

Article VII — Maximum Additions

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Article VII — Maximum Additions

§ 18-701 General Definitions.

When used in this Article, the words and phrases defined in this Section shall have the following meaning, unless the context in which they are used clearly indicates a different meaning:

(a) **Compensation.** The term “Compensation” for a Participant for a Limitation Year shall mean:

(1) **In General.** All wages within the meaning of Code § 3401(a) (for purposes of income tax withholding at the source), and all other payments of compensation to an employee by the Employer (in the course of such employers' trade or business) for which the Employer is required to furnish the employee a written statement under Code §§ 6401(d), 6051(a)(3), and 6052, plus amounts that would be included in wages but for an election under Code §§ 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). Compensation shall be determined without regard to any rules under Code § 3401(a) that limit covered employment based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code § 3401(a)(2)).

(2) **Payment During the Limitation Year.** Except as otherwise provided in this subsection (a), in order to be taken into account for a Limitation Year, amounts under paragraph (1) must be actually paid or made available to the Participant (or, if earlier, includible in the gross income of the Participant) within the Limitation Year. For this purpose, an amount is treated as paid on a date if it is actually paid on that date or it would have been paid on that date but for an election under Code §§ 125, 132(f)(4), 401(k), 403(b), 408(k), 408(p)(2)(A)(i), or 457(b).

(3) **Payment Prior to Severance from Employment.** Except as otherwise provided in paragraphs (4) and (5), in order to be taken into account for a Limitation Year, amounts under paragraph (1) must be paid or treated as paid to the Participant (in accordance with the rules of paragraph (2)) prior to the Participant's severance from employment (within the meaning of Treas. Regs. § 1.415(a)-1(f)(5)) with the Employer. Thus, for example, "Compensation" generally does not include severance pay or parachute payments.

(4) **Regular Pay After Severance from Employment.** Notwithstanding paragraph (3), a payment of an amount described in paragraph (1) after severance from employment will be considered "Compensation" for the Limitation Year which includes the date of severance from employment if it—

(A) is regular compensation for services during the Participant's regular working hours, or compensation for services outside the employee's regular working hours (such as overtime or shift differential), commissions, bonuses, or other similar payments;

(B) would have been paid to the Participant prior to a severance from employment if the Participant had continued in employment with the Employer; **and**

(C) is paid by the *later* of 2.5 months after severance from employment with the Employer maintaining the plan *or* the end of the Limitation Year which includes the date of severance from employment.

(5) **Leave Cashouts.** Notwithstanding paragraph (3), a payment of an amount described in paragraph (1) after severance from employment will be considered "Compensation" for the Limitation Year which includes the date of severance from employment if it—

(A) is payment for unused accrued bona fide sick, vacation, or other leave, but only if the Participant would have been able to use the leave if employment had continued; **and**

(B) is paid by the *later* of 2.5 months after severance from employment with the Employer maintaining the plan *or* the end of the Limitation Year which includes the date of severance from employment.

(6) Qualified Military Service. For purposes of this subsection (a), a Participant who is in qualified military service (within the meaning of Code § 414(u)(5)) shall be treated as receiving Compensation from the Employer during such period of qualified military service equal to—

(A) the Compensation the Participant would have received during such period if the Participant were not in qualified military service, determined based on the rate of pay the Participant would have received from the Employer but for absence during the period of qualified military service; **or**

(B) if the compensation the Participant would have received during such period was not reasonably certain, the Participant's average Compensation from the Employer during the 12-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(7) Back Pay. Payments awarded by an administrative agency or court or pursuant to a bona fide agreement by an employer to compensate an employee for lost wages are Compensation within the meaning of this subsection (a) for the Limitation Year to which the back pay relates, but only to the extent such payments represent wages and compensation that would otherwise be included in compensation under this subsection (a).

(8) Maximum Amount Which May Be Treated As Compensation.

(A) General Rule. Notwithstanding anything to the contrary in this subsection (a), the "Compensation" of a Participant for any Limitation Year shall not exceed the amount in effect for such year under Code § 401(a)(17), as adjusted for changes in the cost of living. (For any Limitation Year beginning in 2020, the amount is \$285,000.00.)

