K&L Alert
COMPENSATION & BENEFITS

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Summary of Retirement-Related Provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001

The Economic Growth and Tax Relief Reconciliation Act of 2001 (the "Act"), which was signed into law by President Bush on June 7, 2001, contains significant changes to the federal income tax provisions applicable to virtually every type of tax-qualified retirement arrangement, including qualified retirement plans (such as 401(k), profit sharing, money purchase and defined benefit pension plans), employee stock ownership plans ("ESOPs"), 403(b) plans, state and local government deferred compensation plans established under Section 457 of the Internal Revenue Code ("457 plans") and individual retirement accounts (including Traditional, Roth, SEP and SIMPLE IRAs).

The Act's retirement provisions include well-publicized increases in limits on benefits and contributions. However, several changes in the way retirement plans must be administered, designed and communicated to participants were also included in the Act. Although a number of these less well-publicized provisions of the Act offer significant opportunities to employers to enhance employee participation and retention, maximize deductions and other tax benefits of plan sponsorship and simplify plan administration, many impose potentially substantial and perhaps unexpected burdens on plan sponsors and administrators.

Most of these changes take effect on January 1, 2002. Accordingly, employers and individuals will need to begin planning for these changes now. The Internal Revenue Service is considering whether to issue model amendments for plans to use in adopting the Act's changes, but no decision has been made at this time. Notably, due to restraints imposed by prior budget resolutions, all of the changes included in the Act are scheduled to terminate on December 31, 2010 unless Congress provides otherwise before that date.

We have prepared a detailed plan-by-plan analysis of the retirement-related provisions of the Act. It is, of course, not possible to capture in this summary all of the nuances reflected in the nearly 100 pages of the Conference Report devoted to the retirement-related provisions of the Act. Moreover, numerous questions regarding the scope and implementation of these changes arise that do not presently lend themselves to easy answers.

With that caveat, the summary has been divided into Sections examining provisions related to specific plan types, with brief Sections summarizing special provisions applicable to certain small employers and other miscellaneous and technical provisions. Attached to this summary are two appendices. Appendix A is a chart showing the phased-in increase in individual contribution limits and catch-up contributions for each type of arrangement described below. Appendix B contains a chart comparing several current plan limitations with the new limitations established under the Act.

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A. Qualified Plans (General)

1. INCREASE IN COMPENSATION LIMIT

The Internal Revenue Code limits the amount of a participant's annual compensation that may be taken into account for several purposes in a qualified plan. The compensation limit applies to the level of contributions made to or benefits accrued under a plan, the amount that an employer can deduct for plan contributions and certain nondiscrimination tests. Currently, the compensation limit is $170,000, which is indexed to inflation in $10,000 increments. Under the Act, the compensation limit is increased to $200,000 in 2002 and will be indexed to inflation in $5,000 increments for subsequent years. The new compensation limit will have the effect of increasing permitted contributions, benefits and deductions, and further expands the tax savings generated by corresponding increases in employer and employee contribution limits for retirement plans and arrangements (see Sections B(2), F(1), G(2) and G(3)) and employer deduction limits (see Sections B(3) and C(2)).

2. PLAN LOANS

The current prohibited transaction rules do not allow loans from qualified plans to participants who are "owner-employees." Plan loans to other plan participants are permitted under a regulatory exemption to the prohibited transaction rules, with certain limits on the amount and form of the loan. For these purposes, an "owner-employee" includes a sole proprietor or a partner or S corporation shareholder with a significant ownership interest in the partnership or corporation, as the case may be. In addition, IRA owners are not permitted to take out loans on their IRA balances. The Act eliminates the prohibition on plan loans to owner-employees, but not with respect to IRA owners. Consequently, owner-employees will be eligible to receive plan loans subject to the same requirements and limits imposed on other plan participants. While this change is effective beginning January 1, 2002, it will apply to a loan made prior to January 1, 2002 if the loan otherwise conforms to the regulatory requirements for plan loans. This means that plan loans can be made available to owner-employees now.

3. TOP-HEAVY RULES

If a plan is considered "top-heavy," special increased contribution and accelerated vesting requirements apply to the plan. Generally, a plan is top-heavy if at least 60% of the accrued benefits (in a defined benefit plan) or plan account balances (in a defined contribution plan) are allocated to a group of participants known as the "key employees." Currently, key employees include (i) officers earning over $70,000, (ii) five-percent owners of the employer, (iii) one-percent owners of the employer earning over $150,000, or (iv) one of the 10 employees earning more than $35,000 with the largest ownership interests in the employer. Family ownership of the employer must be aggregated for purposes of determining who is a key employee. In addition, distributions made to employees over the past five years who were key employees when they terminated employment are included in the calculation of whether the plan is top-heavy.

The Act makes three primary changes to the top-heavy rules. First, the definition of a key employee is simplified somewhat and its scope is narrowed. Under the Act, key employees will include only (i) officers earning over $130,000, (ii) five-percent owners, and (iii) one-percent owners earning over $150,000. The Act increases the compensation threshold for officers and eliminates the "top-ten owner" rule under (iv) above. In addition, key employees will include only those employees who fall under one of the above categories in the preceding plan year, rather than over the last five years. Family attribution of ownership interests will continue to apply only to the determination of employees who are five-percent owners.

Second, the determination of the benefits included in the top-heavy calculation is modified. The calculation of whether the plan is top-heavy generally will take into account only current benefits and distributions made in the one-year period ending on the date the top-heavy determination is being made, instead of including distributions to key employees in the past five years. However, in-service distributions made in the past five years will continue to be included in the top-heavy calculation. Further, benefits attributable to former employees will not be taken into account if the employee has performed no services for the employer in the one-year period ending on the top-heavy determination date.

Third, the Act provides that a 401(k) plan meeting the safe harbor nondiscrimination requirements of Section 401(k)(12) of the Internal Revenue Code will

automatically avoid top-heavy status. The safe harbor under Section 401(k)(12) generally requires that an employer make either (i) a nonelective contribution for each eligible nonhighly compensated employee of 3% of the employee's compensation, or (ii) a matching contribution for each eligible employee (or just for each eligible nonhighly compensated employee) equal to 100% of the employee's salary deferrals up to 3% of the employee's compensation, plus 50% of the employee's deferrals from 3% to 5% of his or her compensation. The Act also provides that matching contributions used to satisfy the minimum benefit requirements for top-heavy plans may be taken into account in determining whether the plan satisfies the nondiscrimination rules, thus overriding current Internal Revenue Service regulations.

