

ROTH INDIVIDUAL RETIREMENT ARRANGEMENTS (Roth IRAs)

List of Required Modifications and Information Package (LRMs)
(For use with prototype Roth IRAs intending to satisfy the requirements of Code § 408A and § 408(a) or (b).)
(LRM #s 6 and 16 have been completely revised. Other changes from the 11-1998 package are underlined.)

This information package contains samples of provisions that have been found to satisfy certain specific requirements of the Internal Revenue Code as amended through the Job Creation and Worker Assistance Act of 2002 (P.L. 107-147). Such language may or may not be acceptable in specific IRAs, depending on the context.

Part A, provisions 1-12, applies to Roth individual retirement accounts under Code §§ 408A and 408(a). Part B, provisions 13-21, applies to Roth individual retirement annuities under §§ 408A and 408(b).

PART A: ACCOUNTS - Roth trust or custodial accounts under Code §§ 408A, 408(a) and 408(h).

- (1) **Statement of Requirement:** The Roth IRA is organized and operated for the exclusive benefit of the individual, Code §§ 408A and 408(a). **Sample Language:**

The account is established for the exclusive benefit of the individual or his or her beneficiaries.

- (2) **Statement of Requirement:** Maximum permissible annual contribution and restrictions on kinds of contributions, Code §§ 219(b), 219(f)(1), 408(d)(3)(G), 408(p)(1)(B), 408(p)(2)(A)(iv), 408A(c), 408A(d)(6) and 408A(e) and Regulations §§ 1.219-1(c)(1) and 1.408A-3, -4 and -5. **Sample Language:**

(a) Maximum Permissible Amount. Except in the case of a qualified rollover contribution or a recharacterization (as defined in (f) below), no contribution will be accepted unless it is in cash and the total of such contributions to all the individual's Roth IRAs for a taxable year does not exceed the applicable amount (as defined in (b) below), or the individual's compensation (as defined in (h) below), if less, for that taxable year. The contribution described in the previous sentence that may not exceed the lesser of the applicable amount or the individual's compensation is referred to as a "regular contribution." A "qualified rollover contribution" is a rollover contribution that meets the requirements of § 408(d)(3) of the Internal Revenue Code, except the one-rollover-per-year rule of § 408(d)(3)(B) does not apply if the rollover contribution is from an IRA other than a Roth IRA (a "nonRoth IRA"). Contributions may be limited under (c) through (e) below.

(b) Applicable Amount. The applicable amount is determined under (i) or (ii) below:

(i) If the individual is under age 50, the applicable amount is \$3,000 for any taxable year beginning in 2002 through 2004, \$4,000 for any taxable year beginning in 2005 through 2007 and \$5,000 for any taxable year beginning in 2008 and years thereafter.

(ii) If the individual is 50 or older, the applicable amount is \$3,500 for any taxable year beginning in 2002 through 2004, \$4,500 for any taxable year beginning in 2005, \$5,000 for any taxable year beginning in 2006 through 2007 and \$6,000 for any taxable year beginning in 2008 and years thereafter.

After 2008, the limits in paragraph (b)(i) and (ii) above will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code § 219(b)(5)(C). Such adjustments will be in multiples of \$500.

(c) Regular Contribution Limit. If (i) and/or (ii) below apply, the maximum regular contribution that can be made to all the individual's Roth IRAs for a taxable year is the smaller amount determined under (i) or (ii).

(i) The maximum regular contribution is phased out ratably between certain levels of modified adjusted gross income

("modified AGI," defined in (g) below) in accordance with the following table:

Filing Status	Full Contribution	Phase-out Range	No Contribution
Modified AGI			
Single or Head of Household	\$95,000 or less	Between \$95,000 and \$110,000	\$110,000 or more
Joint Return or Qualifying Widow(er)	\$150,000 or less	Between \$150,000 and \$160,000	\$160,000 or more
Married-Separate Return	\$0	Between \$0 and \$10,000	\$10,000 or more

If the individual's modified AGI for a taxable year is in the phase-out range, the maximum regular contribution determined under this table for that taxable year is rounded up to the next multiple of \$10 and is not reduced below \$200.

