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12 UNITED STATES DISTRICT COURT
 13 SOUTHERN DISTRICT OF NEW YORK

14 Zaid Abdul-Aziz, Individually
 15 And on behalf of all others similarly
 16 situated
 17
 18 *Plaintiff,*
 19
 20 v.
 21 NATIONAL BASKETBALL
 22 ASSOCIATION
 23 PLAYERS' PENSION PLAN
 24
 25 *Defendant.*

No. CV 17-8901

**CLASS ACTION COMPLAINT FOR
 VIOLATIONS OF THE FEDERAL ERISA
 LAWS**

JURY TRIAL DEMANDED

NATURE OF THE ACTION

26 1. This class action complaint is filed individually and on behalf of a class consisting
 27 of all former participants in the National Basketball Association Players' Pension Plan (the
 28 "Plan"), who elected to receive a form of retirement pension that terminated prior to the player or
 his spouse's death, if applicable, seeking a declaration that the Plan, a defined benefit pension
 plan, violates the Sections 204(c)(3) and 502(a)(1)(B) of the Employee Retirement Income
 Security Act of 1974 ("ERISA"), and further seeking injunctive relief requiring the Plan to
 recalculate and remit pension benefits in accordance with ERISA and IRS Code regulations.

JURISDICTION AND VENUE

2. The claims asserted herein arise under and pursuant to ERISA §§ 204(c)(3), (g) and 502(a)(1)(B) (29 U.S.C. § 1054(c)(3), (g), and 29 U.S.C. § 1132(a)(1)(B), respectively).

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and ERISA § 502(e) (29 U.S.C.S. §1132(e)).

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) as the Plan maintains its headquarters and conducts business in this district at 645 Fifth Avenue, New York, New York 10022.

PARTIES

5. Plaintiff Zaid Abdul-Aziz (“Abdul-Aziz”) is a major domiciliary of the State of Washington. Mr. Abdul-Aziz played ten (10) seasons in the National Basketball Association (“NBA”) from 1968 - 1978. He received eight (8) years of credited service towards his retirement and participated in the Plan from July 1991 through August 2001.

6. Defendant National Basketball Association Players’ Pension Plan, or the “Plan,” provides defined retirement benefits to retired NBA basketball players. The Plan is administered by the Pension Committee, which consists of at least two persons appointed from time to time by the majority vote of all the individual team members of the NBA, and oversees the Plan’s general administration.

CHOICE OF LAW

7. The Plan shall be construed, whenever possible, in conformity with the requirements of the Internal Revenue Code and ERISA, and, to the extent not otherwise in conflict with federal law, the laws of the State of New York.

SUBSTANTIVE ALLEGATIONS

The Plan Provides Retired NBA Players with a Choice of Electing a Normal Retirement Pension or an Actuarial Equivalent

8. On November 7, 1969, the National Basketball Association (“NBA”) reached an Agreement with representatives of the Player’s Association of the National Basketball Association (aka National Basketball Players’ Association or the “NBPA”) (the “1969 Agreement”). *See* C-9.

9. The 1969 Agreement amended the original NBA pension plan by providing pension benefits for all eligible players (“Every Player on the Roster of any Member during the Regular Season which included February 2, 1966 shall be eligible to participate as of February 2, 1970.”). *See* C-9-000003.

10. The 1969 Agreement resulted in amendments to the Plan in 1970 (“1970 Plan”).

11. The 1970 Plan guaranteed retired NBA players a *Normal Retirement Pension* in the form of a defined monthly benefit commencing on the first day of the first month following the player’s Normal Retirement Date and continuing to be paid on the first day of each month up to and including the month in which the player dies (aka “Life Annuity”). *See* C-1-000009.

12. In addition, the 1970 Plan offered, and all subsequently amended Plans continue to offer, an *Actuarial Equivalent* to the Normal Retirement Pension.

13. *Actuarial Equivalents* include several options that terminate prior to the player’s death: (1) a single lump sum payment (a “Lump Sum”), (2) installments of fixed amount (“Fixed Amounts”), and (3) installments for fixed period (“Fixed Period”).

14. The 1970 Plan, and all subsequently amended Plans, defined an Actuarial Equivalent as a **benefit of equivalent value** to a Life Annuity when computed on the basis of actuarial assumptions, such as percent interest and mortality tables as determined by the Plan.

1 15. All Plans have provided retired NBA Players with the choice of electing to receive
2 a *Normal Retirement Pension* (payable as a Life Annuity) or an *Actuarial Equivalent* (purportedly
3 payable as a benefit of equivalent value to the Life Annuity).

4 16. The Plan violates ERISA §§ 204(c)(3) and 502(a)(1)(B) because the *Actuarial*
5 *Equivalents* offered to retired NBA pensioners do not provide retired players with a benefit of
6 equivalent value when financially compared to a *Normal Retirement Pension*.

7 17. The financial inequity between a *Normal Retirement Pension* and certain *Actuarial*
8 *Equivalents* results from the Plan failing to pay cost-of-living adjustments (“COLAs”) for
9 Actuarial Equivalents (i.e., Lump Sum, Fixed Amount, and Fixed Period) that terminated prior to
10 the player or spouse’s death.

11 18. The financial difference between the *Normal Retirement Pension* and the *Actuarial*
12 *Equivalent* elected by Mr. Zaid Abdul-Aziz and his spouse in August 1991 ultimately cost their
13 family hundreds of thousands of dollars in loss of important retirement benefits.

14 **The Plan Pays Significant Ongoing Cost-of-Living Adjustments to Pensioners**
15 **Who Elected to Receive a Normal Retirement Pension**

16 19. The 1970 Plan guaranteed players a Normal Retirement Pension in the amount of
17 \$60.00 per month for each credited year of current service, plus a payment of \$60.00 per month
18 for each credited year of past service. *See* C-1-000009.

19 20. The 1970 Plan further guaranteed that every player shall be entitled to elect, in lieu
20 of the Normal Retirement Pension or Early Retirement Pension and Supplemental Pension, the
21 Actuarial Equivalent beginning on the date that the pension would have otherwise become
22 payable in one of the following ways:

- 23 a. Lump Sum;
24 b. Fixed Amounts; and
25 c. Fixed Period.

1 See C-1-000011-12.

2 21. The 1970 Plan provided: “Actuarial Equivalent shall mean a benefit of equivalent
3 value when computed on the basis of actuarial assumptions adopted by the Committee.” See C-1-
4 000003.

5 22. Stated differently, the Plan contractually obligated itself to pay an Actuarial
6 Equivalent that amounted to the same total amount of money as otherwise payable as a Normal
7 Retirement Pension, when taking into consideration objective actuarial assumptions, such as
8 percent interest and anticipated life span.

9 23. In 1976, the Plan revised the amount payable as a Normal Retirement Pension
10 (“1976 Plan”) and instituted the first guarantee of a cost-of-living adjustment (or “COLA”).
11

12 24. The 1976 Plan guaranteed players who became eligible to receive a Normal
13 Retirement Pension on or before May 31, 1976, \$60.00 per month for each year of credited
14 service, or \$75.00 per month for each year of credited service on or after June 1, 1976 with a cost-
15 of-living increase, the amount of which was dependent upon the National Consumer Price Index
16 as determined by the player’s date of retirement eligibility. See C-2-000008-09.
17

18 25. The 1976 Plan guaranteed an Actuarial Equivalent payable as a Lump Sum, Fixed
19 Amounts, or Fixed Period. See C-2-000012-13.

20 26. The 1976 Plan provided: “Actuarial Equivalent shall mean a benefit of equivalent
21 value when computed on the basis of the actuarial assumptions recommended by the Enrolled
22 Actuary and adopted by the Committee.” See C-2-000002.

23 27. The Plan as revised in 1978 did not alter the Normal Retirement Pension amount
24 (“1978 Plan”). See C-3-000009-10.

25 28. The 1978 Plan guaranteed an Actuarial Equivalent payable as a Lump Sum, Fixed
26 Amounts, or Fixed Period. See C-3-000013-14.
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1 29. The 1978 Plan provided: “Actuarial Equivalent shall mean a benefit of equivalent
2 value when computed on the basis of the actuarial assumptions recommended by the Enrolled
3 Actuary and adopted by the Committee.” *See* C-3-000003.

4 30. The Plan as revised in 1981 did not alter the Normal Retirement Pension amount
5 (“1981 Plan”). *See* C-4-000010-11.

6 31. The 1981 Plan guaranteed an Actuarial Equivalent payable as a Lump Sum, Fixed
7 Amounts, or Fixed Period. *See* C-4-000014-15.

8 32. The 1981 Plan provided: “Actuarial Equivalent shall mean a benefit of equivalent
9 value when computed on the basis of the actuarial assumptions recommended by the Enrolled
10 Actuary and adopted by the Committee.” *See* C-4-000003.

11 33. The Plan as revised in 1984 did not alter the Normal Retirement Pension amount
12 (“1984 Plan”). *See* C-5-000011-12.

13 34. The 1984 Plan guaranteed an Actuarial Equivalent payable as a Lump Sum, Fixed
14 Amount, or Fixed Period. *See* C-5-000019-20.

15 35. The 1984 Plan provided: “Actuarial Equivalent shall mean, unless specified
16 otherwise, a benefit of equivalent value when computed on the basis of 7 percent interest and the
17 1971 Group Annuity Mortality Table (male rates).” *See* C-5-000003.

18 36. On April 27, 1988, the NBA and NBPA entered into a collective bargaining
19 agreement (“1988 CBA”), which amended the Plan and effectuated changes to the Normal
20 Retirement Pension amount for all former and current players.

21 37. The 1989 Plan provided that the Normal Retirement Pension would now pay
22 \$200.00 per month for each year of credited service for any player (1) who was receiving
23 monthly benefits under the Plan as of September 1, 1988 or (2) who had not yet begun to receive
24 a benefit under the Plan as of September 1, 1988. *See* C-6-000014-17.

1 38. The 1989 Plan provided that the new monthly benefit of \$200.00 per month per
2 year of credited service applied to payments made on or after September 1, 1988. *See* C-6-
3 000014-17.

4 39. The 1989 Plan continued to guarantee an Actuarial Equivalent payable as a Lump
5 Sum, Fixed Amounts, or Fixed Period. *See* C-6-000024-25.

6 40. The 1989 Plan provided: “Actuarial Equivalent shall mean, unless specified
7 otherwise, a benefit of equivalent value when computed on the basis of 7 percent interest and the
8 1971 Group Annuity Mortality Male Table set back 7 years for spouses and alternate payees.”
9 *See* C-6-000005.

10 41. The 1989 Plan offered no guidance in either Section 3.11 outlining optional
11 Actuarial Equivalents or Article 1, Section 1.2 defining Actuarial Equivalent as to how future
12 cost-of-living increases to the Normal Retirement Pension might otherwise affect the
13 mathematical calculation of the benefit of equivalent value for Lump Sum, Fixed Amounts, or
14 Fixed Period.

15 42. On September 18, 1995, the NBPA and the NBA entered into a collective
16 bargaining agreement (the “1995 CBA”), which again amended the Plan and effectuated changes
17 to the Normal Retirement Pension amount for all former and current players.

18 43. First, the 1995 CBA materially altered the definition of Normal Retirement
19 Pension from a set monetary amount to a more broadly defined “Maximum Monthly Benefit.”

20 44. The “Maximum Monthly Benefit” was defined as the maximum monthly amount
21 payable as a defined benefit and permitted by the applicable benefit limitations under the Internal
22 Revenue Code of 1986, as amended (the “IRS Code”) to be paid to the player at his Normal
23 Retirement Date under the Plan. *See* C-14-000002.

1 45. The 1995 CBA further provided that the new Maximum Monthly Benefit was to
2 be continually adjusted for increases in the cost-of-living in the same manner as the cost-of-living
3 adjustment for the dollar limitation under Section 415(b)(1)(A) of the IRS Code. *See* C-14-
4 000003, C-27-000001.

5 46. The 1995 CBA provided that the new Maximum Monthly Benefit would effectuate
6 a change to the Normal Retirement Pension for all players who had not yet begun to receive a
7 benefit under the Plan as of July 1, 1996 and to those players who were already receiving monthly
8 benefits under the Plan as of September 1, 1996. *See* C-14-000003.

9 47. The 1995 CBA provided that the Maximum Monthly Benefit would apply to
10 players receiving monthly benefits as of September 1, 1996 and for all benefits paid on or after
11 September 1, 1996. *See* C-14-000003.
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13 48. Where the 1995 CBA adopted ongoing COLAs to the Maximum Monthly Benefit,
14 the collective bargaining agreement offered no guidance as to how these future COLAs might
15 otherwise affect the mathematical calculation of an Actuarial Equivalent, such as Lump Sum,
16 Fixed Amounts, or Fixed Period.
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18 49. On February 2, 1996, the NBA Pension Plan (the “1996 Plan”) was amended to
19 reflect the Maximum Monthly Benefit changed made pursuant to the 1995 CBA.
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21 50. The 1996 Plan defined the starting Maximum Monthly Benefit at \$285.00 per
22 month for each year of credited service for all players who had not yet begun to receive a benefit
23 under the Plan as of July 1, 1996 and for a player who was receiving monthly benefits under the
24 Plan as of September 1, 1996. *See* C-7-000016-21.

25 51. The 1996 Plan provided that the \$285.00 monthly benefit only applied to payments
26 made on or after September 1, 1996. *See* C-7-000016-21.
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1 52. The 1996 Plan continued to guarantee an Actuarial Equivalent payable as a Lump
2 Sum, Fixed Amounts, or Fixed Period. *See* C-7-000029-31.

3 53. The 1996 Plan provides: “Actuarial Equivalent shall mean, unless specified
4 otherwise, a benefit of equivalent value when computed on the basis of 7 percent interest and the
5 1971 Group Annuity Mortality Male Table for Players, and the 1971 Group Annuity Mortality
6 Male Table set back 7 years for spouses and alternate payees.” *See* C-7-000005.

7 54. The 1996 Plan offered no guidance in either Section 3.11 outlining optional
8 Actuarial Equivalents or Article 1, Section 1.2 defining Actuarial Equivalent as to how future
9 cost-of-living increases to the Normal Retirement Pension might otherwise affect the
10 mathematical calculation of the benefit of equivalent value for Lump Sum, Fixed Amounts, or
11 Fixed Period.

12 55. The Small Business Job Protection Act of 1996 and subsequent legislation and
13 regulation made numerous changes to the rules governing qualified retirement plans; therefore,
14 the Plan was amended and entirely restated effective February 2, 1997 (the “1997 Plan”).

15 56. The 1997 Plan instituted a series of systematic cost-of-living increases to the
16 Maximum Monthly Benefit governing the amount payable as a Normal Retirement Pension.

17 57. The 1997 Plan amended the Normal Retirement Pension to \$296.24 per month for
18 each year of credit service for all players who had not yet begun to receive a benefit under the
19 Plan as of March 1, 1997 and for all players who were receiving monthly benefits under the Plan
20 as of March 1, 1997. *See* C-8-000014-20.

21 58. The 1997 Plan amended the Normal Retirement Pension to \$309.34 per month for
22 each year of credited service for all players who had not yet begun to receive a benefit under the
23 Plan as of March 1, 1998 and for all players who were receiving monthly benefits under the Plan
24 as of March 1, 1998. *See* C-8-000014-20.

1 59. The 1997 Plan amended the Normal Retirement Pension to \$321.24 per month for
2 each year of credited service for all players who had not yet begun to receive a benefit under the
3 Plan as of March 1, 2000 and for all players who were receiving monthly benefits under the Plan
4 as of March 1, 2000. *See* C-8-000014-20.

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6 60. The 1997 Plan amended the Normal Retirement Pension to \$333.14 per month for
7 each year of credited service for all players who had not yet begun to receive a benefit under the
8 Plan as of March 1, 2001 and for all players who were receiving monthly benefits under the Plan
9 as of March 1, 2001. *See* C-8-000014-20.

10 61. The 1997 Plan provided that the monthly cost-of-living adjustments in 1997, 1998,
11 2000, and 2001, respectively, only applied to payments made on or after each respective
12 implementation date. *See* C-8-000014-20.

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14 62. The 1997 Plan continued to guarantee an Actuarial Equivalent payable as a Lump
15 Sum, Fixed Amount, or Fixed Period. *See* C-8-000027-28.

16 63. The 1997 Plan provided: “Actuarial Equivalent shall mean, unless specified
17 otherwise, a benefit of equivalent value when computed on the basis of 7 percent interest and the
18 1971 Group Annuity Mortality Male Table for Players, and the 1971 Group Annuity Mortality
19 Male Table set back 7 years for spouses and alternate payees.” *See* C-8-000004.

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21 64. The 1997 Plan offered no guidance in either Section 3.11 outlining optional
22 Actuarial Equivalents or Article 1, Section 1.2 defining Actuarial Equivalent as to how future
23 cost-of-living increases to the Normal Retirement Pension might otherwise affect the
24 mathematical calculation of the benefit of equivalent value for Lump Sum, Fixed Amounts, or
25 Fixed Period.

26 65. On January 20, 1999, the NBPA and NBA entered into a collective bargaining
27 agreement (“1999 CBA”).
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1 66. The 1999 CBA retained the definition of the Normal Retirement Pension as the
2 Maximum Monthly Benefit payable under the Code. *See* C-15-000002.

3 67. The 1999 CBA stated that the Maximum Monthly Benefit shall continue to be
4 adjusted for increases in the cost-of-living (“COLA”) in the same manner as the cost-of-living
5 adjustment for the dollar limitation under Section 415(b)(1)(A) of the IRS Code. *See* C-15-
6 000002, C-27-000001.

7 68. The 1999 CBA provided that any increase in the Maximum Monthly Benefit
8 hereunder shall be effective as of the first day of the month following the beginning of the Plan
9 Year of the Plan to which the increase relates (the “Benefits Increase Commencement Date”).
10 *See* C-15-000002-03.

11 69. The 1999 CBA offered no guidance as to how future cost-of-living increases to the
12 Normal Retirement Pension might otherwise affect the mathematical calculation of the benefit of
13 equivalent value for Lump Sum, Fixed Amounts, or Fixed Period.

14 70. On July 30, 2005, the NBPA and NBA entered into a collective bargaining
15 agreement (the “2005 CBA”).

16 71. Upon information and belief, the 2005 CBA implemented an additional COLA
17 increase to the Maximum Monthly Benefit payable to for holders of a Normal Retirement
18 Pension. *See* C-16-000002-03.

19 72. On December 8, 2011, the NBPA and NBA entered into a collective bargaining
20 agreement (the “2011 CBA”), and amended the Plan to incorporate language providing for “New
21 Monthly Benefit” as opposed to “Maximum Monthly Benefit.”

22 73. The 2011 CBA defined the “Current Benefit” as follows: “As of the date of this
23 Agreement, the Normal Retirement Pension payable under Section 3.2 of the Pension Plan shall
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1 be \$518.92 per month for each year of Credited Service payable in accordance with the
2 provisions of the Pension Plan.” *See* C-17-000002.

3 74. The 2011 CBA provided for “Benefit Increases”, “Effective for the Plan Year
4 commencing February 2, 2012 and for each subsequent Plan Year beginning during the term of
5 this agreement, the Normal Retirement Pension payable under Section 3.2 of the Pension Plan
6 shall be adjusted (the monthly benefit amount following any such adjustment, the ‘New Monthly
7 Benefit’), subject to Section 1(c) below, such that the New Monthly Benefit is equal to the
8 amount that results” from actuarially-determined annual contributions to the Pension Plan to fund
9 a “Baseline Benefit.” *See* C-17-000002.

10 75. The 2011 CBA defined “Baseline Benefit” as the Normal Retirement Pension
11 amount in effect under the Pension Plan prior to the additions of benefit increase amounts, as
12 adjusted for future increases in the cost-of-living in the manner provided for in Section 415(d)(2)
13 of the IRS Code. *See* C-17-000003.

14 76. The 2011 CBA provided that any increase in the New Monthly Benefit shall be
15 effective for all players as of the first day of the month following the beginning of the Plan Year
16 of the Pension Plan to which the increase relates (the “New Benefit Increase Commencement
17 Date”). *See* C-17-000003.

18 77. The 2011 CBA reflects several cost-of-living adjustments to the Normal
19 Retirement Pension from \$333.14 as of March 1, 2001 to the \$518.92 as of December 8, 2011.

20 78. The 2011 CBA offered no guidance as to how future cost-of-living increases to
21 the Normal Retirement Pension might otherwise affect the mathematical calculation of the benefit
22 of equivalent value for Lump Sum, Fixed Amounts, or Fixed Period.

23 79. On January 19, 2017, the NBPA and NBA entered into a collective bargaining
24 agreement effective July 1, 2017 (the “2017 CBA”).
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1 80. The 2017 CBA identified the “Current Benefit” as of January 19, 2017 at \$572.12
2 per month for each year of credited service payable in accordance with the provisions of the
3 pension plan. *See* C-18-000003.

4 81. As set forth above, in 1976, the Plan implemented provisions providing for
5 COLAs to the Normal Retirement Pension.

6 82. In summary, from 1988 to the present, the Plan has increased the Normal
7 Retirement Pension from \$200.00 per month for each year of credited service to \$572.12 per
8 month for each year of credited service; in other words, the Plan has increased the Normal
9 Retirement Pension by more than 186% over the last twenty-nine years.

10 83. Each increase to the Normal Retirement Pension necessarily increased the benefit
11 of equivalent value payable to pensioners who elected to receive an Actuarial Equivalent,
12 including Lump Sum, Fixed Amount, or Fixed Period.

13 84. Notwithstanding each increase to the Normal Retirement Pension, the Plan has not
14 provided an actual benefit of equivalent value to those pensioners who elected to receive a time-
15 limited Actuarial Equivalent, once the time limit expired.

16 85. The Plan violates ERISA and IRS regulations federally mandating that a pensioner
17 must receive the Actuarial Equivalent when compared to pensioners who elect to receive a Life
18 Annuity payable until death.

19 **The Plan’s Failure to Pay Full Benefits of Equivalent Value Cost**
20 **Plaintiff’s Family Hundreds of Thousands of Dollars in Loss of Retirement Benefits**

21 86. Plaintiff Zaid Abdul-Aziz was drafted into the NBA on June 4, 1968 by the
22 Cincinnati Royals and made his NBA debut on October 16, 1968.

23 87. Abdul-Aziz played for ten (10) seasons in the NBA from 1968 through 1978 and
24 received eight (8) years of credited service.

1 88. Abdul-Aziz played and retired under the 1970 Plan, 1976 Plan, and 1978 Plan,
2 respectively.

3 89. Abdul-Aziz retired from the NBA after his release by the Houston Rockets on June
4 20, 1978.

5 90. Plaintiff's Normal Retirement Date was set for May 1996, and his Early
6 Retirement Date was set for May 1991.

7 91. In May 1991, Plaintiff applied to receive Early Retirement Benefits and signed his
8 application for retirement benefits on June 22, 1991 under the 1989 Plan ("Retirement
9 Application"). See C-24-000004-07.

10 92. Under the 1989 Plan, the Normal Retirement Pension payable upon his Normal
11 Retirement Date was set at \$200.00 per month for each year of credited service. See C-6-000017.

12 93. Abdul-Aziz was presented with a Benefit Calculation Worksheet at the time he
13 and his wife selected his retirement pension benefits ("Benefit Calculation Worksheet"). See C-
14 24-000008-09.

15 94. The Benefit Calculation Worksheet evidenced a "**Benefit Calculation Payable at**
16 **Normal Retirement Date**" of May 1996 at \$200.00 per month for each year of credited service,
17 or \$1,600.00 per month beginning May 1996. See C-24-000008.

18 95. In addition to the Normal Retirement Pension, the Benefit Calculation Worksheet
19 calculated Abdul-Aziz's Early Retirement Pension, payable for life, as follows:

20 a. **Early Retirement Benefit:** $\$1,600.00 \times .667 = \$1,067.20$ / month for life
21 See C-24-000009.

22 96. The Benefit Calculation Worksheet presented Plaintiff with two Actuarial
23 Equivalent:
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1 a. **Lump Sum Payment:** PBGC Rate 7.25% at \$1,600.00 x 136.85 = \$218,960.00;

2 and

3 b. **10 Year Certain Only Beginning on Early Retirement Date of 05/01/91 and**
4 **ending 04/30/01:** \$1,067.20 x 1.699 = \$1,813.17/month for 10 years.

5 *See C-24-000009.*

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7 97. The Retirement Application offered no guidance as to how future cost-of-living
8 increases to the Normal Retirement Pension might otherwise affect the mathematical calculation
9 or value for an Actuarial Equivalent in the form of Lump Sum, Fixed Amounts, or Fixed Period.

10 98. The Benefit Calculation Worksheet also offered no guidance as to how future cost-
11 of-living increases to the Normal Retirement Pension might otherwise affect the mathematical
12 calculation or value for an Actuarial Equivalent in the form of Lump Sum, Fixed Amounts, or
13 Fixed Period.

14
15 99. Moreover, the 1989 Plan offered no guidance as to how future cost-of-living
16 increases to the Normal Retirement Pension might otherwise affect the mathematical calculation
17 of the benefit of equivalent value for an Actuarial Equivalent in the form of Lump Sum, Fixed
18 Amounts, or Fixed Period.

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20 100. In fact, no provision contained within the 1989 Plan, Retirement Application, or
21 Benefit Calculation Worksheet expressly advised Abdul-Aziz and his wife that they would
22 forever forfeit their pension rights to future COLA increases to the Normal Retirement
23 Application, which ERISA and IRS Code regulations prohibit anyway.

24 101. Abdul-Aziz and his wife elected to receive a Fixed Period-Actuarial Equivalent in
25 the form of monthly installments for ten (10) years payable at \$1,813.17 per month. *See C-24-*
26 *000004-07.*

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1 102. The Plan accepted Plaintiff's Retirement Application on July 12, 1991. *See* C-19-
2 000001.

3 103. Due to the timing of the application's acceptance, Plaintiff received a letter from
4 the Plan dated July 12, 1991, stating that he would begin to receive \$1,851.64 per month from the
5 Plan beginning on August 1, 1991 and ceasing on July 31, 2001. *See* C-19-000001.

6 104. Thereafter, the NBA and NBPA entered into the 1995 CBA and amended the
7 Normal Retirement Pension in the 1996 Plan to \$285.00 per month for each year of credited
8 service beginning September 1, 1996. *See* Paragraphs 30 – 43 *supra*.

9 105. On September 1, 1996, Plaintiff began to receive \$2,479.53 per month to reflect
10 the \$285.00 increase to defined monthly benefit and the cost-of-living adjustments to the federal
11 maximum benefit limitations applicable to the 1996 Plan. *See* C-20-000001, C-24-000012.

12 106. On January 1, 1997, Plaintiff began to receive \$2,582.91 per month to reflect
13 similar changes to defined monthly benefit and cost-of-living adjustments. *See* C-24-000002.

14 107. On January 1, 1998, Plaintiff began to receive \$2,686.22 per month to reflect
15 similar changes to the defined monthly benefit and cost-of-living adjustments. *See* C-24-000002.

16 108. On January 1, 2000, Plaintiff began to receive \$2,789.58 per month to reflect
17 similar changes to the defined monthly benefit and cost-of-living adjustments. *See* C-24-000002.

18 109. On January 1, 2001, Plaintiff began to receive \$2,892.88 per month to reflect
19 similar changes to the defined monthly benefit and cost-of-living adjustments. *See* C-24-000002.

20 110. In a letter dated June 3, 2015, the Plan admitted that the aforementioned increases
21 resulted from COLA increases to the underlying Normal Retirement Pension ("During the
22 remainder of the fixed payment period, the monthly payment amounts were increased periodically
23 to reflect collective-bargained for benefit formula increases and/or cost of living adjustments to
24 the federal maximum benefit limitation applicable to the Plan.") *See* C-24-000001-03.
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1 111. On August 31, 2001, Plaintiff's retirement benefits ceased upon the expiration of
2 the ten (10) year Fixed Period pension.

3 112. Nothing contained within the 1989 Plan, Retirement Application, or Benefit
4 Calculation Worksheet advised Plaintiff that pensioners electing to receive a Normal Retirement
5 Pension would continue to receive significant financial benefits, while those pensioners electing
6 to receive a form of pension terminating prior to the player's death would not receive the
7 Actuarial Equivalent, as otherwise guaranteed under the Plan, and which is further expressly
8 forbidden by ERISA and IRS Code regulations.

9
10 113. Following cessation of retirement benefits on August 31, 2001, the Plan has not
11 provided Plaintiff with information or documentation regarding any revisions to the Normal
12 Retirement Pension from 2001 through the present.

13
14 114. Considering the 2005, 2011, and 2017 Collective Bargaining Agreements,
15 respectively, along with passing several revised versions of the Plan in 2009, 2014, and 2017,
16 respectively, Plaintiff has not, in fact, received the Actuarial Equivalent of the Normal Retirement
17 Pension given the last twenty-nine years of COLA increases.

18 115. Each Collective Bargaining Agreement and revised Plan afforded a tremendous
19 financial benefit and windfall to those NBA pensioners who elected to receive a Normal
20 Retirement Pension in the form of a Life Annuity.

21
22 116. On the other hand, the Plan has provided no monetary benefits to Plaintiff and
23 other putative class members who elected an Actuarial Equivalent that terminated sometime prior
24 to the player's death.

25 117. For example, from August 1991 through August 2001, Plaintiff received ten years
26 of defined monthly installments totaling \$273,098.72, which amount should have represented the
27
28

1 benefit of equivalent value if Plaintiff had elected to receive a Normal Retirement Pension
2 payable from his Normal Retirement Date in May 1996.

3 118. Today, the maximum monthly benefit for those pensioners who elected to receive
4 a Normal Retirement Pension is \$572.12 per month for each year of credited service; therefore,
5 assuming Plaintiff's eight years of credited service, the COLA increases to the Normal
6 Retirement Pension means that Plaintiff would be receive \$4,576.96 per month for life.

7
8 119. At \$4,576.96 per month, Plaintiff would only have to live another five (5) years
9 from today's date to receive the entire \$273,098.72 he received *en toto* over the entire ten (10)
10 year period from August 1991 – August 2001. This does not even begin to calculate the loss of
11 hundreds of thousands of dollars in retirement benefits if one assumes Plaintiff would have also
12 received from his Normal Retirement Date in May 1996 through June 2017, an additional period
13 of over twenty-one (21) years in lost retirement benefits.

14
15 120. Even the most basic of mathematical calculations clearly establishes that the Plan's
16 failure to pay Plaintiff and the putative class a true and correct benefit of equivalent value equal to
17 and commensurate with the COLA increases to the Normal Retirement Pension has cost Plaintiff
18 and his family hundreds of thousands of dollars in loss of retirement benefits.

19 **ERISA and IRS Code Regulations Federally Mandate that Pensioners Who Receive Their**
20 **Pension in the Form of an Actuarial Equivalent Must Receive**
21 **the Same Financial Benefits as Life Annuitants**

22 121. ERISA § 502(a)(1)(B) provides that in the case of a defined benefit plan, a plan
23 participant may bring a civil action to recover benefits due him under the terms of his plan, to
24 enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the
25 terms of the plan.

26 122. ERISA § 204(c)(3), (g) (the "Anti-Cutback Rule") provides that in the case of a
27 defined benefit plan, if any employee's accrued benefit is to be determined as an amount other
28

1 than an annual benefit commencing at the normal retirement age, then the employee's accrued
2 benefit shall be the actuarial equivalent of the annual benefit.

3 123. "The term 'accrued benefit' means in the case of a defined benefit plan, the
4 individual's accrued benefit determined under the plan and, except as provided in section
5 1054(c)(3) of this title, expressed in the form of an annual benefit commencing at normal
6 retirement age." 29 U.S.C. § 1002(23) and Internal Revenue Code, 26 U.S.C. § 411(a)(7). *See*
7 C-28-000006.
8

9 124. "If an employee's accrued benefit is to be determined as an amount other than an
10 annual benefit commencing at normal retirement age, or if the accrued benefit derived from
11 contributions made by an employee is to be determined with respect to a benefit other than an
12 annual benefit in the form of a single life annuity (without ancillary benefits) commencing at
13 normal retirement age, the employee's accrued benefit...shall be the actuarial equivalent of such
14 benefit or amount determined under paragraph (1) or (2)." 29 U.S.C. § 1054(c)(3) and Internal
15 Revenue Code, 26 U.S.C. § 411(c)(3). *See* C-28-000014.
16

17 125. IRS regulations further provide that the "present value of any optional form of
18 benefit cannot be less than the present value of the normal retirement benefit..." Treasury Reg.
19 1.417(e)-1(d). *See* C-29-000005.
20

21 126. An "accrued benefit" within the meaning of ERISA at 29 U.S.C. §§ 1002(23)(A)
22 & 1054(c)(3) includes defined benefit pension annuities and cost-of-living adjustments
23 commencing at normal retirement age.

24 127. Cost-of-living adjustments, or COLAs, are inseparably tied to the monthly
25 retirement benefit and thus constitute an accrued benefit and not an ancillary or supplementary
26 benefit. 26 C.F.R. § 1.411(d)-3(g)(6). *See* C-30-000017-18.
27
28

1 128. ERISA further requires that “alternate forms” of pension payment must be the
2 “actuarial equivalent” of the accrued benefit pursuant to 29 U.S.C. §§ 1054(c)(3) and 26 U.S.C. §
3 411(c)(3). *See* C-28-000013-14.

4 129. ERISA and IRS Code regulations provide that if a defined benefit pension plan
5 provides a cost-of-living adjustment, it must similarly provide the actuarially-determined benefit
6 of equivalent value to all holders of alternate forms of pension.
7

8 130. By violating ERISA and IRS Code regulations as described above, Defendants
9 have caused members of the Class to receive pension payments in amounts far less than they
10 would have received had they chosen the Life Annuity option.

11 131. As a result, Plaintiff and all putative class members have been injured.

12 COUNTS

13 **Count I – Violation of ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B)** 14 **Liability for Pension Benefits Owed Under the Plan**

15 132. Plaintiff brings this civil class action under ERISA § 502(a)(1)(B) for several
16 reasons: (1) to recover the benefits of equivalent value associated with prior COLA increases to
17 the Normal Retirement Pension; (2) to enforce their rights under the terms of the plan through
18 injunctive relief requiring recalculation of actuarially-determined benefits due under the Plan, and
19 (3) to clarify their rights to any future benefits of equivalent value arising by virtue of future
20 COLA increases to the Normal Retirement Pension under the terms of the plan.
21

22 133. Plaintiff Abdul-Aziz and the putative class, who elected to receive an Actuarial
23 Equivalent terminating prior to the player’s death, such as Lump Sum, Fixed Amounts, and Fixed
24 Period, have not received benefits of equivalent value as guaranteed under the Plan.

25 134. Over the last twenty-nine years, the Plan has granted significant COLA increases
26 to Life Annuity recipients, but have failed to provide a benefit of equivalent value to Lump Sum,
27 Fixed Amounts, and Fixed Period pensioners.
28

1 **Count II – Violation of ERISA § 204(c)(3), (g), 29 U.S.C. § 1054(c)(3), (g)**
2 **Breach of ERISA’s Anti-Cutback Rule**

3 135. Plaintiff brings this civil class action under ERISA § 204(c)(3), (g) where the Plan,
4 a defined benefit plan, has failed to pay the actuarial equivalent of an accrued benefit, as an
5 amount other than an annual benefit commencing at normal retirement age.

6 136. The Plan has failed to pay the actuarial equivalent of the annual benefit
7 commencing at Early or Normal retirement age to Plaintiff and the putative class members, who
8 elected to receive an optional form of pension under the Plan that terminated prior to their deaths.

9 **CLASS ACTION ALLEGATIONS**

10 137. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil
11 Procedure 23(a), (b)(1), and (b)(2), consisting of all former participants of the Plan, who elected
12 to receive an Actuarial Equivalent that terminated sometime prior to the player or his
13 beneficiary’s death, if applicable, including but not limited to Lump Sum, Fixed Amounts, and
14 Fixed Period; and who did not receive a benefit of equivalent value because his or her Actuarial
15 Equivalent terminated prior to said increase to the monthly benefit payable pursuant to the
16 Normal Retirement Benefit (“Class”).
17

18 138. The Class is so numerous that joinder of all putative class members is
19 impracticable. Upon information and belief, as of July 2015, there were an estimated 1,500 living
20 former NBA basketball players who were out of the NBA league years before the salary and
21 endorsements explosion of the modern era; therefore, many of these NBA players depend upon
22 the income provided by the Plan. Moreover, there are other additional players who played in the
23 modern era, including approximately 450 players on the 2016-17 opening day roster, who rights
24 to future benefits will depend upon the outcome of this class action for declaratory judgment and
25 injunctive relief.
26
27
28

1 139. Common questions of law and fact exist as to all members of Class where the right
2 to recover the benefits of equivalent value associated with prior COLA increases to the Normal
3 Retirement Pension depend upon a uniform interpretation and application of the Plan and ERISA
4 and the IRS Code; where the right to seek injunctive relief requiring recalculation of actuarially-
5 determined benefits due under the Plan is applicable to all members of the Class, and clarification
6 of the Class' rights to any future benefits of equivalent value arising by virtue of future COLA
7 increases to the Normal Retirement Pension depends upon a uniform interpretation and
8 application of the Plan and ERISA and the IRS Code.

10 140. Plaintiff's claims are typical of the claims of the members of the Class as all
11 members of the Class are similarly affected by the Plan's language, interpretation, and payment
12 schedules.

14 141. Plaintiff will fairly and adequately protect the interests of the members of the Class
15 and has retained counsel competent and experienced in class and securities litigation. Plaintiff
16 and all other retired NBA players have a vested interest in seeing the Plan properly drafted,
17 interpreted, and applied in accordance with ERISA and the IRS Code. Plaintiff's counselors have
18 many years of complex litigation and class action in federal district and appellate courts.

19 142. This class action is appropriate to certification under Rule 23(b)(1)(A) where
20 prosecuting separate actions by or against individual class members could create inconsistent and
21 varying adjudications with respect to the uniform interpretation and application of the Plan and
22 ERISA and the IRS Code, thereby establishing incompatible standards of conduct by the Plan,
23 specifically how to properly calculate a benefit of equivalent value for an Actuarial Equivalent.

25 143. This class action is appropriate to certification under Rule 23(b)(1)(B) where
26 adjudications with respect to individual class members would be dispositive of the interests of the
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1 other members of the Class not parties to this action, where injunctive relief, if granted, could
2 order recalculation of benefits payable to the entire Class.

3 144. This class is appropriate to certification under Rule 23(b)(2) where the Plan has
4 acted and refused to act on grounds that apply generally to the Class. The Plan does not believe
5 that Plaintiff is entitled to receive a benefit of equivalent value, despite the necessary
6 mathematical increase to the Actuarial Equivalent resulting from twenty-nine years of systematic
7 COLA increases to the Normal Retirement Pension. Accordingly, Plaintiff filed this class action
8 suit for declaratory judgment and injunctive relief to ensure that the Court declares the
9 participant's entitlements to rights arising under the Plan and issues final injunctive relief
10 ordering recalculation of retirement benefits for all members of Class financially harmed by the
11 Plan.
12

13 **STATUTE OF LIMITATIONS**

14 145. ERISA does not prescribe a limitations period for actions arising under § 1132;
15 therefore, the controlling limitations period is that specified in the most nearly analogous state
16 limitations statute. The state limitations statute most analogous to §§ 502(a)(1)(B) and 204(c)(3),
17 (g) claims for wrongful denial of benefits is that for contract actions. The Plan is governed by the
18 laws of the State of New York; therefore, the state's six-year statute of limitations for contract
19 actions applies.
20

21 146. An ERISA cause of action under §§ 502(a)(1)(B) and 204(c)(3), (g) accrues, and
22 thus, the statute of limitation begins to run, when an employee benefit plan clearly and
23 unequivocally repudiates a beneficiary's claim for benefits under the plan. The beneficiary must
24 also have actual or constructive notice of the repudiation of his or her claim. In addition,
25 although a limitations period generally begins to run when an employee benefit plan denies a
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1 beneficiary's formal application for benefits, a repudiation may occur regardless of whether the
2 beneficiary has filed a formal application for benefits.

3 147. Plaintiff alleges that his ERISA cause of action did not begin to accrue until June
4 3, 2015, whereupon Plaintiff received a letter from the NBA advising him that he had no rights
5 under the Plan because he accepted an Actuarial Equivalent payable in monthly installments for
6 10 years. *See* C-24-000001-03.

8 148. On April 26, 2015, Plaintiff, through an attorney, issued a letter to the NBA
9 Benefits Department. With limited information, Plaintiff's attorney believed that the NBA
10 purchased all of Abdul-Aziz's lifetime pension benefits in exchange for a payment that was less
11 than the amount he would have received without such buy-out transaction. Plaintiff's attorney
12 requested file information to examine Plaintiff's entitlement to an NBA pension. *See* C-23-
13 000001-03.

15 149. In response, on June 3, 2015, the NBA, through Caroline H. Cheng, Associate
16 Counsel, issued a written letter; therein, Ms. Cheng stated wrote:

17 Mr. Abdul-Aziz elected to receive his pension benefits in the form of installments
18 paid over a ten (10) year fixed period commencing on August 1, 1991 and ending
19 July 31, 2001. He made his election after the Plan provided him with a benefit
20 illustration that described each potential form of payment under the Plan, as well
21 as the amount he would receive under each potential form of payment under the
Plan. Mr. Abdul-Aziz's benefit application explained that: (a) the form of
22 payment he elected would provide monthly payments over a fixed period; (b) upon
23 the expiration of the fixed period, all benefits would cease; and (c) the payments
24 over the fixed period would equal the entire amount of his pension benefits.

25 *See* C-24-000001-03.

26 150. The NBA letter dated June 3, 2015 constituted the first clear repudiation of any
27 additional benefits owed under the Plan.

28 151. Notwithstanding, Plaintiff contends that Ms. Cheng's letter on behalf of the NBA
is overly misleading and entirely silent with respect to Plaintiff's entitlement to an actuarial
equivalent when a COLA increase is applied to a Normal Retirement Pension.

1 152. Ms. Cheng’s letter never addressed the fact that ERISA and the IRS Code require
2 that the “present value of any optional form of benefit cannot be less than the present value of the
3 normal retirement benefit....” Treasury Reg. 1.417(c)-1(d); that an “accrued benefit” within the
4 meaning of ERISA at 29 U.S.C. §§ 1002(23)(A) & 1054(c)(3) includes defined benefit pension
5 annuities and cost-of-living adjustments commencing at normal retirement age; that cost-of-living
6 adjustments, or COLAs, are inseparably tied to the monthly retirement benefit and thus constitute
7 an accrued benefit and not an ancillary or supplementary benefit. 26 C.F.R. § 1.411(d)-3(g)(6);
8 or that ERISA further requires that “alternate forms” of pension payment must be the “actuarial
9 equivalent” of the accrued benefit pursuant to 29 U.S.C. §§ 1054(c)(3) and 26 U.S.C. § 411(c)(3).
10

11 153. For the above and foregoing reasons, Plaintiff respectfully contends that that
12 statute of limitations date for his ERISA cause of action is June 3, 2021; therefore, Plaintiff’s
13 claim is not time-barred.
14

15 154. In the alternative, only, Plaintiff alleges that his ERISA cause of action would re-
16 accrue at each and every COLA increase to the Normal Retirement Date because of the necessary
17 mathematical increase to the benefit of equivalent value due under the Plan for an Actuarial
18 Equivalent. The 2011 CBA was entered on December 8, 2011, which six years from said date is
19 December 8, 2017; therefore, Plaintiff ERISA cause of action for increased benefits due under the
20 Plan is not time-barred for all COLA increases implemented after December 8, 2011.
21

22 155. Finally, in the alternative, only, Plaintiff claims that his ERISA cause of action is
23 not time-barred as he is entitled to seek a declaration of his future benefits arising under the plan
24 pursuant to § 502(a)(1)(B), which expressly provides that a plan participant may file a civil action
25 to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the
26 terms of the plan. Plaintiff claims in the alternative, only, that he and all Class members are
27 entitled to a benefit of equivalent value with each and every COLA increase to the Normal
28

1 Retirement Pension; therefore, Plaintiff's ERISA cause of action is not time-barred where this
2 civil class action seeks a declaration of future rights for Plaintiff and all members of the Class
3 with respect to any future COLA increase to the Normal Retirement Pension.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff prays for declaratory judgment and injunctive relief, as follows:

6 A. Determining whether this action is a proper class action, designating Plaintiff as
7 class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiff's counsel
8 as Class Counsel;

9 B. Declaring that the Plan violated ERISA §§ 204(c)(3), (g), 502(a)(1)(B) and
10 applicable IRS Code regulations by failing to pay cost-of-living adjustments to pensioners
11 electing to receive an Actuarial Equivalent that terminated prior to the player or his spouse's
12 death, if applicable;

13 C. Declaring that the Plaintiff and Class who accepted an Actuarial Equivalent were
14 entitled to receive a true and accurate benefit of equivalent value under Article I, Section 1.2 of
15 the Plan with each prior cost-of-living adjustment to the Normal Retirement Pension;

16 D. Declaring that the Plaintiff and Class who accepted an Actuarial Equivalent remain
17 entitled to receive a true and accurate benefit of equivalent value under Article I, Section 1.2 of
18 the Plan with each future cost-of-living adjustment to the Normal Retirement Pension;

19 E. Render final judgment in the form of injunctive relief, requiring the Plan to
20 perform a complete actuarially-determined calculation of the true and accurate benefit of
21 equivalent value under Article I, Section 1.2 of the Plan;

22 F. Render final judgment in the form of injunctive relief, requiring the Plan to remit
23 payments to the Plaintiff and Class for all past and future benefits of equivalent value as
24 actuarially-determined and calculated by the Plan;

1 G. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in
2 this action, including counsel fees and expert fees; and

3 H. Such other and further equitable relief as the Court may deem just and proper.
4

5 **JURY TRIAL DEMANDED**

6 Plaintiff hereby demands a trial by jury.

7 Dated:

Respectfully submitted,

8
9
10 _____s/Jason L. Melancon_____.

Jason L. Melancon, Esq. (SBN 28152)

Robert C. Rimes, Esq. (SBN 28740)

R. Lee Daquanno, Jr., Esq. (SBN 36430)

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17 *Counsel for Plaintiff*
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NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN

INDEX

<u>Item</u>	<u>Article No.</u>	<u>Page No.</u>
Names of Participating Employers	--	1, 2
Definitions	1	2
Eligibility	2	7
Benefits	3	7
Credited Service	4	13
Former Pension Benefits	5	14
Member's Contributions	6	16
Termination of Employment	7	17
Death Benefits	8	18
Non-alienation of Benefits	9	19
Forfeitures	10	19
Income and Expenses	11	20
Member's Accounts	12	21
Insurance Contracts	13	21
Administration of Plan	14	23
Limitation of Rights of the Players	15	26
Participating Members	16	27
Amendment or Termination of the Plan	17	28
Miscellaneous	18	30

As Amended through 4/1/70

PLAYERS' PENSION PLAN

The following members of the National Basketball Association do hereby amend in its entirety their pension plan established on December 7, 1964 and effective on February 2, 1965, such amended plan to be known as the "National Basketball Association Players' Pension Plan":

<u>NAME</u>	<u>ADDRESS</u>
THE BALTIMORE BULLETS BASKETBALL CLUB, INC.	Civic Center Baltimore, Maryland
BOSTON CELTICS BASKETBALL CLUB	Boston Garden North Station Boston, Massachusetts
THE CHICAGO PROFESSIONAL BASKETBALL CORPORATION	221 North LaSalle Street Chicago, Illinois
CINCINNATI BASKETBALL CLUB CO.	Cincinnati Gardens 2250 Seymour Avenue Cincinnati, Ohio
DETROIT PISTONS BASKETBALL CLUB, a division of Zollner Industries	Zollner Corporation 202 Michigan Avenue Detroit, Michigan
CALIFORNIA SPORTS, INCORPORATED	P. O. Box 10 Inglewood, California
MADISON SQUARE GARDEN CENTER, INC.	410 Park Avenue New York, New York
RIKO ENTERPRISES, INC.	Spectrum Broad Street and Pattison Philadelphia, Pennsylvania
ST. LOUIS HAWKS BASKETBALL CLUB, INC.	9011 Manchester Road St. Louis, Missouri
SAN DIEGO BASKETBALL CLUB, a limited partnership	3500 Frontier Street San Diego, California
SAN FRANCISCO WARRIORS, a partnership	556 Golden Gate Avenue San Francisco, California
SEATTLE SUPERSONICS CORP.	Blue Spruce Building 158 Thomas Street Seattle, Washington

The following members of the National Basketball Association do hereby adopt the National Basketball Association Players' Pension Plan:

PHOENIX PROFESSIONAL
BASKETBALL CLUB

c/o George R. Hill, Esq.
111 West Monroe
10th Floor
Phoenix, Arizona

MILWAUKEE PROFESSIONAL
SPORTS, INC.

710 North Plankinton Avenue
Room 810
Milwaukee, Wisconsin

The Plan shall operate in accordance with the following provisions:

ARTICLE 1 - DEFINITIONS

Section 1.1. "Active List" shall mean the list of Players who have signed formal contracts with a Member, and are otherwise eligible to participate in a Championship Game as certified to the Committee by each Member.

Section 1.2. "Actuarial Equivalent" shall mean a benefit of equivalent value when computed on the basis of the actuarial assumptions adopted by the Committee.

Section 1.3. "Actuarial Value" shall mean the present value of a benefit when computed on the basis of the actuarial assumptions adopted by the Committee.

Section 1.4. "Anniversary Date" shall mean any anniversary of the Effective Date of the Plan.

Section 1.5. "Armed Services List" shall mean the list of those Players who have entered the Armed Services and are serving on active duty as certified to the Committee by each Member.

Section 1.6. "Association" shall mean the National Basketball Association and its successors.

Section 1.7. "Beneficiary" shall mean the person or persons designated by a Player to receive any benefits under this Plan. Where a Player fails to designate a Beneficiary or where a Beneficiary fails to survive a Player, "Beneficiary" shall mean the Player's surviving spouse, if any, or, if none, his children, if any, in equal shares, or, if none, his personal representative. Any person entitled to receive benefits hereunder after the death of a Player shall also be deemed a Beneficiary for purposes of the Plan.

Section 1.8. "Championship Game" shall mean any game included in the Association's schedule of Championship Games and shall not include playoff games or exhibition games.

Section 1.9. "Committee" shall mean the Pension Committee referred to in Article 14 hereof.

Section 1.10. "Contract" shall mean a Group Annuity contract issued by an Insurer under this Plan, whether or not such contract contains any element of life insurance protection.

Section 1.11. "Early Retirement Date" shall mean a date after the forty-fifth (45th) anniversary of the Player's date of birth, on which an election made by the Player for an Early Retirement Pension becomes effective.

Section 1.12. "Early Retirement Pension" shall mean the pension payable to a Player at his Early Retirement Date.

Section 1.13. "Effective Date" shall mean February 2, 1965.

Section 1.14. "Franchise" shall mean the right of any Member to participate in the Association as determined under the rules of the Association.

Section 1.15. "Injured List" shall mean the list of Players who, due to injury or illness, have been temporarily removed from the Active List of a Member as certified to the Committee by each Member.

Section 1.16. "Insurer" shall mean a legal reserve life insurance company which shall issue a Contract under which the Members shall participate upon execution of an agreement providing for such participation, and which is licensed to do business in the State of New York.

Section 1.17. "Member" shall mean a member of the Association.

Section 1.18. "Normal Retirement Date" shall mean the sixty-fifth (65th) anniversary of the Player's date of birth.

Section 1.19. "Normal Retirement Pension" shall mean the pension payable to the Player at his Normal Retirement Date.

Section 1.20. "Plan" shall mean the National Basketball Association Players' Pension Plan.

Section 1.21. "Plan Year" shall mean the twelve (12) month period beginning on the Effective Date, or any twelve (12) month period beginning on the Anniversary Date in a subsequent year, during which this Plan shall be in effect.

Section 1.22. "Player" shall mean any person carried on any Player List, as defined in the By-Laws of the Association, or, where the context permits, a person eligible to be carried on any such List or a person formerly carried on any such List.

Section 1.23. "Regular Season" shall mean the period beginning on the date of the first game of the

Association's schedule of Championship Games and ending at the end of the day before the first Playoff Game is played.

Section 1.24. "Roster" shall mean (i) every Player on the Active List of any Member on February 2 of the Regular Season involved and (ii) every Player on either the Suspended, Armed Services or Injured List of any Member on February 2 of the Regular Season involved provided that such Player was on the Active List of any Member for 50 percent or more of the total Championship Games played by each Member during the Regular Season which includes such February 2.

Section 1.25. "Supplemental Pension" shall mean the pension payable to a Player from his Supplemental Pension Account.

Section 1.26. "Supplemental Pension Account" shall mean a segregated account to be maintained by the Insurer for each Player, as directed by the Committee and subject to the terms of this Plan.

Section 1.27. "Suspended List" shall mean the list of those Players who, for proper cause, have been suspended by the Association or by the Member having the right to so suspend as certified to the Committee by each Member

a subsequent year, during which this Plan shall be in effect.

Section 1.19. "Trust Agreement" shall mean any agreement and declaration of trust implementing the Plan entered into between the Association and a Trustee.

Section 1.20. "Valuation Date" shall mean February 28, May 31, August 31 and November 30 of each Plan Year and such other dates as are specified by the Association as being necessary to make computations hereunder.

ARTICLE 2 - ELIGIBILITY

Section 2.1. Each Employee who was an Employee for at least three years on the Effective Date, shall automatically participate in the benefits of the Plan as of the Effective Date.

Section 2.2. Each Employee who is not an Employee for at least three years or major fraction thereof on the Effective Date shall automatically participate in the benefits of the Plan on the first Anniversary Date following the end of the Plan Year in which he becomes an Employee of the Association for three years or major fraction thereof.

Amended
language
in red
10/12/73

ARTICLE 3 - BENEFITS

Section 3.1. Every Employee eligible to participate hereunder, who attains his Normal Retirement Date shall be entitled to a Normal Retirement Pension; provided, however, that if an Employee remains in the employ of the Association after attaining his Normal Retirement Date, he shall continue as a participant until the date of his actual retirement (which date shall then be considered his Normal Retirement Date), unless the Committee, at the Employee's written request, approves the payment to him of his retirement benefits as if he had in fact retired on his actual Normal Retirement Date.

Section 3.2. The Normal Retirement Pension payable to an Employee shall be paid to him on the first day of the first month following said Employee's Normal Retirement Date and shall continue to be paid in equal amounts on the first day of each month up to and including the month in which the Employee dies and shall be the Actuarial Equivalent of

to a Player shall be paid to him on the first day of the first month following said Player's Normal Retirement Date and shall continue to be paid on the first day of each month up to and including the month in which the Player dies and shall be equal to:

(a) A payment of \$60 per month for each credited year of current service, plus

(b) A payment of \$60 per month for each credited year of past service, less the Actuarial Equivalent as a life-time annuity beginning on the same date of any benefit payable to the Player under Article 5 hereof.

Section 3.3. Every Player who was on the Roster of any Member for any three Regular Seasons shall be entitled to elect, to receive, in lieu of a Normal Retirement Pension, an Early Retirement Pension and shall be entitled to receive a Supplemental Pension. Such election shall be made at least 90 days prior to the Early Retirement Date and shall be made in writing delivered to the Pension Committee.

Section 3.4. The Early Retirement Pension payable to a Player shall be paid to him on the first day of the first month following the Player's Early Retirement Date and shall continue to be paid on the first day of each month up to and

including the month in which the Player dies and shall be the Actuarial Equivalent of the Normal Retirement Pension that said Player would have been entitled to on his Normal Retirement Date.

Section 3.5. The Insurer shall maintain a separate Supplemental Pension Account for each Player and \$100.00, less a reasonable amount, as determined by the Committee, to reflect the administration expenses allocable to said Supplemental Pension Account, shall be added to said Account during each Plan Year that said Player is credited with a year of current service under Section 4.2 hereof.

Section 3.6. The funds in all Supplemental Pension Accounts maintained by the Insurer shall be invested by the Insurer in a segregated account, as directed by the Committee, in such equity securities as the Insurer deems advisable.

Section 3.7. As of December 31 of each year, and at such other times as is necessary to calculate any benefits payable hereunder, the Insurer shall value all of the assets representing the funds held in all Supplemental Pension Accounts, based on their respective market values on said valuation date, and as of said valuation date each Player's

Supplemental Pension Account shall be adjusted properly to reflect the effect of contributions, income collected and accrued and realized and unrealized profits and losses for the period since the most recent previous valuation date.

Section 3.8. The Supplemental Pension payable to a Player shall be the Actuarial Equivalent of said Player's Supplemental Pension Account on his Normal Retirement Date or Early Retirement Date, as the case may be, and shall be paid to him in the same manner and at the same time as the payment to him of a Normal Retirement Pension or Early Retirement Pension, as the case may be.

Section 3.9. Every Player shall be entitled to elect, in lieu of the Normal Retirement Pension or Early Retirement Pension and Supplemental Pension provided for in this Article, the Actuarial Equivalent of such a pension payable beginning on the date that pension would otherwise have become payable in one or more of the following ways:

(b) Installments of Fixed Amount - Paid in installments of a specified amount each month.

(c) Installments for a Fixed Period - Paid in equal monthly installments for a fixed number of years.

(d) Installments for a Fixed Period and Life Thereafter - Paid in equal monthly installments for a fixed number of years and for so long thereafter as the Player shall live:

(e) Joint and Survivorship Annuity - Paid in equal monthly installments to the Player, terminating with the last monthly installment before his death. Following the death of the Player after this option becomes effective, monthly installments shall be continued to the person he named as his joint annuitant. The amount of each installment payable to the joint annuitant shall be equal to 100% of the monthly amount which was payable to the Player, or to a lesser percentage, as specified by the Player in his election of this option.

(f) Social Security Option - Paid in monthly installments so long as the Player shall live in such amounts so as to enable the Player to receive an approximately equal amount each month taking into

consideration the benefits hereunder and the benefits payable under the Social Security Act.

Section 3.10. Where an optional method of settlement is selected under this Article, periods certain or periods over which installments are payable shall not exceed the life expectancy of the Player based on the mortality tables then generally in use, that of the Player and his spouse or that of the Player and another not more than five years younger than the Player. An election under this Article shall be made at least two (2) years prior to the start of any pension, or at such later date approved by the Insurer, and shall be made in writing delivered to the Committee.

Section 3.11. If any Player or Beneficiary is, in the judgment of the Committee, legally, physically or mentally incapable of personally receiving and receipting for any payment due hereunder, payment may be made to the guardian or other legal representative of such Player or his Beneficiary, or, if none, to such other person, or institution, who, in the opinion of the Committee, is then maintaining or has custody of such Player or his Beneficiary. Such payments shall constitute a full discharge with

respect thereto.

Section 3.12. If a Player or Beneficiary fails to apprise the Committee of changes in the address of the Player or Beneficiary, and the Committee is unable to communicate with the Player or Beneficiary at the address last recorded by the Committee, any payments due to the Player or Beneficiary shall be accumulated without interest until claim is made therefor, and, if claim is not made for seven years after the first accumulated payment becomes due, all rights of the Player and Beneficiary or either of them shall cease, and such sums shall be treated as a forfeiture.

ARTICLE 4 - CREDITED SERVICE

Section 4.1. Every Player eligible to participate under Sections 2.1 or 2.2 hereof shall be credited with one year of past service for every year that said Player was on the Roster of any Member for any Regular Season prior to the Regular Season for which said Player is first eligible to participate hereunder.

Section 4.2. Every Player eligible to participate under Sections 2.1 or 2.2 hereof shall be credited with one year of current service for each year that said Player is on the Roster of any Member for any Regular Season beginning with the Regular Season for which said Player is first eligible to participate hereunder.

ARTICLE 5 - FORMER PENSION BENEFITS

Section 5.1. The Members shall forthwith cause the Contract currently in existence with Continental Assurance Company to be discontinued in accordance with the terms of such Contract and shall continue the Single Premium Endowment Insurance of all Players insured thereunder in the same amount as Paid-up Endowment Insurance, to be paid to said Players in accordance with the terms of said Contract.

Section 5.2. In addition to all benefits provided hereunder, and notwithstanding any other provision to the contrary, every Player on the Active List of any Member on

February 2, 1965, February 2, 1966 or February 2, 1967,
or his Beneficiary, shall be entitled to receive such
benefits as are payable under the Paid-up Endowment
Insurance Contract referred to in Section 5.1 hereof,
upon such conditions and subject to such options as are
set forth in said Paid-up Endowment Insurance Contract.

ARTICLE 6 - MEMBER'S CONTRIBUTIONS

Section 6.1. On or before May 1 of each Plan Year every Member shall pay to the Insurer an amount necessary to fund the benefits for its Players in accordance with the rules set forth in this Article.

Section 6.2. The annual cost of funding for the current and past service benefits for any Player on the Active List on February 2, 1968, or on any subsequent February 2, shall be paid by the Member on whose Active List the Player appears on February 2 of the Plan Year involved.

Section 6.3. The annual cost of funding for the current and past service benefits for any Player on the Suspended, Armed Services or Injured List of any Member on February 2, 1968, or on any subsequent February 2, and on the Active List of any Member for 50 percent or more of the total Championship Games played by each Member during the Regular Season which includes such February 2 shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved.

Section 6.4. The annual cost of funding for the past service benefits for any Player not on any Roster during the Plan Year involved shall be ^{allocated equally} paid by the Member

having rights to the services of such Player, as a Player, on February 2 of the Plan Year involved or, if no Member has such rights on said February 2, by the Member last having such rights prior to said February 2.

Section 6.5. The annual amount necessary to fund the current service benefits shall be equal to :

(a) the Actuarial Value of the benefits for current service; and

(b) \$100 for each Player entitled to be credited with a year of current service for such Plan Year.

Section 6.6. The annual amount necessary to fund the past service benefits shall be that amount which if paid in equal annual installments over thirty (30) years from the date or dates such past service benefits are effective will accumulate to the Actuarial Value of such benefits, taking into account interest at the rate adopted by the Committee.

ARTICLE 7 - TERMINATION OF EMPLOYMENT

Section 7.1. If, while there is in force between a Member and a Player any contract, or any renewal or extension thereof, or any option to renew or extend any such contract, the Player, without the consent of the Member, enters into an agreement with, or grants an option to any other person or entity with respect to the Player's services as a basketball player, or performs services for compensation as a basketball

benefits then accrued, with the exception of the benefits provided for in Section 5.2 hereof, shall be forfeited.

ARTICLE 8 - DEATH BENEFITS

Section 8.1. In the event of the death of any Player prior to his becoming entitled to receive either an Early Retirement Pension or a Normal Retirement Pension, said Player's Beneficiary shall be entitled to receive a cash settlement, in a lump sum, equal to (i) 100% of the Supplemental Pension that said Player would have been entitled to receive if his date of death had been his Normal Retirement Date, (ii) plus any contribution thereafter required to be made on his behalf, under Section 6.5(b) hereof, reduced by such amount determined by the Committee under Section 3.5 hereof for the Plan Year involved and (iii) plus the excess, if any, of an amount equal to the actuarial reserve on the date of death for the Normal Retirement Pension based on the actuarial assumptions most recently adopted pursuant to Section 14.7 hereof and based on the Credited Service earned to the date of death, over the proceeds of any group life insurance policy (exclusive of any such proceeds paid because of accidental death) maintained and paid for by a Member on the life of a Player. Said payment shall be made thirty (30) days after the Committee is notified of said Player's death.

Section 8.2. Upon the death of a Player after his Early Retirement Date or Normal Retirement Date, as the case may be, no further payments shall be made other than those, if any, specified in the option, if any which the Player has elected.

ARTICLE 9 - NON-ALIENATION OF BENEFITS

Section 9.1. No benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void, nor shall any such benefit be in any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefit.

Section 9.2. If any Player or any Beneficiary under the Plan is adjudicated bankrupt or attempts to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge any benefit under the Plan, except as specifically provided in the Plan, then such benefit shall, in the discretion of the Committee, cease and terminate and in that event the Committee shall hold or apply the same or any part thereof to or for the benefit of such Player or Beneficiary in such manner as the Committee may deem proper.

ARTICLE 10 - FORFEITURES

Section 10.1. To the extent that the amount funded for any Player exceeds the amount necessary to pay the benefits to which said Player becomes entitled to hereunder, such excess

shall be treated as a forfeiture and shall serve to reduce the contribution of such Member or Members for the following Plan Year, and shall not be applied to increase the benefits of any other Player hereunder. Such forfeiture shall be allocated among the Members, on an actuarial basis, in order to give due consideration to the amount contributed on behalf of such Player by such Members.