The changes to the top-heavy rules are effective for plan years beginning on or after January 1, 2002. These changes—particularly the elimination of the five-year look-back rules—should substantially simplify administration of the top-heavy test. Moreover, the increase in the key employee compensation threshold for officers should make it easier for some plans to pass the top-heavy test. The top-heavy exemption for safe harbor 401(k) plans should increase the appeal of these plans.

4. EXPANSION OF ROLLOVER PROVISIONS

Currently, distributions from a tax-qualified defined benefit or defined contribution plan that otherwise meet the definition of an "eligible rollover distribution" can be rolled over only to an IRA or another qualified plan. They cannot be rolled over to a 403(b) plan or a 457 plan. Similarly, distributions from these other types of plans cannot be rolled over to a tax-qualified plan. Also, surviving spouses generally may only roll over a distribution to an IRA. The Act removes these rollover restrictions and generally allows an eligible rollover distribution from any of the above plans to be rolled over to another type of plan. However, a plan is not required to accept such rollovers. Distributions for which capital gains or averaging treatment are available and sought may only be rolled over in accordance with existing rollover rules.

The Act also permits a surviving spouse of a deceased participant to roll over distributions of the deceased participant's benefits to a qualified plan, a 403(b) plan or a 457 plan in which the surviving spouse participates.

The Act expands the definition of eligible rollover distribution to include distributions attributable to after-tax contributions. However, rollovers between qualified plans of distributions attributable to after-tax contributions may be accomplished only in a direct plan-to-plan transfer, and distributions of amounts attributable to after-tax IRA contributions may not be rolled over to a qualified plan, a 403(b) plan or a 457 plan.

In addition, the Act revises the requirement that a participant must roll over a distribution within 60 days after the distribution by giving the Internal Revenue Service authority to waive the 60-day requirement in cases of casualty, disaster or other events beyond the control of the participant.

These changes are effective for distributions occurring on or after January 1, 2002. These expanded rollover rules should generally increase the portability of tax-advantaged retirement assets between employers. However, the rules contain several traps for the unwary that could complicate the rollover process. The expansion of the definition of eligible rollover distribution to include amounts attributable to after-tax contributions should be welcomed by individuals that wish to move retirement assets out of a former employer's plan while still preserving tax-deferred treatment of the earnings on those contributions.

5. CHANGES TO INVOLUNTARY CASH-OUT RULES

A qualified plan is permitted to distribute a terminated employee's plan benefit without the employee's consent if the present value of the benefit does not exceed $5,000. The Act allows a plan to disregard amounts that have been rolled over to the plan in calculating whether the employee's benefit exceeds $5,000.

In addition, the employee generally is permitted to roll over the involuntary cash-out distribution to an IRA or another qualified plan, but if the employee does not elect this alternative, the distribution is paid out in cash. The Act requires that, for cash-out distributions exceeding $1,000, the default option is a direct rollover to an employer-established IRA. Of course, the employee still has the option of designating an IRA or other employer plan to receive the distribution or taking a cash distribution. However, the default rollover provision for cash-out

distributions could create significant administrative burdens for employers when employees do not make an affirmative distribution election. First, the employer must seek out an IRA provider and establish an IRA on behalf of the nonresponsive employee. Second, the Act specifies that the employer retains fiduciary responsibility with respect to the assets in the IRA for a year (except to the extent that the participant moves the assets of the IRA to another IRA before then). This means, among other things, that the employer must monitor the prudence of investments under the IRA following the rollover.

These changes are effective for distributions made on or after January 1, 2002.

6. EXCLUSION FROM INCOME OF COST OF EMPLOYER-PROVIDED RETIREMENT ADVICE

The Act clarifies that effective for tax years beginning on or after January 1, 2002, qualified retirement planning services provided to an employee and his or her spouse by or at the expense of the employer are excluded from the employee's wages as a de minimis fringe benefit. The exclusion will not apply to highly compensated employees unless the advice is provided in a uniform nondiscriminatory manner. Advice covered by the exclusion may include general retirement planning and how the employer's plan fits into the employee's overall retirement plan. However, it does not apply to other services that may be related to retirement, such as tax preparation, accounting, legal or brokerage services.

7. MODIFICATION OF MINIMUM REQUIRED DISTRIBUTION LIFE EXPECTANCY TABLES

In January 2001, the Internal Revenue Service issued regulations modifying and largely simplifying the minimum distribution rules that apply to participants who have not begun receiving distributions upon reaching age 70½ or, for certain participants, retirement, if later. The amount of a required minimum distribution generally is determined by using life expectancy tables established by the Internal Revenue Service in its regulations. The Act directs the Internal Revenue Service to revise the applicable life expectancy tables to reflect current life expectancy rates. Since current life expectancies are longer than the life expectancies used under the existing life expectancy tables contained in the regulations, this change should result in smaller minimum required distributions for most individuals.

8. LIMITATION ON ANTI-CUTBACK RULES

Until recently, no qualified plan could adopt an amendment that reduced or eliminated "protected benefits," which are generally defined as accrued benefits, including an early retirement benefit or retirement-type subsidy, or any optional form of benefit, such as an annuity or installment form of distribution. The Internal Revenue Service recently issued regulations permitting the elimination of certain forms of distribution in most defined contribution plans, following notice to participants, as long as the plan retains a lump sum form of distribution that is equivalent in value to the other forms of distribution. The Act largely parrots the new Internal Revenue Service regulations. However, the Act also directs the Internal Revenue Service to issue regulations additionally excluding from the anti-cutback rules any amendment that reduces or eliminates any protected benefit if that benefit creates significant burdens or complexities for a plan and its participants, but only if the amendment does not adversely affect the rights of participants in more than a de minimis manner. While this provision opens up the possibility that the anti-cutback rules will be further limited in the future, the language of the provision is so broad and undefined as to give no real sense as to how the regulations may finally apply.

B. Defined Contribution Plans

1. LIMIT ON ANNUAL ADDITIONS UNDER SECTION 415

Section 415 of the Internal Revenue Code limits the amount of "annual additions" that can be contributed or allocated to an individual participant's plan account during the year. Amounts included in a participant's annual additions are generally any employer or employee contributions and any forfeitures allocated to the participant's account. Currently, annual additions are limited to the lesser of $35,000 or 25% of the participant's compensation for the year. Effective in 2002, the Act raises this limit to the lesser of $40,000 or 100% of compensation. The $40,000 amount will be indexed to inflation in $1,000 increments.