(ii) If the individual makes regular contributions to both Roth and nonRoth IRAs for a taxable year, the maximum regular contribution that can be made to all the individual's Roth IRAs for that taxable year is reduced by the regular contributions made to the individual's nonRoth IRAs for the taxable year.

(d) Qualified Rollover Contribution Limit. A rollover from a nonRoth IRA cannot be made to this IRA if, for the year the amount is distributed from the nonRoth IRA, (i) the individual is married and files a separate return, (ii) the individual is not married and has modified AGI in excess of \$100,000 or (iii) the individual is married and together the individual and the individual's spouse have modified AGI in excess of \$100,000. For purposes of the preceding sentence, a husband and wife are not treated as married for a taxable year if they have lived apart at all times during that taxable year and file separate returns for the taxable year.

(e) SIMPLE IRA Limits. No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to § 408(p). Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is, an IRA used in conjunction with a SIMPLE IRA plan, prior to the

expiration of the 2-year period beginning on the date the individual first participated in that employer's SIMPLE IRA plan.

(f) Recharacterization. A regular contribution to a nonRoth IRA may be recharacterized pursuant to the rules in § 1.408A-5 of the regulations as a regular contribution to this IRA, subject to the limits in (c) above.

(g) Modified AGI. For purposes of (c) and (d) above, an individual's modified AGI for a taxable year is defined in § 408A(c)(3)(C)(i) and does not include any amount included in adjusted gross income as a result of a rollover from a nonRoth IRA (a "conversion").

(h) Compensation. For purposes of (a) above, compensation is defined as wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered (including, but not limited to commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and includes earned income, as defined in § 401(c)(2) (reduced by the deduction the self-employed individual takes for contributions made to a self-employed retirement plan). For purposes of this definition, § 401(c)(2) shall be applied as if the term trade or business for purposes of § 1402 included service described in subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income. Compensation also does not include any amount received as a pension or annuity or as deferred compensation. The term "compensation" shall include any amount includible in the individual's gross income under § 71 with respect to a divorce or separation instrument described in subparagraph (A) of § 71(b)(2). In the case of a married individual filing a joint return, the greater compensation of his or her spouse is treated as his or her own compensation, but only to the extent that such spouse's compensation is not being used for purposes of the spouse making a contribution to a Roth IRA or a deductible contribution to a nonRoth IRA.

(3) Statement of Requirement: An investment in collectibles will be treated as a distribution, Code § 408(m). Sample Language:

If the trust acquires collectibles within the meaning of Code § 408(m) after December 31, 1981, trust assets will be treated as a distribution in an amount equal to the cost of such collectibles.

(Note to reviewer: This provision is not required if the arrangement precludes any investments that could be construed as collectibles. Code § 408(m) (3) provides an exception to this rule for certain coins and precious metals.)

(4) Statement of Requirement: Prohibition against investment in life insurance, Code § 408(a) (3). Sample Language:

No part of the trust funds will be invested in life insurance contracts.

(5) Statement of Requirement: Distributions before death are not required, Code § 408A(c) (5). Sample Language:

No amount is required to be distributed prior to the death of the individual for whose benefit the account was originally established.

(6) Statement of Requirement: Distribution upon death, Code §§ 408(a) (6) and 408A(c) (5) and Regulations §§ 1.408-8 and 1.408A-6. Sample Language:

(a) Notwithstanding any provision of this IRA to the contrary, the distribution of the individual's interest in the account shall be made in accordance with the requirements of Code § 408(a) (6), as modified by § 408A(c) (5), and the regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are made from an annuity contract purchased from an insurance company, distributions thereunder must satisfy the requirements of § 1.401(a) (9)-6T of the Temporary Income Tax Regulations (taking into account Code § 408A(c) (5)), rather than the distribution rules in paragraphs (b), (c) and (d) below.

(b) Upon the death of the individual, his or her entire interest will be distributed at least as rapidly as follows:

(i) If the designated beneficiary is someone other than the individual's surviving spouse, the entire interest will be

distributed, starting by the end of the calendar year following the calendar year of the individual's death, over the remaining life expectancy of the designated beneficiary, with such life expectancy determined using the age of the beneficiary as of his or her birthday in the year following the year of the individual's death, or, if elected, in accordance with paragraph (b)(iii) below.

