IRALERT

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TO: IRA Group Distribution

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RE: IRA LRMs

Today, the IRS issued updated traditional IRA LRMs, dated 6-2007. The changes from the 3-2002 versions are to incorporate the qualified reservist exception of 72(t)(2)(G) from the 10% tax, add the rule under section 219(c)(5)(C) permitting make-up contributions by employees that participated in ESOPs of insolvent companies, and add a reference to the final 401(a)(9) regulations. We do not yet know when new prototype filings will be required, but are making inquiries.

Please feel free to direct questions to any of the Groom principals listed above or to IRA@groom.com.

(6-2007)

TRADITIONAL INDIVIDUAL RETIREMENT ARRANGEMENTS (Traditional IRAs)

List of Required Modifications and Information Package (LRMs)
(For use with prototype traditional IRAs intending to satisfy the requirements of Code § 408(a) or (b).)
Changes from the 3-2002 package are <u>underlined</u>.

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 Tax Relief and Health Care Act of 2006 (P.L. 109-432). Such language may or may not be acceptable in specific IRAs, depending on the context.

We have prepared this package to assist sponsors who are drafting IRAs. To expedite the review process, sponsors are encouraged to use the language contained in this package.

Part A, provisions 1-12, applies to individual retirement accounts under Code § 408(a). Part B, provisions 13-22, applies to individual retirement annuities under § 408(b).

PART A: ACCOUNTS - Trust or custodial accounts under Code § 408(a).

(1) Statement of Requirement: The IRA is organized and operated for the exclusive benefit of the individual, Code § 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 §§ 72(t)(2)(G), 219(b), 408(a)(1), 408(d)(3)(G), 408(p)(1)(B) and 408(p)(2)(A)(iv). Sample Language:

(a) Except in the case of a rollover contribution (as permitted by Internal Revenue Code §§ 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3) and 457(e)(16)) or a contribution made in accordance with the terms of a Simplified Employee Pension (SEP) as described in § 408(k), no contributions will be accepted unless they are in cash, and the total of such contributions shall not exceed:

$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.

After 2008, the limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code § 219(b)(5)(D). Such adjustments will be in multiples of $500.

(b) In the case of an individual who is 50 or older, the annual cash contribution limit is increased by:

$500 for any taxable year beginning in 2002 through 2005; and
$1,000 for any taxable year beginning in 2006 and years thereafter.

(c) In addition to the amounts described in paragraphs (a) and (b) above, an individual may make a repayment of a qualified reservist distribution described in Code § 72(t)(2)(G) during the 2-year period beginning on the day after the end of the active duty period or by August 17, 2008, if later.

(d) In addition to the amounts described in paragraphs (a) and (c) above, an individual who was a participant in a § 401(k) plan of a certain employer in bankruptcy described in Code § 219(c)(5)(C) may contribute up to $3,000 for taxable years beginning after 2006 and before 2010 only. An individual who makes contributions under this paragraph (d) may not also make contributions under paragraph (b).

(e) 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.

(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 must commence no later than 70½, Code § 408(a)(6) and Regs. § 1.408-8. 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) 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 Q&A-4 of § 1.401(a)(9)-6 of the Income Tax Regulations, rather than paragraphs (b), (c) and (d) below and section --- . The required minimum distributions calculated for this IRA may be withdrawn from another IRA of the individual in accordance with Q&A-9 of § 1.408-8 of the Income Tax Regulations.

(Note to reviewer: The blank should contain a reference that corresponds to LRM #6.)

(b) The entire value of the account of the individual for whose benefit the account is maintained will commence to be distributed no later than the first day of April following the calendar year in which such individual attains age 70½ (the "required beginning date") over the life of such individual or the lives of such individual and his or her designated beneficiary.

(c) The amount to be distributed each year, beginning with the calendar year in which the individual attains age 70½ and continuing through the year of death, shall not be less than the quotient obtained by dividing the value of the IRA (as determined under section ---) as of the end of the preceding year by the distribution period in the Uniform Lifetime Table in Q&A-2 of § 1.401(a)(9)-9 of the Income Tax Regulations, using the individual's age as of his or her birthday in the year. However, if the individual's sole designated beneficiary is his or her surviving spouse and such spouse is more than 10 years younger than the individual, then the distribution period is determined under the Joint and Last Survivor Table in Q&A-3 of § 1.401(a)(9)-9, using the ages as of the individual's and spouse's birthdays in the year.

(Note to reviewer: The blank should contain a reference that corresponds to LRM #6(c).)

(d) The required minimum distribution for the year the individual attains age 70½ can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.

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

(a) Death On or After Required Beginning Date. If the individual dies on or after the required beginning date, the remaining portion of his or her interest will be distributed at least as rapidly as follows:

(1) If the designated beneficiary is someone other than the individual's surviving spouse, the remaining interest will be distributed over the remaining life expectancy of the designated beneficiary, with such life expectancy determined using the beneficiary's age as of his or her birthday in the year following the year of the individual's death, or over the period described in paragraph (a)(3) below if longer.

(2) If the individual's sole designated beneficiary is the individual's surviving spouse, the remaining interest will be distributed over such spouse's life or over the period described in paragraph (a)(3) below if longer. Any interest remaining after such spouse's death will be distributed over such 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, or, if the distributions are being made over the period described in paragraph (a)(3) below, over such period.

(3) If there is no designated beneficiary, or if applicable by operation of paragraph (a)(1) or (a)(2) above, the remaining interest will be distributed over the individual's remaining life expectancy determined in the year of the individual's death.