2. INCREASE IN 401(k) ELECTIVE DEFERRAL LIMIT/CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OLDER

Employees participating in a 401(k) plan may elect to defer a portion of their salary to the plan on a pre-tax basis. These elective deferrals are excluded from the employee's income for federal (and often state) income tax purposes. Currently, an employee may not elect to defer more than $10,500 per year. The Act raises this limit to $11,000 beginning in 2002 and in $1,000 increments each year thereafter until it reaches $15,000 in 2006. Thereafter, the limit will be indexed for inflation in $500 increments.

In addition, the Act permits participants who are age 50 and older to make additional elective deferrals above the limit described above. These additional deferrals are described as "catch-up contributions," although they are not contingent on a participant's prior level of deferrals. Beginning in 2002, the annual limit on catch-up contributions is $1,000. This limit will increase in $1,000 increments until it reaches $5,000 in 2006. Thereafter, the limit on catch-up contributions will be indexed for inflation in $500 increments. An individual's catch-up contribution for a year may not exceed the difference between the individual's compensation for the year and the other elective deferral contributions made by the individual for the year. Catch-up contributions generally are not subject to other compensation limitations and are not taken into account for nondiscrimination testing purposes. Also, employers may make matching contributions relating to catch-up contributions, but these matching contributions will be subject to other limitations including the nondiscrimination rules. Consequently, a participant who is at least age 50 by the end of 2002 can effectively elect to defer up to $12,000 of his or her salary ($11,000 regular deferral and $1,000 catch-up contribution). A participant who is at least age 50 by the end of 2006 will be able to defer up to $20,000 of his or her salary ($15,000 regular deferral and $5,000 catch-up contribution). Further, if, due to other limitations on salary deferrals, the participant's regular elective deferral is limited to, for example, $7,000, an eligible participant would still be able to defer an additional $1,000 in 2002 or $5,000 in 2006.

These limits are described in detail in Appendix A.

3. EMPLOYER'S TAX DEDUCTION FOR PLAN CONTRIBUTIONS

Currently, employers sponsoring a profit sharing plan or a 401(k) plan are not permitted to take a tax deduction for contributions to the plan in any year greater than 15% of the total compensation of the plan's participants during such year (subject to the compensation limit discussed under the General Qualified Plan section above). Employers sponsoring a money purchase plan may take a tax deduction for contributions up to the minimum funding cost of the plan. (If the employer sponsors both a money purchase plan and a profit sharing or 401(k) plan, the overall deduction limit is the greater of 25% of participants' total plan year compensation or the minimum funding cost for the year.)

Effective for tax years beginning on or after January 1, 2002, the Act makes two important changes to an employer's ability to deduct plan contributions to defined contribution plans. First, for defined contribution plans (including money purchase plans), the deduction limit is raised to 25% of participants' total plan year compensation. Second, elective deferrals by participants will not be taken into account as part of the employer's contributions to the plan. Nevertheless, the employer can still deduct these amounts as business expenses under Section 162 of the Internal Revenue Code. Thus, the 25% limit on deductions will only apply to matching and other nonelective contributions made by the employer to the plan. Consequently, subject to other limitations on employer and employee contributions, an employer may permit employees to defer up to 100% of their compensation and can fully deduct such employee elective deferrals, while also taking a deduction for any additional employer contributions to the plan up to 25% of the total participant compensation for the plan year.

Many 401(k) plans impose a limit on a participant's elective deferral contributions in the form of a maximum percentage of the participant's compensation—e.g., 18% of compensation—primarily to ensure compliance with the 15% of aggregate compensation deduction limit imposed by the Internal Revenue Code and, occasionally, to ensure compliance with the limit on annual additions under Section 415 of the Internal Revenue Code. In light of the Act's exemption of elective deferral contributions from the deduction limit and the Act's

increase of the limit on annual additions under Section 415 of the Internal Revenue Code, there should no longer be any need for employers to continue to impose compensation percentage limits on 401(k) contributions (other than the 100% of compensation limit imposed by Section 415). Of course, some employers may continue to limit contributions by highly compensated employees to ensure compliance with nondiscrimination tests under Section 401(k) of the Internal Revenue Code.

4. ROTH 401(k) AFTER-TAX CONTRIBUTIONS

Currently, 401(k) plans may (but are not required to) allow employees to make both pre-tax salary deferrals and after-tax salary deferrals. While the pre-tax deferrals have the benefit of deferring current taxes on the deferred amount and any earnings until they are distributed, the only benefit of the after-tax contributions is to defer tax on any earnings until distribution. The Act permits (but does not require) employers to allow employees to make after-tax deferrals to 401(k) plans that will function in a similar manner to Roth IRA contributions, meaning neither the deferrals nor the earnings will be subject to federal income taxes when they are distributed. These after-tax deferrals will be known as Roth 401(k) contributions. However, the Roth 401(k) contribution provisions will not be effective until 2006, which gives Congress plenty of time to repeal or alter what could be a significant tax-savings opportunity.

5. NONREFUNDABLE TAX CREDIT FOR EMPLOYEE CONTRIBUTIONS

Currently, the tax benefit of making employee contributions to a 401(k) or other plan is the deferral of taxes on the earnings (and, in some cases, the contributions themselves) until they are distributed from the plan. The Act adds a new tax benefit that allows certain low income taxpayers to reduce their current tax liability even further by taking a credit for their eligible retirement plan contributions. For this purpose, all elective deferral contributions under a 401(k) plan, a 403(b) plan, a 457 plan, a SIMPLE IRA, or a SEP-IRA, all contributions to a Traditional IRA or Roth IRA and all voluntary after-tax 401(k) contributions are aggregated and eligible for the credit. The credit is available to employees who have adjusted gross income below $50,000 for joint filers, $37,500 for head of household filers and $25,000 for all other filers. However, full-time students and any person who is claimed as a dependent cannot use the credit. The maximum credit is 50% of the taxpayer's first $2,000 of eligible retirement plan contributions. The table below shows the credit rate for different levels of adjusted gross income:

JOINT FILERS	HEADS OF HOUSEHOLD	ALL OTHER FILERS	CREDIT RATE
$0-$30,000	$0-$22,500	$0-$15,000	50%
$30,000-$32,500	$22,500-$24,375	$15,000-$16,250	20%
$32,500-$50,000	$24,375-$37,500	$16,250-$25,000	10%
Over $50,000	Over $37,500	Over $25,000	0%

The credit is reduced by the amount of any taxable distributions received by the taxpayer and the taxpayer's spouse during the tax year for which the credit is claimed or the two prior tax years and during the period after the end of the tax year for which the credit is claimed, but prior to the due date for filing the taxpayer's tax return for the year. Because the credit is nonrefundable, if the taxpayer does not have any tax liability prior to application of the credit, the credit is lost. The credit is effective for deferrals made for plan years beginning on or after January 1, 2002, but currently is set to expire after 2006.