ARTICLE 11 - INCOME AND EXPENSES

Section 11.1. At the end of each Plan Year, or at such other times set forth in any Contract, all income (including dividends paid by the Insurer on any Contract) earned on the funds held by the Insurer (other than on funds held in Supplemental Pension Accounts) shall be allocated to each Member's account based on the assets allocable to such Member from time to time during such Plan Year.

Section 11.2. All expenses of the Plan shall be paid from the funds held by the Insurer or directly by the Members. At the end of each Plan Year, or at such other times set forth in any Contract, the expenses of the Plan paid from the funds held in Supplemental Pension Accounts shall be charged, pro rata, to said Accounts and the expenses paid from any other funds shall be charged, pro rata, to each Member's account.

A. ARTICLE 12 - MEMBER'S ACCOUNTS

Section 12.1. The Insurer shall maintain a separate account for each Member to which it shall credit each Member's allocable share of Member's contributions (other than those provided for in Section 6.5(b) hereof) and to which it shall charge each Member's allocable share of benefits paid to Players, losses and expenses.

Section 12.2. The benefits payable hereunder to each Player shall be allocated among the Members, on an actuarial basis, in order to give due consideration to the amount contributed on behalf of such Player by such Members.

ARTICLE 13 - INSURANCE CONTRACTS

Section 13.1. One or more Contracts will be purchased in order to carry out the terms of the Plan from such Insurer or Insurers as the Members, in their absolute discretion, shall choose. Such Contracts shall cover the Players in the Plan and may be amended from time to time.

Section 13.2. The Players shall not have any right, title, interest, or ownership in and to any Contract which shall be purchased pursuant hereto. Except as otherwise provided herein, in no event may any of the avails or proceeds of any Contract be recoverable or revert, directly or indirectly, to any Member or be diverted to any purpose other than for the

exclusive benefit of the Players and Beneficiaries covered here-

under.

Section 13.3. The provisions for the form and mode of benefit payments under this Plan shall be subject to all of the terms and conditions of any and all Contracts purchased pursuant to Section 13.1 hereof.

Section 13.4. The Contracts shall provide that any death benefit payable thereunder shall be payable to the Beneficiary and shall reserve to the Contract holder such rights as are necessary to implement this Plan. The signature of any Player may be required for the exercise of any such right.

Section 13.5. No Insurer shall be considered to be a party to this Plan, nor shall it have any responsibility for the validity of this Plan. Its sole liability shall be its liability as stated in each Contract which it may issue.

Section 13.6. The Insurer shall be fully protected from any liability in assuming that the Plan has not been amended or changed until notice of any amendment or change in any of the terms thereof has been received by the Insurer.

Section 13.7. The Insurer shall be fully protected in accepting, from the Members, or the Committee, premiums on or instructions in connection with Contracts which it may issue or may have issued under this Plan and shall have no responsi-

bility to make an inquiry as to the authority to make such payment or to give such instructions.

ARTICLE 14 - ADMINISTRATION OF PLAN

Section 14.1. The general administration of the Plan shall be placed in a Committee, consisting of at least three persons, who shall be appointed from time to time by the majority vote of all of the Members.

Section 14.2. The Members of the Committee shall elect a Chairman from their number, and a Secretary who may be, but need not be, one of the members of the Committee, and shall designate an actuary to act in actuarial matters relating to the Plan. They may appoint from their number such committees with such powers as they shall determine, may authorize one or more of their number or any agent to make any payment in their behalf, or to execute or deliver any instrument except that a requisition for funds from the Insurer shall be signed by two members of the Committee. The Committee may employ counsel and agents and such clerical, medical and accounting services as they may require in carrying out the provisions of the Plan.

Section 14.3. The Committee shall hold meetings upon such notice, at such place or places, and at such time or times as they may from time to time determine.

Section 14.4. A majority of the members of the Committee at the time in office shall constitute a quorum for the transaction of business. All resolutions or other actions taken by the Committee at any meeting shall be by vote of a majority of the Committee at the time in office.

Section 14.5. No member of the Committee shall receive any compensation from the Plan for his services as such.

Section 14.6. Subject to the limitations of the Plan, the Committee from time to time shall establish rules for the administration of the Plan and the transaction of its business. The determination of the Committee as to any questions arising under the Plan shall be conclusive.

Section 14.7. The Committee shall adopt from time to time standards for use in all actuarial calculations required in connection with the Plan, and shall establish the rates of contribution on account of the Plan as provided herein. As an aid to the Committee in adopting tables and in fixing the rates of contribution payable under the Plan, the actuary designated by the Committee shall make annual actuarial valuations with respect to the operation and administration of the Plan and shall certify to the Committee the tables and rates of contribution which he recommends for use by the Committee.

Section 14.8. The Committee shall arrange for the maintenance of accounts showing the fiscal transactions of the Plan, and for the keeping in convenient form of such data as may be necessary for actuarial valuations with respect to the operation and administration of the Plan. The Committee shall prepare, from time to time, a report giving a brief account of the operation of the Plan. Such report shall be submitted to the Members.

Section 14.9. The Committee shall be entitled to rely upon all tables, valuations, certificates and reports furnished by the actuary designated by the Committee, and upon all opinions given by any legal counsel selected or approved by the Members. The Committee shall not be liable for any action taken or suffered by them in good faith in reliance upon any such actuary or counsel.

Section 14.10. The Committee shall be responsible for exercising any and all rights under the Contracts, including the right to designate the portion of the premiums paid to the Insurer which shall be invested in equity securities.

ARTICLE 15 - LIMITATION OF RIGHTS OF THE PLAYERS

Section 15.1. Nothing contained in this Plan shall be deemed to give any Player the right to be retained in the service of any Member. Inclusion under the Plan shall not give any Player any right or claim to any benefits except to the extent such right is specifically fixed under the terms of the Plan.

Section 15.2. The Members agree to make any and all contributions required to provide the benefits set forth herein.

Section 15.3. No liability shall attach to any Member for any payment of any benefit or claim hereunder.

Section 15.4. The Committee shall not be responsible for the validity of any Contracts, or for the action of any person or persons which may render any Contract invalid or unenforceable either in whole or in part. The Committee shall not be responsible for any inability to perform or any delay in performing any act occasioned by any other person. In the event it becomes impossible for the Committee to perform any act, that act shall be performed which in the judgment of the Committee will most nearly carry out the intent and purpose of this Plan.

ARTICLE 16 - PARTICIPATING MEMBERS

Section 16.1. Each Member shall execute such documents as are necessary to duly adopt this Plan and to participate in any Contracts to implement said Plan.

Section 16.2. In the event of the sale, transfer, exchange or other disposition of a franchise by any Member, or the granting of a new franchise by the Association, such new Member shall immediately execute such documents and take such actions as are necessary so as to provide the benefits of this Plan for its Players.

Section 16.3. In the event that any Member ceases to own a franchise and if said franchise is not sold, transferred or exchanged or otherwise disposed of to any new Member, or if any Member completely discontinues making contributions, then the Plan shall terminate as to said Member, and all of its Players shall be vested with all benefits accrued to the date of such termination. Said Member shall immediately make a contribution equal to the entire unfunded past service liability for each

Player for which it is then liable to make a contribution under the provisions hereof; provided, however, that such Member shall not be liable for any further contributions for any Player to the extent that another Member becomes liable for such contributions under the terms of this Plan, by virtue of having acquired rights to said Player.

ARTICLE 17 - AMENDMENT OR TERMINATION OF THE PLAN

Section 17.1. The Members shall have the right to amend the Plan at any time by an instrument in writing executed by all Members and delivered to the Insurer, provided, however, that:

(a) no amendment shall deprive any Player or Beneficiary of any of the benefits to which he is entitled under the Plan with respect to contributions previously made;

(b) no amendment shall provide for the use of the funds or assets held by the Insurer other than for the exclusive benefit of Players and

Beneficiaries, and except as otherwise provided herein, no funds contributed shall ever revert to or be used or enjoyed by the Member; and

(c) no amendment shall deprive the Insurer of any of its exemptions and immunities with respect to Contracts issued by it prior to receipt by the Insurer of notice of such amendment.

Any amendment to the Plan or Contract may be made retro-active which is necessary to enable the Members to obtain rulings from the United States Treasury Department as to the qualification of this Plan within the meaning of the Internal Revenue Code, as amended, or as it may be replaced by any sections of Federal law of like intent and purpose.

Section 17.2. The Members may terminate the Plan at any time by an instrument in writing executed by all the Members and delivered to the Insurer, provided, however, that if the Plan shall be terminated, each Player or Beneficiary shall be vested with all benefits accrued to the date of

termination, and each Member shall, prior to termination, make a contribution equal to the entire unfunded past service liability for each Player for which it is then liable to make a contribution under the provisions hereof.

Upon termination, the Members may obtain deferred annuities for Players not yet retired and immediate annuities for retired Players and Beneficiaries then entitled to payments providing for the benefits to which such Player or Beneficiary is entitled, and upon termination such annuities or Certificates of such annuities shall be distributed in complete discharge of all of the rights of such Players and Beneficiaries in the Plan. After discharge of all liabilities, the remaining balance in any Member's account shall be returned to such Member. Any Contract purchased under this Plan shall contain terms implementing the foregoing.

ARTICLE 18 - MISCELLANEOUS

Section 18.1. The headings and subheadings in this Plan have been inserted for the convenience of reference

only, and are to be ignored in any construction of the provisions hereof.

Section 18.2. In the construction of this Plan, the masculine shall include the feminine and the neuter and the singular shall include the plural in all cases where such meanings would be appropriate.

Section 18.3. This Plan shall be construed in accordance with the laws of the State of New York.

Section 18.4. This Plan is created for the exclusive benefit of the Players and their Beneficiaries. If any provision hereof is susceptible of more than one interpretation, then, among those interpretations which are possible, that one shall always be adopted which will be consistent with this Plan's being a qualified Plan within the meaning of the Internal Revenue Code, as amended, or as it may be replaced by any sections of Federal law of like intent and purpose.

Section 18.5. This Plan is to be submitted to the United States Treasury Department to obtain rulings that the Plan and any Contract purchased hereunder qualify under applicable Internal Revenue Code provisions and regulations thereunder and that contributions to the Plan constitute deductions under applicable Internal Revenue Code provisions and regulations thereunder. Notwithstanding any other provisions hereof, no Player shall have any vested right in any assets prior to the obtaining of an initial ruling from the Treasury Department as to the qualification of the Plan and any Contract purchased hereunder under said provisions and regulations. Any benefits which would by the terms of this Plan be payable to any Player, his Beneficiary or personal representatives prior to the obtaining of the above-mentioned rulings shall be paid in the manner hereinbefore set forth only after such rulings are obtained. In the event such rulings shall not be obtained, the Members may terminate the Plan, in which event all the assets shall be paid to and revested in the Members.

February 2,
1976

File: Plan document

NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN

The following members of the National Basketball Association do hereby amend and restate in its entirety their pension plan established on December 7, 1964 and effective on February 2, 1965, such restated plan to be known as the "National Basketball Association Players' Pension Plan":

ATLANTA FALCONS BASKETBALL, INC.
108 Techwood Drive NW
Atlanta, Ga. 30303

BOSTON CRITICS BASKETBALL CLUB, INC.
Boston Garden
North Station
Boston, Mass. 02114

BUFFALO BRAVES, INC.
Memorial Auditorium
Main & Terrace
Buffalo, N.Y. 14202

THE CHICAGO PROFESSIONAL SPORTS CORPORATION
333 North Michigan Avenue
Chicago, Illinois 60601

CLEVELAND PROFESSIONAL BASKETBALL COMPANY
P.O. Box 355
Richfield, Ohio 44286

DETROIT PISTONS BASKETBALL COMPANY
Cobo Arena
One Washington Blvd.
Detroit, Michigan 48226

SAN FRANCISCO WARRIORS
Oakland Coliseum Arena
Nimitz Freeway &
Hegenberger Road
Oakland, California 94621

TEXAS PRO SPORTS, INC.
The Summit
Houston, Texas 77046

KINGS PROFESSIONAL BASKETBALL CLUB, INC.
1860 Genessee Street
Kansas City, Missouri 64102

CALIFORNIA SPORTS INCORPORATED
P.O. Box 10
Inglewood, California 90306

MILWAUKEE PROFESSIONAL SPORTS & SERVICES, INC.
901 North Fourth Street
Milwaukee, Wisconsin 53203

NEW ORLEANS PROFESSIONAL BASKETBALL CLUB
P.O. Box 55213
New Orleans, La. 70153

MADISON SQUARE GARDEN CENTER, INC.
4 Pennsylvania Plaza
New York, N.Y. 10001

RIKO ENTERPRISES, INC.
The Spectrum
Broad St. & Pattison Ave.
Philadelphia, Pa. 19148

PHOENIX PROFESSIONAL BASKETBALL CLUB
P.O. Box 1369
Phoenix, Arizona 85001

PRO BASKETBALL, INC.
Suite 300-Cloyd Building
700 NE Multnomah St.
Portland, Oregon 97232

FIRST NORTHWEST INDUSTRIES OF AMERICA, INC.
221 W. Garrison
Seattle, Washington 98119

CAPITAL BULLETS BASKETBALL CLUB, INC.
Capital Centre
One Harry S. Truman Dr.
Landover, Md. 20786

The Plan shall operate in accordance with the following provisions:

ARTICLE I - DEFINITIONS

Section 1.1. "Active List" shall mean the list of Players who have signed formal contracts with a Member, and are otherwise eligible to participate in a Championship Game as certified to the Committee by each Member.

Section 1.2. "Actuarial Equivalent" shall mean a benefit of equivalent value when computed on the basis of the actuarial assumptions recommended by the Enrolled Actuary and adopted by the Committee.

Section 1.3. "Actuarial Value" shall mean the present value of a benefit when computed on the basis of the actuarial assumptions adopted by the Committee.

Section 1.4. "Anniversary Date" shall mean any anniversary of the Effective Date of the Plan.

Section 1.5. "Armed Services List" shall mean the list of these Players who have entered the Armed Services and are serving on active duty as certified to the Committee by each Member.

Section 1.6. "Association" shall mean the National Basketball Association and its successors.

Section 1.7. "Beneficiary" shall mean the person or persons designated by a Player to receive any benefits under this Plan. Where a Player fails to designate a Beneficiary or where a Beneficiary fails to survive a Player, "Beneficiary" shall mean the Player's surviving spouse, if any, or, if none, his children, if any, in equal shares, or, if none, his personal representative. Any person entitled to receive benefits hereunder after the death of a Player shall also be deemed a Beneficiary for purposes of the Plan.

Section 1.8. "Championship Game" shall mean any game included in the Association's schedule of Championship Games and shall not include playoff games or exhibition games.

Section 1.9. "Committee" shall mean the Pension Committee referred to in Article 13 hereof.

Section 1.10. "Contract" shall mean a Group Annuity Contract issued by an Insurer under this Plan, whether or not such Contract contains any element of life insurance protection.

Section 1.11. "Early Retirement Date" shall mean a date after the forty-fifth (45th) anniversary of the Player's date of birth, on which an election made by the Player for an Early Retirement Pension becomes effective, provided that the Player is not on the Roster of any Member during the Plan Year involved.

Section 1.12. "Early Retirement Pension" shall mean the pension payable to a Player at his Early Retirement Date.

Section 1.13. "Effective Date" shall mean February 2, 1965. "Restatement Effective Date" shall mean February 2, 1976.

Section 1.14. "Enrolled Actuary" shall mean a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under Subtitle C of Title III of ERISA.

Section 1.15. "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and with which this Plan is intended to comply.

Section 1.16. "Franchise" shall mean the right of any Member to participate in the Association as determined under the rules of the Association.

Section 1.17. "Injured List" shall mean the list of Players who, due to injury or illness, have been temporarily removed from the Active List of a Member as certified to the Committee by each Member.

Section 1.18. "Insurer" shall mean a legal reserve life insurance company which shall issue a Contract under which the Members shall participate upon execution of an agreement providing for such participation, and which is licensed to do business in the State of New York.

Section 1.19. "Internal Revenue Code" shall mean the Internal Revenue Code of 1954, as amended from time to time, including the amendments thereto made by Title II of ERISA.

Section 1.20. "Member" shall mean a member of the Association.

Section 1.21. "Named Fiduciary" shall mean the Committee.

Section 1.22. "Normal Retirement Date" shall mean the fifty-third (53rd) anniversary of the Player's date of birth. 53

Section 1.23. "Normal Retirement Pension" shall mean the pension payable to the Player at his Normal Retirement Date.

Section 1.24. "Plan" shall mean the National Basketball Association Players' Pension Plan.

Section 1.25. "Plan Administrator" shall mean the Committee.

Section 1.26. "Plan Year" shall mean the twelve (12) month period beginning on the Effective Date, or any twelve (12) month period beginning on the Anniversary Date in a subsequent year, during which this Plan shall be in effect.

Section 1.27. "Player" shall mean any person carried on any Player List, as defined in the By-Laws of the Association, or, where the context permits, a person eligible to be carried on any such List or a person formerly carried on any such List.

Section 1.28. "Qualified Joint and Survivor Annuity" shall mean a pension benefit payable for the life of a retired

Player and continued upon his death for the life of the deceased Player's surviving spouse, if any, with the surviving spouse's periodic benefit to be at a level of 50% of the actuarially reduced benefit paid or payable for each such period to the Player during his lifetime.

Section 1.29. "Regular Season" shall mean the period beginning on the date of the first game of the Association's schedule of Championship Games and ending at the end of the day before the first Playoff Game is played.

Section 1.30. "Roster" shall mean, for Plan Years ended on or before February 1, 1965, (i) every Player on the Active List of any Member on February 2 of the Regular Season involved and (ii) every Player on either the Suspended, Armed Services or Injured List of any Member on February 2 of the Regular Season involved provided that such Player was on the Active List of any Member for 50 percent or more of the total Championship Games played by the Member during the Regular Season which includes such February 2. For Plan Years ended after February 2, 1965, "Roster" shall mean (i) every Player on the Active List or the Injured List of any Member on February 2 of the Regular Season involved; and (ii) every Player on the Suspended List or the Armed Services List of any Member on February 2 of the Regular Season involved provided that such Player was on the Active List of any Member for 50 percent or more of the total Championship Games played by the Member during the Regular Season which includes such February 2. A Player, not otherwise considered to be on the Roster of any Member pursuant to the terms hereof, shall not be considered to be on the Roster of any Member by virtue of the fact that he has entered into a "guaranteed" or "no-cut"

contract on or after May 1, 1976, except to the extent that the Player and a Member have agreed that the Player shall be considered to be on the Roster with respect to any Plan Year during which such contract is in effect.

Section 1.31. "Supplemental Pension" shall mean the pension payable to a Player from his Supplemental Pension Account.

Section 1.32. "Supplemental Pension Account" shall mean a segregated account to be maintained by the Insurer for each Player, as directed by the Committee and subject to the terms of this Plan.

Section 1.33. "Suspended List" shall mean the list of those Players who, for proper cause, have been suspended by the Association or by the Member having the right to so suspend as certified to the Committee by each Member.

ARTICLE 2 - ELIGIBILITY

Section 2.1. Every Player on the Roster of any Member during the Regular Season which included February 2, 1967 shall be eligible to participate as of February 2, 1968. Every Player on the Roster of any Member during the Regular Season which included February 2, 1966, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1970. Every Player on the Roster of any Member during the Regular Season which included February 2, 1965, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1973.

Section 2.2. Every Player on the Roster of any Member during any Regular Season beginning subsequent to the Regular Season which includes February 2, 1967, not otherwise eligible hereunder, shall be eligible to participate as of the Anniversary

Date during such subsequent Regular Season.

Section 2.3. Every Player entitled to any benefit under the terms of the Pension Plan in existence prior to the adoption of this instrument shall continue to be eligible to receive such benefits.

ARTICLE 3 - BENEFITS

Section 3.1. Every Player eligible to participate hereunder, who attains his Normal Retirement Date and who was on the Roster of any Member for any three Regular Seasons shall be entitled to a Normal Retirement Pension.

Section 3.2. The Normal Retirement Pension payable to a Player shall be paid to him commencing on the first day of the first month following said Player's Normal Retirement Date and shall continue to be paid on the first day of each month up to and including the month in which the Player dies and, except as otherwise provided in Section 3.9, shall be paid as an annuity for the life of the Player in an amount equal to:

(a) For a Player who becomes eligible to receive a Normal Retirement Pension on or before May 31, 1976, \$60 per month for each year of Credited Service.

(b) For a Player who becomes eligible to receive a Normal Retirement Pension on or after June 1, 1976 and on or before May 31, 1979, \$75 per month for each year of Credited Service.

(c) For a Player who becomes eligible to receive a Normal Retirement Pension on or after June 1, 1979 and on or before December 1, 1980, \$75 plus a cost-of-living adjustment (which adjustment shall be calculated by apply to \$75 the percentage increase in the National Consumer Price Index between

September 1975 and May 1979, and which shall be rounded off to the nearest whole dollar) per month for each year of Credited Service.

(d) For a Player who becomes eligible to receive a Normal Retirement Pension on or after December 2, 1980 the amount provided in Section 3.2(b) above, plus a cost-of-living adjustment (which adjustment shall be calculated by applying to the amount provided in Section 3.2(b) the percentage increase in the National Consumer Price Index between June 1979 and November 1980, and which shall be rounded off to the nearest whole dollar) per month for each year of Credited Service.

Section 3.3. All the amounts provided for in Section 3.2 hereof shall be reduced by the Actuarial Equivalent (of a lifetime annuity beginning on the same date) of any benefit payable to a Player under Article 5 hereof.

Section 3.4. Every Player who was on the Roster of any Member for any three Regular Seasons shall be entitled to elect to receive, in lieu of a Normal Retirement Pension, an Early Retirement Pension. Such election shall be made at least 90 days prior to the Early Retirement Date and shall be made in writing delivered to the Committee.

Section 3.5. The Early Retirement Pension payable to a Player shall be paid to him commencing on the first day of the first month following the Player's Early Retirement Date and shall continue to be paid on the first day of each month up to and including the month in which the Player dies and, except as otherwise provided in Section 3.10 shall be paid as an annuity for life in an amount which shall be the Actuarial Equivalent of the Normal Retirement Pension that said Player would have been entitled to on his Normal Retirement Date (calculated as if the

Normal Retirement Date was the fiftieth (50th) anniversary of the Player's date of birth).

Section 3.6. For Plan Years ending prior to February 2, 1973, the Insurer shall maintain a separate Supplemental Pension Account for each Player and \$100.00 (less a reasonable amount, as determined by the Committee, to reflect the administration expenses allocable to said Supplemental Pension Account) shall be added to said Account during each Plan Year that said Player is credited with a year of current service under Section 4.2 hereof. For Plan Years beginning on or after February 2, 1973 and ending on or before February 1, 1976, the Insurer shall maintain a separate Supplemental Pension Account for each Player and \$200.00 (less a reasonable amount, as determined by the Committee to reflect the administration expenses allocable to said Supplemental Pension Account) shall be added to said Account during each Plan Year that said Player is credited with a year of current service under Section 4.2 hereof. For Plan Years beginning on or after February 2, 1976, the Insurer shall continue to maintain a separate Supplemental Pension Account for each Player having a Supplemental Pension Account on such date and the Insurer shall apply the amount therein (as adjusted pursuant to Section 3.8 hereof) to provide such Player with a Supplemental Pension in accordance with Section 3.9 hereof. No additional amount shall be added to any Supplemental Pension Account for Plan Years beginning on or after February 2, 1976, except for the adjustments made pursuant to Section 3.8 hereof.

Section 3.7. The funds in all Supplemental Pension Accounts maintained by the Insurer shall be invested by the Insurer in a segregated account, as directed by the

Committee, in such securities as the Insurer deems advisable. In giving such directions, the Committee shall consult with a representative designated by the Players Association in order to reach an agreement with respect to such directions. In the absence of an agreement between the Committee and said representative, the Committee shall follow the directions of the Players Association.

* Section 3.8. As of December 31 of each year, and at such other times as is necessary to calculate any benefits payable hereunder, the Insurer shall value all of the assets representing the funds held in all Supplemental Pension Accounts, based on their respective market values on said valuation date, and as of said valuation date the Supplemental Pension Account of any Player shall be adjusted to reflect the effect of contributions, income collected and accrued and realized and unrealized profits and losses for the period since the most recent previous valuation date.

Section 3.9. The Supplemental Pension payable to any Player shall be the Actuarial Equivalent of said Player's Supplemental Pension Account on his Normal Retirement Date or Early Retirement Date, as the case may be, and shall be paid to him in the same manner and at the same time as the payment to him of a Normal Retirement Pension or Early Retirement Pension, as the case may be.

Section 3.10. Subject to the provisions of subparagraph (a) of this section, if a Player is married on his Early Retirement Date or his Normal Retirement Date, as the case may be, his Early Retirement Pension or Normal Retirement Pension and any Supplemental Pension shall be paid in the form of a Qualified

Joint and Survivor Annuity under which the Player's pension is reduced so that the resulting pension payable to the Player and his spouse shall be the Actuarial Equivalent of his Early Retirement Pension or Normal Retirement Pension and any Supplemental Pension otherwise payable.

(a) The preceding paragraph shall not apply if the Player on or before the date on which his benefits commence, files an election in writing with the Insurer pursuant to which he becomes entitled to the payment of the pension in a form other than a Qualified Joint and Survivor Annuity.

Section 3.11. Every Player not eligible for, or electing not to receive a Qualified Joint and Survivor Annuity, may elect to receive, in lieu of the Normal Retirement Pension or Early Retirement Pension and any Supplemental Pension provided for in this Article, the Actuarial Equivalent of such pension payable on the date that said pension would otherwise have become payable in one or more of the following ways:

- (a) Installments for Life - Paid in equal monthly installments for as long as the Player shall live.
- (b) Installments of Fixed Amount - Paid in installments of a specified amount each month.
- (c) Installments for a Fixed Period - Paid in equal monthly installments for a fixed number of years.
- (d) Installments for a Fixed Period and Life Thereafter - Paid in equal monthly installments for a fixed number of years and for so long thereafter as the Player shall live.
- (e) Joint and Survivorship Annuity - Paid in equal monthly installments to the Player, terminating with the last monthly installment before his death. Following the death of

the Player after this option becomes effective, monthly installments shall be continued to the person he named as his joint annuitant. The amount of each installment payable to the joint annuitant shall be equal to 100% of the monthly amount which was payable to the Player, or to a lesser percentage, as specified by the Player in his election of this option.

(f) Social Security Option - Paid in monthly installments, to the extent permitted by ERISA, so long as the Player shall live, in such amounts so as to enable the Player to receive an approximately equal amount each month taking into consideration the benefits hereunder and the estimated primary benefits payable under the Social Security Act.

(g) Lump Sum - Paid to the Player in one Lump Sum.

Section 3.12. Any optional method of settlement selected under this Article shall become effective on the date on which the Player's benefits hereunder commence.

Section 3.13. Where an optional method of settlement is selected under this Article, periods certain or periods over which installments are payable shall not exceed the life expectancy of the Player based on the mortality tables then generally in use, that of the Player and his spouse or that of the Player and another not more than five years younger than the Player. An election under this Section shall be made at least two (2) years prior to the start of any pension, or at such later date approved by the Insurer, and shall be made in writing delivered to the Committee.

Section 3.14. If any Player or Beneficiary is, in the judgment of the Committee, legally, physically or mentally in-

capable of personally receiving and receipting for any payment due hereunder, payment may be made to the guardian or other legal representative of such Player or his Beneficiary, or, if none, to such other person, or institution, who, in the opinion of the Committee, is then maintaining or has custody of such Player or his Beneficiary. Such payments shall constitute a full discharge with respect thereto.

ARTICLE 4 - CREDITED SERVICE

Section 4.1. Every Player eligible to participate hereunder shall be credited with one year of Credited Service for each year that said Player was on the Roster of any Member for any Regular Season prior to the Regular Season for which said Player is first eligible to participate hereunder ("past service").

Section 4.2. Every Player eligible to participate hereunder shall be credited with one year of Credited Service for each year that said Player is on the Roster of any Member for any Regular Season beginning with the Regular Season for which said Player is first eligible to participate hereunder ("current service").

ARTICLE 5 - FORMER PENSION BENEFITS

Section 5.1. The Members have caused the Contract formerly in existence with Continental Assurance Company to be discontinued in accordance with the terms of such Contract and have continued the Single Premium Endowment Insurance of all Players insured thereunder in the same amount as Paid-up Endowment Insurance, to be paid to said Players in accordance with the terms of said Contract.

Section 5.2. In addition to all benefits provided hereunder, and notwithstanding any other provision to the contrary, every Player on the Active List of any Member on February 2, 1965, February 2, 1966 or February 2, 1967, or his Beneficiary, shall be entitled to receive such benefits as are payable under the Paid-up Endowment Insurance Contract referred to in Section 5.1 hereof, upon such conditions and subject to such options as are set forth in said Paid-up Endowment Insurance Contract.

ARTICLE 6 - MEMBER'S CONTRIBUTIONS

Section 6.1. On or before July 1 of each Plan Year every Member shall pay to the Insurer an amount necessary to fund the benefits for its Players in accordance with the rules set forth in this Article, and in order to prevent a deficiency in the funding Standard Account as required by the Internal Revenue Code and ERISA.

Section 6.2. The annual cost of funding for the current and past service benefits for any Player on the Active List on February 2, 1968 (or on any subsequent February 2) or on the Injured List on February 2, 1973 (or on any subsequent February 2), shall be paid by the Member on whose Active List or Injured List, as the case may be, the Player appears on February 2 of the Plan Year involved.

Section 6.3. The annual cost of funding for the current and past service benefits for any Player (i) on the Suspended or Armed Services List on February 2, 1968 (or on any subsequent February 2) or on the Injured List on February 2, 1968 (or any subsequent February 2, prior to February 2, 1973) and (ii) on the Active List of any Member for 50 percent or more of the total Cham-

pionship Games played by each Member during the Regular Season which includes such February 2 shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved.

Section 6.4. The annual cost of funding for the past service benefits for any Player not on any Roster during the Plan Year involved shall be paid by the Member having rights to the services of such Player, as a Player, on February 2 of the Plan Year involved or, if no Member has such rights on said February 2, by the Member last having such rights prior to said February 2.

Section 6.5. The annual amount necessary to fund the current service benefits shall be equal to:

- (a) The Actuarial Value of the benefits for current service; and
- (b) \$100 (for Plan Years ending prior to February 2, 1973) and \$200 (for Plan years beginning on or after February 2, 1973 and ending on or before February 1, 1976), for each Player entitled to be credited with a year of current service for such Plan Year.

Section 6.6. The annual amount necessary to fund the past service benefits shall be that amount which if paid in equal annual installments over thirty (30) years from the date or dates such past service benefits are effective, or over such shorter period of years determined by the Enrolled Actuary that will result in an approximately equivalent amortization schedule, will accumulate to the Actuarial Value of such benefits, taking into account interest at the rate adopted by the Committee.

Section 6.7. In no event shall the projected Normal Retirement Pension, payable to any Player under this Plan and any other defined benefit plan (as defined in Section 414(j) of the Internal Revenue Code) maintained by a Member, exceed the lesser of (a) \$75,000 or (b) 100% of the Player's average total compensation for the period of three (3) consecutive calendar years yielding the highest such average and during which he was a Player. In the case of a Player who has less than ten (10) years of Credited Service, the limitation stated in the foregoing sentence shall be reduced by multiplying it by a fraction, the numerator of which is the number of years (or part thereof) of Credited Service and the denominator of which is ten (10).

Section 6.8. If at any time a Player is a participant in both a defined benefit plan and a defined contribution plan (as such terms are defined in Sections 414(j) and 414(i) of the Internal Revenue Code) maintained by any Member, the sum of his defined benefit fraction and his defined contribution fraction shall, in no event, exceed 1.4 for any Plan Year. If such sum would otherwise exceed 1.4 for any Plan Year, appropriate adjustments shall be made to eliminate such excess. For the purpose of this Section, all defined benefit plans (whether or not terminated) of the Members shall be treated as a single defined benefit plan, and all defined contribution plans (whether or not terminated) of the Members shall be treated as one defined contribution plan.

Section 6.9. All computations with respect to the limitations under this Article shall be made on the basis of each Plan Year.

Section 6.10. As used herein, the term "annual addition" means, with respect to any Player, the sum of (a) all contributions made by a Member and all forfeitures allocable to a Player with respect to all defined contribution plans (as defined in Section 414(i) of the Internal Revenue Code) maintained by a Member and (b) all contributions, made by a Player (other than rollover contributions) with respect to all such defined contribution plans, in excess of the amount prescribed in Section 415(c)(2)(B) of the Internal Revenue Code.

As used herein, the term "defined benefit fraction" shall mean a fraction, the numerator of which is a Player's projected annual benefit under a defined benefit plan of the Member (determined as of the end of the Plan Year), and the denominator of which is such Player's projected annual benefit (determined as of the end of the Plan Year) if such plan provided the maximum benefit allowable under Section 415(b) of the Internal Revenue Code. A Player's projected annual benefit will be determined by taking into consideration all relevant factors used to determine benefits under the plan.

As used herein, the term "defined contribution fraction" shall mean a fraction, the numerator of which is the sum of all annual additions credited to a Player under a defined contribution plan of the Member, and the denominator of which is the maximum amount of annual additions which could have been credited to such person under Section 415(c) of the Internal Revenue Code.

ARTICLE 7 - DEATH BENEFITS

Section 7.1. Except as otherwise provided in Section 7.2 hereof, in the event of the death of any Player prior to the date as of which the payment of his Early Retirement Pension or

Normal Retirement Pension, as the case may be, becomes effective, said Player's Beneficiary shall be entitled to receive a cash settlement, in a lump sum, equal to (i) 100% of the Supplemental Pension that said Player would have been entitled to receive if his date of death had been his Normal Retirement Date, (ii) plus any contribution thereafter required to be made on his behalf, under Section 6.5(b) hereof, reduced by such amount determined by the Committee under Section 3.5 hereof for the Plan Year involved and (iii) plus the excess, if any, of an amount equal to the actuarial reserve on the date of death for the Normal Retirement Pension based on the actuarial assumptions most recently adopted pursuant to Section 13.12 hereof and based on the Credited Service earned to the date of death, over the proceeds of any group life insurance policy (exclusive of any such proceeds paid because of accidental death) maintained and paid for by a Member on the life of a Player. Said payment shall be made as soon as practicable after the Committee is notified of said Player's death.

Section 7.2. In the event of the death of a married Player during a Plan Year in which he is on the Roster of any Member and on or after the date on which he reaches the forty-fifth (45th) anniversary of his date of birth, such Player's spouse shall receive in lieu of the benefit provided for in Section 7.1, (i) a death benefit in the form of an annuity which shall be the Actuarial Equivalent of the payments which would have been made to such spouse under a Qualified Joint and Survivor Annuity to which the Player would have been entitled if he had become entitled to an Early Retirement Pension under Section 3.9 hereof on the day before his death, plus (ii) a lump sum equal to the excess, if any, of the amount otherwise payable

under Section 7.1 over the Actuarial Equivalent of the amount payable under this Section.

Section 7.3. Upon the death of a Player after the date as of which the payment of his Early Retirement Pension or Normal Retirement Pension, as the case may be, becomes effective, no further payments shall be made other than those, if any, specified in the benefit to which the Player is entitled.

ARTICLE 8 - NON-ALIENATION OF BENEFITS

Section 8.1. No benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void, nor shall any such benefit be in any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefit.

Section 8.2. If any Player or any Beneficiary under the Plan is adjudicated bankrupt or attempts to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge any benefit under the Plan, except as specifically provided in the Plan, then such benefit shall, in the discretion of the Committee, cease and terminate and in that event the Committee shall hold or apply the same or any part thereof to or for the benefit of such Player or Beneficiary in such manner as the Committee may deem proper.

ARTICLE 9 - FORFEITURES

Section 9.1. To the extent that the amount funded for any Player exceeds the amount necessary to pay the benefits to which said Player or his Beneficiary becomes entitled hereunder,

such excess shall be treated as a forfeiture and shall serve to reduce the contribution of the Member or Members affected thereby for the following Plan Year, and shall not be applied to increase the benefits of any other Player hereunder. Such forfeiture shall be allocated among the Members, on an actuarial basis, in order to give due consideration to the amount contributed on behalf of such Player by such Members.

ARTICLE 10 - INCOME AND EXPENSES

Section 10.1. At the end of each Plan Year, or at such other times set forth in any Contract, all income (including dividends paid by the Insurer on any Contract) earned on the funds held by the Insurer (other than on funds held in Supplemental Pension Accounts) shall be allocated to each Member's account based on the assets allocable to such Member from time to time during such Plan Year.

Section 10.2. All expenses of the Plan shall be paid from the funds held by the Insurer or directly by the Members. At the end of each Plan Year, or at such other times set forth in any Contract, the expenses of the Plan paid from the funds held in Supplemental Pension Accounts shall be charged, pro rata, to said Accounts and the expenses paid from any other funds shall be charged pro rata, to each Member's account.

ARTICLE 11 - MEMBER'S ACCOUNTS

Section 11.1. The Insurer shall maintain a separate account for each Member to which it shall credit each Member's allocable share of Member's contributions (other than those provided for in Section 6.5(b) hereof) and to which it shall

charge each Member's allocable share of benefits paid to Players, losses and expenses.

Section 11.2. The benefits payable hereunder to each Player shall be allocated among the Members, on an actuarial basis, in order to give due consideration to the amount contributed on behalf of such Player by such Member.

ARTICLE 12 - INSURANCE CONTRACTS

Section 12.1. One or more Contracts may be purchased in order to carry out the terms of the Plan from such Insurer or Insurers as the Members, in their absolute discretion, shall choose. Such Contracts shall cover the Players in the Plan and may be amended from time to time.

Section 12.2. The Players shall not have any right, title, interest, or ownership in and to any Contract which shall be purchased pursuant hereto. Except as otherwise provided herein, in no event may any of the avails or proceeds of any Contract be recoverable or revert, directly or indirectly, to any Member or be diverted to any purpose other than for the exclusive benefit of the Players and Beneficiaries covered hereunder.

Section 12.3. The provisions for the form and mode of benefit payments under this Plan shall be subject to all of the terms and conditions of any and all Contracts purchased pursuant to Section 12.1 hereof.

Section 12.4. The Contracts shall provide that any death benefit payable thereunder shall be payable to the Beneficiary and shall reserve to the Contract holder such rights as are neces-

sary to implement this Plan. The signature of any Player may be required for the exercise of any such right.

Section 12.5. No insurer shall be considered to be a party to this Plan, nor shall it have any responsibility for the validity of this Plan. Its sole liability shall be its liability as stated in each Contract which it may issue.

Section 12.6. The Insurer shall be fully protected from any liability in assuming that the Plan has not been amended or changed until notice of any amendment or change in any of the terms thereof has been received by the Insurer.

Section 12.7. The Insurer shall be fully protected in accepting, from the Members, or the Committee, premiums on or instructions in connection with Contracts which it may issue or may have issued under this Plan and shall have no responsibility to make an inquiry as to the authority to make such payment or to give such instructions.

ARTICLE 13 - ADMINISTRATION OF PLAN

Section 13.1. The general administration of the Plan shall be placed in a Committee, consisting of at least three persons, who shall be appointed from time to time by the majority vote of all of the Members.

Section 13.2. The members of the Committee shall elect a Chairman from their number, and a Secretary who may be, but need not be, one of the members of the Committee, and shall designate an Enrolled Actuary to act in actuarial matters relating to the Plan. They may appoint from their number such committees with such powers as they shall determine, may authorize one or more of

their member or any agent to make any payment in their behalf, or to execute or deliver any instrument except that a requisition for funds from the Insurer shall be signed by two members of the Committee. The Committee may employ counsel and agents and such clerical, medical and accounting services as they may require in carrying out the provisions of the Plan.

Section 13.3. The Committee shall hold meetings upon such notice, at such place or places, and at such time or times as they may from time to time determine.

Section 13.4. A majority of the members of the Committee at the time in office shall constitute a quorum for the transaction of business. All resolutions or other actions taken by the Committee at any meeting shall be by vote of a majority of the Committee at the time in office.

Section 13.5. No member of the Committee shall receive any compensation from the Plan for his services as such.

Section 13.6. Subject to the limitations of the Plan, the Committee from time to time shall establish rules for the administration of the Plan and the transaction of its business. The Committee shall take such steps as are considered necessary and appropriate to remedy any inequity that results from incorrect information received or communicated in good faith or as the consequence of an administrative error. The Committee shall interpret the Plan and shall determine the answers to questions arising in the administration, interpretation and application of the Plan and shall endeavor to act, whether by general rules or by particular decisions, so as not to discriminate in favor of or against any Player. The Committee may correct any defect, reconcile any

inconsistency or supply any omission. All Players in similar circumstances shall be treated as nearly uniformly as practicable.

Section 13.7. The Committee shall keep all records relating to Players including former Players and such other records as are necessary for the proper operation of the Plan.

Section 13.8. The Committee shall take such steps as are necessary to insure that all reporting and disclosure requirements imposed upon the Plan by applicable Federal law, any amendments thereto, regulations thereunder, or any other official published interpretation thereunder, are complied with.

Section 13.9. The Committee shall discharge its duties in accordance with the requirements of applicable Federal law, any amendments thereto, regulations thereunder or any other official published interpretation thereunder.

Section 13.10 The Committee shall arrange for such bonding as is required by law but no bonding in excess of the amount required by law shall be considered required by this Plan.

Section 13.11 The Committee shall be indemnified by the Members against expenses reasonably incurred by it in connection with any action, to which it may be a party, by reason of its service as a Committee, except in relation to matters as to which it shall be adjudged in such action to be liable for gross negligence or willful misconduct in the performance of its duty.

Section 13.12 The Committee shall adopt from time to time standards for use in all actuarial calculations required in connection with the Plan, and shall establish the amount of con-

contributions under the Plan as provided herein. As an aid to the Committee in adopting tables and in fixing the amount of contributions payable under the Plan, the Enrolled Actuary designated by the Committee shall make annual actuarial valuations with respect to the operation and administration of the Plan and shall certify to the Committee the tables and amount of contributions which he recommends for use by the Committee. ¶

Section 13.13 The Committee shall arrange for the maintenance of accounts showing the fiscal transactions of the Plan, and for the keeping in convenient form of such data as may be necessary for actuarial valuations with respect to the operation and administration of the Plan. The Committee shall prepare, from time to time, a report giving a brief account of the operation of the Plan. Such report shall be submitted to the Members.

Section 13.14. The Committee shall be entitled to rely upon all tables, valuations, certificates and reports furnished by the Enrolled Actuary designated by the Committee, and upon all opinions given by any legal counsel selected or approved by the Members. The Committee shall not be liable for any action taken or suffered by them in good faith in reliance upon any such Enrolled Actuary or counsel.

Section 13.15. The Committee shall be responsible for exercising any and all rights under the Contracts, including the right to designate the portion of the premium paid to the Insurer which shall be invested in equity securities.

ARTICLE 14. Liability and Standard of
Care of Committee

Section 14.1. Each member of the Committee and any other fiduciary with respect to the Plan shall discharge his duties with respect thereto (a) solely in the interest of Players and their Beneficiaries; (b) for the exclusive purpose of providing benefits to Players and their Beneficiaries and defraying reasonable expenses of administering the Plan; (c) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and (d) in accordance with the provisions of the Plan insofar as such provisions are not inconsistent with applicable law. As used herein, the term "fiduciary" shall have the meaning ascribed to it in Section 3(21) of ERISA.

Section 14.2. No fiduciary with respect to the Plan shall be liable for an act or omission of another person resulting in a breach by such other person of his fiduciary responsibility with respect to the Plan, except to the extent that:

(a) such fiduciary participated knowingly in, or knowingly undertook to conceal, an act or omission of such other person, knowing such act or omission to be a breach of fiduciary responsibility;

(b) such fiduciary, by his failure to comply with the provisions of the preceding Section of the Plan or with Section 404(a)(1) of ERISA in the administration of his specific responsibilities which give rise to his status of a fiduciary, has enabled such other person to commit a breach of fiduciary responsibility;

(c) such fiduciary has knowledge of a breach of fiduciary responsibility by such other person, unless he makes reasonable efforts under the circumstances to remedy the breach; or

(d) such fiduciary is a "named fiduciary" (as such term is defined in Section 402(a)(2) of ERISA) and has violated his duties under Section 404(a)(1) of ERISA:

(1) with respect to the allocation of fiduciary responsibilities among "named fiduciaries" or the designation of persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan;

(2) with respect to the establishment or implementation of procedures for allocating fiduciary responsibilities among "named fiduciaries" or for designating persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan; or

(3) in continuing the allocation of fiduciary responsibilities among "named fiduciaries" or the designating of persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan.

Section 14.3. Notwithstanding anything to the contrary contained herein, no member of the Committee or other fiduciary with respect to the Plan shall incur any liability for any act or omission to the extent he would not be liable therefor under Part 4 of Subtitle B of Title I of ERISA and to the extent such act or omission is not the result of his own gross negligence or wilful misconduct.

Section 14.4. The Members shall indemnify each member of the Committee and any other person to whom a fiduciary responsibility with respect to the Plan is allocated or delegated

from and against all liabilities, costs and expenses incurred by such person as a result of act, omission or conduct in connection with the performance of his fiduciary duties, responsibilities and obligations under the Plan and under ERISA, except with respect to liabilities and claims arising from such person's own wilful misconduct or gross negligence. The Members may obtain, pay for and maintain a policy or policies of insurance, the proceeds of which may be used in satisfying its obligations under this Section.

ARTICLE 15 - CLAIMS PROCEDURE

Section 15.1. Any request for a benefit payable under the Plan shall be made in writing by a Player or Beneficiary (or an authorized representative of either of them), as the case may be, and shall be delivered to any member of the Committee. Such written request shall be deemed filed upon receipt thereof by the Committee. Such request shall be made within the time prescribed in the Plan for claiming a particular benefit or, if no time is so prescribed, within a reasonable time before payment of the benefit is to commence.

Section 15.2. In the event a request for benefits contains insufficient information, the Committee shall, within 15 days after receipt of such request, send a written notification to the claimant setting forth a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material is necessary. The claimant's request shall be deemed filed with the Committee on the date the Committee receives in writing such additional information.

Section 15.3. The Committee shall make a determination with respect to a request for benefits within 30 days after such

calculated to be understood by the claimant, the specific reasons for its decision and the pertinent provisions of the Plan on which the decision is based.

Section 15.6. If the claimant so requests in his timely application for review, the Named Fiduciary shall schedule a conference with the claimant (and/or his authorized representative). Such conference shall be held at the offices of the Association at a date and time which is mutually agreed upon by the parties concerned, provided that in no event shall the conference be held more than 60 days after the Named Fiduciary receives the claimant or his authorized representative within 30 days after the date on which the conference is completed, and shall set forth, in the same manner, the information required in the preceding Section.

ARTICLE 16 - LIMITATION OF RIGHTS OF THE PLAYERS

Section 16.1. Nothing contained in this Plan shall be deemed to give any Player the right to be retained in the service of any Member. Inclusion under the Plan shall not give any Player any right or claim to any benefits except to the extent such right is specifically fixed under the terms of the Plan.

Section 16.2. The Members agree to make any and all contributions required to provide the benefits set forth herein.

Section 16.3. No liability shall attach to any Member for any payment of any benefit or claim hereunder.

Section 16.4. The Committee shall not be responsible for the validity of any Contracts, or for the action of any person or persons which may render any Contract invalid or unenforceable either in whole or in part. The Committee shall not be responsible

for any inability to perform or any delay in performing any act occasioned by any other person. In the event it becomes impossible for the Committee to perform any act, that act shall be performed which in the judgment of the Committee will most nearly carry out the intent and purpose of this Plan.

ARTICLE 17 - PARTICIPATING MEMBERS

Section 17.1. Each Member shall execute such documents as are necessary to duly accept this Plan and to participate in any Contracts to implement said Plan.

Section 17.2. In the event of the sale, transfer, exchange or other disposition of a franchise by any Member, or the granting of a new franchise by the Association, such new Member shall immediately execute such documents and take such actions as are necessary so as to provide the benefits of this Plan for its Players.

Section 17.3. In the event that any Member ceases to own a franchise and if said franchise is not sold, transferred, or exchanged or otherwise disposed of to any new Member, or if any Member completely discontinues making contributions, then the Plan shall terminate as to said Member, and all of its Players shall be vested with all benefits accrued to the date of such termination. Said Member shall immediately make a contribution equal to the entire unfunded past service liability for each Player for whom it is then liable to make a contribution under the provisions hereof; provided, however, that such Member shall not be liable for any further contribution for any Player to the extent that another Member becomes liable for such contributions under the terms of the Plan, by virtue of having acquired rights to said Player.

Section 17.4. In no event shall any merger or consolidation of any other plan with this Plan, or any transfer of assets and liabilities of this Plan to any other plan or any transfer of assets and liabilities from any other plan to this Plan take place which results in a benefit to any Player or Beneficiary (if the Plan then terminated) that is lower than the benefit he would have received immediately before the merger, consolidation or transfer (if the Plan then terminated).

ARTICLE 18 - AMENDMENT OR TERMINATION OF THE PLAN

Section 18.1. The Members shall have the right to amend the Plan at any time by an instrument in writing executed by all Members and delivered to the Insurer, provided, however, that:

(a) no amendment shall deprive any Player or Beneficiary of any of the benefits to which he is entitled under the Plan with respect to contributions previously made;

(b) no amendment shall provide for the use of the funds or assets held by the Insurer other than for the exclusive benefit of Players and Beneficiaries, and except as otherwise provided herein, no funds contributed shall ever revert to or be used or enjoyed by the Member; and

(c) no amendment shall deprive the Insurer of any of its exemptions and immunities with respect to Contracts issued by it prior to receipt by the Insurer of notice of such amendment.

Any amendment to the Plan or Contract may be made retroactive which is necessary to enable the Members to obtain rulings from the United States Treasury Department as to the qualification of this Plan within the meaning of the Internal Revenue Code,

as amended, or as it may be replaced by any sections of Federal law of like intent and purpose.

Section 18.2. The Members may terminate the Plan at any time by an instrument in writing executed by all the Members and delivered to the Insurer, provided, however, that if the Plan shall be terminated (or if there shall be a partial termination of the Plan), each Player or Beneficiary affected thereby shall be vested with all benefits accrued to the date of termination, and each Member shall, prior to termination, make a contribution equal to the entire unfunded past service liability for each Player for which it is then liable to make a contribution under the provisions hereof. Upon termination, the Members may obtain deferred annuities for Players not yet retired and immediate annuities for retired Players and Beneficiaries then entitled to payments providing for the benefits to which such Player or Beneficiary is entitled, and upon termination such annuities or Certificates of such annuities shall be distributed in complete discharge of all of the rights of such Players and Beneficiaries in the Plan. After discharge of all liabilities, the remaining balance in any Member's account shall be returned to such Member. Any Contract purchased under this Plan shall contain terms implementing the foregoing.

Section 18.3. In the event that the balance in any Member's account is insufficient to discharge its liabilities in full, then such balance shall be allocated among its Employees (and their Beneficiaries) in such manner determined by the Committee as is consistent with applicable law.

ARTICLE 19 - MISCELLANEOUS

Section 19.1. The headings and subheadings in this

Plan have been inserted for the convenience of reference only, and are to be ignored in any construction of the provisions hereof.

Section 19.2. In the construction of this Plan, the masculine shall include the feminine and the neuter and the singular shall include the plural in all cases where such meanings would be appropriate.

Section 19.3. This Plan shall be construed, whenever possible to be in conformity with the requirements of the Internal Revenue Code and ERISA. To the extent not in conflict with the preceding sentence, and except to the extent that state law shall not have been preempted by the provisions of ERISA or any other laws of the United States heretofore or hereafter enacted, the Plan should be construed, administered and governed in all respects under and by the laws of the State of New York.

Section 19.4. This Plan is created for the exclusive benefit of the Players and their Beneficiaries. If any provision hereof is susceptible of more than one interpretation, then among those interpretations which are possible, that one shall always be adopted which will be consistent with this Plan's being a qualified Plan within the meaning of the Internal Revenue Code, as amended, or as it may be replaced by any sections of Federal law of like intent and purpose.

Section 19.5. This Plan is to be submitted to the United States Treasury Department to obtain rulings that the Plan and any Contract purchased hereunder qualify under applicable Internal Revenue Code provisions and regulations thereunder and that contributions to the Plan constitute deductions under appli-

cable Internal Revenue Code provisions and regulations thereunder. Notwithstanding any other provisions hereof, no Player shall have any vested right in any assets prior to the obtaining of an initial ruling from the Treasury Department as to the qualification of the Plan and any Contract purchased hereunder under said provisions and regulations. Any benefits which would by the terms of this Plan be payable to any Player, his Beneficiary or personal representative prior to the obtaining of the above-mentioned rulings shall be paid in the manner hereinbefore set forth only after such rulings are obtained. In the event such rulings shall not be obtained, the Members may terminate the Plan, in which event all the assets shall be paid to and revested in the Members.

cable Internal Revenue Code provisions and regulations thereunder. Notwithstanding any other provisions hereof, no Player shall have any vested right in any assets prior to the obtaining of an initial ruling from the Treasury Department as to the qualification of the Plan and any Contract purchased hereunder under said provisions and regulations. Any benefits which would by the terms of this Plan be payable to any Player, his Beneficiary or personal representative prior to the obtaining of the above-mentioned rulings shall be paid in the manner hereinbefore set forth only after such rulings are obtained. In the event such rulings shall not be obtained, the Members may terminate the Plan, in which event all the assets shall be paid to and revested in the Members.

1
NATIONAL BASKETBALL ASSOCIATION

PLAYERS' PENSION PLAN

INDEX

<u>Item</u>	<u>Article No.</u>	<u>Page No.</u>
Names of Participating Employers	- - -	1
Definitions	1	2
Eligibility	2	7
Benefits	3	7
Credited Service	4	14
Former Pension Benefits	5	14
Member's Contributions	6	15
Death Benefits	7	18
Non-alienation of Benefits	8	20
Forfeitures	9	20
Income and Expenses	10	21
Member's Accounts	11	21
Insurance Contracts	12	22
Administration of Plan	13	23
Liability and Standards of Care of Committee	14	27
Claims Procedure	15	29
Limitation of Rights of the Players	16	31
Participating Members	17	32
Amendment or Termination of the Plan	18	33
Miscellaneous	19	34

(As Amended February 4, 1978)

NATIONAL BASKETBALL ASSOCIATION

PLAYERS' PENSION PLAN

The following members of the National Basketball Association do hereby amend and restate in its entirety their pension plan established on December 7, 1964 and effective on February 2, 1965, such restated plan to be known as the "National Basketball Association Players' Pension Plan":*

ATLANTA HAWKS BASKETBALL, INC.
100 Techwood Drive NW
Atlanta, Ga. 30303

BOSTON CELTICS BASKETBALL CLUB, INC.
Boston Garden
North Station
Boston, Mass. 02114

BUFFALO BRAVES, INC.
Memorial Auditorium
Main & Terrace
Buffalo, N.Y. 14202

THE CHICAGO PROFESSIONAL SPORTS CORPORATION
333 North Michigan Avenue
Chicago, Illinois 60601

CLEVELAND PROFESSIONAL BASKETBALL COMPANY
P.O. Box 355
Richfield, Ohio 44286

DETROIT PISTONS BASKETBALL COMPANY
Cobo Arena
One Washington Blvd.
Detroit, Michigan 48226

SAN FRANCISCO WARRIORS
Oakland Coliseum Arena
Nimitz Freeway &
Regenberger Road
Oakland, California 94621

TEXAS PRO SPORTS, INC.
The Summitt
Houston, Texas 77046

KINGS PROFESSIONAL BASKETBALL CLUB, INC.
1800 Genessee Street
Kansas City, Missouri 64102

CALIFORNIA SPORTS INCORPORATED
P.O. Box 10
Inglewood, California 90306

* See Exhibit A for additional adopting employers.

MILWAUKEE PROFESSIONAL SPORTS & SERVICES, INC.
901 North Fourth Street
Milwaukee, Wisconsin 53203

NEW ORLEANS PROFESSIONAL BASKETBALL CLUB
P.O. Box 53213
New Orleans, La. 70153

MADISON SQUARE GARDEN CENTER, INC.
4 Pennsylvania Plaza
New York, N.Y. 10001

PHILADELPHIA 76ers BASKETBALL CLUB, INC.
Veterans Stadium
P.O. Box 25090
Philadelphia, Pa. 19147

PHOENIX PROFESSIONAL BASKETBALL CLUB
P.O. Box 1369
Phoenix, Arizona 85001

PRO BASKETBALL, INC.
Suite 380-Lloyd Building
700 NE Multnomah St.
Portland, Oregon 97232

FIRST NORTHWEST INDUSTRIES OF AMERICA, INC.
221 W. Harrison
Seattle, Washington 98119

CAPITAL BULLETS BASKETBALL CLUB, INC.
Capital Centre
One Harry S. Truman Dr.
Landover, Md. 20786

The Plan shall operate in accordance with the following provisions:

ARTICLE 1 - DEFINITIONS

Section 1.1. "Active List" shall mean the list of Players who have signed formal contracts with a Member, and are otherwise eligible to participate in a Championship Game as certified to the Committee by each Member.

Section 1.2. "Actuarial Equivalent" shall mean a benefit of equivalent value when computed on the basis of the actuarial assumptions recommended by the Enrolled Actuary and adopted by the Committee.

Section 1.3. "Actuarial Value" shall mean the present value of a benefit when computed on the basis of the actuarial assumptions adopted by the Committee.

Section 1.4. "Anniversary Date" shall mean any anniversary of the Effective Date of the Plan.

Section 1.5 "Armed Services List" shall mean the list of those Players who have entered the Armed Services and are serving on active duty as certified to the Committee by each Member.

Section 1.6. "Association" shall mean the National Basketball Association and its successors.

Section 1.7. "Beneficiary" shall mean the person or persons designated by a Player to receive any benefits under this Plan. Where a Player fails to designate a Beneficiary or where a Beneficiary fails to survive a Player, "Beneficiary" shall mean the Player's surviving spouse, if any, or, if none, his children, if any, in equal shares, or, if none, his personal representative. Any person entitled to receive benefits hereunder after the death of a Player shall also be deemed a Beneficiary for purposes of the Plan.

Section 1.8. "Championship Game" shall mean any game included in the Association's schedule of Championship Games and shall not include playoff games or exhibition games.

Section 1.9. "Committee" shall mean the Pension Committee referred to in Article 13 hereof.

Section 1.10. "Contract" shall mean a Group Annuity Contract issued by an Insurer under this Plan, whether or not such Contract contains any element of life insurance protection.

Section 1.11. "Early Retirement Date" shall mean a date after the forty-fifth (45th) anniversary of the Player's date of birth, on which an election made by the Player for an Early Retirement Pension becomes effective, provided that the Player is not on the Roster of any Member during the Plan Year involved.

Section 1.12. "Early Retirement Pension" shall mean the pension payable to a Player at his Early Retirement Date.

Section 1.13. "Effective Date" shall mean February 2, 1965. "Restatement Effective Date" shall mean February 2, 1976.

Section 1.14. "Enrolled Actuary" shall mean a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under Subtitle C of Title III of ERISA.

Section 1.15. "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and with which this Plan is intended to comply.

Section 1.16. "Franchise" shall mean the right of any Member to participate in the Association as determined under the rules of the Association.

Section 1.17. "Injured List" shall mean the list of Players who, due to injury or illness, have been temporarily removed from the Active List of a Member as certified to the Committee by each Member.

Section 1.18. "Insurer" shall mean a legal reserve life insurance company which shall issue a Contract under which the Members shall participate upon execution of an agreement providing for such participation, and which is licensed to do business in the State of New York.

Section 1.19. "Internal Revenue Code" shall mean the Internal Revenue Code of 1954, as amended from time to time, including the amendments thereto made by Title II of ERISA.

Section 1.20. "Member" shall mean a member of the Association.

Section 1.21. "Named Fiduciary" shall mean the Committee.

Section 1.22. "Normal Retirement Date" shall mean the fifty-third (53rd) anniversary of the Player's date of birth. Effective February 2, 1978, "Normal Retirement Date" shall mean the fiftieth (50th) anniversary of the Player's date of birth.

Section 1.23. "Normal Retirement Pension" shall mean the pension payable to the Player at his Normal Retirement Date.

Section 1.24. "Plan" shall mean the National Basketball Association Players' Pension Plan.

Section 1.25. "Plan Administrator" shall mean the Committee.

Section 1.26. "Plan Year" shall mean the twelve (12) month period beginning on the Effective Date, or any twelve (12) month period beginning on the Anniversary Date in a subsequent year, during which this Plan shall be in effect.

Section 1.27. "Player" shall mean any person carried on any Player List, as defined in the By-Laws of the Association, or, where the context permits, a person eligible to be carried on any such List or a person formerly carried on any such List.

Section 1.28. "Qualified Joint and Survivor Annuity"

shall mean a pension benefit payable for the life of a retired player and continued upon his death for the life of the deceased player's surviving spouse, if any, with the surviving spouse's periodic benefit to be at a level of 50% of the actuarially reduced benefit paid or payable for each such period to the Player during his lifetime.

Section 1.29. "Regular Season" shall mean the period beginning on the date of the first game of the Association's schedule of Championship Games and ending at the end of the day before the first Playoff Game is played.

Section 1.30. "Roster" shall mean (i) every Player on the Active List of any Member on February 2 of the Regular Season involved, (ii) every Player on either the Suspended, Armed Services or Injured List of any Member on February 2 of the Regular Season involved provided that such Player was on the Active List of any Member for 50 percent or more of the total Championship Games played by the Member during the Regular Season which includes such February 2 and (iii) for any Regular Season ending after February 2, 1965, every additional Player on the Injured List on February 2 of the Regular Season involved, without regard to whether such additional Player was on the Active List of any Member during such Regular Season. A Player, not otherwise considered to be on the Roster of any Member pursuant to the terms hereof, shall not be considered to be on the Roster of any Member by virtue of the fact that he has entered into a "guaranteed" or "no-cut" contract on or after May 1, 1976, except to the extent that the Player and a Member have agreed that the Player shall be considered to be on the Roster with respect to any Plan Year during which such contract is in effect. Notwithstanding anything to the contrary, no Player shall be treated as having been on the Roster of any Member for any Plan Year for which all or part of his benefits were forfeited under

the provisions of this Plan in existence prior to the Restatement Effective Date. "Roster" shall also include any Player on the Armed Services List of any Member on February 2 of the Regular Season involved, who is not otherwise considered to be on the Roster for such Regular Season, if, and to the extent, that applicable law requires the Player to be so treated.

Section 1.31. "Supplemental Pension" shall mean the pension payable to a Player from his Supplemental Pension Account.

Section 1.32. "Supplemental Pension Account" shall mean a segregated account to be maintained by the Insurer for each Player, as directed by the Committee and subject to the terms of this Plan.

Section 1.33. "Suspended List" shall mean the list of those Players who, for proper cause, have been suspended by the Association or by a Member as certified to the Committee by each Member.

ARTICLE 2 - ELIGIBILITY

Section 2.1. Every Player on the Roster of any Member during the Regular Season which included February 2, 1967 shall be eligible to participate as of February 2, 1968. Every Player on the Roster of any Member during the Regular Season which included February 2, 1966, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1970. Every Player on the Roster of any Member during the Regular Season which included February 2, 1965, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1973.

Section 2.2. Every Player on the Roster of any Member during any Regular Season beginning subsequent to the Regular Season which includes February 2, 1967, not otherwise eligible hereunder, shall be eligible to participate as of the Anniversary Date during such subsequent Regular Season.

Section 2.3. Notwithstanding anything herein to the contrary, for the sole purpose of determining when a Player is first eligible to participate hereunder, any Player on the Roster of any Member for any Regular Season ended before February 2, 1973 solely by reason of Section 1.30 (iii) hereof shall not be eligible

to participate hereunder by reason of being on such Roster until February 2, 1976. This Section shall not affect the eligibility of any Player by reason of Section 1.30(i) or Section 1.30(ii) hereof.

Section 2.4. Every Player entitled to any benefit under the terms of the Pension Plan in existence prior to the adoption of this instrument shall continue to be eligible to receive such benefits.

ARTICLE 3 - BENEFITS

Section 3.1. Every Player eligible to participate hereunder, who attains his Normal Retirement Date and who was on the Roster of any Member for any three Regular Seasons shall be entitled to a Normal Retirement Pension and any Supplemental Pension payable pursuant to Section 3.6 hereof.