(ii) If the individual's sole designated beneficiary is the individual's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the individual's death (or by the end of the calendar year in which the individual would have attained age 70½, if later), over such spouse's life, or, if elected, in accordance with paragraph (b)(iii) below. If the surviving spouse dies before distributions are required to begin, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's designated beneficiary's remaining life expectancy determined using such beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph (b)(iii) below. If the surviving spouse dies after distributions are required to begin, any remaining interest will be distributed over the spouse's remaining life expectancy determined using the spouse's age as of his or her birthday in the year of the spouse's death.

(iii) If there is no designated beneficiary, or if applicable by operation of paragraph (b)(i) or (b)(ii) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the individual's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph (b)(ii) above).

(iv) The amount to be distributed each year under paragraph (b)(i) or (ii) is the quotient obtained by dividing the value of the IRA as of the end of the preceding year by the remaining life expectancy specified in such paragraph. Life expectancy is determined using the Single Life Table in Q&A-1 of § 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole designated beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In

all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the beneficiary's age in the year specified in paragraph (b) (i) or (ii) and reduced by 1 for each subsequent year.

(c) The "value" of the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of § 1.408-8 of the Income Tax Regulations.

(d) If the sole designated beneficiary is the individual's surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a beneficiary.

(7) Statement of Requirement: Individual's interest must be nonforfeitable, Code § 408(a)(4). Sample Language:

The interest of an individual in the balance in his or her account is nonforfeitable at all times.

(8) Statement of Requirement: Prohibition against commingling of assets, Code § 408(a)(5). Sample Language:

The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(9) Statement of Requirement: Separate accounting for the interest of each individual under a Roth IRA established by an employer or employee association, Regulations §§ 1.408-2(c)(3) and 1.408A-2. Sample Language:

Separate records will be maintained for the interest of each individual.

(Note to reviewer: The above provision is required only in Roth IRAs that are sponsored by the employer or employee association.)

(10) Statement of Requirement: Annual reports by trustees, Code §§ 408(i) and 408A(d)(3)(D) and Regulations §§ 1.408-5 and 1.408-8. Sample Language:

The trustee of a Roth individual retirement account shall furnish annual calendar-year reports concerning the status of the account and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.

(11) Statement of Requirement: Substitution of non-bank trustee or custodian, Regulations § 1.408-2(e)(6)(v). Sample Language:

The non-bank trustee or custodian shall substitute another trustee or custodian if the non-bank trustee or custodian receives notice from the Commissioner of Internal Revenue that such substitution is required because it has failed to comply with the requirements of § 1.408-2(e) of the regulations.

(Note to reviewer: This provision is required only in IRA accounts that are sponsored by non-bank trustees or custodians.)

(12) [Reserved]

PART B. ANNUITIES - Roth annuities under Code §§ 408A and 408(b).

(13) Statement of Requirement: The Roth IRA is organized and operated for the exclusive benefit of the individual, Code §§ 408A and 408(b). Sample Language:

The contract is established for the exclusive benefit of the individual or his or her beneficiaries.

(14) Statement of Requirement: Maximum permissible annual contribution and restrictions on kinds of contributions, Code §§ 219(b), 219(f)(1), 408(d)(3)(G), 408(p)(1)(B), 408(p)(2)(A)(iv), 408A(c), 408A(d)(6) and 408A(e) and Regulations §§ 1.219-1(c)(1) and 1.408A-3, -4 and -5. Sample Language:

(a) Maximum Permissible Amount. Except in the case of a qualified rollover contribution or a recharacterization (as defined in (f) below), no contribution will be accepted unless it is in cash and the total of such contributions to all the individual's Roth IRAs for a taxable year does not exceed the applicable amount (as defined in (b) below), or the individual's compensation (as defined in (h) below), if less, for that taxable year. The contribution described in the previous sentence that may not exceed the lesser of the applicable amount or the individual's compensation is referred to as a "regular contribution." A "qualified rollover contribution" is a rollover contribution that meets the requirements of § 408(d)(3) of the Internal Revenue Code, except the one-rollover-per-year rule of § 408(d)(3)(B) does not apply if the rollover contribution is from an IRA other than a Roth IRA (a "nonRoth IRA"). Contributions may be limited under (c) through (e) below.

