

**STATE BOARD OF EDUCATION**  
**December 30, 2003**  
**OPTIONAL RETIREMENT PROGRAM (ORP)**

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<b>DESCRIPTION</b>	<b>ACTION</b>	<b>PAGE</b>
<b>Adopt amendments to the Idaho Optional Retirement Plan (ORP) 401a as required by Federal law.</b>	<b>MOTION TO APPROVE</b>	<b>1</b>
<b>Adopt by resolution Amendment I.</b>	<b>MOTION TO APPROVE</b>	<b>2</b>
<b>PLAN DOCUMENT (amended)</b>		
Has “strike & add” language at Section 7.6 – describes new, more generous tax laws regarding rollover.		<b>3-27</b>
Adds “Amendment 1” to end of Plan Document to conform with Federal IRS tax law known as EGTRRA.		
<b>Explanation of ORP additional language and amendment.</b>		
Comments provided by outside counsel hired by Office of State Board of Education to review.		<b>28-29</b>
<b>Idaho Code 33-107B</b>		
Authorizes the State Board of Education to establish and operate an optional retirement program.		<b>30-33</b>

**STATE BOARD OF EDUCATION**  
**December 30, 2003**

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**SUBJECT**

Adopt amendments to the Idaho Optional Retirement Plan (ORP) as required by Federal law.

**BACKGROUND**

As Federal tax laws change, the State Board of Education is required to amend the Optional Retirement Plan to remain in conformance. Specifically, this amendment deals with minimum distribution requirements. The 401 (a) plan is the employee/employer matching retirement program offered to eligible employees of the State Board of Education.

**DISCUSSION**

The attached plan document at Section 7.6 (pages 16-19), will replace existing language in the relevant ORP document administered by the Office of the State Board of Education on behalf of ORP participants at Idaho public postsecondary institutions and in the Office of the State Board of Education. The entire document is included for your review.

**IMPACT**

Adoption of this amendment to the Optional Retirement Plan will cause the Idaho ORP to be in conformance with Federal law.

**STAFF COMMENTS**

Staff has discussed this amendment with external legal counsel, who has reviewed the language and recommends adoption by Resolution.

**BOARD ACTION**

A motion to adopt the following resolution:

RESOLVED that, effective as of December 30, 2003, the Defined Contribution Plan is hereby amended in the form attached hereto and identified as Section 7.6; and RESOLVED that, the officers of the IDAHO STATE BOARD OF EDUCATION be, and each of them hereby is, authorized and directed to take such further action as may be necessary or advisable to effectuate the foregoing resolution, including, but not limited to, providing notification to certain interested parties of such amendments.

Moved by\_\_\_\_\_ Seconded by\_\_\_\_\_ Carried Yes\_\_\_\_\_ No\_\_\_\_\_

**STATE BOARD OF EDUCATION**  
**December 30, 2003**

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**SUBJECT**

Adopt amendments to the Idaho Optional Retirement Plan (ORP) as required by Federal law.

**BACKGROUND**

As Federal tax laws change, the State Board of Education is required to amend the Optional Retirement Plan to remain in conformance with tax laws. The relevant Federal statute is the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). The proposed action clarifies that Board action was properly taken in 2002 to amend the ORP to comply with EGTRRA.

**DISCUSSION**

The attached "Amendment 1" (pages 25-27) will be added to the existing ORP document, which is administered by the Office of the State Board of Education on behalf of ORP participants at Idaho public postsecondary institutions, and at the Office of the State Board of Education. The entire document is included for your review.

**IMPACT**

Adoption of this amendment to the Optional Retirement Plan will allow the Idaho ORP to be in conformance with Federal law.

**STAFF COMMENTS**

Adopting this amendment clarifies that the Idaho ORP is in conformance with IRS regulations

**BOARD ACTION**

A motion to adopt Amendment 1 to the Idaho Optional Retirement Plan. The proposed amendment is attached.

Moved by\_\_\_\_\_ Seconded by\_\_\_\_\_ Carried Yes\_\_\_\_\_ No\_\_\_\_\_

**Idaho State Board of Education  
Optional  
Retirement Plan**

**A Defined Contribution Retirement Plan  
Restated November 2001  
Restated to include amendments through 2003**

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## Article I: Definitions

- 1.1 **Accumulation Account** means the separate account(s) established for each Participant. The current value of a Participant's Accumulation Account includes all Plan Contributions, less expense charges, and reflects credited investment experience.
- 1.2 **Annual Additions** means the sum of the following amounts credited to a Participant's Accumulation Account during the Limitation Year: (a) Plan Contributions; (b) forfeitures, if any; and (c) individual medical account amounts described in section 415(l)(2) and 419A(d)(2) of the Code, if any.
- 1.3 **Beneficiary (ies)** means the individual, institution, trustee, or estate designated by the Participant to receive the Participant's benefits at his or her death.
- 1.4 **Board** means the Idaho State Board of Education and Board of Regents of the University of Idaho as defined in Idaho Code §33-101.
- 1.5 **Code** means the Internal Revenue Code of 1986, as amended.
- 1.6 **Compensation** means the amount reported as wages on the Participant's Form W-2, excluding compensation not currently included because of the application of Code Sections 125 or 403(b).

In addition to other applicable limitations stated in the plan, and notwithstanding any other provision of the Plan to the contrary, for Plan years beginning on or after January 1, 1996, the annual compensation of each employee taken into account under the Plan shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is \$150,000, as adjusted by the Commissioner of the Internal Revenue Service for increases in the cost of living in accordance with section 401(a)(17)(B) of the Internal Revenue Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

For Plan years beginning on or after January 1, 1996, any reference in this Plan to the limitation under section 401(a)(17) of the Code shall mean the OBRA '93 annual compensation limit stated in this provision.

If compensation for any prior determination period is taken into account in determining an employee's benefits accruing in the current Plan Year, the compensation for that prior determination period is subject to the OBRA '93 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first Plan Year beginning on or after January 1, 1996, the OBRA '93 annual compensation limit is \$150,000.

Notwithstanding the above, employees who became Participants in the Plan before the first day of the Plan Year beginning on or after January 1, 1996, will not be subject to the annual compensation limit.

- 1.7 **Date of Employment or Reemployment** means the effective date of the appointment for a faculty member. For all other employees, the Date of Employment or Reemployment is the first day upon which an employee completes an Hour of Service for performance of duties during the employee's most recent period of service with the Institution.