Section 3.2. The Normal Retirement Pension payable to a Player shall be paid to him commencing on the first day of the first month following said Player's Normal Retirement Date and shall continue to be paid on the first day of each month up to and including the month in which the Player dies and, except as otherwise provided in Section 3.10, shall be paid as an annuity for the life of the Player in an amount equal to:

(a) For a Player who becomes eligible to receive a Normal Retirement Pension on or before May 31, 1976, \$60 per month for each year of Credited Service.

(b) For a Player who becomes eligible to receive a Normal Retirement Pension on or after June 1, 1976 and on or before May 31, 1979, \$75 per month for each year of Credited Service.

(c) For a Player who becomes eligible to receive a Normal Retirement Pension on or after June 1, 1979 and on or before December 1, 1980, \$75 plus a cost-of-living adjustment (which adjustment shall be calculated by applying to \$75 the percentage increase in the National Consumer Price Index between

September 1975 and May 1979, and which shall be rounded off to the nearest whole dollar) per month for each year of Credited Service.

(d) For a Player who becomes eligible to receive a Normal Retirement Pension on or after December 2, 1980 the amount provided in Section 3.2(c) above, plus a cost-of-living adjustment (which adjustment shall be calculated by applying to the amount provided in Section 3.2(c) the percentage increase in the National Consumer Price Index between June 1979 and November 1980, and which shall be rounded off to the nearest whole dollar) per month for each year of Credited Service.

Section 3.3. All the amounts provided for in Section 3.2 hereof shall be reduced by the Actuarial Equivalent (of a lifetime annuity beginning on the same date) of any benefit payable to a Player under Article 5 hereof.

Section 3.4. Every Player who was on the Roster of any Member for any three Regular Seasons shall be entitled to elect to receive, in lieu of a Normal Retirement Pension, an Early Retirement Pension and shall be entitled to any Supplemental Pension payable pursuant to Section 3.6 hereof. Such election shall be made at least 90 days prior to the Early Retirement Date and shall be made in writing delivered to the Committee.

Section 3.5. The Early Retirement Pension payable to a Player shall be paid to him commencing on the first day of the first month following the Player's Early Retirement Date and shall continue to be paid on the first day of each month up to and including the month in which the Player dies and, except as otherwise provided in Section 3.10 shall be paid as an annuity for life in an amount which shall be the Actuarial Equivalent of the Normal Retirement Pension that said Player would have been entitled to on his Normal Retirement Date (calculated on the basis

that the Normal Retirement Date is the fiftieth (50th) anniversary of the Player's date of birth).

Section 3.6. For Plan Years ending prior to February 2, 1973, the Insurer shall maintain a separate Supplemental Pension Account for each Player and \$100.00 (less a reasonable amount, as determined by the Committee, to reflect the administration expenses allocable to said Supplemental Pension Account) shall be added to said Account during each Plan Year that said Player is credited with a year of current service under Section 4.2 hereof. For Plan Years beginning on or after February 2, 1973 and ending on or before February 1, 1976, the Insurer shall maintain a separate Supplemental Pension Account for each Player and \$200.00 (less a reasonable amount, as determined by the Committee to reflect the administration expenses allocable to said Supplemental Pension Account) shall be added to said Account during each Plan Year that said Player is credited with a year of current service under Section 4.2 hereof. For Plan Years beginning on or after February 2, 1976, the Insurer shall continue to maintain a separate Supplemental Pension Account for each Player having a Supplemental Pension Account on such date and the Insurer shall apply the amount therein (as adjusted pursuant to Section 3.8 hereof) to provide such Player with a Supplemental Pension in accordance with Section 3.9 hereof. No additional amount shall be added to any Supplemental Pension Account for Plan Years beginning on or after February 2, 1976, except for the adjustments made pursuant to Section 3.8 hereof.

Section 3.7. The funds in all Supplemental Pension Accounts maintained by the Insurer shall be invested by the Insurer in a segregated account, as directed by the

Committee, in such securities as the Insurer deems advisable. In giving such directions, the Committee shall consult with a representative designated by the Players Association in order to reach an agreement with respect to such directions. In the absence of an agreement between the Committee and said representative, the Committee shall follow the directions of the Players Association.

Section 3.8. As of December 31 of each year, and at such other times as is necessary to calculate any benefits payable hereunder, the Insurer shall value all of the assets representing the funds held in all Supplemental Pension Accounts, based on their respective market values on said valuation date, and as of said valuation date the Supplemental Pension Account of any Player shall be adjusted to reflect the effect of contributions, income collected and accrued and realized and unrealized profits and losses for the period since the most recent previous valuation date.

Section 3.9. The Supplemental Pension payable to any Player shall be the Actuarial Equivalent of said Player's Supplemental Pension Account on his Normal Retirement Date or Early Retirement Date, as the case may be, and shall be paid to him in the same manner and at the same time as the payment to him of a Normal Retirement Pension or Early Retirement Pension, as the case may be.

Section 3.10. Subject to the provisions of subparagraph (a) of this section, if a Player is married on his Early Retirement Date or his Normal Retirement Date, as the case may be, his Early Retirement Pension or Normal Retirement Pension and any Supplemental Pension shall be paid in the form of a Qualified

Joint and Survivor Annuity under which the Player's pension is reduced so that the resulting pension payable to the Player and his spouse shall be the Actuarial Equivalent of his Early Retirement Pension or Normal Retirement Pension and any Supplemental Pension otherwise payable.

(a) The preceding paragraph shall not apply if the Player, on or before the date on which his benefits commence, files an election (which is not revoked prior to the date on which his benefits commence) in writing with the Insurer pursuant to which he becomes entitled to the payment of the pension in a form other than a Qualified Joint and Survivor Annuity. In no event shall such election period expire before 90 days following the furnishing of all information required by the applicable provisions of the Internal Revenue Code and the regulations thereunder; and, if necessary, the commencement of benefits shall be delayed until the end of such 90-day period.

Section 3.11. Every Player not eligible for, or electing not to receive a Qualified Joint and Survivor Annuity, may elect to receive, in lieu of the Normal Retirement Pension or Early Retirement Pension and any Supplemental Pension provided for in this Article, the Actuarial Equivalent of such pension payable on the date that said pension would otherwise have become payable in one or more of the following ways:

- (a) Installments for Life - Paid in equal monthly installments for as long as the Player shall live.
- (b) Installments of Fixed Amount - Paid in installments of a specified amount each month.
- (c) Installments for a Fixed Period - Paid in equal monthly installments for a fixed number of years.
- (d) Installments for a Fixed Period and Life Thereafter - Paid in equal monthly installments for a fixed number of years and for so long thereafter as the Player shall live.
- (e) Joint and Survivorship Annuity - Paid in equal monthly installments to the Player, terminating with the last monthly installment before his death. Following the death of

the Player after this option becomes effective, monthly installments shall be continued to the person he named as his joint annuitant. The amount of each installment payable to the joint annuitant shall be equal to 100% of the monthly amount which was payable to the Player, or to a lesser percentage, as specified by the Player in his election of this option.

(f) Social Security Option - Paid in monthly installments, to the extent permitted by ERISA, so long as the Player shall live, in such amounts so as to enable the Player to receive an approximately equal amount each month taking into consideration the benefits hereunder and the estimated primary benefits payable under the Social Security Act.

(g) Lump Sum.- Paid to the Player in one Lump Sum.

Section 3.12. Any optional method of settlement selected under this Article shall become effective on the date on which the Player's benefits hereunder commence.

Section 3.13. Where an optional method of settlement is selected under this Article, periods certain or periods over which installments are payable shall not exceed the life expectancy of the Player based on the mortality tables then in use, that of the Player and his spouse or that of the Player and another not more than five years younger than the Player. An election under this Section shall be made at least two (2) years prior to the start of any pension, or at such later date approved by the Insurer, and shall be made in writing delivered to the Committee.

Section 3.14. If any Player or Beneficiary is, in the judgment of the Committee, legally, physically or mentally in-

able of personally receiving and receipting for any payment hereunder, payment may be made to the guardian or other legal representative of such player or his Beneficiary, or, if none, to such other person, or institution, who, in the opinion of the Committee, is then maintaining or has custody of such player or his Beneficiary. Such payments shall constitute a full discharge with respect thereto.

ARTICLE 4 - CREDITED SERVICE

Section 4.1. Every Player eligible to participate hereunder shall be credited with one year of Credited Service for each year that said Player was on the Roster of any Member for any Regular Season prior to the Regular Season for which said Player is first eligible to participate hereunder ("past service").

Section 4.2. Every Player eligible to participate hereunder shall be credited with one year of Credited Service for each year that said Player is on the Roster of any Member for any Regular Season beginning with the Regular Season for which said Player is first eligible to participate hereunder ("current service").

ARTICLE 5 - FORMER PENSION BENEFITS

Section 5.1. The Members have caused the Contract formerly in existence with Continental Assurance Company to be discontinued in accordance with the terms of such Contract and have continued the Single Premium Endowment Insurance of all Players insured thereunder in the same amount as Paid-up Endowment Insurance, to be paid to said Players in accordance with the terms of said Contract.

Section 5.2. In addition to all benefits provided hereunder, and notwithstanding any other provision to the contrary, every Player on the Active List of any Member on February 2, 1965, February 2, 1966 or February 2, 1967, or his Beneficiary, shall be entitled to receive such benefits as are payable under the Paid-up Endowment Insurance Contract referred to in Section 5.1 hereof, upon such conditions and subject to such options as are set forth in said Paid-up Endowment Insurance Contract.

ARTICLE 6 - MEMBER'S CONTRIBUTIONS

Section 6.1. On or before July 1 of each Plan Year every Member shall pay to the Insurer an amount necessary to fund the benefits for its Players in accordance with the rules set forth in this Article, and in order to prevent a deficiency in the funding Standard Account as required by the Internal Revenue Code and ERISA.

Section 6.2. The annual cost of funding for the current and past service benefits for any Player on the Active List on February 2, 1968 (or on any subsequent February 2) or on the Injured List on February 2, 1973 (or on any subsequent February 2), shall be paid by the Member on whose Active List or Injured List, as the case may be, the Player appears on February 2 of the Plan Year involved.

Section 6.3. The annual cost of funding for the current and past service benefits for any Player (i) on the Suspended or Armed Services List on February 2, 1968 (or on any subsequent February 2) or on the Injured List on February 2, 1968 (or any subsequent February 2, prior to February 2, 1973) and (ii) on the Active List of any Member for 50 percent or more of the total Cham-

pionship Games played by each Member during the Regular Season which includes such February 2 shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved.

Section 6.4. The annual cost of funding for the past service benefits for any Player not on any Roster during the Plan Year involved shall be paid by the Member having rights to the services of such Player, as a Player, on February 2 of the Plan Year involved or, if no Member has such rights on said February 2, by the Member last having such rights prior to said February 2.

Section 6.5. The annual amount necessary to fund the current service benefits shall be equal to:

- (a) The Actuarial Value of the benefits for current service; and
- (b) \$100 (for Plan Years ending prior to February 2, 1973) and \$200 (for Plan years beginning on or after February 2, 1973 and ending on or before February 1, 1976), for each Player entitled to be credited with a year of current service for such Plan Year.

Section 6.6. The annual amount necessary to fund the past service benefits shall be that amount which if paid in equal annual installments over thirty (30) years from the date or dates such past service benefits are effective, or over such shorter period of years determined by the Enrolled Actuary that will result in an approximately equivalent amortization schedule, will accumulate to the Actuarial Value of such benefits, taking into account interest at the rate adopted by the Committee.

Section 6.7. In no event shall the projected annual Normal Retirement Pension, payable to any Player under this Plan and any other defined benefit plan (as defined in Section 414(j) of the Internal Revenue Code) maintained by a Member, exceed the lesser of (a) \$75,000 or (b) 100% of the Player's average total compensation for the period of three (3) consecutive calendar years yielding the highest such average and during which he was a Player. In the case of a Player who has less than ten (10) years of Credited Service, the limitation stated in the foregoing sentence shall be reduced by multiplying it by a fraction, the numerator of which is the number of years (or part thereof) of Credited Service and the denominator of which is ten (10).

Section 6.8. If at any time a Player is a participant in both a defined benefit plan and a defined contribution plan (as such terms are defined in Sections 414(j) and 414(i) of the Internal Revenue Code) maintained by any Member, the sum of his defined benefit fraction and his defined contribution fraction shall, in no event, exceed 1.4 for any Plan Year. If such sum would otherwise exceed 1.4 for any Plan Year, appropriate adjustments shall be made to eliminate such excess. For the purpose of this Section, all defined benefit plans (whether or not terminated) of the Members shall be treated as a single defined benefit plan, and all defined contribution plans (whether or not terminated) of the Members shall be treated as one defined contribution plan.

Section 6.9. All computations with respect to the limitations under this Article shall be made on the basis of each Plan Year.

Section 6.10. As used herein, the term "annual addition" means, with respect to any Player, the sum of (a) all contributions made by a Member and all forfeitures allocable to a Player with respect to all defined contribution plans (as defined in Section 414(i) of the Internal Revenue Code) maintained by a Member and (b) all contributions, made by a Player (other than rollover contributions) with respect to all such defined contribution plans, in excess of the amount prescribed in Section 415(c)(2)(B) of the Internal Revenue Code.

As used herein, the term "defined benefit fraction" shall mean a fraction, the numerator of which is a Player's projected annual benefit under a defined benefit plan of the Member (determined as of the end of the Plan Year), and the denominator of which is such Player's projected annual benefit (determined as of the end of the Plan Year) if such plan provided the maximum benefit allowable under Section 415(b) of the Internal Revenue Code. A Player's projected annual benefit will be determined by taking into consideration all relevant factors used to determine benefits under the plan.

As used herein, the term "defined contribution fraction" shall mean a fraction, the numerator of which is the sum of all annual additions credited to a Player under a defined contribution plan of the Member, and the denominator of which is the maximum amount of annual additions which could have been credited to such person under Section 415(c) of the Internal Revenue Code.

ARTICLE 7 - DEATH BENEFITS

Section 7.1. Except as otherwise provided in Section 7.2 hereof, in the event of the death of any Player prior to the date as of which the payment of his Early Retirement Pension or

Normal Retirement Pension, as the case may be, becomes effective, said Player's Beneficiary shall be entitled to receive a cash settlement, in a lump sum, equal to (i) 100% of the Supplemental Pension that said Player would have been entitled to receive if his date of death had been his Normal Retirement Date, and (ii) plus the excess, if any, of an amount equal to the actuarial reserve on the date of death for the Normal Retirement Pension based on the actuarial assumptions most recently adopted pursuant to Section 13.12 hereof and based on the Credited Service earned to the date of death, over the proceeds of any group life insurance policy (exclusive of any such proceeds paid because of accidental death) maintained and paid for by a Member on the life of a Player. Said payment shall be made as soon as practicable after the Committee is notified of said Player's death.

Section 7.2. In the event of the death of a married Player during a Plan Year in which he is on the Roster of any Member and on or after the date on which he reaches the forty-fifth (45th) anniversary of his date of birth, and in the event of the death of a married Player who terminated his employment after the date on which he reached the forty-fifth (45th) anniversary of his date of birth, but before an election to receive his Early Retirement Pension or Normal Retirement Pension becomes effective, such Player's spouse shall receive in lieu of the benefit provided for in Section 7.1, (i) a death benefit in the form of an annuity which shall be the Actuarial Equivalent of the payments which would have been made to such spouse under a Qualified Joint and Survivor Annuity to which the Player would have been entitled if he had become entitled to an Early Retirement Pension under Section 3.9 hereof on the day before his death, plus (ii) a lump sum equal to the excess, if any, of the amount otherwise payable

under Section 7.1 over the Actuarial Equivalent of the amount payable under this Section.

Section 7.3. Upon the death of a Player after the date as of which the payment of his Early Retirement Pension or Normal Retirement Pension, as the case may be, becomes effective, no further payments shall be made other than those, if any, specified in the benefit to which the Player is entitled.

ARTICLE 8 - NON-ALIENATION OF BENEFITS

Section 8.1. No benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void, nor shall any such benefit be in any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefit.

Section 8.2. If any Player or any Beneficiary under the Plan is adjudicated bankrupt or attempts to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge any benefit under the Plan, except as specifically provided in the Plan, then such benefit shall, in the discretion of the Committee, cease and terminate and in that event the Committee shall hold or apply the same or any part thereof to or for the benefit of such Player or Beneficiary in such manner as the Committee may deem proper.

ARTICLE 9 - FORFEITURES

Section 9.1. To the extent that the amount funded for any Player exceeds the amount necessary to pay the benefits to which said Player or his Beneficiary becomes entitled hereunder,

such excess shall be treated as a forfeiture and shall serve to reduce the contribution of the Member or Members affected thereby and shall not be applied to increase the benefits of any other Player hereunder. Such forfeiture shall be allocated among the Members, on an actuarial basis, in order to give due consideration to the amount contributed on behalf of such Player by such Members.

ARTICLE 10 - INCOME AND EXPENSES

Section 10.1. At the end of each Plan Year, or at such other times set forth in any Contract, all income (including dividends paid by the Insurer on any Contract) earned on the funds held by the Insurer (other than on funds held in Supplemental Pension Accounts) shall be allocated to each Member's account based on the assets allocable to such Member from time to time during such Plan Year.

Section 10.2. All expenses of the Plan shall be paid from the funds held by the Insurer or directly by the Members. At the end of each Plan Year, or at such other times set forth in any Contract, the expenses of the Plan paid from the funds held in Supplemental Pension Accounts shall be charged, pro rata, to said Accounts and the expenses paid from any other funds shall be charged pro rata, to each Member's account, unless paid directly by such Member.

ARTICLE 11 - MEMBER'S ACCOUNTS

Section 11.1. The Insurer shall maintain a separate account for each Member to which it shall credit each Member's allocable share of Member's contributions (other than those provided for in Section 6.5(b) hereof), and to which it shall

charge each Member's allocable share of benefits paid to Players, losses and expenses.

Section 11.2. The benefits payable hereunder to each Player shall be allocated among the Members, on an actuarial basis, in order to give due consideration to the amount contributed on behalf of such Player by such Member.

ARTICLE 12 - INSURANCE CONTRACTS

Section 12.1. One or more Contracts may be purchased in order to carry out the terms of the Plan from such Insurer or Insurers as the Members, in their absolute discretion, shall choose. Such Contracts shall cover the Players in the Plan and may be amended from time to time.

Section 12.2. The Players shall not have any right, title, interest, or ownership in and to any Contract which shall be purchased pursuant hereto. Except as otherwise provided herein, in no event may any of the avails or proceeds of any Contract be recoverable or revert, directly or indirectly, to any Member or be diverted to any purpose other than for the exclusive benefit of the Players and Beneficiaries covered hereunder.

Section 12.3. The provisions for the form and mode of benefit payments under this Plan shall be subject to all of the terms and conditions of any and all Contracts purchased pursuant to Section 12.1 hereof.

Section 12.4. The Contracts shall provide that any death benefit payable thereunder shall be payable to the Beneficiary and shall reserve to the Contract holder such rights as are neces-

sary to implement this Plan. The signature of any Player may be required for the exercise of any such right.

Section 12.5. No Insurer shall be considered to be a party to this Plan, nor shall it have any responsibility for the validity of this Plan. Its sole liability shall be its liability as stated in each Contract which it may issue.

Section 12.6. The Insurer shall be fully protected from any liability in assuming that the Plan has not been amended or changed until notice of any amendment or change in any of the terms thereof has been received by the Insurer.

Section 12.7. The Insurer shall be fully protected in accepting, from the Members, or the Committee, premiums on or instructions in connection with Contracts which it may issue or may have issued under this Plan and shall have no responsibility to make an inquiry as to the authority to make such payment or to give such instructions.

ARTICLE 13 - ADMINISTRATION OF PLAN

Section 13.1. The general administration of the Plan shall be placed in a Committee, consisting of at least three persons, who shall be appointed from time to time by the majority vote of all of the Members.

Section 13.2. The members of the Committee shall elect a Chairman from their number, and a Secretary who may be, but need not be, one of the members of the Committee, and shall designate an Enrolled Actuary to act in actuarial matters relating to the Plan. They may appoint from their number such committees with such powers as they shall determine, may authorize one or more of

their number or any agent to make any payment in their behalf, or to execute or deliver any instrument except that a requisition for funds from the Insurer shall be signed by two members of the Committee. The Committee may employ counsel and agents and such clerical, medical and accounting services as they may require in carrying out the provisions of the Plan.

Section 13.3. The Committee shall hold meetings upon such notice, at such place or places, and at such time or times as they may from time to time determine.

Section 13.4. A majority of the members of the Committee at the time in office shall constitute a quorum for the transaction of business. All resolutions or other actions taken by the Committee at any meeting shall be by vote of a majority of the Committee at the time in office.

Section 13.5. No member of the Committee shall receive any compensation from the Plan for his services as such.

Section 13.6. Subject to the limitations of the Plan, the Committee from time to time shall establish rules for the administration of the Plan and the transaction of its business. The Committee shall take such steps as are considered necessary and appropriate to remedy any inequity that results from incorrect information received or communicated in good faith or as the consequence of an administrative error. The Committee shall interpret the Plan and shall determine the answers to questions arising in the administration, interpretation and application of the Plan and shall endeavor to act, whether by general rules or by particular decisions, so as not to discriminate in favor of or against any Player. The Committee may correct any defect, reconcile any

inconsistency of supply and demand. All layers in said circumstances shall be treated as nearly uniformly as practicable.

Section 13.7. The Committee shall keep all records relating to Players including former Players and such other records as are necessary for the proper operation of the Plan.

Section 13.8. The Committee shall take such steps as are necessary to insure that all reporting and disclosure requirements imposed upon the Plan by applicable Federal law, any amendments thereto, regulations thereunder, or any other official published interpretation thereunder, are complied with.

Section 13.9. The Committee shall discharge its duties in accordance with the requirements of applicable Federal law, any amendments thereto, regulations thereunder or any other official published interpretation thereunder.

Section 13.10 The Committee shall arrange for such bonding as is required by law but no bonding in excess of the amount required by law shall be considered required by this Plan.

Section 13.11 The Committee shall be indemnified by the Members against expenses reasonably incurred by it in connection with any action, to which it may be a party, by reason of its service as a Committee, except in relation to matters as to which it shall be adjudged in such action to be liable for gross negligence or willful misconduct in the performance of its duty.

Section 13.12 The Committee shall adopt from time to time standards for use in all actuarial calculations required in connection with the Plan, and shall establish the amount of con-

tributions under the Plan as provided herein. As an aid to the Committee in adopting tables and in fixing the amount of contributions payable under the Plan, the Enrolled Actuary designated by the Committee shall make annual actuarial valuations with respect to the operation and administration of the Plan and shall certify to the Committee the tables and amount of contributions which he recommends for use by the Committee.

Section 13.13 The Committee shall arrange for the maintenance of accounts showing the fiscal transactions of the Plan, and for the keeping in convenient form of such data as may be necessary for actuarial valuations with respect to the operation and administration of the Plan. The Committee shall prepare, from time to time, a report giving a brief account of the operation of the Plan. Such report shall be submitted to the Members.

Section 13.14. The Committee shall be entitled to rely upon all tables, valuations, certificates and reports furnished by the Enrolled Actuary designated by the Committee, and upon all opinions given by any legal counsel selected or approved by the Members. The Committee shall not be liable for any action taken or suffered by them in good faith in reliance upon any such Enrolled Actuary or counsel.

Section 13.15. The Committee shall be responsible for exercising any and all rights under the Contracts, including the right to designate the portion of the premium paid to the Insurer which shall be invested in equity securities.

ARTICLE 14. Liability and Standard of
Care of Committee

Section 14.1. Each member of the Committee and any other fiduciary with respect to the Plan shall discharge his duties with respect thereto (a) solely in the interest of Players and their Beneficiaries; (b) for the exclusive purpose of providing benefits to Players and their Beneficiaries and defraying reasonable expenss of administering the Plan; (c) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and (d) in accordance with the provisions of the Plan insofar as such provisions are not inconsistent with applicable law. As used herein, the term "fiduciary" shall have the meaning ascribed to it it Section 3(21) of ERISA.

Section 14.2. No fidiciary with respect to the Plan shall be liable for an act or omission of another person resulting in a breach by such other person of his fiduciary responsibility with respect to the Plan, except to the extent that:

(a) such fiduciary participated knowingly in, or knowingly undertook to conceal, an act or omission of such other person, knowing such act or omission to be a breach of fiduciary responsibility;

(b) such fiduciary, by his failure to comply with the provisions of the preceding Section of the Plan or with Section 404(a)(1) of ERISA in the administration of his specific responsibilities which give rise to his status of a fiduciary, has enabled such other person to commit a breach of fiduciary responsibility;

(c) such fiduciary has knowledge of a breach of fiduciary responsibility by such other person, unless he makes reasonable efforts under the circumstances to remedy the breach; or

(d) such fiduciary is a "named fiduciary" (as such term is defined in Section 402(a)(2) of ERISA) and has violated his duties under Section 404(a)(1) of ERISA:

(1) with respect to the allocation of fiduciary responsibilities among "named fiduciaries" or the designation of persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan;

(2) with respect to the establishment or implementation of procedures for allocating fiduciary responsibilities among "named fiduciaries" or for designating persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan; or

(3) in continuing the allocation of fiduciary responsibilities among "named fiduciaries" or the designating of persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan.

Section 14.3. Notwithstanding anything to the contrary contained herein, no member of the Committee or other fiduciary with respect to the Plan shall incur any liability for any act or omission to the extent he would not be liable therefor under Part 4 of Subtitle B of Title I of ERISA and to the extent such act or omission is not the result of his own gross negligence or wilful misconduct.

Section 14.4. The Members shall indemnify each member of the Committee and any other individual to whom a fiduciary responsibility with respect to the Plan is allocated or delegated

from and against all liabilities, costs and expenses incurred by such person as a result of act, omission or conduct in connection with the performance of his fiduciary duties, responsibilities and obligations under the Plan and under ERISA, except with respect to liabilities and claims arising from such person's own wilful misconduct or gross negligence. The Members may obtain, pay for and maintain a policy or policies of insurance, the proceeds of which may be used in satisfying its obligations under this Section.

ARTICLE 15 - CLAIMS PROCEDURE

Section 15.1. Any request for a benefit payable under the Plan shall be made in writing by a Player or Beneficiary (or an authorized representative of either of them), as the case may be, and shall be delivered to any member of the Committee. Such written request shall be deemed filed upon receipt thereof by the Committee. Such request shall be made within the time prescribed in the Plan for claiming a particular benefit or, if no time is so prescribed, within a reasonable time before payment of the benefit is to commence.

Section 15.2. In the event a request for benefits contains insufficient information, the Committee shall, within 15 days after receipt of such request, send a written notification to the claimant setting forth a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material is necessary. The claimant's request shall be deemed filed with the Committee on the date the Committee receives in writing such additional information.

Section 15.3. The Committee shall make a determination with respect to a request for benefits within 30 days after such

request is filed. The Committee shall notify the claimant whether his claim has been granted or whether it has been denied in whole or in part. Such notification shall be in writing and shall be delivered, by mail or otherwise, to the claimant within a reasonable time after such claim is filed. If the claim is denied in whole or in part, the written notification shall set forth, in a manner calculated to be understood by the claimant:

- (a) The specific reason or reasons for the denial;
- (b) Specific reference to pertinent provisions of the Plan on which the denial is based; and
- (c) An explanation of the Plan's claim review procedure.

Failure by the Committee to give notification pursuant to this Section within a reasonable time after receipt of the claim shall be deemed a denial of the request for the purpose of proceeding to the review stage.

Section 15.4. A claimant whose request for benefits has been denied in whole or in part may, within 60 days after written notification of such denial, file with the Named Fiduciary, with a copy to the Committee, a written request for a review of his claim. Such written request shall be deemed filed upon receipt of same by the Named Fiduciary.

Section 15.5. A claimant who timely files a request for review of his claim for benefits may review pertinent documents (upon reasonable notice to the Named Fiduciary) and may submit the issues and his comments to the Named Fiduciary in writing. Except as otherwise provided below, the Named Fiduciary shall, within 60 days after receipt of the written request for review, communicate its decision in writing to the claimant, setting forth, in a manner

calculated to be understood by the claimant, the specific reasons for its decision and the pertinent provisions of the Plan on which the decision is based.

Section 15.6. If the claimant so requests in his timely application for review, the Named Fiduciary shall schedule a conference with the claimant (and/or his authorized representative). Such conference shall be held at the offices of the Association at a date and time which is mutually agreed upon by the parties concerned, provided that in no event shall the conference be held more than 60 days after the Named Fiduciary receives the claimant's written request for review of his claim. The decision of the Named Fiduciary shall be communicated in writing to the claimant or his authorized representative within 30 days after the date on which the conference is completed, and shall set forth, in the same manner, the information required in the preceding Section.

ARTICLE 16 - LIMITATION OF RIGHTS OF THE PLAYERS

Section 16.1. Nothing contained in this Plan shall be deemed to give any Player the right to be retained in the service of any Member. Inclusion under the Plan shall not give any Player any right or claim to any benefits except to the extent such right is specifically fixed under the terms of the Plan.

Section 16.2. The Members agree to make any and all contributions required to provide the benefits set forth herein.

Section 16.3. No liability shall attach to any Member for any payment of any benefit or claim hereunder.

Section 16.4. The Committee shall not be responsible for the validity of any Contracts, or for the action of any person or persons which may render any Contract invalid or unenforceable either in whole or in part. The Committee shall not be responsible

for any inability to perform or any delay in performing any act occasioned by any other person. In the event it becomes impossible for the Committee to perform any act, that act shall be performed which in the judgment of the Committee will most nearly carry out the intent and purpose of this Plan.

ARTICLE 17 - PARTICIPATING MEMBERS

Section 17.1. Each Member shall execute such documents as are necessary to duly accept this Plan and to participate in any Contracts to implement said Plan.

Section 17.2. In the event of the sale, transfer, exchange or other disposition of a franchise by any Member, or the granting of a new franchise by the Association, such new Member shall immediately execute such documents and take such actions as are necessary so as to provide the benefits of this Plan for its Players.

Section 17.3. In the event that any Member ceases to own a franchise and if said franchise is not sold, transferred, or exchanged or otherwise disposed of to any new Member, or if any Member completely discontinues making contributions, then the Plan shall terminate as to said Member, and all of its Players shall be vested with all benefits accrued to the date of such termination. Said Member shall immediately make a contribution equal to the entire unfunded past service liability for each Player for whom it is then liable to make a contribution under the provisions hereof; provided, however, that such Member shall not be liable for any further contribution for any Player to the extent that another Member becomes liable for such contributions under the terms of the Plan, by virtue of having acquired rights to said Player.

Section 17.4. In no event shall any merger or consolidation of any other plan with this Plan, or any transfer of assets and liabilities of this Plan to any other plan or any transfer of assets and liabilities from any other plan to this Plan take place which results in a benefit to any Player or Beneficiary (if the Plan then terminated) that is lower than the benefit he would have received immediately before the merger, consolidation or transfer (if the Plan then terminated).

ARTICLE 18 - AMENDMENT OR TERMINATION OF THE PLAN

Section 18.1. The Members shall have the right to amend the Plan at any time by an instrument in writing executed by all Members and delivered to the Insurer, provided, however, that:

(a) no amendment shall deprive any Player or Beneficiary of any of the benefits to which he is entitled under the Plan with respect to contributions previously made;

(b) no amendment shall provide for the use of the funds or assets held by the Insurer other than for the exclusive benefit of Players and Beneficiaries, and except as otherwise provided herein, no funds contributed shall ever revert to or be used or enjoyed by the Member; and

(c) no amendment shall deprive the Insurer of any of its exemptions and immunities with respect to Contracts issued by it prior to receipt by the Insurer of notice of such amendment.

Any amendment to the Plan or Contract may be made retroactive which is necessary to enable the Members to obtain rulings from the United States Treasury Department as to the qualification of this Plan within the meaning of the Internal Revenue Code,

as amended, or as it may be replaced by any sections of Federal law of like intent and purpose.

Section 18.2. The Members may terminate the Plan at any time by an instrument in writing executed by all the Members and delivered to the Insurer, provided, however, that if the Plan shall be terminated (or if there shall be a partial termination of the Plan), each Player or Beneficiary affected thereby shall be vested with all benefits accrued to the date of termination, and each Member shall, prior to termination, make a contribution equal to the entire unfunded past service liability for each Player for which it is then liable to make a contribution under the provisions hereof. Upon termination, the Members may obtain deferred annuities for Players not yet retired and immediate annuities for retired Players and Beneficiaries then entitled to payments providing for the benefits to which such Player or Beneficiary is entitled, and upon termination such annuities or Certificates of such annuities shall be distributed in complete discharge of all of the rights of such Players and Beneficiaries in the Plan. After discharge of all liabilities, the remaining balance in any Member's account shall be returned to such Member. Any Contract purchased under this Plan shall contain terms implementing the foregoing.

Section 18.3. In the event that the balance in any Member's account is insufficient to discharge its liabilities in full, then such balance shall be allocated among its Employees (and their Beneficiaries) in such manner determined by the Committee as is consistent with applicable law.

ARTICLE 19 - MISCELLANEOUS

Section 19.1. The headings and subheadings in this

Plan have been inserted for the convenience of reference only, and are to be ignored in any construction of the provisions hereof.

Section 19.2. In the construction of this Plan, the masculine shall include the feminine and the neuter and the singular shall include the plural in all cases where such meanings would be appropriate.

Section 19.3. This Plan shall be construed, whenever possible to be in conformity with the requirements of the Internal Revenue Code and ERISA. To the extent not in conflict with the preceding sentence, and except to the extent that state law shall not have been preempted by the provisions of ERISA or any other laws of the United States heretofore or hereafter enacted, the Plan should be construed, administered and governed in all respects under and by the laws of the State of New York.

Section 19.4. This Plan is created for the exclusive benefit of the Players and their Beneficiaries. If any provision hereof is susceptible of more than one interpretation, then among those interpretations which are possible, that one shall always be adopted which will be consistent with this Plan's being a qualified Plan within the meaning of the Internal Revenue Code, as amended, or as it may be replaced by any sections of Federal law of like intent and purpose.

Section 19.5. This Plan is to be submitted to the United States Treasury Department to obtain rulings that the Plan and any Contract purchased hereunder qualify under applicable Internal Revenue Code provisions and regulations thereunder and that contributions to the Plan constitute deductions under appli-

cable Internal Revenue Code provisions and regulations thereunder. Notwithstanding any other provisions hereof, no Player shall have any vested right in any assets prior to the obtaining of an initial ruling from the Treasury Department as to the qualification of the Plan and any Contract purchased hereunder under said provisions and regulations. Any benefits which would by the terms of this Plan be payable to any Player, his Beneficiary or personal representative prior to the obtaining of the above-mentioned rulings shall be paid in the manner hereinbefore set forth only after such rulings are obtained. In the event such rulings shall not be obtained, the Members may terminate the Plan, in which event all the assets shall be paid to and revested in the Members.

EXHIBIT A

DENVER NUGGETS, INC.
1635 Clay Street
Denver, Colorado 80204

INDIANA PACERS L.P.
Market Square Center Building
151 North Delaware Street
Lower Concourse
Indianapolis, Indiana 46204

LONG ISLAND SPORTS, INC.
30 Park Avenue
Rutherford, New Jersey 07070

SPURS PROFESSIONAL BASKETBALL CLUB LTD.
Hemisfair Arena
P.O. Box 530
San Antonio, Texas 78292

NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN
TABLE OF CONTENTS

<u>Item</u>	<u>Article No.</u>	<u>Page No.</u>
Names of Participating Employers	- - -	1
Definitions	1	2
Eligibility	2	8
Benefits	3	9
Credited Service	4	15
Former Pension Benefits	5	15
Member's Contributions	6	16
Death Benefits	7	20
Non-alienation of Benefits	8	21
Forfeitures	9	22
Income and Expenses	10	23
Member's Accounts	11	23
Insurance Contracts	12	24
Administration of Plan	13	25
Liability and Standards of Care of Committee	14	28
Claims Procedure	15	31
Limitation of Rights of the Players	16	33
Participating Members	17	34
Amendment or Termination of the Plan	18	35
Miscellaneous	19	36

(As Amended Through 9/21/81)

NATIONAL BASKETBALL ASSOCIATION

PLAYERS' PENSION PLAN

The following members of the National Basketball Association do hereby amend and restate in its entirety their pension plan established on December 7, 1964 and effective on February 2, 1965, such restated plan to be known as the "National Basketball Association Players' Pension Plan":*

ATLANTA HAWKS BASKETBALL, INC.
100 Techwood Drive NW
Atlanta, Ga. 30303

BOSTON CELTICS BASKETBALL CLUB, INC.
Boston Garden
North Station
Boston, Mass. 02114

BUFFALO BRAVES, INC.
Memorial Auditorium
Main & Terrace
Buffalo, N.Y. 14202

THE CHICAGO PROFESSIONAL SPORTS CORPORATION
333 North Michigan Avenue
Chicago, Illinois 60601

CLEVELAND PROFESSIONAL BASKETBALL COMPANY
P.O. Box 355
Richfield, Ohio 44286

DETROIT PISTONS BASKETBALL COMPANY
Cobo Arena
One Washington Blvd.
Detroit, Michigan 48226

SAN FRANCISCO WARRIORS
Oakland Coliseum Arena
Nimitz Freeway &
Hegenberger Road
Oakland, California 94621

TEXAS PRO SPORTS, INC.
The Summitt
Houston, Texas 77046

KINGS PROFESSIONAL BASKETBALL CLUB, INC.
1800 Genessee Street
Kansas City, Missouri 64102

CALIFORNIA SPORTS INCORPORATED
P.O. Box 10
Inglewood, California 90306

* See Exhibit A for additional adopting employers.

MILWAUKEE PROFESSIONAL SPORTS & SERVICES, INC.
901 North Fourth Street
Milwaukee, Wisconsin 53203

NEW ORLEANS PROFESSIONAL BASKETBALL CLUB
P.O. Box 53213
New Orleans, La. 70153

MADISON SQUARE GARDEN CENTER, INC.
4 Pennsylvania Plaza
New York, N.Y. 10001

PHILADELPHIA 76ers BASKETBALL CLUB, INC.
Veterans Stadium
P.O. Box 25090
Philadelphia, Pa. 19147

PHOENIX PROFESSIONAL BASKETBALL CLUB
P.O. Box 1369
Phoenix, Arizona 85001

PRO BASKETBALL, INC.
Suite 380-Lloyd Building
700 NE Multnomah St.
Portland, Oregon 97232

FIRST NORTHWEST INDUSTRIES OF AMERICA, INC.
221 W. Harrison
Seattle, Washington 98119

CAPITAL BULLETS BASKETBALL CLUB, INC.
Capital Centre
One Harry S. Truman Dr.
Landover, Md. 20786

The Plan shall operate in accordance with the following provisions:

ARTICLE 1 - DEFINITIONS

Section 1.1. "Active List" shall mean the list of Players who have signed formal contracts with a Member, and are otherwise eligible to participate in a Championship Game as certified to the Committee by each Member.

Section 1.2. "Actuarial Equivalent" shall mean a benefit of equivalent value when computed on the basis of the actuarial assumptions recommended by the Enrolled Actuary and adopted by the Committee.

Section 1.3. "Actuarial Value" shall mean the present value of a benefit when computed on the basis of the actuarial assumptions adopted by the Committee.

Section 1.4. "Anniversary Date" shall mean any anniversary of the Effective Date of the Plan.

Section 1.5. "Armed Services List" shall mean the list of those Players who have entered the Armed Services and are serving on active duty as certified to the Committee by each Member.

Section 1.6. "Association" shall mean the National Basketball Association and its successors.

Section 1.7. "Beneficiary" shall mean the person or persons designated by a Player to receive any benefits under this Plan. Where a Player fails to designate a Beneficiary or where a Beneficiary fails to survive a Player, "Beneficiary" shall mean the Player's surviving spouse, if any, or, if none, his children, if any, in equal shares, or, if none, his personal representative. Any person entitled to receive benefits hereunder after the death of a Player shall also be deemed a Beneficiary for purposes of the Plan.

Section 1.8. "Championship Game" shall mean any game included in the Association's schedule of Championship Games and shall not include playoff games or exhibition games.

Section 1.9. "Committee" shall mean the Pension Committee referred to in Article 13 hereof.

Section 1.10. "Contract" shall mean a Group Annuity Contract issued by an Insurer under this Plan, whether or not such Contract contains any element of life insurance protection. Any Con-

tract may provide for the allocation of amounts received by an Insurer under the Plan to said Insurer's general account or to one or more of its separate accounts (including separate accounts maintained for the collective investment of assets of qualified retirement plans).

Section 1.11. "Early Retirement Date" shall mean a date after the forty-fifth (45th) anniversary of the Player's date of birth, on which an election made by the Player for an Early Retirement Pension becomes effective, provided that the Player is not on the Roster of any Member during the Plan Year involved.

Section 1.12. "Early Retirement Pension" shall mean the pension payable to a Player at his Early Retirement Date.

Section 1.13. "Effective Date" shall mean February 2, 1965. "Restatement Effective Date" shall mean February 2, 1976.

Section 1.14. "Enrolled Actuary" shall mean a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under Subtitle C of Title III of ERISA.

Section 1.15. "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and with which this Plan is intended to comply.

Section 1.16. "Franchise" shall mean the right of any Member to participate in the Association as determined under the rules of the Association.

Section 1.17. "Injured List" shall mean the list of Players who, due to injury or illness, have been temporarily removed from the Active List of a Member as certified to the Committee by each Member.

Section 1.18. "Insurer" shall mean a legal reserve life insurance company which shall issue a Contract under which the Members shall participate upon execution of an agreement providing for such participation, and which is licensed to do business in the State of New York.

Section 1.19. "Internal Revenue Code" shall mean the Internal Revenue Code of 1954, as amended from time to time, including the amendments thereto made by Title II of ERISA.

Section 1.20. "Member" shall mean a member of the Association.

Section 1.21. "Named Fiduciary" shall mean the Committee.

Section 1.22. "National Consumer Price Index" shall mean the Consumer Price Index for urban consumers ("CPI-U").

Section 1.23. "Normal Retirement Date" shall mean the fifty-third (53rd) anniversary of the Player's date of birth. Effective February 2, 1978, "Normal Retirement Date" shall mean the fiftieth (50th) anniversary of the Player's date of birth.

Section 1.24. "Normal Retirement Pension" shall mean the pension payable to the Player at his Normal Retirement Date.

Section 1.25. "Plan" shall mean the National Basketball Association Players' Pension Plan.

Section 1.26. "Plan Administrator" shall mean the Committee.

Section 1.27. "Plan Year" shall mean the twelve (12) month period beginning on the Effective Date, or any twelve (12)

month period beginning on the Anniversary Date in a subsequent year, during which this Plan shall be in effect.

Section 1.28. "Player" shall mean any person carried on any Player List, as defined in the By-Laws of the Association, or, where the context permits, a person eligible to be carried on any such List or a person formerly carried on any such List.

Section 1.29. "Qualified Joint and Survivor Annuity" shall mean a pension benefit payable for the life of a retired Player and continued upon his death for the life of the deceased Player's surviving spouse, if any, with the surviving spouse's periodic benefit to be at a level of 50% of the actuarially reduced benefit paid or payable for each such period to the Player during his lifetime.

Section 1.30. "Regular Season" shall mean the period beginning on the date of the first game of the Association's schedule of Championship Games and ending at the end of the day before the first Playoff Game is played.

Section 1.31. "Roster" shall mean (i) every Player on the Active List of any Member on February 2 of the Regular Season involved, (ii) for any Regular Season ending after February 2, 1965, every additional Player on the Injured List on February 2 of the Regular Season involved, without regard to whether such additional Player was on the Active List of any Member during such Regular Season and (iii) every other Player who was on the Active List of any Member for 50 percent or more of the total Championship Games played by the Member during the Regular Season involved. A Player, not otherwise considered to be on the Roster of any Member pursuant to the terms hereof, shall

not be considered to be on the Roster of any Member by virtue of the fact that he has entered into a "guaranteed" or "no-cut" contract on or after May 1, 1976, except to the extent that the Player and a Member have agreed that the Player shall be considered to be on the Roster with respect to any Plan Year during which such contract is in effect. Notwithstanding anything to the contrary, no Player shall be treated as having been on the Roster of any Member for any Plan Year for which all or part of his benefits were forfeited under the provisions of this Plan in existence prior to the Restatement Effective Date. "Roster" shall also include any Player on the Armed Services List of any Member on February 2 of the Regular Season involved, who is not otherwise considered to be on the Roster for such Regular Season, if, and to the extent, that applicable law requires the Player to be so treated.

Section 1.32. "Supplemental Pension" shall mean the pension payable to a Player from his Supplemental Pension Account.

Section 1.33. "Supplemental Pension Account" shall mean a segregated account to be maintained by the Insurer for each Player, as directed by the Committee and subject to the terms of this Plan.

Section 1.34. "Suspended List" shall mean the list of those Players who, for proper cause, have been suspended by the Association or by a Member as certified to the Committee by each Member.

ARTICLE 2 - ELIGIBILITY

Section 2.1. Every Player on the Roster of any Member during the Regular Season which included February 2, 1967 shall be eligible to participate as of February 2, 1968. Every Player on the Roster of any Member during the Regular Season which included February 2, 1966, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1970. Every Player on the Roster of any Member during the Regular Season which included February 2, 1965, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1973.

Section 2.2. Every Player on the Roster of any Member during any Regular Season beginning subsequent to the Regular Season which includes February 2, 1967, not otherwise eligible hereunder, shall be eligible to participate as of the Anniversary Date during such subsequent Regular Season.

Section 2.3. Notwithstanding anything herein to the contrary, for the sole purpose of determining when a Player is first eligible to participate hereunder, any Player on the Roster of any Member for any Regular Season ended before February 2, 1973 solely by reason of Section 1.31 (ii) hereof shall not be eligible to participate hereunder by reason of being on such Roster until February 2, 1976. This Section shall not affect the eligibility of any Player by reason of Section 1.31(i) or Section 1.31(iii) hereof.

Section 2.4. Every Player entitled to any benefit under the terms of the Pension Plan in existence prior to the adoption of this instrument shall continue to be eligible to receive such benefits.

ARTICLE 3 - BENEFITS

Section 3.1. Every Player eligible to participate hereunder, who attains his Normal Retirement Date and who was on the Roster of any Member for any three Regular Seasons shall be entitled to a Normal Retirement Pension and any Supplemental Pension payable pursuant to Section 3.6 hereof.

Section 3.2. The Normal Retirement Pension payable to a Player shall be paid to him commencing on the first day of the first month following said Player's Normal Retirement Date and shall continue to be paid on the first day of each month up to and including the month in which the Player dies and, except as otherwise provided in Section 3.10, shall be paid as an annuity for the life of the Player in an amount equal to:

(a) For a Player who becomes eligible to receive a Normal Retirement Pension on or before May 31, 1976, \$60 per month for each year of Credited Service.

(b) For a Player who becomes eligible to receive a Normal Retirement Pension on or after June 1, 1976 and on or before May 31, 1979, \$75 per month for each year of Credited Service.

(c) For a Player who becomes eligible to receive a Normal Retirement Pension on or after June 1, 1979 and on or before December 1, 1980, \$75 plus a cost-of-living adjustment (which adjustment shall be calculated by applying to \$75 the percentage increase in the National Consumer Price Index between September 1975 and May 1979, and which shall be rounded off to the nearest whole dollar) per month for each year of Credited Service.

(d) For a Player who becomes eligible to receive a Normal Retirement Pension on or after December 2, 1980 the amount

provided in Section 3.2(c) above, plus a cost-of-living adjustment (which adjustment shall be calculated by applying to the amount provided in Section 3.2(c) the percentage increase in the National Consumer Price Index between June 1979 and November 1980, and which shall be rounded off to the nearest whole dollar) per month for each year of Credited Service.

Section 3.3. All the amounts provided for in Section 3.2 hereof shall be reduced by the Actuarial Equivalent (of a lifetime annuity beginning on the same date) of any benefit payable to a Player under Article 5 hereof.

Section 3.4. Every Player who was on the Roster of any Member for any three Regular Seasons shall be entitled to elect to receive, in lieu of a Normal Retirement Pension, an Early Retirement Pension and shall be entitled to any Supplemental Pension payable pursuant to Section 3.6 hereof. Such election shall be made at least 90 days prior to the Early Retirement Date and shall be made in writing delivered to the Committee.

Section 3.5. The Early Retirement Pension payable to a Player shall be paid to him commencing on the first day of the first month following the Player's Early Retirement Date and shall continue to be paid on the first day of each month up to and including the month in which the Player dies and, except as otherwise provided in Section 3.10 shall be paid as an annuity for life in an amount which shall be the Actuarial Equivalent of the Normal Retirement Pension that said Player would have been entitled to on his Normal Retirement Date (calculated on the basis that the Normal Retirement Date is the fiftieth (50th) anniversary of the Player's date of birth).

Section 3.6. For Plan Years ending prior to February 2, 1973, the Insurer shall maintain a separate Supplemental Pension Account for each Player and \$100.00 (less a reasonable amount, as determined by the Committee, to reflect the administration expenses allocable to said Supplemental Pension Account) shall be added to said Account during each Plan Year that said Player is credited with a year of current service under Section 4.2 hereof. For Plan Years beginning on or after February 2, 1973 and ending on or before February 1, 1976, the Insurer shall maintain a separate Supplemental Pension Account for each Player and \$200.00 (less a reasonable amount, as determined by the Committee to reflect the administration expenses allocable to said Supplemental Pension Account) shall be added to said Account during each Plan Year that said Player is credited with a year of current service under Section 4.2 hereof. For Plan Years beginning on or after February 2, 1976, the Insurer shall continue to maintain a separate Supplemental Pension Account for each Player having a Supplemental Pension Account on such date and the Insurer shall apply the amount therein (as adjusted pursuant to Section 3.8 hereof) to provide such Player with a Supplemental Pension in accordance with Section 3.9 hereof. No additional amount shall be added to any Supplemental Pension Account for Plan Years beginning on or after February 2, 1976, except for the adjustments made pursuant to Section 3.8 hereof.

Section 3.7. The funds in all Supplemental Pension Accounts maintained by the Insurer shall be invested by the Insurer in a segregated account, as directed by the Committee, in such securities as the Insurer deems advisable. In giving such directions, the Committee shall consult with a representative designated by the Players Association in order to reach an agree-

ment with respect to such directions. In the absence of an agreement between the Committee and said representative, the Committee shall follow the directions of the Players Association.

Section 3.8. As of December 31 of each year, and at such other times as is necessary to calculate any benefits payable hereunder, the Insurer shall value all of the assets representing the funds held in all Supplemental Pension Accounts, based on their respective market values on said valuation date, and as of said valuation date the Supplemental Pension Account of any Player shall be adjusted to reflect the effect of contributions, income collected and accrued and realized and unrealized profits and losses for the period since the most recent previous valuation date.

Section 3.9. The Supplemental Pension payable to any Player shall be the Actuarial Equivalent of said Player's Supplemental Pension Account on his Normal Retirement Date or Early Retirement Date, as the case may be, and shall be paid to him in the same manner and at the same time as the payment to him of a Normal Retirement Pension or Early Retirement Pension, as the case may be.

Section 3.10. Subject to the provisions of subparagraph (a) of this section, if a Player is married on his Early Retirement Date or his Normal Retirement Date, as the case may be, his Early Retirement Pension or Normal Retirement Pension and any Supplemental Pension shall be paid in the form of a Qualified Joint and Survivor Annuity under which the Player's pension is reduced so that the resulting pension payable to the Player and his spouse shall be the Actuarial Equivalent of his Early Retirement Pension or Normal Retirement Pension and any Supplemental Pension otherwise payable.

(a) The preceding paragraph shall not apply if the Player, on or before the date on which his benefits commence, files an election (which is not revoked prior to the date on which his benefits commence) in writing with the Insurer pursuant to which he becomes entitled to the payment of the pension in a form other than a Qualified Joint and Survivor Annuity. In no event shall such election period expire before 90 days following the furnishing of all information required by the applicable provisions of the Internal Revenue Code and the regulations thereunder; and, if necessary, the commencement of benefits shall be delayed until the end of such 90-day period.

Section 3.11. Every Player not eligible for, or electing not to receive a Qualified Joint and Survivor Annuity, may elect to receive, in lieu of the Normal Retirement Pension or Early Retirement Pension and any Supplemental Pension provided for in this Article, the Actuarial Equivalent of such pension payable on the date that said pension would otherwise have become payable in one or more of the following ways:

- (a) Installments for Life - Paid in equal monthly installments for as long as the Player shall live.
- (b) Installments of Fixed Amount - Paid in installments of a specified amount each month.
- (c) Installments for a Fixed Period - Paid in equal monthly installments for a fixed number of years.
- (d) Installments for a Fixed Period and Life Thereafter - Paid in equal monthly installments for a fixed number of years and for so long thereafter as the Player shall live.
- (e) Joint and Survivorship Annuity - Paid in equal monthly installments to the Player, terminating with the last monthly installment before his death. Following the death of

the Player after this option becomes effective, monthly installments shall be continued to the person he named as his joint annuitant. The amount of each installment payable to the joint annuitant shall be equal to 100% of the monthly amount which was payable to the Player, or to a lesser percentage, as specified by the Player in his election of this option.

(f) Social Security Option - Paid in monthly installments, to the extent permitted by ERISA, so long as the Player shall live, in such amounts so as to enable the Player to receive an approximately equal amount each month taking into consideration the benefits hereunder and the estimated primary benefits payable under the Social Security Act.

(g) Lump Sum - Paid to the Player in one Lump Sum.

Section 3.12. Any optional method of settlement selected under this Article shall become effective on the date on which the Player's benefits hereunder commence.

Section 3.13. Where an optional method of settlement is selected under this Article, periods certain or periods over which installments are payable shall not exceed the life expectancy of the Player based on the mortality tables then in use, that of the Player and his spouse or that of the Player and another not more than five years younger than the Player. An election under this Section shall be made at least two (2) years prior to the start of any pension, or at such later date approved by the Insurer, and shall be made in writing delivered to the Committee.

Section 3.14. If any Player or Beneficiary is, in the judgment of the Committee, legally, physically or mentally incapable of personally receiving and receipting for any payment

due hereunder, payment may be made to the guardian or other legal representative of such Player or his Beneficiary, or, if none, to such other person, or institution, who, in the opinion of the Committee, is then maintaining or has custody of such Player or his Beneficiary. Such payments shall constitute a full discharge with respect thereto.

ARTICLE 4 - CREDITED SERVICE

Section 4.1. Every Player eligible to participate hereunder shall be credited with one year of Credited Service for each year that said Player was on the Roster of any Member for any Regular Season prior to the Regular Season for which said Player is first eligible to participate hereunder ("past service").

Section 4.2. Every Player eligible to participate hereunder shall be credited with one year of Credited Service for each year that said Player is on the Roster of any Member for any Regular Season beginning with the Regular Season for which said Player is first eligible to participate hereunder ("current service").

ARTICLE 5 - FORMER PENSION BENEFITS

Section 5.1. The Members have caused the Contract formerly in existence with Continental Assurance Company to be discontinued in accordance with the terms of such Contract and have continued the Single Premium Endowment Insurance of all Players insured thereunder in the same amount as Paid-up Endowment Insurance, to be paid to said Players in accordance with the terms of said Contract.

Section 5.2. In addition to all benefits provided hereunder, and notwithstanding any other provision to the contrary, every Player on the Active List of any Member on February 2, 1965, February 2, 1966 or February 2, 1967, or his Beneficiary, shall be entitled to receive such benefits as are payable under the Paid-up Endowment Insurance Contract referred to in Section 5.1 hereof, upon such conditions and subject to such options as are set forth in said Paid-up Endowment Insurance Contract.

ARTICLE 6 - MEMBER'S CONTRIBUTIONS

Section 6.1. On or before July 1 of each Plan Year every Member shall pay to the Insurer an amount necessary to fund the benefits for its Players in accordance with the rules set forth in this Article, and in order to prevent a deficiency in the funding Standard Account as required by the Internal Revenue Code and ERISA.

Section 6.2. The annual cost of funding for the current and past service benefits for any Player on the Active List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1981), or on the Injured List on February 2, 1973 (or on any subsequent February 2, prior to February 2, 1981), shall be paid by the Member on whose Active List or Injured List, as the case may be, the Player appears on February 2 of the Plan Year involved. The annual cost of funding for the current and past service benefits for any Player on the Active List or Injured List on February 16, 1981 (or on any subsequent February 16) shall be paid by the Member on whose Active List or injured List, as the case may be, the Player appears on February 16 of the Plan Year involved.

Section 6.3. The annual cost of funding for the current and past service benefits for any Player (i) on the Suspended or Armed Services List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1981), or on the Injured List on February 2, 1968 (or any subsequent February 2, prior to February 2, 1973), and (ii) on the Active List of any Member for 50 percent or more of the total Championship Games played by each Member during the Regular Season which includes such February 2 and which ended before February 2, 1981, shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved. The annual cost of funding for the current and past service benefits for any other Player on the Roster during the Plan Year involved shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved.

Section 6.4. The annual cost of funding for the past service benefits for any Player not on any Roster during the Plan Year involved shall be paid by the Member having rights to the services of such Player, as a Player, on February 16 of the Plan Year involved (or February 2, if the Plan Year involved ended prior to February 2, 1981) or, if no Member has such rights on said February 16 (or February 2, as the case may be), by the Member last having such rights prior to said February 16 (or February 2, as the case may be).

Section 6.5. The annual amount necessary to fund the current service benefits shall be equal to:

- (a) The Actuarial Value of the benefits for current service; and
- (b) \$100 (for Plan Years ending prior to February 2, 1973) and \$200 (for Plan years beginning on or after February 2,

1973 and ending on or before February 1, 1976), for each Player entitled to be credited with a year of current service for such Plan Year.

Section 6.6. The annual amount necessary to fund the past service benefits shall be that amount which if paid in equal annual installments over thirty (30) years from the date or dates such past service benefits are effective, or over such shorter period of years determined by the Enrolled Actuary that will result in an approximately equivalent amortization schedule, will accumulate to the Actuarial Value of such benefits, taking into account interest at the rate adopted by the Committee.

Section 6.7. In no event shall the projected annual Normal Retirement Pension, payable to any Player under this Plan and any other defined benefit plan (as defined in Section 414(j) of the Internal Revenue Code) maintained by a Member, exceed the lesser of (a) \$75,000 or such other maximum dollar limitation permitted by applicable law or (b) 100% of the Player's average total compensation for the period of three (3) consecutive calendar years yielding the highest such average and during which he was a Player. In the case of a Player who has less than ten (10) years of Credited Service, the limitation stated in the foregoing sentence shall be reduced by multiplying it by a fraction, the numerator of which is the number of years (or part thereof) of Credited Service and the denominator of which is ten (10). The Normal Retirement Pension or Early Retirement Pension, as the case may be, shall be adjusted to the Actuarial Equivalent of a benefit beginning at age 55 in applying the dollar limitation referred to above.

Section 6.8. If at any time a Player is a participant in both a defined benefit plan and a defined contribution

plan (as such terms are defined in Sections 414(j) and 414(i) of the Internal Revenue Code) maintained by any Member, the sum of his defined benefit fraction and his defined contribution fraction shall, in no event, exceed 1.4 for any Plan Year. If such sum would otherwise exceed 1.4 for any Plan Year, appropriate adjustments shall be made to eliminate such excess. For the purpose of this Section, all defined benefit plans (whether or not terminated) of the Members shall be treated as a single defined benefit plan, and all defined contribution plans (whether or not terminated) of the Members shall be treated as one defined contribution plan.

Section 6.9. All computations with respect to the limitations under this Article shall be made on the basis of each Plan Year, pursuant to the rules set forth in Sections 415(e)(3) and 415(e)(4).

Section 6.10. As used herein, the term "annual addition" means, with respect to any Player, the sum of (a) all contributions made by a Member and all forfeitures allocable to a Player with respect to all defined contribution plans maintained by a Member and (b) all contributions, made by a Player (other than rollover contributions) with respect to all such defined contribution plans, equal to the lesser of (a) the amount of such contributions in excess of six percent of the Player's Compensation or (b) one-half of such contributions.

As used herein, the term "defined benefit fraction" shall mean a fraction, the numerator of which is a Player's projected annual benefit under a defined benefit plan of the Member (determined as of the end of the Plan Year), and the denominator of which is such Player's projected annual benefit (determined as of the end of the Plan Year) if such plan provided the maximum benefit allow-

able under Section 415(b) of the Internal Revenue Code. A Player's projected annual benefit will be determined by taking into consideration all relevant factors used to determine benefits under the plan.

As used herein, the term "defined contribution fraction" shall mean a fraction, the numerator of which is the sum of all annual additions credited to a Player under a defined contribution plan of the Member, and the denominator of which is the maximum amount of annual additions which could have been credited to such person under Section 415 of the Internal Revenue Code.

In the event that the Normal Retirement Pension payable to a Player under this Plan and all other defined benefit plans of a Member or an Affiliate does not exceed \$10,000 for the Plan Year, or for any prior Plan Year, and the Member has not at any time maintained a defined contribution plan in which the Player participated, the limitation otherwise imposed by the Article shall not apply.

ARTICLE 7 - DEATH BENEFITS

Section 7.1. Except as otherwise provided in Section 7.2 hereof, in the event of the death of any Player prior to the date as of which the payment of his Early Retirement Pension or Normal Retirement Pension, as the case may be, becomes effective, said Player's Beneficiary shall be entitled to receive a cash settlement, in a lump sum, equal to (i) 100% of the Supplemental Pension that said Player would have been entitled to receive if his date of death had been his Normal Retirement Date, and (ii) plus the excess, if any, of an amount equal to the actuarial reserve on the date of death for the Normal Retirement Pension based on the actuarial assumptions most recently adopted pursuant to Section 13.12 hereof and based on the Credited Service earned to the date of death, over the proceeds of any group life insurance policy (exclusive of any such proceeds paid because of accidental death) maintained and paid for by a Member on the life of a Player. Said payment shall be made as soon as practicable after the Committee is notified of said Player's death.

Section 7.2. In the event of the death of a married Player during a Plan Year in which he is on the Roster of any Member and on or after the date on which he reaches the forty-fifth (45th) anniversary of his date of birth, and in the event of the death of a married Player who terminated his employment after the date on which he reached the forty-fifth (45th) anniversary of his date of birth, but before an election to receive his Early Retirement Pension or Normal Retirement Pension becomes effective, such Player's spouse shall receive in lieu of the benefit provided for in Section 7.1, (i) a death benefit in the form of an annuity which shall be the Actuarial Equivalent of the payments which would have been made to such spouse under a Qualified Joint and Survivor Annuity to which the Player would have been entitled if he had become entitled to an Early Retirement Pension under Section 3.9 hereof on the day before his death, plus (ii) a lump sum equal to the excess, if any, of the amount otherwise payable under Section 7.1 over the Actuarial Equivalent of the amount payable under this Section.

Section 7.3. Upon the death of a Player after the date as of which the payment of his Early Retirement Pension or Normal Retirement Pension, as the case may be, becomes effective, no further payments shall be made other than those, if any, specified in the benefit to which the Player is entitled.

ARTICLE 8 - NON-ALIENATION OF BENEFITS

Section 8.1. No benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void, nor shall any such benefit be in any manner

liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefit.

Section 8.2. If any Player or any Beneficiary under the Plan is adjudicated bankrupt or attempts to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge any benefit under the Plan, except as specifically provided in the Plan, then such benefit shall, in the discretion of the Committee, cease and terminate and in that event the Committee shall hold or apply the same or any part thereof to or for the benefit of such Player or Beneficiary in such manner as the Committee may deem proper.

Section 8.3. If any court of competent jurisdiction issues an order inconsistent with this Section, and the Committee thereafter notifies the Player or any Beneficiary of such order, then, unless and until such order is set aside, the following provisions shall apply:

(a) No action shall be required by the Association, Insurer, Committee or any other person to prevent such order from being complied with.

(b) Thirty days after giving such notice, such order may be complied with.

ARTICLE 9 - FORFEITURES

Section 9.1. To the extent that the amount funded for any Player exceeds the amount necessary to pay the benefits to which said Player or his Beneficiary becomes entitled hereunder, such excess shall be treated as a forfeiture and shall serve to reduce the contribution of the Member or Members affected thereby and shall not be applied to increase the benefits of any other Player hereunder. Such forfeiture shall be allocated among the

Members, on an actuarial basis, in order to give due consideration to the amount contributed on behalf of such Player by such Members.

ARTICLE 10 - INCOME AND EXPENSES

Section 10.1. At the end of each Plan Year, or at such other times set forth in any Contract, all income (including dividends paid by the Insurer on any Contract) earned on the funds held by the Insurer (other than on funds held in Supplemental Pension Accounts) shall be allocated to each Member's account based on the assets allocable to such Member from time to time during such Plan Year.

