



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

JUN 17 2003

Internal Revenue Service

Employee Plans

Technical Advice Memorandum

Taxpayer's Name: [REDACTED]

Taxpayer's Address: [REDACTED]

Taxpayer's EIN: [REDACTED]

Year(s) Involved: July 1, 2002

Plan Involved: [REDACTED] Defined Benefit Pension Plan ("Plan")
(Plan No. [REDACTED])

Issue(s)

Issue One

Whether the Plan meets minimum participation requirements of section 401(a)(26) of the Internal Revenue Code (Code).

Issue Two

Whether the general test demonstrates compliance with nondiscrimination requirements of section 401(a)(4) of the Code.

2

Facts

A Form 5300, Application for Determination for Employee Benefit Plan, dated February 25, 2002, was submitted on behalf of the Plan to the Internal Revenue Service (Service). The request was for an initial determination as to the qualified status of the Plan which became effective on July 1, 2002. The request for a determination was subsequently referred to Headquarters in Washington, D.C. for technical advice on whether the Plan satisfied the minimum participation requirements of section 401(a)(26) of the Internal Revenue Code (Code) and whether the general test demonstrated compliance with the nondiscrimination requirements of section 401(a)(4) of the Code. At the time the request for technical advice was submitted to Headquarters, the Taxpayer had an initial proposed amendment and a Demonstration 6 ("Original Demo 6") based on the initial proposed amendment in an effort to demonstrate compliance with section 401(a)(4) of the Code. The Taxpayer also attempted to demonstrate that the Plan met the minimum participation requirements of section 401(a)(26) of the Code. Our office reached a tentative adverse conclusion with respect to the issues raised in the request. In a letter dated August-15, 2005, the Taxpayer was notified of our adverse position. Ultimately, in response to our adverse position, the Taxpayer submitted a proposed amendment (2006 Proposed Amendment) on March 2, 2006, to address the issues that the Service had with the Plan.

Plan Provisions

In what follows, unless otherwise noted, Plan language is cited as written in the original Plan document.

Section 2.1 of the Plan provides that the Accrued Benefit is the value of the benefits provided under the terms of the Plan to a Participant or Beneficiary. The normal benefit form for payment of a Participant's vested Accrued Benefit shall be a monthly single life annuity beginning on his Normal Retirement Date.

Section 2.2 of the Plan provides that for purposes of computing actuarially equivalent benefits under the Plan: (a) an interest rate of 6% compounded annually and the Applicable Mortality Table described below shall be used to compute the actuarially equivalent benefit forms at every age and to compute the present value of benefits at the Normal Retirement Age, (b) an interest rate of 6% compounded annually and no mortality shall be used to increase the present value of benefits from the Normal Retirement Age to a later age, and (c) an interest rate of 6% compounded annually and no mortality shall be used to decrease the present value of benefits from the Normal Retirement Age to an earlier age. Section 2.2 of the Plan further provides that the Applicable Interest Rate shall be the annual interest rate as prescribed under IRC section 417(e)(3)(A)(ii)(II) and that the Applicable Mortality Table is the mortality table specified in Rev. Rul. 2001-62.

The Taxpayer indicated that his intent was to reflect post-retirement mortality when adjusting benefits for early and late retirement. The Taxpayer has agreed to amend

section 2.2 of the Plan to clarify the adjustment for benefits commencing before and after normal retirement age.

Section 2.17 of the Plan provides that the Normal Retirement Age is the later of Age 62 or the Participant's age on the 5th anniversary of the first day of the Plan Year. The Plan does not provide for an Early Retirement Age. The Plan Year is defined in section 2.24 as the period from the first day of July to the last day of June, annually.

Section 2.26 of the Plan provides that the Qualified Joint and Survivor Annuity (QJSA) under the Plan shall be a 50% QJSA for a married participant.

Section 2.37 of the Plan provides that a Year of Service for Accrual of Benefits, generally, means a Plan Year during which the Employee had not less than 1,000 Hours of Service (HOS) as a Participant.

Section 2.38 of the Plan provides that a Year of Service for Participation means the 12-consecutive month period during which the Employee completes at least 1,000 HOS.

Section 2.39 of the Plan provides that a Year of Service for Vesting means a Plan Year during which the Employee had not less than 1,000 HOS, including Plan Years before July 1, 2002.

Section 3.1 of the Plan provides that every Employee shall participate in the Plan on the Entry Date nearer to the date he completes 1 Year of Service for Participation, provided that he is an Employee on such date. For this purpose, Entry Date means each July 1 on and after July 1, 2002. Section 3.1 further provides that an Employee shall not be eligible to participate in the Plan if he is an Employee other than HCE1, NHCE1, or NHCE2.

Section 4.1 of the Plan (as stated originally) provides that upon Retirement at his Normal Retirement Date, a Participant shall be entitled to a monthly Normal Retirement Benefit payable in the straight life annuity form commencing on his Normal Retirement Date which is equal to \$10 multiplied by his Years of Service for Vesting. For this purpose, Years of Service for Vesting before January 1, 1997 and Years of Service for Vesting in excess of 10 years shall not be taken into account. Section 4.1 further provides that regardless of the preceding provisions and subject to the provisions of Section 4.6, the minimum monthly Normal Retirement Benefit payable in the straight life annuity form commencing on his Normal Retirement Date which is equal to 1/12 of 1/2% of the Participant's Average Annual Compensation multiplied by his Years of Service for Accrual of Benefits. The minimum monthly Normal Retirement Benefit payable in the normal form commencing on the Participant's Normal Retirement Date shall be equal to \$730 multiplied by his Years of Service for Accrual of Benefits (up to a maximum of 10 years) for HCE1.

Section 4.1 of the Plan (as stated in the initial proposed amendment) provides that upon Retirement at his Normal Retirement Date, a Participant shall be entitled to a monthly Normal Retirement Benefit payable in the straight life annuity form commencing

on his Normal Retirement Date which is equal to $1/12$ of $1/2\%$ of his Average Annual Compensation multiplied by his Years of Service for Vesting. Section 4.1 further provides that regardless of the preceding provisions, the monthly Normal Retirement Benefit payable in the normal form commencing on the Participant's Normal Retirement Date shall be equal to \$365 multiplied by his Years of Service for Vesting for HCE1. For purposes of this Section 4.1, Years of Service for Vesting before the Participant's theoretical Entry Date is determined as though the Plan had always been in effect; Years of Service for Vesting before July 1, 1997, and Years of Service for Vesting in excess of 20 years shall not be taken into account.

Section 4.1 of the Plan (as stated in the 2006 Proposed Amendment) provides that upon Retirement at his Normal Retirement Date, a Participant shall be entitled to a monthly Normal Retirement Benefit payable in the straight life annuity form commencing on his Normal Retirement Date which is equal to the sum of his Years of Past Service for Accrual of Benefits and his Years of Future Service for Accrual of Benefits multiplied by: (a) $1/12$ of 0.5% of her Average Annual Compensation for NHCE1, (b) $1/12$ of 0.8% of his Average Annual Compensation for NHCE2, and (c) \$730 for HCE1.

For purposes of Article IV, a Participant's Years of Past Service for Accrual of Benefits means the Years of Service for Accrual of Benefits the Participant would have had before the effective date of the Plan determined as though the Plan had always been in effect, but no more than 5 years. A Participant's Years of Future Service for Accrual of Benefits means the Years of Service for Accrual of Benefits the Participant earns after the effective date of the Plan, but no more than 20 years reduced by the Participant's Years of Past Service for Accrual of Benefits.