1.8 **Eligible Employee** means faculty or nonclassified staff of the Office of the Idaho State Board of Education, Boise State University, Idaho State University, University of Idaho, or Lewis-Clark State College initially appointed or hired between July 1, 1990 and June 30, 1993 who work on a 50 full-time equivalency basis or more and similar employees hired before July 1, 1990 who elected to participate in the Plan during the 90 day period from July 1, 1990 to September 28, 1990; and teaching staff and officers of the Office of the Idaho State Board of Education, Boise State University, Idaho State University, University of Idaho, or Lewis-Clark State College initially appointed or hired on or after July 1, 1993 who work on a .50 full-time equivalency basis or more; and teaching staff and officers of the College of Southern Idaho, North Idaho College, or Eastern Idaho Technical College initially appointed or hired on or after July 1, 1997 who work on a .50 full-time equivalency basis or more and similar employees hired before July 1, 1997 who elected to participate in the Plan during the 150 day period from July 1, 1997 to November 28, 1997. However, “Eligible Employee” shall exclude:

- a. an Employee whose employment is expected to be less than five (5) months; and
- b. an Employee whose employment is incidental to his or her status as a student at the Institution; and
- c. an Employee who is vested in the Public Employee Retirement System of Idaho (PERSI) and who makes a one time irrevocable election to remain a member of that retirement system within 60 days of the date of initial hire or appointment.

The term Eligible Employee shall not include any leased employee deemed to be an employee of the Institution as provided in Code Section 414(n).

If an individual is classified as an independent contractor during any period of providing services to the Institution, such individual will be deemed to be in an ineligible class of employees for purposes of the Plan during such period, even if the individual is determined to be a common law employee during such period pursuant to a government audit or litigation. Notwithstanding the above, if the failure to cover such reclassified individual would prevent the Plan from satisfying the minimum coverage requirement under Code Section 410(b) for a Plan year, the minimum number of such individuals necessary for the plan to fulfill such minimum coverage requirements will be included as eligible employees for the plan year, with preference given to those reclassified individuals with the smallest amount of compensation.

No individual who is deemed to be an independent contractor, as determined by the Plan Administrator in its sole discretion, or individual performing services for the Employer pursuant to an agreement that provides that such individual shall not be eligible to participate in the retirement or other benefit plans of the Employer, shall be an Eligible Employee for purposes of this plan.

1.9 **Fund Sponsor** means an insurance, variable annuity or Investment Company that provides Funding Vehicles available to Participants under this Plan.

1.10 **Funding Vehicles** means the annuity contracts or custodial accounts that satisfy the requirements of Code Section 401(f) issued for funding accrued benefits under this Plan and specifically approved by the Institution for use under this Plan.

1.11 **Hours of Service means:**

- (a) Each hour for which an employee is paid, or entitled to payment, for the performance of duties for the Institution.
- (b) Each hour for which an employee is paid, or entitled to payment, on account of a period of time during which no duties are performed (regardless of whether employment has terminated) due to vacation, holiday, illness, incapacity (including disability), layoff, jury duty, military duty, leave of absence, or maternity or paternity leave (whether paid or unpaid). However, any period for which a payment is made or due under a plan maintained solely for the purpose of complying with Workers' Compensation or

unemployment compensation or disability insurance laws, or solely to reimburse the employee for medical or medically-related expenses is excluded. An employee is directly or indirectly paid, or entitled to payment by the Institution regardless of whether payment is made by or due from the Institution directly or made indirectly through a trust fund, insurer or other entity to which the Institution contributes or pays premium. No more than 501 Hours of Service will be credited under this paragraph. Hours of Service under this paragraph will be calculated and credited pursuant to Section 2530.200b-2 of the Department of Labor Regulations, incorporated herein by reference.

- (c) Each hour for which back pay, irrespective of mitigation of damages, is either awarded or agreed to by the Institution, without duplication of hours provided above, and subject to the 501-hour restriction for periods described in (b) above.

Hours of Service will be credited for employment with other members of an affiliated service group (under Code Section 414(m)), a controlled group of corporations (under Code Section 414(b)), or a group of trades or businesses under common control (under Code Section 414(c)) of which the Institution is a member, and any other entity required to be aggregated with the employer pursuant to Code Section 414(o) and the regulations thereunder. Hours of Service also will be credited for any person considered an employee for this Plan under Code Sections 414(n) or 414(o) and the regulations thereunder.

Hours of Service will be determined on the basis of actual hours that an employee is paid or entitled to payment.

- 1.12 ***Institution*** means the Board and employment units under its jurisdiction, namely:  
The Office of the Idaho State Board of Education  
Boise State University  
Idaho State University  
University of Idaho  
Lewis-Clark State College  
Eastern Idaho Technical College  
College of Southern Idaho  
North Idaho College
- 1.13 ***Institution Plan Contributions*** means contributions made by the Institution under this Plan.
- 1.14 ***Limitation Year*** means a calendar year.
- 1.15 ***Normal Retirement Age*** means age 65.
- 1.16 ***Participant*** means any Eligible Employee of the Institution participating in this Plan.
- 1.17 ***Participant Plan Contributions*** means contributions made by a Participant under this Plan. Participant Plan Contributions are designated as being picked-up by the Institution in lieu of contributions by the Participant, in accordance with Code Section 414(h)(2). The pick-up amounts cannot be received directly by the Participant and are required to be made.
- 1.18 ***Plan*** means the Idaho State Board of Education Optional Retirement Plan as set forth in this document, and pursuant to Idaho Code §33-107A and 33-107B.
- 1.19 ***Plan Contributions*** means the combination of Participant Plan Contributions and Institution Plan Contributions.
- 1.20 ***Plan Entry Date*** means the later of the Effective Date of the Plan or the Eligible Employee's Date of Employment or Reemployment.
- 1.21 ***Plan Year*** means January 1 through December 31.
- 1.22 ***Year of Service*** means a 12-month period (computation period) during which the Eligible Employee completes 1,000 or more Hours of Service.



## **Article II: Establishment of Plan**

2.1 ***Establishment of Plan.*** The Idaho State Legislature authorized the Board to establish the Plan as of July 1, 1990.

This Plan document sets forth the provisions of this Code Section 401(a) Plan. The Plan was restated as of November 1, 2001. Plan Contributions are invested, at the direction of each Participant, in one or more of the Funding Vehicles available to Participants under the Plan. Plan Contributions shall be held for the exclusive benefit of Participants.

Participant Plan Contributions are designated as being picked-up by the Institution in lieu of contributions by the Participant, in accordance with Code Section 414(h)(2).

It is intended that this Plan will not be subject to the requirements of ERISA under Department of Labor Regulation Section 2510.3-2(f).