6. FASTER VESTING OF MATCHING CONTRIBUTIONS

Currently, employer matching contributions under a 401(k) plan must vest under either a 5-year cliff schedule (*i.e.* 100% vesting after 5 years) or a 3-to-7-year graded schedule (*i.e.*, at least 20% vested after 3 years and increasing in at least 20% increments until 100% vested after 7 years). The Act requires that matching contributions vest under either a 3-year cliff schedule or a 2-to-6-year graded schedule. The accelerated vesting schedule applies to matching contributions made for plan years beginning on or after January 1, 2002, but requires service prior to the effective date to be taken into account.

7. MODIFICATIONS TO HARDSHIP WITHDRAWAL RULES

Elective deferrals in a 401(k) plan may be distributed in the case of an employee's financial hardship, meaning an immediate and heavy financial need

where the distribution is necessary to satisfy the heavy need. Internal Revenue Service regulations provide a safe harbor for making hardship distributions which require, among other things, that employees receiving a hardship distribution be prohibited from making any elective deferrals to the plan for at least 12 months after the distribution. The Act requires the Internal Revenue Service to revise its regulations so that the prohibition on elective deferrals after a hardship distribution will be limited to only 6 months. This revision must be effective for distributions on or after January 1, 2002.

The Act also clarifies that any distribution designated by a defined contribution plan as a hardship distribution—even if the distribution is not subject to the 401(k) hardship distribution standards—is not an eligible rollover distribution. For example, if a plan permits in-service distribution of amounts attributable to employer matching contributions or profit sharing contributions only on the basis of hardship, then such amounts would not be eligible rollover distributions.

8. ELIMINATION OF THE SAME-DESK RULE

Currently, distributions from 401(k) plans are permitted only in the event of the participant's attainment of age 59½, death, disability or "separation from service." Under the current Internal Revenue Service interpretation of the term separation from service, a complex set of rules has developed for determining whether a participant has incurred a separation from service, particularly in the context of a corporate merger or acquisition. Thus, an employee may experience a "severance from employment" with a particular employer maintaining a 401(k) plan due to an acquisition of the employer's business, but the employee is not deemed to have a "separation from service" if the employee continues to work for the acquiring employer at the same job, or the "same desk." An exception to the same-desk rule provides that an employee has a separation from service if the employee changes employers due to a sale of a subsidiary or a sale of the employer's assets, as long as the employee is transferred to the buyer in the transaction and certain other requirements are met.

The Act effectively eliminates the same-desk rule by providing that distributions may be made upon a participant's "severance from employment" rather than a "separation from service." However, plans are permitted to limit the definition of "severance from employment" such that the old same-desk rules would apply. Also, the Act does not change the rule that no distribution is allowed if plan assets and liabilities relating to an employee's benefit are transferred to the employee's new employer as part of the corporate transaction. The elimination of the same-desk rule is effective for distributions occurring on or after January 1, 2002, regardless of when the severance from employment occurred. This change should significantly simplify the treatment of 401(k) plans in corporate mergers and acquisitions.

9. REPEAL OF THE MULTIPLE USE TEST

Under current law, nondiscrimination testing rules apply to various types of contributions to 401(k) plans. One test, known as the ADP test, determines whether elective salary deferrals discriminate in favor of highly compensated employees. Similarly, the ACP test focuses on whether employer matching contributions and after-tax employee contributions favor highly compensated employees. A plan generally passes these tests by satisfying at least one of two different calculations comparing, on a separate basis, the deferral and contribution percentages of the highly compensated employees with those of the other employees. However, if the plan passes both tests by using only one of the two methods for comparing the percentages, it must also pass another test, known as the multiple use test. The multiple use test generally has been viewed as adding an unnecessary level of complexity to an already unwieldy testing scheme. Effective for plan years beginning on or after January 1, 2002, the Act repeals the multiple use test.

10. EXCLUSION OF TAX-EXEMPT ENTITY'S EMPLOYEES FROM NONDISCRIMINATION TESTING

Prior to 1997, tax-exempt charitable entities were not permitted to sponsor 401(k) plans, but generally could sponsor 403(b) plans under which employees could make elective salary deferrals. Internal Revenue Service regulations permitted a for-profit employer that was a member of a controlled group of entities including a tax-exempt organization to sponsor a 401(k) plan for its employees and exclude the tax-exempt entity's employees when performing nondiscrimination testing as long as at least 95% of the for-profit employees were eligible to participate in

the 401(k) plan. Beginning in 1997, tax-exempt employers were permitted to sponsor 401(k) plans for their employees. The Act requires the Internal Revenue Service to revise its regulations to provide that employees of a tax-exempt employer may be excluded from nondiscrimination testing in a 401(k) plan sponsored by an affiliated for-profit employer as long as at least 95% of the for-profit employees are covered under the 401(k) plan and the tax-exempt employees are not eligible to participate in the 401(k) plan, but are covered under the tax-exempt employer's 403(b) plan. The revised regulations are to be retroactively effective to 1997.

C. Defined Benefit Plans

1. INCREASED INTERNAL REVENUE CODE SECTION 415 LIMIT

Currently, the maximum annual benefit permitted under a defined benefit plan pursuant to Section 415 of the Internal Revenue Code is the lesser of 100% of a participant's average compensation or $140,000. The $140,000 limit is increased where benefit payments begin after Social Security normal retirement age (currently, age 65) and decreased where benefit payments begin before Social Security normal retirement age. Effective for years *ending* on or after January 1, 2002, the Act increases the dollar maximum in this formula from $140,000 to $160,000. This dollar amount will continue to be indexed to inflation. In addition, adjustments to the $160,000 limit for early or later commencement will no longer be tied to Social Security normal retirement age. Rather, effective for years *ending* on or after January 1, 2002, the $160,000 figure will be reduced where benefit payments begin before age 62 and increased where benefit payments begin after age 65.

