

- LRM 40, Section 415 Limitation on Benefits -

SECTION 415 LIMITATIONS [5-24-01]

40. Document Provision:

Statement of Requirement: Limitation on benefits, IRC §415, IRC §419A(d); Regs. §1.415-1; Notice 83-10, 1983-1 C.B. 536; Notice 87-21, 1987-1 C.B. 458; Rev. Rul. 98-1, 1998-2 I.R.B. 5; Notice 99-44, 1999-35 I.R.B. 326; Rev. Proc. 99-23, 1999-16 I.R.B. 5; Rev. Proc. 2000-20, §5.07, §5.196 & §8.0315; Rev. Proc. 2000-27, 2000-26 I.R.B. 1272.

Sample Plan Language:

Article _____: Limitation on Benefits

Section 1. This section applies regardless of whether any participant is or has ever been a participant in another qualified plan maintained by the adopting employer. If any participant is or has ever been a participant in another qualified plan maintained by the employer, or a welfare benefit fund maintained by the employer (as defined in § 419(e) of the Internal Revenue Code) under which amounts attributable to post-retirement medical benefits are allocated to separate accounts of key employees (as defined in § 419(A)(d)(3)), or an individual medical account, as defined in § 415(l)(2) of the Internal Revenue Code, maintained by the employer, or a simplified employee pension, as defined in § 408(k) of the Internal Revenue Code, maintained by the employer, that provides an Annual Addition as defined in section 5.1, section 2 is also applicable to that participant's benefits.

Section 1.1. The Annual Benefit otherwise payable to a participant at any time will not exceed the Maximum Permissible Benefit. If the benefit the participant would otherwise accrue in a Limitation Year would produce an Annual Benefit in excess of the Maximum Permissible Benefit, the benefit must be limited (or the rate of accrual reduced) to a benefit that does not exceed the Maximum Permissible Benefit.

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Section 1.2. If a participant has made voluntary employee contributions, or mandatory employee contributions as defined in § 411(c)(2)(C) of the Internal Revenue Code, under the terms of this plan, the amount of such contributions is treated as an Annual Addition to a qualified defined contribution plan, for purposes of sections 1.1 and 2.2 of this article.

Section 2. This section applies if any participant is also a participant, or has ever participated, in another plan maintained by the employer, including a qualified plan, a welfare benefit fund maintained by the employer (as defined in § 419(e) of the Internal Revenue Code) under which amounts attributable to post-retirement medical benefits are allocated to separate accounts of key employees (as defined in § 419(A)(d)(3)), an individual medical account, or a simplified employee pension that provides an Annual Addition as described in section 5.1.

Section 2.1. If a participant is, or has ever been, a participant in more than one defined benefit plan maintained by the employer, the sum of the participant's Annual Benefits from all such plans may not exceed the Maximum Permissible Benefit. Where the participant's employer-provided benefits under all defined benefit plans ever maintained by the employer (determined as of the same age) would exceed the Maximum Permissible Benefit applicable at that age, the employer will choose in section _____ of the adoption agreement the method by which the plans will limit a participant's benefit accrual in such cases.

(Note to reviewer: the above blank should be filled in with the section of the adoption agreement where the employer has stated the order and manner in which benefits will be limited when an employee with benefits under more than one defined benefit plan of the employer has a total benefit under all such defined benefit plans that exceeds the Maximum Permissible Benefit. This language is not provided.)

Section 2.2. For Limitation Years beginning before January 1, 2000, if the employer maintains, or ever maintained, one or more qualified defined contribution plans in which any participant in this plan participated, including a welfare benefit fund maintained by the employer (as defined in § 419(e) of the Internal Revenue Code) under which amounts

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attributable to post-retirement medical benefits are allocated to separate accounts of key employees (as defined in § 419(A)(d)(3)), an individual medical account, or a simplified employee pension, the sum of the participant's Defined Contribution Plan Fraction and Defined Benefit Plan Fraction will not exceed 1.0 in any Limitation Year and, where the sum exceeds 1.0 for a participant for a Limitation Year, the Annual Benefit otherwise payable to the participant under this plan will be limited in accordance with section _____ of the adoption agreement.

(Note to reviewer: The blank above should be filled in with the section of the adoption agreement in which the plan under which benefits will be limited in order to satisfy the limitation of this section, and the methodology to be used, are specified. This language is not provided.)

Unless a different group of employees is elected in the adoption agreement, benefit increases resulting from the repeal of § 415(e) will be provided to all current and former participants (with benefits limited by § 415(e)) who have an accrued benefit under the plan immediately before the first day of the first Limitation Year beginning in 2000.