### Article III: Eligibility for Participation

- 3.1 **Eligibility.** An Eligible Employee must, as a condition of employment begin participation in this Plan on the Plan Entry Date following employment at the Institution.
- 3.2 **Notification.** The Institution will notify an Eligible Employee when he or she has completed the requirements necessary to become a Participant. An Eligible Employee who complies with the requirements and becomes a Participant is entitled to the benefits and is bound by all the terms, provisions, and conditions of this Plan, including any amendments that, from time to time, may be adopted, and including the terms, provisions and conditions of any Funding Vehicle(s) to which Plan Contributions for the Participant have been applied.
- 3.3 **Enrollment in Plan.** To participate in this Plan, an Eligible Employee must complete the necessary enrollment form(s) and return them to the Institution. An employee who has been notified that he or she is eligible to participate but who fails to return the enrollment forms will be deemed to have waived all of his or her rights under the Plan except the right to enroll at a future date.
- 3.4 **Reemployment.** A former employee who is reemployed by the Institution will be eligible to participate upon meeting the requirements stated in the "Eligibility" section of Article III. A former employee who satisfied these requirements before termination of employment will be eligible to begin participation immediately after reemployment provided the former employee is an Eligible Employee.
- 3.5 **Termination of Participation.** A Participant will continue to be eligible for the Plan until one of the following conditions occur:
- he or she ceases to be an Eligible Employee;
  - the Plan is terminated.

Furthermore, if a Participant begins to receive retirement benefits from the Accumulation Account(s) arising from Plan Contributions under this Plan before termination of employment, he or she will cease to be eligible and no further Institution Plan Contributions will be made on his or her behalf.

#### Article IV: Plan Contributions

- 4.1 **Plan Contributions.** Plan Contributions will be made for Eligible Employees who have satisfied the requirements of Article III as follows:

Each Institution shall contribute an amount equal to seven and eighty-one hundredths percent (7.81%) of each Participant's Compensation, reduced by any amount necessary, if any, to provide contributions to a total disability program, but in no event less than five percent (5%) of each Participant's Compensation; and

Each Participant shall contribute an amount equal to six and ninety-seven hundredths percent (6.97%) of his or her Compensation.

Plan Contribution rates are defined in Idaho Code §33-107A and are subject to change as that section is amended.

Plan Contributions are considered to be credited to Participants no later than the last day of the Plan Year for which the Plan Contributions are made.

- 4.2 **When Contributions Are Made.** Plan Contributions will begin when the Institution has determined that the Participant has met or will meet the requirements of Article III. Any part of a year's Plan Contributions not contributed before this determination will be included in contributions made for that year after the determination. Plan Contributions will be forwarded to the Fund Sponsor(s) in accordance with the procedures established by the Institution. Institution Plan Contributions will be forwarded to the Fund Sponsor(s) at least annually. Participant Plan Contributions will be forwarded by the Institution to the Fund Sponsor(s) as soon as it is administratively feasible for the Institution to segregate contributions, but in any event, within the time required by law.
- 4.3 **Allocation of Contributions.** A Participant may allocate Plan Contributions to the Funding Vehicle(s) in any whole-number percentages that equal 100 percent. A Participant may change his or her allocation of future contributions to the Funding Vehicle(s) according to the administrative procedures of the Fund Sponsor(s). A Participant may direct contributions to only one Fund Sponsor at any given time. However, a Participant may change Fund Sponsors once per calendar year by completing the appropriate forms provided by the Institution.
- 4.4 **Leave of Absence.** During a paid leave of absence, Plan Contributions will continue to be made for a Participant on the basis of Compensation then being paid by the Institution. No Plan Contributions will be made during an unpaid leave of absence.
- 4.5 **Transfer of Funds from Another Plan.** The Fund Sponsor shall accept contributions that are transferred directly from any other plan qualified under sections 401(a) or 403(a) of the Code, whether such plans are funded through a trustee arrangement or through an annuity contract, if such contributions are attributable only to employer and employee contributions and the earnings thereon and accompanied by instructions showing the respective amounts attributable to employer and employee contributions. Such funds and the accumulation generated from them shall always be fully vested and nonforfeitable.
- 4.6 **Acceptance of Rollover Contributions.** If a Participant is entitled to receive a distribution from another plan qualified under sections 401(a) or 403(a) of the Code that is an eligible rollover distribution under section 402 of the Code, the Fund Sponsor will accept such amount under this Plan provided the rollover to this Plan is made 1) directly from another plan; or 2) by the Participant within 60 days of the receipt of the distribution.
- 4.7 **Uniformed Services.** Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with §414(u) of the Code.

- 4.8 **Maximum Plan Contributions.** Notwithstanding anything contained in this Plan to the contrary, the total Annual Additions made for any Participant for any year will not exceed the amount permitted under section 415 of the Code. The limitations of Code Section 415 are hereby incorporated by reference.

For the purpose of calculating the limits of Code Section 415, compensation means a Participant's earned income, wages, salaries, and fees for professional services and other amounts received for personal services actually rendered in the course of employment with the employer maintaining the plan and excluding the following: (a) employer contributions to a plan of deferred compensation that are not includable in the Employee's gross income for the taxable year in which contributed, or employer contributions under a simplified employee pension plan to the extent such contributions are deductible by the Employee, or any distributions from a plan of deferred compensation; and (2) other amount that received special tax benefits, or contributions made by the employer (whether or not under a salary reduction agreement towards the purchase of an annuity described in Code Section 403(b) (whether or not the amounts are actually excludable from the gross income of the Employee). For years beginning after December 31, 1997, compensation shall include any elective deferral (as defined in Code §402(g)(3)) and any amount which is contributed or deferred by the Institution at the election of the Participant and which is not includable in the gross income of the Participant by reason of Code §125 or 457 For limitation years beginning on and after [enter the earlier of January 1, 2001 or the first day of the first limitation year for which the plan was operated in accordance with CRA amendment but in no case earlier than the first day of the first limitation year beginning on or after January 1, 1988], for purposes of applying the limitations described in this section of the Plan, compensation shall include elective amounts that are not includible in the gross income of the Participant by reason of Code § 132(f)(4).

To the extent permitted by Code Section 415 and the regulations promulgated thereunder, if the Annual Additions exceed the Section 415 limitations, the excess amounts will be disposed of as follows: (a) any Participant Plan Contributions (plus any gain attributable to the excess), to the extent they would reduce the excess amount, will be returned to the Participant; and, to the extent necessary, (b) if, after the application of (a) an excess still exists, the excess will be held unallocated in a suspense account and will be applied to reduce Institution Plan Contributions in succeeding limitation years.

If the limitations are exceeded because the Participant is also participating in another plan required to be aggregated with this Plan for Code Section 415, then the extent to which annual contributions under this Plan will be reduced, as compared with the extent to which annual benefits or contributions under any other plans will be reduced, will be determined by the Institution in a manner as to maximize the aggregate benefits payable to the Participant from all plans. If the reduction is under this Plan, the Institution will advise affected Participants of any additional limitation on their annual contributions required by this paragraph.

## Article V: Funding Vehicles

5.1 **Funding Vehicles.** Plan Contributions are invested in one or more Funding Vehicles available to Participants under this Plan. The Fund Sponsors are:

- A. Teachers Insurance and Annuity Association-College Retirement Equities Fund (TIAA-CREF)
- B. Variable Annuity Life Insurance Company (VALIC)

Participants may choose any Funding Vehicle offered by a Fund Sponsor. The Institution's current selection of Fund Sponsors isn't intended to limit future additions or deletions of Fund Sponsors. Any additional accounts offered by a Fund Sponsor will automatically be made available to Participants in accordance with the procedures established by the Institution and the Fund Sponsor.

