incidental death benefit requirement in Code Section 401(a)(9)(G), and the Regulations thereunder.
3. Limits on Distribution Periods. As of the first distribution calendar year, distributions to a Member, if not made in a single sum, may only be made over one of the following periods:
 - a. the life of the Member,
 - b. the joint lives of the Member and a designated beneficiary,
 - c. a period certain not extending beyond the life expectancy of the Member,
or
 - d. a period certain not extending beyond the joint life and last survivor expectancy of the Member and a designated beneficiary.
4. Grandfather Benefits. In the case of an annuity distribution option provided under the optional forms of this plan as in effect on April 17, 2002, the plan will not fail to satisfy the requirements of Section 401(a)(9) of the Code merely because the annuity payments do not satisfy the requirements of this Section.
5. NonGrandfathered Benefits. For calendar years 2003, 2004 and 2005, the reasonable and good faith standard extends to the end of the calendar year that contains the 90th day after the opening of the first legislative session of the legislative body with the authority to amend the plan that begins on or after June 15, 2004, if such 90th day is later than December 31, 2005.

B. Time and Manner of Distribution.

1. Required Beginning Date. The Member's entire interest will be distributed, or begin to be distributed, no later than the Member's required beginning date as referenced in Section 3.30.050(H)(6) hereof.
2. Death of Member Before Distributions Begin. If the Member dies before distributions begin, the Member's entire interest will be distributed, or begin to be distributed, no later than as follows:
 - a. If the Member's surviving Spouse is the Member's sole designated beneficiary, then distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the Member died, or by December 31 of the calendar year in which the Member would have attained age 70½, if later.
 - b. If the Member's surviving Spouse is not the Member's sole designated beneficiary, then, unless an election to the contrary is made pursuant to this subsection (b), distributions to the designated beneficiary will begin by December 31 of the calendar year containing the fifth anniversary of the Member's death. The foregoing will apply to all distributions other than distributions to a surviving Spouse.

Notwithstanding the preceding paragraph, a Member or designated beneficiary may elect to have distributions to the designated beneficiary begin by December 31 of the calendar year immediately following the calendar year in which the Member died. Such election must be made no later than the earlier of September 30 of the calendar year in which distributions would be required to begin under Section 3.30.050(B)(2) hereof, or by September 30 of the calendar year which contains the fifth anniversary of the member's (or, if applicable, surviving Spouse's) death. If neither the Member nor Beneficiary makes such an election, distributions will be made in accordance with the first paragraph of this subsection (b).

- c. If there is no designated beneficiary as of September 30 of the year following the year of the Member's death, the member's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the Member's death.
- d. If the Member's surviving Spouse is the Member's sole designated beneficiary and the surviving Spouse dies after the Member but before distributions to the surviving Spouse are required to begin, this subsection (B)(2), other than subparagraph (a), will apply as if the surviving Spouse were the Member.

For purposes of this subsection (B)(2) and Section 3.30.050(E), unless Section 3.30.050(B)(2)(d) applies, distributions are considered to begin on the Member's required beginning date. If Section 3.30.050(B)(2)(d) applies, distributions are considered to begin on the date distributions are required

to begin to the surviving Spouse under Section 3.30.050(B)(2)(a). If distributions under an annuity meeting the requirements of this Section 3.30.050 commence to the Member before the Member's required beginning date (or to the Member's surviving Spouse before the date distributions are required to begin to the surviving Spouse under Section 3.30.050(b)(2)(A)), the date distributions are considered to begin is the date distributions actually commence.

3. Forms of Distribution. Unless the Member's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with subsections (C), (D) and (E) of this Section 3.30.050. If the Member's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and Section 1.401(a)(9) of the Regulations. Any part of the Member's interest which is in the form of an individual account described in Code Section 414(k) will be distributed in a manner satisfying the requirements of Code Section 401(a)(9) and Section 1.401(a)(9) of the Regulations that apply to individual accounts.