(Note to reviewer: Plans may elect in section I of the adoption agreement to provide benefit increases resulting from the repeal of § 415(e) to a different group of employees. See section I of the adoption agreement.)

(Note to reviewer: A plan may elect under Rev. Proc. 2000-20 to continue to apply the combined plan limitations of section 2.2 of LRM 40 to participants in Limitation Years beginning after December 31, 1999, and prior to the plan's adoption date of its GUST restatement. However, in the case of a standardized form plan, the employer will not have reliance on its opinion letter for this period, without a determination letter. Language is not provided for such continued application of the combined plan limitations of section 2.2 of LRM 40. See Q&A-8 of Notice 99-44, relating to qualification requirements that may not be satisfied if a plan continues to limit benefits after the first day of the first limitation year beginning on or after January 1, 2000, using the pre-SBJPA § 415(e) limitations.)

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Section 3. In the case of an individual who was a participant in one or more defined benefit plans of the employer as of the first day of the first Limitation Year beginning after December 31, 1986, the application of the limitations of this article shall not cause the Maximum Permissible Benefit for such individual under all such defined benefit plans to be less than the individual's Tax Reform Act of 1986 (TRA '86) accrued benefit. The preceding sentence applies only if such defined benefit plans met the requirements of § 415 of the Internal Revenue Code, for all Limitation Years beginning before January 1, 1987.

Section 4. If elected in section _____ of the adoption agreement, where an individual was a participant in one or more defined benefit plans of the employer as of the first day of the first Limitation Year beginning after December 31, 1994, the application of the limitations of this article shall not cause the Maximum Permissible Benefit for such individual under all such defined benefit plans to be less than the individual's Retirement Protection Act of 1994 (RPA '94) Old-Law Benefit. The preceding sentence applies only if such defined benefit plans met the requirements of § 415 of the Internal Revenue Code on December 7, 1994.

(Note to reviewer: The blank above should be filled in with the section of the adoption agreement where an employer elects whether to provide an RPA '94 Old-Law Benefit. See section E of the adoption agreement.)

Section 5. Definitions.

Section 5.1. Annual Additions: The sum of the following amounts credited to a participant's account for the Limitation Year:

- (i) employer contributions;
- (ii) employee contributions,
- (iii) forfeitures;
- (iv) allocations under a simplified employee pension; and

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(v) amounts allocated after March 31, 1984, to an individual medical account that is part of a pension or annuity plan maintained by the employer, and amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, that are attributable to post-retirement medical benefits allocated to the separate account of a key employee (as defined in § 419A(d)(3) of the Internal Revenue Code) under a welfare benefit fund.

(Note to Reviewer: the amounts in (v) above are treated as Annual Additions to a defined contribution plan.)

Section 5.2. Annual Benefit: A benefit that is payable annually in the form of a straight life annuity. Except as provided below, where a benefit is payable in a form other than a straight life annuity, the benefit must be adjusted to an actuarially equivalent straight life annuity before applying the limitations of this article. Effective for limitation years beginning on or after January 1, 1995, where a participant's benefit must be adjusted to an actuarially equivalent straight life annuity, the actuarially equivalent straight life annuity is equal to the greater of the annuity benefit computed using the interest rate specified in section _____ of the plan and the mortality table (or other tabular factor) specified in section _____ of the plan, and the annuity benefit computed using a 5 percent interest rate assumption and the applicable mortality table defined in section _____ of the plan. In determining the actuarially equivalent straight life annuity for a benefit form other than (1) a nondecreasing annuity payable for a period of not less than the life of the participant (or, in the case of a qualified pre-retirement survivor annuity, the life of the surviving spouse), or (2) an annuity that decreases during the life of the participant merely because of (a) the death of the survivor annuitant (but only if the reduction is not below 50% of the benefit payable before the death of the survivor annuitant), or (b) the cessation or reduction of Social Security supplements or qualified disability payments (as defined in § 401(a)(11)), "the applicable interest rate", as defined in section _____ of the plan, will be substituted for "a 5 percent interest rate assumption" in the preceding sentence. However, where an employer has elected in the adoption agreement to provide an RPA '94

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Old-Law Benefit, such actuarially equivalent straight life annuity is determined in accordance with section 6.

No actuarial adjustment to the benefit is required for (a) the value of a qualified joint and survivor annuity, (b) benefits that are not directly related to retirement benefits (such as a qualified disability benefit, pre-retirement death benefits, and post-retirement medical benefits), and (c) the value of post-retirement cost-of-living increases made in accordance with § 415(d) of the Internal Revenue Code and section 1.415-3(c)(2)(iii) of the Income Tax Regulations. The Annual Benefit does not include any benefits attributable to employee contributions or rollover contributions, or the assets transferred from a qualified plan that was not maintained by the employer.