5.2 **Fund Transfers.** Subject to a Funding Vehicle's rules for transfers and in accordance with the provisions of the Code for maintaining the tax deferral of the Accumulation Account(s), a Participant may transfer funds accumulated under the Plan among the Plan's approved Funding Vehicles to the extent permitted by the Funding Vehicles.

## Article VI: Vesting

- 6.1 ***Plan Contributions.*** Plan Contributions shall be fully vested and nonforfeitable when such Plan Contributions are made.

## Article VII: Benefits

- 7.1 **Retirement Benefits.** A Participant who has terminated employment may elect to receive retirement benefits under any of the forms of benefit, as provided below.

**Forms of Benefit.** The forms of benefit are the benefit options offered by the Funding Vehicles available under this Plan. These forms are equally available to all Participants choosing the Funding Vehicle. The forms of benefit available under this Plan include:

Single life annuities as provided under the Funding Vehicle contract.

Joint and survivor annuities as provided under the Funding Vehicle contract.

Cash withdrawals (to the extent the Funding Vehicle permits and subject to the limitations in the "Cash Withdrawal" section of this Article).

Fixed period annuities, as permitted by the Funding Vehicle contract.

Retirement Transition Benefit.

Such other annuity and withdrawal options as provided under the Funding Vehicle contract.

- 7.2 **Cash Withdrawals.** A Participant who has terminated employment may withdraw Participant Plan Contributions or receive benefits in any form the relevant Funding Vehicle permits, including a cash withdrawal. However, only an employee who has terminated employment and has attained age 55 may withdraw Institution Plan Contributions or receive benefits in any form the relevant Funding Vehicle permits, including a cash withdrawal.

Except, following retirement or termination of employment prior to age 55, if total accumulation is less than or equal to \$10,000, both Participant and Institution Plan Contributions are available in a cash withdrawal subject to any restrictions of the Funding Vehicles of the Fund Sponsor.

- 7.3 **Retirement Transition Benefit.** Unless the Minimum Distribution Annuity, or the Limited Periodic Withdrawal Option is elected, a Participant may elect to receive a one time lump-sum payment of up to 10 percent of his or her Accumulation Account(s) in TIAA and/or the CREF account(s) at the time annuity income begins, provided the one sum payment from each TIAA contract and/or CREF account(s) doesn't exceed 10 percent of the respective Accumulation Account(s) being converted to retirement income.

- 7.4 **Survivor Benefits.** If a Participant dies before the start of retirement benefit payments, the full current value of the Accumulation Account(s) is payable to the Beneficiary (ies) under the options offered by the Funding Sponsors. Distribution of Survivor Benefits is subject to the required distribution rules set forth in Code Section 401(a)(9).

- 7.5 **Application for Benefits.** Procedures for receipt of benefits are initiated by writing directly to the Fund Sponsor. Benefits will be payable by the Fund Sponsor upon receipt of a satisfactorily completed application for benefits and supporting documents. The necessary forms will be provided to the Participant, the surviving spouse, or the Beneficiary (ies) by the Fund Sponsor.

~~7.6 **Minimum Distribution Requirements.** The requirements of this section shall apply to any distribution of a Participant's vested Accumulation Account(s) and will take precedence over any inconsistent provisions of this Plan. Distributions in all cases will be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder, including the minimum distribution incidental benefit requirement of Section 1.401(a)(9)-2 of the proposed regulations. With respect to distributions under the Plan made for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of Section 401(a)(9) of the Internal Revenue Code in accordance with the regulations under Section 401(a)(9) that were proposed on January 17, 2001, notwithstanding any provisions of the Plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under Section 401(a) or such other dates as may be specified in guidance published by the Internal Revenue Service.~~

~~(a) **Limits on Settlement Options.** Distributions may only be made over one of the following periods (or a combination thereof):~~

- ~~i) the life of the Participant;~~
- ~~ii) the life of the Participant and a designated Beneficiary (ies);~~
- ~~iii) a period certain not extending beyond the life expectancy of the Participant; or~~
- ~~iv) a period certain not extending beyond the joint and last survivor life expectancy of the Participant and designated Beneficiary (ies).~~

~~(b) **Required Beginning Date.** The entire interest of a Participant must be distributed or begin to be distributed no later than the Participant's Required Beginning Date. The Required Beginning Date of a Participant is April 1 following the calendar year in which the Participant attains age 70 1/2 or, if later, April 1 following the calendar year that the Participant retires.~~

~~(c) **Death Distribution Provisions.** Upon the death of the Participant, the following distribution provisions will take effect:~~

~~i) If the Participant dies after distribution of his or her vested Accumulation Account has begun, the remaining portion of the vested Accumulation Account(s) will continue to be distributed at least as rapidly as under the method of distribution being used before the Participant's death;~~

~~ii) If the Participant dies before distribution of his or her vested Accumulation Account(s) begins, distribution of the Participant's entire vested Accumulation Account(s) shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death except where an election is made to receive distributions in accordance with (1) or (2) below:~~

~~(1) If any portion of the Participant's vested Accumulation Account is payable to a designated Beneficiary (ies), distributions may be made over a period certain not greater than the life expectancy of the designated Beneficiary (ies) commencing by December 31 of the calendar year immediately following the calendar year in which the Participant died;~~

~~(2) If the designated Beneficiary (ies) is the Participant's surviving spouse, the date distributions are required to begin in accordance with (1) above must not be earlier than the later of~~

~~(a) December 31 of the calendar year immediately following the calendar year in which the Participant died and~~

~~(b) December 31 of the calendar year in which the Participant would have attained age 70 1/2.~~

~~If the Participant has not made an election pursuant to this section by the time of his or her death, the Participant's~~



~~designated Beneficiary (ies) must elect the method of distribution no later than the earlier of (1) December 31 of the calendar year in which distributions would be required to begin under this section, or (2) December 31 of the calendar year that contains the fifth anniversary of the date of death of the Participant. If the Participant has no designated Beneficiary (ies), or if the designated Beneficiary (ies) does not elect a method of distribution, distribution of the Participant's entire vested Accumulation Account(s) must be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.~~

**7.6 Minimum Distribution Requirements.** The provisions of this Section will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year. The requirements of this Section shall apply to any distribution of a Participant's vested Accumulation Account(s) and will take precedence over any inconsistent provisions of this Plan. Distributions in all cases will be made in accordance with Code Section 401(a)(9) and the regulations promulgated thereunder.

**(a) Time and Manner of Distribution.**

**(i) Required Beginning Date.** The participant's entire interest shall be distributed, or begin to be distributed, to the Participant no later than the Participant's Required Beginning Date.