Section 4.3 of the Plan (as stated originally) provides that if a Participant has a Termination Date for any reason before his Normal Retirement Date, his Accrued Benefit at such time shall be equal to the Normal Retirement Benefit the Participant would have received in accordance with section 4.1 if he had remained employed until his Normal Retirement Date (based on, if applicable, his Average Annual Compensation as of his Termination Date) multiplied by a fraction (not exceeding 1) the numerator of which is the number of Years of Service for Accrual of Benefits as of his Termination Date and the denominator of which is the lesser of 10 years or the number of Years of Service for Accrual of Benefits he would have had if he had remained employed until his Normal Retirement Date.

Section 4.3 of the Plan (as stated in the 2006 Proposed Amendment) provides that if a Participant has a Termination Date for any reason before his Normal Retirement Date, his Accrued Benefit at such time shall be determined pursuant to the provisions of Section 4.1, but based on his Average Annual Compensation (if applicable), Years of Past Service for Accrual of Benefits, and Years of Future Service for Accrual of Benefits as of his Termination Date. Section 4.3 further provides that, regardless of any other provisions of the Plan to the contrary, the maximum monthly Accrued Benefit at any time before July 1, 2003 shall be \$740 for HCE1. A terminated Participant shall be entitled to a deferred vested monthly benefit payable in the normal form of benefit

commencing on his Normal Retirement Date which is equal to his Accrued Benefit as of his Termination Date multiplied by his Vested Percentage.

Section 4.6 of the Plan (as stated originally) provides that if a Participant has a Termination Date before his Early Retirement Age for any reason other than his death, the terminated Participant may elect to receive a reduced monthly benefit payable in the straight life annuity form commencing as of the first day of any month following the date of his election which is equal to the reduced actuarial equivalent of his deferred vested monthly benefit commencing on his Normal Retirement Date. Section 4.6 further provides that a Participant's minimum monthly Normal Retirement Benefit (1/12 of 1/2% formula) of Section 4.1 shall: (a) be subject to an actuarially equivalent reduction if the Participant's Normal Retirement Age is earlier than age 65, and (b) take into account no more than 10 Years of Service for Accrual of Benefits.

Section 4.6 of the Plan (as stated in the 2006 Proposed Amendment) provides that the terminated Participant may elect to receive a reduced monthly benefit payable in the straight life annuity form commencing as of the first day of any month following the date of his election which is equal to the reduced actuarial equivalent of his deferred vested monthly benefit commencing on his Normal Retirement Date.

Section 9.1 of the Plan provides that a Participant may elect to receive any of the following actuarially equivalent optional benefit forms: (a) single life annuity with no certain period, (b) single life annuity with 120 months certain, (c) a QJSA with a survivor annuity percentage of 50% or 100%, (d) a lump sum distribution, or (e) a direct rollover.

Applicable Law

Issue One

Section 401(a)(26) of the Code provides that a qualified plan on each day of the plan year must benefit at least the lesser of (i) 50 employees of the employer, or (ii) the greater of 40% of all employees of the employer or 2 employees (or if there is only 1 employee, such employee). A plan may exclude from consideration under section 401(a)(26) employees described in paragraphs (3) and (4)(A) of section 410(b).

Section 410 of the Code provides minimum participation standards that qualified plans must satisfy.

Section 1.401(a)(26)-1 of the Income Tax regulations ("regulations") provides that a qualified plan must satisfy section 401(a)(26) of the Code for the plan year. A plan that satisfies any of the exceptions described in 1.401(a)(26)-1(b) passes section 401(a)(26) automatically for the plan year, and a plan that does not satisfy one of the exceptions must satisfy 1.401(a)(26)-2(a). A defined benefit plan must, additionally, satisfy section 1.401(a)(26)-3 with respect to its prior benefit structure. A defined benefit plan that benefits former employees must separately satisfy section 1.401(a)(26)-4 with respect to its former employees.

Section 1.401(a)(26)-1(b) of the regulations provides exceptions to section 401(a)(26) of the Code for certain plans, including plans that do not benefit any highly compensated employees ("HCEs"), multiemployer plans, certain underfunded defined benefit plans, section 401(k) plans maintained by employers that include certain governmental or tax-exempt entities, and certain acquisitions or dispositions.

Section 1.401(a)(26)-2(a) of the regulations provides that a plan satisfies that section for a plan year only if the plan benefits the lesser of (1) 50 employees of the employer, or (2) 40% of the employees of the employer.

Section 1.401(a)(26)-3(a) of the regulations provides that a defined benefit plan that does not meet one of the exceptions in section 1.401(a)(26)-1(b) must satisfy section 1.401(a)(26)-3(c) with respect to its prior benefit structure. Defined contribution plans are not subject to section 1.401(a)(26)-3. Section 1.401(a)(26)-3(b) provides that each defined benefit plan has only prior benefit structure, and all accrued benefits under the plan as of the beginning of the plan year (including benefits rolled over or transferred to the plan) are included in the prior benefit structure for the year.

Section 1.401(a)(26)-3(c) of the regulations provides that a plan's prior benefit structure satisfies that paragraph if the plan provides meaningful benefits to a group of employees that includes the lesser of 50 employees or 40% of the employer's employees. Whether a plan provides meaningful benefits, or whether individuals have meaningful accrued benefits under a plan, is determined on the basis of all the facts and circumstances.

Issue Two

Section 401(a)(4) of the Code provides that a plan is a qualified plan only if the contributions or the benefits provided under the plan do not discriminate in favor of HCEs. A plan may exclude from consideration under section 401(a)(4) employees described in paragraphs 410(b)(3)(A) (collectively bargained employees) and 410(b)(3)(C) (nonresident alien employees).

Section 1.401(a)(4)-1 of the regulations provides the rules for determining whether a plan satisfies section 401(a)(4). Section 1.401(a)(4)-1(b)(2)(iii) provides that a defined benefit plan meets these requirements if the benefits provided under the plan are nondiscriminatory in amount under section 1.401(a)(4)-3. Section 1.401(a)(4)-1(c)(4)(iv) provides that references to satisfying section 410(b) in sections 1.401(a)(4)-1 through 1.401(a)(4)-13 mean satisfying section 1.410(b)-2.

Section 1.401(a)(4)-3(a) of the regulations provides that plans that do not provide uniform benefits must satisfy the general test in 1.401(a)(4)-3(c).

Section 1.401(a)(4)-3(c)(1) of the regulations provides that the employer-provided benefits under a defined benefit plan are nondiscriminatory in amount for a plan year if

each rate group under the plan satisfies section 410(b) of the Code. For purposes of paragraph (c)(1), a rate group exists under a plan for each HCE and consists of the HCE and all other employees (both HCEs and nonhighly compensated employees, "NHCEs") who have a normal accrual rate greater than or equal to the HCE's normal accrual rate, and who also have a most valuable accrual rate greater than or equal to the HCE's most valuable accrual rate.

Section 1.401(a)(4)-3(d)(1)(i) of the regulations provides that the normal accrual rate for an employee for a plan year is the increase in the employee's accrued benefit during the measurement period, divided by the employee's testing service during the measurement period, and expressed either as a level dollar amount or percentage of the employee's average annual compensation.