(b) Applicable Amount. The applicable amount is determined under (i) or (ii) below:

(i) If the individual is under age 50, the applicable amount is \$3,000 for any taxable year beginning in 2002 through 2004, \$4,000 for any taxable year beginning in 2005 through 2007 and \$5,000 for any taxable year beginning in 2008 and years thereafter.

(ii) If the individual is 50 or older, the applicable amount is \$3,500 for any taxable year beginning in 2002 through 2004, \$4,500 for any taxable year beginning in 2005, \$5,000 for any taxable year beginning in 2006 through 2007 and \$6,000 for any taxable year beginning in 2008 and years thereafter.

After 2008, the limits in paragraph (b) (i) and (ii) above will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code § 219(b)(5)(C). Such adjustments will be in multiples of \$500.

(c) Regular Contribution Limit. If (i) and/or (ii) below apply, the maximum regular contribution that can be made to all the individual's Roth IRAs for a taxable year is the smaller amount determined under (i) or (ii).

(i) The maximum regular contribution is phased out ratably between certain levels of modified adjusted gross income ("modified AGI," defined in (g) below) in accordance with the following table:

Filing Status	Full Contribution	Phase-out Range	No Contribution
Modified AGI			
Single or Head of Household	\$95,000 or less	Between \$95,000 and \$110,000	\$110,000 or more
Joint Return or Qualifying Widow(er)	\$150,000 or less	Between \$150,000 and \$160,000	\$160,000 or more
Married- Separate Return	\$0	Between \$0 and \$10,000	\$10,000 or more

If the individual's modified AGI for a taxable year is in the phase-out range, the maximum regular contribution determined under this table for that taxable year is rounded up to the next multiple of \$10 and is not reduced below \$200.

(ii) If the individual makes regular contributions to both Roth and nonRoth IRAs for a taxable year, the maximum regular contribution that can be made to all the individual's Roth IRAs for that taxable year is reduced by the regular contributions made to the individual's nonRoth IRAs for the taxable year.

(d) Qualified Rollover Contribution Limit. A rollover from a nonRoth IRA cannot be made to this IRA if, for the year the amount is distributed from the nonRoth IRA, (i) the individual is married and files a separate return, (ii) the individual is not married and has modified AGI in excess of \$100,000 or (iii) the individual is married and together the individual and the individual's spouse have modified AGI in excess of \$100,000. For purposes of the preceding sentence, a husband and wife are not treated as married for a taxable year if they have lived apart at all times during that taxable year and file separate returns for the taxable year.

(e) SIMPLE IRA Limits. No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to § 408(p). Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is, an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the

individual first participated in that employer's SIMPLE IRA plan.

(f) Recharacterization. A regular contribution to a nonRoth IRA may be recharacterized pursuant to the rules in § 1.408A-5 of the regulations as a regular contribution to this IRA, subject to the limits in (c) above.

(g) Modified AGI. For purposes of (c) and (d) above, an individual's modified AGI for a taxable year is defined in § 408A(c)(3)(C)(i) and does not include any amount included in adjusted gross income as a result of a rollover from a nonRoth IRA (a "conversion").

(h) Compensation. For purposes of (a) above, compensation is defined as wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered (including, but not limited to commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and includes earned income, as defined in § 401(c)(2) (reduced by the deduction the self-employed individual takes for contributions made to a self-employed retirement plan). For purposes of this definition, § 401(c)(2) shall be applied as if the term trade or business for purposes of § 1402 included service described in subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income. Compensation also does not include any amount received as a pension or annuity or as deferred compensation. The term "compensation" shall include any amount includible in the individual's gross income under § 71 with respect to a divorce or separation instrument described in subparagraph (A) of § 71(b)(2). In the case of a married individual filing a joint return, the greater compensation of his or her spouse is treated as his or her own compensation, but only to the extent that such spouse's compensation is not being used for purposes of the spouse making a contribution to a Roth IRA or a deductible contribution to a nonRoth IRA.

(15) Statement of Requirement: Distributions before death are not required, Code § 408A(c)(5). Sample Language:

No amount is required to be distributed prior to the death of the individual for whose benefit the contract was originally established.