2. MODIFICATION OF DEDUCTION RULES

Under current law, an employer that sponsors a qualified defined benefit plan may not deduct contributions in excess of the full funding limit. The full funding limit is, generally, the excess of (i) the lesser of (A) the accrued liability of the plan or (B) 160% of the plan's current liability over (ii) the value of the plan's assets. The current liability full funding limit is scheduled under current law to increase to 165% of current liability for 2003 and 2004 and to 170% for 2005 and thereafter. Notwithstanding the foregoing, sponsors of single employer plans with more than 100 participants may deduct up to 100% of the plan's unfunded current liability.

The Act modifies the deduction rules for qualified defined benefit plans in several respects:

(i) The Act increases the current liability full funding limit to 165% of current liability for 2002 and to 170% of current liability for 2003 and eliminates the current liability full funding limit for 2004 and subsequent years. Accordingly, in 2004 and thereafter, a plan's full funding limit will be the accrued liability of the plan over the value of the plan's assets. Since the accrued liability funding limit is based upon projected benefit liabilities (rather than current accrued benefit liabilities), this change could provide sponsors of defined benefit plans with an opportunity to take larger deductions.

(ii) Effective for plan years beginning on or after January 1, 2002, the special rule permitting deductions of contributions up to 100% of a plan's unfunded current liability is extended to plans with 100 or fewer participants and to multiemployer plans (provided that the plan is covered by the Pension Benefit Guaranty Corporation termination insurance program).

(iii) Effective for plan years beginning on or after January 1, 2002, an employer may deduct contributions up to 100% of a terminating plan's unfunded termination liability.

3. MODIFICATION OF EXCISE TAX RULES FOR NONDEDUCTIBLE CONTRIBUTIONS

Under current law, a 10% excise tax is generally assessed on all nondeductible contributions to all defined benefit and defined contribution plans. The excise tax generally does not apply to (i) contributions to certain terminating defined benefit plans and (ii) employer matching and employee elective deferral contributions to defined contribution plans (up to 6% of compensation). Effective January 1, 2002, an employer may elect to exempt from the excise tax defined benefit plan contributions in excess of the current liability full funding limit (but not contributions in excess of the accrued liability full funding limit). To the extent the employer makes such an election, the employer will

be unable to take advantage of the excise tax exemptions for certain terminating defined benefit plans and for defined contribution plans.

4. MODIFICATION OF RULES REQUIRING ADVANCE NOTICE OF CERTAIN AMENDMENTS

Under current law, an amendment to a defined benefit plan or a money purchase pension plan that significantly reduces the rate of future benefit accrual is not effective unless notice of the amendment is distributed to plan participants after the amendment is adopted, but no later than 15 days prior to the effective date of the amendment.

The Act modifies these notice requirements in several respects:

(i) The notice must also be distributed in connection with any amendment that eliminates or reduces an early retirement benefit or retirement-type subsidy.

(ii) The Internal Revenue Service has authority to exempt plans with fewer than 100 participants or to impose less strict notice requirements on such plans.

(iii) The Internal Revenue Service has authority to exempt amendments if participants are given the option to choose between benefits under the new plan formula or the old plan formula.

(iv) The 15-day advance notice rule is replaced with a requirement that the notice be distributed within a "reasonable time" before the effective date of the amendment, except to the extent specified in Internal Revenue Service regulations.

(v) A plan administrator that fails to provide proper notice is subject to an excise tax of $100 per day per participant. However, the excise tax does not apply during any period for which the plan administrator is not aware of the failure and exercises reasonable diligence to meet the notice requirement. The excise tax also does not apply to any failure to satisfy the notice requirement if the plan administrator exercised reasonable diligence to meet the notice requirement and provides the notice during the 30-day period beginning on the first day the plan administrator knew, or exercising reasonable diligence, should have known, that the failure existed. The total excise tax may not exceed $500,000 for a year if the plan administrator exercised reasonable diligence to meet the notice requirement.

(vi) Any amendment for which a failure to comply with the advance notice requirement is egregious will not become effective.

These modifications become effective with respect to amendments that are effective on or after June 7, 2001.

5. TIMING OF PLAN VALUATIONS FOR FUNDING PURPOSES

Effective for plan years beginning on or after January 1, 2002, the Act provides that an employer must value plan assets for funding purposes as of a date during the plan year for which the valuation is required or as of any date within the three-month period beginning prior to the plan year. In addition, an employer may elect to value plan assets as of any date in the year preceding the year for which the valuation is required if, as of the date of the valuation, plan assets are not less than 100% of the plan's current liability. Actuarial adjustments to the valuation information are required to reflect significant differences in plan participants. An employer may change its funding method to take advantage of the prior plan year rule only if plan assets are at least 125% of the plan's current liability. The Internal Revenue Service will automatically approve changes in funding method to use a prior year valuation if the change is within the first three years that the plan is eligible to make a change. An employer may not revoke a prior plan year election without the consent of the Internal Revenue Service.

6. PURCHASE OF SERVICE CREDIT UNDER GOVERNMENTAL PENSION PLANS

Effective on or after January 1, 2002, a participant in a defined benefit plan maintained by a state or local government may use a rollover or direct transfer of benefits from a 403(b) plan or a 457 plan to purchase "permissive service credit" under the defined benefit plan or to repay contributions and earnings with respect to an amount previously refunded under a forfeiture of service credit under the plan (or another plan maintained by a state or local government employer within the same state).

D. Employee Stock Ownership Plans

1. EXCISE TAX ON PROHIBITED ALLOCATIONS TO DISQUALIFIED PERSONS IN SUBCHAPTER S ESOPS

Effective for plan years beginning on or after January 1, 2005, an S corporation that sponsors an ESOP may be subject to a series of excise taxes for any plan year during which disqualified persons own at least 50% of the outstanding shares of the corporation. This provision is intended to encourage broad-based stock allocations in ESOPs sponsored by S corporations and to deter abusive exploitation of the 1996 law that allows subchapter S corporations to adopt ESOPs. In determining whether an individual is a disqualified person, generally, only shares owned by the ESOP are taken into consideration. However, in determining whether the excise taxes are triggered—i.e., whether the 50% ownership threshold is exceeded—all shares attributable to an individual are generally taken into account, whether owned directly or indirectly through the ESOP. Special rules apply with respect to "synthetic equity interests."