Section 1.401(a)(4)-3(d)(1)(ii) of the regulations provides that the most valuable accrual rate for an employee for a plan year is the increase in the employee's most valuable optional form of payment of the accrued benefit during the measurement period, divided by the employee's testing service during the measurement period. Paragraph 3(d)(1)(ii) further provides that the employee's most valuable optional form of payment of the accrued benefit is determined by calculating for the employee the normalized QJSA associated with the accrued benefit that is potentially payable in the current or any future plan year at any age under the plan and selecting the largest per year of testing service.

Section 1.401(a)(4)-3(d)(1)(iii) of the regulations provides that the measurement period can be the current plan year, the current plan year and all prior years, or the current plan year and all prior and future years.

Section 1.401(a)(4)-3(d)(1)(iv) of the regulations provides that testing service generally means an employee's years of service as defined in the plan for purposes of applying the benefit formula under the plan.

Section 1.401(a)(4)-12 of the regulations provides that to "normalize" a benefit means to convert the benefit to an actuarially equivalent straight life annuity commencing at the employee's testing age.

Section 1.401(a)(4)-5(a) of the regulations provides rules for determining whether the timing of a plan amendment or series of amendments has the effect of discriminating significantly in favor of HCEs. For this purpose, a plan amendment includes the establishment of the plan, and any change in the benefit formulas under the plan.

Section 1.401(a)(4)-5(a)(3) of the regulations provides a safe harbor for certain grants of benefits for past periods. Paragraph 5(a)(3) provides that a plan amendment that credits years of service for a period in the past is deemed not to have the effect of discriminating significantly in favor of HCEs if the period for which the service credit is granted does not exceed the five years immediately preceding the year in which the amendment first becomes effective, the service credit is granted on a reasonably

uniform basis to all employees, benefits attributable to the period are determined by applying the current plan formula, and the service credited is service with the employer that may be taken into account under section 1.401(a)(4)-11(d)(3) of the regulations. Section 1.401(a)(4)-11(d)(3)(i)(B) of the regulations provides that service for periods in which an employee performed services as an employee and did not participate in a plan, but in which the employee would have participated in the plan but for the fact that the plan was not in existence during that period, may be taken into account in determining whether the plan satisfies sections 1.401(a)(4)-1(b)(2) and (b)(3) of the regulations.

Section 1.401(a)(4)-7(a) of the regulations provides that in determining whether a plan satisfies section 401(a)(4) with respect to the amount of benefits provided under the plan, permitted disparity may be taken into account by determining an adjusted accrual rate. Section 1.401(a)(4)-7(c) provides rules for determining an employee's adjusted accrual rate. Section 1.401(l)-3 of the regulations provides rules for determining the permitted disparity for benefits provided under a defined benefit plan.

Section 410(b) of the Code provides minimum coverage requirements that qualified plans must satisfy. For this purpose, excludable employees under sections 410(b)(3) (collectively bargained employees and nonresident alien employees who earn no income in U.S.) and 410(b)(4) (employees who have not met minimum age and service requirements) shall be excluded from consideration. Section 410(b)(1) of the Code provides that a trust shall not constitute a qualified trust unless the trust meets one of the requirements in paragraphs (A), (B), or (C). Section 410(b)(1)(B) provides that a plan satisfies 410(b)(1) if the plan benefits (i) a percentage of the NHCEs which is at least 70% of (ii) the percentage of the HCEs benefiting under the plan.

Section 1.410(b)-2 of the regulations provides minimum coverage requirements a qualified plan must satisfy. Section 1.410(b)-2(a) provides that a plan satisfies section 410(b) of the Code if it satisfies paragraph 1.410(b)-2(b) of the regulations with respect to employees. Section 1.410(b)-2(b)(1) provides that a plan satisfies paragraph 2(b) for a plan year if it satisfies at least one of the tests in paragraphs (b)(2) through (b)(7) of this section for the plan year. Section 1.410(b)-2(b)(3) provides that a plan satisfies paragraph 2(b) for a plan year if the plan satisfies both the nondiscriminatory classification test of section 1.410(b)-4 and the average benefit percentage test of section 1.410(b)-5 for the plan year.

Section 1.410(b)-4(a) of the regulations provides that a plan satisfies the nondiscriminatory classification test for a plan year if for the plan year, the plan benefits the employees who qualify under a reasonable classification established by the employer in accordance with paragraph 4(b), and the classification of employees is nondiscriminatory in accordance with paragraph 4(c).

Section 1.410(b)-5(a) of the regulations provides that a plan satisfies the average benefit percentage test for a plan year if the average benefit percentage of the plan for the plan year is at least 70%.

Section 1.410(b)-5(b) provides that the average benefit percentage of a plan for a plan year is the percentage determined by dividing the actual benefit percentage of the NHCEs in the testing group for the testing period that includes the plan year by the actual benefit percentage of the HCEs in the testing group for that testing period.

Section 1.410(b)-5(c) provides that the actual benefit percentage of a group of employees for a testing period is the average of the employee benefit percentages, calculated separately with respect to each of the employees in the group for the testing period. All nonexcludable employees of the employer are taken into account for this purpose, even if they are not benefiting under the plan.

Section 1.401(a)(4)-3(c)(2) of the regulations provides that for purposes of determining whether a rate group satisfies section 410(b) of the Code, the same rules apply as in section 1.401(a)(4)-2(c)(3) of the regulations.

Section 1.401(a)(4)-2(c)(3)(i) of the regulations provides that in determining whether a rate group satisfies section 410(b) of the Code, the rate group is treated as if it were a separate plan that benefits only the employees included in the rate group. Paragraphs (c)(3)(ii) and (c)(3)(iii) provide additional rules for determining whether a rate group satisfies section 410(b).

Section 1.401(a)(4)-2(c)(3)(ii) of the regulations provides that a rate group satisfies the nondiscriminatory classification test of section 1.410(b)-4 (including the reasonable classification requirement of section 1.410(b)-4(b)) if and only if the ratio percentage of the rate group is greater than or equal to the lesser of (A) the midpoint between the safe and the unsafe harbor percentages applicable to the plan (as set forth in the table in section 1.410(b)-4(c)(4)(iv) of the regulations), and (B) the ratio percentage of the plan.

Section 1.401(a)(4)-2(c)(3)(iii) of the regulations provides that a rate group satisfies the average benefit percentage test of section 1.410(b)-5 if the plan of which it is a part satisfies section 1.410(b)-5.

Section 1.410(b)-9 of the regulations defines the ratio percentage as the percentage determined by dividing (a) the percentage of NHCEs who benefit under the plan by (b) the percentage of the HCEs who benefit under the plan. The percentage of NHCEs who benefit under the plan is determined by dividing the number of NHCEs benefiting under the plan by the total number of nonexcludable NHCEs. Similarly, the percentage of HCEs who benefit under the plan is determined by dividing the number of HCEs benefiting under the plan by the total number of nonexcludable HCEs.

Employee Data

	Non-excludable Employee	Status	Hire Date	Benefiting Under DB
1	HCE1	HCE	09/01/92	Yes
2	HCE2	HCE	10/18/98	No
3	NHCE1	NHCE	02/15/93	Yes
4	NHCE2	NHCE	06/11/01	Yes
5	NHCE3	NHCE	10/28/98	No
6	NHCE4	NHCE	01/24/00	No

Analysis- Issue One

A qualified defined benefit plan must satisfy section 401(a)(26) of the Internal Revenue Code. To satisfy section 401(a)(26), a plan must benefit the lesser of (i) 50 employees of the employer, or (ii) the greater of 40% of all employees of the employer, or 2 employees (or if there is only 1 employee, such employee). For these purposes, a plan may exclude from consideration employees described in paragraphs (3) and (4)(A) of section 410(b) of the Code. Section 410(b)(3) of the Code provides for the exclusion of certain employees for purposes of that section. Section 410(b)(4)(A) provides that if a plan prescribes minimum age and service requirements as a condition of participation, and excludes all employees not meeting such requirements from participation, then such employees are excluded from consideration for purposes of that subsection.