C. Determination of Amount to be Distributed Each Year.

1. General Annuity Requirements. If the member's interest is to be paid in the form of annuity distributions under the Plan, payments under the annuity shall satisfy the following requirements:
 - a. the annuity distributions will be paid in periodic payments made at uniform intervals not longer than one year;
 - b. the distribution period will be over a life (or lives) or over a period certain not longer than the period described in Sections 3.30.050(D) or (E) hereof;
 - c. once payments have begun over a period, the period will be changed only in accordance with Section 3.30.050(F) hereof;
 - d. payments will either be nonincreasing or increase only as follows:
 - i. by an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index for a 12-month period ending in the year during which the increase occurs or a prior year;
 - ii. by a percentage increase that occurs at specified times and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index since the annuity starting date, or if later, the date of the most recent percentage increase;

- iii. by a constant percentage of less than 5 percent per year, applied not less frequently than annually;
- iv. as a result of dividend or other payments that result from actuarial gains, provided:
 - (a) actuarial gain is measured not less frequently than annually,
 - (b) the resulting dividend or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured),
 - (c) the actuarial gain taken into account is limited to actuarial gain from investment experience,
 - (d) the assumed interest rate used to calculate such actuarial gains is not less than 3 percent, and
 - (e) the annuity payments are not increased by a constant percentage as described in Section 3.30.050(C)(1)(d)iii hereof;
- v. to the extent of the reduction in the amount of the Member's payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the Beneficiary whose life was being used to determine the distribution period described in subsection (D) below dies or is no longer the Member's Beneficiary pursuant to a qualified domestic relations order within the meaning of Code Section 414(p);
- vi. to provide a final payment upon the Member's death not greater than the excess of the actuarial present value of the Member's accrued benefit (within the meaning of Code Section 411(a)(7)) calculated as of the Annuity Starting Date using the applicable interest rate and mortality table defined in Section 1.2 of the Plan (or, if greater, the total amount of employee contributions, if any) over the total of payments before the Member's death;
- vii. to allow a Beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the Member's death; or
- viii. to pay increased benefits that result from a Plan amendment.

2. Amount Required to be Distributed by Required Beginning Date and Later Payment Intervals. The amount that must be distributed on or before the Member's required beginning date (or, if the Member dies before distributions begin, the date distributions are required to begin under Section 3.30.050(B)(2)(a) or (b) hereof) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. All of the Member's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the Member's required beginning date.

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

D. Requirements For Annuity Distributions That Commence During Member's Lifetime.

1. *Joint Life Annuities Where the Beneficiary Is Not the Member's Spouse.* If the Member's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the Member and a nonspouse Beneficiary, annuity payments to be made on or after the Member's required beginning date to the designated beneficiary after the Member's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the Member, using the table set forth in Section 1.401(a)(9)-6, Q&A2(c)(2), in the manner described in Q&A 2(c)(1), of the Regulations, to determine the applicable percentage. If the form of distribution combines a joint and survivor annuity for the joint lives of the Member and a nonspouse Beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

2. *Period Certain Annuities.* Unless the Member's Spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the Member's lifetime may not exceed the applicable distribution period for the Member under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2, of the Regulations for the calendar year that contains the Annuity Starting Date. If the Annuity Starting Date precedes the year in which the Member reaches age 70, the applicable distribution period for the Member is the distribution period for age 70 under the Uniform Lifetime Table set forth in Section 1.401(a)(9)-9, Q&A-2, of the Regulations plus the excess of 70 over the age of the Member as of the Member's birthday in the year that contains the Annuity Starting Date. If the Member's Spouse is the Member's sole

designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the Member's applicable distribution period, as determined under this subsection (d)(2), or the joint life and last survivor expectancy of the Member and the member's Spouse as determined under the Joint and Last Survivor Table set forth in Section 1.401(a)(9)-9, Q&A-3, of the Regulations, using the Member's and Spouse's attained ages as of the Member's and Spouse's birthdays in the calendar year that contains the Annuity Starting Date.