(Note to reviewer: The 1st and 2nd blanks above should be filled in with the sections of the plan that specify, respectively, the interest rate and mortality table specified for such actuarial equivalence. The 3rd and 4th blanks above should be filled in with the sections of the plan that specify, respectively, the applicable mortality table and applicable interest rate and that correspond, respectively, to sections 3 and 2 of LRM #42.)

Section 5.3. Compensation: As elected by the employer in the adoption agreement, Compensation shall mean one of the following:

(1) Information required to be reported under §§ 6041, 6051, and 6052 of the Internal Revenue Code (wages, tips, and other compensation as reported on Form W-2). Compensation is defined as wages, within the meaning of § 3401(a), and all other payments of compensation to an employee by the employer (in the course of the employer's trade or business) for which the employer is required to furnish the employee a written statement under §§ 6041(d), 6051(a)(3), and 6052. Compensation must be determined without regard to any rules under § 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in § 3401(a)(2)).

(2) Section 3401(a) wages. Compensation is defined as wages within the meaning of § 3401(a) for the purposes

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of income tax withholding at the source but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in § 3401(a)(2)).

(3) 415 safe-harbor compensation. Compensation is defined as wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan to the extent that the amounts are includible in gross income (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements, or other expense allowances under a nonaccountable plan (as described in 1.62-2(c)), and excluding the following:

(a) Employer contributions to a plan of deferred compensation which are not includible in the employee's gross income for the taxable year in which contributed, or employer contributions under a simplified employee pension to the extent such contributions are deductible by the employee, or any distributions from a plan of deferred compensation;

(b) Amounts realized from the exercise of a non-qualified stock option, or when restricted stock (or property) held by the employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;

(c) Amounts realized from the sale, exchange or other disposition of stock acquired under a qualified stock option; and

(d) Other amounts which received special tax benefits, or contributions made by the employer (whether or not under a salary reduction agreement) towards the purchase of an annuity contract described in § 403(b) of the Internal Revenue Code (whether or not the contributions

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are actually excludable from the gross income of the employee).

For any self-employed individual, Compensation will mean earned income.

For Limitation Years beginning after December 31, 1991, compensation for a Limitation Year is the compensation actually paid or made available during such Limitation Year.

For Limitation Years beginning after December 31, 1997, compensation paid or made available during such Limitation Year shall include any elective deferral (as defined in Code § 402(g)(3)), and any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of §§ 125 or 457. For Limitation Years beginning after December 31, 2000, or an earlier date specified in the adoption agreement, Compensation shall also include any elective amounts that are not includible in the gross income of the employee by reason of § 132(f)(4).

Section 5.4. Defined Benefit Compensation Limitation: 100 percent of a participant's High Three-Year Average Compensation, payable in the form of a straight life annuity.

In the case of a participant who has separated from service, the Defined Benefit Compensation Limitation applicable to the participant will be automatically adjusted by multiplying such limitation by the cost-of-living adjustment factor prescribed by the Secretary of the Treasury under § 415(d) of the Internal Revenue Code in such manner as the Secretary shall prescribe. The adjusted compensation limit will apply to Limitation Years ending with or within the calendar year of the date of the adjustment.

Section 5.5. Defined Benefit Dollar Limitation: \$90,000, automatically adjusted, effective January 1 of each year, under § 415(d) of the Internal Revenue Code in such manner as the Secretary shall prescribe, and payable in the form of a straight life annuity. The new limitation will apply to Limitation Years ending with or within the calendar year of the date of the adjustment.

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Section 5.6. Defined Benefit Plan Fraction: a fraction, the numerator of which is the sum of the participant's projected Annual Benefits under all the defined benefit plans (whether or not terminated) maintained by the employer, and the denominator of which is the lesser of (i) 125 percent of the Defined Benefit Dollar Limitation applicable to the participant, or (ii) 140 percent of the Defined Benefit Compensation Limitation applicable to the participant, both adjusted as necessary in accordance with section 5.11 below.

Notwithstanding the above, if the participant was a participant as of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined benefit plans maintained by the employer which were in existence on May 6, 1986, the denominator of this fraction will not be less than 125 percent of the sum of the Annual Benefits under such plans which the participant had accrued as of the close of the last Limitation Year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plans after May 5, 1986. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of § 415 for all Limitation Years beginning before January 1, 1987.