An individual is a disqualified person if the individual is a member of a "Deemed 20% Shareholder Group" or is a "Deemed 10% Shareholder." An individual is a member of a Deemed 20% Shareholder Group if the individual and certain family members are deemed to own at least 20% of the outstanding deemed-owned shares of the corporation. An individual is a Deemed 10% Shareholder if the individual is deemed to own at least 10% of the outstanding deemed-owned shares of the corporation. For these purposes, an individual's deemed-owned shares include (i) the shares allocated to the individual's account under the ESOP, and (ii) the individual's ratable share of the unallocated shares held by the ESOP (based upon the plan's most recent allocation).

Shares subject to synthetic equity interests are treated as outstanding shares and as deemed-owned shares of the person holding the synthetic equity interest to the extent that it will result in any person being treated as a disqualified person for the year. Synthetic equity interests include stock options, warrants, restricted stock, deferred issuance stock rights or similar interests that give the holder the right to acquire or receive stock in the future, as well as stock appreciation rights, phantom stock units or similar rights to future cash payments based on the value of the corporation's stock or appreciation in such value.

For purposes of determining whether disqualified persons own 50% of the outstanding shares of an S corporation's stock, share ownership and synthetic equity ownership are attributed among specified family members.

If disqualified persons own 50% or more of the outstanding stock of an S corporation for a plan year, the corporation is subject to the following excise taxes:

(i) 50% of the value of any allocation to any disqualified person for the plan year. This excise tax also applies for any plan year during which the principal substance of the ownership structure of an S corporation constitutes, in substance, an avoidance or evasion of this prohibited allocation rule.

(ii) 50% of the value of the shares upon which any synthetic equity interest held by a disqualified person is based—even if no shares are allocated under the ESOP to disqualified persons for that plan year.

(iii) Solely with respect to the first plan year in which disqualified persons own at least 50% of the outstanding stock of the corporation, 50% of the value of the deemed-owned shares of all disqualified persons for that plan year—even if no shares are allocated to disqualified persons for that year.

In addition, amounts allocated to disqualified persons for any such plan year are treated as distributed to them.

Although these excise taxes generally do not apply for plan years beginning before January 1, 2005, they apply to any ESOP established after March 14, 2001 or to any ESOP whose sponsoring employer elected subchapter S status after March 14, 2001 beginning with the first plan year ending after March 14, 2001.

2. DIVIDEND REINVESTMENT DEDUCTION

Under current law, dividends paid on employer securities held by an ESOP are deductible to the employer only if (i) they are paid in cash to plan

participants directly or within 90 days following the end of the plan year in which the dividends are paid or (ii) they are used to repay the loan the proceeds of which were used to acquire the employer securities. Effective for tax years beginning on or after January 1, 2002, dividends paid on employer securities are deductible to the employer if, at the election of participants, they are paid in cash directly or within 90 days following the end of the plan year in which the dividends are paid or used to acquire employer securities. No deduction is allowed with respect to any ESOP dividend if the Internal Revenue Service determines that the dividend constitutes, in substance, the avoidance or evasion of taxes. This includes unreasonable dividends. The conference agreement describing the final bill clarifies that a dividend paid on common stock that is primarily and regularly traded on an established securities market is reasonable. For employers with non-publicly traded stock, the reasonableness of a dividend is determined by comparing the dividend rate on stock held by the ESOP with the dividend rate for common stock of comparable corporations whose stock is publicly traded. Comparability is determined by reference to relevant corporate characteristics such as industry, corporate size, earnings, debt-equity structure and dividend history.

E. 403(b) Plans

1. QUALIFIED PLAN CHANGES THAT APPLY TO 403(b) PLANS

A number of changes that apply to qualified plans generally or to defined contribution plans specifically also apply to 403(b) plans. These changes are listed below and are described earlier in this summary at the locations indicated:

Increase in Compensation Limit .... Section A(1)
Expansion of Rollover Provisions .... Section A(4)
Modification of Minimum Required
Distribution Life Expectancy Tables .... Section A(7)
Limit on Annual Additions
Under Section 415 .... Section B(1)
Increase in Elective Deferral Limit/
Catch-Up Contributions .... Section B(2)
Nonrefundable Tax Credit for
Employee Contributions .... Section B(5)
Modifications to Hardship
Withdrawal Rules .... Section B(7)
Elimination of the Same-Desk Rule .... Section B(8)

2. REPEAL OF EXCLUSION ALLOWANCE

Under current law, a 403(b) plan participant's contributions for a year are limited by an "exclusion allowance," which is 20% of the participant's compensation for the year, multiplied by the participant's years of service, less tax-excludable contributions for prior years under qualified retirement plans (including qualified defined benefit plans), 403(b) plans or 457 plans maintained by the same employer.

Effective for tax years beginning on or after January 1, 2002, the exclusion allowance applicable to 403(b) plans is eliminated. In addition, the exclusion allowance rules are retroactively amended effective for tax years beginning on or after January 1, 2000 to provide that prior contributions to a qualified defined benefit plan do not reduce a participant's exclusion allowance.

F. 457 Plans

1. QUALIFIED PLAN CHANGES THAT APPLY TO 457 PLANS

A number of changes that apply to qualified plans generally or to defined contribution plans specifically also apply to 457 plans. These changes are listed below and are described earlier in this summary at the locations indicated:

Nonrefundable Tax Credit for
Employee Contributions .... Section B(5)
Modification of Minimum Required
Distribution Life Expectancy Tables .... Section A(7)
Elimination of the Same Desk Rule .... Section B(8)

2. INCREASE IN ELECTIVE DEFERRAL LIMIT/CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OLDER

Under current law, a participant's annual elective deferral contributions to a 457 plan may not exceed the lesser of $8,500 or 33-1/3% of the participant's annual compensation.

The $8,500 limit will be increased in the same manner as the limit on annual elective deferral contributions to 401(k) plans described above in Section B(2), including the rules for catch-up contributions by

individuals age 50 or older. However, in the three years prior to retirement, the catch-up contribution rule does not apply to a 457 Plan but the otherwise applicable limit (for individuals less than age 50) is doubled. These limits are described in detail in Appendix A.

In addition, effective for years beginning on or after January 1, 2001, the compensation percentage limitation is increased from 33-1/3% to 100%.

3. ELECTIVE DEFERRAL CONTRIBUTIONS UNDER OTHER PLANS DO NOT COUNT AGAINST DOLLAR LIMIT

Under current law, the dollar limit applicable to an individual with respect to annual elective deferral contributions to a 457 Plan is reduced by the amount of any elective deferral contributions made by the individual under any 401(k) plan, 403(b) plan, salary reduction SEP-IRA or SIMPLE IRA. Effective for years beginning on or after January 1, 2002, elective deferral contributions under these plans will not count against the 457 plan annual elective deferral contribution limit.