(B) Short Years. If Compensation is ever required to be determined for a short Limitation Year which contains fewer than 12 months, the amount of effect for such Limitation Year under Code § 401(a)(17) shall be equal to the amount in effect under Code § 401(a)(17) for the calendar year in which the Limitation Year begins, multiplied by a fraction whose numerator is equal to the number of months in the period, and whose denominator is equal to 12.

(b) Limitation Year. The term "Limitation Year" shall mean, for this Plan, those periods which are coextensive with the Plan Year after the Effective Date of this Plan, and those periods utilized as limitation years under the Provisions of the Defined Benefit Plan (but in no case extending beyond the Effective Date). Limitation Years for other plans shall be as elected for those plans.

(c) Employer. The term "Employer" shall mean the Sponsor and all Related Employers, and, to the extent required under Treas. Regs. § 1.415(f)-1, a predecessor employer within the meaning of that regulation.

[Ord. 415 10-29-2003, 561 01-29-2020]

§ 18-702 Definitions Relating to Defined Contribution Limitations.

When used in this Article, the words and phrases defined in this Section shall have the following meaning, unless the context in which they are used clearly indicates a different meaning:

(a) [RESERVED]

(b) **Annual Additions.** The term “Annual Additions”, for a Participant in any given Limitation Year with respect to the Defined Contribution Plans maintained by the Employer, shall have the meaning given to the term under Treas. Regs. § 1.415(c)-1(b) (which generally includes all employer contributions, employee contributions, and forfeitures credited to the Participant’s accounts for the Limitation Year).

(c) **Defined Contribution Plan.** The term “Defined Contribution Plan” shall have the meaning provided in Treas. Regs. § 1.415(c)-1(a)(2) (including mandatory employee contributions to a defined benefit plan maintained by the Employer which are not treated as employer pick-up contributions under Code § 414(h)(2), and employee contributions to a separate account in a defined benefit plan maintained by the Employer to the extent that benefits are based on the separate account).

(d) **Maximum Permissible Amount.**

(1) **In General.** Subject to the special rules relating to certain medical benefits and employee stock ownership plans under Treas. Regs. § 1.415(c)-1(e) and (f), the term “Maximum Permissible Amount”, for any Limitation Year, shall mean the lesser of—

(A) The defined contribution dollar limitation in effect for the Limitation Year under Code § 415(c)(1)(A) as adjusted under Code § 415(d) for changes in the cost of living (\$57,000 for 2020); or

(B) 100% of the Participant’s Compensation for the Limitation Year.

(2) **Short Year.** If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12 consecutive month period, for purposes of the short Limitation Year, the number in paragraph (1)(A) shall be multiplied by the following fraction:

$$\frac{\text{number of months in the short Limitation Year (including fractional parts of a month)}}{12}$$

If the Plan is terminated as of a date other than the last day of the Limitation Year, the Plan is deemed to have been amended to change its Limitation Year and the Maximum Permissible Amount shall be determined by prorating for the resulting short Limitation Year.

[Ords. 415 10-29-2003, 561 01-29-2020]

§ 18-703 [RESERVED]

[Ord. 561 01-29-2020]

§ 18-704 **General Rule.**

The amount of Annual Additions which would otherwise be allocated under this Plan on behalf of any Participant during any Limitation Year (whether of this Plan or any other plan of

the Employer or any Related Employer) shall be reduced (under the procedures of § 18-707) to the extent necessary and possible so that the total amount of Annual Additions which may be allocated on behalf of any Participant during that Limitation Year (whether of this Plan or any other plan of the Employer) under all of the Defined Contributions Plans maintained by the Employer shall not exceed the Maximum Permissible Amount.

[Ords. 415 10-29-2003, 561 01-29-2020]

§ 18-705 [RESERVED]

[Ord. 561 01-29-2020]

§ 18-706 [RESERVED]

[Ord. 561 01-29-2020]

§ 18-707 Procedure for Reducing Contributions.

(a) **Timing of Reductions.** Reductions pursuant to this Article in the amount of contributions and allocations made on behalf of a Participant shall be made as soon as is administratively feasible, preferably before contributions and allocations are made.

(b) [RESERVED]

(c) [RESERVED]

(d) **Priority vs. Medical Plans.** Annual Additions under this Plan shall be reduced in full before Annual Additions are reduced under any individual medical accounts (as defined in Code § 415(J)(2)) or post-retirement medical accounts for key employees (as described in Code § 419A(d)) maintained by the Employer.