Section 5.7. Defined Contribution Plan Fraction: A fraction, the numerator of which is the sum of the Annual Additions to the participant's account under all the defined contribution plans (whether or not terminated) maintained by the employer for the current and all prior Limitation Years, (including the Annual Additions attributable to the participant's voluntary employee contributions, or mandatory employee contributions as defined in § 411(c)(2)(C) of the Internal Revenue Code, to this and all other defined benefit plans (whether or not terminated) maintained by the employer, and the Annual Additions attributable to all welfare benefit funds maintained by the employer (as defined in § 419(e) of the Internal Revenue Code) under which amounts attributable to post-retirement medical benefits are allocated to separate accounts of key employees (as defined in § 419(A)(d)(3)), or individual medical accounts and simplified employee pensions maintained by the employer), and the denominator of which is the sum of the maximum aggregate amounts for the current and all prior Limitation Years of the

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participant's service with the employer (regardless of whether a defined contribution plan was maintained by the employer).

The maximum aggregate amount for any Limitation Year is the lesser of (1) 125 percent of the Defined Contribution Dollar Limitation, or (2) 35 percent (1.4 x 25 percent) of the participant's Compensation for such year.

The Annual Addition for any Limitation Year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as Annual Additions.

If the employee was a participant as of the first day of the first Limitation Year beginning after December 31, 1986, in one or more defined contribution plans maintained by the employer which were in existence on May 6, 1986, the numerator of this fraction will be adjusted if the sum of this fraction and the Defined Benefit Plan Fraction would otherwise exceed 1.0 under the terms of this plan. Under the adjustment, an amount equal to the product of (1) the excess of the sum of the fractions over 1.0 times (2) the denominator of this fraction, will be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last Limitation Year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plans made after May 5, 1986, but using the § 415 limitation applicable to the first Limitation Year beginning on or after January 1, 1987.

Section 5.8. Employer: For purposes of this article, employer shall mean the employer that adopts this plan, and all members of a controlled group of corporations (as defined in § 414(b) of the Internal Revenue Code, as modified by § 415(h)), all commonly controlled trades or businesses (as defined in § 414(c) as modified by § 415(h)), or affiliated service groups (as defined in § 414(m)) of which the adopting employer is a part, and any other entity required to be aggregated with the employer pursuant to § 414(o) of the Internal Revenue Code.

Section 5.9. High Three-Year Average Compensation: The average compensation for the three consecutive years of service with the employer that produces the highest average. A year of service with the employer is the 12-

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consecutive month period defined in section _____ of the adoption agreement.

Section 5.10. Limitation Year: A calendar year, or the 12-consecutive month period elected by the employer in section _____ of the adoption agreement. All qualified plans maintained by the employer must use the same Limitation Year. If the Limitation Year is amended to a different 12-consecutive month period, the new Limitation Year must begin on a date within the Limitation Year in which the amendment is made.

Section 5.11. Maximum Permissible Benefit: The lesser of the Defined Benefit Dollar Limitation or the Defined Benefit Compensation Limitation (both adjusted where required, as provided below).

(a) If the participant has less than 10 years of participation in the plan, the Defined Benefit Dollar Limitation shall be multiplied by a fraction -- (i) the numerator of which is the number of years (or part thereof) of participation in the plan, and (ii) the denominator of which is 10. In the case of a participant who has less than ten years of service with the employer, the Defined Benefit Compensation Limitation shall be multiplied by a fraction -- (i) the numerator of which is the number of years (or part thereof) of service with the employer, and (ii) the denominator of which is 10.

Where a Defined Benefit Plan Fraction is calculated, the adjustments of this section (a) shall be applied in the denominator of the fraction based upon years of service. For purposes of computing the Defined Benefit Plan Fraction only, years of service shall include future years of service (or part thereof) commencing before the participant's normal retirement age. Such future years of service shall include the year that contains the date the participant reaches normal retirement age, only if it can be reasonably anticipated that the participant will receive a year of service for such year, or the year in which the participant terminates employment, if earlier.

(b) If the Annual Benefit of the participant commences before the participant's Social Security Retirement Age, but on or after age 62, the Defined Benefit

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Dollar Limitation (as reduced in (a) above, if necessary) shall be determined as follows:

(i) If a participant's Social Security Retirement Age is 65, for benefits commencing on or after age 62, the Defined Benefit Dollar Limitation is reduced by 5/9 of one percent for each month by which benefits commence before the month in which the participant attains age 65.

(ii) If a participant's Social Security Retirement Age is greater than 65, for benefits commencing on or after age 62, the Defined Benefit Dollar Limitation is reduced by 5/9 of one percent for each of the first 36 months and 5/12 of one percent for each of the additional months (up to 24 months) by which benefits commence before the month of the participant's Social Security Retirement Age.