Section 10.2. All expenses of the Plan shall be paid from the funds held by the Insurer or directly by the Members. At the end of each Plan Year, or at such other times set forth in any Contract, the expenses of the Plan paid from the funds held in Supplemental Pension Accounts shall be charged, pro rata, to said Accounts and the expenses paid from any other funds shall be charged pro rata, to each Member's account, unless paid directly by such Member.

ARTICLE 11 - MEMBER'S ACCOUNTS

Section 11.1. The Insurer shall maintain a separate account for each Member to which it shall credit each Member's allocable share of Member's contributions (other than those provided for in Section 6.5(b) hereof) and to which it shall charge each Member's allocable share of benefits paid to Players, losses and expenses.

Section 11.2. The benefits payable hereunder to each Player shall be allocated among the Members, on an actuarial basis,

in order to give due consideration to the amount contributed on behalf of such Player by such Member.

ARTICLE 12 - INSURANCE CONTRACTS

Section 12.1. One or more Contracts may be purchased in order to carry out the terms of the Plan from such Insurer or Insurers as the Members, in their absolute discretion, shall choose. Such Contracts shall cover the Players in the Plan and may be amended from time to time.

Section 12.2. The Players shall not have any right, title, interest, or ownership in and to any Contract which shall be purchased pursuant hereto. Except as otherwise provided herein, in no event may any of the avails or proceeds of any Contract be recoverable or revert, directly or indirectly, to any Member or be diverted to any purpose other than for the exclusive benefit of the Players and Beneficiaries covered hereunder.

Section 12.3. The provisions for the form and mode of benefit payments under this Plan shall be subject to all of the terms and conditions of any and all Contracts purchased pursuant to Section 12.1 hereof.

Section 12.4. The Contracts shall provide that any death benefit payable thereunder shall be payable to the Beneficiary and shall reserve to the Contract holder such rights as are necessary to implement this Plan. The signature of any Player may be required for the exercise of any such right.

Section 12.5. No Insurer shall be considered to be a party to this Plan, nor shall it have any responsibility for the validity of this Plan. Its sole liability shall be its liability as stated in each Contract which it may issue.

Section 12.6. The Insurer shall be fully protected from any liability in assuming that the Plan has not been amended or changed until notice of any amendment or change in any of the terms thereof has been received by the Insurer.

Section 12.7. The Insurer shall be fully protected in accepting, from the Members, or the Committee, premiums on or instructions in connection with Contracts which it may issue or may have issued under this Plan and shall have no responsibility to make an inquiry as to the authority to make such payment or to give such instructions.

ARTICLE 13 - ADMINISTRATION OF PLAN

Section 13.1. The general administration of the Plan shall be placed in a Committee, consisting of at least three persons, who shall be appointed from time to time by the majority vote of all of the Members.

Section 13.2. The members of the Committee shall elect a Chairman from their number, and a Secretary who may be, but need not be, one of the members of the Committee, and shall designate an Enrolled Actuary to act in actuarial matters relating to the Plan. They may appoint from their number such committees with such powers as they shall determine, may authorize one or more of their number or any agent to make any payment in their behalf, or to execute or deliver any instrument except that a requisition for funds from the Insurer shall be signed by two members of the Committee. The Committee may employ counsel and agents and such clerical, medical and accounting services as they may require in carrying out the provisions of the Plan.

Section 13.3. The Committee shall hold meetings upon such notice, at such place or places, and at such time or times as they may from time to time determine.

Section 13.4. A majority of the members of the Committee at the time in office shall constitute a quorum for the transaction of business. All resolutions or other actions taken by the Committee at any meeting shall be by vote of a majority of the Committee at the time in office.

Section 13.5. No member of the Committee shall receive any compensation from the Plan for his services as such.

Section 13.6. Subject to the limitations of the Plan, the Committee from time to time shall establish rules for the administration of the Plan and the transaction of its business. The Committee shall take such steps as are considered necessary and appropriate to remedy any inequity that results from incorrect information received or communicated in good faith or as the consequence of an administrative error. The Committee shall interpret the Plan and shall determine the answers to questions arising in the administration, interpretation and application of the Plan and shall endeavor to act, whether by general rules or by particular decisions, so as not to discriminate in favor of or against any Player. The Committee may correct any defect, reconcile any inconsistency or supply any omission. All Players in similar circumstances shall be treated as nearly uniformly as practicable.

Section 13.7. The Committee shall keep all records relating to Players including former Players and such other records as are necessary for the proper operation of the Plan.

Section 13.8. The Committee shall take such steps as are necessary to insure that all reporting and disclosure requirements imposed upon the Plan by applicable Federal law, any amendments thereto, regulations thereunder, or any other official published interpretation thereunder, are complied with.

Section 13.9. The Committee shall discharge its duties in accordance with the requirements of applicable Federal law, any amendments thereto, regulations thereunder or any other official published interpretation thereunder.

Section 13.10 The Committee shall arrange for such bonding as is required by law but no bonding in excess of the amount required by law shall be considered required by this Plan.

Section 13.11 The Committee shall be indemnified by the Members against expenses reasonably incurred by it in connection with any action, to which it may be a party, by reason of its service as a Committee, except in relation to matters as to which it shall be adjudged in such action to be liable for gross negligence or willful misconduct in the performance of its duty.

Section 13.12 The Committee shall adopt from time to time standards for use in all actuarial calculations required in connection with the Plan, and shall establish the amount of contributions under the Plan as provided herein. As an aid to the Committee in adopting tables and in fixing the amount of contributions payable under the Plan, the Enrolled Actuary designated by the Committee shall make annual actuarial valuations with respect to the operation and administration of the Plan and shall certify to the Committee the tables and amount of contributions which he recommends for use by the Committee.

Section 13.13. The Committee shall arrange for the maintenance of accounts showing the fiscal transactions of the Plan, and for the keeping in convenient form of such data as may be necessary for actuarial valuations with respect to the operation and administration of the Plan. The Committee shall prepare, from time to time, a report giving a brief account of the operation of the Plan. Such report shall be submitted to the Members.

Section 13.14. The Committee shall be entitled to rely upon all tables, valuations, certificates and reports furnished by the Enrolled Actuary designated by the Committee, and upon all opinions given by any legal counsel selected or approved by the Members. The Committee shall not be liable for any action taken or suffered by them in good faith in reliance upon any such Enrolled Actuary or counsel.

Section 13.15. The Committee shall be responsible for exercising any and all rights under the Contracts, including the right to designate the portion of the premium paid to the Insurer which shall be invested in equity securities.

Section 13.16. The Committee may appoint an Insurer under this Plan to act as an investment manager to manage any assets of the Plan; provided that (a) the Insurer is qualified under the laws of more than one state, to perform such services and (b) the Insurer has acknowledged, in a writing delivered to the Committee, that it is a fiduciary with respect to the Plan.

Section 13.17. The Committee may waive the provisions of Sections 4204(a)(3)(A) and 4204(a)(3)(B) of the Multiemployer Pension Plan Amendments Act of 1980 requiring a Member that disposes of its franchise to any new Member, under certain conditions, to post a bond, or place an amount in escrow, with the Plan; provided that, the new Member posts a bond, or otherwise provides security acceptable to the Committee, in an amount that is not less than the amount of the bond (or escrow) that the Member that disposed of its franchise would have otherwise been required to provide. Any such bond or other security provided by the new Member shall be in addition to any other bond (or other security) required to be provided by the new Member. Nothing contained herein shall give the Committee the right to otherwise relieve the Member that disposed of its franchise of any other liability imposed upon it by the Multiemployer Plan Amendments Act.

ARTICLE 14. Liability and Standard of
Care of Committee

Section 14.1. Each member of the Committee and any other fiduciary with respect to the Plan shall discharge his

duties with respect thereto (a) solely in the interest of Players and their Beneficiaries; (b) for the exclusive purpose of providing benefits to Players and their Beneficiaries and defraying reasonable expenses of administering the Plan; (c) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and (d) in accordance with the provisions of the Plan insofar as such provisions are not inconsistent with applicable law. As used herein, the term "fiduciary" shall have the meaning ascribed to it in Section 3(21) of ERISA.

Section 14.2. No fiduciary with respect to the Plan shall be liable for an act or omission of another person resulting in a breach by such other person of his fiduciary responsibility with respect to the Plan, except to the extent that:

(a) such fiduciary participated knowingly in, or knowingly undertook to conceal, an act or omission of such other person, knowing such act or omission to be a breach of fiduciary responsibility;

(b) such fiduciary, by his failure to comply with the provisions of the preceding Section of the Plan or with Section 404(a)(1) of ERISA in the administration of his specific responsibilities which give rise to his status of a fiduciary, has enabled such other person to commit a breach of fiduciary responsibility;

(c) such fiduciary has knowledge of a breach of fiduciary responsibility by such other person, unless he makes reasonable efforts under the circumstances to remedy the breach; or

(d) such fiduciary is a "named fiduciary" (as such term is defined in Section 402(a)(2) of ERISA) and has violated his duties under Section 404(a)(1) of ERISA:

(1) with respect to the allocation of fiduciary responsibilities among "named fiduciaries" or the designation of persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan;

(2) with respect to the establishment or implementation of procedures for allocating fiduciary responsibilities among "named fiduciaries" or for designating persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan; or

(3) in continuing the allocation of fiduciary responsibilities among "named fiduciaries" or the designating of persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan.

Section 14.3. Notwithstanding anything to the contrary contained herein, no member of the Committee or other fiduciary with respect to the Plan shall incur any liability for any act or omission to the extent he would not be liable therefor under Part 4 of Subtitle B of Title I of ERISA and to the extent such act or omission is not the result of his own gross negligence or wilful misconduct.

Section 14.4. The Members shall indemnify each member of the Committee and any other individual to whom a fiduciary responsibility with respect to the Plan is allocated or delegated from and against all liabilities, costs and expenses incurred by such person as a result of act, omission or conduct in connection with the performance of his fiduciary duties, responsibilities and obligations under the Plan and under ERISA, except

with respect to liabilities and claims arising from such person's own wilful misconduct or gross negligence. The Members may obtain, pay for and maintain a policy or policies of insurance, the proceeds of which may be used in satisfying its obligations under this Section.

ARTICLE 15 - CLAIMS PROCEDURE

Section 15.1. Any request for a benefit payable under the Plan shall be made in writing by a Player or Beneficiary (or an authorized representative of either of them), as the case may be, and shall be delivered to any member of the Committee. Such written request shall be deemed filed upon receipt thereof by the Committee. Such request shall be made within the time prescribed in the Plan for claiming a particular benefit or, if no time is so prescribed, within a reasonable time before payment of the benefit is to commence.

Section 15.2. In the event a request for benefits contains insufficient information, the Committee shall, within 15 days after receipt of such request, send a written notification to the claimant setting forth a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material is necessary. The claimant's request shall be deemed filed with the Committee on the date the Committee receives in writing such additional information.

Section 15.3. The Committee shall make a determination with respect to a request for benefits within 30 days after such request is filed. The Committee shall notify the claimant whether his claim has been granted or whether it has been denied in whole or in part. Such notification shall be in writing and shall be

delivered, by mail or otherwise, to the claimant within a reasonable time after such claim is filed. If the claim is denied in whole or in part, the written notification shall set forth, in a manner calculated to be understood by the claimant:

- (a) The specific reason or reasons for the denial;
- (b) Specific reference to pertinent provisions of the Plan on which the denial is based; and
- (c) An explanation of the Plan's claim review procedure.

Failure by the Committee to give notification pursuant to this Section within a reasonable time after receipt of the claim shall be deemed a denial of the request for the purpose of proceeding to the review stage.

Section 15.4. A claimant whose request for benefits has been denied in whole or in part may, within 60 days after written notification of such denial, file with the Named Fiduciary, with a copy to the Committee, a written request for a review of his claim. Such written request shall be deemed filed upon receipt of same by the Named Fiduciary.

Section 15.5. A claimant who timely files a request for review of his claim for benefits may review pertinent documents (upon reasonable notice to the Named Fiduciary) and may submit the issues and his comments to the Named Fiduciary in writing. Except as otherwise provided below, the Named Fiduciary shall, within 60 days after receipt of the written request for review, communicate its decision in writing to the claimant, setting forth, in a manner calculated to be understood by the claimant, the specific reasons for its decision and the pertinent provisions of the Plan on which the decision is based.

Section 15.6. If the claimant so requests in his timely application for review, the Named Fiduciary shall schedule a conference with the claimant (and/or his authorized representative). Such conference shall be held at the offices of the Association at a date and time which is mutually agreed upon by the parties concerned, provided that in no event shall the conference be held more than 60 days after the Named Fiduciary receives the claimant's written request for review of his claim. The decision of the Named Fiduciary shall be communicated in writing to the claimant or his authorized representative within 30 days after the date on which the conference is completed, and shall set forth, in the same manner, the information required in the preceding Section.

ARTICLE 16 - LIMITATION OF RIGHTS OF THE PLAYERS

Section 16.1. Nothing contained in this Plan shall be deemed to give any Player the right to be retained in the service of any Member. Inclusion under the Plan shall not give any Player any right or claim to any benefits except to the extent such right is specifically fixed under the terms of the Plan.

Section 16.2. The Members agree to make any and all contributions required to provide the benefits set forth herein.

Section 16.3. No liability shall attach to any Member for any payment of any benefit or claim hereunder.

Section 16.4. The Committee shall not be responsible for the validity of any Contracts, or for the action of any person or persons which may render any Contract invalid or unenforceable either in whole or in part. The Committee shall not be responsible for any inability to perform or any delay in performing any act occasioned by any other person. In the event it becomes impossible

for the Committee to perform any act, that act shall be performed which in the judgment of the Committee will most nearly carry out the intent and purpose of this Plan.

ARTICLE 17 - PARTICIPATING MEMBERS

Section 17.1. Each Member shall execute such documents as are necessary to duly accept this Plan and to participate in any Contracts to implement said Plan.

Section 17.2. In the event of the sale, transfer, exchange or other disposition of a franchise by any Member, or the granting of a new franchise by the Association, such new Member shall immediately execute such documents and take such actions as are necessary so as to provide the benefits of this Plan for its Players.

Section 17.3. In the event that any Member ceases to own a franchise and if said franchise is not sold, transferred, or exchanged or otherwise disposed of to any new Member, or if any Member completely discontinues making contributions, then the Plan shall terminate as to said Member, and all of its Players shall be vested with all benefits accrued to the date of such termination. Said Member shall immediately make a contribution equal to the entire unfunded past service liability for each Player for whom it is then liable to make a contribution under the provisions hereof; provided, however, that such Member shall not be liable for any further contribution for any Player to the extent that another Member becomes liable for such contributions under the terms of the Plan, by virtue of having acquired rights to said Player.

Section 17.4. In no event shall any merger or consolidation of any other plan with this Plan, or any transfer of assets and liabilities of this Plan to any other plan or any transfer of assets and liabilities from any other plan to this Plan take place which results in a benefit to any Player or Beneficiary (if the Plan then terminated) that is lower than the benefit he would have received immediately before the merger, consolidation or transfer (if the Plan then terminated).

ARTICLE 18 - AMENDMENT OR TERMINATION OF THE PLAN

Section 18.1. The Members shall have the right to amend the Plan at any time by an instrument in writing executed by all Members and delivered to the Insurer, provided, however, that:

(a) no amendment shall deprive any Player or Beneficiary of any of the benefits to which he is entitled under the Plan with respect to contributions previously made;

(b) no amendment shall provide for the use of the funds or assets held by the Insurer other than for the exclusive benefit of Players and Beneficiaries, and except as otherwise provided herein, no funds contributed shall ever revert to or be used or enjoyed by the Member; and

(c) no amendment shall deprive the Insurer of any of its exemptions and immunities with respect to Contracts issued by it prior to receipt by the Insurer of notice of such amendment.

Any amendment to the Plan or Contract may be made retroactive which is necessary to enable the Members to obtain rulings from the United States Treasury Department as to the qualification of this Plan within the meaning of the Internal Revenue Code,

as amended, or as it may be replaced by any sections of Federal law of like intent and purpose.

Section 18.2. The Members may terminate the Plan at any time by an instrument in writing executed by all the Members and delivered to the Insurer, provided, however, that if the Plan shall be terminated (or if there shall be a partial termination of the Plan), each Player or Beneficiary affected thereby shall be vested with all benefits accrued to the date of termination, and each Member shall, prior to termination, make a contribution equal to the entire unfunded past service liability for each Player for which it is then liable to make a contribution under the provisions hereof. Upon termination, the Members may obtain deferred annuities for Players not yet retired and immediate annuities for retired Players and Beneficiaries then entitled to payments providing for the benefits to which such Player or Beneficiary is entitled, and upon termination such annuities or Certificates of such annuities shall be distributed in complete discharge of all of the rights of such Players and Beneficiaries in the Plan. After discharge of all liabilities, the remaining balance in any Member's account shall be returned to such Member. Any Contract purchased under this Plan shall contain terms implementing the foregoing.

Section 18.3. In the event that the balance in any Member's account is insufficient to discharge its liabilities in full, then such balance shall be allocated among its Employees (and their Beneficiaries) in such manner determined by the Committee as is consistent with applicable law.

ARTICLE 19 - MISCELLANEOUS

Section 19.1. The headings and subheadings in this

Plan have been inserted for the convenience of reference only, and are to be ignored in any construction of the provisions hereof.

Section 19.2. In the construction of this Plan, the masculine shall include the feminine and the neuter and the singular shall include the plural in all cases where such meanings would be appropriate.

Section 19.3. This Plan shall be construed, whenever possible to be in conformity with the requirements of the Internal Revenue Code and ERISA. To the extent not in conflict with the preceding sentence, and except to the extent that state law shall not have been preempted by the provisions of ERISA or any other laws of the United States heretofore or hereafter enacted, the Plan should be construed, administered and governed in all respects under and by the laws of the State of New York.

Section 19.4. This Plan is created for the exclusive benefit of the Players and their Beneficiaries. If any provision hereof is susceptible of more than one interpretation, then among those interpretations which are possible, that one shall always be adopted which will be consistent with this Plan's being a qualified Plan within the meaning of the Internal Revenue Code, as amended, or as it may be replaced by any sections of Federal law of like intent and purpose.

Section 19.5. This Plan is to be submitted to the United States Treasury Department to obtain rulings that the Plan and any Contract purchased hereunder qualify under applicable Internal Revenue Code provisions and regulations thereunder and that contributions to the Plan constitute deductions under appli-

cable Internal Revenue Code provisions and regulations thereunder. Notwithstanding any other provisions hereof, no Player shall have any vested right in any assets prior to the obtaining of an initial ruling from the Treasury Department as to the qualification of the Plan and any Contract purchased hereunder under said provisions and regulations. Any benefits which would by the terms of this Plan be payable to any Player, his Beneficiary or personal representative prior to the obtaining of the above-mentioned rulings shall be paid in the manner hereinbefore set forth only after such rulings are obtained. In the event such rulings shall not be obtained, the Members may terminate the Plan, in which event all the assets shall be paid to and revested in the Members.

EXHIBIT A

DENVER NUGGETS, INC.
1635 Clay Street
Denver, Colorado 80204

INDIANA PACERS L.P.
Market Square Center Building
151 North Delaware Street
Lower Concourse
Indianapolis, Indiana 46204

LONG ISLAND SPORTS, INC.
30 Park Avenue
Rutherford, New Jersey 07070

SPURS PROFESSIONAL BASKETBALL CLUB LTD.
Hemisfair Arena
P.O. Box 530
San Antonio, Texas 78292

DALLAS MAVERICKS
Reunion Arena
777 Sports Street
Dallas, Texas 75207

**NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN**

Restated Effective February 2, 1984

C-5-000001

NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN

TABLE OF CONTENTS

- I. DEFINITIONS
- II. ELIGIBILITY
- III. BENEFITS
- IV. CREDITED SERVICES
- V. FORMER PENSION BENEFITS
- VI. MEMBER'S CONTRIBUTIONS
- VII. DEATH BENEFITS
- VIII. NON-ALIENATION OF BENEFITS
- IX. FORFEITURES
- X. INCOME AND EXPENSES
- XI. MEMBER'S ACCOUNTS
- XII. INSURANCE CONTRACTS
- XIII. ADMINISTRATION OF PLAN
- XIV. LIABILITY AND STANDARD OF CARE OF COMMITTEE
- XV. CLAIMS PROCEDURE
- XVI. LIMITATION OF RIGHTS OF THE PLAYER
- XVII. PARTICIPATING MEMBERS
- XVIII. AMENDMENT OR TERMINATION OF PLAN
- XIX. MISCELLANEOUS

ARTICLE I
DEFINITIONS

1.1 "Active List" shall mean the list of Players who have signed "formal contracts" with a Member, and are otherwise eligible to participate in a Championship Game as certified to the Committee by each Member.

1.2 "Actuarial Equivalent" shall mean, unless specified otherwise, a benefit of equivalent value when computed on the basis of 7 percent interest and the 1971 Group Annuity Mortality Table (male rates).

1.3 "Actuarial Value" shall mean the present value of a benefit when computed on the basis of the actuarial assumptions specified under the Plan.

1.4 "Anniversary Date" shall mean any anniversary of the Effective Date of the Plan (February 2).

1.5 "Armed Services List" shall mean the list of those Players who have entered the Armed Services and are serving on active duty as certified to the Committee by each Member.

1.6 "Association" shall mean the National Basketball Association and its successors.

1.7 "Beneficiary" shall mean the person or persons designated by a Player to receive any benefits under this Plan. Where

a Player fails to designate a Beneficiary or where a Beneficiary fails to survive a Player, "Beneficiary" shall mean the Player's surviving spouse, if any, or, if none, his children, if any, in equal shares, or, if none, his personal representative. Any person entitled to receive benefits hereunder after the death of a Player shall also be deemed a Beneficiary for purposes of the Plan.

1.8 "Championship Game" shall mean any game included in the Association's schedule of Championship Games and shall not include playoff games or exhibition games.

1.9 "Committee" shall mean the Pension Committee referred to in Article 13 hereof.

1.10 "Contract" shall mean a Group Annuity Contract issued by an Insurer under this Plan, whether or not such Contract contains any element of life insurance protection. Any Contract may provide for the allocation of amounts received by an Insurer under the Plan to said Insurer's general account or to one or more of its separate accounts (including separate accounts maintained for the collective investment of assets of qualified retirement plans).

1.11 "Early Retirement Date" shall mean a date after the forty-fifth (45th) anniversary of the Player's date of birth, on which an election made by the Player for an Early Retirement Pension becomes effective, provided that the Player is not on the Roster of any Member during the Plan Year involved.

1.12 "Early Retirement Pension" shall mean the pension payable to a Player at his Early Retirement Date.

1.13 "Effective Date" shall mean February 2, 1965. "Restatement Effective Date" shall mean February 2, 1976. The "Effective Date of the Second Plan Restatement" shall, except as otherwise provided herein, mean February 2, 1984.

1.14 "Enrolled Actuary" shall mean a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under Subtitle C of Title III of ERISA.

1.15 "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and with which this Plan is intended to comply.

1.16 "Franchise" shall mean the right of any Member to participate in the Association as determined under the rules of the Association.

1.17 "Injured List" shall mean the list of Players who, due to injury or illness, have been temporarily removed from the Active List of a Member as certified to the Committee by each Member.

1.18 "Insurer" shall mean a legal reserve life insurance company which shall issue a Contract under which the Members shall participate upon execution of an agreement providing for such participation, and which is licensed to do business in the State of New York.

1.19 "Internal Revenue Code" shall mean the Internal Revenue Code of 1954, as amended from time to time, including the amendments thereto made by Title II of ERISA.

1.20 "Member" shall mean a member of the Association.

1.21 "Named Fiduciary" shall mean the Committee.

1.22 "National Consumer Price Index" shall mean the Consumer Price Index for urban consumers ("CPI-U").

1.23 "Normal Retirement Date" shall mean the fifty-third (53rd) anniversary of the Player's date of birth. Effective February 2, 1978, "Normal Retirement Date" shall mean the fiftieth (50th) anniversary of the Player's date of birth.

1.24 "Normal Retirement Pension" shall mean the pension payable to the Player at his Normal Retirement Date.

1.25 "Plan" shall mean the National Basketball Association Players' Pension Plan.

1.26 "Plan Administrator" shall mean the Committee.

1.27 "Plan Year" shall mean the twelve (12) month period beginning on the Effective Date, or any subsequent twelve (12) month period beginning on February 2 and ending on February 1 during which this Plan shall be in effect.

1.28 "Player" shall mean any person carried on any Player List, as defined in the By-Laws of the Association, or, where the

context permits, a person eligible to be carried on any such List or a person formerly carried on any such List.

1.29 "Qualified Joint and Survivor Annuity" shall mean a pension benefit payable for the life of a retired Player and continued upon his death for the life of the deceased Player's surviving spouse, if any, with the surviving spouse's periodic benefit to be at a level of 50 percent of the actuarially reduced benefit paid or payable for each such period to the Player during his lifetime.

1.30 "Regular Season" shall mean the period beginning on the date of the first game of the Association's schedule of Championship Games and ending at the end of the day before the first Playoff Game is played.

1.31 "Roster" shall mean (i) every Player on the Active List of any Member on February 2 of the Regular Season involved, (ii) for any Regular Season ending after February 2, 1965, every additional Player on the Injured List on February 2 of the Regular Season involved, without regard to whether such additional Player was on the Active List of any Member during such Regular Season and (iii) every other Player who was on the Active List of any Member for 50 percent or more of the total Championship Games played by the Member during the Regular Season involved. A Player, not otherwise considered to be on the Roster of any Member pursuant to the terms hereof, shall not be considered to be on the Roster of any Member by virtue of the fact that he has entered

into a "guaranteed" or "no-cut" contract on or after May 1, 1976, except to the extent that the Player and a Member have agreed that the Player shall be considered to be on the Roster with respect to any Plan Year during which such contract is in effect. Notwithstanding anything to the contrary, no Player shall be treated as having been on the Roster of any Member for any Plan Year for which all or part of his benefits were forfeited under the provisions of this Plan in existence prior to February 2, 1976.

"Roster" shall also include any Player on the Armed Services List of any Member on February 2 of the Regular Season involved, who is not otherwise considered to be on the Roster for such Regular Season, if, and to the extent, that applicable law requires the Player to be so treated.

1.32 "Supplemental Pension" shall mean the pension payable to a Player from his Supplemental Pension Account.

1.33 "Supplemental Pension Account" shall mean a segregated account to be maintained by the Insurer for each Player, as directed by the Committee and subject to the terms of this Plan.

1.34 "Suspended List" shall mean the list of those Players who, for proper cause, have been suspended by the Association or by a Member as certified to the Committee by each Member.

ARTICLE II

ELIGIBILITY

2.1 Every Player on the Roster of any Member during the Regular Season which included February 2, 1967 shall be eligible to participate as of February 2, 1968. Every Player on the Roster of any Member during the Regular Season which included February 2, 1966, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1970. Every Player on the Roster of any Member during the Regular Season which included February 2, 1965, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1973.

2.2 Every Player on the Roster of any Member during any Regular Season beginning subsequent to the Regular Season which includes February 2, 1967, not otherwise eligible hereunder, shall be eligible to participate as of the Anniversary Date during such subsequent Regular Season.

2.3 Notwithstanding anything herein to the contrary, for the sole purpose of determining when a Player is first eligible to participate hereunder, any Player on the Roster of any Member for any Regular Season ended before February 2, 1973 solely by reason of Section 1.31(ii) hereof shall not be eligible to participate hereunder by reason of being on such Roster until February 2, 1976. This Section shall not affect the eligibility of any Player by reason of Section 1.31(i) or Section 1.31(iii) hereof.

2.4 Every Player entitled to any benefit under the terms of the Pension Plan in existence prior to the adoption of this instrument shall continue to be eligible to receive such benefits.

ARTICLE III

BENEFITS

3.1 Every Player eligible to participate hereunder, who attains his Normal Retirement Date and who was on the Roster of any Member for any three Regular Seasons shall be entitled to a Normal Retirement Pension and any Supplemental Pension payable pursuant to Section 3.6 hereof.

3.2 The Normal Retirement Pension payable to a Player shall be paid to him commencing on the first day of the first month following said Player's Normal Retirement Date and shall continue to be paid on the first day of each month up to and including the month in which the Player dies and, except as otherwise provided in Sections 3.10 and 3.11, shall be paid as an annuity for the life of the Player ("Single Life Annuity") in an amount equal to:

(a) For a Player who becomes eligible to receive a Normal Retirement Pension on or before May 31, 1976, \$60 per month for each year of Credited Service.

(b) For a Player who becomes eligible to receive a Normal Retirement Pension on or after June 1, 1976 and on or before May 31, 1979, \$75 per month for each year of Credited Service.

(c) For a Player who becomes eligible to receive a Normal Retirement Pension on or after June 1, 1979 and on or before December 1, 1980, \$75 plus a cost-of-living adjustment (which adjustment shall be calculated by applying to \$75 the

percentage increase in the National Consumer Price Index between September 1975 and May 1979, and which shall be rounded off to the nearest whole dollar) per month for each year of Credited Service.

(d) For a Player who becomes eligible to receive a Normal Retirement Pension on or after December 2, 1980, the amount provided in Section 3.2(c) above, plus a cost-of-living adjustment (which adjustment shall be calculated by applying to the amount provided in Section 3.2(c) the percentage increase in the National Consumer Price Index between June 1979 and November 1980, and which shall be rounded off to the nearest whole dollar) per month for each year of Credited Service.

3.3 All the amounts provided for in Section 3.2 hereof shall be reduced by the Actuarial Equivalent (of a lifetime annuity beginning on the same date) of any benefit payable to a Player under Article 5 hereof.

3.4 Every Player who was on the Roster of any Member for any three Regular Seasons shall be entitled to elect to receive, in lieu of a Normal Retirement Pension, an Early Retirement Pension and shall be entitled to any Supplemental Pension payable pursuant to Section 3.6 hereof. Such election shall be made at least 90 days prior to the Early Retirement Date and shall be made in writing delivered to the Committee.

3.5 The Early Retirement Pension payable to a Player shall be paid to him commencing on the first day of the first month

following the Player's Early Retirement Date ("Early Retirement Pension Commencement Date") and, except as otherwise provided in Sections 3.10 and 3.11, shall be paid as a Single Life Annuity in an amount which shall be determined by reducing the Normal Retirement Pension that said Player would have been entitled to on his Normal Retirement Date by the product of $1/180$ and the total number of months the Player's Early Retirement Pension Commencement Date precedes the Player's Normal Retirement Date.

3.6 For Plan Years ending prior to February 2, 1973, the Insurer shall maintain a separate Supplemental Pension Account for each Player and \$100.00 (less a reasonable amount, as determined by the Committee, to reflect the administration expenses allocable to said Supplemental Pension Account) shall be added to said Account during each Plan Year that said Player is credited with a year of current service under Section 4.2 hereof. For Plan Years beginning on or after February 2, 1973 and ending on or before February 1, 1976, the Insurer shall maintain a separate Supplemental Pension Account for each Player and \$200.00 (less a reasonable amount, as determined by the Committee to reflect the administration expenses allocable to said Supplemental Pension Account) shall be added to said Account during each Plan Year that said Player is credited with a year of current service under Section 4.2 hereof. For Plan Years beginning on or after February 2, 1976, the Insurer shall continue to maintain a separate

Supplemental Pension Account for each Player having a Supplemental Pension Account on such date and the Insurer shall apply the amount therein (as adjusted pursuant to Section 3.8 hereof) to provide such Player with a Supplemental Pension in accordance with Section 3.9 hereof. No additional amount shall be added to any Supplemental Pension Account for Plan Years beginning on or after February 2, 1976, except for the adjustments made pursuant to Section 3.8 hereof.

3.7 The funds in all Supplemental Pension Accounts maintained by the Insurer shall be invested by the Insurer in a segregated account, as directed by the Committee, in such securities as the Insurer deems advisable. In giving such directions, the Committee shall consult with a representative designated by the Players Association in order to reach an agreement with respect to such directions. In the absence of an agreement between the Committee and said representative, the Committee shall follow the directions of the Players Association.

3.8 As of December 31 of each year, and at such other times as is necessary to calculate any benefits payable hereunder, the Insurer shall value all of the assets representing the funds held in all Supplemental Pension Accounts, based on their respective market values on said valuation date, and as of said valuation date the Supplemental Pension Account of any Player shall be adjusted to reflect the effect of contributions, income collected and accrued and realized and unrealized profits and losses for the period since the most recent previous valuation date.

3.9 The Supplemental Pension payable to any Player shall be the Actuarial Equivalent of said Player's Supplemental Pension Account on his Normal Retirement Date or Early Retirement Date, as the case may be, and shall be paid to him at the same time as the payment to him of a Normal Retirement Pension or Early Retirement Pension, as the case may be.

3.10 (Effective up to February 2, 1985). Subject to the provisions of subparagraph (a) of this Section, if a Player is married on his Early Retirement Date or his Normal Retirement Date, as the case may be, his Early Retirement Pension or Normal Retirement Pension and any Supplemental Pension shall be paid in the form of a Qualified Joint and Survivor Annuity under which the Player's pension is reduced so that the resulting pension payable to the Player and his spouse shall be the Actuarial Equivalent of his Early Retirement Pension or Normal Retirement Pension and any Supplemental Pension otherwise payable.

(a) The preceding paragraph shall not apply if the Player, on or before the date on which his benefits commence, files an election (which is not revoked prior to the date on which his benefits commence) in writing with the Insurer pursuant to which he becomes entitled to the payment of the pension in a form other than a Qualified Joint and Survivor Annuity. In no event shall such election period expire before 90 days following the furnishing of all information required by the applicable provisions of the Internal Revenue Code and the regulations thereunder;

and, if necessary, the commencement of benefits shall be delayed until the end of such 90-day period.

3.10 (Generally Effective February 2, 1985).

(a) Subject to the waiver and consent provisions of paragraphs (b) and (c) of this Section, if a Player is married on his Early Retirement Date or his Normal Retirement Date, as the case may be, his Early Retirement Pension or Normal Retirement Pension and any Supplemental Pension shall be paid in the form of a Qualified Joint and Survivor Annuity under which the Player's pension is reduced so that the resulting pension payable to the Player and his spouse shall be the Actuarial Equivalent of his Early Retirement Pension or Normal Retirement Pension and any Supplemental Pension otherwise payable.

(b) (i) The provisions of paragraph (a) shall not apply to a married Player if such Player files a written election with the Committee to have his pension paid in a form other than a Qualified Joint and Survivor Annuity. Any election to waive the Qualified Joint and Survivor Annuity shall be subject to the provisions of subparagraphs (ii) and (iii) of this paragraph (b).

(ii) A Player may waive the Qualified Joint and Survivor Annuity within the 90 day period prior to the date on which his benefits commence, subject to consent of the spouse as set forth in paragraph (c) below. A Player who has waived the Qualified Joint and

Survivor Annuity may subsequently cancel his waiver at any time prior to the date his payments commence, by filing a proper waiver or cancellation of waiver with the Committee.

(iii) Notwithstanding anything to the contrary herein contained, no election of an optional form of payment under Section 3.11 shall be valid unless and until the Qualified Joint and Survivor Annuity has been waived in accordance with this Section 3.10.

(c) (i) Effective with respect to payments commencing after January 1, 1985, the spouse of the Player who waives the benefits under paragraph (b) above, must consent to the waiver, when initially made. Such consent shall be in writing, shall be irrevocable, shall acknowledge the effect of such consent, and shall be witnessed by a notary public; provided, however, that if it is established to the satisfaction of the Committee that the spouse of the Player cannot be located, such consent will not be required. Any such consent shall be effective only with respect to the spouse who gives the consent.

(ii) The consent of the spouse as set forth in subparagraph (i) above shall also be required to the designation of any Beneficiary other than the spouse, and to any change in such designation.

(iii) If the Secretary of the Treasury issues

regulations which set forth special circumstances under which the consent of the spouse to a waiver will not be required pursuant to Section 417 of the Code, then no consent of a spouse will be required under those circumstances under this Plan with respect to a waiver of the Qualified Joint and Survivor Annuity.

(d) (i) A reasonable time before the date on which a Player's benefits commence, the Committee will supply the Player with an explanation of rights with respect to the Qualified Joint and Survivor Annuity, and a general explanation of the financial effect on the Player's benefit if he decides to accept the Qualified Joint and Survivor Annuity.

(ii) Any explanation under subparagraph (i) above shall contain:

(A) the terms and conditions of the Qualified Joint and Survivor Annuity;

(B) the Player's right to make, and the effect of, an election to waive the Qualified Joint and Survivor Annuity;

(C) the rights of the Player's spouse under paragraph (c) above; and

(D) the right to make, and the effect of, a revocation of an election to waive the Qualified Joint and Survivor Annuity.

(e) If a Player is not married on his Early Retirement

Date or his Normal Retirement Date, as the case may be, the provisions of paragraphs (b)(ii) and (iii) and paragraph (d) of this Section 3.10 shall apply with respect to an election by such Player to have his pension paid in a form other than a Single Life Annuity; except that for purposes of these provisions, the term "Single Life Annuity" shall be substituted for the term "Qualified Joint and Survivor Annuity."

(f) The provisions of this Section 3.10 shall be effective as of February 2, 1985, except as may otherwise be provided hereunder or under Section 303(c)(2) and Section 303(e) of the Retirement Equity Act of 1984.

3.11 (a) Every Player electing not to receive a Qualified Joint and Survivor Annuity or Single Life Annuity (whichever is applicable) under Section 3.10, may elect to receive, in lieu of the Normal Retirement Pension or Early Retirement Pension and any Supplemental Pension provided for in this Article, the Actuarial Equivalent of such pension payable on the date that said pension would otherwise have become payable in one or more of the following ways:

(i) Installments for Life - Paid in equal monthly installments for as long as the Player shall live.

(ii) Installments of Fixed Amount - Paid in installments of a specified amount each month.

(iii) Installments for a Fixed Period - Paid in

equal monthly installments for a fixed number of years.

(iv) Installments for a Fixed Period and Life Thereafter - Paid in equal monthly installments for a fixed number of years and for so long thereafter as the Player shall live.

(v) Joint and Survivorship Annuity - Paid in equal monthly installments to the Player, terminating with the last monthly installment before his death. Following the death of the Player after this option becomes effective, monthly installments shall be continued to the person he named as his joint annuitant, terminating with the last monthly installment before the joint annuitant's death. The amount of each installment payable to the joint annuitant shall be equal to 100 percent of the monthly amount which was payable to the Player, or to a lesser percentage, as specified by the Player in his election of this option.

(vi) Social Security Option - Paid in monthly installments, to the extent permitted by ERISA, so long as the Player shall live, in such amounts so as to enable the Player to receive an approximately equal amount each month taking into consideration the benefits hereunder and the estimated primary benefits payable under the Social Security Act.

(vii) Lump Sum - Paid to the Player in one Lump Sum.

(b) An application for an optional method of settlement under this Article shall be made at least two years prior to the start of any pension, or at such later date approved by the Insurer, and shall be made in writing delivered to the Committee.

3.12 Any optional method of settlement selected under this Article shall become effective on the date on which the Player's benefits hereunder commence.

3.13 (a) Where any of the optional methods of settlement described in Sections 3.11(a)(ii)-(iv) is selected hereunder, the periods over which installments are payable to the Player and his designated Beneficiary shall not exceed the joint life and last survivor expectancy of the Player and such Beneficiary; provided, however, that under any optional method of settlement, if the designated Beneficiary is someone other than the Player's spouse, the Player must anticipate receiving more than 50% of the actuarial value of his benefits calculated as of his Normal or Early Retirement Date, whichever is applicable.

(b) Notwithstanding anything to the contrary contained herein, the benefits payable to a designated Beneficiary upon the death of a Player prior to the distribution of any benefits to such Player or upon the death of the Player's spouse before distributions to such spouse had begun shall be subject to the following requirements:

(i) If the benefits are being paid to the spouse of a Player, such payments must commence not

later than one year after the Player's death, and must be paid over a period not longer than the life (or life expectancy) of the spouse.

(ii) If the benefits are being paid to a non-spouse Beneficiary, such payments must commence not later than one year after the Player's death (or spouse's death, if applicable), and must be made over a period not longer than the life (or life expectancy) of such Beneficiary.

If the requirements of subparagraphs (i) or (ii) (whichever are applicable) are not satisfied, any benefits to be paid to a designated Beneficiary under the circumstances described in this paragraph (b) shall be paid in installments within five years after the Player's death (or, spouse's death, if applicable).

(c) Notwithstanding anything to the contrary contained herein, if the distribution of benefits has commenced to a Player and if the Player dies before his entire interest has been distributed to him, any distributions made after the death of the Player shall be made at least as rapidly as under the method of distribution in effect prior to the Player's death.

(d) For purposes of this Section 3.13, if the Beneficiary is the Player's spouse, their joint life expectancies may be redetermined annually; if the Beneficiary is not the Player's spouse, only the Player's life expectancy may be redetermined annually.

3.14 If any Player or Beneficiary is, in the judgment of the Committee, legally, physically or mentally incapable of personally receiving and receipting for any payment due hereunder, payment may be made to the guardian or other legal representative of such Player or his Beneficiary, or, if none, to such other person, or institution, who, in the opinion of the Committee, is then maintaining or has custody of such Player or his Beneficiary. Such payments shall constitute a full discharge with respect thereto.

3.15 (a) If the payment of a pension under this Plan is to be made in any of the optional forms described in Section 3.11, the Actuarial Equivalent of such pension is to be determined by the Plan's Enrolled Actuary on the following basis:

(i) If payments are to be made under the optional form over a period shorter than the life expectancy of the Player, the amount of the payment will be computed on the basis of the 1971 Group Annuity Mortality Table (male rates) and the interest rate promulgated by the Pension Benefit Guaranty Corporation, as in effect as of the January 1 preceding the date of payment, for the valuation of immediate annuities in terminated single employer pension plans.

(ii) If payments are to be made under the optional form over a period equal to or longer than the life expectancy of the Player, the amount of the payment will be computed on the basis of the 1971 Group Annuity

Mortality Table (male rates) and 7 percent interest.

(b) The provisions of this Section 3.15 shall be effective for any pension that first becomes payable after February 1, 1984.

3.16 (a) Effective February 2, 1985, if the present value of a Player's pension under the Plan is greater than \$3,500, and if the Player (and, if required, the Player's spouse, if any) consents to receive such pension, the pension shall be paid to him commencing at the time prescribed under Section 3.2 (or, if applicable, Section 3.5). If the Player (or, if required, the Player's spouse, if any) does not consent to receive his pension at such time, then, notwithstanding any other provision of this Plan to the contrary, his pension shall be paid to him commencing on the first day of the first month following the Player's attainment of age 62.

(b) For purposes of this Section 3.16: (i) "present value" shall be determined in accordance with Section 3.15(a)(i); and (ii) if the pension of a married Player under this Plan is to be paid in the form of a Qualified Joint and Survivor Annuity, consent of the Player's spouse shall not be required under paragraph (a) above.

ARTICLE IV

CREDITED SERVICES

4.1 Every Player eligible to participate hereunder shall be credited with one year of Credited Service for each year that said Player was on the Roster of any Member for any Regular Season prior to the Regular Season for which said Player is first eligible to participate hereunder ("past service").

4.2 Every Player eligible to participate hereunder shall be credited with one year of Credited Service for each year that said Player is on the Roster of any Member for any Regular Season beginning with the Regular Season for which said Player is first eligible to participate hereunder ("current service").

ARTICLE V

FORMER PENSION BENEFITS

5.1 The Members have caused the Contract formerly in existence with Continental Assurance Company to be discontinued in accordance with the terms of such Contract and have continued the Single Premium Endowment Insurance of all Players insured thereunder in the same amount as Paid-up Endowment Insurance, to be paid to said Players in accordance with the terms of said Contract.

5.2 In addition to all benefits provided hereunder, and notwithstanding any other provision of the Plan to the contrary, every Player on the Active List of any Member on February 2, 1965, February 2, 1966 or February 2, 1967, or his Beneficiary, shall be entitled to receive such benefits as are payable under the Paid-up Endowment Insurance Contract referred to in Section 5.1 hereof, upon such conditions and subject to such options as are set forth in said Paid-up Endowment Insurance Contract.

ARTICLE VI

MEMBER'S CONTRIBUTIONS

6.1 On or before July 1 of each Plan Year every Member shall pay to the Insurer an amount necessary to fund the benefits for its Players in accordance with the rules set forth in this Article, and in order to prevent a deficiency in the funding standard account as required by the Internal Revenue Code and ERISA.

6.2 The annual cost of funding for the current and past service benefits for any Player on the Active List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1981), or on the Injured List on February 2, 1973 (or on any subsequent February 2, prior to February 2, 1981), shall be paid by the Member on whose Active List or Injured List, as the case may be, the Player appears on February 2 of the Plan Year involved. The annual cost of funding for the current and past service benefits for any Player on the Active List or Injured List on February 16, 1981 (or on any subsequent February 16) shall be paid by the Member on whose Active List or Injured List, as the case may be, the Player appears on February 16 of the Plan Year involved.

6.3 The annual cost of funding for the current and past service benefits for any Player (i) on the Suspended or Armed Services List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1981), or on the Injured List on February 2, 1968 (or any subsequent February 2, prior to Febru-

ary 2, 1973), and (ii) on the Active List of any Member for 50 percent or more of the total Championship Games played by each Member during the Regular Season which includes such February 2 and which ended before February 2, 1981, shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved. The annual cost of funding for the current and past service benefits for any other Player on the Roster during the Plan Year involved shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved.

6.4 The annual cost of funding for the past service benefits for any Player not on any Roster during the Plan Year involved shall be paid by the Member having rights to the services of such Player, as a Player, on February 16 of the Plan Year involved (or February 2, if the Plan Year involved ended prior to February 2, 1981) or, if no Member has such rights on said February 16 (or February 2, as the case may be), by the Member last having such rights prior to said February 16 (or February 2, as the case may be).

6.5 The annual amount necessary to fund the current service benefits shall be equal to:

(a) The Actuarial Value of the benefits for current service; and

(b) \$100 (for Plan Years ending prior to February 2, 1973) and \$200 (for Plan Years beginning on or after February 2,

1973 and ending on or before February 1, 1976), for each Player entitled to be credited with a year of current service for such Plan Year.

6.6 The annual amount necessary to fund the past service benefits shall be that amount which if paid in equal annual installments over thirty (30) years from the date or dates such past service benefits are effective, or over such shorter period of years determined by the Enrolled Actuary that will result in an approximately equivalent amortization schedule, will accumulate to the Actuarial Value of such benefits, taking into account interest at the rate adopted by the Committee.

6.7 In no event shall the "annual retirement pension", payable to any Player under this Plan and any other defined benefit plan maintained by a Member, exceed for any Limitation Year, the lesser of (a) \$90,000 (the "Dollar Amount") or (b) 100 percent of the Player's average compensation for the period of three consecutive calendar years yielding the highest such average and during which he was a Player. If the annual retirement pension commences before the Player attains age 62, in determining the maximum allowable benefit otherwise payable under paragraph (a) of this Section, the Dollar Amount shall be adjusted so that it is the Actuarial Equivalent of a \$90,000 annual benefit beginning at age 62, based on the greater of the interest rate assumption used under the Plan or on an assumption of 5% per annum; provided, however, that the reduction shall not cause the maximum allowable

benefit payable beginning at or after age 55 to be less than \$75,000; and further provided that the maximum allowable benefit beginning prior to age 55 shall be the Actuarial Equivalent of a \$75,000 benefit beginning at age 55, based on the greater of the interest rate assumption under the Plan or on an assumption of 5% per annum. For purposes of this Section, "compensation" shall mean the Player's wages, salaries, and other amounts received for personal services rendered for a Member.

6.8 If the annual retirement pension is payable in a form other than a Single Life Annuity or a Qualified Joint and Survivor Annuity, for purposes of determining the maximum allowable benefit payable under Section 6.7, the retirement pension shall be adjusted so that it is the Actuarial Equivalent of a single life annuity. In making this adjustment, the interest rate assumption shall not be less than the greater of five percent or the rate specified in the Plan.

6.9 In the event that the annual retirement pension payable to a Player under this Plan and all other defined benefit plans of a Member does not exceed \$10,000 for a Limitation Year, and if the Player has not at any time participated in a defined contribution plan maintained by a Member, the limitations otherwise imposed by Section 6.7 and the adjustments described in Section 6.8 shall not apply.

6.10 If a Player has less than ten (10) years of Credited

Service at the time in which he is entitled to receive benefits under the Plan, the limitations described in Section 6.7 and, if applicable, the \$10,000 amount described in Section 6.9, shall be reduced by multiplying the applicable limitation by a fraction, the numerator of which is the number of years (or part thereof) of Credited Service and the denominator of which is ten.

6.11 If a Player is also a participant in a defined contribution plan maintained by a Member, the "annual additions" (as defined in Section 415(c)(2) of the Internal Revenue Code) to such defined contribution plan for such Player shall be limited so that the sum of the "Defined Benefit Fraction" and the "Defined Contribution Fraction" of such Player for any Limitation Year shall not exceed 1.0.

For purposes of this section:

(a) The Defined Benefit Fraction shall mean a fraction, the numerator of which shall be the Player's projected annual benefit under the defined benefit plan of the Member (determined as of the close of the Limitation Year), and the denominator of which shall be the lesser of (i) 1.25 multiplied by the dollar limitation in effect under Section 415(b)(1)(A) of the Internal Revenue Code for such Limitation Year or (ii) 1.4 multiplied by the compensation limitation determined under Section 415(b)(1)(B) of the Code for such Player for that Limitation Year.

(b) The Defined Contribution Fraction shall mean a fraction, the numerator of which shall be the sum of the annual

additions credited to the Player's account under the defined contribution plan of the Member (determined as of the close of the Limitation Year), and the denominator of which shall be the sum of the "defined contribution denominator increments" for the Limitation Year, and for each prior Limitation Year in which the Player had a year of Credited Service. For each such Limitation Year, the defined contribution denominator increment shall be the lesser of (i) 1.25 multiplied by the dollar limitation in effect under Section 415(c)(1)(A) of the Internal Revenue Code for such Limitation Year or (ii) 1.4 multiplied by the compensation limitation determined under Section 415(c)(1)(B) of the Code for such Player for that Limitation Year.

6.12 (a) In applying the limitations described in Sections 6.7 through 6.11, the Limitation Year shall be the 12-month period corresponding with the Plan Year.

(b) The limitations described in Sections 6.7 through 6.11 shall be effective as of February 2, 1983.

ARTICLE VII
DEATH BENEFITS

7.1 (a) In the event of the death of a married Player prior to the date as of which the payment of his Early Retirement Pension or Normal Retirement Pension, as the case may be, becomes effective, except as otherwise provided in Section 7.2, such Player's spouse shall be entitled to a monthly benefit payable as an annuity for her life in an amount (the "Preretirement Survivor Annuity") equal to the greater of:

(i) The Actuarial Equivalent of the Supplemental Pension Account that said Player would have been entitled to receive if his date of death had been his Normal Retirement Date, plus the excess, if any, of an amount equal to the Actuarial Equivalent on the date of death of the Normal Retirement Pension based on the Credited Service earned to the date of death, over the Actuarial Equivalent of the proceeds of any group life insurance policy (exclusive of any such proceeds paid because of accidental death) maintained and paid for by a Member on the life of a Player; or

(ii) 50% of the benefit the Player would have received:

(A) in the case of a Player whose date of death occurs after his attainment of age 45, had such Player begun to receive his benefit under the Plan (as adjusted under Section 3.5, if applicable)

on the day before his date of death in the form of a Qualified Joint and Survivor Annuity; or

(B) in the case of a Player whose date of death occurs prior to his attainment of age 45, had such Player survived until the attainment of such age and elected to receive his benefit under the Plan (as adjusted under Section 3.5) commencing on the first day of the first month following his attainment of age 45 in the form of a Qualified Joint and Survivor Annuity.

(b) Notwithstanding paragraph (a) of this Section, the surviving spouse of the Player may elect to receive the Actuarial Equivalent of the Preretirement Survivor Annuity in the form of a lump sum payment. Such election shall be in writing and shall be filed with the Committee within a reasonable time prior to the commencement of benefits under this Section.

(c) (i) Payments under the Preretirement Survivor Annuity under paragraph (a) of this Section shall commence on the first day of the first month following the date that the Player would have attained age 45 had he survived or, if the Player's death occurs after his attainment of age 45, as soon as possible after the Committee is notified of the Player's death.

(ii) The payment of the Actuarial Equivalent of the Preretirement Survivor Annuity in a lump sum under paragraph (b) of this Section shall be made as soon as

practicable after the Committee is notified of the Player's death; except that if the Player's death occurs prior to his attainment of age 45, the surviving spouse may elect in writing to defer the commencement of the benefit payable in the form of a lump sum until the first day of the first month following the date the Player would have attained age 45 had he survived.

7.2 In the event of the death of an unmarried Player, or the death of a married Player who has elected, subject to the consent of the spouse as set forth in Section 3.10(c)(ii), a Beneficiary other than his spouse, prior to the date as of which the payment of such Player's Early Retirement Pension or Normal Retirement Pension, as the case may be, becomes effective, said Player's Beneficiary shall be entitled to receive a cash settlement, in a lump sum, equal to (i) 100% of the Supplemental Pension that said Player would have been entitled to receive if his date of death had been his Normal Retirement Date, and (ii) plus the excess, if any, of an amount equal to the Actuarial Equivalent on the date of death of the Normal Retirement Pension based on the Credited Service earned to the date of death, over the proceeds of any group life insurance policy (exclusive of any such proceeds paid because of accidental death) maintained and paid for by a Member on the life of a Player. Such payment shall be made as soon as practicable after the Committee is notified of such Player's death.

7.3 (a) Each Player, upon becoming eligible to participate

under the Plan, may designate a Beneficiary to receive any benefits payable under the Plan in the event of his death. In the absence of any such designation, the provisions of Section 1.7 shall govern with regard to the payment of benefits to a Beneficiary after the death of the Player. Any designation under this Section shall be in writing and shall be filed with the Committee. A Player may change his Beneficiary at any time prior to the commencement of his benefits by filing a new designation with the Committee.

(b) Effective with regard to payments commencing after January 1, 1985, if the Beneficiary designated by the Player is not his spouse, such designation must be consented to by his spouse in accordance with the provisions of Section 3.10(c).

7.4 Upon the death of a Player after the date as of which the payment of his Early Retirement Pension or Normal Retirement Pension, as the case may be, becomes effective, no further payments shall be made other than those, if any, specified in the benefit to which the Player is entitled.

7.5 The provisions of this Article VII shall be effective as of February 2, 1985, except as may otherwise be provided hereunder or under Section 303(c)(2) and Section 303(e) of the Retirement Equity Act of 1984.

ARTICLE VIII

NON-ALIENATION OF BENEFITS

8.1 No benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void, nor shall any such benefit be in any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefit.

8.2 If any Player or any Beneficiary under the Plan is adjudicated bankrupt or attempts to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge any benefit under the Plan, except as specifically provided in the Plan, then such benefit shall, in the discretion of the Committee, cease and terminate and in that event the Committee shall hold or apply the same or any part thereof to or for the benefit of such Player or Beneficiary in such manner as the Committee may deem proper.

8.3 If any court of competent jurisdiction issues an order inconsistent with this Section, and the Committee thereafter notifies the Player or any Beneficiary of such order, then, unless and until such order is set aside, the following provisions shall apply:

(a) No action shall be required by the Association, Insurer, Committee or any other person to prevent such order from

being complied with.

(b) Thirty days after giving such notice, such order may be complied with.

8.4 Notwithstanding the foregoing provisions of this Article, effective January 1, 1985, the Plan shall pay benefits pursuant to a domestic relations order which, as determined by the Committee, constitutes a "qualified domestic relations order" within the meaning of Section 414(p) of the Code.

ARTICLE IX
FORFEITURES

9.1 To the extent that the amount funded for any Player exceeds the amount necessary to pay the benefits to which said Player or his Beneficiary becomes entitled hereunder, such excess shall be treated as a forfeiture and shall serve to reduce the contribution of the Member or Members affected thereby and shall not be applied to increase the benefits of any other Player hereunder. Such forfeitures shall be allocated among the Members, on an actuarial basis, in order to give due consideration to the amount contributed on behalf of such Player by such Members.

9.2 If the Committee is unable to make payment under the Plan because it is unable to find the Player or Beneficiary to whom payment is to be made, the Player's benefit under the Plan shall be forfeited as of the last day of the Plan Year in which the Committee determines that it is unable to find such Player or Beneficiary. If the Player or Beneficiary later makes a claim for such payment and the Committee determines that the claim is valid, the amount of the Player's benefit when forfeited shall be restored and payment made within 60 days of such determination.

ARTICLE X

INCOME AND EXPENSES

10.1 At the end of each Plan Year, or at such other times set forth in any Contract, all income (including dividends paid by the Insurer on any Contract) earned on the funds held by the Insurer (other than on funds held in Supplemental Pension Accounts) shall be allocated to each Member's account based on the assets allocable to such Member from time to time during such Plan Year.

10.2 All expenses of the Plan shall be paid from the funds held by the Insurer or directly by the Members. At the end of each Plan Year, or at such other times set forth in any Contract, the expenses of the Plan paid from the funds held in Supplemental Pension Accounts shall be charged, pro rata, to said Accounts and the expenses paid from any other funds shall be charged pro rata, to each Member's account, unless paid directly by such Member.

ARTICLE XI

MEMBER'S ACCOUNTS

11.1 The Insurer shall maintain a separate account for each Member to which it shall credit each Member's allocable share of Member's contributions (other than those provided for in Section 6.5(b) hereof) and to which it shall charge each Member's allocable share of benefits paid to Players, losses and expenses.

11.2 The benefits payable hereunder to each Player shall be allocated among the Members, on an actuarial basis, in order to give due consideration to the amount contributed on behalf of such Player by such Member.

ARTICLE XII
INSURANCE CONTRACTS

12.1 One or more Contracts may be purchased in order to carry out the terms of the Plan from such Insurer or Insurers as the Members, in their absolute discretion, shall choose. Such Contracts shall cover the Players in the Plan and may be amended from time to time.

12.2 The Players shall not have any right, title, interest, or ownership in and to any Contract which shall be purchased pursuant hereto. Except as otherwise provided herein, in no event may any of the avails or proceeds of any Contract be recoverable or revert, directly or indirectly, to any member or be diverted to any purpose other than for the exclusive benefit of the Players and Beneficiaries covered hereunder.

12.3 The provisions for the form and mode of benefit payments under this Plan shall be subject to all of the terms and conditions of any and all Contracts purchased pursuant to Section 12.1 hereof.

12.4 The Contracts shall provide that any death benefit payable thereunder shall be payable to the Beneficiary and shall reserve to the Contract holder such rights as are necessary to implement this Plan. The signature of any Player may be required for the exercise of any such right.

12.5 No Insurer shall be considered to be a party to this

Plan, nor shall it have any responsibility for the validity of this Plan. Its sole liability shall be its liability as stated in each Contract which it may issue.

12.6 The Insurer shall be fully protected from any liability in assuming that the Plan has not been amended or changed until notice of any amendment or change in any of the terms thereof has been received by the Insurer.

12.7 The Insurer shall be fully protected in accepting, from the Members, or the Committee, premiums on or instructions in connection with Contracts which it may issue or may have issued under this Plan and shall have no responsibility to make an inquiry as to the authority to make such payment or to give such instructions.

ARTICLE XIII

ADMINISTRATION OF PLAN

13.1 The general administration of the Plan shall be placed in a Committee, consisting of at least three persons, who shall be appointed from time to time by the majority vote of all of the Members.

13.2 The members of the Committee shall elect a Chairman from their number, and a Secretary who may be, but need not be, one of the members of the Committee, and shall designate an Enrolled Actuary to act in actuarial matters relating to the Plan. They may appoint from their number such committees with such powers as they shall determine, may authorize one or more of their number or any agent to make any payment in their behalf, or to execute or deliver any instrument except that a requisition for funds from the Insurer shall be signed by two members of the Committee. The Committee may employ counsel and agents and such clerical, medical and accounting services as they may require in carrying out the provisions of the Plan.

13.3 The Committee shall hold meetings upon such notice, at such place or places, and at such time or times as they may from time to time determine.

13.4 A majority of the members of the Committee at the time in office shall constitute a quorum for the transaction of business. All resolutions or other actions taken by the Committee at

any meeting shall be by vote of a majority of the Committee at the time in office.

13.5 No member of the Committee shall receive any compensation from the Plan for his services as such.

13.6 Subject to the limitations of the Plan, the Committee from time to time shall establish rules for the administration of the Plan and the transaction of its business. The Committee shall take such steps as are considered necessary and appropriate to remedy any inequity that results from incorrect information received or communicated in good faith or as the consequence of an administrative error. The Committee shall interpret the Plan and shall determine the answers to questions arising in the administration, interpretation and application of the Plan and shall endeavor to act, whether by general rules or by particular decisions, so as not to discriminate in favor of or against any Player. The Committee may correct any defect, reconcile any inconsistency or supply any omission. All Players in similar circumstances shall be treated as nearly uniformly as practicable.

13.7 The Committee shall keep all records relating to Players including former Players and such other records as are necessary for the proper operation of the Plan.

13.8 The Committee shall take such steps as are necessary to insure that all reporting and disclosure requirements imposed upon the Plan by applicable Federal law, any amendments thereto, regu-

lations thereunder, or any other official published interpretation thereunder, are complied with.

13.9 The Committee shall discharge its duties in accordance with the requirements of applicable Federal law, any amendments thereto, regulations thereunder or any other official published interpretation thereunder.

13.10 The Committee shall arrange for such bonding as is required by law but no bonding in excess of the amount required by law shall be considered required by this Plan.

13.11 The Committee shall be indemnified by the Members against expenses reasonably incurred by it in connection with any action, to which it may be a party, by reason of its service as a Committee, except in relation to matters as to which it shall be adjudged in such action to be liable for gross negligence or willful misconduct in the performance of its duty.

13.12 The Committee shall adopt from time to time standards for use in all actuarial calculations required in connection with the Plan, and shall establish the amount of contributions under the Plan as provided herein. As an aid to the Committee in adopting tables and in fixing the amount of contributions payable under the Plan, the Enrolled Actuary designated by the Committee shall make annual actuarial valuations with respect to the operation and administration of the Plan and shall certify to the Committee the tables and amount of contributions which he recommends for use by the Committee.

13.13 The Committee shall arrange for the maintenance of accounts showing the fiscal transactions of the Plan, and for the keeping in convenient form of such data as may be necessary for actuarial valuations with respect to the operation and administration of the Plan. The Committee shall prepare, from time to time, a report giving a brief account of the operation of the Plan. Such report shall be submitted to the Members.

13.14 The Committee shall be entitled to rely upon all tables, valuations, certificates and reports furnished by the Enrolled Actuary designated by the Committee, and upon all opinions given by any legal counsel selected or approved by the Members. The Committee shall not be liable for any action taken or suffered by them in good faith in reliance upon any such Enrolled Actuary or counsel.

13.15 The Committee shall be responsible for exercising any and all rights under the Contracts, including the right to designate the portion of the premium paid to the Insurer which shall be invested in equity securities.

13.16 The Committee may appoint an Insurer under this Plan to act as an investment manager to manage any assets of the Plan; provided that (a) the Insurer is qualified under the laws of more than one state, to perform such services and (b) the Insurer has acknowledged, in a writing delivered to the Committee, that it is a fiduciary with respect to the Plan.

13.17 The Committee may waive the provisions of Sections 4204(a)(3)(A) and 4204(a)(3)(B) of the Multiemployer Pension Plan Amendments Act of 1980 requiring a Member that disposes of its franchise to any new Member, under certain conditions, to post a bond, or place an amount in escrow, with the Plan; provided that, the new Member posts a bond, or otherwise provides security acceptable to the Committee, in an amount that is not less than the amount of the bond (or escrow) that the Member that disposed of its franchise would have otherwise been required to provide. Any such bond or other security provided by the new Member shall be in addition to any other bond (or other security) required to be provided by the new Member. Except as described above or as may be determined by the Committee in a manner consistent with their fiduciary duties described in Article XIV of the Plan, nothing contained herein shall give the Committee the right to otherwise relieve the Member that disposed of its franchise of any liability imposed upon it by the Multiemployer Pension Plan Amendments Act of 1980.