(e) **Priority vs. Earlier Defined Contribution Plan Allocations.** Annual Additions under this Plan which are allocated as of later dates shall be reduced in full before any earlier allocations under this or any other defined contribution plan of the Employer or any Related Employer are reduced.

(f) **Priority vs. Contemporaneous Allocations Under All Defined Contribution Plans.**

Annual Additions under this Plan which are allocated on the same day as other Annual Additions under this Plan or under other defined contribution plans, shall be reduced according to the order of priority which follows (to the extent necessary). Where a full reduction is not necessary under any given category, the amount of Annual Additions to be reduced under this Plan shall be determined by the following product:

The total amount of Annual Additions to be reduced in that category.	X	The amount of Annual Additions allocated under <u>this Plan in that category</u> . The total amount of Annual Additions allocated under all defined contribution plans in that category.
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(1) **Nondeductible Employee Contributions.** First, nondeductible employee contributions under this Plan and other defined contribution plans of the Employer or any Related Employer shall be reduced, or, if already made, shall be returned to the Participant and not allocated. (*See* subsection (g) for the treatment of any related matching contributions.)

(2) **Elective Deferrals.** Second, elective deferrals under any other plans of the Employer or any Related Employer shall be reduced, or, if already made, shall be distributed to the Participant. This distribution shall not be subject to any of the provisions of Articles XII, XIII, or XIV, and shall not be considered in determining whether the Participant has satisfied the minimum distribution requirements under those Articles and Code § 401(a)(9). (*See* subsection (g) for the treatment of any related matching contributions.)

(3) **Profit Sharing Employer Contributions.** Third, allocations which would be attributable to nonelective employer contributions under profit sharing plans of the Employer or any Related Employer shall be reduced. These reductions shall be used to increase the amount of additions to be allocated to Participants who have not reached their Code § 415 limit (as provided in this Article VII). After each such allocation, the provisions of this Article VII and similar Code § 415 provisions in other plans executed to that point shall be re-executed in accordance with the new allocations. Successive reductions and reallocations under this paragraph shall continue until all employer contributions are allocated to Participants consistent with the Code § 415 limitations or all eligible Participants have received the maximum amount permitted under this Article VII and similar Code § 415 provisions in other plans. In the later event, any remaining reductions shall be returned to the relevant employer; if they cannot be so returned, they shall be allocated to the suspense accounts of such profit sharing plans. All amounts allocated to Participants under this paragraph are considered employer contributions.

(4) **Money Purchase Employer Contributions.** Fourth, allocations which would be attributable to nonelective employer contributions under this and other money purchase pension plans of the Employer or any Related Employer shall be reduced and the Employer or Related Employer shall not be required to make contributions to such plans in such amounts. If through some mistake in computation or estimation, the Employer or any Related Employer does in fact contribute amounts which may not be allocated to a Participant's account because of the limitations of this Article VII and similar Code § 415 provisions of other plans, and such amounts cannot be returned to the Employer or Related Employer, such amounts shall be allocated to the suspense accounts under such money purchase pension plans of the Employer or Related Employer.

(4.1) **Other Allocations.** Fifth, any allocations not described in paragraphs (1) through (4) or (5) of this subsection (f), or in subsection (g), shall be reduced.

(5) **Forfeitures.** Finally, allocations which would be attributable to withdrawals from Forfeiture or Suspense Accounts of all defined contribution plans of the Employer or any

Related Employer shall be reduced. The amount of such reductions shall be allocated to the Suspense Accounts under such plans.

(g) Matching Contributions. Allocations which would be attributable to employer matching contributions made with respect to employee contributions or elective deferrals under defined contribution plans of the Employer or any Related Employer that are returned or distributed to the Participant by virtue of this Article VII, shall not be made and the Employer or Related Employer shall not be required to make such contributions (since there are no underlying contributions to match).

[Ords. 415 10-29-2003, 561 01-29-2020]

§ 18-708 Conformance to Code Section 415.

The limitations provided by this Article are intended to comply with Code § 415 and the regulations promulgated thereunder. To the extent there is any discrepancy between this Article and Code § 415 and related regulations, or any ambiguity in the terms of this Article, the discrepancy or ambiguity (whether this Article is more or less stringent than Code § 415 and related regulations) shall be resolved in such a way as to give full effect to the provisions of Code § 415 and regulations promulgated thereunder.

[Ord. 415 10-29-2003]