(c) If the benefit of a participant commences prior to age 62, the Defined Benefit Dollar Limitation applicable to the participant at such earlier age is an annual benefit payable in the form of a straight life annuity that is the actuarial equivalent of the Defined Benefit Dollar Limitation for age 62, as determined above, reduced for each month by which benefits commence before the month in which the participant attains age 62. Effective for Limitation Years beginning on or after January 1, 1995, the Defined Benefit Dollar Limitation applicable at an age prior to age 62 is determined as the lesser of the actuarial equivalent of the Defined Benefit Dollar Limitation for age 62 computed using the interest rate and mortality table (or other tabular factor) specified in section _____ of the plan, and the actuarial equivalent of the Defined Benefit Dollar Limitation for age 62 computed using a 5 percent interest rate and the applicable mortality table as defined in section _____ of the plan. Any decrease in the Defined Benefit Dollar Limitation determined in accordance with this provision (c) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.

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(Note to reviewer: The 1st blank above should be filled in with the section number of the plan that specifies the actuarial equivalence factors to be used for early retirement purposes. The 2nd blank above should be filled in with the section number of the plan corresponding to section 3 of LRM #42.)

(d) If the benefit of a participant commences after the participant's Social Security Retirement Age, the Defined Benefit Dollar Limitation applicable to the participant at the later age is the annual benefit payable in the form of a straight life annuity commencing at the later age that is actuarially equivalent to the Defined Benefit Dollar Limitation applicable to the participant (adjusted under (a) above, if necessary) at the participant's Social Security Retirement Age. Effective for Limitation Years beginning on or after January 1, 1995, the actuarial equivalent of the Defined Benefit Dollar Limitation at the participant's Social Security Retirement Age is determined as the lesser of the actuarial equivalent of the Defined Benefit Dollar Limitation at the participant's Social Security Retirement Age computed using the interest rate and mortality table (or other tabular factor) specified in section _____ of the plan, and the actuarial equivalent of the Defined Benefit Dollar Limitation at the participant's Social Security Retirement Age computed using a 5 percent interest rate assumption and the applicable mortality table as defined in section _____ of the plan. For these purposes, mortality between a participant's Social Security Retirement Age and the age at which benefits commence must be ignored.

(Note to reviewer: The 1st blank above should be filled in with the section number of the plan that specifies the actuarial equivalence factors to be used for delayed retirement purposes. The 2nd blank above should be filled in with the section number of the plan corresponding to section 3 of LRM #42.)

(e) Minimum benefit permitted: Notwithstanding anything else in this section to the contrary, the benefit otherwise accrued or payable to a participant under this plan shall be deemed not to exceed the Maximum Permissible Benefit if:

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(i) the retirement benefits payable for a plan year under any form of benefit with respect to such participant under this plan and under all other defined benefit plans (regardless of whether terminated) ever maintained by the employer do not exceed \$1,000 multiplied by the participant's number of years of service or parts thereof (not to exceed 10) with the employer; and

(ii) the employer has not at any time maintained a defined contribution plan, a welfare benefit fund under which amounts attributable to post-retirement medical benefits are allocated to separate accounts of key employees (as defined in § 419(A)(d)(3)), or an individual medical account in which the participant participated (for these purposes, employee contributions, whether voluntary or involuntary, under a defined benefit plan are not treated as a separate defined contribution plan).

Section 5.12. Projected Annual Benefit: The Annual Benefit as defined in section 5.2 of this article, to which the participant would be entitled under the terms of the plan assuming:

(a) the participant will continue employment until normal retirement age under the plan (or current age, if later), and

(b) the participant's Compensation for the current Limitation Year and all other relevant factors used to determine benefits under the plan will remain constant for all future Limitation Years.

(Note to reviewer on sections 5.13, 5.14, and 5.15 below: Only plans adopted and in effect on December 7, 1994, and which satisfy the requirements of § 415 as in effect on December 7, 1994, may have an RPA '94 Final Implementation Date, an RPA '94 Freeze Date, and participants with an RPA '94 Old-Law Benefit.)

Section 5.13. RPA '94 Final Implementation Date: The first day of the first limitation year beginning on or after January 1, 2000, unless an earlier date is specified in section _____ of the adoption agreement.

(Note to reviewer: The blank above should be filled in with the section of the adoption agreement, which specifies the Final Implementation Date for the plan.)

(Note to reviewer: Sponsors who amended their plans for RPA '94 changes to § 415(b)(2)(E) prior to August 20, 1996, (SBJPA enactment date) were permitted by SBJPA to amend the plan to repeal their amendment within one year of the enactment of SBJPA, and this period was extended by section 3.03 of Rev. Proc. 99-23 to the last day of the first plan year beginning on or after January 1, 2000. The period was further extended to the last day of the first plan year beginning on or after January 1, 2001, by section 4 of Rev. Proc. 2000-27.)