ARTICLE XIV

LIABILITY AND STANDARD OF CARE OF COMMITTEE

14.1 Each member of the Committee and any other fiduciary with respect to the Plan shall discharge his duties with respect thereto (a) solely in the interest of Players and their Beneficiaries; (b) for the exclusive purpose of providing benefits to Players and their Beneficiaries and defraying reasonable expenses of administering the Plan; (c) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and (d) in accordance with the provisions of the Plan insofar as such provisions are not inconsistent with applicable law. As used herein, the term "fiduciary" shall have the meaning ascribed to it in Section 3(21) of ERISA.

14.2 No fiduciary with respect to the Plan shall be liable for an act or omission of another person resulting in a breach by such other person of his fiduciary responsibility with respect to the Plan, except to the extent that:

(a) such fiduciary participated knowingly in, or knowingly undertook to conceal, an act or omission of such other person, knowing such act or omission to be a breach of fiduciary responsibility;

(b) such fiduciary, by his failure to comply with the provisions of the preceding Section of the Plan or with Section

404(a)(1) of ERISA in the administration of his specific responsibilities which give rise to his status of a fiduciary, has enabled such other person to commit a breach of fiduciary responsibility;

(c) such fiduciary has knowledge of a breach of fiduciary responsibility by such other person, unless he makes reasonable efforts under the circumstances to remedy the breach; or

(d) such fiduciary is a "named fiduciary" (as such term is defined in Section 402(a)(2) of ERISA) and has violated his duties under Section 404(a)(1) of ERISA:

(i) with respect to the allocation of fiduciary responsibilities among "named fiduciaries" or the designation of persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan;

(ii) with respect to the establishment or implementation of procedures for allocating fiduciary responsibilities among "named fiduciaries" or for designating persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan; or

(iii) in continuing the allocation of fiduciary responsibilities among "named fiduciaries" or the designating of persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan.

14.3 Notwithstanding anything to the contrary contained herein, no member of the Committee or other fiduciary with respect to the Plan shall incur any liability for any act or omission to

the extent he would not be liable therefor under Part 4 of Subtitle B of Title I of ERISA and to the extent such act or omission is not the result of his own gross negligence or wilful misconduct.

14.4 The Members shall indemnify each member of the Committee and any other individual to whom a fiduciary responsibility with respect to the Plan is allocated or delegated from and against all liabilities, costs and expenses incurred by such person as a result of act, omission or conduct in connection with the performance of his fiduciary duties, responsibilities and obligations under the Plan and under ERISA, except with respect to liabilities and claims arising from such person's own wilful misconduct or gross negligence. The Members may obtain, pay for and maintain a policy or policies of insurance, the proceeds of which may be used in satisfying its obligations under this Section.

ARTICLE XV

CLAIMS PROCEDURE

15.1 Any request for a benefit payable under the Plan shall be made in writing by a Player or Beneficiary (or an authorized representative of either of them), as the case may be, and shall be delivered to any member of the Committee. Such written request shall be deemed filed upon receipt thereof by the Committee. Such request shall be made within the time prescribed in the Plan for claiming a particular benefit or, if no time is so prescribed, within a reasonable time before payment of the benefit is to commence.

15.2 In the event a request for benefits contains insufficient information, the Committee shall, within 15 days after receipt of such request, send a written notification to the claimant setting forth a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material is necessary. The claimant's request shall be deemed filed with the Committee on the date the Committee receives in writing such additional information.

15.3 The Committee shall make a determination with respect to a request for benefits within 30 days after such request is filed. The Committee shall notify the claimant whether his claim has been granted or whether it has been denied in whole or in part. Such notification shall be in writing and shall be delivered, by mail

or otherwise, to the claimant within a reasonable time after such claim is filed. If the claim is denied in whole or in part, the written notification shall set forth, in a manner calculated to be understood by the claimant:

- (a) The specific reason or reasons for the denial;
- (b) Specific reference to pertinent provisions of the Plan on which the denial is based; and
- (c) An explanation of the Plan's claim review procedure.

Failure by the Committee to give notification pursuant to this Section within a reasonable time after receipt of the claim shall be deemed a denial of the request for the purpose of proceeding to the review stage.

15.4 A claimant whose request for benefits has been denied in whole or in part may, within 60 days after written notification of such denial, file with the Named Fiduciary, with a copy to the Committee, a written request for a review of his claim. Such written request shall be deemed filed upon receipt of same by the Named Fiduciary.

15.5 A claimant who timely files a request for review of his claim for benefits may review pertinent documents (upon reasonable notice to the Named Fiduciary) and may submit the issues and his comments to the Named Fiduciary in writing. Except as otherwise provided below, the Named Fiduciary shall, within 60 days after

receipt of the written request for review, communicate its decision in writing to the claimant, setting forth, in a manner calculated to be understood by the claimant, the specific reasons for its decision and the pertinent provisions of the Plan on which the decision is based.

15.6 If the claimant so requests in his timely application for review, the Named Fiduciary shall schedule a conference with the claimant (and/or his authorized representative). Such conference shall be held at the offices of the Association at a date and time which is mutually agreed upon by the parties concerned, provided that in no event shall the conference be held more than 60 days after the Named Fiduciary receives the claimant's written request for review of his claim. The decision of the Named Fiduciary shall be communicated in writing to the claimant or his authorized representative within 30 days after the date on which the conference is completed, and shall set forth, in the same manner, the information required in the preceding Section.

ARTICLE XVI

LIMITATION OF RIGHTS OF THE PLAYER

16.1 Nothing contained in this Plan shall be deemed to give any Player the right to be retained in the service of any Member. Inclusion under the Plan shall not give any Player any right or claim to any benefits except to the extent such right is specifically fixed under the terms of the Plan.

16.2 The Members agree to make any and all contributions required to provide the benefits set forth herein.

16.3 No liability shall attach to any Member for any payment of any benefit or claim hereunder.

16.4 The Committee shall not be responsible for the validity of any Contracts, or for the action of any person or persons which may render any Contract invalid or unenforceable either in whole or in part. The Committee shall not be responsible for any inability to perform or any delay in performing any act occasioned by any other person. In the event it becomes impossible for the Committee to perform any act, that act shall be performed which in the judgment of the Committee will most nearly carry out the intent and purpose of this Plan.

ARTICLE XVII

PARTICIPATING MEMBERS

17.1 Each Member shall execute such documents as are necessary to duly accept this Plan and to participate in any Contracts to implement said Plan.

17.2 (a) In the event of the sale, transfer, exchange or other disposition of a franchise, or the granting of a new franchise by the Association, in addition to satisfying the provisions of paragraph (b) which apply in the case of a sale of assets, the new Member shall immediately execute such documents and take such actions as the Committee deems necessary so as to provide the benefits of this Plan for its Players.

(b) In the event of the sale of the assets of a franchise by a Member, such Member shall not be considered to have "withdrawn" from the Plan (as described in Section 17.3(a)) as a result of such sale, provided that all of the applicable conditions described in Section 4204(a) of ERISA, as may be modified or varied by the Pension Benefit Guaranty Corporation, are satisfied.

17.3 (a) In the event that any Member ceases to own a franchise and if such franchise is not sold, transferred or exchanged or otherwise disposed of to any new Member or if the assets of such franchise are sold to a new Member without compliance with the conditions of Section 4204(a) of ERISA, or if any Member completely discontinues making contributions to the Plan, such

Member shall be considered to have "withdrawn" from the Plan (within the meaning of Section 4203 of ERISA) and the provisions of paragraphs (b) and (c) of this Section shall apply to such Member (the "Withdrawing Member").

(b) All of the Players of the Withdrawing Member shall be vested with all benefits accrued to the date of such withdrawal and the Plan shall terminate as to such Member.

(c) The Withdrawing Member shall be obligated to immediately make a lump sum payment to the Plan equal to the sum of the amounts set forth below in subparagraphs (i) and (ii) ("withdrawal liability").

(i) The "unfunded accrued liability" as of the date of withdrawal for each Player for whom the Withdrawing Member is then liable to make a contribution under the provisions hereof; provided, however, that such Member shall not be liable for any further contribution for any Player to the extent that another Member becomes liable for such contributions under the terms of the Plan, by virtue of having acquired rights to such Player. For purposes of this Section 17.3, the amount of the "unfunded accrued liability" allocable to a Withdrawing Member shall be determined pursuant to the provisions of Articles X and XI of the Plan.

(ii) The Withdrawing Member's allocable share of any "unattributable liabilities" existing under the Plan. For purposes of this Section 17.3, "unattributable

liabilities" shall mean the total amount of the withdrawal liabilities of Members which have previously withdrawn from the Plan that is outstanding as of the date of the withdrawal of the Withdrawing Member. The amount of unattributable liabilities allocable to the Withdrawing Member shall equal the total amount of such liabilities multiplied by a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Members of the Association as of the date of withdrawal.

In determining the amount of withdrawal liability for any Withdrawing Member under this Section 17.3, the provisions of Section 4209 of ERISA (relating to the de minimis rule) and Section 4219(c)(1)(B) of ERISA (relating to the 20-year limit on withdrawal liability payments) shall not apply.

17.4 In no event shall any merger or consolidation of any other plan with this Plan, or any transfer of assets and liabilities of this Plan to any other plan or any transfer of assets and liabilities from any other plan to this Plan take place which results in a benefit to any Player or Beneficiary (if the Plan then terminated) that is lower than the benefit he would have received immediately before the merger, consolidation or transfer (if the Plan then terminated).

ARTICLE XVIII

AMENDMENT OR TERMINATION OF THE PLAN

18.1 The Members shall have the right to amend the Plan at any time by an instrument in writing executed by all Members (or by the Association as agent for its Members) and delivered to the Insurer, provided, however, that:

(a) no amendment shall deprive any Player or Beneficiary of any of the benefits to which he is entitled under the Plan with respect to contributions previously made;

(b) no amendment shall provide for the use of the funds or assets held by the Insurer other than for the exclusive benefit of Players and Beneficiaries, and except as otherwise provided in the Plan, no funds contributed shall ever revert to or be used or enjoyed by the Member; and

(c) no amendment shall deprive the Insurer of any of its exemptions and immunities with respect to Contracts issued by it prior to receipt by the Insurer of notice of such amendment.

Any amendment to the Plan or Contract may be made retroactive which is necessary to enable the Members to obtain rulings from the United States Treasury Department as to the qualification of this Plan within the meaning of the Internal Revenue Code, as amended, or as it may be replaced by any sections of Federal law of like intent and purpose.

18.2 The Members may terminate the Plan at any time and for any reason by an instrument in writing executed by all the Members

and delivered to the Insurer; provided, however, that if the Plan shall be terminated (or if there shall be a partial termination of the Plan), each Player or Beneficiary affected thereby shall be vested with all benefits accrued to the date of termination, and each Member shall, prior to termination, make a contribution equal to the entire unfunded past service liability for each Player for which it is then liable to make a contribution under the provisions hereof. Upon termination, the Members may obtain deferred annuities for Players not yet retired and immediate annuities for retired Players and Beneficiaries then entitled to payments providing for the benefits to which such Player or Beneficiary is entitled, and upon termination such annuities or Certificates of such annuities shall be distributed in complete discharge of all of the rights of such Players and Beneficiaries in the Plan. After discharge of all liabilities, the remaining balance in any Member's account shall be returned to such Member. Any Contract purchased under this Plan shall contain terms implementing the foregoing.

18.3 In the event that the balance in any Member's account is insufficient to discharge its liabilities in full, then such balance shall be allocated among its Players (and their Beneficiaries) in such manner determined by the Committee as is consistent with applicable law.

ARTICLE XIX
MISCELLANEOUS

19.1 The headings and subheadings in this Plan have been inserted for the convenience of reference only, and are to be ignored in any construction of the provisions hereof.

19.2 In the construction of this Plan, the masculine shall include the feminine and the neuter and the singular shall include the plural in all cases where such meanings would be appropriate.

19.3 This Plan shall be construed, whenever possible, to be in conformity with the requirements of the Internal Revenue Code and ERISA. To the extent not in conflict with the preceding sentence, and except to the extent that state law shall not have been preempted by the provisions of ERISA or any other laws of the United States heretofore or hereafter enacted, the Plan should be construed, administered and governed in all respects under and by the laws of the State of New York.

19.4 This Plan is created for the exclusive benefit of the Players and their Beneficiaries. If any provision hereof is susceptible of more than one interpretation, then among those interpretations which are possible, that one shall always be adopted which will be consistent with this Plan's being a qualified Plan within the meaning of the Internal Revenue Code, as amended, or as it may be replaced by any sections of Federal law of like intent and purpose.

19.5 This Plan is to be submitted to the United States Treasury Department to obtain rulings that the Plan and any Contract purchased hereunder qualify under applicable Internal Revenue Code provisions and regulations thereunder and that contributions to the Plan constitute deductions under applicable Internal Revenue Code provisions and regulations thereunder. Notwithstanding any other provisions hereof, no Player shall have any vested right in any assets prior to the obtaining of an initial ruling from the Treasury Department as to the qualification of the Plan and any Contract purchased hereunder under said provisions and regulations. Any benefits which would by the terms of this Plan be payable to any Player, his Beneficiary or personal representative prior to the obtaining of the above-mentioned rulings shall be paid in the manner hereinbefore set forth only after such rulings are obtained. In the event such rulings shall not be obtained, the Members may terminate the Plan, in which event all the assets shall be paid to and revested in the Members.

19.6 If any provision of this Plan is held to be illegal, invalid or unenforceable for any reason, this shall not affect any other provision of the Plan, and this Plan shall be construed as if said illegal, invalid or unenforceable provision had never been inserted herein.

19.7 The Plan set forth herein shall amend and restate, effective as of February 2, 1984, except as otherwise provided herein, all provisions of the Plan, as in effect on February 1,

1984, except that the rights of former Players who terminated employment, died or retired prior to February 2, 1984, shall be governed by the terms of such Plan as in effect at the time of termination of employment, death or retirement.

On this 26th day of November, 1985, the National Basketball Association, as agent for its Member Clubs, has executed this Plan.

NATIONAL BASKETBALL ASSOCIATION

By: 

Title: General Counsel

NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN

Restated Effective February 2, 1989

**NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN**

Restated Effective February 2, 1989

C-6-000002

NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN

TABLE OF CONTENTS

	PREAMBLE
I.	DEFINITIONS
II.	ELIGIBILITY
III.	BENEFITS
IV.	CREDITED SERVICE
V.	FORMER PENSION BENEFITS
VI.	MEMBER'S CONTRIBUTIONS AND BENEFIT LIMITATIONS
VII.	DEATH BENEFITS
VIII.	NON-ALIENATION OF BENEFITS
IX.	FORFEITURES
X.	INCOME AND EXPENSES
XI.	MEMBER'S ACCOUNTS
XII.	INSURANCE CONTRACTS
XIII.	TRUST FUND
XIV.	ADMINISTRATION OF PLAN
XV.	LIABILITY AND STANDARD OF CARE OF COMMITTEE
XVI.	CLAIMS PROCEDURE
XVII.	LIMITATION OF RIGHTS OF THE PLAYER
XVIII.	PARTICIPATING MEMBERS
XIX.	AMENDMENT OR TERMINATION OF PLAN
XX.	PROVISIONS PERTAINING TO PRE-1965 PLAYERS
XXI.	MISCELLANEOUS

PREAMBLE

THE NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN

WHEREAS, the National Basketball Association Players' Pension Plan (the "Plan") was established on February 2, 1965;

WHEREAS, the Plan was restated effective February 2, 1976 and was subsequently restated effective February 2, 1984;

WHEREAS, the Tax Reform Act of 1986 and subsequent legislation and regulations ("employee benefit changes") have made numerous changes to the rules governing all qualified plans, thereby requiring all qualified plans to be amended to reflect these changes in order for such plans to retain their tax-qualified status;

WHEREAS, the Internal Revenue Service has extended the "remedial amendment period" for plans to be amended to comply with the employee benefit changes through the last day of the first plan year beginning after December 31, 1993; and

WHEREAS, in light of the amendments that have previously been made to the Plan and in light of the need to amend the Plan to comply with the employee benefit changes, it has been decided to amend and entirely restate the Plan.

NOW, THEREFORE, except as otherwise provided in the Plan, effective February 2, 1989, the Plan is hereby amended and restated as set forth herein.

ARTICLE I
DEFINITIONS

1.1 "Active List" shall mean the list of Players who have signed "formal contracts" with a Member, and are otherwise eligible to participate in a Championship Game as certified to the Committee by each Member.

1.2 "Actuarial Equivalent" shall mean, unless specified otherwise, a benefit of equivalent value when computed on the basis of 7 percent interest and the 1971 Group Annuity Mortality Male Table for Players, and the 1971 Group Annuity Mortality Male Table set back 7 years for spouses and alternate payees.

1.3 "Actuarial Value" shall mean the present value of a benefit when computed on the basis of the actuarial assumptions specified under the Plan.

1.4 "Anniversary Date" shall mean any anniversary of the Effective Date of the Plan (February 2).

1.5 "Armed Services List" shall mean the list of those Players who have entered the Armed Services and are serving on active duty as certified to the Committee by each Member.

1.6 "Association" shall mean the National Basketball Association and its successors.

1.7 "Beneficiary" shall mean the person or persons designated by a Player to receive any benefits under this Plan. Where

a Player fails to designate a Beneficiary or where a Beneficiary fails to survive a Player, "Beneficiary" shall mean the Player's surviving spouse, if any, or, if none, his children, if any, in equal shares, or, if none, his personal representative. Any person entitled to receive benefits hereunder after the death of a Player shall also be deemed a Beneficiary for purposes of the Plan.

1.8 "Championship Game" shall mean any game included in the Association's schedule of Championship Games and shall not include playoff games or exhibition games.

1.9 "Committee" shall mean the Pension Committee referred to in Article XIV hereof.

1.10 "Contract" shall mean a Group Annuity Contract issued by an Insurer under this Plan, whether or not such Contract contains any element of life insurance protection. Any Contract may provide for the allocation of amounts received by an Insurer under the Plan to said Insurer's general account or to one or more of its separate accounts (including separate accounts maintained for the collective investment of assets of qualified retirement plans).

1.11 "Early Retirement Date" shall mean a date after the forty-fifth (45th) anniversary of the Player's date of birth, on which an election made by the Player for an Early Retirement

Pension becomes effective, provided that the Player is not on the Roster of any Member during the Plan Year involved.

1.12 "Early Retirement Pension" shall mean the pension payable to a Player at his Early Retirement Date.

1.13 "Effective Date" shall mean February 2, 1965. "Restatement Effective Date" shall mean February 2, 1976. The "Effective Date of the Second Plan Restatement" shall mean February 2, 1984. The "Effective Date of this Third Plan Restatement" shall, except as otherwise provided herein, mean February 2, 1989.

1.14 "Enrolled Actuary" shall mean a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under Subtitle C of Title III of ERISA.

1.15 "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and with which this Plan is intended to comply.

1.16 "Franchise" shall mean the right of any Member to participate in the Association as determined under the rules of the Association.

1.17 "Injured List" shall mean the list of Players who, due to injury or illness, have been temporarily removed from the Active List of a Member as certified to the Committee by each Member.

1.18 "Insurer" shall mean a legal reserve life insurance company which shall issue a Contract under which the Members shall participate upon execution of an agreement providing for such participation, and which is licensed to do business in the State of New York.

1.19 "Internal Revenue Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

1.20 "Member" shall mean a member of the Association.

1.21 "Named Fiduciary" shall mean the Committee.

1.22 "National Consumer Price Index" shall mean the Consumer Price Index for Urban Consumers ("CPI-U").

1.23 "Normal Retirement Date" shall mean the fifty-third (53rd) anniversary of the Player's date of birth. Effective February 2, 1978, "Normal Retirement Date" shall mean the fiftieth (50th) anniversary of the Player's date of birth.

1.24 "Normal Retirement Pension" shall mean the pension payable to the Player at his Normal Retirement Date.

1.25 "Plan" shall mean the National Basketball Association Players' Pension Plan.

1.26 "Plan Administrator" shall mean the Committee.

1.27 "Plan Year" shall mean the twelve (12) month period beginning on the Effective Date, or any subsequent twelve (12) month period beginning on February 2 and ending on February 1 during which this Plan shall be in effect.

1.28 "Player" shall mean any person carried on any Player List, as defined in the By-Laws of the Association, or, where the context permits, a person eligible to be carried on any such List or a person formerly carried on any such List.

1.29 "Qualified Joint and Survivor Annuity" shall mean a pension benefit payable for the life of a retired Player and continued upon his death for the life of the deceased Player's surviving spouse, if any, with the surviving spouse's periodic benefit to be at a level of 50 percent of the actuarially reduced benefit paid or payable for each such period to the Player during his lifetime.

1.30 "Regular Season" shall mean the period beginning on the date of the first game of the Association's schedule of Championship Games and ending at the end of the day before the first Playoff Game is played.

1.31 "Roster" shall mean (i) every Player on the Active List of any Member on February 2 of the Regular Season involved, (ii) for any Regular Season ending after February 2, 1965, every additional Player on the Injured List on February 2 of the Regular Season involved, without regard to whether such additional Player

was on the Active List of any Member during such Regular Season and (iii) every other Player who was on the Active List of any Member for 50 percent or more of the total Championship Games played by the Member during the Regular Season involved. A Player, not otherwise considered to be on the Roster of any Member for any Plan Year beginning on or after February 2, 1989 pursuant to the terms hereof, shall not be considered to be on the Roster of any Member for any such Plan Year by virtue of the fact that he has entered into a "guaranteed" or "no-cut" contract. Notwithstanding anything to the contrary, no Player shall be treated as having been on the Roster of any Member for any Plan Year for which all or part of his benefits were forfeited under the provisions of this Plan in existence prior to February 2, 1976. "Roster" shall also include any Player on the Armed Services List of any Member on February 2 of the Regular Season involved, who is not otherwise considered to be on the Roster for such Regular Season, if, and to the extent, that applicable law requires the Player to be so treated.

1.32 "Supplemental Pension" shall mean the pension payable to a Player from his Supplemental Pension Account.

1.33 "Supplemental Pension Account" shall mean an account to be maintained by the Insurer for each Player, as directed by the Committee and subject to the terms of this Plan.

1.34 "Suspended List" shall mean the list of those Players who, for proper cause, have been suspended by the Association or by a Member as certified to the Committee by each Member.

1.35 "Trust Agreement" shall mean the Agreement establishing the Trust hereunder entered into between the Members and the Trustee.

1.36 "Trust" shall mean the funds and assets held and administered by the Trustees at any time under the terms of the Trust Agreement.

1.37 "Trustees" shall mean the Trustees of the Trust under the Trust Agreement, as originally executed and as amended from time to time, and any successor Trustee or Trustees acting thereunder.

ARTICLE II
ELIGIBILITY

2.1 Every Player on the Roster of any Member during the Regular Season which included February 2, 1967 shall be eligible to participate as of February 2, 1968. Every Player on the Roster of any Member during the Regular Season which included February 2, 1966, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1970. Every Player on the Roster of any Member during the Regular Season which included February 2, 1965, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1973.

2.2 Every Player on the Roster of any Member during any Regular Season beginning subsequent to the Regular Season which includes February 2, 1967, not otherwise eligible hereunder, shall be eligible to participate as of the Anniversary Date during such subsequent Regular Season.

2.3 Notwithstanding anything herein to the contrary, for the sole purpose of determining when a Player is first eligible to participate hereunder, any Player on the Roster of any Member for any Regular Season ended before February 2, 1973 solely by reason of Section 1.31(ii) hereof shall not be eligible to participate hereunder by reason of being on such Roster until February 2, 1976. This Section shall not affect the eligibility of any Player by reason of Section 1.31(i) or Section 1.31(iii) hereof.

2.4 Every Player entitled to any benefit under the terms of the pension plan in existence prior to the adoption of this instrument shall continue to be eligible to receive such benefits.

ARTICLE III
BENEFITS

3.1 Every Player eligible to participate hereunder, who attains his Normal Retirement Date and who was on the Roster of any Member for any three Regular Seasons shall be entitled to a Normal Retirement Pension and any Supplemental Pension payable pursuant to Section 3.6 hereof.

3.2 The Normal Retirement Pension payable to a Player shall be paid to him commencing on the first day of the first month following said Player's Normal Retirement Date and shall continue to be paid on the first day of each month up to and including the month in which the Player dies and, except as otherwise provided in Sections 3.10 and 3.11, shall be paid as an annuity for the life of the Player ("Single Life Annuity") in an amount equal to:

(a) For a Player who becomes eligible to receive a Normal Retirement Pension on or before May 31, 1976, \$60 per month for each year of Credited Service.

(b) For a Player who becomes eligible to receive a Normal Retirement Pension on or after June 1, 1976 and on or before May 31, 1979, \$75 per month for each year of Credited Service.

(c) For a Player who becomes eligible to receive a Normal Retirement Pension on or after June 1, 1979 and on or before December 1, 1980, \$75 plus a cost-of-living adjustment (which adjustment shall be calculated by applying to \$75 the percentage increase in the National Consumer Price Index between

September 1975 and May 1979, and which shall be rounded off to the nearest whole dollar) per month for each year of Credited Service.

(d) For a Player who becomes eligible to receive a Normal Retirement Pension on or after December 2, 1980, the amount provided in Section 3.2(c) above, plus a cost-of-living adjustment (which adjustment shall be calculated by applying to the amount provided in Section 3.2(c) the percentage increase in the National Consumer Price Index between June 1979 and November 1980, and which shall be rounded off to the nearest whole dollar) per month for each year of Credited Service.

(e) (i) For a Player who was a "Former Player" as of February 2, 1985, the Normal Retirement Pension otherwise payable to such Player under this Section shall be increased by \$2.65 per month for each year of Credited Service.

(ii) For purposes of this paragraph (e), as of February 2, 1985, a Former Player shall mean an individual formerly employed by a Member who, as of such date, has a vested right to a pension benefit under the Plan and had not begun to receive the payment of such pension benefit. Any individual that is credit with a year of Credited Service on or after February 2, 1985 (or any individual who would have been credited with a year of Credited Service on or after February 2, 1985 if not for the fact that such individual was employed by a corporation (the sole shareholder of which is such individual) which has entered into an agreement with

a Member for providing services to such Member), shall not be considered a Former Player for purposes of this paragraph (e).

(f) (i) For a Player who was a "Former Player" as of February 2, 1986, the Normal Retirement Pension otherwise payable to such Player under this Section shall be increased by \$2.60 per month for each year of Credited Service.

(ii) For purposes of this paragraph (f), as of February 2, 1986, a Former Player shall mean an individual formerly employed by a Member who, as of such date, had a vested right to a pension benefit under the Plan and had not begun to receive the payment of such pension benefit. Any individual that is credited with a year of Credited Service on or after February 2, 1986 (or any individual who would have been credited with a year of Credited Service on or after February 2, 1986, if not for the fact that such individual was employed by a corporation (the sole shareholder of which is such individual) which has entered into an agreement with a Member for providing services to such Member), shall not be considered a Former Player for purposes of this paragraph (f).

(g) (i) For a Player who was a "Former Player" as of February 2, 1987, the Normal Retirement Pension otherwise payable to such Player under this Section shall be increased by \$2.60 per month for each year of Credited Service.

(ii) For purposes of this paragraph (g), as of February 2, 1987, a Former Player shall mean an individual formerly employed by a Member who, as of such date, has a vested right to a pension benefit under the Plan and had not begun to receive the payment of such pension benefit. Any individual that is credited with a year of Credited Service on or after February 2, 1987 (or any individual who would have been credited with a year of Credited Service on or after February 2, 1987 if not for the fact that such individual was employed by a corporation (the sole shareholder of which is such individual) which has entered into an agreement with a Member for providing services to such Member), shall not be considered a Former Player for purposes of this paragraph (g).

(h) For a Player who had not yet begun to receive a benefit under the Plan as of September 1, 1988, \$200 per month for each year of Credited Service.

(i) (i) For a Player who was receiving monthly benefits under the Plan as of September 1, 1988, \$200 per month for each year of Credited Service.

(ii) The benefit to be paid in accordance with subparagraph (i) of this paragraph (i) shall apply with respect to benefit payments made after September 1, 1988 and shall not require the recalculation of benefit payments made prior to such date.

3.3 All the amounts provided for in Section 3.2 hereof shall be reduced by the Actuarial Equivalent (of a lifetime annuity beginning on the same date) of any benefit payable to a Player under Article V hereof. Effective February 2, 1988, this Section 3.3 shall not apply with respect to those former Players who had not yet begun to receive the payment of any benefit under the Plan as of such date.

3.4 Every Player who was on the Roster of any Member for any three Regular Seasons shall be entitled to elect to receive, in lieu of a Normal Retirement Pension, an Early Retirement Pension and shall be entitled to any Supplemental Pension payable pursuant to Section 3.6 hereof. Such election shall be made at least 90 days prior to the Early Retirement Date and shall be made in writing delivered to the Committee.

3.5 The Early Retirement Pension payable to a Player shall be paid to him commencing on the first day of the first month following the Player's Early Retirement Date ("Early Retirement Pension Commencement Date") and, except as otherwise provided in Sections 3.10 and 3.11, shall be paid as a Single Life Annuity in an amount which shall be determined by reducing the Normal Retirement Pension that said Player would have been entitled to on his Normal Retirement Date by the product of $1/180$ and the total number of months the Player's Early Retirement Pension Commencement Date precedes the Player's Normal Retirement Date.

3.6 For Plan Years ending prior to February 2, 1973, the Insurer shall maintain a Supplemental Pension Account for each Player and \$100.00 (less a reasonable amount, as determined by the Committee, to reflect the administration expenses allocable to said Supplemental Pension Account) shall be added to said Account during each Plan Year that said Player is credited with a year of Credited Service under Section 4.1 hereof. For Plan Years beginning on or after February 2, 1973 and ending on or before February 1, 1976, the Insurer shall maintain a Supplemental Pension Account for each Player and \$200.00 (less a reasonable amount, as determined by the Committee to reflect the administration expenses allocable to said Supplemental Pension Account) shall be added to said Account during each Plan Year that said Player is credited with a year of Credited Service under Section 4.1 hereof. For Plan Years beginning on or after February 2, 1976, the Insurer shall continue to maintain a Supplemental Pension Account for each Player having a Supplemental Pension Account on such date. No additional contribution shall be added to any Supplemental Pension Account for Plan Years beginning on or after February 2, 1976.

3.7 The funds in all Supplemental Pension Accounts shall be invested by the Insurer in a money market account maintained by the Insurer.

3.8 As of the last business day of each calendar quarter, the Insurer shall value all of the assets representing the funds

held in all Supplemental Pension Accounts, based on their respective market values on each such date.

3.9 (a) The Supplemental Pension payable to any Player shall be paid to him at the same time and in the same method of payment as the payment to him of a Normal Retirement Pension or Early Retirement Pension, as the case may be.

(b) If a Player receives payment of his Supplemental Pension in a form of payment described in either Section 3.10, 3.11(i), 3.11(iv), 3.11(v) or 3.11(vi), the Supplemental Pension payable to such Player shall be the Actuarial Equivalent of the Player's Supplemental Pension Account, based on the value of such Account as of the valuation date immediately preceding the date on which the Player commences to receive payment of his Supplemental Pension under the Plan. If the Player commences to receive payment of his Supplemental Pension prior to the Player's Normal Retirement Date, the reduction in the Supplemental Pension shall be on an Actuarial Equivalent basis and shall not be based on the factors set forth in Section 3.5.

(c) If a Player receives payment of his Supplemental Pension in a form of payment described in either Section 3.11(ii), 3.11(iii) or 3.11(vii), the Supplemental Pension payable to such Player shall be based upon the value of the Player's Supplemental Pension Account as of the valuation date immediately preceding the date on which the Player receives or commences to receive payment of his Supplemental Pension Account under the Plan.

3.10 (a) Subject to the waiver and consent provisions of paragraphs (b) and (c) of this Section, if a Player is married on his Early Retirement Date or his Normal Retirement Date, as the case may be, his Early Retirement Pension or Normal Retirement Pension and any Supplemental Pension shall be paid in the form of a Qualified Joint and Survivor Annuity under which the Player's pension is reduced so that the resulting pension payable to the Player and his spouse shall be the Actuarial Equivalent of his Early Retirement Pension or Normal Retirement Pension and any Supplemental Pension otherwise payable.

(b) (i) The provisions of paragraph (a) shall not apply to a married Player if such Player files a written election with the Committee to have his pension paid in a form other than a Qualified Joint and Survivor Annuity. Any election to waive the Qualified Joint and Survivor Annuity shall be subject to the provisions of subparagraphs (ii) and (iii) of this paragraph (b).

(ii) A Player may elect to waive the Qualified Joint and Survivor Annuity within the 90 day period prior to the date on which his benefits commence, subject to consent of the spouse as set forth in paragraph (c) below. Any such election shall be in writing and shall indicate that the Player is electing to receive his pension benefit in one of the forms of payment specified in Section 3.11 and not in the form of a Qualified Joint and Survivor Annuity. A Player who has elected to waive the Qualified Joint and

Survivor Annuity may subsequently cancel his election at any time prior to the date his payments commence, by filing a proper waiver or cancellation of election with the Committee.

(iii) Notwithstanding anything to the contrary herein contained, no election of an optional form of payment under Section 3.11 shall be valid unless and until the Qualified Joint and Survivor Annuity has been waived in accordance with this Section 3.10.

(c) (i) The spouse of the Player who waives the benefits under paragraph (b) above must consent to the waiver when initially made. Such consent shall be in writing, shall be irrevocable, shall acknowledge the effect of such consent, and shall be witnessed by a notary public; provided, however, that if it is established to the satisfaction of the Committee that the spouse of the Player cannot be located, such consent will not be required. Any such consent shall be effective only with respect to the spouse who gives the consent.

(ii) The consent of the spouse as set forth in subparagraph (i) above shall also be required to the designation of any Beneficiary other than the spouse, and to any change in such designation.

(iii) If the Secretary of the Treasury issues regulations which set forth special circumstances under which the consent of the spouse to a waiver will not be

required pursuant to Section 417 of the Internal Revenue Code, then no consent of a spouse will be required under those circumstances under this Plan with respect to a waiver of the Qualified Joint and Survivor Annuity.

(d) (i) Within a reasonable time before the date on which a Player's benefits commence, the Committee shall supply the Player with an explanation of rights with respect to the Qualified Joint and Survivor Annuity, and a general explanation of the financial effect on the Player's benefit if he decides to accept the Qualified Joint and Survivor Annuity.

(ii) Any explanation under subparagraph (i) above shall contain:

(A) the terms and conditions of the Qualified Joint and Survivor Annuity;

(B) the Player's right to make, and the effect of, an election to waive the Qualified Joint and Survivor Annuity;

(C) the rights of the Player's spouse under paragraph (c) above; and

(D) the right to make, and the effect of, a revocation of an election to waive the Qualified Joint and Survivor Annuity.

(e) If a Player is not married on his Early Retirement Date or his Normal Retirement Date, as the case may be, the provisions of paragraphs (b)(ii) and (iii) and paragraph (d) of

this Section 3.10 shall apply with respect to an election by such Player to have his pension paid in a form other than a Single Life Annuity; except that for purposes of these provisions, the term "Single Life Annuity" shall be substituted for the term "Qualified Joint and Survivor Annuity".

3.11 Every Player electing not to receive a Qualified Joint and Survivor Annuity or Single Life Annuity (whichever is applicable) under Section 3.10, may elect to receive, in lieu of the Normal Retirement Pension or Early Retirement Pension and any Supplemental Pension provided for in this Article, the Actuarial Equivalent of such pension payable on the date that said pension would otherwise have become payable in one or more of the following ways:

(i) Installments for Life - Paid in equal monthly installments for as long as the Player shall live.

(ii) Installments of Fixed Amount - Paid in installments of a specified amount each month.

(iii) Installments for a Fixed Period - Paid in equal monthly installments for a fixed number of years.

(iv) Installments for a Fixed Period and Life Thereafter - Paid in equal monthly installments for a fixed number of years and for so long thereafter as the Player shall live.

(v) Joint and Survivorship Annuity - Paid in equal monthly installments to the Player, terminating with

the last monthly installment before his death. Following the death of the Player after this option becomes effective, monthly installments shall be continued to the person he named as his joint annuitant, terminating with the last monthly installment before the joint annuitant's death. The amount of each installment payable to the joint annuitant shall be equal to 100 percent of the monthly amount which was payable to the Player, or to a lesser percentage, as specified by the Player in his election of this option.

(vi) Social Security Option - Paid in monthly installments, to the extent permitted by ERISA, so long as the Player shall live, in such amounts so as to enable the Player to receive an approximately equal amount each month taking into consideration the benefits hereunder and the estimated primary benefits payable under the Social Security Act.

(vii) Lump Sum - Paid to the Player in one Lump Sum.

3.12 Any optional method of settlement selected under this Article shall become effective on the date on which the Player's benefits hereunder commence.

3.13 (a) Where any of the optional methods of settlement described in Sections 3.11(ii)-(iv) is selected hereunder, the periods over which installments are payable to the Player and his designated Beneficiary shall not exceed the joint life expectancy

of the Player and such Beneficiary, determined as of the time at which the distribution of benefits commence, and in accordance with Section 401(a)(9)(A)(ii) of the Internal Revenue Code and the Treasury Regulations thereunder; provided, however, that under any optional method of settlement, if the designated Beneficiary is someone other than the Player's spouse, the Player must anticipate receiving more than 50% of the actuarial value of his benefits calculated as of his Normal or Early Retirement Date, whichever is applicable.

(b) If a Player should die before the distribution of any benefits under this Article has begun, and if the benefit upon the death of the Player shall be payable over greater than a five year period, such benefit shall be payable over a five year period in an amount equal to the Actuarial Equivalent (as of the date of death) of the payments to be made. The preceding sentence shall not apply if (i) the payments to be made to the Player's designated Beneficiary will be made over the life of such Beneficiary (or over a period not exceeding the life expectancy of the Beneficiary) and (ii) the payments commence not later than one year after the date of the Player's death (or if the Player's designated Beneficiary is his spouse, the payments commence no later than the date on which the Player would have attained age 70-1/2 had he survived). If the Player's designated Beneficiary is his spouse, and if such spouse should die before the distribution of any benefits has begun, the rules of this paragraph (b) shall apply as if the spouse were the Player.

(c) Notwithstanding anything to the contrary contained herein, if the distribution of benefits has commenced to a Player and if the Player dies before his entire interest has been distributed to him, any distributions made after the death of the Player shall be made at least as rapidly as under the method of distribution in effect as of the date of the Player's death.

3.14 If any Player or Beneficiary is, in the judgment of the Committee, legally, physically or mentally incapable of personally receiving and receipting for any payment due hereunder, payment may be made to the guardian or other legal representative of such Player or his Beneficiary, or, if none, to such other person, or institution, who, in the opinion of the Committee, is then maintaining or has custody of such Player or his Beneficiary. Such payments shall constitute a full discharge with respect thereto.

3.15 If the payment of a pension under this Plan is to be made in any of the optional forms described in Section 3.11, the Actuarial Equivalent of such pension is to be determined by the Plan's Enrolled Actuary on the following basis:

(i) If the payment is to be made in the form described in Section 3.11(v)(ii), the amount of the payment shall be computed on the basis of the 1971 Group Annuity Mortality Table (male rates) and the interest rate or rates which would be used as of February 2 preceding the date of payment by the Pension Benefit Guaranty Corporation for

purposes of determining the present value of a benefit upon termination of an insufficient trusteed single employer pension plan.

(ii) If payments are to be made in any of the forms described in either Section 3.10 or Section 3.11 (other than Section 3.11(v)(ii)), the amount of the payment shall be computed on an Actuarial Equivalent basis.

3.16 (a) If the present value of a Player's pension under the Plan is greater than \$3,500, and if the Player (and, if required, the Player's spouse, if any) consents to receive such pension, the pension shall be paid to him commencing at the time prescribed under Section 3.2 (or, if applicable, Section 3.5). If the Player (or, if required, the Player's spouse, if any) does not consent to receive his pension at such time, then, notwithstanding any other provision of this Plan to the contrary, his pension shall be paid to him commencing on the first day of the first month following the Player's attainment of age 62; provided, however, that the Player may elect to receive an earlier payment of such pension. If the Player makes such an election, his pension shall be paid to him commencing as soon as administratively practicable following his election to receive his pension. If payment of a Player's pension commences after the Player's Normal Retirement Date, the pension payable to the Player shall be the Actuarial Equivalent of the pension that

would have been payable under Section 3.2 had the payment of such pension commenced on the Player's Normal Retirement Date.

(b) For purposes of this Section 3.16: (i) "present value" shall be determined in accordance with Section 3.15(i); and (ii) if the pension of a married Player under this Plan is to be paid in the form of a Qualified Joint and Survivor Annuity, consent of the Player's spouse shall not be required under paragraph (a) above.

3.17 Rollovers to Other Plans or IRAs.

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Player's election under the Plan, a Player may elect, at the time and in the manner prescribed by the Committee, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Player in a Direct Rollover.

(b) Definitions:

For purposes of this Section 3.17, the following definitions will apply:

(i) "Eligible Rollover Distribution" shall mean any distribution of all or any portion of the Player's pension under the Plan, except that an Eligible Rollover Distribution does not include:

(A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or

life expectancy) of the Player or the joint lives (or joint life expectancies) of the Player and the Player's designated beneficiary, or for a specified period of ten years or more; and

(B) the portion of any distribution that is not includible in gross income.

(ii) "Eligible Retirement Plan" shall mean an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified trust described in Section 401(a) of the Internal Revenue Code, that accepts the Player's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to a surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

(iii) "Player" shall mean a Player within the meaning of Section 1.28 who is entitled to receive a benefit under the Plan. In addition, the Player's surviving spouse and the Player's spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in Section 414(p) of the Internal Revenue Code, shall be considered as

Players with regard to the interest of the spouse or former spouse.

(iv) "Direct Rollover" shall mean a payment by the Plan to the Eligible Retirement Plan specified by the Player.

(c) This Section 3.17 shall be effective as of January 1, 1993.

ARTICLE IV
CREDITED SERVICE

4.1 Every Player eligible to participate hereunder shall be credited with one year of Credited Service for each year that said Player is on the Roster of any Member for any Regular Season beginning with the Regular Season for which said Player is first eligible to participate hereunder ("Credited Service").

ARTICLE V
FORMER PENSION BENEFITS

5.1 The Members have caused the Contract formerly in existence with Continental Assurance Company to be discontinued in accordance with the terms of such Contract and have continued the Single Premium Endowment Insurance of all Players insured thereunder in the same amount as Paid-up Endowment Insurance, to be paid to said Players in accordance with the terms of said Contract.

5.2 In addition to all benefits provided hereunder, and notwithstanding any other provision of the Plan to the contrary, every Player on the Active List of any Member on February 2, 1965, February 2, 1966 or February 2, 1967, or his Beneficiary, shall be entitled to receive such benefits as are payable under the Paid-up Endowment Insurance Contract referred to in Section 5.1 hereof, upon such conditions and subject to such options as are set forth in said Paid-up Endowment Insurance Contract.

5.3 (a) Effective as of September 8, 1988, the assets of the Plan held under the Paid-up Endowment Insurance Contract have been transferred to the Insurer.

(b) Notwithstanding Sections 5.1 and 5.2, and in accordance with paragraph (a) of this Section 5.3, any amounts that would otherwise have been payable under the Paid-up Endowment Insurance Contract shall no longer be payable under such Contract on or after February 2, 1988 with respect to those

former Players who had not yet begun to receive the payment of any benefit under the Plan as of February 2, 1988. Effective as of February 2, 1988, every former Player who is described in the preceding sentence and who was on the Active List of any Member on February 2, 1965, February 2, 1966 or February 2, 1967, or his Beneficiary, shall receive the total benefit to which he is entitled under Section 3.2 hereof from the assets of the Plan held by the Insurer; provided, however, that any such former Player who is not entitled to a benefit under Section 3.2 hereof shall receive a benefit under the Plan from Plan assets held by the Insurer in an amount equal to the benefit he would have otherwise received under the Paid-up Endowment Insurance Contract.

ARTICLE VI
MEMBER'S CONTRIBUTIONS AND BENEFIT LIMITATIONS

6.1 On or before July 1 of each Plan Year, every Member shall pay an amount necessary to fund the benefits for its Players in accordance with the rules set forth in this Article, and in order to prevent a deficiency in the funding standard account as required by the Internal Revenue Code and ERISA.

6.2 The annual cost of funding for the benefits for any Player on the Active List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1981), or on the Injured List on February 2, 1973 (or on any subsequent February 2, prior to February 2, 1981), shall be paid by the Member on whose Active List or Injured List, as the case may be, the Player appears on February 2 of the Plan Year involved. The annual cost of funding for the benefits for any Player on the Active List or Injured List on February 16, 1981 (or on any subsequent February 16) shall be paid by the Member on whose Active List or Injured List, as the case may be, the Player appears on February 16 of the Plan Year involved.

6.3 The annual cost of funding for the benefits for any Player (i) on the Suspended or Armed Services List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1981), or on the Injured List on February 2, 1968 (or any subsequent February 2, prior to February 2, 1973), and (ii) on the Active List of any Member for 50 percent or more of the total

Championship Games played by each Member during the Regular Season which includes such February 2 and which ended before February 2, 1981, shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved. The annual cost of funding for the benefits for any other Player on the Roster during the Plan Year involved shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved.

6.4 (a) The annual cost of funding for the benefits for any Player not on any Roster during the Plan Year involved shall be paid by the Member having rights to the services of such Player, as a Player, on February 16 of the Plan Year involved (or February 2, if the Plan Year involved ended prior to February 2, 1981) or, if no Member has such rights on said February 16 (or February 2, as the case may be), by the Member last having such rights prior to said February 16 (or February 2, as the case may be).

(b) Notwithstanding any other provision of this Article VI to the contrary, the annual cost of funding for the benefit increases provided to Former Players under paragraphs (e), (f) and (g) of Section 3.2 shall be paid by each Member of the Association. The amount of the funding cost to be paid by each Member shall equal the total amount of such cost multiplied by a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Members of the

Association. For purposes of Section 18.3(c)(i) of the Plan, the allocable share of the funding cost provided for under this paragraph (b) shall be part of the "unfunded accrued liability" directly allocable to a Withdrawing Member."

6.5 The annual cost of funding for the benefits provided under the Plan shall be determined by the Enrolled Actuary based on an actuarial cost method and the assumptions and amortization period adopted by the Committee.

6.6 In no event shall the annual funding cost determined under Section 6.5 for any Plan Year be less than the minimum contribution required under the Internal Revenue Code and ERISA for that Plan Year.

6.7 (a) In no event shall the annual retirement pension payable to any Player under this Plan exceed for any Limitation Year, the lesser of:

(i) \$90,000, as increased by cost-of-living adjustments under Section 415(d) of the Internal Revenue Code (the "Dollar Amount"), or

(ii) 100 percent of the Player's average Compensation (as increased by cost-of-living adjustments under Section 415(d) of the Internal Revenue Code for former Players) for the period of three consecutive calendar years yielding the highest such average during which he was a Player.

(b) In determining the maximum allowable benefit otherwise payable under this Section, the Dollar Amount shall be adjusted so that:

(i) if the Player's annual retirement pension commences upon the Player's attaining age 62, the Dollar Amount shall be computed by using a reduction factor that is consistent with the reduction for old-age social security benefits commencing before the Player's Social Security Retirement Age; or

(ii) if the Player's annual retirement pension commences prior to the Player's attaining age 62, the Dollar Amount shall be the Actuarial Equivalent of the Dollar Amount computed as if the Player's Annual Retirement Pension commenced at age 62, reduced for each month by which benefits commence before the month in which the Player attains age 62.

The Actuarial Equivalent of the Dollar Amount shall be based upon the greater of the interest rate assumption used under Section 1.2 or an interest rate assumption of 5% per annum.

(c) Notwithstanding anything contained herein, the provisions of paragraph (b) shall not reduce any Player's annual retirement pension below the pension he was entitled to receive under the terms of the Plan as in effect on February 1, 1987 (determined without regard to changes in the terms of the Plan or cost of living increases occurring after May 5, 1986).

(d) For purposes of this Section and Sections 6.8 through 6.13:

(i) The annual retirement pension shall not include the portion of the Player's benefit that is attributable to the Player's Supplemental Pension Account.

(ii) "Compensation" shall mean the Player's wages, salaries, and other amounts received for personal services rendered for a Member.

(iii) "Social Security Retirement Age" shall mean:

(A) in the case of a Player who attains age 62 before January 1, 2000, age 65;

(B) in the case of a Player who attains age 62 after December 31, 1999, age 66; and

(C) in the case of a Player who attains age 62 after December 31, 2016, age 67.

6.8 If a Player's annual retirement pension is payable in a form other than a Single Life Annuity or a Qualified Joint and Survivor Annuity, for purposes of determining the maximum allowable benefit payable under Section 6.7, the annual retirement pension shall be adjusted so that it is the Actuarial Equivalent of a single life annuity. In making this adjustment, the interest rate assumption shall not be less than the greater of five percent or the rate specified in Section 1.2.

6.9 In the event that the annual retirement pension payable to a Player under this Plan and all other defined benefit plans of a Member does not exceed \$10,000 for a Limitation Year, and if the Player does not have a Supplemental Pension Account and has not at any time participated in a defined contribution plan maintained by a Member, the limitations otherwise imposed by Section 6.7 and the adjustments described in Section 6.8 shall not apply.

6.10 (a) If a Player has less than ten (10) years of aggregate service with all Members (including service in a capacity other than as a Player) ("Member Service") at the time at which he is entitled to receive benefits under the Plan, the limitation described in Section 6.7(a)(ii) and, if applicable, the \$10,000 amount described in Section 6.9 or the limitation described in Section 6.11, shall be reduced by multiplying the applicable limitation by a fraction, the numerator of which is the Player's number of years (or part thereof) of Member Service and the denominator of which is ten.

(b) If a Player has less than ten (10) years of Credited Service (as defined in Section 4.1) at the time at which he is entitled to receive benefits under the Plan, the Dollar Amount shall be reduced by multiplying the Dollar Amount by a fraction, the numerator of which is the Player's number of years (or part thereof) of Credited Service and the denominator of which is ten.

(c) In no event shall paragraphs (a) and (b) of this Section 6.10 reduce any limitation described therein (including the Dollar Amount) to an amount less than one-tenth (1/10th) of such limitation.

6.11 (a) If a Player has a Supplemental Pension Account, the Player's annual retirement pension under this Plan shall be limited or reduced so that the sum of the "Defined Benefit Fraction" and the "Defined Contribution Fraction" of such Player for any Limitation Year shall not exceed 1.0.

(b) If a Player has at any time been a participant in a defined contribution plan maintained by a Member, subject to the provisions of Section 6.12, the "annual additions" (as defined in Section 415(c)(2) of the Internal Revenue Code) to such defined contribution plan for such Player shall be limited or reduced so that the sum of the "Defined Benefit Fraction" and the "Defined Contribution Fraction" of such Player for any Limitation Year shall not exceed 1.0.

(c) If a Player (i) has a Supplemental Pension Account and (ii) also has at any time been a participant in a defined contribution plan maintained by a Member, subject to the provisions of Section 6.12, the Player's annual retirement pension under this Plan shall be limited or reduced so that the sum of the "Defined Benefit Fraction" and the "Defined Contribution Fraction" of such Player for any Limitation Year shall not exceed 1.0; provided, however, that in determining the

extent of any such limitation or reduction, the Player's Defined Contribution Fraction for the Limitation Year shall be computed prior to taking into account any annual additions to the defined contribution plan for such Player for such Limitation Year and for prior Limitation Years.

(d) For purposes of this Section:

(i) The Defined Benefit Fraction shall mean the fraction defined in Section 415(e)(2) of the Internal Revenue Code.

(ii) The Defined Contribution Fraction shall mean the fraction defined in Section 415(e)(3) of the Internal Revenue Code.

6.12 (a) For purposes of applying the limitations described in Sections 6.7 through 6.11, in accordance with Treas. Reg. § 1.415-8(e), this Plan shall not be aggregated with any other multiemployer plans (as defined in Section 414(f) of the Internal Revenue Code) maintained by the Members.

(b) If a Member maintains a plan that is not a multiemployer plan, and if benefits are provided to a Player under such plan, that plan shall be aggregated (based on its limitation year) with this Plan for purposes of applying the limitations described in Sections 6.7 through 6.11 (and in accordance with the provisions of those Sections) to the extent of the benefits provided by the Member to the Player under this Plan.

6.13 (a) In applying the limitations described in Sections 6.7 through 6.12, the Limitation Year shall be the 12-month period corresponding with the Plan Year.

(b) The limitations described in Sections 6.7 through 6.12 shall be effective as of February 2, 1987.

ARTICLE VII
DEATH BENEFITS

7.1 (a) In the event of the death of a married Player prior to the date as of which the payment of his Early Retirement Pension or Normal Retirement Pension, as the case may be, becomes effective, except as otherwise provided in Section 7.2, such Player's spouse shall be entitled to a monthly benefit payable as an annuity for her life in an amount (the "Preretirement Survivor Annuity") equal to the greater of:

(i) The Actuarial Equivalent of the Supplemental Pension Account that said Player would have been entitled to receive if his date of death had been his Normal Retirement Date, plus the excess, if any, of an amount equal to the Actuarial Equivalent on the date of death of the Normal Retirement Pension based on the Credited Service earned to the date of death, over the Actuarial Equivalent of the proceeds of any group life insurance policy (exclusive of any such proceeds paid because of accidental death) maintained and paid for by a Member on the life of a Player;
or

(ii) 50% of the benefit the Player would have received:

(A) in the case of a Player whose date of death occurs after his attainment of age 45, had such Player begun to receive his benefit under the Plan (as adjusted under Section 3.5, if applicable) on the day

before his date of death in the form of a Qualified Joint and Survivor Annuity; or

(B) in the case of a Player whose date of death occurs prior to his attainment of age 45, had such Player survived until the attainment of such age and elected to receive his benefit under the Plan (as adjusted under Section 3.5) commencing on the first day of the first month following his attainment of age 45 in the form of a Qualified Joint and Survivor Annuity.

(b) Notwithstanding paragraph (a) of this Section, the surviving spouse of the Player may elect to receive the Actuarial Equivalent of the Preretirement Survivor Annuity in the form of a lump sum payment. Such election shall be in writing and shall be filed with the Committee within a reasonable time prior to the commencement of benefits under this Section.

(c) (i) Payments under the Preretirement Survivor Annuity under paragraph (a) of this Section shall commence on the first day of the first month following the date that the Player would have attained age 45 had he survived or, if the Player's death occurs after his attainment of age 45, as soon as possible after the Committee is notified of the Player's death.

(ii) The payment of the Actuarial Equivalent of the Preretirement Survivor Annuity in a lump sum under paragraph (b) of this Section shall be made as soon as practicable after the Committee is notified of the Player's

death; except that if the Player's death occurs prior to his attainment of age 45, the surviving spouse may elect in writing to defer the commencement of the benefit payable in the form of a lump sum until the first day of the first month following the date the Player would have attained age 45 had he survived.

(d) (i) Notwithstanding the provisions of this Section 7.1, in the event of the death of a "Vested Former Player", the death benefit payable under this Section shall be calculated as if such Player had reached his Normal Retirement Date on the date of his death. The preceding sentence shall not apply if the death benefit payable under this Section is determined under Section 7.1(a)(ii).

(ii) For purposes of this paragraph (d), a Vested Former Player shall mean an individual with a vested right to a pension benefit under the Plan who, at the date of his death, was not employed as a Player by a Member and had not begun to receive the payment of his pension benefit under the Plan.

(iii) The applicable provisions of this paragraph (d) shall also apply with respect to the calculation of the death benefit payable under Section 7.2.

7.2 In the event of the death of an unmarried Player, or the death of a married Player who has elected to waive the Preretirement Survivor Annuity in accordance with Section 7.3(c),

prior to the date as of which the payment of such Player's Early Retirement Pension or Normal Retirement Pension, as the case may be, becomes effective, said Player's Beneficiary shall be entitled to receive a cash settlement, in a lump sum, equal to (i) 100% of the Supplemental Pension that said Player would have been entitled to receive if his date of death had been his Normal Retirement Date, and (ii) plus the excess, if any, of an amount equal to the Actuarial Equivalent on the date of death of the Normal Retirement Pension based on the Credited Service earned to the date of death, over the proceeds of any group life insurance policy (exclusive of any such proceeds paid because of accidental death) maintained and paid for by a Member on the life of a Player. Such payment shall be made as soon as practicable after the Committee is notified of such Player's death.

7.3 (a) The Committee shall provide each married Player, within the applicable period, a written explanation with respect to the Preretirement Survivor Annuity in such terms as would be comparable to the explanation provided under Section 3.10(d) applicable to the Qualified Joint and Survivor Annuity.

(b) For purposes of paragraph (a) of this Section, the "applicable period" shall mean whichever of the following periods ends last:

(i) the period beginning with the first day of the Plan Year in which a Player attains age 32 and ending

with the close of the Plan Year preceding the Plan Year in which the Player attains age 35.

(ii) a reasonable period after a Player becomes eligible to participate in the Plan.

(iii) a reasonable period after termination of employment with respect to a Player who terminates before attaining age 35.

(c) Subject to the spousal consent rules set forth in Section 3.10(c), a married Player may elect to waive the Preretirement Survivor Annuity during the period which begins on the later of either (i) first day of the Plan Year in which the Player attains age 35 or (ii) the date of the Player's marriage, and ends on the date of the Player's death; provided, however, that in the case of a married Player who has terminated his employment, the applicable election period under this paragraph (c) with respect to benefits accrued before the date of such termination shall begin on such termination date. A Player who has waived the Preretirement Survivor Annuity may subsequently cancel his waiver at any time, by filing a proper waiver or cancellation of waiver with the Committee.

(d) Subject to the applicable provisions of this Section 7.3 and the spousal consent rules of Section 3.10(c), each Player, upon becoming eligible to participate under the Plan, may designate a Beneficiary to receive any benefits payable under the Plan in the event of his death. In the absence of any such designation, the provisions of Section 1.7 shall govern with

regard to the payment of benefits to a Beneficiary after the death of the Player. Any designation under this Section shall be in writing and shall be filed with the Committee. A Player may change his Beneficiary at any time prior to the commencement of his benefits by filing a new designation with the Committee.

7.4 Upon the death of a Player after the date as of which the payment of his Early Retirement Pension or Normal Retirement Pension, as the case may be, becomes effective, no further payments shall be made other than those, if any, specified in the benefit to which the Player is entitled.

ARTICLE VIII
NON-ALIENATION OF BENEFITS

8.1 No benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void, nor shall any such benefit be in any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefit.

8.2 If any Player or any Beneficiary under the Plan is adjudicated bankrupt or attempts to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge any benefit under the Plan, except as specifically provided in the Plan, then such benefit shall, in the discretion of the Committee, cease and terminate and in that event the Committee shall hold or apply the same or any part thereof to or for the benefit of such Player or Beneficiary in such manner as the Committee may deem proper.

8.3 If any court of competent jurisdiction issues an order inconsistent with this Section, and the Committee thereafter notifies the Player or any Beneficiary of such order, then, unless and until such order is set aside, the following provisions shall apply:

(a) No action shall be required by the Association, Insurer, Committee or any other person to prevent such order from being complied with.

(b) Thirty days after giving such notice, such order may be complied with.

8.4 Notwithstanding the foregoing provisions of this Article, the Plan shall pay benefits pursuant to a domestic relations order which, as determined by the Committee, constitutes a "qualified domestic relations order" within the meaning of Section 414(p) of the Internal Revenue Code.

ARTICLE IX
FORFEITURES

9.1 Any forfeitures arising under the Plan shall be allocated among the Members, on an actuarial basis, and shall not be applied to increase the benefits of any Player hereunder.

9.2 If the Committee is unable to make payment under the Plan because it is unable to find the Player or Beneficiary to whom payment is to be made, the Player's benefit under the Plan shall be forfeited as of the last day of the Plan Year in which the Committee determines that it is unable to find such Player or Beneficiary. If the Player or Beneficiary later makes a claim for such payment and the Committee determines that the claim is valid, the amount of the Player's benefit when forfeited shall be restored and payment made within 60 days of such determination.

ARTICLE X
INCOME AND EXPENSES

10.1 At the end of each Plan Year, or at such other times set forth in any Contract or Trust Agreement, all income (including dividends paid by the Insurer on any Contract) earned on the funds held by the Insurer (other than on funds held in Supplemental Pension Accounts) or by the Trustees, or any losses on such funds, shall be allocated to each Member's account based on the assets allocable to such Member from time to time during such Plan Year.

10.2 All expenses of administering the Plan, including, but not limited to, the compensation of actuaries, accountants, consultants and counsel, shall be paid from the funds held by the Insurer and shall be charged equally to each Member's account.

ARTICLE XI
MEMBER'S ACCOUNTS

11.1 The Insurer and, if applicable, Trustees, shall maintain a separate account for each Member to which it shall credit each Member's allocable share of Member's contributions (other than those provided for in Section 6.5(b) hereof) and to which it shall charge each Member's allocable share of benefits paid to Players.

11.2 The benefits payable hereunder to each Player shall be allocated among the Members, on an actuarial basis, in order to give due consideration to the amount contributed on behalf of such Player by such Member.

ARTICLE XII
INSURANCE CONTRACTS

12.1 One or more Contracts may be purchased in order to carry out the terms of the Plan from such Insurer or Insurers as the Members, in their absolute discretion, shall choose. Such Contracts shall cover the Players in the Plan and may be amended from time to time.

12.2 The Players shall not have any right, title, interest, or ownership in and to any Contract which shall be purchased pursuant hereto. Except as otherwise provided herein, in no event may any of the avails or proceeds of any Contract be recoverable or revert, directly or indirectly, to any member or be diverted to any purpose other than for the exclusive benefit of the Players and Beneficiaries covered hereunder.

12.3 The provisions for the form and mode of benefit payments under this Plan shall be subject to all of the terms and conditions of any and all Contracts purchased pursuant to Section 12.1 hereof.

12.4 The Contracts shall provide that any death benefit payable thereunder shall be payable to the Beneficiary and shall reserve to the Contract holder such rights as are necessary to implement this Plan. The signature of any Player may be required for the exercise of any such right.

12.5 No Insurer shall be considered to be a party to this Plan, nor shall it have any responsibility for the validity of this Plan. Its sole liability shall be its liability as stated in each Contract which it may issue.

12.6 The Insurer shall be fully protected from any liability in assuming that the Plan has not been amended or changed until notice of any amendment or change in any of the terms thereof has been received by the Insurer.

12.7 The Insurer shall be fully protected in accepting, from the Members, or the Committee, premiums on or instructions in connection with Contracts which it may issue or may have issued under this Plan and shall have no responsibility to make an inquiry as to the authority to make such payment or to give such instructions.

ARTICLE XIII
TRUST FUND

13.1 (a) The Members have entered into a Trust Agreement with Gary Bettman and Robert Criqui, providing for the administration of the Trust by them as Trustees thereof, in such form and containing such provisions as the Members deem appropriate. Effective February 2, 1993, Jeffrey Mishkin shall replace Gary Bettman as a Trustee under the Trust Agreement. The Trust Agreement shall be deemed to form a part of this Plan and any and all rights and benefits which may accrue to any person under this Plan shall be subject to all the terms and provisions of said Trust Agreement.

13.2 (a) The "Trust Fund" shall consist of the assets held by the Trustees thereunder, together with the net income or loss produced by the investments of the Fund or the sale of any such investments, which shall be added to or deducted from the Fund by the Trustees. The Trust Fund shall be held, administered and invested in the manner provided in the Trust Agreement.

ARTICLE XIV
ADMINISTRATION OF PLAN

14.1 The general administration of the Plan shall be placed in a Committee, consisting of at least two persons, who shall be appointed from time to time by the majority vote of all of the Members.

14.2 The members of the Committee shall elect a Chairman from their number, and a Secretary who may be, but need not be, one of the members of the Committee, and shall designate an Enrolled Actuary to act in actuarial matters relating to the Plan. They may appoint from their number such committees with such powers as they shall determine, may authorize one or more of their number or any agent to make any payment in their behalf, or to execute or deliver any instrument except that a requisition for funds from the Insurer shall be signed by two members of the Committee. The Committee may employ counsel and agents and such clerical, medical and accounting services as they may require in carrying out the provisions of the Plan.

14.3 The Committee shall hold meetings upon such notice, at such place or places, and at such time or times as they may from time to time determine.

14.4 A majority of the members of the Committee at the time in office shall constitute a quorum for the transaction of business. All resolutions or other actions taken by the Committee at

any meeting shall be by vote of a majority of the Committee at the time in office.