**(ii) Death of Participant Before Distributions Begin.** If the Participant dies before distributions begin, the Participant's entire interest shall be distributed, or begin to be distributed, no later than as follows:

- (1) If the participant's surviving spouse is the Participant's sole designated Beneficiary, then distributions to the surviving spouse shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died, or by December 31 of the calendar year in which the Participant would have attained age 70½, if later.
- (2) If the participant's surviving spouse is not the Participant's sole designated beneficiary, then distributions to the designated beneficiary shall begin by December 31 of the calendar year immediately following the calendar year in which the Participant died.
- (3) If there is no designated Beneficiary as of September 30 of the year following the year of the Participant's death, the Participant's entire interest shall be distributed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (4) If the Participant's surviving spouse is the Participant's sole designated Beneficiary and the surviving spouse dies after the Participant but before distributions to the surviving spouse begin, this subsection ~~(A)(2)(a)(ii)~~, other than subsection ~~(A)(2)(a)(ii)(a1)~~, will apply as if the surviving spouse were the Participant.

For purposes of subsections ~~(A)(2)(a)(ii)~~ and ~~(C)~~, unless subsection ~~(A)(2)(a)(ii)(d4)~~ applies, distributions are considered to begin on the Participant's Required Beginning Date. If subsection ~~(A)(2)(a)(ii)(d4)~~ applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under subsection ~~(A)(2)(a)(ii)(a1)~~. If distributions under an annuity purchased from an insurance company irrevocably commence to the Participant before the Participant's Required Beginning Date (or to the Participant's surviving spouse before the date distributions are required to begin to the surviving spouse under subsection ~~(A)(2)(a)(ii)(a1)~~, the date distributions are considered to begin is the date distributions actually commence.

**(iii) Forms of Distribution.** Unless the Participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the Required Beginning Date, as of the first distribution calendar year distributions shall be made in accordance with subsections ~~(Bb)~~ and ~~(C)~~ of this Section. If the Participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of Code Section 401(a)(9) and the Treasury Regulations.

**(b) Required Minimum Distributions During Participant's Lifetime.**

**(i) Amount of Required Minimum Distribution for Each Distribution Calendar Year.** During the Participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

~~a) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the distribution calendar year; or~~

- ~~(1) b) the quotient obtained by dividing the Participant's account balance by the distribution period in the Uniform Lifetime Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's age as of the Participant's birthday in the distribution calendar year; or~~
- ~~(2) if the Participant's sole designated Beneficiary for the distribution calendar year is the Participant's spouse, the quotient obtained by dividing the Participant's account balance by the number in the Joint and Last Survivor Table set forth in Treasury Regulation Section 1.401(a)(9)-9, using the Participant's and spouse's attained ages as of the Participant's and spouse's birthdays in the distribution calendar year.~~

**(ii) Lifetime Required Minimum Distribution Through Year of Participant's Death.** Required minimum distributions will be determined under this subsection (~~B~~**b**) beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the Participant's date of death.

**(c) Required Minimum Distributions After Participant's Death**

**(i) Death On or After Date Distributions Begin.**

~~(1) a) Participant Survived by Designated Beneficiary.~~ If the Participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the longer of the remaining life expectancy of the Participant or the remaining life expectancy of the Participant's designated beneficiary, determined as follows:

- ~~(a) The Participant's remaining life expectancy is calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.~~
- ~~(b) If the Participant's surviving spouse is the Participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the Participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.~~
- ~~(c) If the Participant's surviving spouse is not the Participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the Participant's death, reduced by one for each subsequent year.~~

**(2) No Designated Beneficiary.** If the Participant dies on or after the date distributions

begin and there is no designated beneficiary as of September 30 of the year after the year of the Participant's death, minimum amount that shall be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the Participant's remaining life expectancy calculated using the age of the Participant in the year of death, reduced by one for each subsequent year.

**(ii) Death Before Date Distributions Begin**

- (1) Participant Survived by Designated Beneficiary.** If the Participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that shall be distributed for each distribution calendar year after the year of the Participant's death is the quotient obtained by dividing the Participant's account balance by the remaining life expectancy of the Participant's designated beneficiary, determined as provided in subsection ~~(C)(4)~~.
- (2) No Designated Beneficiary.** If the Participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the Participant's death, distribution of the Participant's entire interest shall be completed by December 31 of the calendar year containing the fifth anniversary of the Participant's death.
- (3) Death of Surviving Spouse Before Distributions to Surviving Spouse are Required to Begin.** If the Participant dies before the date distributions begin, the Participant's surviving spouse is the Participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under subsection ~~(A)(2)(a)(ii)(a1)~~, this subsection ~~(C)(2ii)~~ shall apply as if the surviving spouse were the Participant.

**(d) Definitions**

- (i) Designated Beneficiary.** The individual who is designated as the Beneficiary under the Plan and is the designated Beneficiary under Code Section 401(a)(9) and Treasury Regulation Section 1.401(a)(9)-1, Q&A-4.
- (ii) Distribution calendar year.** A calendar year for which a minimum distribution is required. For distributions beginning before the Participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the Participant's Required Beginning Date. For distributions beginning after the Participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under subsection ~~(A)(2)(a)(ii)~~. The required minimum distribution for the Participant's first distribution calendar year shall be made on or before the Participant's Required Beginning Date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the Participant's Required Beginning Date occurs, will be made on or before December 31 of that distribution calendar year.
- (iii) Life Expectancy.** Life expectancy as computed by use of the Single Life Table in Treasury Regulation Section 1.401(a)(9)-9.
- (iv) Participant's Account Balance.** The Participant's account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the Participant's account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The

Participant's account balance for the valuation calendar year includes any amounts rolled over or transferred to the Plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

(v) **Required Beginning Date.** The Required Beginning Date of a Participant is April 1 following the calendar year in which the Participant attains age 70½ or if later, April 1 following the calendar year in which the Participant retires.

(e) **Election to Allow Participants, Former Participants or Beneficiaries to Elect 5-Year Rule.**

Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in subsections ~~(A)(2)(a)(ii)~~ and ~~(C)(2)(i)~~ applies to distributions after the death of a Participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under Subsection ~~(A)(2)(a)(ii)~~, or by September 30 of the calendar year which contains the fifth anniversary of the Participant's (or, if applicable, surviving spouse's) death. If neither the Participant nor beneficiary makes an election under this paragraph, distributions will be made in accordance with subsection ~~(A)(2)(a)(ii)~~ and ~~(C)(2)(i)~~.

(f) **Election to Allow Designated Beneficiary Receiving Distributions Under 5-Year Rule to Elect Life Expectancy Distributions.**

A designated beneficiary who is receiving payments under the 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period.