Section 5.14. RPA '94 Freeze Date: The date as of which a participant's RPA '94 Old-Law Benefit is determined, specified in section _____ of the adoption agreement.

(Note to reviewer: The blank above should be filled in with the section of the adoption agreement which specifies the RPA '94 Freeze Date, which must be a date prior to the plan's Final Implementation Date.

Section 5.15. RPA '94 Old-Law Benefit: The participant's accrued benefit under the terms of the plan as of the RPA '94 Freeze Date, for the annuity starting date and optional form and taking into account the limitations of § 415, as in effect on December 7, 1994, including the participation requirements under § 415(b)(5). In determining the amount of a participant's RPA '94 Old-Law Benefit, the following shall be disregarded:

(i) any plan amendment increasing benefits adopted after the RPA '94 Freeze Date; and

(ii) any cost-of-living adjustments that become effective under § 415(d) after the RPA '94 Freeze Date.

If, at any date after the RPA '94 Freeze Date, the participant's total plan benefit, before the application of § 415, is less than the participant's RPA '94 Old-Law Benefit, the RPA '94 Old-Law Benefit will be reduced to a benefit equal to the participant's total plan benefit.

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Unless a different group of employees is elected in the adoption agreement, for all current and former participants who have an accrued benefit under the plan immediately before the first day of the first Limitation Year beginning in 2000, if the RPA '94 Old-Law Benefit was reduced during the period between the RPA '94 Freeze Date and the first day of the first Limitation Year beginning on or after January 1, 2000, because of Annual Additions credited to a participant's account in a defined contribution plan, the RPA '94 Old-Law Benefit will increase to the RPA '94 Freeze Date level as of the first day of the first Limitation Year beginning on or after January 1, 2000.

(Note to reviewer: Plans may elect in section I of the adoption agreement to provide benefit increases resulting from the repeal of § 415(e) to a different group of employees. If a different group of employees is elected under section I, that group will receive the increase described above. See section I of the adoption agreement.)

The use of a different interest rate and mortality table may not increase a participant's RPA '94 Old-Law Benefit to an amount greater than such benefit as of the RPA '94 Freeze Date.

(Note to reviewer: If the plan is amended for the RPA '94 § 417(e)(3) changes on or before the RPA '94 Freeze Date, such changes must be taken into account in determining the plan benefit used in the calculation of a participant's RPA '94 Old-Law Benefit, and where a variable rate (e.g., PBGC rates, applicable rate) is used under the plan, the rate in effect on the RPA '94 Freeze Date is used to determine the RPA '94 Old-Law Benefit on the RPA '94 Freeze Date.)

Section 5.16. Social Security Retirement Age: Age 65 in the case of a participant born before January 1, 1938; age 66 for a participant born after December 31, 1937, but before January 1, 1955; and age 67 for a participant born after December 31, 1954.

Section 5.17. TRA '86 Accrued Benefit: A participant's accrued benefit under the plan, determined as if the participant had separated from service as of the close of the last Limitation Year beginning before January 1, 1987, when expressed as an Annual Benefit within the meaning of § 415(b)(2) of the Internal Revenue Code. In determining

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the amount of a participant's TRA '86 Accrued Benefit, the following shall be disregarded:

(i) any change in the terms and conditions of the plan after May 5, 1986; and

(ii) any cost-of-living adjustments occurring after May 5, 1986.

Section 5.18. Year of Participation: The participant shall be credited with a Year of Participation (computed to fractional parts of a year) for each accrual computation period for which the following conditions are met: (1) The participant is credited with at least the number of hours of service (or period of service if the elapsed time method is used) for benefit accrual purposes, required under the terms of the plan in order to accrue a benefit for the accrual computation period, and (2) the participant is included as a participant under the eligibility provisions of the plan for at least one day of the accrual computation period. If these two conditions are met, the portion of a year of participation credited to the participant shall equal the amount of benefit accrual service credited to the participant for such accrual computation period. A participant who is permanently and totally disabled within the meaning of § 415(c)(3)(C)(i) of the Internal Revenue Code for an accrual computation period shall receive a Year of Participation with respect to that period. In addition, for a participant to receive a Year of Participation (or part thereof) for an accrual computation period, the plan must be established no later than the last day of such accrual computation period. In no event will more than one Year of Participation be credited for any 12-month period.

Section 6. Transition Rule - Applying the limitations of this article when a participant has an RPA '94 Old-Law Benefit: For participants with RPA '94 Old-Law Benefits, for purposes of determining whether a participant's benefit exceeds the limitations of this article after the RPA '94 Freeze Date, the employer will elect in section _____ of the adoption agreement which of the following 3 methods will be used.

(Note to reviewer: The blank above should be filled in with the section number of the adoption agreement where a plan sponsor elects one of the three methods.)