14.5 No member of the Committee shall receive any compensation from the Plan for his services as such.

14.6 Subject to the limitations of the Plan, the Committee from time to time shall establish rules for the administration of the Plan and the transaction of its business. The Committee shall take such steps as are considered necessary and appropriate to remedy any inequity that results from incorrect information received or communicated in good faith or as the consequence of an administrative error. The Committee shall interpret the Plan and shall determine the answers to questions arising in the administration, interpretation and application of the Plan and shall endeavor to act, whether by general rules or by particular decisions, so as not to discriminate in favor of or against any Player. The Committee may correct any defect, reconcile any inconsistency or supply any omission. All Players in similar circumstances shall be treated as nearly uniformly as practicable.

14.7 The Committee shall keep all records relating to Players including former Players and such other records as are necessary for the proper operation of the Plan.

14.8 The Committee shall take such steps as are necessary to insure that all reporting and disclosure requirements imposed

upon the Plan by applicable Federal law, any amendments thereto, regulations thereunder, or any other official published interpretation thereunder, are complied with.

14.9 The Committee shall discharge its duties in accordance with the requirements of applicable Federal law, any amendments thereto, regulations thereunder or any other official published interpretation thereunder.

14.10 The Committee shall arrange for such bonding as is required by law but no bonding in excess of the amount required by law shall be considered required by this Plan.

14.11 The Committee shall be indemnified by the Members against expenses reasonably incurred by it in connection with any action, to which it may be a party, by reason of its service as a Committee, except in relation to matters as to which it shall be adjudged in such action to be liable for gross negligence or willful misconduct in the performance of its duty.

14.12 The Committee shall adopt from time to time standards for use in all actuarial calculations required in connection with the Plan, and shall establish the amount of contributions under the Plan as provided herein. As an aid to the Committee in adopting tables and in fixing the amount of contributions payable under the Plan, the Enrolled Actuary designated by the Committee shall make annual actuarial valuations with respect to the operation and administration of the Plan and shall certify to the

Committee the tables and amount of contributions which he recommends for use by the Committee.

14.13 The Committee shall arrange for the maintenance of accounts showing the fiscal transactions of the Plan, and for the keeping in convenient form of such data as may be necessary for actuarial valuations with respect to the operation and administration of the Plan. The Committee shall prepare, from time to time, a report giving a brief account of the operation of the Plan. Such report shall be submitted to the Members.

14.14 The Committee shall be entitled to rely upon all tables, valuations, certificates and reports furnished by the Enrolled Actuary designated by the Committee, and upon all opinions given by any legal counsel selected or approved by the Members. The Committee shall not be liable for any action taken or suffered by them in good faith in reliance upon any such Enrolled Actuary or counsel.

14.15 The Committee shall be responsible for exercising any and all rights under the Contracts, including the right to designate the portion of the premium paid to the Insurer which shall be invested in equity securities.

14.16 The Committee may appoint an Insurer under this Plan to act as an Investment Manager to manage, acquire, and dispose of any assets of the Plan. The Trustees may also appoint an Investment Manager or Managers to manage, acquire and dispose of

any assets of the Plan. Any such Investment Manager shall be an investment adviser registered under the Investment Advisers Act of 1940, a bank as defined in that Act, or an insurance company qualified to perform investment services under the laws of at least two States. The appointment of any such Investment Manager shall not be effective until such Investment Manager has acknowledged in writing that it is a fiduciary with respect to the Plan.

14.17 The Committee may waive the provisions of Sections 4204(a)(3)(A) and 4204(a)(3)(B) of ERISA requiring a Member that disposes of its franchise to any new Member, under certain conditions, to post a bond, or place an amount in escrow, with the Plan; provided that the new Member posts a bond, or otherwise provides security acceptable to the Committee, in an amount that is not less than the amount of the bond (or escrow) that the Member that disposed of its franchise would have otherwise been required to provide. Except as may otherwise be determined by the Committee, any such bond or other security provided by the new Member shall be in addition to any other bond (or other security) required to be provided by the new Member. Except as described above or as may be determined by the Committee in a manner consistent with their fiduciary duties described in Article XV of the Plan, nothing contained herein shall give the Committee the right to otherwise relieve the Member that disposed

of its franchise of any liability imposed upon it by the
Multiemployer Pension Plan Amendments Act of 1980.

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ARTICLE XV
LIABILITY AND STANDARD OF CARE OF COMMITTEE

15.1 Each member of the Committee and any other fiduciary with respect to the Plan shall discharge his duties with respect thereto (a) solely in the interest of Players and their Beneficiaries; (b) for the exclusive purpose of providing benefits to Players and their Beneficiaries and defraying reasonable expenses of administering the Plan (except as otherwise provided in Sections 21.5 and 21.6); (c) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and (d) in accordance with the provisions of the Plan insofar as such provisions are not inconsistent with applicable law. As used herein, the term "fiduciary" shall have the meaning ascribed to it in Section 3(21) of ERISA; and the "named fiduciaries" under the Plan shall be: (i) the Committee for the purpose of administering this Plan; (ii) the Insurer appointed as Investment Manager under Section 14.16, who shall be a named fiduciary only with respect to the management and control of the assets of the Plan transferred to it; and (iii) each Investment Manager appointed pursuant to Section 14.16, who shall be a named fiduciary only with respect to the management and control of the assets of the Plan transferred to it.

15.2 No fiduciary with respect to the Plan shall be liable for an act or omission of another person resulting in a breach by

such other person of his fiduciary responsibility with respect to the Plan, except to the extent that:

(a) such fiduciary participated knowingly in, or knowingly undertook to conceal, an act or omission of such other person, knowing such act or omission to be a breach of fiduciary responsibility;

(b) such fiduciary, by his failure to comply with the provisions of the preceding Section of the Plan or with Section 404(a)(1) of ERISA in the administration of his specific responsibilities which give rise to his status of a fiduciary, has enabled such other person to commit a breach of fiduciary responsibility;

(c) such fiduciary has knowledge of a breach of fiduciary responsibility by such other person, unless he makes reasonable efforts under the circumstances to remedy the breach; or

(d) such fiduciary is a "named fiduciary" and has violated his duties under Section 404(a)(1) of ERISA:

(i) with respect to the allocation of fiduciary responsibilities among "named fiduciaries" or the designation of persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan;

(ii) with respect to the establishment or implementation of procedures for allocating fiduciary responsibilities among "named fiduciaries" or for desig-

nating persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan; or

(iii) in continuing the allocation of fiduciary responsibilities among "named fiduciaries" or the designating of persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan.

15.3 Notwithstanding anything to the contrary contained herein, no member of the Committee or other fiduciary with respect to the Plan shall incur any liability for any act or omission to the extent he would not be liable therefor under Part 4 of Subtitle B of Title I of ERISA and to the extent such act or omission is not the result of his own gross negligence or wilful misconduct.

15.4 The Members shall indemnify each member of the Committee and any other individual to whom a fiduciary responsibility with respect to the Plan is allocated or delegated from and against any and all liabilities, claims, losses, damages, costs and expenses incurred by such person as a result of act, omission or conduct in connection with the performance of his fiduciary duties, responsibilities and obligations under the Plan and under ERISA, except with respect to liabilities and claims arising from such person's own willful misconduct or gross negligence. The Members may obtain, pay for and maintain a policy or policies of insurance, the proceeds of which may be used in satisfying its obligations under this Section.

ARTICLE XVI
CLAIMS PROCEDURE

16.1 Any request for a benefit payable under the Plan shall be made in writing by a Player or Beneficiary (or an authorized representative of either of them), as the case may be, and shall be delivered to any member of the Committee. Such written request shall be deemed filed upon receipt thereof by the Committee. Such request shall be made within the time prescribed in the Plan for claiming a particular benefit or, if no time is so prescribed, within a reasonable time before payment of the benefit is to commence.

16.2 In the event a request for benefits contains insufficient information, the Committee shall, within 25 days after receipt of such request, send a written notification to the claimant setting forth a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material is necessary. The claimant's request shall be deemed filed with the Committee on the date the Committee receives in writing such additional information.

16.3 The Committee shall make a determination with respect to a request for benefits within 60 days after such request is filed. The Committee shall notify the claimant whether his claim has been granted or whether it has been denied in whole or in part. Such notification shall be in writing and shall be

delivered, by mail or otherwise, to the claimant within a reasonable time after such claim is filed. If the claim is denied in whole or in part, the written notification shall set forth, in a manner calculated to be understood by the claimant:

- (a) The specific reason or reasons for the denial;
- (b) Specific reference to pertinent provisions of the Plan on which the denial is based; and
- (c) An explanation of the Plan's claim review procedure.

Failure by the Committee to give notification pursuant to this Section within a reasonable time after receipt of the claim shall be deemed a denial of the request for the purpose of proceeding to the review stage.

16.4 A claimant whose request for benefits has been denied in whole or in part may, within 60 days after written notification of such denial, file with the Committee, a written request for a review of his claim. Such written request shall be deemed filed upon receipt of same by the Committee.

16.5 A claimant who timely files a request for review of his claim for benefits may review pertinent documents (upon reasonable notice to the Committee) and may submit the issues and his comments to the Committee in writing. Except as otherwise provided below, the Committee shall, within 120 days after receipt of the written request for review, communicate its deci-

sion in writing to the claimant, setting forth, in a manner calculated to be understood by the claimant, the specific reasons for its decision and the pertinent provisions of the Plan on which the decision is based.

16.6 If the claimant so requests in his timely application for review, the Committee shall schedule a conference with the claimant (and/or his authorized representative). Such conference shall be held at the offices of the Association at a date and time which is mutually agreed upon by the parties concerned, provided that in no event shall the conference be held more than 120 days after the Committee receives the claimant's written request for review of his claim. The decision of the Committee shall be communicated in writing to the claimant or his authorized representative within 30 days after the date on which the conference is completed, and shall set forth, in the same manner, the information required in the preceding Section.

ARTICLE XVII
LIMITATION OF RIGHTS OF THE PLAYER

17.1 Nothing contained in this Plan shall be deemed to give any Player the right to be retained in the service of any Member. Inclusion under the Plan shall not give any Player any right or claim to any benefits except to the extent such right is specifically fixed under the terms of the Plan.

17.2 The Members agree to make any and all contributions required to provide the benefits set forth herein.

17.3 No liability shall attach to any Member for any payment of any benefit or claim hereunder.

17.4 The Committee shall not be responsible for the validity of any Contracts, or for the action of any person or persons which may render any Contract invalid or unenforceable either in whole or in part. The Committee shall not be responsible for any inability to perform or any delay in performing any act occasioned by any other person. In the event it becomes impossible for the Committee to perform any act, that act shall be performed which in the judgment of the Committee will most nearly carry out the intent and purpose of this Plan.

ARTICLE XVIII
PARTICIPATING MEMBERS

18.1 Each Member shall execute such documents as are necessary to duly accept this Plan and to participate in any Contracts and the Trust Agreement to implement said Plan.

18.2 (a) In the event of the sale, transfer, exchange or other disposition of a franchise, or the granting of a new franchise by the Association, in addition to satisfying the provisions of paragraph (b) which apply in the case of a sale of assets, the new Member shall immediately execute such documents and take such actions as the Committee deems necessary so as to provide the benefits of this Plan for its Players.

(b) In the event of the sale of the assets of a franchise by a Member, such Member shall not be considered to have "withdrawn" from the Plan (as described in Section 18.3(a)) as a result of such sale, provided that all of the applicable conditions described in Section 4204(a) of ERISA, as may be modified or varied by the Pension Benefit Guaranty Corporation, are satisfied.

18.3 (a) In the event that any Member ceases to own a franchise and if such franchise is not sold, transferred or exchanged or otherwise disposed of to any new Member or if the assets of such franchise are sold to a new Member without compliance with the conditions of Section 4204(a) of ERISA, or if any Member completely discontinues making contributions to the Plan, such

Member shall be considered to have "withdrawn" from the Plan (within the meaning of Section 4203 of ERISA) and the provisions of paragraphs (b) and (c) of this Section shall apply to such Member (the "Withdrawing Member").

(b) All of the Players of the Withdrawing Member shall be vested with all benefits accrued to the date of such withdrawal and the Plan shall terminate as to such Member.

(c) The Withdrawing Member shall be obligated to immediately make a lump sum payment to the Plan equal to the sum of the amounts set forth below in subparagraphs (i) and (ii) ("withdrawal liability").

(i) The "unfunded accrued liability" as of the date of withdrawal for each Player for whom the Withdrawing Member is then liable to make a contribution under the provisions hereof; provided, however, that such Member shall not be liable for any further contribution for any Player to the extent that another Member becomes liable for such contributions under the terms of the Plan, by virtue of having acquired rights to such Player. For purposes of this Section 18.3, the amount of the "unfunded accrued liability" allocable to a Withdrawing Member shall be determined pursuant to the provisions of Articles X and XI of the Plan.

(ii) The Withdrawing Member's allocable share of any "unattributable liabilities" existing under the Plan. For purposes of this Section 18.3, "unattributable liabilities" shall mean the total amount of the withdrawal

liabilities of Members which have previously withdrawn from the Plan that is outstanding as of the date of the withdrawal of the Withdrawing Member. The amount of unattributable liabilities allocable to the Withdrawing Member shall equal the total amount of such liabilities multiplied by a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Members of the Association as of the date of withdrawal.

In determining the amount of withdrawal liability for any Withdrawing Member under this Section 18.3, the provisions of Section 4209 of ERISA (relating to the de minimis rule) and Section 4219(c)(1)(B) of ERISA (relating to the 20-year limit on withdrawal liability payments) shall not apply.

18.4 In no event shall any merger or consolidation of any other plan with this Plan, or any transfer of assets and liabilities of this Plan to any other plan or any transfer of assets and liabilities from any other plan to this Plan take place which results in a benefit to any Player or Beneficiary (if the Plan then terminated) that is lower than the benefit he would have received immediately before the merger, consolidation or transfer (if the Plan then terminated).

ARTICLE XIX
AMENDMENT OR TERMINATION OF THE PLAN

19.1 The Members shall have the right to amend the Plan at any time by an instrument in writing executed by all Members (or by the Association as agent for its Members) and delivered to the Insurer and Trustees, provided, however, that:

(a) no amendment shall deprive any Player or Beneficiary of any of the benefits to which he is entitled under the Plan with respect to contributions previously made;

(b) no amendment shall provide for the use of the funds or assets held by the Insurer or Trustees other than for the exclusive benefit of Players and Beneficiaries and for defraying reasonable expenses of administering the Plan, and except as otherwise provided in the Plan, no funds contributed shall ever revert to or be used by the Member;

(c) no amendment shall deprive the Insurer of any of its exemptions and immunities with respect to Contracts issued by it prior to receipt by the Insurer of notice of such amendment; and

(d) no amendment shall increase the powers, duties or liabilities of the Trustees without their written consent.

Any amendment to the Plan, Contract, or Trust Agreement may be made retroactive to enable the Members to obtain rulings from the Internal Revenue Service as to the qualification of this Plan within the meaning of the Internal Revenue Code, as amended, or

as it may be replaced by any sections of Federal law of like intent and purpose.

19.2 The Members may terminate the Plan at any time and for any reason by an instrument in writing executed by all the Members and delivered to the Insurer and Trustees; provided, however, that if the Plan shall be terminated (or if there shall be a partial termination of the Plan), each Player or Beneficiary affected thereby shall be vested with all benefits accrued to the date of termination, and each Member shall make a contribution (or contributions) to the Plan in the amount required by the applicable provisions of ERISA. Upon termination, the Members may obtain deferred annuities for Players not yet retired and immediate annuities for retired Players and Beneficiaries then entitled to payments providing for the benefits to which such Player or Beneficiary is entitled, and upon termination such annuities or certificates of such annuities shall be distributed in complete discharge of all of the rights of such Players and Beneficiaries in the Plan. After discharge and satisfaction of all liabilities under the Plan, any remaining assets shall be returned to each Member in proportion to the amounts credited to each such Member's account under Articles X and XI of the Plan. Any Contract purchased under this Plan shall contain terms implementing the foregoing.

19.3 In the event that the balance in any Member's account is insufficient to discharge its liabilities in full, then such

balance shall be allocated among its Players (and their Beneficiaries) in such manner determined by the Committee as is consistent with applicable law.

ARTICLE XX
PROVISIONS PERTAINING TO PRE-1965 PLAYERS

20.1 Notwithstanding anything else in the Plan to the contrary, this Article XX contains special provisions, effective October 1, 1988, reflecting the provision of a benefit under the Plan to certain former Players ("Pre-1965 Players") who were not otherwise eligible to participate in the Plan.

20.2 For purposes of this Article XX only, the following special definitions shall apply (whether such defined term appears in this Article XX or in a Section which is incorporated into this Article XX by reference):

(a) "Active List" shall mean the list of Pre-1965 Players who, with respect to Regular Seasons prior to the Regular Season which included February 2, 1965, signed "formal contracts" with a Member and were otherwise eligible to participate in a Championship Game.

(b) "Armed Services List" shall mean the list of those Pre-1965 Players who, with respect to Regular Seasons prior to the Regular Season which included February 2, 1965, entered the Armed Services and served on active duty (as certified to the Committee by each Pre-1965 Player).

(c) "Early Retirement Benefit" shall mean a benefit commencing on a Pre-1965 Player's Early Retirement Benefit Commencement Date.

(d) "Early Retirement Benefit Commencement Date" shall mean any date after the Pre-1965 Player's attainment of age 55

and prior to his attainment of age 62 on which an election by the Pre-1965 Player to receive an Early Retirement Benefit under this Article XX becomes effective.

(e) "Member" shall mean a member or former member of the Association or the National Basketball League.

(f) "Normal Retirement Benefit" shall mean a benefit commencing on a Pre-1965 Player's Normal Retirement Benefit Commencement Date.

(g) "Normal Retirement Benefit Commencement Date" shall mean the first day of the first month following a Pre-1965 Player's attainment of age 62 or October 1, 1988, if later.

(h) "Pre-1965 Player" shall mean a Player who:

(i) had at least 5 Years of Pre-1965 Credited Service;

(ii) is not otherwise eligible to participate in this Plan under Article II; and

(iii) is living on October 1, 1988.

(i) "Year of Pre-1965 Credited Service" shall mean:

(i) each Regular Season that a Pre-1965 Player was on the Active List, and

(ii) each Regular Season that a Pre-1965 Player was on the Armed Services List; provided, however, that a Pre-1965 Player shall not receive credit for Years of Pre-1965 Credited Service for Regular Seasons during which he was on the Armed Services List unless his period of service in the Armed Services was either immediately preceded or

followed by a Regular Season during which he was on the Active List.

For purposes of this Article XX, any term used herein (or incorporated by reference herein) that is not separately defined in this Section 20.2 shall have the meaning set forth elsewhere in the Plan; provided, however, that the reference in the definition of 'Championship Game' (as set forth in Section 20.8) and in the definition of 'Regular Season' (as set forth in Section 20.30) to the term 'Association' shall also include the National Basketball League.

20.3 (a) (i) Except as provided in paragraphs (b) and (c) of this Section, a Pre-1965 Player who attains his Normal Retirement Benefit Commencement Date shall be entitled to receive a Normal Retirement Benefit of \$100 per month for each of his Years of Pre-1965 Credited Service. The Normal Retirement Benefit shall be paid to him commencing on his Normal Retirement Benefit Commencement Date, shall continue to be paid on the first day of each month up to and including the month in which such Player dies and, except as otherwise provided in paragraph (c), shall be paid as an annuity for the life of the Player ("Single Life Annuity").

(ii) Effective October 1, 1992, the Normal Retirement Benefit provided under subparagraph (i) shall be increased to \$108.33 per month for each Year of Pre-1965 Credited Service. The benefit to be paid in accordance with

this subparagraph (ii) shall apply only with respect to benefit payments due on or after October 1, 1992 and shall not require the recalculation of benefit payments made prior to such date. This increase shall also apply in determining the benefits payable to a surviving spouse under either the Qualified Joint and Survivor Annuity or the Preretirement Survivor Annuity.

(iii) Effective March 1, 1993, the Normal Retirement Benefit provided under subparagraph (ii) shall be increased to \$116.73 per month for each Year of Pre-1965 Credited Service. The benefit to be paid in accordance with this subparagraph (iii) shall apply only with respect to benefit payments due on or after March 1, 1993 and shall not require the recalculation of benefit payments made prior to such date. This increase shall also apply in determining the benefits payable to a surviving spouse under either the Qualified Joint and Survivor Annuity or the Preretirement Survivor Annuity.

(b) (i) A Pre-1965 Player who is not yet eligible for a Normal Retirement Benefit may elect to receive, in lieu of a Normal Retirement Benefit, an Early Retirement Benefit. Such election shall be made at least 90 days prior to his Early Retirement Benefit Commencement Date and shall be made in writing delivered to the Committee.

(ii) The Early Retirement Benefit payable to a Pre-1965 Player shall be paid to him commencing on the first

day of the first month following such Player's Early Retirement Benefit Commencement Date and, except as otherwise provided in paragraph (c) of this Section, shall be paid as a Single Life Annuity. The amount of the Early Retirement Benefit payable to a Pre-1965 Player shall be determined by reducing the Normal Retirement Benefit that such Player would have been entitled to on his Normal Retirement Benefit Commencement Date by the product of $1/180$ and the total number of months that the Pre-1965 Player's Early Retirement Benefit Commencement Date precedes such Player's Normal Retirement Benefit Commencement Date.

(c) (i) If a Pre-1965 Player is married on his Early Retirement Benefit Commencement Date or on his Normal Retirement Benefit Commencement Date, as the case may be, his Early Retirement Benefit or Normal Retirement Benefit shall be paid in the form of a Qualified Joint and Survivor Annuity under which such Pre-1965 Player's benefit is reduced so that the resulting benefit payable to the Pre-1965 Player and his spouse shall be the Actuarial Equivalent of his Early Retirement Benefit or Normal Retirement Benefit otherwise payable.

(ii) Notwithstanding subparagraph (i) of this paragraph (c), a married Pre-1965 Player may elect to have his Early Retirement Benefit or Normal Retirement Benefit paid in the form of a Single Life Annuity by filing a written election with the Committee; provided, however, that

the spouse of such Pre-1965 Player must consent to such an election in accordance with the provisions of Section 3.10(c)(i). Any election by a Pre-1965 Player to waive the Qualified Joint and Survivor Annuity must be made within a reasonable period prior to the date on which his benefits commence. A Pre-1965 Player who has waived the Qualified Joint and Survivor Annuity may subsequently cancel his waiver at any time prior to the date his benefits commence, by filing a proper waiver or cancellation of waiver with the Committee.

(d) Except as provided in paragraph (c)(ii) of this Section 20.3, the optional forms described in Section 3.11 shall not be available with respect to the payment of benefits to a Pre-1965 Player.

(e) In determining the benefit to which a Pre-1965 Player may be entitled under this Section, the Pre-1965 Player shall not be credited with a Year of Pre-1965 Credited Service to the extent that such service is taken into account for benefit accrual purposes under any other qualified plan maintained or sponsored by the Association.

(f) Notwithstanding anything else in this Article XX to the contrary, the benefits payable to a Pre-1965 Player shall be subject to the applicable benefit limitations set forth in Sections 6.7, 6.9 and 6.10; provided, however, that for purposes of Section 6.10, years of Member Service shall also include all

Years of Pre-1965 Credited Service (within the meaning of Section 20.2(i)(i)).

20.4 (a) In the event of the death of a married Pre-1965 Player prior to the date as of which the payment of his Early Retirement Benefit or Normal Retirement Benefit, as the case may be, becomes effective, such Pre-1965 Player's spouse shall be entitled to a monthly benefit payable as an annuity for her life (the "Preretirement Survivor Annuity") in an amount equal to 50% of the benefit the Pre-1965 Player would have received:

(i) in the case of a Pre-1965 Player whose date of death occurs after his attainment of age 55, had such Pre-1965 Player begun to receive his benefit under the Plan (as adjusted under Section 20.3(b)(ii), if applicable) on the day before his date of death in the form of a Qualified Joint and Survivor Annuity; or

(ii) in the case of a Pre-1965 Player whose date of death occurs prior to his attainment of age 55, had such Pre-1965 Player survived until the attainment of such age and elected to receive his benefit under the Plan (as adjusted under Section 20.3(b)(ii)) commencing on the first day of the first month following his attainment of age 55 in the form of a Qualified Joint and Survivor Annuity.

(b) Payments under the Preretirement Survivor Annuity under paragraph (a) of this Section shall commence as soon as

possible after the Committee is notified of the Pre-1965 Player's death.

20.5 The annual cost of funding the benefits provided to Pre-1965 Players under this Article XX shall be paid by each Member of the Association. The amount of the annual funding cost to be paid by each Member shall be determined based on the ratio of each Member's accrued liability over the total accrued liability of all of the Members under the Plan. For purposes of Section 18.3(c)(i) of the Plan, a Member's funding cost under this Section 20.5 shall be part of the "unfunded accrued liability" directly allocable to a Withdrawing Member.

20.6 Wherever applicable under the Plan, the term "Player" shall also include a "Pre-1965 Player."

ARTICLE XXI
MISCELLANEOUS

21.1 The headings and subheadings in this Plan have been inserted for the convenience of reference only, and are to be ignored in any construction of the provisions hereof.

21.2 In the construction of this Plan, the masculine shall include the feminine and the neuter and the singular shall include the plural in all cases where such meanings would be appropriate.

21.3 This Plan shall be construed, whenever possible, to be in conformity with the requirements of the Internal Revenue Code and ERISA. To the extent not in conflict with the preceding sentence, and except to the extent that state law shall not have been preempted by the provisions of ERISA or any other laws of the United States heretofore or hereafter enacted, the Plan should be construed, administered and governed in all respects under and by the laws of the State of New York.

21.4 Subject to Sections 21.5 and 21.6, this Plan is created for the exclusive benefit of the Players and their Beneficiaries. If any provision hereof is susceptible of more than one interpretation, then among those interpretations which are possible, that one shall always be adopted which will be consistent with this Plan's being a qualified Plan within the meaning of the Internal Revenue Code, as amended, or as it may be

replaced by any sections of Federal law of like intent and purpose.

21.5 If a Member makes a contribution to the Plan due to a mistake of fact or a mistake of law, such contribution shall be returned to such Member within six months after the Committee determines that the contribution was made by such a mistake.

21.6 All contributions by the Members are conditioned upon their deductibility under Section 404 of the Internal Revenue Code, and if part or all of the deduction for a Member's contribution is disallowed, the contribution, to the extent disallowed, shall be returned to the Member within one year after the disallowance of the deduction.

21.7 If any provision of this Plan is held to be illegal, invalid or unenforceable for any reason, this shall not affect any other provision of the Plan, and this Plan shall be construed as if said illegal, invalid or unenforceable provision had never been inserted herein.

21.8 The Plan set forth herein shall amend and restate, effective as of February 2, 1989, except as otherwise provided herein, all provisions of the Plan, as in effect on February 1, 1989, except that the rights of former Players who terminated employment, died or retired prior to February 2, 1989, shall be governed by the terms of such Plan as in effect at the time of termination of employment, death or retirement.

On this 19th day of January, 1995, the National Basketball Association, as agent for its Member Clubs, has executed this Plan.

ATTEST:

Joan Ferris

NATIONAL BASKETBALL ASSOCIATION

BY: Jeffrey L. Minkin

Title: Senior Vice President
Legal and Business Affairs

**NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN**

Restated Effective February 2, 1996

NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN

TABLE OF CONTENTS

	PREAMBLE
I.	DEFINITIONS
II.	ELIGIBILITY
III.	BENEFITS
IV.	CREDITED SERVICE
V.	FORMER PENSION BENEFITS
VI.	MEMBER'S CONTRIBUTIONS AND BENEFIT LIMITATIONS
VII.	DEATH BENEFITS
VIII.	NON-ALIENATION OF BENEFITS
IX.	FORFEITURES
X.	INCOME AND EXPENSES
XI.	MEMBER'S ACCOUNTS
XII.	INSURANCE CONTRACTS
XIII.	TRUST FUND
XIV.	ADMINISTRATION OF PLAN
XV.	LIABILITY AND STANDARD OF CARE OF COMMITTEE
XVI.	CLAIMS PROCEDURE
XVII.	LIMITATION OF RIGHTS OF THE PLAYER
XVIII.	PARTICIPATING MEMBERS

- XIX. AMENDMENT OR TERMINATION OF PLAN
- XX. PROVISIONS PERTAINING TO PRE-1965 PLAYERS
- XXI. PROVISIONS PERTAINING TO CANADIAN PLAYERS
- XXII. MISCELLANEOUS

PREAMBLE

THE NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN

WHEREAS, the National Basketball Association Players' Pension Plan (the "Plan") was established on February 2, 1965;

WHEREAS, the Plan was (i) restated effective February 2, 1976, (ii) subsequently restated effective February 2, 1984 and (iii) subsequently restated again effective February 2, 1989;

WHEREAS, the First Amendment to the Plan was adopted on January 17, 1996;

WHEREAS, it has become necessary to further amend the Plan in order to (i) reflect the pension provisions of the new Collective Bargaining Agreement and (ii) make other clarifying changes to the Plan; and

WHEREAS, in light of the amendments that have previously been made to the Plan and in light of the need to make further amendments to the Plan, it has been decided to amend and entirely restate the Plan.

NOW, THEREFORE, except as otherwise provided in the Plan, effective February 2, 1996, the Plan is hereby amended and restated as set forth herein.

ARTICLE I

DEFINITIONS

1.1 "Active List" shall mean the list of Players who have signed "formal contracts" with a Member, and are otherwise eligible to participate in a Championship Game as certified to the Committee by each Member.

1.2 "Actuarial Equivalent" shall mean, unless specified otherwise, a benefit of equivalent value when computed on the basis of 7 percent interest and the 1971 Group Annuity Mortality Male Table for Players, and the 1971 Group Annuity Mortality Male Table set back 7 years for spouses and alternate payees.

1.3 "Actuarial Value" shall mean the present value of a benefit when computed on the basis of the actuarial assumptions specified under the Plan.

1.4 "Anniversary Date" shall mean any anniversary of the Effective Date of the Plan (February 2).

1.5 "Armed Services List" shall mean the list of those Players who have entered the Armed Services and are serving on active duty as certified to the Committee by each Member.

1.6 "Association" shall mean the National Basketball Association and its successors.

1.7 "Beneficiary" shall mean the person or persons designated by a Player to receive any benefits under this Plan. Where a Player fails to designate a Beneficiary or where a Beneficiary fails to survive a Player, "Beneficiary" shall mean the Player's surviving spouse, if any, or, if none, his children, if any, in equal shares, or, if none, his personal representative. Any person entitled to receive benefits hereunder after the death of a Player shall also be deemed a Beneficiary for purposes of the Plan.

1.8 "Championship Game" shall mean any game included in the Association's schedule of Championship Games and shall not include playoff games or exhibition games.

1.9 "Committee" shall mean the Pension Committee referred to in Article XIV hereof.

1.10 "Contract" shall mean a Group Annuity Contract issued by an Insurer under this Plan, whether or not such Contract contains any element of life insurance protection. Any Contract may provide for the allocation of amounts received by an Insurer

under the Plan to said Insurer's general account or to one or more of its separate accounts (including separate accounts maintained for the collective investment of assets of qualified retirement plans).

1.11 "Early Retirement Date" shall mean a date after the forty-fifth (45th) anniversary of the Player's date of birth, on which an election made by the Player for an Early Retirement Pension becomes effective, provided that during the Plan Year involved the Player (i) is not on the Roster of any Member and (ii) is not employed in any capacity by a Member, where the Player was last employed as a Player by such Member and, within the twelve-month period following such Player's employment as a Player of such Member, was reemployed by such Member in a capacity other than as a Player without any subsequent termination of such Player's employment with the Member.

1.12 "Early Retirement Pension" shall mean the pension payable to a Player at his Early Retirement Date.

1.13 "Effective Date" shall mean February 2, 1965. "Restatement Effective Date" shall mean February 2, 1976. The "Effective Date of the Second Plan Restatement" shall mean

February 2, 1984. The "Effective Date of the Third Plan Restatement" shall mean February 2, 1989. The "Effective Date of this Fourth Plan Restatement" shall, except as otherwise provided herein, mean February 2, 1996.

1.14 "Enrolled Actuary" shall mean a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under Subtitle C of Title III of ERISA.

1.15 "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and with which this Plan is intended to comply.

1.16 "Franchise" shall mean the right of any Member to participate in the Association as determined under the rules of the Association.

1.17 "Injured List" shall mean the list of Players who, due to injury or illness, have been temporarily removed from the Active List of a Member as certified to the Committee by each Member.

1.18 "Insurer" shall mean a legal reserve life insurance company which shall issue a Contract under which the Members

shall participate upon execution of an agreement providing for such participation, and which is licensed to do business in the State of New York.

1.19 "Internal Revenue Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

1.20 "Member" shall mean a member of the Association.

1.21 "Named Fiduciary" shall mean the Committee.

1.22 "National Consumer Price Index" shall mean the Consumer Price Index for Urban Consumers ("CPI-U").

1.23 "Normal Retirement Date" shall mean the fifty-third (53rd) anniversary of the Player's date of birth. Effective February 2, 1978, "Normal Retirement Date" shall mean the fiftieth (50th) anniversary of the Player's date of birth.

1.24 "Normal Retirement Pension" shall mean the pension payable to the Player at his Normal Retirement Date.

1.25 "Plan" shall mean the National Basketball Association Players' Pension Plan.

1.26 "Plan Administrator" shall mean the Committee.

1.27 "Plan Year" shall mean the twelve (12) month period beginning on the Effective Date, or any subsequent twelve (12) month period beginning on February 2 and ending on February 1 during which this Plan shall be in effect.

1.28 "Player" shall mean any person carried on any Player List, as defined in the By-Laws of the Association, or, where the context permits, a person eligible to be carried on any such List or a person formerly carried on any such List.

1.29 "Qualified Joint and Survivor Annuity" shall mean a pension benefit payable for the life of a retired Player and continued upon his death for the life of the deceased Player's surviving spouse, if any, with the surviving spouse's periodic benefit to be at a level of 50 percent of the benefit paid or payable for each such period to the Player during his lifetime in accordance with the provisions of Section 3.10(a). In the case of a Pre-1965 Player (as defined in Section 20.2(h)), Qualified Joint and Survivor Annuity shall mean a pension benefit payable for the life of the Pre-1965 Player and continued upon his death for the life of the deceased Pre-1965 Player's surviving spouse, if any, with the surviving spouse's periodic benefit to be at a

level of 50 percent of the actuarially reduced benefit paid or payable for each such period to the Pre-1965 Player during his lifetime in accordance with the provisions of Section 20.3(c).

1.30 "Regular Season" shall mean the period beginning on the date of the first game of the Association's schedule of Championship Games and ending at the end of the day before the first Playoff Game is played.

1.31 "Roster" shall mean (i) every Player on the Active List of any Member on February 2 of the Regular Season involved, (ii) for any Regular Season ending after February 2, 1965, every additional Player on the Injured List on February 2 of the Regular Season involved, without regard to whether such additional Player was on the Active List of any Member during such Regular Season and (iii) every other Player who was on the Active List of any Member for 50 percent or more of the total Championship Games played by the Member during the Regular Season involved. A Player, not otherwise considered to be on the Roster of any Member for any Plan Year beginning on or after February 2, 1989 pursuant to the terms hereof, shall not be considered to be on the Roster of any Member for any such Plan Year by virtue of the fact that he has entered into a "guaranteed" or "no-cut"

contract. Notwithstanding anything to the contrary, no Player shall be treated as having been on the Roster of any Member for any Plan Year for which all or part of his benefits were forfeited under the provisions of this Plan in existence prior to February 2, 1976. "Roster" shall also include any Player on the Armed Services List of any Member on February 2 of the Regular Season involved, who is not otherwise considered to be on the Roster for such Regular Season, if, and to the extent, that applicable law requires the Player to be so treated.

1.32 "Supplemental Pension" shall mean the pension payable to a Player from his Supplemental Pension Account.

1.33 "Supplemental Pension Account" shall mean an account to be maintained by the Insurer for each Player, as directed by the Committee and subject to the terms of this Plan.

1.34 "Suspended List" shall mean the list of those Players who, for proper cause, have been suspended by the Association or, by a Member as certified to the Committee by each Member.

1.35 "Trust Agreement" shall mean the Agreement establishing the Trust hereunder entered into between the Members and the Trustee.

1.36 "Trust" shall mean the funds and assets held and administered by the Trustees at any time under the terms of the Trust Agreement.

1.37 "Trustees" shall mean the Trustees of the Trust under the Trust Agreement, as originally executed and as amended from time to time, and any successor Trustee or Trustees acting thereunder.

ARTICLE II

ELIGIBILITY

2.1 Every Player on the Roster of any Member during the Regular Season which included February 2, 1967 shall be eligible to participate as of February 2, 1968. Every Player on the Roster of any Member during the Regular Season which included February 2, 1966, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1970. Every Player on the Roster of any Member during the Regular Season which included February 2, 1965, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1973.

2.2 Every Player on the Roster of any Member during any Regular Season beginning subsequent to the Regular Season which includes February 2, 1967, not otherwise eligible hereunder, shall be eligible to participate as of the Anniversary Date during such subsequent Regular Season.

2.3 Notwithstanding anything herein to the contrary, for the sole purpose of determining when a Player is first eligible to participate hereunder, any Player on the Roster of any Member for any Regular Season ended before February 2, 1973 solely by

reason of Section 1.31(ii) hereof shall not be eligible to participate hereunder by reason of being on such Roster until February 2, 1976. This Section shall not affect the eligibility of any Player by reason of Section 1.31(i) or Section 1.31(iii) hereof.

2.4 Every Player entitled to any benefit under the terms of the pension plan in existence prior to the adoption of this instrument shall continue to be eligible to receive such benefits.

ARTICLE III

BENEFITS

3.1 Every Player eligible to participate hereunder, who attains his Normal Retirement Date and who was on the Roster of any Member for any three Regular Seasons shall be entitled to a Normal Retirement Pension and any Supplemental Pension payable pursuant to Section 3.6 hereof.

3.2 The Normal Retirement Pension payable to a Player shall be paid to him commencing on the first day of the first month following said Player's Normal Retirement Date and shall continue to be paid on the first day of each month up to and including the month in which the Player dies and, except as otherwise provided in Sections 3.10 and 3.11, shall be paid as an annuity for the life of the Player ("Single Life Annuity") in an amount equal to:

(a) For a Player who becomes eligible to receive a Normal Retirement Pension on or before May 31, 1976, \$60 per month for each year of Credited Service.

(b) For a Player who becomes eligible to receive a Normal Retirement Pension on or after June 1, 1976 and on or before May 31, 1979, \$75 per month for each year of Credited Service.

(c) For a Player who becomes eligible to receive a Normal Retirement Pension on or after June 1, 1979 and on or before December 1, 1980, \$75 plus a cost-of-living adjustment (which adjustment shall be calculated by applying to \$75 the percentage increase in the National Consumer Price Index between September 1975 and May 1979, and which shall be rounded off to the nearest whole dollar) per month for each year of Credited Service.

(d) For a Player who becomes eligible to receive a Normal Retirement Pension on or after December 2, 1980, the amount provided in Section 3.2(c) above, plus a cost-of-living adjustment (which adjustment shall be calculated by applying to the amount provided in Section 3.2(c) the percentage increase in the National Consumer Price Index between June 1979 and November 1980, and which shall be rounded off to the nearest whole dollar) per month for each year of Credited Service.

(e) (i) For a Player who was a "Former Player" as of February 2, 1985, the Normal Retirement Pension otherwise payable to such Player under this Section shall be increased by \$2.65 per month for each year of Credited Service.

(ii) For purposes of this paragraph (e), as of February 2, 1985, a Former Player shall mean an individual

formerly employed by a Member who, as of such date, has a vested right to a pension benefit under the Plan and had not begun to receive the payment of such pension benefit. Any individual that is credited with a year of Credited Service on or after February 2, 1985 (or any individual who would have been credited with a year of Credited Service on or after February 2, 1985 if not for the fact that such individual was employed by a corporation (the sole shareholder of which is such individual) which has entered into an agreement with a Member for providing services to such Member), shall not be considered a Former Player for purposes of this paragraph (e).

(f) (i) For a Player who was a "Former Player" as of February 2, 1986, the Normal Retirement Pension otherwise payable to such Player under this Section shall be increased by \$2.60 per month for each year of Credited Service.

(ii) For purposes of this paragraph (f), as of February 2, 1986, a Former Player shall mean an individual formerly employed by a Member who, as of such date, had a vested right to a pension benefit under the Plan and had not begun to receive the payment of such pension benefit. Any individual that is credited with a year of Credited Service

on or after February 2, 1986 (or any individual who would have been credited with a year of Credited Service on or after February 2, 1986, if not for the fact that such individual was employed by a corporation (the sole shareholder of which is such individual) which has entered into an agreement with a Member for providing services to such Member), shall not be considered a Former Player for purposes of this paragraph (f).

(g) (i) For a Player who was a "Former Player" as of February 2, 1987, the Normal Retirement Pension otherwise payable to such Player under this Section shall be increased by \$2.60 per month for each year of Credited Service.

(ii) For purposes of this paragraph (g), as of February 2, 1987, a Former Player shall mean an individual formerly employed by a Member who, as of such date, has a vested right to a pension benefit under the Plan and had not begun to receive the payment of such pension benefit. Any individual that is credited with a year of Credited Service on or after February 2, 1987 (or any individual who would have been credited with a year of Credited Service on or after February 2, 1987 if not for the fact that such individual was employed by a corporation (the sole

shareholder of which is such individual) which has entered into an agreement with a Member for providing services to such Member), shall not be considered a Former Player for purposes of this paragraph (g).

(h) For a Player who had not yet begun to receive a benefit under the Plan as of September 1, 1988, \$200 per month for each year of Credited Service.

(i) (i) For a Player who was receiving monthly benefits under the Plan as of September 1, 1988, \$200 per month for each year of Credited Service.

(ii) The benefit to be paid in accordance with subparagraph (i) of this paragraph (i) shall apply with respect to benefit payments made after September 1, 1988 and shall not require the recalculation of benefit payments made prior to such date.

(j) Except as provided in paragraph (k) of this Section, for a Player who had not yet begun to receive a benefit under the Plan as of July 1, 1996, \$285 per month for each year of Credited Service.

(k) (i) For a Player who was receiving monthly benefits under the Plan as of September 1, 1996, \$285 per month for each year of Credited Service.

(ii) The benefit to be paid in accordance with subparagraph (i) of this paragraph (k) shall apply only with respect to benefit payments made on or after September 1, 1996 and shall not require the recalculation of benefit payments made prior to such date.

3.3 All the amounts provided for in Section 3.2 hereof shall be reduced by the Actuarial Equivalent (of a lifetime annuity beginning on the same date) of any benefit payable to a Player under Article V hereof. Effective February 2, 1988, this Section 3.3 shall not apply with respect to those former Players who had not yet begun to receive the payment of any benefit under the Plan as of such date.

3.4 Every Player who was on the Roster of any Member for any three Regular Seasons shall be entitled to elect to receive, in lieu of a Normal Retirement Pension, an Early Retirement Pension and shall be entitled to any Supplemental Pension payable pursuant to Section 3.6 hereof. Such election shall be made at least 90 days prior to the Early Retirement Date and shall be made in writing delivered to the Committee.

3.5 The Early Retirement Pension payable to a Player shall be paid to him commencing on the first day of the first month following the Player's Early Retirement Date ("Early Retirement Pension Commencement Date") and, except as otherwise provided in Sections 3.10 and 3.11, shall be paid as a Single Life Annuity in an amount which shall be determined by reducing the Normal Retirement Pension that said Player would have been entitled to on his Normal Retirement Date by the product of $1/180$ and the total number of months the Player's Early Retirement Pension Commencement Date precedes the Player's Normal Retirement Date.

3.6 For Plan Years ending prior to February 2, 1973, the Insurer shall maintain a Supplemental Pension Account for each Player and \$100.00 (less a reasonable amount, as determined by the Committee, to reflect the administration expenses allocable to said Supplemental Pension Account) shall be added to said Account during each Plan Year that said Player is credited with a year of Credited Service under Section 4.1 hereof. For Plan Years beginning on or after February 2, 1973 and ending on or before February 1, 1976, the Insurer shall maintain a Supplemental Pension Account for each Player and \$200.00 (less a reasonable amount, as determined by the Committee to reflect the

administration expenses allocable to said Supplemental Pension Account) shall be added to said Account during each Plan Year that said Player is credited with a year of Credited Service under Section 4.1 hereof. For Plan Years beginning on or after February 2, 1976, the Insurer shall continue to maintain a Supplemental Pension Account for each Player having a Supplemental Pension Account on such date. No additional contribution shall be added to any Supplemental Pension Account for Plan Years beginning on or after February 2, 1976.

3.7 The funds in all Supplemental Pension Accounts shall be invested by the Insurer in a money market account maintained by the Insurer.

3.8 As of the last business day of each calendar quarter, the Insurer shall value all of the assets representing the funds held in all Supplemental Pension Accounts, based on their respective market values on each such date.

3.9 (a) The Supplemental Pension payable to any Player shall be paid to him at the same time and in the same form of payment as the payment to him of a Normal Retirement Pension or Early Retirement Pension, as the case may be.

(b) If a Player receives payment of his Supplemental Pension in a form of payment described in either Section 3.10, 3.11(i), 3.11(iv), 3.11(v) or 3.11(vi), the Supplemental Pension payable to such Player shall be the Actuarial Equivalent of the Player's Supplemental Pension Account, based on the value of such Account as of the valuation date immediately preceding the date on which the Player commences to receive payment of his Supplemental Pension under the Plan. If the Player commences to receive payment of his Supplemental Pension prior to the Player's Normal Retirement Date, the reduction in the Supplemental Pension shall be on an Actuarial Equivalent basis and shall not be based on the factors set forth in Section 3.5.

(c) If a Player receives payment of his Supplemental Pension in a form of payment described in either Section 3.11(ii), 3.11(iii) or 3.11(vii), the Supplemental Pension payable to such Player shall be based upon the value of the Player's Supplemental Pension Account as of the valuation date immediately preceding the date on which the Player receives or commences to receive payment of his Supplemental Pension Account under the Plan.

3.10 (a) (i) Subject to the waiver and consent provisions of paragraphs (b) and (c) of this Section, and subject to the provisions of subparagraph (ii) of this paragraph (a), if a Player is married on his Early Retirement Date or his Normal Retirement Date, as the case may be, his Early Retirement Pension or Normal Retirement Pension and any Supplemental Pension shall be paid in the form of a Qualified Joint and Survivor Annuity under which the Player's pension shall be reduced so that the resulting pension payable to the Player and his spouse shall be the Actuarial Equivalent of his Early Retirement Pension or Normal Retirement Pension and any Supplemental Pension otherwise payable.

(ii) In the case of an Early Retirement Pension or Normal Retirement Pension (and any Supplemental Pension) which is paid to a Player beginning on or after September 1, 1996 in the form of a Qualified Joint and Survivor Annuity, the actuarial reduction provided in subparagraph (i) of this paragraph (a) shall no longer apply to such Player's pension. If a Player is receiving pension payments under the Plan as of September 1, 1996 in the form of a Qualified Joint

and Survivor Annuity, the elimination of the actuarial reduction provided in this subparagraph (ii) shall apply only with respect to pension payments made on or after September 1, 1996 and shall not require the recalculation of benefit payments made prior to such date.

(b) (i) The provisions of paragraph (a) shall not apply to a married Player if such Player files a written election with the Committee to have his pension paid in a form other than a Qualified Joint and Survivor Annuity. Any election to waive the Qualified Joint and Survivor Annuity shall be subject to the provisions of subparagraphs (ii) and (iii) of this paragraph (b).

(ii) A Player may elect to waive the Qualified Joint and Survivor Annuity within the 90 day period prior to the date on which his benefits commence, subject to consent of the spouse as set forth in paragraph (c) below. Any such election shall be in writing and shall indicate that the Player is electing to receive his pension benefit in one of the forms of payment specified in Section 3.11 and not in the form of a Qualified Joint and Survivor Annuity. A Player who has elected to waive the Qualified Joint and

Survivor Annuity may subsequently cancel his election at any time prior to the date his payments commence, by filing a proper waiver or cancellation of election with the Committee.

(iii) Notwithstanding anything to the contrary herein contained, no election of an optional form of payment under Section 3.11 shall be valid unless and until the Qualified Joint and Survivor Annuity has been waived in accordance with this Section 3.10.

(c) (i) The spouse of the Player who waives the benefits under paragraph (b) above must consent to the waiver when initially made. Such consent shall be in writing, shall be irrevocable, shall acknowledge the effect of such consent, and shall be witnessed by a notary public; provided, however, that if it is established to the satisfaction of the Committee that the spouse of the Player cannot be located, such consent will not be required. Any such consent shall be effective only with respect to the spouse who gives the consent..

(ii) The consent of the spouse as set forth in subparagraph (i) above shall also be required to the desig-

nation of any Beneficiary other than the spouse, and to any change in such designation.

(iii) If the Secretary of the Treasury issues regulations which set forth special circumstances under which the consent of the spouse to a waiver will not be required pursuant to Section 417 of the Internal Revenue Code, then no consent of a spouse will be required under those circumstances under this Plan with respect to a waiver of the Qualified Joint and Survivor Annuity.

(d) (i) Within a reasonable time before the date on which a Player's benefits commence, the Committee shall supply the Player with an explanation of rights with respect to the Qualified Joint and Survivor Annuity, and a general explanation of the financial effect on the Player's benefit if he decides to accept the Qualified Joint and Survivor Annuity.

(ii) Any explanation under subparagraph (i) above shall contain:

(A) the terms and conditions of the Qualified Joint and Survivor Annuity;

(B) the Player's right to make, and the effect of, an election to waive the Qualified Joint and Survivor Annuity;

(C) the rights of the Player's spouse under paragraph (c) above; and

(D) the right to make, and the effect of, a revocation of an election to waive the Qualified Joint and Survivor Annuity.

(e) If a Player is not married on his Early Retirement Date or his Normal Retirement Date, as the case may be, the provisions of paragraphs (b) (ii) and (iii) and paragraph (d) of this Section 3.10 shall apply with respect to an election by such Player to have his pension paid in a form other than a Single Life Annuity; except that for purposes of these provisions, the term "Single Life Annuity" shall be substituted for the term "Qualified Joint and Survivor Annuity".

3.11 Every Player electing not to receive a Qualified Joint and Survivor Annuity or Single Life Annuity (whichever is applicable) under Section 3.10, may elect to receive, in lieu of the Normal Retirement Pension or Early Retirement Pension and any Supplemental Pension provided for in this Article, the Actuarial

Equivalent of such pension payable as a Single Life Annuity on the date that said pension would otherwise have become payable in one or more of the following ways:

(i) Installments for Life - Paid in equal monthly installments for as long as the Player shall live.

(ii) Installments of Fixed Amount - Paid in installments of a specified amount each month.

(iii) Installments for a Fixed Period - Paid in equal monthly installments for a fixed number of years.

(iv) Installments for a Fixed Period and Life Thereafter - Paid in equal monthly installments for a fixed number of years and for so long thereafter as the Player shall live.

(v) Joint and Survivorship Annuity - Paid in equal monthly installments to the Player, terminating with the last monthly installment before his death. Following the death of the Player after this option becomes effective, monthly installments shall be continued to the person he named as his joint annuitant, terminating with the last monthly installment before the joint annuitant's death. The amount of each installment payable to the joint annuitant shall be equal to 100 percent of the monthly amount which

was payable to the Player, or to a lesser percentage, as specified by the Player in his election of this option.

(vi) Social Security Option - Paid in monthly installments, to the extent permitted by ERISA, so long as the Player shall live, in such amounts so as to enable the Player to receive an approximately equal amount each month taking into consideration the benefits hereunder and the estimated primary benefits payable under the Social Security Act.

(vii) Lump Sum - Paid to the Player in one Lump Sum.

3.12 Any optional method of settlement selected under this Article shall become effective on the date on which the Player's benefits hereunder commence.

3.13 (a) Where any of the optional methods of settlement described in Sections 3.11(ii)-(iv) is selected hereunder, the periods over which installments are payable to the Player and his designated Beneficiary shall not exceed the joint life expectancy of the Player and such Beneficiary, determined as of the time at which the distribution of benefits commence, and in accordance with Section 401(a)(9)(A)(ii) of the Internal Revenue Code and

the Treasury Regulations thereunder; provided, however, that under any optional method of settlement, if the designated Beneficiary is someone other than the Player's spouse, the Player must anticipate receiving more than 50% of the actuarial value of his benefits calculated as of his Normal or Early Retirement Date, whichever is applicable.

(b) If a Player should die before the distribution of any benefits under this Article has begun, and if the benefit upon the death of the Player shall be payable over greater than a five year period, such benefit shall be payable over a five year period in an amount equal to the Actuarial Equivalent (as of the date of death) of the payments to be made. The preceding sentence shall not apply if (i) the payments to be made to the Player's designated Beneficiary will be made over the life of such Beneficiary (or over a period not exceeding the life expectancy of the Beneficiary) and (ii) the payments commence not later than one year after the date of the Player's death (or if the Player's designated Beneficiary is his spouse, the payments commence no later than the date on which the Player would have attained age 70-1/2 had he survived). If the Player's designated Beneficiary is his spouse, and if such spouse should die before

the distribution of any benefits has begun, the rules of this paragraph (b) shall apply as if the spouse were the Player.

(c) Notwithstanding anything to the contrary contained herein, if the distribution of benefits has commenced to a Player and if the Player dies before his entire interest has been distributed to him, any distributions made after the death of the Player shall be made at least as rapidly as under the method of distribution in effect as of the date of the Player's death.

3.14 If any Player or Beneficiary is, in the judgment of the Committee, legally, physically or mentally incapable of personally receiving and receipting for any payment due hereunder, payment may be made to the guardian or other legal representative of such Player or his Beneficiary, or, if none, to such other person, or institution, who, in the opinion of the Committee, is then maintaining or has custody of such Player or his Beneficiary. Such payments shall constitute a full discharge with respect thereto.

3.15 If the payment of a pension under this Plan is to be made in any of the optional forms described in Section 3.11, the Actuarial Equivalent of such pension is to be determined by the Plan's Enrolled Actuary on the following basis:

(i) If the payment is to be made in the form described in Section 3.11(vii), the amount of the payment shall be computed on the basis of the 1971 Group Annuity Mortality Table (male rates) and the interest rate or rates which would be used as of February 2 preceding the date of payment by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a benefit upon termination of an insufficient trustee single employer pension plan.

(ii) If payments are to be made in any of the forms described in either Section 3.10 or Section 3.11 (other than Section 3.11(vii)), the amount of the payment shall be computed on an Actuarial Equivalent basis.

3.16 (a) If the present value of a Player's pension under the Plan is greater than \$3,500, and if the Player (and, if required, the Player's spouse, if any) consents to receive such pension, the pension shall be paid to him commencing at the time prescribed under Section 3.2 (or, if applicable, Section 3.5). If the Player (or, if required, the Player's spouse, if any) does not consent to receive his pension at such time, then, notwithstanding any other provision of this Plan to the contrary, his

pension shall be paid to him commencing on the first day of the first month following the Player's attainment of age 62; provided, however, that the Player may elect to receive an earlier payment of such pension. If the Player makes such an election, his pension shall be paid to him commencing as soon as administratively practicable following his election to receive his pension. If payment of a Player's pension commences after the Player's Normal Retirement Date, the pension payable to the Player shall be the Actuarial Equivalent of the pension that would have been payable under Section 3.2 had the payment of such pension commenced on the Player's Normal Retirement Date.

(b) For purposes of this Section 3.16: (i) "present value" shall be determined in accordance with Section 3.15(i); and (ii) if the pension of a married Player under this Plan is to be paid in the form of a Qualified Joint and Survivor Annuity, consent of the Player's spouse shall not be required under paragraph (a) above.

3.17 Rollovers to Other Plans or IRAs.

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Player's election under the Plan, a Player may elect, at the time and in the manner

prescribed by the Committee, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Player in a Direct Rollover.

(b) Definitions:

For purposes of this Section 3.17, the following definitions will apply:

(i) "Eligible Rollover Distribution" shall mean any distribution of all or any portion of the Player's pension under the Plan, except that an Eligible Rollover Distribution does not include:

(A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Player or the joint lives (or joint life expectancies) of the Player and the Player's designated beneficiary, or for a specified period of ten years or more; and

(B) the portion of any distribution that is not includible in gross income.

(ii) "Eligible Retirement Plan" shall mean an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity

described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified trust described in Section 401(a) of the Internal Revenue Code, that accepts the Player's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to a surviving spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

(iii) "Player" shall mean a Player within the meaning of Section 1.28 who is entitled to receive a benefit under the Plan. In addition, the Player's surviving spouse and the Player's spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in Section 414(p) of the Internal Revenue Code, shall be considered as Players with regard to the interest of the spouse or former spouse.

(iv) "Direct Rollover" shall mean a payment by the Plan to the Eligible Retirement Plan specified by the Player.

ARTICLE IV

CREDITED SERVICE

4.1 Every Player eligible to participate hereunder shall be credited with one year of Credited Service for each year that said Player is on the Roster of any Member for any Regular Season beginning with the Regular Season for which said Player is first eligible to participate hereunder ("Credited Service").

ARTICLE V

FORMER PENSION BENEFITS

5.1 The Members have caused the Contract formerly in existence with Continental Assurance Company to be discontinued in accordance with the terms of such Contract and have continued the Single Premium Endowment Insurance of all Players insured thereunder in the same amount as Paid-up Endowment Insurance, to be paid to said Players in accordance with the terms of said Contract.

5.2 In addition to all benefits provided hereunder, and notwithstanding any other provision of the Plan to the contrary, every Player on the Active List of any Member on February 2, 1965, February 2, 1966 or February 2, 1967, or his Beneficiary, shall be entitled to receive such benefits as are payable under the Paid-up Endowment Insurance Contract referred to in Section 5.1 hereof, upon such conditions and subject to such options as are set forth in said Paid-up Endowment Insurance Contract.

5.3 (a) Effective as of September 8, 1988, the assets of the Plan held under the Paid-up Endowment Insurance Contract have been transferred to the Insurer.

(b) Notwithstanding Sections 5.1 and 5.2, and in accordance with paragraph (a) of this Section 5.3, any amounts that would otherwise have been payable under the Paid-up Endowment Insurance Contract shall no longer be payable under such Contract on or after February 2, 1988 with respect to those former Players who had not yet begun to receive the payment of any benefit under the Plan as of February 2, 1988. Effective as of February 2, 1988, every former Player who is described in the preceding sentence and who was on the Active List of any Member on February 2, 1965, February 2, 1966 or February 2, 1967, or his Beneficiary, shall receive the total benefit to which he is entitled under Section 3.2 hereof from the assets of the Plan held by the Insurer; provided, however, that any such former Player who is not entitled to a benefit under Section 3.2 hereof shall receive a benefit under the Plan from Plan assets held by the Insurer in an amount equal to the benefit he would have otherwise received under the Paid-up Endowment Insurance Contract.

ARTICLE VI

MEMBER'S CONTRIBUTIONS AND BENEFIT LIMITATIONS

6.1 On or before October 1 of each Plan Year, every Member shall pay an amount necessary to fund the benefits for its Players in accordance with the rules set forth in this Article, and in order to prevent a deficiency in the funding standard account as required by the Internal Revenue Code and ERISA.

6.2 The annual cost of funding for the benefits for any Player on the Active List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1981), or on the Injured List on February 2, 1973 (or on any subsequent February 2, prior to February 2, 1981), shall be paid by the Member on whose Active List or Injured List, as the case may be, the Player appears on February 2 of the Plan Year involved. The annual cost of funding for the benefits for any Player on the Active List or Injured List on February 16, 1981 (or on any subsequent February 16) shall be paid by the Member on whose Active List or Injured List, as the case may be, the Player appears on February 16 of the Plan Year involved.

6.3 The annual cost of funding for the benefits for any Player (i) on the Suspended or Armed Services List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1981), or on the Injured List on February 2, 1968 (or any subsequent February 2, prior to February 2, 1973), and (ii) on the Active List of any Member for 50 percent or more of the total Championship Games played by each Member during the Regular Season which includes such February 2 and which ended before February 2, 1981, shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved. The annual cost of funding for the benefits for any other Player on the Roster during the Plan Year involved shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved.

6.4 (a) The annual cost of funding for the benefits for any Player not on any Roster during the Plan Year involved shall be paid by the Member having rights to the services of such Player, as a Player, on February 16 of the Plan Year involved (or February 2, if the Plan Year involved ended prior to February 2, 1981) or, if no Member has such rights on said February 16 (or February 2, as the case may be), by the Member last having such

rights prior to said February 16 (or February 2, as the case may be).

(b) Notwithstanding any other provision of this Article VI to the contrary, the annual cost of funding for the benefit increases provided to Former Players under paragraphs (e), (f) and (g) of Section 3.2 shall be paid by each Member of the Association. The amount of the funding cost to be paid by each Member shall equal the total amount of such cost multiplied by a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Members of the Association. For purposes of Section 18.3(c)(i) of the Plan, the allocable share of the funding cost provided for under this paragraph (b) shall be part of the "unfunded accrued liability" directly allocable to a Withdrawing Member."

6.5 The annual cost of funding for the benefits provided under the Plan shall be determined by the Enrolled Actuary based on an actuarial cost method and the assumptions and amortization period adopted by the Committee.

6.6 In no event shall the annual funding cost determined under Section 6.5 for any Plan Year be less than the minimum

contribution required under the Internal Revenue Code and ERISA for that Plan Year.

6.7 (a) In no event shall the annual retirement pension payable to any Player under this Plan exceed for any Limitation Year, the lesser of:

(i) \$90,000, as increased by cost-of-living adjustments under Section 415(d) of the Internal Revenue Code for both current and former Players (the "Dollar Amount"), or

(ii) 100 percent of the Player's average Compensation (as increased by cost-of-living adjustments under Section 415(d) of the Internal Revenue Code for former Players) for the period of three consecutive calendar years yielding the highest such average during which he was a Player.

(b) In determining the maximum allowable benefit otherwise payable under this Section, the Dollar Amount shall be adjusted so that:

(i) if the Player's annual retirement pension commences upon the Player's attaining age 62, the Dollar Amount shall be computed by using a

reduction factor that is consistent with the reduction for old-age social security benefits commencing before the Player's Social Security Retirement Age; or

(ii) if the Player's annual retirement pension commences prior to the Player's attaining age 62, the Dollar Amount shall be the Actuarial Equivalent of the Dollar Amount computed as if the Player's Annual Retirement Pension commenced at age 62, reduced for each month by which benefits commence before the month in which the Player attains age 62.

The Actuarial Equivalent of the Dollar Amount shall be based upon the greater of the interest rate assumption used under Section 1.2 or an interest rate assumption of 5% per annum.

(c) Notwithstanding anything contained herein, the provisions of paragraph (b) shall not reduce any Player's annual retirement pension below the pension he was entitled to receive under the terms of the Plan as in effect on February 1, 1987 (determined without regard to changes in the terms of the Plan or cost of living increases occurring after May 5, 1986).

(d) For purposes of this Section and Sections 6.8 through 6.13:

(i) The annual retirement pension shall not include the portion of the Player's benefit that is attributable to the Player's Supplemental Pension Account.

(ii) The annual retirement pension payable to a Player shall be determined without giving effect to any reduction under Section 21.2

(iii) "Compensation" shall mean the Player's wages, salaries, and other amounts received for personal services rendered for a Member.

(iv) "Social Security Retirement Age" shall mean:

(A) in the case of a Player who attains age 62 before January 1, 2000, age 65;

(B) in the case of a Player who attains age 62 after December 31, 1999, age 66; and

(C) in the case of a Player who attains age 62 after December 31, 2016, age 67.

(v) If the annual retirement pension to which a former Player is entitled to receive under the Plan is otherwise limited by the Dollar Amount, such pension shall be increased in accordance with cost of

living adjustments of the Dollar Amount, as provided under paragraph (a)(i) of this Section and Treas. Reg. §1.415-5(a). This subparagraph (v) shall apply regardless of whether the former Player has actually begun to receive the payment of his pension under the Plan.

(vi) If the annual retirement pension to which a former Player is entitled to receive under the Plan is otherwise limited by the Compensation limitation described in paragraph (a)(ii) of this Section, such pension shall be increased in accordance with cost of living adjustments of the Compensation limitation, as provided under paragraph (a)(ii) of this Section and Treas. Reg. §1.415-5(b). This subparagraph (vi) shall apply regardless of whether the former Player has actually begun to receive the payment of his pension under the Plan.

6.8 If a Player's annual retirement pension is payable in a form other than a Single Life Annuity or a Qualified Joint and Survivor Annuity, for purposes of determining the maximum allowable benefit payable under Section 6.7, the annual retirement pension shall be adjusted so that it is the Actuarial

Equivalent of a single life annuity. In making this adjustment, the interest rate assumption shall not be less than the greater of five percent or the rate specified in Section 1.2.