4. BENEFITS NO LONGER TAXABLE PRIOR TO DISTRIBUTION

Under current law, benefits under a 457 plan are taxable when they are "made available" to a participant. Effective on or after January 1, 2001, benefits under a 457 plan are taxable only when distributed.

5. APPLICATION OF DIRECT ROLLOVER AND WITHHOLDING RULES

Effective for distributions made on or after January 1, 2002, the direct rollover and withholding rules that are generally applicable to qualified retirement plans and 403(b) plans (as modified by the Act and described in Section A(5) above) are extended to 457 plans. As a result, eligible rollover distributions from a 457 plan may be rolled over to a qualified retirement plan, a 403(b) plan, another 457 plan or an IRA. Moreover, administrators of 457 plans must withhold 20% of any distribution from a 457 plan that is an "eligible rollover distribution" and that is not rolled over directly to another plan or IRA. Nonperiodic distributions from a 457 plan that are not eligible rollover distributions are subject to 10% withholding and periodic distributions from a 457 plan that are not eligible rollover distributions are subject to normal wage withholding and, in either case, the participant may elect not to have any amount withheld. Like qualified retirement plans and 403(b) plans, hardship distributions from a 457 plan would not be considered eligible rollover distributions. Although distributions from a 457 plan are not generally subject to the 10% early distribution excise tax that applies to qualified retirement plans, 403(b) plans and IRAs, the excise tax does apply to amounts distributed from a 457 plan that are attributable to amounts rolled over from such plans. 457 plans must separately account for these amounts.

6. REPEAL OF SPECIAL MINIMUM REQUIRED DISTRIBUTIONS RULES

Under current law, distributions from a 457 plan are subject to the same minimum required distribution rules as qualified retirement plans, with certain modifications. Effective for distributions occurring on or after January 1, 2002, the modifications applicable to 457 plans are eliminated.

7. CLARIFICATION OF RULES RELATING TO DOMESTIC RELATIONS ORDERS

The Act clarifies that, effective January 1, 2002, distributions from a 457 plan pursuant to certain kinds of domestic relations orders do not violate the distributions requirements of Section 457 of the Internal Revenue Code (e.g., the prohibition of distributions prior to separation from service) and that distributions pursuant to a covered domestic relations order are taxed in the same manner as qualified retirement plans. This means that distributions to a spouse or former spouse of the participant pursuant to a covered domestic relations order are taxable to the spouse or former spouse and distributions to any other person pursuant to a covered domestic relations order are taxable to the participant.

G. Individual Retirement Accounts

1. INCREASE IN TRADITIONAL AND ROTH IRA CONTRIBUTION LIMIT/CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OLDER

The maximum annual contribution that may be made to any combination of Traditional and Roth IRAs will be gradually increased from $2,000 to $5,000 by 2008. After

2008, the $5,000 contribution limit will be indexed to inflation in $500 increments. Individuals age 50 or older by the end of the taxable year for which a contribution is made will be permitted to make additional catch-up contributions—an additional $500 per year beginning in 2002 and an additional $1,000 per year beginning in 2006. Unlike catch-up contributions to 401(k) plans, 403(b) plans, 457 plans, SEP-IRAs and SIMPLE IRAs, (i) an individual's maximum Traditional and Roth IRA catch-up contribution for a year is not limited by the individual's compensation and other retirement-related contributions and (ii) the catch-up Traditional and Roth IRA is not indexed to inflation. These limits are described in detail in Appendix A. Although the Act increases the limits on IRA contributions, the Act does not change any of the rules applicable to Traditional or Roth IRA eligibility or any of the rules applicable to deductions for Traditional IRA contributions.

2. INCREASE IN ELECTIVE DEFERRAL LIMIT FOR SALARY REDUCTION SEP-IRAS/CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OLDER

The $10,500 limit on annual elective deferral contributions to salary reduction SEP-IRAs (sometimes referred to as SARSEP-IRAs) will be increased in the same manner as the limit on annual elective deferral contributions to 401(k) plans described in Section B(2) above including the rules for catch-up contributions by individuals age 50 or older. These limits are described in detail in Appendix A.

3. INCREASE IN ELECTIVE DEFERRAL LIMIT FOR SIMPLE IRAS/CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OLDER

The maximum annual elective deferral contribution that may be made by an employee to a SIMPLE IRA will be gradually increased from $6,500 to $10,000 by 2005. After 2005, the $10,000 contribution limit will be indexed to inflation in $500 increments. Individuals age 50 or older by the end of the tax year for which an elective deferral contribution to a SIMPLE IRA is made will be permitted to make additional catch-up contributions. The catch-up contribution will be phased in gradually and will ultimately be $2,500 by 2006. After 2006, the $2,500 catch-up contribution will be indexed to inflation in $500 increments (unlike the catch-up contribution to Traditional and Roth IRAs, which is not indexed to inflation). An individual's catch-up contribution for a year may not exceed the difference between the individual's compensation for the year and any other elective deferral contributions by the individual for the year. These limits are described in detail in Appendix A.

4. NONREFUNDABLE TAX CREDIT FOR IRA CONTRIBUTIONS

Effective for the 2002 through 2006 tax years, the tax credit described in Section B(5) above with respect to 401(k) plan elective deferral contributions by low income individuals is also available with respect to contributions to a Traditional, Roth, SIMPLE or SEP-IRA. This new tax credit is in addition to any applicable deduction.

5. EXPANSION OF ROLLOVER PROVISIONS

The rollover changes described in Section A(5) above also generally apply to IRAs. Accordingly, effective for distributions made on or after January 1, 2002, any distribution from an IRA that is otherwise eligible for tax-deferred rollover treatment can be rolled over to a qualified retirement plan, a 403(b) plan or a 457 plan. A distribution from an IRA that is attributable to after-tax IRA contributions (e.g., nondeductible Traditional IRA contributions and Roth IRA contributions) may not be rolled over to a qualified retirement plan, a 403(b) plan or a 457 plan.

6. MODIFICATION OF MINIMUM REQUIRED DISTRIBUTION LIFE EXPECTANCY TABLES

The modification to the life expectancy tables described in Section A(8) above also applies to IRAs.