The Taxpayer has a total of 6 nonexcludable employees on the test date. In order to satisfy section 401(a)(26)(A) of the Code and section 1.401(a)(26)-2(a) of the regulations, the Plan must benefit at least the lesser of (1) 50 employees, or (2) 40% of the employees of the Taxpayer. Because the Taxpayer only has 6 nonexcludable employees, the lesser of (1) 50 employees or (2) the greater of 40% of the employees of the Taxpayer and two employees is 40% of the employees of the Taxpayer. The Plan must benefit a total of 3 employees ($40\% * 6 = 2.4$, rounded to 3) to satisfy the 40% requirement. Since the Plan benefits 3 employees, the 40% requirement of section 401(a)(26)(A) of the Code and section 1.401(a)(26)-2(a) of the regulations is satisfied for the plan year beginning July 1, 2002.

Section 1.401(a)(26)-3(a) of the regulations provides that a defined benefit plan that does not meet one of the exceptions in section 1.401(a)(26)-1(b) must satisfy section 1.401(a)(26)-3(c) with respect to its prior benefit structure. A plan's prior benefit structure satisfies that paragraph if the plan provides meaningful benefits to the lesser of 50 employees or 40% of the employer's employees. A plan will satisfy this requirement if at least 50 employees or 40% of the employer's employees currently accrue meaningful benefits under the plan, or if at least 50 employees and former

employees or 40% of the employer's employees and former employees have meaningful accrued benefits under the plan.

Section 1.401(a)(26)-3(c)(2) of the regulations provides that whether a plan is providing meaningful benefits, or whether individuals have meaningful accrued benefits under a plan, is determined on the basis of all the facts and circumstances. The relevant factors in making this determination include, but are not limited to, the following:

- The level of current benefit accruals;
- The comparative rate of accruals under the current benefit formula compared to prior rates of accrual under the plan;
- The projected accrued benefits under the current benefit formula compared to accrued benefits as of the close of the immediately preceding plan year;
- The length of time the current benefit formula has been in effect;
- The number of employees with accrued benefits under the plan; and
- The length of time the plan has been in effect.

The regulation further provides that a plan does not satisfy the meaningful benefit requirement of that section if it exists primarily to preserve accrued benefits for a small group of employees, and functions more as an individual plan for the small group of employees or for the employer. Moreover, the meaningful benefit requirement of section 1.401(a)(26)-3(c)(2) is concerned with a plan that exists to provide or preserve accrued benefits for highly compensated employees (because a plan that benefits only non-highly compensated employees is deemed to satisfy section 401(a)(26) pursuant to the exceptions in section 1.401(a)(26)-1(b) of the regulations). The factors to be considered include consideration of the level of current benefit accruals and such a consideration needs to be made on a consistent basis. The accrued benefits provided to HCEs are generally defined in terms of the normal retirement age under the plan. Thus, the measurement of the benefit provided to NHCEs should likewise use the plan's normal retirement age to measure meaningful benefits. Furthermore, using the normal retirement age to measure whether a benefit is meaningful is consistent with the top-heavy rules and the minimum top-heavy benefit.

Under section 416 of the Code, a minimum benefit of 2% of compensation per year of service (up to 10 years) is considered sufficient to provide to non-key employees in a top-heavy plan. This suggests that a total benefit of 20% should be considered as a meaningful benefit in the absence of other considerations. The top-heavy minimum benefit accrues over 10 years. However, NHCEs will often be younger than HCEs and have a total career of roughly 40 years. Dividing 20% by 40 years, results in a rate of accrual of 0.5 percent per year of service. Viewed over the span of a 40 year career, the 0.5 percent per year will provide a benefit consistent with top-heavy accruals. Thus we can consider 0.5 percent as a minimum meaningful benefit when HCEs are accruing a greater level of benefit.

The Plan does not meet any of the exceptions in section 1.401(a)(26)-(1)(b) and, therefore, must satisfy section 1.401(a)(26)-3(c). Thus, the Plan must provide

meaningful benefits to a group of employees that includes the lesser of 50 employees or 40% of the Taxpayer's employees. That is, to satisfy section 1.401(a)(26)-3(c), the Plan must provide meaningful benefits to at least 3 employees.

Initial Proposed Amendment

Section 4.1 of the Plan, as stated in the initial proposed amendment, provided that NHCE1 and NHCE2 shall be entitled to a monthly Normal Retirement Benefit commencing on Normal Retirement Date (Age 62) which is equal to 1/12 of 1/2% of Average Annual Compensation multiplied by Years of Service for Vesting. Section 4.6 of the Plan, as stated originally, provided that a Participant's minimum monthly Normal Retirement Benefit set forth section 4.1 shall be subject to an actuarially equivalent reduction if the Participant's Normal Retirement Age is earlier than age 65. Thus, the Plan, as stated in the initial proposed amendment, provided a benefit accrual of at least 0.50% at normal retirement for only 1 benefiting employee, an HCE with a benefit accrual rate of approximately 5%. Therefore, the Plan, as stated in the initial proposed amendment, failed to provide meaningful benefits to at least 40% of the nonexcludable employees, accordingly, the meaningful benefit requirement of section 1.401(a)(26)-3(c) of the regulations was not satisfied for the plan year beginning July 1, 2002 under the initial proposed amendment.

2006 Proposed Amendment

Section 4.1 of the Plan, as stated in the 2006 Proposed Amendment, provides a benefit accrual of at least 0.50% of Average Annual Compensation for all 3 benefiting employees. Section 4.6 of the Plan, as stated in the 2006 Proposed Amendment, provides that a terminated Participant may elect to receive a reduced monthly benefit which is equal to the reduced actuarial equivalent of the deferred vested monthly benefit commencing on Normal Retirement Date (Age 62). Thus, the Plan, as stated in the 2006 Proposed Amendment, provides a benefit accrual of at least 0.50% for all 3 benefiting employees. Therefore, the Plan, as stated in the 2006 Proposed Amendment, is providing meaningful benefits to at least 40% of the nonexcludable employees, accordingly the meaningful benefit requirement of section 1.401(a)(26)-3(c) of the regulations is satisfied for the plan year beginning July 1, 2002 under the 2006 Proposed Amendment.

Analysis- Issue Two**Initial Proposed Amendment/Original Demo 6**

The Original Demo 6 submitted with the initial proposed amendment indicates that the Plan meets nondiscrimination requirements on the basis of the general test as described in 1.401(a)(4)-(3)(c) of the regulations. The Original Demo 6 utilizes the first year of benefit accrual (Years of Service for Accrual of Benefits as of June 30, 2003, the end of the plan year being tested, equals 1 for all participants as defined in the Plan). The testing service utilized in the Original Demo 6 was Years of Service for Vesting as defined in section 4.1 of the Plan under the initial proposed amendment.