6.9 In the event that the annual retirement pension payable to a Player under this Plan and all other defined benefit plans of a Member does not exceed \$10,000 for a Limitation Year, and if the Player does not have a Supplemental Pension Account and has not at any time participated in a defined contribution plan maintained by a Member, the limitations otherwise imposed by Section 6.7 and the adjustments described in Section 6.8 shall not apply.

6.10 (a) If a Player has less than ten (10) years of aggregate service with all Members (including service in a capacity other than as a Player) ("Member Service") at the time at which he is entitled to receive benefits under the Plan, the limitation described in Section 6.7(a)(ii) and, if applicable, the \$10,000 amount described in Section 6.9 or the limitation described in Section 6.11, shall be reduced by multiplying the applicable limitation by a fraction, the numerator of which is the Player's number of years (or part thereof) of Member Service and the denominator of which is ten.

(b) If a Player has less than ten (10) years of Credited Service (as defined in Section 4.1) at the time at which he is entitled to receive benefits under the Plan, the Dollar Amount shall be reduced by multiplying the Dollar Amount by a fraction, the numerator of which is the Player's number of years (or part thereof) of Credited Service and the denominator of which is ten.

(c) In no event shall paragraphs (a) and (b) of this Section 6.10 reduce any limitation described therein (including the Dollar Amount) to an amount less than one-tenth (1/10th) of such limitation.

6.11 (a) If a Player has a Supplemental Pension Account, the Player's annual retirement pension under this Plan shall be limited or reduced so that the sum of the "Defined Benefit Fraction" and the "Defined Contribution Fraction" of such Player for any Limitation Year shall not exceed 1.0.

(b) If a Player has at any time been a participant in a defined contribution plan maintained by a Member, subject to the provisions of Section 6.12, the "annual additions" (as defined in Section 415(c)(2) of the Internal Revenue Code) to such defined contribution plan for such Player shall be limited

or reduced so that the sum of the "Defined Benefit Fraction" and the "Defined Contribution Fraction" of such Player for any Limitation Year shall not exceed 1.0.

(c) If a Player (i) has a Supplemental Pension Account and (ii) also has at any time been a participant in a defined contribution plan maintained by a Member, subject to the provisions of Section 6.12, the Player's annual retirement pension under this Plan shall be limited or reduced so that the sum of the "Defined Benefit Fraction" and the "Defined Contribution Fraction" of such Player for any Limitation Year shall not exceed 1.0; provided, however, that in determining the extent of any such limitation or reduction, the Player's Defined Contribution Fraction for the Limitation Year shall be computed prior to taking into account any annual additions to the defined contribution plan for such Player for such Limitation Year and for prior Limitation Years.

(d) For purposes of this Section:

(i) The Defined Benefit Fraction shall mean the fraction defined in Section 415(e)(2) of the Internal Revenue Code.

(ii) The Defined Contribution Fraction shall mean the fraction defined in Section 415(e)(3) of the Internal Revenue Code.

6.12 (a) For purposes of applying the limitations described in Sections 6.7 through 6.11, in accordance with Treas. Reg. § 1.415-8(e), this Plan shall not be aggregated with any other multiemployer plans maintained by the Members.

(b) If a Member maintains a plan that is not a multiemployer plan, and if benefits are provided to a Player under such plan, that plan shall be aggregated (based on its limitation year) with this Plan for purposes of applying the limitations described in Sections 6.7 through 6.11 (and in accordance with the provisions of those Sections) to the extent of the benefits provided by the Member to the Player under this Plan.

6.13 In applying the limitations described in Sections 6.7 through 6.12, the Limitation Year shall be the 12-month period corresponding with the Plan Year.

ARTICLE VII

DEATH BENEFITS

7.1 (a) In the event of the death of a married Player prior to the date as of which the payment of his Early Retirement Pension or Normal Retirement Pension, as the case may be, becomes effective, except as otherwise provided in Section 7.2, such Player's spouse shall be entitled to a monthly benefit payable as an annuity for her life (the "Preretirement Survivor Annuity") in an amount equal to the greater of:

(i) The Actuarial Equivalent of the Players' Supplemental Pension Account on his date of death, plus the excess, if any, of an amount equal to the Actuarial Equivalent (as determined in accordance with Section 3.15(i)) on the date of death of the Normal Retirement Pension based on the Credited Service earned to the date of death, over the Actuarial Equivalent (as determined in accordance with Section 3.15(i)) of the proceeds of any group life insurance policy (exclusive of any such proceeds paid because of accidental death) maintained and paid for by a Member on the life of a Player; or

(ii) 50% of the benefit the Player would have received:

(A) in the case of a Player whose date of death occurs after his attainment of age 45, had such Player begun to receive his benefit under the Plan (as adjusted under Section 3.5, if applicable) on the day before his date of death in the form of a Qualified Joint and Survivor Annuity; or

(B) in the case of a Player whose date of death occurs prior to his attainment of age 45, had such Player survived until the attainment of such age and elected to receive his benefit under the Plan (as adjusted under Section 3.5) commencing on the first day of the first month following his attainment of age 45 in the form of a Qualified Joint and Survivor Annuity.

(b) Notwithstanding paragraph (a) of this Section, the surviving spouse of the Player may elect to receive the Actuarial Equivalent (as determined in accordance with Section 3.15(i)) of the Preretirement Survivor Annuity in the form of a lump sum payment; provided, however, that if the Preretirement Survivor

Annuity is determined under Section 7.1(a)(i), the portion of the lump sum payment attributable to the Players' Supplemental Pension Account shall be based upon the value of such Supplemental Pension Account as of the valuation date immediately preceding the date on which the Player's surviving spouse receives the lump sum payment. Any election to receive a lump sum payment under this paragraph (b) shall be in writing and shall be filed with the Committee within a reasonable time prior to the commencement of benefits under this Section.

(c) (i) Payments under the Preretirement

Survivor Annuity under paragraph (a) of this Section shall commence on the first day of the first month following the date that the Player would have attained age 45 had he survived or, if the Player's death occurs after his attainment of age 45, as soon as possible after the Committee is notified of the Player's death.

(ii) The payment of the Preretirement

Survivor Annuity in a lump sum under paragraph (b) of this Section shall be made as soon as practicable after the election is made by the surviving spouse; except that if the Player's death occurs prior to his attainment of age 62, the surviving spouse may elect in

writing to defer the commencement of the benefit payable in the form of a lump sum until the first day of the first month following the date the Player would have attained age 62 had he survived.

(d) (i) Notwithstanding the provisions of this Section 7.1, in the event of the death of a "Vested Former Player", the death benefit payable under this Section which is attributable to such Vested Former Player's Normal Retirement Pension shall be the Actuarial Equivalent (as determined in accordance with Section 3.15(i)) of such Normal Retirement Pension calculated as if such Player had reached his Normal Retirement Date on the date of his death. The preceding sentence shall not apply if the death benefit payable under this Section is determined under Section 7.1(a)(ii).

(ii) For purposes of this paragraph (d), a Vested Former Player shall mean an individual with a vested right to a pension benefit under the Plan who, at the date of his death, was not employed as a Player by a Member and had not begun to receive the payment of his pension benefit under the Plan.

(iii) The applicable provisions of this paragraph (d) shall also apply with respect to the calculation of the death benefit payable under Section 7.2.

7.2 In the event of the death of an unmarried Player, or the death of a married Player who has elected to waive the Preretirement Survivor Annuity in accordance with Section 7.3(c), prior to the date as of which the payment of such Player's Early Retirement Pension or Normal Retirement Pension, as the case may be, becomes effective, said Player's Beneficiary shall be entitled to receive a cash settlement, in a lump sum, equal to (i) 100% of the Player's Supplemental Pension Account on his date of death, plus (ii) the excess, if any, of an amount equal to the Actuarial Equivalent (as determined in accordance with Section 3.15(i)) on the date of death of the Normal Retirement Pension based on the Credited Service earned to the date of death, over the proceeds of any group life insurance policy (exclusive of any such proceeds paid because of accidental death) maintained and paid for by a Member on the life of a Player. Such payment shall be made as soon as practicable after the Committee is notified of such Player's death.

7.3 (a) The Committee shall provide each married Player, within the applicable period, a written explanation with respect to the Preretirement Survivor Annuity in such terms as would be comparable to the explanation provided under Section 3.10(d) applicable to the Qualified Joint and Survivor Annuity.

(b) For purposes of paragraph (a) of this Section, the "applicable period" shall mean whichever of the following periods ends last:

(i) the period beginning with the first day of the Plan Year in which a Player attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Player attains age 35.

(ii) a reasonable period after a Player becomes eligible to participate in the Plan.

(iii) a reasonable period after termination of employment with respect to a Player who terminates before attaining age 35.

(c) Subject to the spousal consent rules set forth in Section 3.10(c), a married Player may elect to waive the Preretirement Survivor Annuity during the period which begins on the later of either (i) first day of the Plan Year in which the Player attains age 35 or (ii) the date of the Player's marriage,

and ends on the date of the Player's death; provided, however, that in the case of a married Player who has terminated his employment, the applicable election period under this paragraph (c) with respect to benefits accrued before the date of such termination shall begin on such termination date. A Player who has waived the Preretirement Survivor Annuity may subsequently cancel his waiver at any time, by filing a proper waiver or cancellation of waiver with the Committee.

(d) Subject to the applicable provisions of this Section 7.3 and the spousal consent rules of Section 3.10(c), each Player, upon becoming eligible to participate under the Plan, may designate a Beneficiary to receive any benefits payable under the Plan in the event of his death. In the absence of any such designation, the provisions of Section 1.7 shall govern with regard to the payment of benefits to a Beneficiary after the death of the Player. Any designation under this Section shall be in writing and shall be filed with the Committee. A Player may change his Beneficiary at any time prior to the commencement of his benefits by filing a new designation with the Committee.

7.4 Upon the death of a Player after the date as of which the payment of his Early Retirement Pension or Normal Retirement

Pension, as the case may be, becomes effective, no further payments shall be made other than those, if any, specified in the benefit to which the Player is entitled.

ARTICLE VIII

NON-ALIENATION OF BENEFITS

8.1 No benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void, nor shall any such benefit be in any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefit.

8.2 If any Player or any Beneficiary under the Plan is adjudicated bankrupt or attempts to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge any benefit under the Plan, except as specifically provided in the Plan, then such benefit shall, in the discretion of the Committee, cease and terminate and in that event the Committee shall hold or apply the same or any part thereof to or for the benefit of such Player or Beneficiary in such manner as the Committee may deem proper.

8.3 If any court of competent jurisdiction issues an order inconsistent with this Section, and the Committee thereafter notifies the Player or any Beneficiary of such order, then,

unless and until such order is set aside, the following provisions shall apply:

(a) No action shall be required by the Association, Insurer, Committee or any other person to prevent such order from being complied with.

(b) Thirty days after giving such notice, such order may be complied with.

8.4 Notwithstanding the foregoing provisions of this Article, the Plan shall pay benefits pursuant to a domestic relations order which, as determined by the Committee, constitutes a "qualified domestic relations order" within the meaning of Section 414(p) of the Internal Revenue Code.

ARTICLE IX

FORFEITURES

9.1 Any forfeitures arising under the Plan shall be allocated among the Members, on an actuarial basis, and shall not be applied to increase the benefits of any Player hereunder.

9.2 If the Committee is unable to make payment under the Plan because it is unable to find the Player or Beneficiary to whom payment is to be made, the Player's benefit under the Plan shall be forfeited as of the last day of the Plan Year in which the Committee determines that it is unable to find such Player or Beneficiary. If the Player or Beneficiary later makes a claim for such payment and the Committee determines that the claim is valid, the amount of the Player's benefit when forfeited shall be restored and payment made within 60 days of such determination.

ARTICLE X

INCOME AND EXPENSES

10.1 At the end of each Plan Year, or at such other times set forth in any Contract or Trust Agreement, all income (including dividends paid by the Insurer on any Contract) earned on the funds held by the Insurer (other than on funds held in Supplemental Pension Accounts) or by the Trustees, or any losses on such funds, shall be allocated to each Member's account based on the assets allocable to such Member from time to time during such Plan Year.

10.2 All expenses of administering the Plan, including, but not limited to, the compensation of actuaries, accountants, consultants and counsel, shall be paid from the funds held by the Insurer and shall be charged equally to each Member's account.

ARTICLE XI

MEMBER'S ACCOUNTS

11.1 The Insurer and, if applicable, Trustees, shall maintain a separate account for each Member to which it shall credit each Member's allocable share of Member's contributions (other than those provided for in Section 6.5(b) hereof) and to which it shall charge each Member's allocable share of benefits paid to Players.

11.2 The benefits payable hereunder to each Player shall be allocated among the Members, on an actuarial basis, in order to give due consideration to the amount contributed on behalf of such Player by such Member.

ARTICLE XII

INSURANCE CONTRACTS

12.1 One or more Contracts may be purchased in order to carry out the terms of the Plan from such Insurer or Insurers as the Members, in their absolute discretion, shall choose. Such Contracts shall cover the Players in the Plan and may be amended from time to time.

12.2 The Players shall not have any right, title, interest, or ownership in and to any Contract which shall be purchased pursuant hereto. Except as otherwise provided herein, in no event may any of the avails or proceeds of any Contract be recoverable or revert, directly or indirectly, to any member or be diverted to any purpose other than for the exclusive benefit of the Players and Beneficiaries covered hereunder.

12.3 The provisions for the form and mode of benefit payments under this Plan shall be subject to all of the terms and conditions of any and all Contracts purchased pursuant to Section 12.1 hereof.

12.4 The Contracts shall provide that any death benefit payable thereunder shall be payable to the Beneficiary and shall

reserve to the Contract holder such rights as are necessary to implement this Plan. The signature of any Player may be required for the exercise of any such right.

12.5 No Insurer shall be considered to be a party to this Plan, nor shall it have any responsibility for the validity of this Plan. Its sole liability shall be its liability as stated in each Contract which it may issue.

12.6 The Insurer shall be fully protected from any liability in assuming that the Plan has not been amended or changed until notice of any amendment or change in any of the terms thereof has been received by the Insurer.

12.7 The Insurer shall be fully protected in accepting, from the Members, or the Committee, premiums on or instructions in connection with Contracts which it may issue or may have issued under this Plan and shall have no responsibility to make an inquiry as to the authority to make such payment or to give such instructions.

ARTICLE XIII

TRUST FUND

13.1 (a) The Members have entered into a restated Trust Agreement with Jeffrey Mishkin and Robert Criqui, providing for the administration of the Trust by them as Trustees thereof, in such form and containing such provisions as the Members deem appropriate. The Trust Agreement shall be deemed to form a part of this Plan and any and all rights and benefits which may accrue to any person under this Plan shall be subject to all the terms and provisions of said Trust Agreement.

13.2 (a) The "Trust Fund" shall consist of the assets held by the Trustees thereunder, together with the net income or loss produced by the investments of the Fund or the sale of any such investments, which shall be added to or deducted from the Fund by the Trustees. The Trust Fund shall be held, administered and invested in the manner provided in the Trust Agreement.

ARTICLE XIV

ADMINISTRATION OF PLAN

14.1 The general administration of the Plan shall be placed in a Committee, consisting of at least two persons, who shall be appointed from time to time by the majority vote of all of the Members.

14.2 The members of the Committee shall elect a Chairman from their number, and a Secretary who may be, but need not be, one of the members of the Committee, and shall designate an Enrolled Actuary to act in actuarial matters relating to the Plan. They may appoint from their number such committees with such powers as they shall determine, may authorize one or more of their number or any agent to make any payment in their behalf, or to execute or deliver any instrument except that a requisition for funds from the Insurer shall be signed by two members of the Committee. The Committee may employ counsel and agents and such clerical, medical and accounting services as they may require in carrying out the provisions of the Plan.

14.3 The Committee shall hold meetings upon such notice, at such place or places, and at such time or times as they may from time to time determine.

14.4 A majority of the members of the Committee at the time in office shall constitute a quorum for the transaction of business. All resolutions or other actions taken by the Committee at any meeting shall be by vote of a majority of the Committee at the time in office.

14.5 No member of the Committee shall receive any compensation from the Plan for his services as such.

14.6 Subject to the limitations of the Plan, the Committee from time to time shall establish rules for the administration of the Plan and the transaction of its business. The Committee shall take such steps as are considered necessary and appropriate to remedy any inequity that results from incorrect information received or communicated in good faith or as the consequence of an administrative error. The Committee shall interpret the Plan and shall have the sole authority and discretion to determine the answers to questions arising in the administration, interpretation and application of the Plan, including questions relating to

eligibility for, and the amount of, benefits under the Plan. The Committee shall endeavor to act, whether by general rules or by particular decisions, so as not to discriminate in favor of or against any Player. The Committee may correct any defect, reconcile any inconsistency or supply any omission. All Players in similar circumstances shall be treated as nearly uniformly as practicable.

14.7 The Committee shall keep all records relating to Players including former Players and such other records as are necessary for the proper operation of the Plan.

14.8 The Committee shall take such steps as are necessary to insure that all reporting and disclosure requirements imposed upon the Plan by applicable Federal law, any amendments thereto, regulations thereunder, or any other official published interpretation thereunder, are complied with.

14.9 The Committee shall discharge its duties in accordance, with the requirements of applicable Federal law, any amendments thereto, regulations thereunder or any other official published interpretation thereunder.

14.10 The Committee shall arrange for such bonding as is required by law but no bonding in excess of the amount required by law shall be considered required by this Plan.

14.11 The Committee shall be indemnified by the Members against expenses reasonably incurred by it in connection with any action, to which it may be a party, by reason of its service as a Committee, except in relation to matters as to which it shall be adjudged in such action to be liable for gross negligence or willful misconduct in the performance of its duty.

14.12 The Committee shall adopt from time to time standards for use in all actuarial calculations required in connection with the Plan, and shall establish the amount of contributions under the Plan as provided herein. As an aid to the Committee in adopting tables and in fixing the amount of contributions payable under the Plan, the Enrolled Actuary designated by the Committee shall make annual actuarial valuations with respect to the operation and administration of the Plan and shall certify to the Committee the tables and amount of contributions which he recommends for use by the Committee.

14.13 The Committee shall arrange for the maintenance of accounts showing the fiscal transactions of the Plan, and for the keeping in convenient form of such data as may be necessary for actuarial valuations with respect to the operation and administration of the Plan. The Committee shall prepare, from time to time, a report giving a brief account of the operation of the Plan. Such report shall be submitted to the Members.

14.14 The Committee shall be entitled to rely upon all tables, valuations, certificates and reports furnished by the Enrolled Actuary designated by the Committee, and upon all opinions given by any legal counsel selected or approved by the Members. The Committee shall not be liable for any action taken or suffered by them in good faith in reliance upon any such Enrolled Actuary or counsel.

14.15 The Committee shall be responsible for exercising any and all rights under the Contracts, including the right to designate the portion of the premium paid to the Insurer which shall be invested in equity securities.

14.16 The Committee may appoint an Insurer under this Plan to act as an Investment Manager to manage, acquire, and dispose

of any assets of the Plan. The Trustees may also appoint an Investment Manager or Managers to manage, acquire and dispose of any assets of the Plan. Any such Investment Manager shall be an investment adviser registered under the Investment Advisers Act of 1940, a bank as defined in that Act, or an insurance company qualified to perform investment services under the laws of at least two States. The appointment of any such Investment Manager shall not be effective until such Investment Manager has acknowledged in writing that it is a fiduciary with respect to the Plan.

14.17 The Committee may waive the provisions of Sections 4204(a)(3)(A) and 4204(a)(3)(B) of ERISA requiring a Member that disposes of its franchise to any new Member, under certain conditions, to post a bond, or place an amount in escrow, with the Plan; provided that the new Member posts a bond, or otherwise provides security acceptable to the Committee, in an amount that is not less than the amount of the bond (or escrow) that the Member that disposed of its franchise would have otherwise been required to provide. Except as may otherwise be determined by the Committee, any such bond or other security provided by the new Member shall be in addition to any other bond (or other

security) required to be provided by the new Member. Except as described above or as may be determined by the Committee in a manner consistent with their fiduciary duties described in Article XV of the Plan, nothing contained herein shall give the Committee the right to otherwise relieve the Member that disposed of its franchise of any liability imposed upon it by the Multiemployer Pension Plan Amendments Act of 1980.

ARTICLE XV

LIABILITY AND STANDARD OF CARE OF COMMITTEE

15.1 Each member of the Committee and any other fiduciary with respect to the Plan shall discharge his duties with respect thereto (a) solely in the interest of Players and their Beneficiaries; (b) for the exclusive purpose of providing benefits to Players and their Beneficiaries and defraying reasonable expenses of administering the Plan (except as otherwise provided in Sections 22.5 and 22.6); (c) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and (d) in accordance with the provisions of the Plan insofar as such provisions are not inconsistent with applicable law. As used herein, the term "fiduciary" shall have the meaning ascribed to it in Section 3(21) of ERISA; and the "named fiduciaries" under the Plan shall be: (i) the Committee for the purpose of administering this Plan; (ii) the Insurer appointed as Investment Manager under Section 14.16, who shall be a named fiduciary only with respect to the management and control of the assets of the Plan transferred to it; and (iii) each

Investment Manager appointed pursuant to Section 14.16, who shall be a named fiduciary only with respect to the management and control of the assets of the Plan transferred to it.

15.2 No fiduciary with respect to the Plan shall be liable for an act or omission of another person resulting in a breach by such other person of his fiduciary responsibility with respect to the Plan, except to the extent that:

(a) such fiduciary participated knowingly in, or knowingly undertook to conceal, an act or omission of such other person, knowing such act or omission to be a breach of fiduciary responsibility;

(b) such fiduciary, by his failure to comply with the provisions of the preceding Section of the Plan or with Section 404(a)(1) of ERISA in the administration of his specific responsibilities which give rise to his status of a fiduciary, has enabled such other person to commit a breach of fiduciary responsibility;

(c) such fiduciary has knowledge of a breach of fiduciary responsibility by such other person, unless he makes reasonable efforts under the circumstances to remedy the breach;
or

(d) such fiduciary is a "named fiduciary" and has violated his duties under Section 404(a)(1) of ERISA:

(i) with respect to the allocation of fiduciary responsibilities among "named fiduciaries" or the designation of persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan;

(ii) with respect to the establishment or implementation of procedures for allocating fiduciary responsibilities among "named fiduciaries" or for designating persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan; or

(iii) in continuing the allocation of fiduciary responsibilities among "named fiduciaries" or the designating of persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan.

15.3 Notwithstanding anything to the contrary contained herein, no member of the Committee or other fiduciary with respect to the Plan shall incur any liability for any act or omission to the extent he would not be liable therefor under Part 4 of Subtitle B of Title I of ERISA and to the extent such act or

omission is not the result of his own gross negligence or wilful misconduct.

15.4 The Members shall indemnify each member of the Committee and any other individual to whom a fiduciary responsibility with respect to the Plan is allocated or delegated from and against any and all liabilities, claims, losses, damages, costs and expenses incurred by such person as a result of act, omission or conduct in connection with the performance of his fiduciary duties, responsibilities and obligations under the Plan and under ERISA, except with respect to liabilities and claims arising from such person's own willful misconduct or gross negligence. The Members may obtain, pay for and maintain a policy or policies of insurance, the proceeds of which may be used in satisfying its obligations under this Section.

ARTICLE XVI

CLAIMS PROCEDURE

16.1 Any request for a benefit payable under the Plan shall be made in writing by a Player or Beneficiary (or an authorized representative of either of them), as the case may be, and shall be delivered to any member of the Committee. Such written request shall be deemed filed upon receipt thereof by the Committee. Such request shall be made within the time prescribed in the Plan for claiming a particular benefit or, if no time is so prescribed, within a reasonable time before payment of the benefit is to commence.

16.2 In the event a request for benefits contains insufficient information, the Committee shall, within 25 days after receipt of such request, send a written notification to the claimant setting forth a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material is necessary. The claimant's request shall be deemed filed with the Committee on the date the Committee receives in writing such additional information.

16.3 The Committee shall make a determination with respect to a request for benefits within 60 days after such request is filed. The Committee shall notify the claimant whether his claim has been granted or whether it has been denied in whole or in part. Such notification shall be in writing and shall be delivered, by mail or otherwise, to the claimant within a reasonable time after such claim is filed. If the claim is denied in whole or in part, the written notification shall set forth, in a manner calculated to be understood by the claimant:

- (a) The specific reason or reasons for the denial;
- (b) Specific reference to pertinent provisions of the Plan on which the denial is based; and
- (c) An explanation of the Plan's claim review procedure.

Failure by the Committee to give notification pursuant to this Section within a reasonable time after receipt of the claim shall be deemed a denial of the request for the purpose of proceeding to the review stage.

16.4 A claimant whose request for benefits has been denied in whole or in part may, within 60 days after written notification of such denial, file with the Committee, a written

request for a review of his claim. Such written request shall be deemed filed upon receipt of same by the Committee.

16.5 A claimant who timely files a request for review of his claim for benefits may review pertinent documents (upon reasonable notice to the Committee) and may submit the issues and his comments to the Committee in writing. Except as otherwise provided below, the Committee shall, within 120 days after receipt of the written request for review, communicate its decision in writing to the claimant, setting forth, in a manner calculated to be understood by the claimant, the specific reasons for its decision and the pertinent provisions of the Plan on which the decision is based.

16.6 If the claimant so requests in his timely application for review, the Committee shall schedule a conference with the claimant (and/or his authorized representative). Such conference shall be held at the offices of the Association at a date and time which is mutually agreed upon by the parties concerned, provided that in no event shall the conference be held more than 120 days after the Committee receives the claimant's written request for review of his claim. The decision of the Committee shall be communicated in writing to the claimant or his

authorized representative within 30 days after the date on which the conference is completed, and shall set forth, in the same manner, the information required in the preceding Section.

ARTICLE XVII

LIMITATION OF RIGHTS OF THE PLAYER

17.1 Nothing contained in this Plan shall be deemed to give any Player the right to be retained in the service of any Member. Inclusion under the Plan shall not give any Player any right or claim to any benefits except to the extent such right is specifically fixed under the terms of the Plan.

17.2 The Members agree to make any and all contributions required to provide the benefits set forth herein.

17.3 No liability shall attach to any Member for any payment of any benefit or claim hereunder.

17.4 The Committee shall not be responsible for the validity of any Contracts, or for the action of any person or persons which may render any Contract invalid or unenforceable either in whole or in part. The Committee shall not be responsible for any inability to perform or any delay in performing any act occasioned by any other person. In the event it becomes impossible for the Committee to perform any act, that act shall be performed which in the judgment of the Committee will most nearly carry out the intent and purpose of this Plan.

ARTICLE XVIII

PARTICIPATING MEMBERS

18.1 Each Member shall execute such documents as are necessary to duly accept this Plan and to participate in any Contracts and the Trust Agreement to implement said Plan.

18.2 (a) In the event of the sale, transfer, exchange or other disposition of a franchise, or the granting of a new franchise by the Association, in addition to satisfying the provisions of paragraph (b) which apply in the case of a sale of assets, the new Member shall immediately execute such documents and take such actions as the Committee deems necessary so as to provide the benefits of this Plan for its Players.

(b) In the event of the sale of the assets of a franchise by a Member, such Member shall not be considered to have "withdrawn" from the Plan (as described in Section 18.3(a)) as a result of such sale, provided that all of the applicable conditions described in Section 4204(a) of ERISA, as may be modified or varied by the Pension Benefit Guaranty Corporation, are satisfied.

18.3 (a) In the event that any Member ceases to own a franchise and if such franchise is not sold, transferred or exchanged or otherwise disposed of to any new Member or if the assets of such franchise are sold to a new Member without compliance with the conditions of Section 4204(a) of ERISA, or if any Member completely discontinues making contributions to the Plan, such Member shall be considered to have "withdrawn" from the Plan (within the meaning of Section 4203 of ERISA) and the provisions of paragraphs (b) and (c) of this Section shall apply to such Member (the "Withdrawing Member").

(b) All of the Players of the Withdrawing Member shall be vested with all benefits accrued to the date of such withdrawal and the Plan shall terminate as to such Member.

(c) The Withdrawing Member shall be obligated to immediately make a lump sum payment to the Plan equal to the sum of the amounts set forth below in subparagraphs (i) and (ii) ("withdrawal liability").

(i) The "unfunded accrued liability" as of the date of withdrawal for each Player for whom the Withdrawing Member is then liable to make a contribution under the provisions hereof; provided, however, that such Member shall not be liable for any further contribution for any Player to

the extent that another Member becomes liable for such contributions under the terms of the Plan, by virtue of having acquired rights to such Player. For purposes of this Section 18.3, the amount of the "unfunded accrued liability" allocable to a Withdrawing Member shall be determined pursuant to the provisions of Articles X and XI of the Plan.

(ii) The Withdrawing Member's allocable share of any "unattributable liabilities" existing under the Plan. For purposes of this Section 18.3, "unattributable liabilities" shall mean the total amount of the withdrawal liabilities of Members which have previously withdrawn from the Plan that is outstanding as of the date of the withdrawal of the Withdrawing Member. The amount of unattributable liabilities allocable to the Withdrawing Member shall equal the total amount of such liabilities multiplied by a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Members of the Association as of the date of withdrawal.

In determining the amount of withdrawal liability for any Withdrawing Member under this Section 18.3, the provisions of Section 4209 of ERISA (relating to the de minimis rule) and Sec-

tion 4219(c)(1)(B) of ERISA (relating to the 20-year limit on withdrawal liability payments) shall not apply.

18.4 In no event shall any merger or consolidation of any other plan with this Plan, or any transfer of assets and liabilities of this Plan to any other plan or any transfer of assets and liabilities from any other plan to this Plan take place which results in a benefit to any Player or Beneficiary (if the Plan then terminated) that is lower than the benefit he would have received immediately before the merger, consolidation or transfer (if the Plan then terminated).

ARTICLE XIX

AMENDMENT OR TERMINATION OF THE PLAN

19.1 The Members shall have the right to amend the Plan at any time by an instrument in writing executed by all Members (or by the Association as agent for its Members) and delivered to the Insurer and Trustees, provided, however, that:

(a) no amendment shall deprive any Player or Beneficiary of any of the benefits to which he is entitled under the Plan with respect to contributions previously made;

(b) no amendment shall provide for the use of the funds or assets held by the Insurer or Trustees other than for the exclusive benefit of Players and Beneficiaries and for defraying reasonable expenses of administering the Plan, and except as otherwise provided in the Plan, no funds contributed shall ever revert to or be used by the Member;

(c) no amendment shall deprive the Insurer of any of its exemptions and immunities with respect to Contracts issued by it prior to receipt by the Insurer of notice of such amendment; and

(d) no amendment shall increase the powers, duties or liabilities of the Trustees without their written consent.

Any amendment to the Plan, Contract, or Trust Agreement may be made retroactive to enable the Members to obtain rulings from the Internal Revenue Service as to the qualification of this Plan within the meaning of the Internal Revenue Code, as amended, or as it may be replaced by any sections of Federal law of like intent and purpose.

19.2 The Members may terminate the Plan at any time and for any reason by an instrument in writing executed by all the Members and delivered to the Insurer and Trustees; provided, however, that if the Plan shall be terminated (or if there shall be a partial termination of the Plan), each Player or Beneficiary affected thereby shall be vested with all benefits accrued to the date of termination, and each Member shall make a contribution (or contributions) to the Plan in the amount required by the applicable provisions of ERISA. Upon termination, the Members may obtain deferred annuities for Players not yet retired and immediate annuities for retired Players and Beneficiaries then entitled to payments providing for the benefits to which such Player or Beneficiary is entitled, and upon termination such annuities or certificates of such annuities shall be distributed in complete discharge of all of the rights of such Players and

Beneficiaries in the Plan. After discharge and satisfaction of all liabilities under the Plan, any remaining assets shall be returned to each Member in proportion to the amounts credited to each such Member's account under Articles X and XI of the Plan. Any Contract purchased under this Plan shall contain terms implementing the foregoing.

19.3 In the event that the balance in any Member's account is insufficient to discharge its liabilities in full, then such balance shall be allocated among its Players (and their Beneficiaries) in such manner determined by the Committee as is consistent with applicable law.

ARTICLE XX

PROVISIONS PERTAINING TO PRE-1965 PLAYERS

20.1 Notwithstanding anything else in the Plan to the contrary, this Article XX contains special provisions, effective October 1, 1988, reflecting the provision of a benefit under the Plan to certain former Players ("Pre-1965 Players") who were not otherwise eligible to participate in the Plan.

20.2 For purposes of this Article XX only, the following special definitions shall apply (whether such defined term appears in this Article XX or in a Section which is incorporated into this Article XX by reference):

(a) "Active List" shall mean the list of Pre-1965 Players who, with respect to Regular Seasons prior to the Regular Season which included February 2, 1965, signed "formal contracts" with a Member and were otherwise eligible to participate in a Championship Game.

(b) "Armed Services List" shall mean the list of those Pre-1965 Players who, with respect to Regular Seasons prior to the Regular Season which included February 2, 1965, entered the

Armed Services and served on active duty (as certified to the Committee by each Pre-1965 Player).

(c) "Early Retirement Benefit" shall mean a benefit commencing on a Pre-1965 Player's Early Retirement Benefit Commencement Date.

(d) "Early Retirement Benefit Commencement Date" shall mean any date after the Pre-1965 Player's attainment of age 55 and prior to his attainment of age 62 on which an election by the Pre-1965 Player to receive an Early Retirement Benefit under this Article XX becomes effective.

(e) "Member" shall mean a member or former member of the Association or the National Basketball League.

(f) "Normal Retirement Benefit" shall mean a benefit commencing on a Pre-1965 Player's Normal Retirement Benefit Commencement Date.

(g) "Normal Retirement Benefit Commencement Date" shall mean the first day of the first month following a Pre-1965 Player's attainment of age 62 or October 1, 1988, if later.

(h) "Pre-1965 Player" shall mean a Player who:

(i) had at least 5 Years of Pre-1965 Credited Service;

(ii) is not otherwise eligible to participate in this Plan under Article II; and

(iii) is living on October 1, 1988.

(i) "Year of Pre-1965 Credited Service" shall mean:

(i) each Regular Season that a Pre-1965 Player was on the Active List, and

(ii) each Regular Season that a Pre-1965 Player was on the Armed Services List; provided, however, that a Pre-1965 Player shall not receive credit for Years of Pre-1965 Credited Service for Regular Seasons during which he was on the Armed Services List unless his period of service in the Armed Services was either immediately preceded or followed by a Regular Season during which he was on the Active List.

For purposes of this Article XX, any term used herein (or incorporated by reference herein) that is not separately defined in this Section 20.2 shall have the meaning set forth elsewhere in the Plan; provided, however, that the reference in the definition of 'Championship Game' (as set forth in Section 20.8) and in the definition of 'Regular Season' (as set forth in Section 20.30) to the term 'Association' shall also include the National Basketball League.

20.3 (a) (i) Except as provided in paragraphs (b) and (c) of this Section, a Pre-1965 Player who attains his Normal Retirement Benefit Commencement Date shall be entitled to receive a Normal Retirement Benefit of \$100 per month for each of his Years of Pre-1965 Credited Service. The Normal Retirement Benefit shall be paid to him commencing on his Normal Retirement Benefit Commencement Date, shall continue to be paid on the first day of each month up to and including the month in which such Player dies and, except as otherwise provided in paragraph (c), shall be paid as an annuity for the life of the Player ("Single Life Annuity").

(ii) Effective October 1, 1992, the Normal Retirement Benefit provided under subparagraph (i) shall be increased to \$108.33 per month for each Year of Pre-1965 Credited Service. The benefit to be paid in accordance with this subparagraph (ii) shall apply only with respect to benefit payments due on or after October 1, 1992 and shall not require the recalculation of benefit payments made prior to such date. This increase shall also apply in determining the benefits payable to a surviving spouse under either the

Qualified Joint and Survivor Annuity or the Preretirement Survivor Annuity.

(iii) Effective March 1, 1993, the Normal Retirement Benefit provided under subparagraph (ii) shall be increased to \$116.73 per month for each Year of Pre-1965 Credited Service. The benefit to be paid in accordance with this subparagraph (iii) shall apply only with respect to benefit payments due on or after March 1, 1993 and shall not require the recalculation of benefit payments made prior to such date. This increase shall also apply in determining the benefits payable to a surviving spouse under either the Qualified Joint and Survivor Annuity or the Preretirement Survivor Annuity.

(iv) Effective September 1, 1996, the Normal Retirement Benefit provided under subparagraph (iii) shall be increased to \$200.00 per month for each Year of Pre-1965 Credited Service. The benefit to be paid in accordance with this subparagraph (iv) shall apply only with respect to benefit payments due on or after September 1, 1996 and shall not require the recalculation of benefit payments made prior to such date. This increase shall also apply in determining the benefits payable to a surviving spouse under either the

Qualified Joint and Survivor Annuity or the Preretirement Survivor Annuity.

(b) (i) A Pre-1965 Player who is not yet eligible for a Normal Retirement Benefit may elect to receive, in lieu of a Normal Retirement Benefit, an Early Retirement Benefit. Such election shall be made at least 90 days prior to his Early Retirement Benefit Commencement Date and shall be made in writing delivered to the Committee.

(ii) The Early Retirement Benefit payable to a Pre-1965 Player shall be paid to him commencing on the first day of the first month following such Player's Early Retirement Benefit Commencement Date and, except as otherwise provided in paragraph (c) of this Section, shall be paid as a Single Life Annuity. The amount of the Early Retirement Benefit payable to a Pre-1965 Player shall be determined by reducing the Normal Retirement Benefit that such Player would have been entitled to on his Normal Retirement Benefit Commencement Date by the product of $1/180$ and the total number of months that the Pre-1965 Player's Early Retirement Benefit Commencement Date precedes such Player's Normal Retirement Benefit Commencement Date.

(c) (i) If a Pre-1965 Player is married on his Early Retirement Benefit Commencement Date or on his Normal Retirement Benefit Commencement Date, as the case may be, his Early Retirement Benefit or Normal Retirement Benefit shall be paid in the form of a Qualified Joint and Survivor Annuity under which such Pre-1965 Player's benefit is reduced so that the resulting benefit payable to the Pre-1965 Player and his spouse shall be the Actuarial Equivalent of his Early Retirement Benefit or Normal Retirement Benefit otherwise payable.

(ii) Notwithstanding subparagraph (i) of this paragraph (c), a married Pre-1965 Player may elect to have his Early Retirement Benefit or Normal Retirement Benefit paid in the form of a Single Life Annuity by filing a written election with the Committee; provided, however, that the spouse of such Pre-1965 Player must consent to such an election in accordance with the provisions of Section 3.10(c)(i). Any election by a Pre-1965 Player to waive the Qualified Joint and Survivor Annuity must be made within a reasonable period prior to the date on which his benefits commence. A Pre-1965 Player who has waived the Qualified Joint and Survivor Annuity may subsequently cancel his

waiver at any time prior to the date his benefits commence, by filing a proper waiver or cancellation of waiver with the Committee.

(d) Except as provided in paragraph (c)(ii) of this Section 20.3, the optional forms described in Section 3.11 shall not be available with respect to the payment of benefits to a Pre-1965 Player.

(e) In determining the benefit to which a Pre-1965 Player may be entitled under this Section, the Pre-1965 Player shall not be credited with a Year of Pre-1965 Credited Service to the extent that such service is taken into account for benefit accrual purposes under any other qualified plan maintained or sponsored by the Association.

(f) Notwithstanding anything else in this Article XX to the contrary, the benefits payable to a Pre-1965 Player shall be subject to the applicable benefit limitations set forth in Sections 6.7, 6.9 and 6.10; provided, however, that for purposes of Section 6.10, years of Member Service shall also include all Years of Pre-1965 Credited Service (within the meaning of Section 20.2(i)(i)). In making this determination, the cost of living adjustments provided under Sections 6.7(a)(i) and (ii) and Sections 6.7(d)(v) and (vi) shall apply.

20.4 (a) In the event of the death of a married Pre-1965 Player prior to the date as of which the payment of his Early Retirement Benefit or Normal Retirement Benefit, as the case may be, becomes effective, such Pre-1965 Player's spouse shall be entitled to a monthly benefit payable as an annuity for her life (the "Preretirement Survivor Annuity") in an amount equal to 50% of the benefit the Pre-1965 Player would have received:

(i) in the case of a Pre-1965 Player whose date of death occurs after his attainment of age 55, had such Pre-1965 Player begun to receive his benefit under the Plan (as adjusted under Section 20.3(b)(ii), if applicable) on the day before his date of death in the form of a Qualified Joint and Survivor Annuity; or

(ii) in the case of a Pre-1965 Player whose date of death occurs prior to his attainment of age 55, had such Pre-1965 Player survived until the attainment of such age and elected to receive his benefit under the Plan (as adjusted under Section 20.3(b)(ii)) commencing on the first day of the first month following his attainment of age 55 in the form of a Qualified Joint and Survivor Annuity.

(b) Payments under the Preretirement Survivor Annuity under paragraph (a) of this Section shall commence as soon as possible after the Committee is notified of the Pre-1965 Player's death.

20.5 The annual cost of funding the benefits provided to Pre-1965 Players under this Article XX shall be paid by each Member of the Association. The amount of the annual funding cost to be paid by each Member shall be determined based on the ratio of each Member's accrued liability over the total accrued liability of all of the Members under the Plan. For purposes of Section 18.3(c)(i) of the Plan, a Member's funding cost under this Section 20.5 shall be part of the "unfunded accrued liability" directly allocable to a Withdrawing Member.

20.6 Wherever applicable under the Plan, the term "Player" shall also include a "Pre-1965 Player."

ARTICLE XXI

PROVISIONS PERTAINING TO CANADIAN PLAYERS

21.1 Notwithstanding anything else in the Plan to the contrary, this Article XXI contains special provisions with respect to the provision of benefits under the Plan to certain Players ("Canadian Players") who were at any time entitled to receive a benefit under the Toronto Raptors Players' Pension Plan and/or the Vancouver Grizzlies Players' Pension Plan (the "Canadian Plans").

21.2 (a) Any amounts payable to a Canadian Player under Article III shall be reduced by the benefits payable to such Player under a Canadian Plan (using, where applicable, the actuarial factors specified in the Plan).

(b) Any amounts payable to a Canadian Player's Beneficiary under Article VII shall be reduced by any benefits payable on account of such Canadian Player under a Canadian Plan (using, where applicable, the actuarial factors specified in the Plan).

21.3 In determining the benefits payable to a Canadian Player or a Canadian Player's Beneficiary under a Canadian Plan

for purposes of Section 21.2, such benefits shall be converted from Canadian Dollars to U.S. Dollars based upon the spot buying rate quoted by Chemical Bank for purchases of U.S. Dollars with Canadian Dollars at noon (New York time) on the date on which such Player or Beneficiary first receives or commences to receive payment of a benefit under the Plan or, if earlier, the date on which either the Player or Beneficiary first receives or commences to receive payment of a benefit under such Canadian Plan. If the spot buying rate is not quoted on such day by Chemical Bank, the conversion from Canadian Dollars to U.S. Dollars shall be based upon such rate on the last day on which it was quoted by Chemical Bank.

ARTICLE XXII

MISCELLANEOUS

22.1 The headings and subheadings in this Plan have been inserted for the convenience of reference only, and are to be ignored in any construction of the provisions hereof.

22.2 In the construction of this Plan, the masculine shall include the feminine and the neuter and the singular shall include the plural in all cases where such meanings would be appropriate.

22.3 This Plan shall be construed, whenever possible, to be in conformity with the requirements of the Internal Revenue Code and ERISA. To the extent not in conflict with the preceding sentence, and except to the extent that state law shall not have been preempted by the provisions of ERISA or any other laws of the United States heretofore or hereafter enacted, the Plan should be construed, administered and governed in all respects under and by the laws of the State of New York.

22.4 Subject to Sections 22.5 and 22.6, this Plan is created for the exclusive benefit of the Players and their Beneficiaries. If any provision hereof is susceptible of more than one

interpretation, then among those interpretations which are possible, that one shall always be adopted which will be consistent with this Plan's being a qualified Plan within the meaning of the Internal Revenue Code, as amended, or as it may be replaced by any sections of Federal law of like intent and purpose.

22.5 If a Member makes a contribution to the Plan due to a mistake of fact or a mistake of law, such contribution shall be returned to such Member within six months after the Committee determines that the contribution was made by such a mistake.

22.6 All contributions by the Members are conditioned upon their deductibility under Section 404 of the Internal Revenue Code, and if part or all of the deduction for a Member's contribution is disallowed, the contribution, to the extent disallowed, shall be returned to the Member within one year after the disallowance of the deduction.

22.7 If any provision of this Plan is held to be illegal, invalid or unenforceable for any reason, this shall not affect any other provision of the Plan, and this Plan shall be construed as if said illegal, invalid or unenforceable provision had never been inserted herein.

22.8 Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.

22.9 Except as otherwise provided herein, this Plan shall amend and restate, effective as of February 2, 1996, all provisions of the Plan, as in effect on February 1, 1996.

On this 17th day of January, 1997, the National Basketball Association, as agent for its Member Clubs, has executed this Plan.

ATTEST:

NATIONAL BASKETBALL ASSOCIATION

Denise Perry

By: *Jeffrey A. Mushinski*

Title: Executive Vice-President

**NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN**

Restated Effective February 2, 1997

00006974-3

C-8-000001

NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN

TABLE OF CONTENTS

PREAMBLE

I. DEFINITIONS

II. ELIGIBILITY

III. BENEFITS

IV. CREDITED SERVICE

V. FORMER PENSION BENEFITS

VI. MEMBER'S CONTRIBUTIONS AND BENEFIT LIMITATIONS

VII. DEATH BENEFITS

VIII. NON-ALIENATION OF BENEFITS

IX. FORFEITURES

X. INCOME AND EXPENSES

XI. MEMBER'S ACCOUNTS

XII. INSURANCE CONTRACTS

XIII. TRUST FUND

XIV. ADMINISTRATION OF PLAN

XV. LIABILITY AND STANDARD OF CARE OF COMMITTEE

XVI. CLAIMS PROCEDURE

XVII. LIMITATION OF RIGHTS OF THE PLAYER

XVIII. PARTICIPATING MEMBERS

XIX. AMENDMENT OR TERMINATION OF PLAN

XX. PROVISIONS PERTAINING TO PRE-1965 PLAYERS

XXI. PROVISIONS PERTAINING TO CANADIAN PLAYERS

XXII. MISCELLANEOUS

PREAMBLE

THE NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN

WHEREAS, the National Basketball Association Players' Pension Plan (the "Plan") was established on February 2, 1965;

WHEREAS, the Plan was (i) restated effective February 2, 1976, (ii) subsequently restated effective February 2, 1984, (iii) subsequently restated again effective February 2, 1989 and (iv) subsequently restated again effective February 2, 1996;

WHEREAS, the Small Business Job Protection Act of 1996 and subsequent legislation and regulations ("employee benefit changes") have made numerous changes to the rules governing all qualified plans, thereby requiring all qualified plans to be amended to reflect these changes in order for such plans to retain their tax-qualified status;

WHEREAS, the Internal Revenue Service has extended the "remedial amendment period" for the Plan to be amended to comply with the employee benefit changes through February 28, 2002; and

WHEREAS, in light of the amendments that have previously been made to the Plan since its last restatement and in light of the need to make further amendments to the Plan, it has been decided to amend and entirely restate the Plan.

NOW, THEREFORE, except as otherwise provided in the Plan, effective February 2, 1997, the Plan is hereby amended and restated as set forth herein.

ARTICLE I

DEFINITIONS

1.1 "Active List" shall mean the list of Players who have signed "formal contracts" with a Member, and are otherwise eligible to participate in a Championship Game as certified to the Committee by each Member.

1.2 "Actuarial Equivalent" shall mean, unless specified otherwise, a benefit of equivalent value when computed on the basis of 7 percent interest and the 1971 Group Annuity Mortality Male Table for Players, and the 1971 Group Annuity Mortality Male Table set back 7 years for spouses and alternate payees.

1.3 "Actuarial Value" shall mean the present value of a benefit when computed on the basis of the actuarial assumptions specified under the Plan.

1.4 "Anniversary Date" shall mean any anniversary of the Effective Date of the Plan (February 2).

1.5 "Armed Services List" shall mean the list of those Players who have entered the Armed Services and are serving on active duty as certified to the Committee by each Member.

1.6 "Association" shall mean the National Basketball Association and its successors.

1.7 "Beneficiary" shall mean the person or persons designated by a Player to receive any benefits under this Plan. Where

a Player fails to designate a Beneficiary or where a Beneficiary fails to survive a Player, "Beneficiary" shall mean the Player's surviving spouse, if any, or, if none, his children, if any, in equal shares, or, if none, his personal representative. Any person entitled to receive benefits hereunder after the death of a Player shall also be deemed a Beneficiary for purposes of the Plan.

1.8 "Championship Game" shall mean any game included in the Association's schedule of Championship Games and shall not include playoff games or exhibition games.

1.9 "Committee" shall mean the Pension Committee referred to in Article XIV hereof.

1.10 "Contract" shall mean a Group Annuity Contract issued by an Insurer under this Plan, whether or not such Contract contains any element of life insurance protection. Any Contract may provide for the allocation of amounts received by an Insurer under the Plan to said Insurer's general account or to one or more of its separate accounts (including separate accounts maintained for the collective investment of assets of qualified retirement plans).

1.11 "Early Retirement Date" shall mean a date after the forty-fifth (45th) anniversary of the Player's date of birth, on which an election made by the Player for an Early Retirement Pension becomes effective, provided that during the Plan Year

involved the Player (i) is not on the Roster of any Member and (ii) is not employed in any capacity by a Member, where the Player was last employed as a Player by such Member and, within the twelve-month period following such Player's employment as a Player of such Member, was reemployed by such Member in a capacity other than as a Player without any subsequent termination of such Player's employment with the Member.

1.12 "Early Retirement Pension" shall mean the pension payable to a Player at his Early Retirement Date.

1.13 "Effective Date" shall mean February 2, 1965. "Restatement Effective Date" shall mean February 2, 1976. The "Effective Date of the Second Plan Restatement" shall mean February 2, 1984. The "Effective Date of the Third Plan Restatement" shall mean February 2, 1989. The "Effective Date of the Fourth Plan Restatement" shall mean February 2, 1996. The "Effective Date of this Fifth Plan Restatement" shall, except as otherwise provided herein, mean February 2, 1997.

1.14 "Enrolled Actuary" shall mean a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under Subtitle C of Title III of ERISA.

1.15 "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and with which this Plan is intended to comply.

1.16 "Franchise" shall mean the right of any Member to participate in the Association as determined under the rules of the Association.

1.17 "Injured List" shall mean the list of Players who, due to injury or illness, have been temporarily removed from the Active List of a Member as certified to the Committee by each Member.

1.18 "Insurer" shall mean a legal reserve life insurance company which shall issue a Contract under which the Members shall participate upon execution of an agreement providing for such participation, and which is licensed to do business in the State of New York.

1.19 "Internal Revenue Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

1.20 "Member" shall mean a member team of the Association.

1.21 "Named Fiduciary" shall mean the Committee.

1.22 "National Consumer Price Index" shall mean the Consumer Price Index for Urban Consumers ("CPI-U").

1.23 "Normal Retirement Date" shall mean the fifty-third (53rd) anniversary of the Player's date of birth. Effective February 2, 1978, "Normal Retirement Date" shall mean the fiftieth (50th) anniversary of the Player's date of birth.

1.24 "Normal Retirement Pension" shall mean the pension payable to the Player at his Normal Retirement Date.

1.25 "Plan" shall mean the National Basketball Association Players' Pension Plan.

1.26 "Plan Administrator" shall mean the Committee.

1.27 "Plan Year" shall mean the twelve (12) month period beginning on the Effective Date, or any subsequent twelve (12) month period beginning on February 2 and ending on February 1 during which this Plan shall be in effect.

1.28 "Player" shall mean any person carried on any Player List, as defined in the By-Laws of the Association, or, where the context permits, a person eligible to be carried on any such List or a person formerly carried on any such List.

1.29 "Qualified Joint and Survivor Annuity" shall mean a pension benefit payable for the life of a retired Player and continued upon his death for the life of the deceased Player's surviving spouse, if any, with the surviving spouse's periodic benefit to be at a level of 50 percent of the benefit paid or payable for each such period to the Player during his lifetime in accordance with the provisions of Section 3.10(a). In the case of a Pre-1965 Player (as defined in Section 20.2(h)), Qualified Joint and Survivor Annuity shall mean a pension benefit payable for the life of the Pre-1965 Player and continued upon his death for the life of the deceased Pre-1965 Player's surviving spouse,

if any, with the surviving spouse's periodic benefit to be at a level of 50 percent of the actuarially reduced benefit paid or payable for each such period to the Pre-1965 Player during his lifetime in accordance with the provisions of Section 20.3(c).

1.30 "Regular Season" shall mean the period beginning on the date of the first game of the Association's schedule of Championship Games and ending at the end of the day before the first Playoff Game is played.

1.31 "Roster" shall mean, except as provided in paragraph (b), (i) every Player on the Active List of any Member on February 2 of the Regular Season involved, (ii) for any Regular Season ending after February 2, 1965, every additional Player on the Injured List on February 2 of the Regular Season involved, without regard to whether such additional Player was on the Active List of any Member during such Regular Season and (iii) every other Player who was on the Active List of any Member for 50 percent or more of the total Championship Games played by the Member during the Regular Season involved. A Player, not otherwise considered to be on the Roster of any Member for any Plan Year beginning on or after February 2, 1989 pursuant to the terms hereof, shall not be considered to be on the Roster of any Member for any such Plan Year by virtue of the fact that he has entered into a "guaranteed" or "no-cut" contract or a contract which protects or insures any part of his cash compensation. Notwithstanding anything to the contrary, no Player shall be

treated as having been on the Roster of any Member for any Plan Year for which all or part of his benefits were forfeited under the provisions of this Plan in existence prior to February 2, 1976. Except as provided in paragraph (b), "Roster" shall also include any Player on the Armed Services List of any Member on February 2 of the Regular Season involved, who is not otherwise considered to be on the Roster for such Regular Season, if, and to the extent, that applicable law requires the Player to be so treated.

(b) For the Plan Year commencing on February 2, 1999 and ending on February 1, 2000 (the "1999 Plan Year") and for the Regular Season commencing on February 5, 1999 (the "1999 Regular Season"), "Roster" shall mean, (i) every Player on the Active List of any Member on March 21, 1999, (ii) every additional Player on the Injured List on March 21, 1999, without regard to whether such additional Player was on the Active List of any Member during the 1999 Regular Season and (iii) every other Player who was on the Active List of any Member for 50 percent or more of the total Championship Games played by the Member during the 1999 Regular Season. A Player, not otherwise considered to be on the Roster of any Member for the 1999 Regular Season pursuant to the terms hereof, shall not be considered to be on the Roster of any Member for such Plan Year by virtue of the fact that he has entered into a "guaranteed" or "no-cut" contract or a contract which protects or insures any part of his cash compensation. For the 1999 Plan Year, "Roster" shall also

include any Player on the Armed Services List of any Member on March 21, 1999, who is not otherwise considered to be on the Roster for the 1999 Regular Season if, and to the extent that applicable law requires the Player to be so treated.

1.32 "Supplemental Pension" shall mean the pension payable to a Player from his Supplemental Pension Account.

1.33 "Supplemental Pension Account" shall mean an account to be maintained by the Insurer for each Player, as directed by the Committee and subject to the terms of this Plan.

1.34 "Suspended List" shall mean the list of those Players who, for proper cause, have been suspended by the Association or by a Member as certified to the Committee by each Member.

1.35 "Trust Agreement" shall mean the Agreement establishing the Trust hereunder entered into between the Members and the Trustee.

1.36 "Trust" shall mean the funds and assets held and administered by the Trustees at any time under the terms of the Trust Agreement.

1.37 "Trustees" shall mean the Trustees of the Trust under the Trust Agreement, as originally executed and as amended from time to time, and any successor Trustee or Trustees acting thereunder.

ARTICLE II

ELIGIBILITY

2.1 Every Player on the Roster of any Member during the Regular Season which included February 2, 1967 shall be eligible to participate as of February 2, 1968. Every Player on the Roster of any Member during the Regular Season which included February 2, 1966, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1970. Every Player on the Roster of any Member during the Regular Season which included February 2, 1965, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1973.

2.2 Every Player on the Roster of any Member during any Regular Season beginning subsequent to the Regular Season which includes February 2, 1967, not otherwise eligible hereunder, shall be eligible to participate as of the Anniversary Date during such subsequent Regular Season.

2.3 Notwithstanding anything herein to the contrary, for the sole purpose of determining when a Player is first eligible to participate hereunder, any Player on the Roster of any Member for any Regular Season ended before February 2, 1973 solely by reason of Section 1.31(ii) hereof shall not be eligible to participate hereunder by reason of being on such Roster until February 2, 1976. This Section shall not affect the eligibility of any Player by reason of Section 1.31(i) or Section 1.31(iii) hereof.

2.4 Every Player entitled to any benefit under the terms of the pension plan in existence prior to the adoption of this instrument shall continue to be eligible to receive such benefits.

2.5 Any Player who receives the full value of his Normal Retirement Pension or Early Retirement Pension (and, if, applicable, Supplemental Pension) (or who is deemed to have received a distribution of his Normal Retirement Pension or Early Retirement Pension (and, if applicable, Supplemental Pension) under Section 3.16(b)), shall thereupon cease to be a participant in the Plan, and neither he nor any person on his behalf shall have any further rights to benefits under the Plan.

ARTICLE III

BENEFITS

3.1 Every Player eligible to participate hereunder, who attains his Normal Retirement Date and who was on the Roster of any Member for any three Regular Seasons shall be entitled to a Normal Retirement Pension and any Supplemental Pension payable pursuant to Section 3.6 hereof.

3.2 The Normal Retirement Pension payable to a Player shall be paid to him commencing on the first day of the first month following said Player's Normal Retirement Date and shall continue to be paid on the first day of each month up to and including the month in which the Player dies and, except as otherwise provided in Sections 3.10 and 3.11, shall be paid as an annuity for the life of the Player ("Single Life Annuity") in an amount equal to:

(a) For a Player who becomes eligible to receive a Normal Retirement Pension on or before May 31, 1976, \$60 per month for each year of Credited Service.

(b) For a Player who becomes eligible to receive a Normal Retirement Pension on or after June 1, 1976 and on or before May 31, 1979, \$75 per month for each year of Credited Service.

(c) For a Player who becomes eligible to receive a Normal Retirement Pension on or after June 1, 1979 and on or before December 1, 1980, \$75 plus a cost-of-living adjustment (which adjustment shall be calculated by applying to \$75 the

percentage increase in the National Consumer Price Index between September 1975 and May 1979, and which shall be rounded off to the nearest whole dollar) per month for each year of Credited Service.

(d) For a Player who becomes eligible to receive a Normal Retirement Pension on or after December 2, 1980, the amount provided in Section 3.2(c) above, plus a cost-of-living adjustment (which adjustment shall be calculated by applying to the amount provided in Section 3.2(c) the percentage increase in the National Consumer Price Index between June 1979 and November 1980, and which shall be rounded off to the nearest whole dollar) per month for each year of Credited Service.

(e) (i) For a Player who was a "Former Player" as of February 2, 1985, the Normal Retirement Pension otherwise payable to such Player under this Section shall be increased by \$2.65 per month for each year of Credited Service.

(ii) For purposes of this paragraph (e), as of February 2, 1985, a Former Player shall mean an individual formerly employed by a Member who, as of such date, has a vested right to a pension benefit under the Plan and had not begun to receive the payment of such pension benefit. Any individual that is credited with a year of Credited Service on or after February 2, 1985 (or any individual who would have been credited with a year of Credited Service on or after February 2, 1985 if not for the fact that such individual was employed by a corporation (the sole

shareholder of which is such individual) which has entered into an agreement with a Member for providing services to such Member), shall not be considered a Former Player for purposes of this paragraph (e).

(f) (i) For a Player who was a "Former Player" as of February 2, 1986, the Normal Retirement Pension otherwise payable to such Player under this Section shall be increased by \$2.60 per month for each year of Credited Service.

(ii) For purposes of this paragraph (f), as of February 2, 1986, a Former Player shall mean an individual formerly employed by a Member who, as of such date, had a vested right to a pension benefit under the Plan and had not begun to receive the payment of such pension benefit. Any individual that is credited with a year of Credited Service on or after February 2, 1986 (or any individual who would have been credited with a year of Credited Service on or after February 2, 1986, if not for the fact that such individual was employed by a corporation (the sole shareholder of which is such individual) which has entered into an agreement with a Member for providing services to such Member), shall not be considered a Former Player for purposes of this paragraph (f).

(g) (i) For a Player who was a "Former Player" as of February 2, 1987, the Normal Retirement Pension otherwise payable to such Player under this Section shall be increased by \$2.60 per month for each year of Credited Service.

(ii) For purposes of this paragraph (g), as of February 2, 1987, a Former Player shall mean an individual formerly employed by a Member who, as of such date, has a vested right to a pension benefit under the Plan and had not begun to receive the payment of such pension benefit. Any individual that is credited with a year of Credited Service on or after February 2, 1987 (or any individual who would have been credited with a year of Credited Service on or after February 2, 1987 if not for the fact that such individual was employed by a corporation (the sole shareholder of which is such individual) which has entered into an agreement with a Member for providing services to such Member), shall not be considered a Former Player for purposes of this paragraph (g).

(h) For a Player who had not yet begun to receive a benefit under the Plan as of September 1, 1988, \$200 per month for each year of Credited Service.

(i) (i) For a Player who was receiving monthly benefits under the Plan as of September 1, 1988, \$200 per month for each year of Credited Service.

(ii) The benefit to be paid in accordance with subparagraph (i) of this paragraph (i) shall apply with respect to benefit payments made after September 1, 1988 and shall not require the recalculation of benefit payments made prior to such date.

(j) Except as provided in paragraph (k) of this Section, for a Player who had not yet begun to receive a benefit under the Plan as of July 1, 1996, \$285 per month for each year of Credited Service.

(k) (i) For a Player who was receiving monthly benefits under the Plan as of September 1, 1996, \$285 per month for each year of Credited Service.

(ii) The benefit to be paid in accordance with subparagraph (i) of this paragraph (k) shall apply only with respect to benefit payments made on or after September 1, 1996 and shall not require the recalculation of benefit payments made prior to such date.

(l) For a Player who had not yet begun to receive a benefit under the Plan as of March 1, 1997, \$296.24 per month for each year of Credited Service.

(m) (i) For a Player who was receiving monthly benefits under the Plan as of March 1, 1997, \$296.24 per month for each year of Credited Service.

(ii) The benefit to be paid in accordance with subparagraph (i) of this paragraph (m) shall apply only with respect to benefit payments made on or after March 1, 1997 and shall not require the recalculation of benefit payments made prior to such date.

(n) For a Player who had not yet begun to receive a benefit under the Plan as of March 1, 1998, \$309.34 per month for each year of Credited Service.

(o) (i) For a Player who was receiving monthly benefits under the Plan as of March 1, 1998, \$309.34 per month for each year of Credited Service.

(ii) The benefit to be paid in accordance with subparagraph (i) of this paragraph (o) shall apply only with respect to benefit payments made on or after March 1, 1998 and shall not require the recalculation of benefit payments made prior to such date.

(p) For a Player who had not yet begun to receive a benefit under the Plan as of March 1, 2000, \$321.24 per month for each year of Credited Service.

(q) (i) For a Player who was receiving monthly benefits under the Plan as of March 1, 2000, \$321.24 per month for each year of Credited Service.

(ii) The benefit to be paid in accordance with subparagraph (i) of this paragraph (q) shall apply only with respect to benefit payments made on or after March 1, 2000 and shall not require the recalculation of benefit payments made prior to such date.

(r) For a Player who had not yet begun to receive a benefit under the Plan as of March 1, 2001, \$333.14 per month for each year of Credited Service.

(s) (i) For a Player who was receiving monthly benefits under the Plan as of March 1, 2001, \$333.14 per month for each year of Credited Service.

(ii) The benefit to be paid in accordance with subparagraph (i) of this paragraph (s) shall apply only with respect to benefit payments made on or after March 1, 2001 and shall not require the recalculation of benefit payments made prior to such date.

3.3 All the amounts provided for in Section 3.2 hereof shall be reduced by the Actuarial Equivalent (of a lifetime annuity beginning on the same date) of any benefit payable to a Player under Article V hereof. Effective February 2, 1988, this Section 3.3 shall not apply with respect to those former Players who had not yet begun to receive the payment of any benefit under the Plan as of such date.