7. CONTRIBUTIONS TO SIMPLE IRAS FOR HOUSEHOLD WORKERS NOT SUBJECT TO 10% EXCISE TAX

Under current law, contributions to SIMPLE IRAs on behalf of household workers are not deductible because they are not made in connection with a trade or business expense of the employer and are, therefore, subject to a 10% excise tax on nondeductible contributions. Effective for tax years beginning on or after January 1, 2002, the 10% excise tax does not apply to SIMPLE IRA contributions on behalf of household workers. However, the excise tax continues to apply to contributions made on behalf of the employer or members of the employer's family.

H. Special Provisions for Small Employers

1. SMALL BUSINESS TAX CREDIT FOR NEW PLAN ADMINISTRATIVE EXPENSES

The Act gives certain small employers a general business tax credit equal to 50% of the employer's administrative and retirement-education expenses incurred in the first 3 years following the adoption of a qualified defined benefit or defined contribution plan, a simple IRA or a SEP-IRA. For purposes of the credit, a small employer means an employer with no more than 100 employees who earned $5,000 or more in the preceding year. The maximum credit in any one year is equal to $500. The 50% of expenses offset by the credit are not deductible by the employer. The credit is effective for costs paid or incurred in the 3 taxable years beginning after December 31, 2001 by a plan established after that date.

2. ELIMINATION OF INTERNAL REVENUE SERVICE USER FEES FOR SMALL EMPLOYER DETERMINATION LETTER REQUESTS

Effective in 2002, the Act eliminates Internal Revenue Service user fees for determination letter requests by small employers as long as the request is submitted before the later of (i) the fifth plan year after adoption of the plan or (ii) the end of the applicable remedial amendment period for the plan that begins before the fifth year of the plan. For purposes of this provision, a small employer is any employer with no more than 100 employees and at least one nonhighly compensated employee. The provision is not applicable to sponsors of prototype plans seeking Internal Revenue Service notification or opinion letters, but does apply to employers who adopt prototype plans.

I. Miscellaneous Provisions

The Act also contains several special rules that apply in only limited circumstances. The Act limits eligibility of nonresident aliens working in international shipping who might otherwise be deemed to have received U.S. income. The Act also modifies the maximum benefit rules for commercial airline pilots. The Act makes a technical correction for investment of employee deferrals in employer stock or other property if the assets were acquired prior to 1999. The Act further modifies certain rules applicable only to multiemployer plans.

If you have further questions about the Act or would like more information about K&L's Employee Benefit Plans/ERISA practice, please do not hesitate to contact any of our compensation and benefits attorneys listed below.

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APPENDIX A

Economic Growth and Tax Relief Reconciliation Act of 2001

CONTRIBUTION LIMIT INCREASES

TAX YEAR	401(k), 403(b), 457*, AND SEP-IRA		SIMPLE IRA		TRADITIONAL AND ROTH IRA	
	UNDER AGE 50	AGE 50 OR OLDER	UNDER AGE 50	AGE 50 OR OLDER	UNDER AGE 50	AGE 50 OR OLDER
2002	$11,000	$12,000	$7,000	$7,500	$3,000	$3,500
2003	$12,000	$14,000	$8,000	$9,000	$3,000	$3,500
2004	$13,000	$16,000	$9,000	$10,500	$3,000	$3,500
2005	$14,000	$18,000	$10,000	$12,000	$4,000	$4,500
2006	$15,000	$20,000	Indexed to $10,000	Base contribution indexed to $10,000 Catch-Up contribution is $2,500	$4,000	$5,000
2007	Indexed to $15,000	Base contribution indexed to $15,000 Catch-Up contribution indexed to $5,000	Indexed to $10,000	Base contribution indexed to $10,000 Catch-Up contribution indexed to $2,500	$4,000	$5,000
2008	Indexed to $15,000	Base contribution indexed to $15,000 Catch-Up contribution indexed to $5,000	Indexed to $10,000	Base contribution indexed to $10,000 Catch-Up contribution indexed to $2,500	$5,000	$6,000
2009 and later years	Indexed to $15,000	Base contribution indexed to $15,000 Catch-Up contribution indexed to $5,000	Indexed to $10,000	Base contribution indexed to $10,000 Catch-Up contribution indexed to $2,500	Indexed to $5,000	Base contribution indexed to $5,000 Catch-Up contribution is $1,000 (not indexed)

** The higher limit for individuals age 50 or older does not apply to 457 plans during the three-year period prior to retirement, but the limit applicable to individuals under age 50 is doubled during that period.*

APPENDIX B

Economic Growth and Tax Relief Reconciliation Act of 2001

PLAN LIMITS

PROVISION	CURRENT LAW	CHANGE UNDER EGTRRA
Limit on Participant Plan Year Compensation Under Section 401(a)(17) (applies to defined contribution plans, such as profit sharing and 401(k) plans, defined benefit plans, ESOPs, 403(b) plans, SIMPLE 401(k)s and SEP-IRAs)	$170,000 (indexed to inflation in $10,000 increments)	$200,000 (indexed to inflation in $5,000 increments) Effective in 2002
Limit on Annual Additions to Defined Contribution Plans, ESOPs and 403(b) Plans under Section 415	Lesser of 25% of employee's compensation or $35,000	Lesser of 100% of employee's compensation or $40,000 (indexed to inflation in $1,000 increments) Effective in 2002
Limit on Annual Benefit from Defined Benefit Plans under Section 415	Lesser of 100% of employee's average compensation or $140,000 (adjusted either up or down if benefit commences after or before Social Security normal retirement age – currently age 65)	Lesser of 100% of employee's average compensation or $160,000 (adjusted up if benefit commences after age 65; adjusted down if benefit commences before age 62) Effective for years ending on or after January 1, 2002
Employer Deduction Limit for Plan Contributions	Defined Contribution Plans: 15% of total participant plan year compensation Leveraged ESOPs: 25% of total participant plan year compensation Defined Benefit Plans: lesser of (i) plan's accrued liability or (ii) 160% of plan's current liability, minus value of plan assets Employer Sponsoring Both a Defined Contribution and Defined Benefit Plan: deduction under all plans limited to greater of 25% of total participant plan year compensation or the amount of the defined benefit plan's minimum funding requirement	Defined Contribution Plans (including all ESOPs): 25% of total participant plan year compensation Defined Benefit Plans: lesser of (i) plan's accrued liability or (ii) 165% (170% in 2003) of plan's current liability, minus value of plan assets; after 2003, plan's accrued liability minus value of plan assets Effective in 2002

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