The Plan is tested on a benefits basis, using a measurement period consisting of the current plan year and all prior years. The assumptions used by the Plan to calculate actuarially equivalent benefits consist of a 6% interest rate (pre-retirement and post-retirement) and the mortality table specified in Rev. Rul. 2001-62 applied post-retirement only. The Plan's actuary performed nondiscrimination testing under sections 401(a)(4) and 410(b) of the Code based on assumptions consisting of an 8.5% pre-retirement interest rate, a 7.5% post-retirement interest rate, and the IAM 83 (Female) mortality table, applied post-retirement only.

In the tables that follow, the following abbreviations are used: attained age (AA), testing age (TA), social security retirement age (SSRA), permitted disparity factor (PDF), years of service (YOS), and annuity purchase rate (APR).

For the plan year beginning July 1, 2002, participant data relevant to the initial proposed amendment follows:

Participant Data - Initial Proposed Amendment

	AA	TA	SSRA	YOS Accrual	YOS Vesting	Salary	Covered Comp	PDF
NHCE2	26	62	67	1	1	40,908	84,900	0.50%
HCE1	58	62	66	1	6	177,000	58,608	0.55%
NHCE1	49	62	66	1	8	54,077	73,056	0.55%

The following formulas were used by the Taxpayer in determining the benefits that were tested in the Original Demo 6:

**Benefit Table - Initial Proposed Amendment
As Submitted by Taxpayer**

	(1) Formula Used For Monthly AB at NRA	(2) Monthly AB at NRA	(3) Formula Used For Monthly AB Test Date	(4) Monthly AB Test Date	(5) Test Svc	(6) Formula Used For Inc Monthly AB for Year	(7) Inc Monthly AB for Year
NHCE2	$(.005)(20)(40,908) * \frac{1}{12}$	340.90	$340.90 * \frac{1}{10}$	34.09	1	$34.09 * \frac{1}{1}$	34.09
HCE1	$(365)(10)$	3,650.00	$3,650.00 * \frac{1}{6}$	730.00	6	$730.00 * \frac{1}{6}$	121.67
NHCE1	$(.005)(19)(54,077) * \frac{1}{12}$	428.11	$428.11 * \frac{1}{10}$	42.81	6	$42.81 * \frac{1}{6}$	7.14

Years of Service for Vesting
Years of Service for Accrual of Benefits

When determining the adjusted normal accrual rates, using the tested benefits as shown above, we have the following results:

**Adjusted Normal Rates - Initial Proposed Amendment
As Submitted by Taxpayer**

	(1) Monthly AB Test Date	(2) Test Svc	(3) $\frac{(1)}{(2)}$ Increase Monthly AB Year	(4) Salary	(5) Covered Comp	(6) $\frac{(3) * 12}{(4)}$ Unadjusted Normal Rate	(7) PDF	(8) A/C Rate	(9) B/D Rate	(10) Adjusted Normal Rate Min[(8), (9)]
NHCE2	34.09	1	34.09	40,908	84,900	1.00 %	0.50 %	2.00 %	1.50 %	1.50 %
HCE1	730.00	6	121.67	177,000	58,808	0.82 %	0.55 %	0.99 %	1.01 %	0.99 %
NHCE1	42.81	6	7.14	54,077	73,056	0.16 %	0.55 %	0.32 %	0.71 %	0.32 %

Note that NHCE2 is potentially in HCE1's rate group with the above adjusted normal rates.

Section 1.401(a)(4)-3(d)(1)(iv) of the regulations provides that testing service means an employee's years of service as defined in the plan for purposes of applying the benefit formula under the plan. The testing service used in the Original Demo 6 does not meet this requirement. In this case, the Years of Service for Accrual of Benefits equals 1 for all participants as defined in Plan; therefore, the testing service should equal 1 for all participants.

Acceptable Testing Method – Initial Proposed Amendment

With testing service equal to one for all participants, we have the following results in determining the benefits that are to be tested:

**Benefit Table - Initial Proposed Amendment
Acceptable Testing Method**

	(1) Formula Used For Monthly AB at NRA	(2) Monthly AB at NRA	(3) Formula Used For Monthly AB Test Date	(4) Monthly AB Test Date	(5) Test Svc	(6) Formula Used For Inc Monthly AB for Year	(7) Inc Monthly AB for Year
NHCE2	$(.005)(20)(40,908) * \frac{1}{12}$	340.90	$340.90 * \frac{1}{10}$	34.09	1	$34.09 * \frac{1}{1}$	34.09
HCE1	$(.365)(10)$	3,650.00	$3,650.00 * \frac{1}{6}$	730.00	1	$730.00 * \frac{1}{1}$	730.00
NHCE1	$(.005)(19)(54,077) * \frac{1}{12}$	428.11	$428.11 * \frac{1}{10}$	42.81	1	$42.81 * \frac{1}{1}$	42.81

When determining the adjusted normal rates, using the benefits as shown above, we have the following results:

**Adjusted Normal Rates - Initial Proposed Amendment
Acceptable Testing Method**

	(1) Monthly AB Test Test Date	(2) Test Svc	(3) $\frac{(1)}{(2)}$ Increase Monthly AB Year	(4) Salary	(5) Covered Comp	(6) $\frac{(3) \cdot (4)}{(5)}$ Unadjusted Normal Rate	(7) PDF	(8) A/C Rate	(9) B/D Rate	(10) Adjusted Normal Rate Min[(8), (9)]
NHCE2	34.09	1	34.09	40,908	84,900	1.00 %	0.50 %	2.00 %	1.50 %	1.50 %
HCE1	730.00	1	730.00	177,000	58,608	4.95 %	0.55 %	5.93 %	5.13 %	5.13 %
NHCE1	42.81	1	42.81	54,077	73,056	0.95 %	0.55 %	1.80 %	1.50 %	1.50 %

No NHCEs are in HCE1's rate group with the above adjusted normal rates. The rate group fails to satisfy the non-discriminatory classification test of section 1.410(b)-4 since the ratio percentage for the rate group is equal to 0%. Accordingly, the requirements of section 1.401(a)(4)-2(c)(3)(ii) of the regulations are not met and the Plan, as stated in the initial proposed amendment, does not satisfy section 401(a)(4) of the Code.

2006 Proposed Amendment

The Plan is tested on a benefits basis, using a measurement period consisting of the current plan year and all prior years. The assumptions used by the Plan to calculate actuarially equivalent benefits consist of a 6% interest rate (pre-retirement and post-retirement) and the mortality table specified in Rev. Rul. 2001-62 applied post-retirement only. For the 2006 Proposed Amendment, the Plan's actuary performed nondiscrimination testing under sections 401(a)(4) and 410(b) of the Code based on assumptions consisting of an 8.5% pre-retirement interest rate, a 7.5% post-retirement interest rate, and the mortality table specified in Rev. Rul. 2001-62, applied post-retirement only.