7.7 **Small Sum Payments.** A participant's accumulations may be received in a single sum if certain conditions are met. If a Participant in this Plan terminates employment with the Institution and requests that the Fund Sponsor pay his or her Group Retirement Annuity accumulation in a single sum, the Institution will approve such request if, at the time of the request, the following conditions apply:

1. The total Accumulation Account is \$2,000 or less.
2. The total accumulation Account attributable to Plan Contributions is not more than \$4,000.

Upon request for the small sum payment, the total Accumulation Account will be payable by the Fund Sponsor to the Participant in a lump sum and will be in full satisfaction of the Participant's rights and his or her spouse's rights to retirement or survivor benefits.

7.8 **Direct Rollovers.** This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

For this section, the following definitions apply:

1.)

Eligible rollover distribution: An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under Code Section 401(a)(9); and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities) ; and, for any distributions after 12/31/99, any

hardship distribution described in Code Section 401(k)(2)(b)(i)(iv).

- 2) **Eligible retirement plan:** An eligible retirement plan is an individual retirement account described in Code Section 408(a), an individual retirement described in section 408(b) of the Code, or a qualified retirement plan described in Code Section 401 (a) or 403 (a) of the Code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.
- 3) **Distributee:** A distributee includes an employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.
- 4) **Direct rollover:** A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

## Article VIII: Administration

- 8.1 ***Plan Administrator.*** The Idaho State Board of Education, located at 650 W. State Street Boise, Idaho 83720, is the administrator of this Plan and has designated the following as responsible for enrolling Participants, sending Plan contributions for each Participant to the Fund Sponsor(s) selected by a Participant, and for performing other duties required for the operation of the Plan:

The Chief Fiscal Officer  
The Office of the Idaho State Board of Education

The Financial Vice President  
Boise State University

The Financial Vice President  
Idaho State University

The Vice President for Finance and Administration  
University of Idaho

The Financial Vice President  
Lewis-Clark State College

The Financial Vice President  
Eastern Idaho Technical College

The Financial Vice President  
College of Southern Idaho

The Financial Vice President  
North Idaho College

- 8.2 ***Authority of the Institution.*** The Institution has all the powers and authority expressly conferred upon it herein and further shall have discretionary and final authority to determine all questions concerning eligibility and contributions under the Plan, to interpret and construe all terms of the Plan, including any uncertain terms, and to determine any disputes arising under and all questions concerning administration of the Plan. Any determination made by the Institution shall be given deference, if it is subject to judicial review, and shall be overturned only if it is arbitrary or capricious. In exercising these powers and authority, the Institution will always exercise good faith, apply standards of uniform application, and refrain from arbitrary action. The Institution may employ attorneys, agents, and accountants, as it finds necessary or advisable to assist it in carrying out its duties. The Institution, by action of the Board, may designate a person or persons other than the Institution to carry out any of its powers, authority, or responsibilities. Any delegation will be set forth in writing.
- 8.3 ***Action of the Institution.*** Any act authorized, permitted, or required to be taken by the Institution under the Plan, which has not been delegated in accordance section 8.2 "Authority of the Institution," may be taken by a majority of the members of the Board, by vote at a meeting. All notices, advice, directions, certifications, approvals, and instructions required or authorized to be given by the Institution under the Plan will be in writing and signed by either (i) a majority of the members of the Board, or by any member or members as may be designated by the Board, as having authority to execute the documents on its behalf, or ii) a person who becomes authorized to act for the Institution in accordance with the provisions of section 8.2 "Authority of the Institution." Any action taken by the Institution that is authorized, permitted, or required under the Plan and is in accordance with Funding Vehicles contractual obligations are final and binding upon the Institution, and all persons who have or who claim an interest under the Plan, and all third parties dealing with the Institution.

- 8.4 **Indemnification.** Subject to the limits of the Idaho Tort Claims Act, Idaho Code §6-901 et. seq., The Institution will satisfy any liability actually and reasonably incurred by any members of the Board or any person to whom any power, authority or responsibility of the Institution is delegated pursuant to section 8.2 "Authority of the Institution" (other than the Fund Sponsors) arising out of any action (or inaction) relating to this plan. These liabilities include expenses, attorney's fees, judgments, fines, and amounts paid in connection with any threatened, pending or completed action, suit or proceeding related to the exercise (or failure to exercise) of this authority. This is in addition to whatever rights of indemnification exist under the articles of incorporation, regulations or by-laws of the Institution, under any provision of law, or under any other agreement.
- 8.5 **No Reversion.** Under no circumstances or conditions will any Plan Contributions of the Institution revert to, be paid to, or inure to the benefit of, directly or indirectly, the Institution. However, if Plan Contributions are made by the Institution by mistake of fact, these amounts may be returned to the Institution within one year of the date that they were made, at the option of the Institution.
- 8.6 **Statements.** The Institution will determine the total amount of contributions to be made for each Participant from time to time on the basis of its records and in accordance with the provisions of this Article. When each contribution payment is made by the Institution, the Institution will prepare a statement showing the name of each Participant and the portion of the payment that is made for him or her, and will deliver the statement to the appropriate Fund Sponsors with the contributions payment. Any determination by the Institution, evidenced by a statement delivered to the Fund Sponsors, is final and binding on all Participants, their Beneficiaries or contingent annuitants, or any other person or persons claiming an interest in or derived from the contribution's payment.
- 8.7 **Reporting.** Records for each Participant under this Plan are maintained on the basis of the Plan Year. At least once a year the Fund Sponsors will send each Participant a report summarizing the status of his or her Accumulation Account(s) as of December 31 each year. Similar reports or illustrations may be obtained by a Participant upon termination of employment or at any other time by writing directly to the Fund Sponsors.

## Article IX: Amendment and Termination

- 9.1 ***Amendment and Termination.*** While it is expected that this Plan will continue indefinitely, the Institution reserves the right to amend, otherwise modify, or terminate the Plan, or to discontinue any further contributions or payments under the Plan, by resolution of its Board. In the event of a termination of the Plan or complete discontinuance of Plan Contributions, the Institution will notify all Participants of the termination. As of the date of complete or partial termination, all Accumulation Accounts will become nonforfeitable to the extent that benefits are accrued.
- 9.2 ***Limitation.*** Notwithstanding the provisions of the "Amendment and Termination" section of Article IX, the following conditions and limitations apply:
- (a) No amendment will be made which will operate to recapture for the Institution any contributions previously made under this Plan. However, Plan Contributions made based on a mistake of fact may be returned to the Institution within one year of the date on which the Plan Contribution was made. Also, Plan Contributions made in contemplation of approval by the Internal Revenue Service may be returned to the Institution if the Internal Revenue Service fails to approve the Plan.
  - (b) No amendment will deprive, take away, or alter any then accrued right of any Participant insofar as Plan Contributions are concerned.