(16) Statement of Requirement: Distribution upon death, Code §§ 408(a)(6) and 408A(c)(5) and Regulations §§ 1.408-8 and 1.408A-6. Sample Language:

(a) Notwithstanding any provision of this IRA to the contrary, the distribution of the individual's interest in the IRA shall be made in accordance with the requirements of Code § 408(b)(3), as modified by § 408A(c)(5), and the regulations thereunder, the provisions of which are herein incorporated by reference. If distributions are not made in the form of an annuity on an irrevocable basis (except for acceleration), then distribution of the interest in the IRA (as determined under section ---) must satisfy the requirements of Code § 408(a)(6), as modified by § 408A(c)(5), and the regulations thereunder, rather than the distribution rules in paragraphs (b), (c), (d) and (e) below.

(Note to reviewer: The blank should contain a reference that corresponds to LRM #16(c).)

(b) Upon the death of the individual, his or her entire interest will be distributed at least as rapidly as follows:

(i) If the designated beneficiary is someone other than the individual's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the individual's death, over the remaining life expectancy of the designated beneficiary, with such life expectancy determined using the age of the beneficiary as of his or her birthday in the year following the year of the individual's death, or, if elected, in accordance with paragraph (b)(iii) below.

(ii) If the individual's sole designated beneficiary is the individual's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the individual's death (or by the end of the calendar year in which the individual would have attained age 70½, if later), over such spouse's life, or, if elected, in accordance with paragraph (b)(iii) below. If the surviving spouse dies before required distributions commence to him or her, the remaining interest will be distributed, starting by the end of the

calendar year following the calendar year of the spouse's death, over the spouse's designated beneficiary's remaining life expectancy determined using such beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph (b)(iii) below. If the surviving spouse dies after required distributions commence to him or her, any remaining interest will continue to be distributed under the contract option chosen.

(iii) If there is no designated beneficiary, or if applicable by operation of paragraph (b)(i) or (b)(ii) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the individual's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph (b)(ii) above).

(iv) Life expectancy is determined using the Single Life Table in Q&A-1 of § 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole designated beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the beneficiary's age in the year specified in paragraph (b)(i) or (ii) and reduced by 1 for each subsequent year.

(c) The "interest" in the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of § 1.408-8 of the Income Tax Regulations and the actuarial value of any other benefits provided under the IRA, such as guaranteed death benefits.

(d) For purposes of paragraph (b)(ii) above, required distributions are considered to commence on the date distributions are required to begin to the surviving spouse under such paragraph. However, if distributions start prior to the applicable date in the preceding sentence, on an irrevocable basis (except for acceleration) under an annuity contract meeting the requirements of § 1.401(a)(9)-6T of the Temporary Income Tax Regulations, then required distributions are considered to commence on the annuity starting date.

(e) If the sole designated beneficiary is the individual's surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a beneficiary.

(17) Statement of Requirement: Participant's interest must be nonforfeitable, Code § 408(b)(4). Sample Language:

The interest of the individual is nonforfeitable.

(18) Statement of Requirement: Contract is nontransferable by the owner, Code § 408(b)(1). Sample Language:

This contract is nontransferable by the individual.

(19) Statement of Requirement: Application of refund premiums, Code § 408(b)(2). Sample Language:

Any refund of premiums (other than those attributable to excess contributions) will be applied, before the close of the calendar year following the year of the refund, toward the payment of future premiums or the purchase of additional benefits.

(Note to reviewer: Language that meets the requirements of this provision must be included in annuities that provide for participation in dividends.)

(20) Statement of Requirement: Contract may not require fixed premiums; however, the sample language below does not violate this requirement, Code § 408(b)(2) and Proposed Regulations § 1.408-3(f). Sample Language:

If the premium payments are interrupted, the contract will be reinstated at any date prior to maturity upon payment of a premium to the insurance company, and the minimum premium amount for reinstatement shall be --- (not to exceed \$50), however, the insurance company may at its option either accept additional future payments or terminate the contract by payment in cash of the then present value of the paid up benefit if no premiums have been received for two full consecutive policy years and the paid up annuity benefit at maturity would be less than \$20 per month.

(21) Statement of Requirement: Annual reports by issuers, §§ 408(i) and 408A(d)(3)(D) and Regulations §§ 1.408-5 and 1.408-8. Sample Language:

The issuer of a Roth individual retirement annuity shall furnish annual calendar year reports concerning the status of the annuity and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.