E. Requirements For Minimum Distributions After the Member's Death.

1. *Death After Distributions Begin.* If the Member dies after distribution of his or her interest begins in the form of an annuity meeting the requirements of this Section 3.30.050, the remaining portion of the Member's interest will continue to be distributed over the remaining period over which distributions commenced.
2. *Death Before Distributions Begin.*
 - a. *Member Survived by Designated Beneficiary.* Subject to subsection (1) below, if the Member dies before distributions of his or her interest begins and there is a designated beneficiary, then the Member's entire interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the Member's death. The foregoing will apply to all distributions other than distributions to a surviving Spouse.

Notwithstanding the preceding paragraph, a Member or designated beneficiary may elect to have the Member's entire interest distributed, beginning no later than the time described in Section 3.30.050(B)(2)(a) or (b), over the life of the designated beneficiary or over a period certain not exceeding:

- i. unless the Annuity Starting Date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the Member's death; or
- ii. if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the Annuity Starting Date.

The foregoing election must be made no later than the earlier of September 30 of the calendar year in which distributions would be required to begin under Section 3.30.050(B)(2) hereof, or by September 30 of the calendar year which contains the fifth anniversary of the member's (or, if applicable, surviving Spouse's) death. If neither the Member nor

Beneficiary makes such an election, distributions will be made in accordance with the first paragraph of this subsection (A).

- b. *No Designated Beneficiary.* If the Member dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Member's death, distribution of the Member's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the Member's death.
- c. *Death of Surviving Spouse Before Distributions to Surviving Spouse Begin.* If the Member dies before the date distribution of his or her interest begins, the Member's surviving Spouse is the Member's sole designated beneficiary, and the surviving Spouse dies before distributions to the surviving Spouse begin, this Section 3.30.050(E) will apply as if the surviving Spouse were the Member, except that the time by which distributions must begin will be determined without regard to Section 3.30.050(B)(2)(a).

F. Changes to Annuity Payment Period.

- 1. *Permitted Changes.* An annuity payment period may be changed only in association with an annuity payment increase described in Section 3.30.050(C)(1)(d) hereof or in accordance with Section 3.30.050(F)(2) hereof.
- 2. *Reannuitization.* An annuity payment period may be changed and the annuity payments modified in accordance with that change if the conditions in subsection (3) below are satisfied and:
 - a. the modification occurs when the Member retires or in connection with a plan termination;
 - b. the payment period prior to modification is a period certain without life contingencies; or
 - c. the annuity payments after modification are paid under a Qualified Joint and Survivor Annuity over the joint lives of the Member and a designated beneficiary, the Member's Spouse is the sole designated beneficiary, and the modification occurs in connection with the Member's becoming married to such Spouse.
- 3. *Conditions.* The conditions in this subsection (3) are satisfied if:
 - a. the future payments after the modification satisfy the requirements of Code Section 401(a)(9), Section 1.401(a)(9) of the Regulations, and this Section 3.30.050 (determined by treating the date of the change as a new Annuity Starting Date and the actuarial present value of the remaining payments prior to modification as the entire interest of the Member);

- b. for purposes of Code Sections 415 and 417, the modification is treated as a new Annuity Starting Date;
 - c. after taking into account the modification, the annuity (including all past and future payments) satisfies the requirements of Code Section 415 (determined at the original Annuity Starting Date, using the interest rates and mortality tables applicable to such date); and
- (D) the end point of the period certain, if any, for any modified payment period is not later than the end point available to the employee at the original Annuity Starting Date under Code Section 401(a)(9) and this Section 3.30.050.