In determining whether the Plan, as stated in the 2006 Proposed Amendment, satisfies 401(a)(4) of the Code, the following Participant data pertains to the plan year beginning July 1, 2002:

Participant Data - 2006 Proposed Amendment

	AA	TA	SSRA	YOS Accrual Past	YOS Accrual Future	Testing Service	Salary	Covered Comp	PDF
NHCE2	26	62	67	0	1	1	40,908	84,900	0.50%
HCE1	58	62	66	5	1	6	177,000	58,608	0.55%
NHCE1	49	62	66	5	1	6	54,077	73,056	0.55%

The following formulas are used in determining the benefits under the Plan, as stated in the 2006 Proposed Amendment, that are to be tested under section 401(a)(4) of the Code:

Benefit Table - 2006 Proposed Amendment

	(1) Formula Used For 4.1 Monthly AB at NRA	(2) 4.1 Monthly AB at NRA	(3) 4.3 Limited Monthly AB at NRA	(4) Test Svc	(5) Formula Used For Inc Monthly AB for Year	(6) Inc Monthly AB for Year
NHCE2	$(.008 * 1) * (40,908) * \frac{1}{12}$	27.27	27.27	1	$\frac{27.27}{1}$	27.27
HCE1	$(730 * 6)$	4,380.00	740.00	6	$\frac{740.00}{6}$	123.33
NHCE1	$(.005 * 6) * (54,077) * \frac{1}{12}$	135.19	135.19	6	$\frac{135.19}{6}$	22.53

The safe harbor under section 1.401(a)(4)-5(a)(3) of the regulations provides that a plan amendment that credits years of service for a period in the past is deemed not to have the effect of discriminating significantly in favor of HCEs if the period for which the service credit is granted does not exceed the five years immediately preceding the year in which the amendment first becomes effective, the service credit is granted on a reasonably uniform basis to all employees, benefits attributable to the period are determined by applying the current plan formula, and the service credited is service with the employer that may be taken into account under section 1.401(a)(4)-11(d)(3) of the regulations. The service granted under the 2006 Proposed Amendment satisfies the safe harbor of section 1.401(a)(4)-5(a)(3) of the regulations.

The normal accrual rate and most valuable accrual rate are determined by imputing permitted disparity in accordance with section 1.401(a)(4)-7(c) of the regulations. The adjusted normal accrual rate calculation for each Participant is found below:

Adjusted Normal Rates - 2006 Proposed Amendment

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
	Increase Monthly AB Year	Salary	Covered Comp	$\frac{(1) \times 12}{(2)}$ Unadjusted Normal Rate	PDF	A/C Rate	B/D Rate	Adjusted Normal Rate Min [(6), (7)]
NHCE2	27.27	40,908	84,900	0.80%	0.50%	1.60%	1.30%	1.30%
HCE1	123.33	177,000	58,608	0.84%	0.55%	1.00%	1.02%	1.00%
NHCE1	22.53	54,077	73,056	0.50%	0.55%	1.00%	1.05%	1.00%

The following tables show the progression from the annual accrued benefits under the plan to the normalized QJSA that is tested for 401(a)(4) and ultimately the adjusted most valuable rates for each Participant. In accordance with the regulations, the most valuable accrual rate should be determined by calculating the increase in the accrued benefit payable in the QJSA form of payment at each age the benefit can commence under the terms of the Plan. However, in the Demonstration 6 submitted with the 2006 Proposed Amendment, the Plan's actuary calculated the increase in the accrued benefit based on testing assumptions rather than Plan actuarial equivalence assumptions. This is corrected in the development that follows, it is assumed that all participants are married and that a participant's spouse is the same age as the Participant when determining the 50% QJSA payable under the Plan. These benefits are then normalized to the actuarially equivalent benefit payable as a straight life annuity at the Participant's normal retirement age, and the largest normalized benefit is used as the basis for the most valuable accrual rate. The attached Appendix shows the calculations of the normalized benefits payable at all ages for each participant in determining the most valuable benefit used in calculating the most valuable accrual rates. For this Plan and the testing assumptions used, calculations show that the most valuable accrual rate is based on the benefit payable at the participant's attained age.

**Development
Normalized Accrued Benefit
Most Valuable Retirement Age (AA)**

(1)	(2)	(3)	(4) (2)*(3)	(5) 1.06 ⁽¹⁾⁻⁸²	(6) (4)*(5)	(7)	(8) <u>(8)</u> (7)	(9)	(10) (8)*(9)	
	Monthly AA	APR Age 62 Plan Basis	AB PV NRA	Discount Factor Plan Basis	AB PV AA	AA APR 50% QJSA Plan Basis 6%	50% QJSA Payable Plan Basis	AA APR 50% QJSA Test Basis 7.5%	Test 50% QJSA PV AA	
NHCE2	26	27.27	139.280	3,798.17	0.1227	466.19	197.819	2.36	162.812	383.69
HCE1	58	740.00	139.280	103,067.20	0.7921	81,639.97	159.584	511.57	138.657	70,933.30
NHCE1	49	135.19	139.280	18,929.26	0.4688	8,827.89	176.992	49.88	150.606	7,511.83

* Column 3 from 2006 Proposed Amendment Benefit Table above.

(continued)

(11)	(12)	(13)	(14)	(15)	(16)	(17)	
	(8)*(9) Test 50% QJSA PV AA	1.085 ⁸²⁻⁽¹¹⁾ Accumulation Factor Test Basis	(12)*(13) Test 50% QJSA PV NRA	Life APR Age 62 Test Basis 7.5%	<u>(14)</u> (13) Normalized Monthly Benefit	12*(16) Normalized Annual Benefit	
NHCE2	26	383.69	18.8569	7,235.25	123.241	58.71	704.50
HCE1	58	70,933.30	1.3859	98,303.53	123.241	797.65	9,571.81
NHCE1	49	7,511.83	2.8879	21,693.62	123.241	176.03	2,112.31

**Adjusted Most Valuable Rates
2006 Proposed Amendment**

(1)	(2)	(3) <u>(1)</u> (2)	(4)	(5)	(6)	(7) <u>(3)</u> (4)	(8)	(9)	(10)	
Most Valuable Annual Benefit**	Testing Service	Most Valuable Annual Accrual	Covered Salary	Covered Comp	PDF	Unadjusted MV Accrual Rates	A/C Rates	B/D Rates	Adjusted MV Accrual Rates Min [(8),(9)]	
NHCE2	704.50	1	704.50	40,908	84,900	0.50%	1.72%	3.44%	2.22%	2.22%
HCE1	9,571.81	6	1,595.30	177,000	58,808	0.55%	0.80%	1.08%	1.08%	1.08%
NHCE1	2,112.31	6	352.05	64,077	73,058	0.55%	0.85%	1.30%	1.20%	1.20%

**Based on earliest retirement age (column 17 in table above).

Section 1.401(a)(4)-3(c)(1) of the regulations provides that a rate group exists under a plan for each HCE and consists of the HCE and all other employees (both HCEs and NHCEs) who have a normal accrual rate greater than or equal to the HCE's normal accrual rate, and who also have a most valuable accrual rate greater than or equal to the HCE's most valuable accrual rate. Accordingly, the Plan has one rate group consisting of HCE1, NHCE1 and NHCE2.

Section 1.401(a)(4)-3(c)(1) of the regulations provides that the benefits under a defined benefit plan are nondiscriminatory in amount for a plan year if each rate group under the plan satisfies section 410(b) of the Code. In this case, there is one rate group to test to determine whether the Plan satisfies section 410(b) of the Code.

Section 1.401(a)(4)-3(c)(2) of the regulations provides that for purposes of determining whether a rate group satisfies section 410(b) of the Code, the same rules apply as in section 1.401(a)(4)-2(c)(3) of the regulations. Section 1.401(a)(4)-2(c)(3)(i) of the regulations provides that the rate group is treated as if it were a separate plan that benefits only the employees included in the rate group. Paragraphs (c)(3)(ii) and (c)(3)(iii) of section 1.401(a)(4)-3 provide additional rules for determining whether a rate group satisfies section 410(b).