## Article X: Miscellaneous

- 10.1 **Plan Non-Contractual.** Nothing in this Plan will be construed as a commitment or agreement on the part of any person to continue his or her employment with the Institution, and nothing in this Plan will be construed as a commitment on the part of the Institution to continue the employment or the rate of compensation of any person for any period, and all employees of the Institution will remain subject to discharge to the same extent as if the Plan had never been put into effect.
- 10.2 **Claims of Other Persons.** The provisions of the Plan will not be construed as giving any Participant or any other person, firm, entity, or corporation, any legal or equitable right against the Institution, its officers, employees, or directors, except the rights as specifically provided for in this Plan or created in accordance with the terms and provisions of this Plan.
- 10.3 **Merger, Consolidation, or Transfers of Plan Assets.** In the event of a merger or consolidation with, or transfer of assets to, another plan, each Participant will receive immediately after such action a benefit under the plan that is equal to or greater than the benefit he or she would have received immediately before a merger, consolidation, or transfer of assets or liabilities.
- 10.4 **Finality of Determination.** All determinations with respect to the crediting of Years of Service under the Plan are made on the basis of the records of the Institution, and all determinations made are final and conclusive upon employees, former employees, and all other persons claiming a benefit interest under the Plan. Notwithstanding anything to the contrary contained in this Plan, there will be no duplication of Years of Service credited to an employee for any one period of his or her employment.
- 10.5 **Non-Alienation of Retirement Rights or Benefits.** No benefit under the Plan may, at any time, be subject in any manner to alienation, encumbrance, the claims of creditors or legal process to the fullest extent permitted by law. No person will have power in any manner to transfer, assign, alienate, or in any way encumber his or her benefits under the Plan, or any part thereof, and any attempt to do so will be void and of no effect. However, this Plan will comply with any judgment, decree or order which establishes the rights of another person to all or a portion of a Participant's benefit under this Plan to the extent that it is a "qualified domestic relations order" under section 414(p) of the Code.
- 10.6 **Governing Law.** Except as provided under federal law, the provisions of the Plan are governed by and construed in accordance with the laws of the State of Idaho.

Employer Identification Number: -  
Plan Number: 001

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(Signature of Plan Administrator)

## Amendment 1

### AMENDMENT OF THE Idaho State Board of Education Optional Retirement Plan for EGTRRA

IN WITNESS WHEREOF, Idaho State Board of Education and Board of Regents of the University of Idaho herein amends the Idaho State Board of Education Optional Retirement Plan, as follows:

#### A. PREAMBLE

1. Adoption and effective date of amendment. This amendment of the Plan is adopted to reflect certain provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). This amendment is intended as good faith compliance with the requirements of EGTRRA and is to be construed in accordance with EGTRRA and guidance issued thereunder. Except as otherwise provided, this amendment shall be effective as of the first day of the first plan year beginning after December 31, 2001.
2. Supersession of inconsistent provisions. This amendment shall supersede the provisions of the Plan to the extent those provisions are inconsistent with the provisions of this amendment.

#### B. LIMITATIONS ON CONTRIBUTIONS

Maximum Annual Addition. The annual addition that may be contributed or allocated to a Participant's account under the Plan for any limitation year shall not exceed the lesser of:

(a) \$40,000, as adjusted for increases in the cost-of-living under section 415(d) of the Code, or

(b) 100 percent of the Participant's compensation, within the meaning of section 415(c)(3) of the Code, for the limitation year.

The compensation limit referred to in (b) shall not apply to any contribution for medical benefits after separation from service (within the meaning of section 401(h) or section 419(f)(2) of the Code), if any, otherwise treated as an annual addition.

#### C. INCREASE IN COMPENSATION LIMIT

1. Annual Compensation Limit. The annual compensation of each Participant taken into account in determining allocations for any plan year beginning after December 31, 2001, shall not exceed \$200,000, as adjusted for cost-of-living increases in accordance with section 401(a)(17)(B) of the Code. Annual compensation means compensation during the plan year or such other consecutive 12 month period over which compensation is otherwise determined under the plan (the determination period). The cost-of-living adjustment in effect for a calendar year applies to annual compensation for the determination period that begins with or within such calendar year.
2. Plan Definition of Compensation. To the extent the Plan's definition of Compensation includes compensation not currently includable because of the application of Code Section 125 or 403(b), this definition is amended to include compensation not currently includable because of the application of Code §§ 132(f)(4) and 457.
3. Special Rule for Governmental Plans. Notwithstanding the above, employees of governmental employers who became Participants in the Plan before the first day of the plan year beginning after December 31, 1995, will be subject to the annual compensation limit in effect under the Plan before that date, as determined by IRS regulations.

#### D. DIRECT ROLLOVERS OF PLAN DISTRIBUTIONS

1. Effective date. This section shall apply to distributions made after December 31, 2001.
2. Modification of definition of eligible retirement plan. For purposes of the direct rollover provisions in Article VII of the Plan, an eligible retirement plan shall mean a qualified retirement plan described in section 401(a) or section 403(a), of the Code, a tax sheltered annuity plan described in section 403(b) of the Code and an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in section 414(p) of the Code.
3. Modification of definition of eligible rollover distribution to exclude hardship distributions. For purposes of the direct rollover provisions in Article VII of the Plan, any amount that is distributed on account of hardship shall not be an eligible rollover distribution and the distributee may not elect to have any portion of such a distribution paid directly to an eligible retirement plan.
3. Modification of definition of eligible rollover distribution to include after-tax employee contributions. For purposes of the direct rollover provisions in Article VII of the Plan, a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified defined contribution plan described in section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

#### E. ROLLOVERS FROM OTHER PLANS

1. Direct Rollovers. The Plan will accept a direct rollover of an eligible rollover distribution from:
  - a. A qualified plan described in section 401(a) or 403(a) of the Code including after-tax employee contributions.
  - b. A tax sheltered annuity plan described in section 403(b) of the Code, excluding after-tax employee contributions.
  - c. An eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.
2. Participant Rollover Contributions from Other Plans. The Plan will accept a Participant contribution of an eligible rollover distribution from:
  - a. A qualified plan described in section 401(a) or 403(a) of the Code.
  - b. A tax sheltered annuity plan described in section 403(b) of the Code.
  - c. An eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state.

3. Participant Rollover Contributions from IRAs. The Plan will accept a Participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in section 408(a) or 408(b) of the Code that is eligible to be rolled over and would otherwise be includible in gross income.

**STATE BOARD OF EDUCATION**  
**December 30, 2003**

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**Explanation of Idaho Board of Education ORP Amendments**

Number 1 (immediately below) relates to the newly-incorporated language in the ORP plan document at Section 7.6, dealing with minimum distribution requirements.

Number 2 relates the "Amendment 1" in the ORP plan document, and is the new language attached at the back of said document.