G. Payments to a Surviving Child.

1. *Special rule.* For purposes of this Section 3.30.050, payments made to a Member's surviving child until the child reaches the age of majority (or dies, if earlier) shall be treated as if such payments were made to the surviving Spouse to the extent the payments become payable to the surviving Spouse upon cessation of the payments to the child.
2. *Age of majority.* For purposes of this subsection (g), a child shall be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26. In addition, a child who is disabled within the meaning of § 72(m)(7) when the child reaches the age of majority shall be treated as having not reached the age of majority so long as the child continues to be disabled.

H. Definitions. The following terms used in this Section 3.30.050 shall have the meaning ascribed below:

1. *Actuarial gain.* The difference between an amount determined using the actuarial assumptions (*i.e.*, investment return, mortality, expense, and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced and such amount determined using actuarial assumptions used in calculating payments at the time the actuarial gain is determined.
2. *Designated beneficiary.* The individual who is designated by the Member (or the member's surviving Spouse) as the Beneficiary of the Member's interest under the Plan and who is the designated beneficiary under Code Section 401(a)(9) of the Code and Section 1.401(a)(9)-4 of the Regulations.
3. *Distribution calendar year.* A calendar year for which a minimum distribution is required. For distributions beginning before the Member's death, the first distribution calendar year is the calendar year immediately preceding the

calendar year which contains the Member's Required Beginning Date. For distributions beginning after the Member's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to Section 3.30.050(B)(2) hereof.

4. *Eligible cost-of-living index.* An index described in paragraphs (b)(2), (b)(3) or (b)(4) of Section 1.401(a)(9)-6, Q&A-14, of the Regulations.
5. *Life expectancy.* Life expectancy as computed by use of the Single Life Table in Section 1.401(a)(9)-9, Q&A-1, of the Regulations.
6. *Required beginning date.*
 - a. The required beginning date of a Member is April 1 of the calendar year following the later of the calendar year in which the Member attains age 70½ or the calendar year in which the Member retires.
 - b. Any Member attaining age 70½ in years after 1995 but before 2002 may elect by April 1 of the calendar year following the calendar year in which the member attains age 70½, (or by December 31, 1997 in the case of a Member attaining age 70½ in 1996) to defer distributions until April 1 of the calendar year following the calendar year in which the member retires. If no such election is made the Member will begin receiving distributions by April 1 of the calendar year following the year in which the Member attained age 70½.

I. TEFRA § 242(b)(2) Elections.

1. Notwithstanding the other requirements of this Section 3.30.050 and subject to the requirements of the optional forms of benefits permitted under the terms of the plan hereof, distribution on behalf of any Employee who has made a designation under Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (a "Section 242(b)(2) election") may be made in accordance with all of the following requirements (regardless of when such distribution commences):
 - a. The distribution by the Plan is one which would not have disqualified such plan under Code Section 401(a)(9) as in effect prior to amendment by the Deficit Reduction Act of 1984.
 - b. The distribution is in accordance with a method of distribution designated by the Employee whose interest in the Plan is being distributed or, if the Employee is deceased, by a Beneficiary of such Employee.
 - c. Such designation was in writing, was signed by the Employee or the Beneficiary, and was made before January 1, 1984.

- d. The Employee had accrued a benefit under the Plan as of December 31, 1983.
 - e. The method of distribution designated by the Employee or the Beneficiary specifies the time at which distribution will commence, the period over which distributions will be made, and in the case of any distribution upon the Employee's death, the Beneficiaries of the Employee listed in order of priority.
2. A distribution upon death will not be covered by this transitional rule unless the information in the designation contains the required information described above with respect to the distributions to be made upon the death of the Employee.
 3. For any distribution which commences before January 1, 1984, but continues after December 31, 1983, the Employee, or the Beneficiary, to whom such distribution is being made, will be presumed to have designated the method of distribution under which the distribution is being made if the method of distribution was specified in writing and the distribution satisfies the requirements in subsections (1)(a) and (e) above.
 4. If a designation is revoked any subsequent distribution must satisfy the requirements of Code Section 401(a)(9) and the Regulations thereunder. If a designation is revoked subsequent to the date distributions are required to begin, the plan must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which would have been required to have been distributed to satisfy Code Section 401(a)(9) and the Regulations thereunder, but for the Section 242(b)(2) election. For calendar years beginning after December 31, 1988, such distributions must meet the minimum distribution incidental benefit requirements. Any changes in the designation will be considered to be a revocation of the designation. However, the mere substitution or addition of another Beneficiary (one not named in the designation) under the designation will not be considered to be a revocation of the designation, so long as such substitution or addition does not alter the period over which distributions are to be made under the designation, directly or indirectly (for example, by altering the relevant measuring life).
 5. In the case in which an amount is transferred or rolled over from one plan to another plan, the rules in Section 1.401(a)(9)-8, Q&A-14 and Q&A-15 of the Regulations shall apply.