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(1) Method one: Equivalent Annual Benefits are determined separately with respect to the participant's RPA '94 Old-Law Benefit, and the portion of the participant's total plan benefit that exceeds the RPA '94 Old-Law Benefit. A participant's total Annual Benefit is the sum of these two Annual Benefits, and cannot exceed the Maximum Permissible Benefit applicable to the participant.

If the determination is being made before the Final Implementation Date, where a participant's benefit must be adjusted to an actuarially equivalent Annual Benefit, the Annual Benefit equivalent to the RPA '94 Old-Law Benefit is calculated using an interest rate equal to the greater of the plan interest rate or 5 percent and the plan mortality table, as provided under § 415(b)(2)(E) as in effect on December 7, 1994, and under the plan terms as of December 7, 1994. The Annual Benefit equivalent to the portion of the participant's total plan benefit that exceeds the RPA '94 Old-Law Benefit is calculated as described in section 5.2. For a determination made after the Freeze Date and before the Final Implementation Date, where the Defined Benefit Dollar Limitation is adjusted for commencement of benefits prior to age 62, such adjustments are made in accordance with section 5.11(c); adjustments for commencement of benefits after Social Security Retirement Age are made in accordance with section 5.11(d).

If the determination is being made on or after the Final Implementation Date, where a participant's benefit must be adjusted to an actuarially equivalent Annual Benefit, the Annual Benefit equivalent to the participant's RPA '94 Old-Law Benefit is calculated using an interest rate equal to the greater of the interest rate specified in section _____ of the plan or 5 percent, and the mortality table specified in section _____ of the plan. The Annual Benefit equivalent to the portion of the participant's total plan benefit that exceeds the RPA '94 Old-Law Benefit is calculated as described in section 5.2. For a determination on or after the Final Implementation Date, where the Defined Benefit Dollar Limitation is adjusted for commencement of benefits prior to age 62, such adjustments are made in accordance with section 5.11(c); adjustments for commencement of benefits

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after Social Security Retirement Age are made in accordance with section 5.11(d).

(Note to reviewer: The 1st blank above should be filled in with the section of the plan where the interest rate to be used for such actuarial equivalence is specified. The 2nd blank above should be filled in with the section of the plan where the mortality table to be used for such actuarial equivalence is specified.)

(Note to reviewer: The blank above should be filled in with the section of the adoption agreement where the employer providing RPA '94 Old-Law Benefits chooses which of the three methods will be used.)

(2) Method two: A participant's total Annual Benefit under the plan is determined, and this benefit must not exceed the Maximum Permissible Benefit applicable to the participant. Where a participant's benefit must be adjusted to an actuarially equivalent Annual Benefit, an Annual Benefit equivalent to the participant's total benefit is calculated as described in section 5.2. In any event, the participant will receive no less than the participant's RPA '94 Old-Law Benefit.

(3) Method three: A participant's benefit is limited only to the extent needed to satisfy either the first or second method described above.

Under all of the methods above, a participant will receive no less than the participant's RPA '94 Old-Law Benefit. For purposes of determining that a participant receives no less than the participant's RPA '94 Old-Law Benefit, the limitation applicable to the participant's RPA '94 Old-Law Benefit (old-law limitation) is determined, and the participant may receive the RPA '94 Old-Law Benefit to the extent it does not exceed such old-law limitation. Before the Final Implementation Date, adjustments to the old-law limitation for commencement of benefits prior to age 62 are calculated using an interest rate equal to the greater of the plan interest rate or 5 percent and the plan mortality table, as provided under § 415(b)(2)(E) as in effect on December 7, 1994, and under the plan terms as of December 7, 1994; adjustments to the old-law limitation for commencement of benefits after Social Security Retirement Age are calculated using an interest rate equal to the

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lesser of the plan interest rate or 5 percent and the plan mortality table, as provided under § 415(b)(2)(E) as in effect on December 7, 1994, and under the plan terms as of December 7, 1994. On or after the Final Implementation Date, adjustments to the old-law limitation for commencement of benefits prior to age 62 are calculated using an interest rate equal to the greater of the plan interest rate or 5 percent, and the plan mortality table, using the interest rate and mortality table included in the plan as of the date of determination; adjustments to the old-law limitation for commencement of benefits after Social Security Retirement Age are calculated using an interest rate equal to the lesser of the plan interest rate or 5 percent and the plan mortality table, using the interest rate and mortality table included in the plan as of the date of determination. (However, in no event may a participant's Old-Law Benefit exceed the participant's Old-Law Benefit as of the RPA '94 Freeze Date.)