Section 1.401(a)(4)-2(c)(3)(ii) of the regulations provides that a rate group satisfies the nondiscriminatory classification test of section 1.410(b)-4 (including the reasonable classification requirement of section 1.410(b)-4(b)) if the ratio percentage of the rate group is greater than or equal to the lesser of (A) the midpoint between the safe and the unsafe harbor percentages applicable to the plan, and (B) the ratio percentage of the plan.

**Rate Group
Nondiscriminatory Classification Test
2006 Proposed Amendment**

Total Nonexcludable NHCEs	4
Total Nonexcludable HCEs	2
Total Nonexcludable EEs	6
NHCE Concentration Percentage	66 %
Safe Harbor Percentage	45.5%
Unsafe Harbor Percentage	35.5%
Midpoint Between Safe & Unsafe Harbor Percentage	40.5 %

NHCEs in Group	HCEs in Group	NHCE Ratio	HCE Ratio	Ratio	MidPoint	Test Results
				Percentage Group		
2	1	50%	50%	100%	40.5%	Passes

In accordance with Section 1.401(a)(4)-2(c)(3)(ii), the rate group satisfies the non-discriminatory classification test of section 1.410(b)-4 since the ratio percentage of the group is greater than the midpoint between the safe and unsafe harbor percentages of the Plan.

Section 1.401(a)(4)-2(c)(3)(iii) of the regulations provides that a rate group satisfies the average benefit percentage test of section 1.410(b)-5 if the plan of which it is a part satisfies section 1.410(b)-5.

**Average Benefit Percentage Test
2006 Proposed Amendment**

	NHCE1	NHCE2	NHCE3	NHCE4	Sum Rates	NHCE Total	Avg Adj NHCE Rate
Adjusted Normal Rate	1.00 %	1.30 %	0.00 %	0.00 %	2.30 %	4	0.58 %
	HCE1	HCE2	Sum Rates	HCE Total	Avg Adj HCE Rate		
Adjusted Normal Rate	1.00 %	0.00 %	1.00 %	2	0.50 %		
		NHCEs	HCEs	Average Benefit Percentage	Result		
Average Adjusted Normal Accrual Rate		0.58 %	0.50 %	116.00 %	Passes		

The rate group satisfies the average benefit percentage test of section 1.410(b)-5 since the average benefit percentage of the Plan is greater than 70%.

In accordance with section 1.401(a)(4)-3(c)(1) of the regulations, since the rate group satisfies sections 1.401(a)(4)-2(c)(3)(ii) and 1.401(a)(4)-2(c)(3)(iii) of the regulations, the Plan satisfies section 410(b) of the Code. Accordingly, the Plan, as stated in the 2006 Proposed Amendment, satisfies section 1.401(a)(4)-1 of the regulations and the non-discrimination requirements of section 401(a)(4) of the Code are satisfied for the plan year beginning July 1, 2002.

Conclusion

If the 2006 Proposed Amendment is properly adopted and executed, the Plan will satisfy sections 401(a)(26) and 401(a)(4) of the Code for the plan year beginning July 1, 2002. If the 2006 Proposed Amendment is not properly adopted and executed, the Plan will not satisfy the Code sections referenced above.

However the 2006 Proposed Amendment must be restated to clarify the adjustment for benefits commencing before and after normal retirement age to reflect the actual administration of the Plan.

Even if the Plan is amended as described above, based on the demographics of the participant group and the structure of the benefit formula, we have concerns that the Plan may not satisfy the nondiscrimination requirements under section 401(a)(4) of the Code in subsequent years.

Attachment:

2006 Proposed Amendment

Appendix

NHCE2 Plan 50%QJSA Payable All Ages*

(1)	(2)	(3)	(4)	(5)	(6)	(7)
			$1.06^{(1)-62}$	$(2)+(3)+(4)$		$\frac{(5)}{(6)}$
		APR			APR	50% QJSA
Age	AB	Age 62	Discount	PV	50% QJSA	Payable
	EOY	Plan Basis	Factor	Plan Basis	Plan Basis	Plan Basis
26	27.27	139.280	0.1227	466.19	197.819	2.36
27	27.27	139.280	0.1301	494.16	197.351	2.50
28	27.27	139.280	0.1379	523.81	196.857	2.66
29	27.27	139.280	0.1462	555.24	196.335	2.83
30	27.27	139.280	0.1550	588.55	195.785	3.01
31	27.27	139.280	0.1643	623.87	195.204	3.20
32	27.27	139.280	0.1741	661.30	194.590	3.40
33	27.27	139.280	0.1846	700.98	193.942	3.61
34	27.27	139.280	0.1956	743.04	193.256	3.84
35	27.27	139.280	0.2074	787.62	192.531	4.09
36	27.27	139.280	0.2198	834.87	191.763	4.35
37	27.27	139.280	0.2330	884.97	190.951	4.63
38	27.27	139.280	0.2470	938.07	190.094	4.93
39	27.27	139.280	0.2618	994.35	189.190	5.26
40	27.27	139.280	0.2775	1,054.01	188.236	5.60
41	27.27	139.280	0.2942	1,117.25	187.231	5.97
42	27.27	139.280	0.3118	1,184.29	186.173	6.36
43	27.27	139.280	0.3305	1,255.34	185.057	6.78
44	27.27	139.280	0.3503	1,330.66	183.882	7.24
45	27.27	139.280	0.3714	1,410.50	182.643	7.72
46	27.27	139.280	0.3936	1,495.13	181.337	8.25
47	27.27	139.280	0.4173	1,584.84	179.961	8.81
48	27.27	139.280	0.4423	1,679.93	178.514	9.41
49	27.27	139.280	0.4688	1,780.73	176.992	10.06
50	27.27	139.280	0.4970	1,887.57	175.393	10.76
51	27.27	139.280	0.5268	2,000.83	173.714	11.52
52	27.27	139.280	0.5584	2,120.88	171.954	12.33
53	27.27	139.280	0.5919	2,248.13	170.111	13.22
54	27.27	139.280	0.6274	2,383.02	168.182	14.17
55	27.27	139.280	0.6651	2,526.00	166.165	15.20
56	27.27	139.280	0.7050	2,677.56	164.058	16.32
57	27.27	139.280	0.7473	2,838.21	161.863	17.53
58	27.27	139.280	0.7921	3,008.50	159.584	18.85
59	27.27	139.280	0.8396	3,189.01	157.221	20.28
60	27.27	139.280	0.8900	3,380.35	154.774	21.84
61	27.27	139.280	0.9434	3,583.17	152.242	23.54
62	27.27	139.280	1.0000	3,798.17	149.633	25.38

*Calculations based on 2006 Proposed Amendment restated to clarify the adjustment for benefits commencing before normal retirement age.