SECTION 4. Chapter 3.30 is hereby amended by deleting Section 3.30.060 in its entirety and substituting in lieu thereof the following new Section 3.30.060:

3.30.060 Right To Direct Rollover.

- A. This Section applies to distributions made on or after January 1, 2002. Notwithstanding any provision of the plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the employee benefit board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.
- B. Definitions.
1. *Eligible rollover distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), any hardship distribution (if allowed under the Plan), and any other distribution that is reasonably expected to total less than \$200 during a year.

A portion of a distribution shall not fail to be an "eligible rollover distribution" merely because the portion consists of after-tax Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or 403(a) that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

2. *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts the distributee's eligible rollover distribution. An eligible retirement plan shall also mean an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for

amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving Spouse, or to a Spouse or former Spouse who is the alternate payee under a qualified domestic relations order, as defined in Code Section 414(p).

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

A distributee also includes the Participant's nonspouse Beneficiary. However, in the case of a nonspouse Beneficiary, the rollover must be a direct rollover and must be made to an individual retirement account or annuity describe in Code Section 408(a) or 408(b) ("IRA") that is established on behalf of the Beneficiary and will be treated as an inherited IRA pursuant to Code Section 402(c)(i). Also, in the case of a nonspouse Beneficiary, the determination of any required minimum distribution under Code Section 401(a)(9) that is ineligible for rollover shall be made in accordance with IRS Notice 2007-7, Q&A 17 and 18.

4. *Direct rollover:* A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

SECTION 5. Chapter 3.30 is hereby amended by deleting Section 3.30.120 in its entirety and substituting in lieu thereof the following new Section 3.30.120:

3.30.120 Prohibition Against Diversion of Trust Funds

The metropolitan government has no beneficial interest in the Trust Fund, and no part of the Trust Fund shall ever revert or be repaid to the metropolitan government, directly or indirectly, except:

- (a) upon initial non-qualification pursuant to Chapter 3.30 hereof;
- (b) in the event that the metropolitan government contribution is made by mistake of fact, in which case the amount of such mistaken contribution shall be returned to the Metropolitan government provided no more than one (1) year has elapsed since the date of payment by the metropolitan government of the mistaken contribution; or,
- (c) in the event of termination of the Plan with residual assets as described Section 3.08.210 or 3.08.220 hereof, if, and to the extent, permitted by the Internal Revenue Code and applicable regulations thereunder.

SECTION 6. Chapter 3.30 is hereby amended by deleting Section 3.30.130 in its entirety.

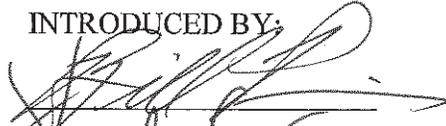
SECTION 7. This ordinance shall take effect from and after its passage, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.

APPROVED AS TO AVAILABILITY OF FUNDS:



Richard Riebeling, Director 
Department of Finance

INTRODUCED BY:





RECOMMENDED BY:



Metropolitan Employee Benefit Board

Members of Council

APPROVED AS TO FORM AND LEGALITY:



Metropolitan Attorney