Sample Adoption Agreement Language:

A. If an employer maintains, or ever maintained, another qualified plan other than paired plan # _____ in which any participant in this plan is (or was) a participant or could become a participant, the employer must complete this section. The employer must also complete this section if it maintains a welfare benefit fund, as defined in § 419(e) of the Internal Revenue Code under which amounts attributable to post-retirement medical benefits are allocated to separate accounts of key employees (as defined in § 419(A)(d)(3)), or an individual medical account, as defined in § 415(l)(2) of the Internal Revenue Code, under which amounts are treated as Annual Additions with respect to any participant in this plan.

(Note to reviewer: For Limitation Years beginning before January 1, 2000, the sponsor should leave space for the adopting employer to provide language that will satisfy the 1.0 limitation of § 415(e) of the Code. Such language must preclude employer discretion as required under Regs. § 1.415-1(d).)

(Note to reviewer: If this plan is paired with another plan maintained by the employer, this plan must provide for the appropriate reductions under IRC 415(e) for Limitation

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Years beginning before January 1, 2000. See LRM #93 for appropriate language.)

(Note to reviewer: If the employer maintains or has ever maintained another defined benefit plan, such employer must provide language that will assure that the Maximum Permissible Benefit is never exceeded. In the alternative, the employer may identify the other plan that will provide suitable language so that the Maximum Permissible Benefit is never exceeded.)

B. The Limitation Year is the following 12-consecutive month period: _____

C. For purposes of calculating the participant's High Three-Year Average Compensation, a year of service is the following 12-consecutive month period:

D. Compensation will mean all of each participant's:

- () Wages, tips, and other compensation as reported on Form W-2
- () Section 3401(a) wages
- () 415 safe-harbor compensation

For Limitation Years beginning after December 31, 1997, for purposes of applying the limitations of this article, Compensation paid or made available during such Limitation Year shall include any elective deferral (as defined in Code § 402(g)(3)), and any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of §§ 125 or 457. Compensation shall also include any elective amounts that are not includible in the gross income of the employee by reason of § 132(f)(4) for Limitation Years beginning after December 31, 2000. If the plan was first operated in accordance with the § 415 changes under the Community Renewal Tax Relief Act of 2000 on a date prior to the first day of the first Limitation Year beginning in 2001, then Compensation shall include such elective amounts for the Limitation Year including such date and successive Limitation Years, but only if such Limitation Year(s) begin after December 31, 1997. The first Limitation Year (beginning after December

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31, 1997) in which the plan was operated in accordance with the § 415 changes under the Community Renewal Tax Relief Act of 2000, is the first Limitation Year beginning after

(Note to reviewer: the above blank should be filled in with the last day of the Limitation Year prior to the first Limitation Year beginning after 1997 in which the plan was operated in accordance with the § 415 changes under the Community Renewal Tax Relief Act of 2000.)

E. Election to provide RPA '94 Old-Law Benefit.

() The RPA '94 § 415(b)(2)(E) changes will not be applied with respect to benefits accrued as of the date specified in G below. This election is only available for plans adopted and in effect before December 8, 1994.

(Note to reviewer: For plans adopted and in effect before December 8, 1994, the employer may or may not choose to provide an Old-Law Benefit.)

(Note to reviewer: Employers who do not make the election in E above, will not make elections under F, G, and H below.)

F. The RPA '94 Final Implementation Date, for plans adopted and in effect on December 7, 1994, and which satisfied the requirements of § 415 as of such date, is:

() The first day of the first Limitation Year beginning on or after January 1, 2000; or

() _____ (Insert the later of the date a plan amendment applying the RPA '94 § 415(b)(2)(E) changes is adopted or made effective.)

(Note to reviewer: the blank above is filled in only if (1) the plan was amended to apply the RPA '94 § 415(b)(2)(E) changes prior to the plan's first Limitation Year beginning in 2000, and (2) the amendment was adopted prior to the plan's first Limitation Year beginning in 2000.)

G. The RPA '94 Freeze Date, applicable to all participants, as of which a participant's RPA '94 Old-Law

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Benefit is determined is _____,
which must be a date prior to the plan's RPA '94 Final
Implementation Date.

H. Where a participant has an RPA '94 Old-Law Benefit, the
method used to determine whether the participant's benefit
exceeds the Maximum Permissible Benefit is:

() Method one;

() Method two; or

() Method three.

(Note to reviewer: an employer having participants with RPA
'94 Old-Law Benefits must choose one and only one of the
three methods above.)

I. Benefit increases resulting from the repeal of §
415(e).

() Benefit increases resulting from the repeal of §
415(e) will only be provided to all employees
participating in the plan that have one hour of
service after the first day of the first Limitation
Year beginning in 2000.

- LRM 42, Definite Benefit -