Appendix

2

NHCE2 Normalized Benefit Applicable All Ages*

(1)	(2)	(3)	(4)	(5)	(6)	(7)
			$1.085^{62-(1)}$		$\frac{(2) \times (3) - (4)}{(5)}$	$12 \times (6)$
	50% QJSA Payable Plan Basis	APR 50% QJSA Test Basis 7.5%	Accumulation Factor Test Basis	Life APR Age 62 Test Basis 7.5%	Normalized Monthly Benefit	Normalized Annual Benefit
Age						
26	2.36	162.812	18.8569	123.241	58.71	704.50
27	2.50	162.579	17.3796	123.241	57.41	688.91
28	2.66	162.330	16.0181	123.241	56.14	673.69
29	2.83	162.064	14.7632	123.241	54.90	658.83
30	3.01	161.780	13.6067	123.241	53.69	644.33
31	3.20	161.477	12.5407	123.241	52.51	630.18
32	3.40	161.153	11.5583	123.241	51.36	616.36
33	3.61	160.807	10.6528	123.241	50.24	602.87
34	3.84	160.436	9.8182	123.241	49.14	589.71
35	4.09	160.038	9.0490	123.241	48.07	576.85
36	4.35	159.611	8.3401	123.241	47.03	564.31
37	4.63	159.155	7.6868	123.241	46.01	552.07
38	4.93	158.666	7.0846	123.241	45.01	540.12
39	5.26	158.145	6.5296	123.241	44.04	528.45
40	5.60	157.589	6.0180	123.241	43.09	517.07
41	5.97	156.996	5.5466	123.241	42.16	505.95
42	6.36	156.364	5.1120	123.241	41.26	495.11
43	6.78	155.691	4.7116	123.241	40.38	484.52
44	7.24	154.973	4.3425	123.241	39.52	474.18
45	7.72	154.207	4.0023	123.241	38.67	464.09
46	8.25	153.390	3.6887	123.241	37.85	454.25
47	8.81	152.519	3.3997	123.241	37.05	444.63
48	9.41	151.592	3.1334	123.241	36.27	435.25
49	10.06	150.606	2.8879	123.241	35.51	426.09
50	10.76	149.558	2.6617	123.241	34.76	417.14
51	11.52	148.446	2.4532	123.241	34.03	408.41
52	12.33	147.267	2.2610	123.241	33.32	399.88
53	13.22	146.019	2.0839	123.241	32.63	391.55
54	14.17	144.699	1.9206	123.241	31.95	383.42
55	15.20	143.303	1.7701	123.241	31.29	375.48
56	16.32	141.831	1.6315	123.241	30.64	367.72
57	17.53	140.282	1.5037	123.241	30.01	360.14
58	18.85	138.657	1.3859	123.241	29.39	352.73
59	20.28	136.958	1.2773	123.241	28.79	345.50
60	21.84	135.181	1.1772	123.241	28.20	338.43
61	23.54	133.327	1.0850	123.241	27.63	331.52
62	25.38	131.399	1.0000	123.241	27.06	324.76

NHCE2 Max Annual Normalized Benefit = 704.50

*Calculations based on 2008 Proposed Amendment restated to clarify the adjustment for benefits commencing before normal retirement age.

Appendix

**HCE1 Plan 50%QJSA
Payable All Ages***

(1)	(2)	(3)	(4)	(5)	(6)	(7)
			$1.06^{(1)-62}$	$(2) \cdot (3) \cdot (4)$		$\frac{(2)}{(6)}$
	AB	APR	Discount	PV	APR	50% QJSA
Age	EOY	Age 62 Plan Basis	Factor	Plan Basis	50% QJSA Plan Basis	Payable Plan Basis
58	740.00	139.280	0.7921	81,638.87	159.584	511.57
59	740.00	139.280	0.8396	86,537.20	157.221	550.42
60	740.00	139.280	0.8900	91,729.43	154.774	592.67
61	740.00	139.280	0.9434	97,233.20	152.242	638.67
62	740.00	139.280	1.0000	103,067.20	149.633	688.80

**HCE1 Normalized Benefit
Applicable All Ages***

(1)	(2)	(3)	(4)	(5)	(6)	(7)
			$1.085^{62-(1)}$		$\frac{(2) \cdot (3) \cdot (4)}{(5)}$	$12 \cdot (6)$
	50% QJSA	APR	Accumulation	Life APR	Normalized	Normalized
Age	Payable	Age 62	Factor	Age 62	Monthly	Annual
	Plan Basis	Test Basis	Test Basis	Test Basis	Benefit	Benefit
		7.5%		7.5%		
58	511.57	138.657	1.3859	123.241	797.65	9,571.81
59	550.42	136.958	1.2773	123.241	781.29	9,375.46
60	592.67	135.181	1.1772	123.241	765.30	9,183.57
61	638.67	133.327	1.0850	123.241	749.67	8,996.03
62	688.80	131.399	1.0000	123.241	734.39	8,812.70

HCE1 Max Annual Normalized Benefit = 9,571.81

*Calculations based on 2008 Proposed Amendment related to clarify the adjustment for benefits commencing before normal retirement age.

Appendix

**NHCE1 Plan 50%QJSA
Payable All Ages***

(1)	(2)	(3)	(4)	(5)	(6)	(7)
			$1.06^{(1)-82}$	$(2) \times (3) \times (4)$		$\frac{(5)}{(6)}$
		APR			APR	50% QJSA
Age	AB EOY	Age 62 Plan Basis	Discount Factor	PV Plan Basis	50% QJSA Plan Basis	Payable Plan Basis
49	135.19	139.280	0.4688	8,827.89	176.992	49.88
50	135.19	139.280	0.4970	9,357.57	175.393	53.35
51	135.19	139.280	0.5268	9,919.02	173.714	57.10
52	135.19	139.280	0.5584	10,514.16	171.954	61.15
53	135.19	139.280	0.5919	11,145.01	170.111	65.52
54	135.19	139.280	0.6274	11,813.71	168.182	70.24
55	135.19	139.280	0.6651	12,522.53	166.165	75.36
56	135.19	139.280	0.7050	13,273.89	164.058	80.91
57	135.19	139.280	0.7473	14,070.32	161.863	86.93
58	135.19	139.280	0.7921	14,914.54	159.584	93.46
59	135.19	139.280	0.8396	15,809.41	157.221	100.56
60	135.19	139.280	0.8900	16,757.98	154.774	108.27
61	135.19	139.280	0.9434	17,763.45	152.242	116.68
62	135.19	139.280	1.0000	18,829.26	149.633	125.84

**NHCE1 Normalized Benefit
Applicable All Ages***

(1)	(2)	(3)	(4)	(5)	(6)	(7)
			$1.085^{82-(1)}$		$\frac{(2) \times (3) \times (4)}{(5)}$	$12 \times (6)$
	50% QJSA	APR		Life APR	Normalized	Normalized
Age	Payable	50% QJSA	Accumulation	Age 62	Monthly	Annual
	Plan Basis	Test Basis	Factor	Test Basis	Benefit	Benefit
		7.5%	Test Basis	7.5%		
49	49.88	150.606	2.8879	123.241	176.03	2,112.31
50	53.35	149.558	2.6617	123.241	172.33	2,067.96
51	57.10	148.446	2.4532	123.241	168.72	2,024.67
52	61.15	147.267	2.2610	123.241	165.20	1,982.39
53	65.52	146.019	2.0839	123.241	161.76	1,941.11
54	70.24	144.699	1.9206	123.241	158.40	1,900.79
55	75.36	143.303	1.7701	123.241	155.12	1,861.41
56	80.91	141.831	1.6315	123.241	151.91	1,822.95
57	86.93	140.282	1.5037	123.241	148.78	1,785.38
58	93.46	138.657	1.3859	123.241	145.72	1,748.67
59	100.56	136.958	1.2773	123.241	142.73	1,712.79
60	108.27	135.181	1.1772	123.241	139.81	1,677.74
61	116.68	133.327	1.0850	123.241	136.96	1,643.48
62	125.84	131.399	1.0000	123.241	134.17	1,609.99

NHCE1 Max Annual Normalized Benefit = 2,112.31

*Calculations based on 2006 Proposed Amendment restated to clarify the adjustment for benefits commencing before normal retirement age.