(4) The amount to be distributed each year under paragraph (a)(1), (2) or (3), beginning with the calendar year following the calendar year of the individual's death, 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 or individual's age in the year specified in paragraph (a)(1), (2) or (3) and reduced by 1 for each subsequent year.

(b) Death Before Required Beginning Date. If the individual dies before the required beginning date, his or her entire interest will be distributed at least as rapidly as follows:

(1) 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)(3) below.

(2) 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)(3) 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)(3) 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.

(3) If there is no designated beneficiary, or if applicable by operation of paragraph (b)(1) or (b)(2) 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)(2) above).

(4) The amount to be distributed each year under paragraph (b)(1) or (2) 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)(1) or (2) 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 an IRA established by an employer or employee association, Regs. § 1.408-2(c)(3). Sample Language:

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

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

(10) Statement of Requirement: Annual reports by trustees, Regs. §§ 1.408-5 and 1.408-8. Sample Language:

The trustee of an 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, Regs. § 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 Income Tax Regulations.

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

(12) Statement of Requirement: Includible compensation, Code § 219(f)(1) and Regs. § 1.219-1(c)(1). Sample Language:

Compensation means 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 Code § 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).

(Note to reviewer: Code § 219(f)(1) (as reproduced above) provides the definition of compensation for use in computing deductible limits for individual retirement arrangements. Compliance with § 219(f)(1) is not required for plan qualification or for receipt of a favorable opinion letter.)

PART B. ANNUITIES - Annuities under Code § 408(b).

(13) Statement of Requirements: The IRA is organized and operated for the exclusive benefit of the individual, Code § 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 §§ 72(t)(2)(G), 219(b), 408(b)(2), 408(d)(3)(G), 408(p)(1)(B) and 408(p)(2)(A)(iv). Sample Language:

(a) Except in the case of a rollover contribution (as permitted by Internal Revenue Code §§ 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3) and 457(e)(16)) or a contribution made in accordance with the terms of a Simplified Employee Pension (SEP) as described in § 408(k), no contributions will be accepted unless they are in cash, and the total of such contributions shall not exceed:

$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.

After 2008, the limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code § 219(b)(5)(D). Such adjustments will be in multiples of $500.

(b) In the case of an individual who is 50 or older, the annual cash contribution limit is increased by:

$500 for any taxable year beginning in 2002 through 2005; and
$1,000 for any taxable year beginning in 2006 and years thereafter.

(c) In addition to the amounts described in paragraphs (a) and (b) above, an individual may make a repayment of a qualified reservist distribution described in Code § 72(t)(2)(G) during the 2-year period beginning on the day after the end of the active duty period or by August 17, 2008, if later.

(d) In addition to the amounts described in paragraphs (a) and (c) above, an individual who was a participant in a § 401(k) plan of a certain employer in bankruptcy described in Code § 219(c)(5)(C) may contribute up to $3,000 for taxable years beginning after 2006 and before 2010 only. An individual who makes contributions under this paragraph (d) may not also make contributions under paragraph (b).

(e) 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.

(15) Statement of Requirement: Distributions before death must commence no later than 70½, Code § 408(b)(3) and Regs. § 1.408-8. 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) 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) and the regulations thereunder, rather than paragraphs (b), (c) and (d) below and section --- .

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

(b) The entire interest of the individual for whose benefit the contract is maintained will commence to be distributed no later than the first day of April following the calendar year in which such individual attains age 70½ (the "required beginning date") over (a) the life of such individual or the lives of such individual and his or her designated beneficiary or (b) a period certain not extending beyond the life expectancy of such individual or the joint and last survivor expectancy of such individual and his or her designated beneficiary. Payments must be made in periodic payments at intervals of no longer than 1 year and must be either nonincreasing or they may increase only as provided in Q&As-1 and -4 of § 1.401(a)(9)-6 of the Income Tax Regulations. In addition, any distribution must satisfy the incidental benefit requirements specified in Q&A-2 of § 1.401(a)(9)-6.

(c) The distribution periods described in paragraph (b) above cannot exceed the periods specified in § 1.401(a)(9)-6 of the Income Tax Regulations.

(d) The first required payment can be made as late as April 1 of the year following the year the individual attains age 70½ and must be the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval.

(16) Statement of Requirement: Distribution upon death, Code § 408(b)(3) and Regs. § 1.408-8. Sample Language:

(a) Death On or After Required Distributions Commence. If the individual dies on or after required distributions commence, the remaining portion of his or her interest will continue to be distributed under the contract option chosen.

(b) Death Before Required Distributions Commence. If the individual dies before required distributions commence, his or her entire interest will be distributed at least as rapidly as follows:

(1) 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)(3) below.

(2) 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)(3) 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)(3) 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.

(3) If there is no designated beneficiary, or if applicable by operation of paragraph (b)(1) or (b)(2) 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)(2) above).

(4) 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)(1) or (2) 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 paragraphs (a) and (b) above, required distributions are considered to commence on the individual's required beginning date or, if applicable, on the date distributions are required to begin to the surviving spouse under paragraph (b)(2) above. 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)-6 of the 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 regulation § 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 Company, and the minimum premium amount for reinstatement shall be --- (not to exceed $50), however, the 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 trustees or issuers, Regs. §§ 1.408-5 and 1.408-8. Sample Language:

The issuer of an 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.

(22) Statement of Requirement: Includible compensation, Code § 219(f)(1) and Regs. § 1.219-1(c)(1). Sample Language:

Compensation means 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 Code § 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).

(Note to Reviewer: Code § 219(f)(1) (as reproduced above) provides the definition of compensation for use in computing deductible limits for individual retirement arrangements. Compliance with § 219(f)(1) is not required for qualification or for receipt of a favorable opinion letter.)