**1. Minimum Distribution Requirements (PAYMENTS TO FORMER ORP PARTICIPANTS WHO ARE OVER AGE 70 1/2).**

These amendments incorporate new IRS regulations that govern the minimum amount that the ORP must distribute each year to a participant who has terminated employment and has reached age 70 1/2. The new regulations are more flexible than prior law, and the IRS requires the ORP to include the new regulations.

**2. EGTRRA Amendments**

These amendments bring the ORP into compliance with the federal tax laws known as EGTRRA, which were passed in 2001. The following points explain the purpose of each paragraph lettered B through E in this Amendment 1.

**Paragraph B (IRS LIMITS ON ANNUAL CONTRIBUTIONS).**

These amendments change the ORP to incorporate new, more generous tax laws regarding the maximum amount that may be contributed to a participant's ORP account in any year. These tax law changes must be added to the ORP document, but they do not affect the operation of the ORP because ORP contributions do not come close to these limits.

**Paragraph C (IRS LIMITS ON COMPENSATION).**

These amendments increase the amount of a participant's compensation that may be considered in calculating contributions to the participant's ORP account. The new compensation limit is \$200,000, beginning in 2002. In prior years the limit was \$150,000, increased for cost-of-living adjustments. These compensation limits do not apply to participants who entered the ORP before 1995.

**Paragraph D (OUTGOING ROLLOVERS).**

These amendments describe the new, more generous tax laws regarding the types of retirement plans to which a participant may make a tax free rollover of the participant's ORP account when the account is paid out. The new laws allow rollovers to 403(b) plans and 457(b) plans that accept such rollovers.

**Paragraph E (INCOMING ROLLOVERS).**

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These amendments describe the new, more generous tax laws regarding the types of retirement plans from which a participant may make a tax free rollover into the participant's ORP account. The new laws allow rollovers into the ORP from 403(b) plans, from 457(b) plans and from taxable IRA distributions.

# Idaho Statutes

TITLE 33  
EDUCATION  
CHAPTER 1

STATE BOARD OF EDUCATION

33-107B. BOARD MAY ESTABLISH AN OPTIONAL RETIREMENT PROGRAM FOR  
COMMUNITY

COLLEGES AND POSTSECONDARY PROFESSIONAL-TECHNICAL EDUCATION  
INSTITUTIONS. (1)

The state board of education may establish an optional retirement  
program  
under which contracts providing retirement and death benefits may be  
purchased  
for members of the teaching staff and officers of community colleges  
and  
postsecondary professional-technical education institutions, including  
north  
Idaho college, college of southern Idaho and eastern Idaho technical  
college,  
hired on or after July 1, 1997; provided however, that no such employee  
shall  
be eligible to participate in an optional retirement program unless he  
would  
otherwise be eligible for membership in the public employee retirement  
system  
of Idaho. The benefits to be provided for or on behalf of participants  
in an  
optional retirement program shall be provided through annuity contracts  
or  
certificates, fixed or variable in nature, or a combination thereof,  
whose  
benefits are owned by the participants in the program.

(2) The state board of education is hereby authorized to provide  
for the  
administration of the optional retirement program and to perform or  
authorize  
the performance of such functions as may be necessary for such  
purposes. The  
board shall designate the company or companies from which contracts are  
to be  
purchased under the optional retirement program and shall approve the  
form and  
contents of such contracts. In making the designation and giving  
approval,  
the board shall consider:

- (a) The nature and extent of the rights and benefits to be  
provided by  
such contracts for participants and their beneficiaries;
- (b) The relation of such rights and benefits to the amount of  
contributions to be made;
- (c) The suitability of such rights and benefits to the needs of  
the

**STATE BOARD OF EDUCATION**  
**December 30, 2003**

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participants and the interests of the institutions in the recruitment and

retention of staff members; and

(d) The ability of the designated company to provide such suitable rights

and benefits under such contracts.

(3) Elections to participate in an optional retirement program shall be as follows:

(a) Eligible employees are the teaching staff and officers initially

appointed or hired on or after the effective date of this chapter.

All

eligible employees, except those who are vested members of the public

employee retirement system of Idaho, shall participate in the optional retirement program.

(b) Eligible employees who are vested members of the public employee

retirement system of Idaho may make a one (1) time irrevocable election to

transfer to the optional retirement program. The election shall be made in

writing and within sixty (60) days of the date of initial hire or appointment, or one hundred fifty (150) days after the effective date of

this chapter, whichever occurs later. The election shall be filed with the

administrative officer of the employing institution. The election shall

be effective not later than the first day of the second pay period following the date of the election.

(c) Teaching staff and officers employed by the institution the day

before the effective date of this chapter may make a one (1) time irrevocable election to participate in the optional retirement program.

The election shall be made in writing and within one hundred fifty (150)

days after the effective date of this chapter. The election shall be filed

with the administrative officer of the employing institution. The election

shall be effective not later than the first day of the second pay period

following the date of the election.

(d) The accumulated contributions of employees who make the one (1) time

irrevocable election or are required to participate in the optional retirement program may be transferred by the public employee retirement

system of Idaho to such qualified plan, maintained under the optional

retirement program, as designated in writing by the employee.

(e) An election by an eligible employee of the optional retirement



**STATE BOARD OF EDUCATION**  
**December 30, 2003**

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program shall be irrevocable and shall be accompanied by an appropriate application, where required, for issuance of a contract or contracts under the program.

(4) (a) Each institution shall contribute on behalf of each participant

in its optional retirement program the following:

(i) To the designated company or companies, an amount equal to

seven and eighty-one hundredths percent (7.81%) of each participant's salary, reduced by any amount necessary, if any, to provide contributions to a total disability program provided either by the

state or by a private insurance carrier licensed and authorized to provide such benefits, or any combination thereof, but in no event

less than five percent (5%) of each participant's salary; and (ii) To the public employee retirement system, an amount equal to

three and eighty-three hundredths percent (3.83%) of salaries of

members who are participants in the optional retirement program. This amount shall be paid until July 1, 2011 and is in lieu of amortization payments and withdrawal contributions required pursuant

to chapter 13, title 59, Idaho Code.

(b) For the purposes of section 59-1322, Idaho Code, the term "projected salaries" shall include the sum of the annual salaries of all participants

in the optional retirement program established pursuant to this section.

(c) Each participant shall contribute an amount equal to six and ninety-seven hundredths percent (6.97%). Employee contributions may be

made by employer pick-up pursuant to section 59-1332, Idaho Code.

(5) Any person participating in the optional retirement program shall be ineligible for membership in the public employee retirement system of Idaho so long as he remains continuously employed in any teaching staff position or as an officer with any of the institutions under the jurisdiction of the state board of education.

(6) A retirement, death or other benefit shall not be paid by the state of Idaho or the state board of education for services credited under the optional retirement program. Such benefits are payable to participants or

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their beneficiaries only by the designated company or companies in accordance with the terms of the contracts.

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