3.4 Every Player who was on the Roster of any Member for any three Regular Seasons shall be entitled to elect to receive, in lieu of a Normal Retirement Pension, an Early Retirement Pension and shall be entitled to any Supplemental Pension payable pursuant to Section 3.6 hereof. Such election shall be made at least 90 days prior to the Early Retirement Date and shall be made in writing delivered to the Committee.

3.5 The Early Retirement Pension payable to a Player shall be paid to him commencing on the first day of the first month following the Player's Early Retirement Date ("Early Retirement Pension Commencement Date") and, except as otherwise provided in Sections 3.10 and 3.11, shall be paid as a Single Life Annuity in an amount which shall be determined by reducing the Normal

Retirement Pension that said Player would have been entitled to on his Normal Retirement Date by the product of 1/180 and the total number of months the Player's Early Retirement Pension Commencement Date precedes the Player's Normal Retirement Date.

3.6 For Plan Years ending prior to February 2, 1973, the Insurer shall maintain a Supplemental Pension Account for each Player and \$100.00 (less a reasonable amount, as determined by the Committee, to reflect the administration expenses allocable to said Supplemental Pension Account) shall be added to said Account during each Plan Year that said Player is credited with a year of Credited Service under Section 4.1 hereof. For Plan Years beginning on or after February 2, 1973 and ending on or before February 1, 1976, the Insurer shall maintain a Supplemental Pension Account for each Player and \$200.00 (less a reasonable amount, as determined by the Committee to reflect the administration expenses allocable to said Supplemental Pension Account) shall be added to said Account during each Plan Year that said Player is credited with a year of Credited Service under Section 4.1 hereof. For Plan Years beginning on or after February 2, 1976, the Insurer shall continue to maintain a Supplemental Pension Account for each Player having a Supplemental Pension Account on such date. No additional contribution shall be added to any Supplemental Pension Account for Plan Years beginning on or after February 2, 1976.

3.7 The funds in all Supplemental Pension Accounts shall be invested by the Insurer in a money market account maintained by the Insurer.

3.8 As of the last business day of each calendar quarter, the Insurer shall value all of the assets representing the funds held in all Supplemental Pension Accounts, based on their respective market values on each such date.

3.9 (a) The Supplemental Pension payable to any Player shall be paid to him at the same time and in the same form of payment as the payment to him of a Normal Retirement Pension or Early Retirement Pension, as the case may be.

(b) If a Player receives payment of his Supplemental Pension in a form of payment described in either Section 3.10, 3.11(i), 3.11(iv), 3.11(v) or 3.11(vi), the Supplemental Pension payable to such Player shall be the Actuarial Equivalent of the Player's Supplemental Pension Account, based on the value of such Account as of the valuation date immediately preceding the date on which the Player commences to receive payment of his Supplemental Pension under the Plan. If the Player commences to receive payment of his Supplemental Pension prior to the Player's Normal Retirement Date, the reduction in the Supplemental Pension shall be on an Actuarial Equivalent basis and shall not be based on the factors set forth in Section 3.5.

(c) If a Player receives payment of his Supplemental Pension in a form of payment described in either Section

3.11(ii), 3.11(iii) or 3.11(vii), the Supplemental Pension payable to such Player shall be based upon the value of the Player's Supplemental Pension Account as of the valuation date immediately preceding the date on which the Player receives or commences to receive payment of his Supplemental Pension Account under the Plan.

3.10 (a) (i) Subject to the waiver and consent provisions of paragraphs (b) and (c) of this Section, and subject to the provisions of subparagraph (ii) of this paragraph (a), if a Player is married on his Early Retirement Date or his Normal Retirement Date, as the case may be, his Early Retirement Pension or Normal Retirement Pension and any Supplemental Pension shall be paid in the form of a Qualified Joint and Survivor Annuity under which the Player's pension shall be reduced so that the resulting pension payable to the Player and his spouse shall be the Actuarial Equivalent of his Early Retirement Pension or Normal Retirement Pension and any Supplemental Pension otherwise payable.

(ii) In the case of an Early Retirement Pension or Normal Retirement Pension (and any Supplemental Pension) which is paid to a Player beginning on or after September 1, 1996 in the form of a Qualified Joint and Survivor Annuity, the actuarial reduction provided in subparagraph (i) of this paragraph (a) shall no longer apply to such Player's pension. If a

Player is receiving pension payments under the Plan as of September 1, 1996 in the form of a Qualified Joint and Survivor Annuity, the elimination of the actuarial reduction provided in this subparagraph (ii) shall apply only with respect to pension payments made on or after September 1, 1996 and shall not require the recalculation of benefit payments made prior to such date.

(b) (i) The provisions of paragraph (a) shall not apply to a married Player if such Player files a written election with the Committee to have his pension paid in a form other than a Qualified Joint and Survivor Annuity. Any election to waive the Qualified Joint and Survivor Annuity shall be subject to the provisions of subparagraphs (ii) and (iii) of this paragraph (b).

(ii) A Player may elect to waive the Qualified Joint and Survivor Annuity within the 90 day period prior to the date on which his benefits commence, subject to consent of the spouse as set forth in paragraph (c) below. Any such election shall be in writing and shall indicate that the Player is electing to receive his pension benefit in one of the forms of payment specified in Section 3.11 and not in the form of a Qualified Joint and Survivor Annuity. A Player who has elected to waive the Qualified Joint and Survivor Annuity may subsequently cancel his election at any time prior to the date his payments commence, by filing a

proper waiver or cancellation of election with the Committee.

(iii) Notwithstanding anything to the contrary herein contained, no election of an optional form of payment under Section 3.11 shall be valid unless and until the Qualified Joint and Survivor Annuity has been waived in accordance with this Section 3.10.

(c) (i) The spouse of the Player who waives the benefits under paragraph (b) above must consent to the waiver when initially made. Such consent shall be in writing, shall be irrevocable, shall acknowledge the effect of such consent, and shall be witnessed by a notary public; provided, however, that if it is established to the satisfaction of the Committee that the spouse of the Player cannot be located, such consent will not be required. Any such consent shall be effective only with respect to the spouse who gives the consent.

(ii) The consent of the spouse as set forth in subparagraph (i) above shall also be required to the designation of any Beneficiary other than the spouse, and to any change in such designation.

(iii) If the Secretary of the Treasury issues regulations which set forth special circumstances under which the consent of the spouse to a waiver will not be required pursuant to Section 417 of the Internal Revenue Code, then no consent of a spouse will be required under

those circumstances under this Plan with respect to a waiver of the Qualified Joint and Survivor Annuity.

(d) (i) Within a reasonable time period, but not less than 30 days before the date on which a Player's benefits commence, the Committee shall supply the Player with an explanation of rights with respect to the Qualified Joint and Survivor Annuity, and a general explanation of the financial effect on the Player's benefit if he decides to accept the Qualified Joint and Survivor Annuity. Notwithstanding the foregoing, a Player may elect (with any applicable spousal consent) to waive any requirement that the explanation of rights be provided at least 30 days before the date on which a Player's benefits commence if the benefits commence more than 7 days after such explanation is provided.

(ii) Any explanation under subparagraph (i) above shall contain:

(A) the terms and conditions of the Qualified Joint and Survivor Annuity;

(B) the Player's right to make, and the effect of, an election to waive the Qualified Joint and Survivor Annuity;

(C) the rights of the Player's spouse under paragraph (c) above; and

(D) the right to make, and the effect of, a revocation of an election to waive the Qualified Joint and Survivor Annuity.

(e) If a Player is not married on his Early Retirement Date or his Normal Retirement Date, as the case may be, the provisions of paragraphs (b)(ii) and (iii) and paragraph (d) of this Section 3.10 shall apply with respect to an election by such Player to have his pension paid in a form other than a Single Life Annuity; except that for purposes of these provisions, the term "Single Life Annuity" shall be substituted for the term "Qualified Joint and Survivor Annuity".

3.11 Every Player electing not to receive a Qualified Joint and Survivor Annuity or Single Life Annuity (whichever is applicable) under Section 3.10, may elect to receive, in lieu of the Normal Retirement Pension or Early Retirement Pension and any Supplemental Pension provided for in this Article, the Actuarial Equivalent of such pension payable as a Single Life Annuity on the date that said pension would otherwise have become payable in one or more of the following ways:

(i) Installments for Life - Paid in equal monthly installments for as long as the Player shall live.

(ii) Installments of Fixed Amount - Paid in installments of a specified amount each month.

(iii) Installments for a Fixed Period - Paid in equal monthly installments for a fixed number of years.

(iv) Installments for a Fixed Period and Life Thereafter - Paid in equal monthly installments for a fixed number of years and for so long thereafter as the Player shall live.

(v) Joint and Survivorship Annuity - Paid in equal monthly installments to the Player, terminating with the last monthly installment before his death. Following the death of the Player after this option becomes effective, monthly installments shall be continued to the person he named as his joint annuitant, terminating with the last monthly installment before the joint annuitant's death. The amount of each installment payable to the joint annuitant shall be equal to 100 percent of the monthly amount which was payable to the Player, or to a lesser percentage, as specified by the Player in his election of this option.

(vi) Social Security Option - Paid in monthly installments, to the extent permitted by ERISA, so long as the Player shall live, in such amounts so as to enable the Player to receive an approximately equal amount each month taking into consideration the benefits hereunder and the estimated primary benefits payable under the Social Security Act.

(vii) Lump Sum - Paid to the Player in one Lump Sum.

3.12 Any optional method of settlement selected under this Article shall become effective on the date on which the Player's benefits hereunder commence.

3.13 (a) Where any of the optional methods of settlement described in Sections 3.11(ii)-(iv) is selected hereunder, the periods over which installments are payable to the Player and his designated Beneficiary shall not exceed the joint life expectancy of the Player and such Beneficiary, determined as of the time at which the distribution of benefits commence, and in accordance with Section 401(a)(9)(A)(ii) of the Internal Revenue Code and the Treasury Regulations thereunder; provided, however, that under any optional method of settlement, if the designated Beneficiary is someone other than the Player's spouse, the Player must anticipate receiving more than 50% of the actuarial value of his benefits calculated as of his Normal or Early Retirement Date, whichever is applicable.

(b) If a Player should die before the distribution of any benefits under this Article has begun, and if the benefit upon the death of the Player shall be payable over greater than a five year period, such benefit shall be payable over a five year period in an amount equal to the Actuarial Equivalent (as of the date of death) of the payments to be made. The preceding sentence shall not apply if (i) the payments to be made to the Player's designated Beneficiary will be made over the life of such Beneficiary (or over a period not exceeding the life expectancy of the Beneficiary) and (ii) the payments commence not

later than one year after the date of the Player's death (or if the Player's designated Beneficiary is his spouse, the payments commence no later than the date on which the Player would have attained age 70-1/2 had he survived). If the Player's designated Beneficiary is his spouse, and if such spouse should die before the distribution of any benefits has begun, the rules of this paragraph (b) shall apply as if the spouse were the Player.

(c) Notwithstanding anything to the contrary contained herein, if the distribution of benefits has commenced to a Player and if the Player dies before his entire interest has been distributed to him, any distributions made after the death of the Player shall be made at least as rapidly as under the method of distribution in effect as of the date of the Player's death.

3.14 If any Player or Beneficiary is, in the judgment of the Committee, legally, physically or mentally incapable of personally receiving and receipting for any payment due hereunder, payment may be made to the guardian or other legal representative of such Player or his Beneficiary, or, if none, to such other person, or institution, who, in the opinion of the Committee, is then maintaining or has custody of such Player or his Beneficiary. Such payments shall constitute a full discharge with respect thereto.

3.15 If the payment of a pension under this Plan is to be made in any of the optional forms described in Section 3.11, the

Actuarial Equivalent of such pension is to be determined by the Plan's Enrolled Actuary on the following basis:

(a) If the payment is to be made in the form described in Section 3.11(vii), the amount of the payment shall be computed on the basis of the 1971 Group Annuity Mortality Table (male rates) and the interest rate or rates which would be used as of February 2 preceding the date of payment by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a benefit upon termination of an insufficient trustee single employer pension plan; provided, however, that effective for distributions made on or after February 2, 2000, the amount of the payment shall be computed based on (i) or (ii) below, whichever produces the greatest lump sum payment.

(i) The 1971 Group Annuity Mortality Table (male rates) and the interest rate or rates which would be used as of February 2 preceding the date of payment by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a benefit upon termination of an insufficient trustee single employer pension plan.

(ii) The annual rate of interest on 30-Year Treasury securities for the second preceding month (December) before the Plan Year in which the distribution is made. The mortality table referred to herein shall be the table prescribed by the Secretary of the Treasury. Such table shall be based on the prevailing

commissioner's standard table, as described in Section 807(d)(5)(A) of the Internal Revenue Code, used to determine reserves for group annuity contracts issued on the date as of which the present value is being determined (without regard to any other subparagraph of Section 807(d)(5)).

(b) If payments are to be made in any of the forms described in either Section 3.10 or Section 3.11 (other than Section 3.11(vii)), the amount of the payment shall be computed on an Actuarial Equivalent basis.

3.16 (a) If a Player is entitled to receive payment of his pension under the Plan and the present value of such Player's pension does not exceed \$3,500 (effective February 2, 1998 \$5,000), such pension shall be paid to him in a lump sum payment.

(b) If a Player who ceases to be employed by any Member is not entitled to a Normal Retirement Pension or Supplemental Pension under the Plan, such Player shall be deemed to have received a distribution of the full value of his benefit for all purposes under the Plan.

(c) If the present value of a Player's pension under the Plan is greater than \$3,500 (effective February 2, 1998, \$5,000), and if the Player (and, if required, the Player's spouse, if any) consents to receive such pension, the pension shall be paid to him commencing at the time prescribed under Section 3.2 (or, if applicable, Section 3.5). If the Player (or, if required, the Player's spouse, if any) does not consent to

receive his pension at such time, then, notwithstanding any other provision of this Plan to the contrary, his pension shall be paid to him commencing on the first day of the first month following the Player's attainment of age 62; provided, however, that the Player may elect to receive an earlier payment of such pension. If the Player makes such an election, his pension shall be paid to him commencing as soon as administratively practicable following his election to receive his pension. If payment of a Player's pension commences after the Player's Normal Retirement Date, the pension payable to the Player shall be the Actuarial Equivalent of the pension that would have been payable under Section 3.2 had the payment of such pension commenced on the Player's Normal Retirement Date.

(d) For purposes of this Section 3.16: (i) "present value" shall be determined in accordance with Section 3.15(a); and (ii) if the pension of a married Player under this Plan is to be paid in the form of a Qualified Joint and Survivor Annuity, consent of the Player's spouse shall not be required under paragraph (c) above.

3.17 Rollovers to Other Plans or IRAs.

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Player's election under the Plan, a Player may elect, at the time and in the manner prescribed by the Committee, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Player in a Direct Rollover.

(b) Definitions:

For purposes of this Section 3.17, the following definitions will apply:

(i) "Eligible Rollover Distribution" shall mean any distribution of all or any portion of the Player's pension under the Plan, except that an Eligible Rollover Distribution does not include:

(A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Player or the joint lives (or joint life expectancies) of the Player and the Player's designated beneficiary, or for a specified period of ten years or more; and

(B) the portion of any distribution that is not includible in gross income.

(ii) "Eligible Retirement Plan" shall mean an individual retirement account described in Section 408(a) of the Internal Revenue Code, an individual retirement annuity described in Section 408(b) of the Internal Revenue Code, an annuity plan described in Section 403(a) of the Internal Revenue Code, or a qualified trust described in Section 401(a) of the Internal Revenue Code, that accepts the Player's Eligible Rollover Distribution. However, in the case of an Eligible Rollover Distribution to a surviving

spouse, an Eligible Retirement Plan is an individual retirement account or individual retirement annuity.

(iii) "Player" shall mean a Player within the meaning of Section 1.28 who is entitled to receive a benefit under the Plan. In addition, the Player's surviving spouse and the Player's spouse or former spouse who is the alternate payee under a qualified domestic relations order as defined in Section 414(p) of the Internal Revenue Code, shall be considered as Players with regard to the interest of the spouse or former spouse.

(iv) "Direct Rollover" shall mean a payment by the Plan to the Eligible Retirement Plan specified by the Player.

ARTICLE IV

CREDITED SERVICE

4.1 Every Player eligible to participate hereunder shall be credited with one year of Credited Service for each year that said Player is on the Roster of any Member for any Regular Season beginning with the Regular Season for which said Player is first eligible to participate hereunder ("Credited Service").

ARTICLE V

FORMER PENSION BENEFITS

5.1 The Members have caused the Contract formerly in existence with Continental Assurance Company to be discontinued in accordance with the terms of such Contract and have continued the Single Premium Endowment Insurance of all Players insured thereunder in the same amount as Paid-up Endowment Insurance, to be paid to said Players in accordance with the terms of said Contract.

5.2 In addition to all benefits provided hereunder, and notwithstanding any other provision of the Plan to the contrary, every Player on the Active List of any Member on February 2, 1965, February 2, 1966 or February 2, 1967, or his Beneficiary, shall be entitled to receive such benefits as are payable under the Paid-up Endowment Insurance Contract referred to in Section 5.1 hereof, upon such conditions and subject to such options as are set forth in said Paid-up Endowment Insurance Contract.

5.3 (a) Effective as of September 8, 1988, the assets of the Plan held under the Paid-up Endowment Insurance Contract have been transferred to the Insurer.

(b) Notwithstanding Sections 5.1 and 5.2, and in accordance with paragraph (a) of this Section 5.3, any amounts that would otherwise have been payable under the Paid-up Endowment Insurance Contract shall no longer be payable under such Contract on or after February 2, 1988 with respect to those

former Players who had not yet begun to receive the payment of any benefit under the Plan as of February 2, 1988. Effective as of February 2, 1988, every former Player who is described in the preceding sentence and who was on the Active List of any Member on February 2, 1965, February 2, 1966 or February 2, 1967, or his Beneficiary, shall receive the total benefit to which he is entitled under Section 3.2 hereof from the assets of the Plan held by the Insurer; provided, however, that any such former Player who is not entitled to a benefit under Section 3.2 hereof shall receive a benefit under the Plan from Plan assets held by the Insurer in an amount equal to the benefit he would have otherwise received under the Paid-up Endowment Insurance Contract.

ARTICLE VI

MEMBER'S CONTRIBUTIONS AND BENEFIT LIMITATIONS

6.1 On or before October 1 of each Plan Year, every Member shall pay an amount necessary to fund the benefits for its Players in accordance with the rules set forth in this Article, and in order to prevent a deficiency in the funding standard account as required by the Internal Revenue Code and ERISA.

6.2 The annual cost of funding for the benefits for any Player on the Active List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1981), or on the Injured List on February 2, 1973 (or on any subsequent February 2, prior to February 2, 1981), shall be paid by the Member on whose Active List or Injured List, as the case may be, the Player appears on February 2 of the Plan Year involved. The annual cost of funding for the benefits for any Player on the Active List or Injured List on February 16, 1981 (or on any subsequent February 16) shall be paid by the Member on whose Active List or Injured List, as the case may be, the Player appears on February 16 of the Plan Year involved; provided, however, for the Plan Year commencing on February 2, 1999 and ending on February 1, 2000 and for the Regular Season commencing on February 5, 1999, the annual cost of funding for the benefits for any Player on the Active List or Injured List on March 21, 1999 shall be paid by the Member on whose Active List or Injured List, as the case may be, the Player appears on March 21, 1999;

provided further, however, effective February 2, 2000, the annual cost of funding for the benefits for any Player on the Active List or Injured List on February 2, 2000 (or on any subsequent February 2) shall be paid by the Member whose Active List or Injured List, as the case may be, the Player appears on February 2 of the Plan Year involved.

6.3 The annual cost of funding for the benefits for any Player (i) on the Suspended or Armed Services List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1981), or on the Injured List on February 2, 1968 (or any subsequent February 2, prior to February 2, 1973), and (ii) on the Active List of any Member for 50 percent or more of the total Championship Games played by each Member during the Regular Season which includes such February 2 and which ended before February 2, 1981, shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved. The annual cost of funding for the benefits for any other Player on the Roster during the Plan Year involved shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved.

6.4 (a) The annual cost of funding for the benefits for any Player not on any Roster during the Plan Year involved shall be paid by the Member having rights to the services of such Player, as a Player, on February 16 of the Plan Year involved (or February 2, if the Plan Year involved ended prior to February 2,

1981) or, if no Member has such rights on said February 16 (or February 2, as the case may be), by the Member last having such rights prior to said February 16 (or February 2, as the case may be).

(b) Notwithstanding any other provision of this Article VI to the contrary, the annual cost of funding for the benefit increases provided to Former Players under paragraphs (e), (f) and (g) of Section 3.2 shall be paid by each Member of the Association. The amount of the funding cost to be paid by each Member shall equal the total amount of such cost multiplied by a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Members of the Association. For purposes of Section 18.3(c)(i) of the Plan, the allocable share of the funding cost provided for under this paragraph (b) shall be part of the "unfunded accrued liability" directly allocable to a Withdrawing Member.

6.5 The annual cost of funding for the benefits provided under the Plan shall be determined by the Enrolled Actuary based on an actuarial cost method and the assumptions and amortization period adopted by the Committee.

6.6 In no event shall the annual funding cost determined under Section 6.5 for any Plan Year be less than the minimum contribution required under the Internal Revenue Code and ERISA for that Plan Year.

6.7 (a) In no event shall the annual retirement pension payable to any Player under this Plan exceed for any Limitation Year, the lesser of:

(i) \$90,000, as increased by cost-of-living adjustments under Section 415(d) of the Internal Revenue Code for both current and former Players (the "Dollar Amount"), or

(ii) 100 percent of the Player's average Compensation (as increased by cost-of-living adjustments under Section 415(d) of the Internal Revenue Code for former Players) for the period of three consecutive calendar years yielding the highest such average during which he was a Player.

(b) In determining the maximum allowable benefit otherwise payable under this Section, the Dollar Amount shall be adjusted so that:

(i) if the Player's annual retirement pension commences upon the Player's attaining age 62, the Dollar Amount shall be computed by using a reduction factor that is consistent with the reduction for old-age social security benefits commencing before the Player's Social Security Retirement Age; or

(ii) if the Player's annual retirement pension commences prior to the Player's attaining age 62, the Dollar Amount shall be the Actuarial Equivalent of the Dollar Amount computed as if the Player's annual

retirement pension commenced at age 62, reduced for each month by which benefits commence before the month in which the Player attains age 62.

For Limitation Years commencing prior to February 2, 2000, (i) for any Player whose annual retirement pension commences on or after attaining his Normal Retirement Date, the Actuarial Equivalent of the Dollar Amount shall be based upon the greater of the interest rate assumption used under Section 1.2 or an interest rate assumption of 5% per annum and (ii) for any Player whose annual retirement pension commences prior to attaining his Normal Retirement Date, the amount he would have been entitled to receive on his Normal Retirement Date under this Section 6.7, reduced by the product of 1/180 and the total number of months by which the date on which the Player commences to receive his annual retirement pension precedes his Normal Retirement Date. For the Limitation Year commencing on February 2, 2000, the Actuarial Equivalent of the Dollar Amount shall be the lesser of (i) the amount determined by using the assumptions specified in Section 3.15(a)(ii) or (ii) for any Player whose annual retirement pension commences on or after attaining his Normal Retirement Date, the amount determined by using the assumptions specified in Section 1.2 and for any Player whose annual retirement pension commences prior to attaining his Normal Retirement Date, the amount he would have been entitled to receive on his Normal Retirement Date using the assumptions specified in Section 1.2, reduced by the product of 1/180 and the

total number of months by which the date on which the Player commences to receive his annual retirement pension precedes his Normal Retirement Date.

(c) Notwithstanding anything contained herein, the provisions of paragraph (b) shall not reduce any Player's annual retirement pension below the pension he was entitled to receive under the terms of the Plan as in effect on February 1, 1987 (determined without regard to changes in the terms of the Plan or cost-of-living increases occurring after May 5, 1986).

(d) For purposes of this Section and Sections 6.8 through 6.13:

(i) The annual retirement pension shall not include the portion of the Player's benefit that is attributable to the Player's Supplemental Pension Account.

(ii) The annual retirement pension payable to a Player shall be determined without giving effect to any reduction under Section 21.2

(iii) "Compensation" shall mean the Player's wages, salaries, and other amounts received for personal services rendered for a Member.

(iv) "Social Security Retirement Age" shall mean:

(A) in the case of a Player who attains age 62 before January 1, 2000, age 65;

(B) in the case of a Player who attains age 62 after December 31, 1999, age 66; and

(C) in the case of a Player who attains age 62 after December 31, 2016, age 67.

(v) If the annual retirement pension to which a former Player is entitled to receive under the Plan is otherwise limited by the Dollar Amount, such pension shall be increased in accordance with cost-of-living adjustments of the Dollar Amount, as provided under paragraph (a)(i) of this Section and Treas. Reg. §1.415-5(a). This subparagraph (v) shall apply regardless of whether the former Player has actually begun to receive the payment of his pension under the Plan.

(vi) If the annual retirement pension to which a former Player is entitled to receive under the Plan is otherwise limited by the Compensation limitation described in paragraph (a)(ii) of this Section, such pension shall be increased in accordance with cost-of-living adjustments of the Compensation limitation, as provided under paragraph (a)(ii) of this Section and Treas. Reg. §1.415-5(b). This subparagraph (vi) shall apply regardless of whether the former Player has actually begun to receive the payment of his pension under the Plan.

6.8 (a) If a Player's annual retirement pension is payable in a form other than a Single Life Annuity or a Qualified Joint

and Survivor Annuity, for purposes of determining the maximum allowable benefit payable under Section 6.7, the annual retirement pension shall be adjusted in accordance with paragraphs (b), (c), (d) and (e) below, so that it is the Actuarial Equivalent of a single life annuity.

(b) For Limitations Years beginning prior to February 2, 2000, the Actuarial Equivalent of a single life annuity shall be determined by using an interest rate assumption that is not less than the greater of (i) five percent or (ii) the rate specified in Section 1.2.

(c) (i) For the Limitation Year commencing on February 2, 2000, if a Player's annual retirement pension is to be paid in a form of payment described in Section 3.11 other than Section 3.11(vii), the Actuarial Equivalent of a single life annuity shall mean the lesser of (A) the amount determined by using the assumptions specified in Section 1.2 or (B) the amount determined by using the assumptions specified in Section 3.15(a)(ii).

(ii) For the Limitation Year commencing on February 2, 2000, if a Player's annual retirement pension is to be paid in a form of payment described in Section 3.11(vii), the Actuarial Equivalent of a single life annuity shall mean the lesser of (A) the amount determined by using the assumptions specified in

Section 3.15(a)(i) or (B) the amount determined by using the assumptions specified in Section 3.15(a)(ii).

(d) Notwithstanding the provisions of paragraph (c), if a Player has an RPA '94 Old-Law Benefit under the Plan, then for the Limitation Year commencing on February 2, 2000, the Actuarial Equivalent of a single life annuity shall be equal to the greater of the amount determined under paragraph (c) or paragraph (e) of this Section. For purposes of this Section 6.8, a Player's RPA '94 Old-Law Benefit shall be equal to the Player's Normal Retirement Benefit under the Plan as of February 1, 2000, taking into account Section 3.15 of the Plan as in effect on December 7, 1994 and disregarding (i) any increases in the Player's Normal Retirement Benefit under Section 3.2 which apply by reason of the adoption of any amendments to the Plan after February 1, 2000 and any other amendments to the Plan adopted after such date and (ii) any increases in the Player's annual retirement pension due to any increases in the cost-of-living adjustments to the Dollar Amount after February 1, 2000.

(e) For purposes of this paragraph (e), the Actuarial Equivalent of a single life annuity with respect to a Player's annual retirement pension shall be equal to the sum (i) the Actuarial Equivalent of the portion of the Player's annual retirement pension that is based upon his RPA '94 Old-Law Benefit as determined in accordance with the method described in paragraph (b) of this Section plus (ii) the Actuarial Equivalent of the portion of the Player's annual retirement pension that

exceeds his RPA '94 Old-Law Benefit as determined in accordance with the method described in paragraph (c) of this Section.

6.9 In the event that the annual retirement pension payable to a Player under this Plan and all other defined benefit plans of a Member does not exceed \$10,000 for a Limitation Year, and if the Player does not have a Supplemental Pension Account and has not at any time participated in a defined contribution plan maintained by a Member, the limitations otherwise imposed by Section 6.7 and the adjustments described in Section 6.8 shall not apply.

6.10 (a) If a Player has less than ten (10) years of aggregate service with all Members (including service in a capacity other than as a Player) ("Member Service") at the time at which he is entitled to receive benefits under the Plan, the limitation described in Section 6.7(a)(ii) and, if applicable, the \$10,000 amount described in Section 6.9 or the limitation described in Section 6.11, shall be reduced by multiplying the applicable limitation by a fraction, the numerator of which is the Player's number of years (or part thereof) of Member Service and the denominator of which is ten.

(b) If a Player has less than ten (10) years of Credited Service (as defined in Section 4.1) at the time at which he is entitled to receive benefits under the Plan, the Dollar Amount shall be reduced by multiplying the Dollar Amount by a fraction, the numerator of which is the Player's number of years

(or part thereof) of Credited Service and the denominator of which is ten.

(c) In no event shall paragraphs (a) and (b) of this Section 6.10 reduce any limitation described therein (including the Dollar Amount) to an amount less than one-tenth (1/10th) of such limitation.

6.11 (a) If a Player has a Supplemental Pension Account, the Player's annual retirement pension under this Plan shall be limited or reduced so that the sum of the "Defined Benefit Fraction" and the "Defined Contribution Fraction" of such Player for any Limitation Year shall not exceed 1.0.

(b) If a Player has at any time been a participant in a defined contribution plan maintained by a Member, subject to the provisions of Section 6.12, the "annual additions" (as defined in Section 415(c)(2) of the Internal Revenue Code) to such defined contribution plan for such Player shall be limited or reduced so that the sum of the "Defined Benefit Fraction" and the "Defined Contribution Fraction" of such Player for any Limitation Year shall not exceed 1.0.

(c) If a Player (i) has a Supplemental Pension Account and (ii) also has at any time been a participant in a defined contribution plan maintained by a Member, subject to the provisions of Section 6.12, the Player's annual retirement pension under this Plan shall be limited or reduced so that the sum of the "Defined Benefit Fraction" and the "Defined Contribution Fraction" of such Player for any Limitation Year

shall not exceed 1.0; provided, however, that in determining the extent of any such limitation or reduction, the Player's Defined Contribution Fraction for the Limitation Year shall be computed prior to taking into account any annual additions to the defined contribution plan for such Player for such Limitation Year and for prior Limitation Years.

(d) For purposes of this Section:

(i) The Defined Benefit Fraction shall mean the fraction defined in Section 415(e)(2) of the Internal Revenue Code.

(ii) The Defined Contribution Fraction shall mean the fraction defined in Section 415(e)(3) of the Internal Revenue Code.

(e) Effective February 2, 2000, the provisions of this Section 6.11 shall no longer apply to the benefits payable to a Player under the Plan.

6.12 (a) For purposes of applying the limitations described in Sections 6.7 through 6.11, in accordance with Treas. Reg. §1.415-8(e), this Plan shall not be aggregated with any other multiemployer plans maintained by the Members.

(b) If a Member maintains a plan that is not a multiemployer plan, and if benefits are provided to a Player under such plan, that plan shall be aggregated (based on its limitation year) with this Plan for purposes of applying the limitations described in Sections 6.7 through 6.11 (and in accordance with the provisions of those Sections) to the extent

of the benefits provided by the Member to the Player under this Plan.

6.13 The provisions of Sections 6.7 through 6.12 shall be applicable only for Limitation Years commencing on or prior to February 2, 2000.

6.14 (a) Effective for Limitation Years commencing on or after February 2, 2001, in no event shall the annual retirement pension payable to any Player under this Plan exceed for any such Limitation Year, the lesser of:

(i) \$140,000 as adjusted for increases in the cost-of-living in the manner provided for under Section 415(d)(2) of the Internal Revenue Code (the "Dollar Limitation"), or

(ii) 100 percent of the Player's average Compensation (as increased by cost-of-living adjustments under Section 415(d) of the Internal Revenue Code for former Players) for the period of three consecutive calendar years yielding the highest such average during which he was a Player.

(b) In determining the maximum allowable benefit otherwise payable under this Section, the Dollar Limitation shall be adjusted so that:

(i) if the Player's annual retirement pension commences upon the Player's attaining age 62, the Dollar Limitation shall be computed by using a

reduction factor that is consistent with the reduction for old-age social security benefits commencing before the Player's Social Security Retirement Age; or

(ii) if the Player's annual retirement pension commences prior to the Player's attaining age 62, the Dollar Limitation shall be the Actuarial Equivalent of the Dollar Limitation computed as if the Player's annual retirement pension commenced at age 62, reduced for each month by which benefits commence before the month in which the Player attains age 62.

The Actuarial Equivalent of the Dollar Amount shall be the lesser of (i) the amount determined by using the assumptions specified in Section 3.15(a)(ii) or (ii) for any Player whose annual retirement pension commences on or after attaining his Normal Retirement Date, the amount determined by using the assumptions specified in Section 1.2 and for any Player whose annual retirement pension commences prior to attaining his Normal Retirement Date, the amount he would have been entitled to receive on his Normal Retirement Date using the assumptions specified in Section 1.2, reduced by the product of $1/180$ and the total number of months by which the date on which the Player commences to receive his annual retirement pension precedes his Normal Retirement Date.

(c) Notwithstanding anything contained herein, the provisions of paragraph (b) shall not reduce any Player's annual retirement pension below the pension he was entitled to receive

under the terms of the Plan as in effect on February 1, 1987 (determined without regard to changes in the terms of the Plan or cost-of-living increases occurring after May 5, 1986).

(d) For purposes of this Section and Sections 6.16 through 6.19:

(i) The annual retirement pension shall not include the portion of the Player's benefit that is attributable to the Player's Supplemental Pension Account.

(ii) The annual retirement pension payable to a Player shall be determined without giving effect to any reduction under Section 21.2

(iii) "Compensation" shall mean the Player's wages, salaries, and other amounts received for personal services rendered for a Member.

(iv) "Social Security Retirement Age" shall mean:

(A) in the case of a Player who attains age 62 before January 1, 2000, age 65;

(B) in the case of a Player who attains age 62 after December 31, 1999, age 66; and

(C) in the case of a Player who attains age 62 after December 31, 2016, age 67.

(v) If the annual retirement pension to which a former Player is entitled to receive under the Plan is otherwise limited by the Dollar Limitation,

such pension shall be increased in accordance with cost-of-living adjustments of the Dollar Limitation, as provided under paragraph (a)(i) of this Section. This subparagraph (v) shall apply regardless of whether the former Player has actually begun to receive the payment of his pension under the Plan.

(vi) If the annual retirement pension to which a former Player is entitled to receive under the Plan is otherwise limited by the Compensation limitation described in paragraph (a)(ii) of this Section, such pension shall be increased in accordance with cost-of-living adjustments of the Compensation limitation, as provided under paragraph (a)(ii) of this Section and Treas. Reg. §1.415-5(b). This subparagraph (vi) shall apply regardless of whether the former Player has actually begun to receive the payment of his pension under the Plan.

6.15 Notwithstanding anything contained herein, in no event shall the benefit paid to any Player under this Plan expressed as an annual benefit (as that term is defined in Section 415(b)(2) of the Internal Revenue Code) cause the limitations on benefits and contributions imposed by Section 415 of the Internal Revenue Code to be exceeded, which limitations are incorporated herein by reference.

6.16 (a) If a Player's annual retirement pension is payable in a form other than a Single Life Annuity or a Qualified Joint and Survivor Annuity, in determining the application of Section 6.14 to such Player's annual retirement pension, such annual retirement pension shall be adjusted in accordance with paragraphs (b), (c), and (d) below, so that it is the Actuarial Equivalent of a single life annuity.

(b) (i) If a Player's annual retirement pension is to be paid in a form of payment described in Section 3.11 other than Section 3.11(vii), the Actuarial Equivalent of a single life annuity shall mean the lesser of (A) the amount determined by using the assumptions specified in Section 1.2 or (B) the amount determined by using the assumptions specified in Section 3.15(a)(ii).

(ii) If a Player's annual retirement pension is to be paid in a form of payment described in Section 3.11(vii), the Actuarial Equivalent of a single life annuity shall mean the lesser of (A) the amount determined by using the assumptions specified in Section 3.15(a)(i) or (B) the amount determined by using the assumptions specified in Section 3.15(a)(ii).

(c) Notwithstanding the provisions of paragraph (b), if a Player has an RPA '94 Old-Law Benefit under the Plan, the Actuarial Equivalent of a single life annuity shall be equal to the greater of the amount determined under paragraph (b) or

paragraph (d) of this Section. For purposes of this Section 6.16, a Player's RPA '94 Old-Law Benefit shall be equal to the Player's Normal Retirement Benefit under the Plan as of February 1, 2000, taking into account Section 3.15 of the Plan as in effect on December 7, 1994 and disregarding (i) any increases in the Player's Normal Retirement Benefit under Section 3.2 which apply by reason of the adoption of any amendments to the Plan after February 1, 2000 and any other amendments to the Plan adopted after such date and (ii) any increases in the Player's annual retirement pension due to any increases in the cost-of-living adjustments under Section 415(d) of the Internal Revenue Code after February 1, 2000.

(d) For purposes of this paragraph (d), the Actuarial Equivalent of a single life annuity with respect to a Player's annual retirement pension shall be equal to the sum (i) the Actuarial Equivalent of the portion of the Player's annual retirement pension that is based upon his RPA '94 Old-Law Benefit as determined in accordance with the method described in paragraph (b) of Section 6.8 plus (ii) the Actuarial Equivalent of the portion of the Player's annual retirement pension that exceeds his RPA '94 Old-Law Benefit as determined in accordance with the method described in paragraph (b) of this Section.

(e) Notwithstanding anything contained in this Section 6.16, if a Player's annual retirement pension is to be paid in a form of payment described in Section 3.11(vii), in no event shall the amount paid to such Player be less than the amount determined

in accordance with Sections 411(a)(11) and 417(e)(3) of the Internal Revenue Code, after taking into account the limitations described in Section 6.15.

6.17 In the event that the annual retirement pension payable to a Player under this Plan and all other defined benefit plans of a Member does not exceed \$10,000 for a Limitation Year, and if the Player does not have a Supplemental Pension Account and has not at any time participated in a defined contribution plan maintained by a Member, the limitations otherwise imposed by Section 6.14 and 6.15 and the adjustments described in Section 6.16 shall not apply.

6.18 (a) If a Player has less than ten (10) years of aggregate service with all Members (including service in a capacity other than as a Player) ("Member Service") at the time at which he is entitled to receive benefits under the Plan, the limitation described in Section 6.14(a)(ii) and, if applicable, Section 415(b)(1)(B) of the Internal Revenue Code, and the \$10,000 amount described in Section 6.17, shall be reduced by multiplying the applicable limitation by a fraction, the numerator of which is the Player's number of years (or part thereof) of Member Service and the denominator of which is ten.

(b) If a Player has less than ten (10) years of Credited Service (as defined in Section 4.1) at the time at which he is entitled to receive benefits under the Plan, the Dollar Limitation and the applicable limitation under Section

415(b)(1)(A) of the Internal Revenue Code shall be reduced by multiplying such amount by a fraction, the numerator of which is the Player's number of years (or part thereof) of Credited Service and the denominator of which is ten.

(c) In no event shall paragraphs (a) and (b) of this Section 6.18 reduce any limitation described therein (including the Dollar Limitation) to an amount less than one-tenth (1/10th) of such limitation.

6.19 (a) For purposes of applying the limitations described in Sections 6.14 through 6.18, this Plan shall not be aggregated with any other multiemployer plans maintained by the Members.

(b) If a Member maintains a plan that is not a multiemployer plan, and if benefits are provided to a Player under such plan, that plan shall be aggregated (based on its limitation year) with this Plan for purposes of applying the limitations described in Sections 6.14 through 6.18 (and in accordance with the provisions of those Sections) to the extent of the benefits provided by the Member to the Player under this Plan; provided, however, that effective for Limitation Years commencing on or after February 2, 2002, the rule described in this paragraph shall no longer apply.

6.20 The provisions of Sections 6.14 through 6.19 shall be applicable only for Limitation Years commencing on or after February 2, 2001.

6.21 In applying the limitations described in Sections 6.7 through 6.19, the Limitation Year shall be the 12-month period corresponding with the Plan Year.

ARTICLE VII
DEATH BENEFITS

7.1 (a) In the event of the death of a married Player prior to the date as of which the payment of his Early Retirement Pension or Normal Retirement Pension, as the case may be, becomes effective, except as otherwise provided in Section 7.2, such Player's spouse shall be entitled to a monthly benefit payable as an annuity for her life (the "Preretirement Survivor Annuity") in an amount equal to the greater of:

(i) The Actuarial Equivalent of the Players' Supplemental Pension Account on his date of death, plus the excess, if any, of an amount equal to the Actuarial Equivalent (as determined in accordance with Section 3.15(a)) on the date of death of the Normal Retirement Pension based on the Credited Service earned to the date of death, over the Actuarial Equivalent (as determined in accordance with Section 3.15(a)) of the proceeds of any group life insurance policy (exclusive of any such proceeds paid because of accidental death) maintained and paid for by a Member on the life of a Player; or

(ii) 50% of the benefit the Player would have received:

(A) in the case of a Player whose date of death occurs after his attainment of age 45, had such Player begun to receive his benefit under

the Plan (as adjusted under Section 3.5, if applicable) on the day before his date of death in the form of a Qualified Joint and Survivor Annuity; or

(B) in the case of a Player whose date of death occurs prior to his attainment of age 45, had such Player survived until the attainment of such age and elected to receive his benefit under the Plan (as adjusted under Section 3.5) commencing on the first day of the first month following his attainment of age 45 in the form of a Qualified Joint and Survivor Annuity.

(b) Notwithstanding paragraph (a) of this Section, the surviving spouse of the Player may elect to receive the Actuarial Equivalent (as determined in accordance with Section 3.15(a)) of the Preretirement Survivor Annuity in the form of a lump sum payment; provided, however, that if the Preretirement Survivor Annuity is determined under Section 7.1(a)(i), the portion of the lump sum payment attributable to the Players' Supplemental Pension Account shall be based upon the value of such Supplemental Pension Account as of the valuation date immediately preceding the date on which the Player's surviving spouse receives the lump sum payment. Any election to receive a lump sum payment under this paragraph (b) shall be in writing and shall be filed with the Committee within a reasonable time prior to the commencement of benefits under this Section.

(c) (i) Payments under the Preretirement Survivor Annuity under paragraph (a) of this Section shall commence on the first day of the first month following the date that the Player would have attained age 45 had he survived or, if the Player's death occurs after his attainment of age 45, as soon as possible after the Committee is notified of the Player's death.

(ii) The payment of the Preretirement Survivor Annuity in a lump sum under paragraph (b) of this Section shall be made as soon as practicable after the election is made by the surviving spouse; except that if the Player's death occurs prior to his attainment of age 62, the surviving spouse may elect in writing to defer the commencement of the benefit payable in the form of a lump sum until the first day of the first month following the date the Player would have attained age 62 had he survived.

(d) (i) Notwithstanding the provisions of this Section 7.1, in the event of the death of a "Vested Former Player", the death benefit payable under this Section which is attributable to such Vested Former Player's Normal Retirement Pension shall be the Actuarial Equivalent (as determined in accordance with Section 3.15(a)) of such Normal Retirement Pension calculated as if such Player had reached his Normal Retirement Date on the date of his death. The

preceding sentence shall not apply if the death benefit payable under this Section is determined under Section 7.1(a)(ii).

(ii) For purposes of this paragraph (d), a Vested Former Player shall mean an individual with a vested right to a pension benefit under the Plan who, at the date of his death, was not employed as a Player by a Member and had not begun to receive the payment of his pension benefit under the Plan.

(iii) The applicable provisions of this paragraph (d) shall also apply with respect to the calculation of the death benefit payable under Section 7.2.

7.2 In the event of the death of an unmarried Player, or the death of a married Player who has elected to waive the Preretirement Survivor Annuity in accordance with Section 7.3(c), prior to the date as of which the payment of such Player's Early Retirement Pension or Normal Retirement Pension, as the case may be, becomes effective, said Player's Beneficiary shall be entitled to receive a cash settlement, in a lump sum, equal to (i) 100% of the Player's Supplemental Pension Account on his date of death, plus (ii) the excess, if any, of an amount equal to the Actuarial Equivalent (as determined in accordance with Section 3.15(a)) on the date of death of the Normal Retirement Pension based on the Credited Service earned to the date of death, over the proceeds of any group life insurance policy (exclusive of any such proceeds paid because of accidental death) maintained and

paid for by a Member on the life of a Player. Such payment shall be made as soon as practicable after the Committee is notified of such Player's death.

7.3 (a) The Committee shall provide each married Player, within the applicable period, a written explanation with respect to the Preretirement Survivor Annuity in such terms as would be comparable to the explanation provided under Section 3.10(d) applicable to the Qualified Joint and Survivor Annuity.

(b) For purposes of paragraph (a) of this Section, the "applicable period" shall mean whichever of the following periods ends last:

(i) the period beginning with the first day of the Plan Year in which a Player attains age 32 and ending with the close of the Plan Year preceding the Plan Year in which the Player attains age 35.

(ii) a reasonable period after a Player becomes eligible to participate in the Plan.

(iii) a reasonable period after termination of employment with respect to a Player who terminates before attaining age 35.

(c) Subject to the spousal consent rules set forth in Section 3.10(c), a married Player may elect to waive the Preretirement Survivor Annuity during the period which begins on the later of either (i) first day of the Plan Year in which the Player attains age 35 or (ii) the date of the Player's marriage, and ends on the date of the Player's death; provided, however,

that in the case of a married Player who has terminated his employment, the applicable election period under this paragraph (c) with respect to benefits accrued before the date of such termination shall begin on such termination date. A Player who has waived the Preretirement Survivor Annuity may subsequently cancel his waiver at any time, by filing a proper waiver or cancellation of waiver with the Committee.

(d) Subject to the applicable provisions of this Section 7.3 and the spousal consent rules of Section 3.10(c), each Player, upon becoming eligible to participate under the Plan, may designate a Beneficiary to receive any benefits payable under the Plan in the event of his death. In the absence of any such designation, the provisions of Section 1.7 shall govern with regard to the payment of benefits to a Beneficiary after the death of the Player. Any designation under this Section shall be in writing and shall be filed with the Committee. A Player may change his Beneficiary at any time prior to the commencement of his benefits by filing a new designation with the Committee.

7.4 Upon the death of a Player after the date as of which the payment of his Early Retirement Pension or Normal Retirement Pension, as the case may be, becomes effective, no further payments shall be made other than those, if any, specified in the benefit to which the Player is entitled.

ARTICLE VIII

NON-ALIENATION OF BENEFITS

8.1 No benefit under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge the same shall be void, nor shall any such benefit be in any manner liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefit.

8.2 If any Player or any Beneficiary under the Plan is adjudicated bankrupt or attempts to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge any benefit under the Plan, except as specifically provided in the Plan, then such benefit shall, in the discretion of the Committee, cease and terminate and in that event the Committee shall hold or apply the same or any part thereof to or for the benefit of such Player or Beneficiary in such manner as the Committee may deem proper.

8.3 If any court of competent jurisdiction issues an order inconsistent with this Section, and the Committee thereafter notifies the Player or any Beneficiary of such order, then, unless and until such order is set aside, the following provisions shall apply:

(a) No action shall be required by the Association, Insurer, Committee or any other person to prevent such order from being complied with.

(b) Thirty days after giving such notice, such order may be complied with.

8.4 Notwithstanding the foregoing provisions of this Article, the Plan shall pay benefits pursuant to a domestic relations order which, as determined by the Committee, constitutes a "qualified domestic relations order" within the meaning of Section 414(p) of the Internal Revenue Code.

ARTICLE IX

FORFEITURES

9.1 Any forfeitures arising under the Plan shall be allocated among the Members, on an actuarial basis, and shall not be applied to increase the benefits of any Player hereunder.

9.2 If the Committee is unable to make payment under the Plan because it is unable to find the Player or Beneficiary to whom payment is to be made, the Player's benefit under the Plan shall be forfeited as of the last day of the Plan Year in which the Committee determines that it is unable to find such Player or Beneficiary. If the Player or Beneficiary later makes a claim for such payment and the Committee determines that the claim is valid, the amount of the Player's benefit when forfeited shall be restored and payment made within 60 days of such determination.

ARTICLE X

INCOME AND EXPENSES

10.1 At the end of each Plan Year, or at such other times set forth in any Contract or Trust Agreement, all income (including dividends paid by the Insurer on any Contract) earned on the funds held by the Insurer (other than on funds held in Supplemental Pension Accounts) or by the Trustees, or any losses on such funds, shall be allocated to each Member's account based on the assets allocable to such Member from time to time during such Plan Year.

10.2 All expenses of administering the Plan, including, but not limited to, the compensation of actuaries, accountants, consultants and counsel, shall be paid from the funds held by the Insurer and shall be charged equally to each Member's account.

ARTICLE XI

MEMBER'S ACCOUNTS

11.1 The Insurer and, if applicable, Trustees, shall maintain a separate account for each Member to which it shall credit each Member's allocable share of Member's contributions (other than those provided for in Section 6.4(b) hereof) and to which it shall charge each Member's allocable share of benefits paid to Players.

11.2 The benefits payable hereunder to each Player shall be allocated among the Members, on an actuarial basis, in order to give due consideration to the amount contributed on behalf of such Player by such Member.

ARTICLE XII

INSURANCE CONTRACTS

12.1 One or more Contracts may be purchased in order to carry out the terms of the Plan from such Insurer or Insurers as the Members, in their absolute discretion, shall choose. Such Contracts shall cover the Players in the Plan and may be amended from time to time.

12.2 The Players shall not have any right, title, interest, or ownership in and to any Contract which shall be purchased pursuant hereto. Except as otherwise provided herein, in no event may any of the avails or proceeds of any Contract be recoverable or revert, directly or indirectly, to any member or be diverted to any purpose other than for the exclusive benefit of the Players and Beneficiaries covered hereunder.

12.3 The provisions for the form and mode of benefit payments under this Plan shall be subject to all of the terms and conditions of any and all Contracts purchased pursuant to Section 12.1 hereof.

12.4 The Contracts shall provide that any death benefit payable thereunder shall be payable to the Beneficiary and shall reserve to the Contract holder such rights as are necessary to implement this Plan. The signature of any Player may be required for the exercise of any such right.

12.5 No Insurer shall be considered to be a party to this Plan, nor shall it have any responsibility for the validity of this Plan. Its sole liability shall be its liability as stated in each Contract which it may issue.

12.6 The Insurer shall be fully protected from any liability in assuming that the Plan has not been amended or changed until notice of any amendment or change in any of the terms thereof has been received by the Insurer.

12.7 The Insurer shall be fully protected in accepting, from the Members, or the Committee, premiums on or instructions in connection with Contracts which it may issue or may have issued under this Plan and shall have no responsibility to make an inquiry as to the authority to make such payment or to give such instructions.

ARTICLE XIII

TRUST FUND

13.1 (a) The Members have entered into a Trust Agreement with Jeffrey Mishkin and Robert Criqui, providing for the administration of the Trust by them as Trustees thereof, in such form and containing such provisions as the Members deem appropriate. Effective January 1, 2000, (i) Joel Litvin shall replace Jeffrey Mishkin as a Trustee under the Trust Agreement and (ii) Daniel Schoor-Rube shall become an additional Trustee under the Trust Agreement. The Trust Agreement shall be deemed to form a part of this Plan and any and all rights and benefits which may accrue to any person under this Plan shall be subject to all the terms and provisions of said Trust Agreement.

13.2 (a) The "Trust Fund" shall consist of the assets held by the Trustees thereunder, together with the net income or loss produced by the investments of the Fund or the sale of any such investments, which shall be added to or deducted from the Fund by the Trustees. The Trust Fund shall be held, administered and invested in the manner provided in the Trust Agreement.

ARTICLE XIV

ADMINISTRATION OF PLAN

14.1 The general administration of the Plan shall be placed in a Committee, consisting of at least two persons, who shall be appointed from time to time by the majority vote of all of the Members.

14.2 The members of the Committee shall elect a Chairman from their number, and a Secretary who may be, but need not be, one of the members of the Committee, and shall designate an Enrolled Actuary to act in actuarial matters relating to the Plan. They may appoint from their number such committees with such powers as they shall determine, may authorize one or more of their number or any agent to make any payment in their behalf, or to execute or deliver any instrument except that a requisition for funds from the Insurer shall be signed by two members of the Committee. The Committee may employ counsel and agents and such clerical, medical and accounting services as they may require in carrying out the provisions of the Plan.

14.3 The Committee shall hold meetings upon such notice, at such place or places, and at such time or times as they may from time to time determine.

14.4 A majority of the members of the Committee at the time in office shall constitute a quorum for the transaction of business. All resolutions or other actions taken by the Committee at

any meeting shall be by vote of a majority of the Committee at the time in office.

14.5 No member of the Committee shall receive any compensation from the Plan for his services as such.

14.6 Subject to the limitations of the Plan, the Committee from time to time shall establish rules for the administration of the Plan and the transaction of its business. The Committee shall take such steps as are considered necessary and appropriate to remedy any inequity that results from incorrect information received or communicated in good faith or as the consequence of an administrative error. The Committee shall interpret the Plan and shall have the sole authority and discretion to determine the answers to all questions arising in the administration, interpretation and application of the Plan, including, but not limited to, questions relating to eligibility for, and the amount of, benefits under the Plan. The Committee shall endeavor to act, whether by general rules or by particular decisions, so as not to discriminate in favor of or against any Player. The Committee may correct any defect, reconcile any inconsistency or supply any omission. All Players in similar circumstances shall be treated as nearly uniformly as practicable.

14.7 The Committee shall keep all records relating to Players including former Players and such other records as are necessary for the proper operation of the Plan.

14.8 The Committee shall take such steps as are necessary to insure that all reporting and disclosure requirements imposed upon the Plan by applicable Federal law, any amendments thereto, regulations thereunder, or any other official published interpretation thereunder, are complied with.

14.9 The Committee shall discharge its duties in accordance with the requirements of applicable Federal law, any amendments thereto, regulations thereunder or any other official published interpretation thereunder.

14.10 The Committee shall arrange for such bonding as is required by law but no bonding in excess of the amount required by law shall be considered required by this Plan.

14.11 The Committee shall be indemnified by the Members against expenses reasonably incurred by it in connection with any action, to which it may be a party, by reason of its service as a Committee, except in relation to matters as to which it shall be adjudged in such action to be liable for gross negligence or willful misconduct in the performance of its duty.

14.12 The Committee shall adopt from time to time standards for use in all actuarial calculations required in connection with the Plan, and shall establish the amount of contributions under the Plan as provided herein. As an aid to the Committee in adopting tables and in fixing the amount of contributions payable under the Plan, the Enrolled Actuary designated by the Committee

shall make annual actuarial valuations with respect to the operation and administration of the Plan and shall certify to the Committee the tables and amount of contributions which he recommends for use by the Committee.

14.13 The Committee shall arrange for the maintenance of accounts showing the fiscal transactions of the Plan, and for the keeping in convenient form of such data as may be necessary for actuarial valuations with respect to the operation and administration of the Plan. The Committee shall prepare, from time to time, a report giving a brief account of the operation of the Plan. Such report shall be submitted to the Members.

14.14 The Committee shall be entitled to rely upon all tables, valuations, certificates and reports furnished by the Enrolled Actuary designated by the Committee, and upon all opinions given by any legal counsel selected or approved by the Members. The Committee shall not be liable for any action taken or suffered by them in good faith in reliance upon any such Enrolled Actuary or counsel.

14.15 The Committee shall be responsible for exercising any and all rights under the Contracts, including the right to designate the portion of the premium paid to the Insurer which shall be invested in equity securities.

14.16 The Committee may appoint an Insurer under this Plan to act as an Investment Manager to manage, acquire, and dispose

of any assets of the Plan. The Trustees may also appoint an Investment Manager or Managers to manage, acquire and dispose of any assets of the Plan. Any such Investment Manager shall be an investment adviser registered under the Investment Advisers Act of 1940, a bank as defined in that Act, or an insurance company qualified to perform investment services under the laws of at least two States. The appointment of any such Investment Manager shall not be effective until such Investment Manager has acknowledged in writing that it is a fiduciary with respect to the Plan.

14.17 The Committee may waive the provisions of Sections 4204(a)(3)(A) and 4204(a)(3)(B) of ERISA requiring a Member that disposes of its franchise to any new Member, under certain conditions, to post a bond, or place an amount in escrow, with the Plan; provided that the new Member posts a bond, or otherwise provides security acceptable to the Committee, in an amount that is not less than the amount of the bond (or escrow) that the Member that disposed of its franchise would have otherwise been required to provide. Except as may otherwise be determined by the Committee, any such bond or other security provided by the new Member shall be in addition to any other bond (or other security) required to be provided by the new Member. Except as described above or as may be determined by the Committee in a manner consistent with their fiduciary duties described in Article XV of the Plan, nothing contained herein shall give the Committee the right to otherwise relieve the Member that disposed

of its franchise of any liability imposed upon it by the
Multiemployer Pension Plan Amendments Act of 1980.

ARTICLE XV

LIABILITY AND STANDARD OF CARE OF COMMITTEE

15.1 Each member of the Committee and any other fiduciary with respect to the Plan shall discharge his duties with respect thereto (a) solely in the interest of Players and their Beneficiaries; (b) for the exclusive purpose of providing benefits to Players and their Beneficiaries and defraying reasonable expenses of administering the Plan (except as otherwise provided in Sections 22.5 and 22.6); (c) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and (d) in accordance with the provisions of the Plan insofar as such provisions are not inconsistent with applicable law. As used herein, the term "fiduciary" shall have the meaning ascribed to it in Section 3(21) of ERISA; and the "named fiduciaries" under the Plan shall be: (i) the Committee for the purpose of administering this Plan; (ii) the Insurer appointed as Investment Manager under Section 14.16, who shall be a named fiduciary only with respect to the management and control of the assets of the Plan transferred to it; and (iii) each Investment Manager appointed pursuant to Section 14.16, who shall be a named fiduciary only with respect to the management and control of the assets of the Plan transferred to it.

15.2 No fiduciary with respect to the Plan shall be liable for an act or omission of another person resulting in a breach by such other person of his fiduciary responsibility with respect to the Plan, except to the extent that:

(a) such fiduciary participated knowingly in, or knowingly undertook to conceal, an act or omission of such other person, knowing such act or omission to be a breach of fiduciary responsibility;

(b) such fiduciary, by his failure to comply with the provisions of the preceding Section of the Plan or with Section 404(a)(1) of ERISA in the administration of his specific responsibilities which give rise to his status of a fiduciary, has enabled such other person to commit a breach of fiduciary responsibility;

(c) such fiduciary has knowledge of a breach of fiduciary responsibility by such other person, unless he makes reasonable efforts under the circumstances to remedy the breach; or

(d) such fiduciary is a "named fiduciary" and has violated his duties under Section 404(a)(1) of ERISA:

(i) with respect to the allocation of fiduciary responsibilities among "named fiduciaries" or the designation of persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan;

(ii) with respect to the establishment or implementation of procedures for allocating fiduciary

responsibilities among "named fiduciaries" or for designating persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan; or

(iii) in continuing the allocation of fiduciary responsibilities among "named fiduciaries" or the designating of persons other than "named fiduciaries" to carry out fiduciary responsibilities under the Plan.

15.3 Notwithstanding anything to the contrary contained herein, no member of the Committee or other fiduciary with respect to the Plan shall incur any liability for any act or omission to the extent he would not be liable therefor under Part 4 of Subtitle B of Title I of ERISA and to the extent such act or omission is not the result of his own gross negligence or wilful misconduct.

15.4 The Members shall indemnify each member of the Committee and any other individual to whom a fiduciary responsibility with respect to the Plan is allocated or delegated from and against any and all liabilities, claims, losses, damages, costs and expenses incurred by such person as a result of act, omission or conduct in connection with the performance of his fiduciary duties, responsibilities and obligations under the Plan and under ERISA, except with respect to liabilities and claims arising from such person's own willful misconduct or gross negligence. The Members may obtain, pay for and maintain a

policy or policies of insurance, the proceeds of which may be used in satisfying its obligations under this Section.

ARTICLE XVI

CLAIMS PROCEDURE

16.1 Any request for a benefit payable under the Plan shall be made in writing by a Player or Beneficiary (or an authorized representative of either of them), as the case may be, and shall be delivered to any member of the Committee. Such written request shall be deemed filed upon receipt thereof by the Committee. Such request shall be made within the time prescribed in the Plan for claiming a particular benefit or, if no time is so prescribed, within a reasonable time before payment of the benefit is to commence.

16.2 In the event a request for benefits contains insufficient information, the Committee shall, within 25 days after receipt of such request, send a written notification to the claimant setting forth a description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material is necessary. The claimant's request shall be deemed filed with the Committee on the date the Committee receives in writing such additional information.

16.3 The Committee shall make a determination with respect to a request for benefits within 60 days after such request is filed. The Committee shall notify the claimant whether his claim has been granted or whether it has been denied in whole or in part. Such notification shall be in writing and shall be

delivered, by mail or otherwise, to the claimant within a reasonable time after such claim is filed. If the claim is denied in whole or in part, the written notification shall set forth, in a manner calculated to be understood by the claimant:

- (a) The specific reason or reasons for the denial;
- (b) Specific reference to pertinent provisions of the Plan on which the denial is based; and
- (c) An explanation of the Plan's claim review procedure.

Failure by the Committee to give notification pursuant to this Section within a reasonable time after receipt of the claim shall be deemed a denial of the request for the purpose of proceeding to the review stage.

16.4 A claimant whose request for benefits has been denied in whole or in part may, within 60 days after written notification of such denial, file with the Committee, a written request for a review of his claim. Such written request shall be deemed filed upon receipt of same by the Committee.

16.5 A claimant who timely files a request for review of his claim for benefits may review pertinent documents (upon reasonable notice to the Committee) and may submit the issues and his comments to the Committee in writing. Except as otherwise provided below, the Committee shall, within 120 days after receipt of the written request for review, communicate its decision in writing to the claimant, setting forth, in a manner cal-

culated to be understood by the claimant, the specific reasons for its decision and the pertinent provisions of the Plan on which the decision is based.

16.6 If the claimant so requests in his timely application for review, the Committee shall schedule a conference with the claimant (and/or his authorized representative). Such conference shall be held at the offices of the Association at a date and time which is mutually agreed upon by the parties concerned, provided that in no event shall the conference be held more than 120 days after the Committee receives the claimant's written request for review of his claim. The decision of the Committee shall be communicated in writing to the claimant or his authorized representative within 30 days after the date on which the conference is completed, and shall set forth, in the same manner, the information required in the preceding Section.

ARTICLE XVII

LIMITATION OF RIGHTS OF THE PLAYER

17.1 Nothing contained in this Plan shall be deemed to give any Player the right to be retained in the service of any Member. Inclusion under the Plan shall not give any Player any right or claim to any benefits except to the extent such right is specifically fixed under the terms of the Plan.

17.2 The Members agree to make any and all contributions required to provide the benefits set forth herein.

17.3 No liability shall attach to any Member for any payment of any benefit or claim hereunder.

17.4 The Committee shall not be responsible for the validity of any Contracts, or for the action of any person or persons which may render any Contract invalid or unenforceable either in whole or in part. The Committee shall not be responsible for any inability to perform or any delay in performing any act occasioned by any other person. In the event it becomes impossible for the Committee to perform any act, that act shall be performed which in the judgment of the Committee will most nearly carry out the intent and purpose of this Plan.

ARTICLE XVIII

PARTICIPATING MEMBERS

18.1 Each Member shall execute such documents as are necessary to duly accept this Plan and to participate in any Contracts and the Trust Agreement to implement said Plan.

18.2 (a) In the event of the sale, transfer, exchange or other disposition of a franchise, or the granting of a new franchise by the Association, in addition to satisfying the provisions of paragraph (b) which apply in the case of a sale of assets, the new Member shall immediately execute such documents and take such actions as the Committee deems necessary so as to provide the benefits of this Plan for its Players.

(b) In the event of the sale of the assets of a franchise by a Member, such Member shall not be considered to have "withdrawn" from the Plan (as described in Section 18.3(a)) as a result of such sale, provided that all of the applicable conditions described in Section 4204(a) of ERISA, as may be modified or varied by the Pension Benefit Guaranty Corporation, are satisfied.

18.3 (a) In the event that any Member ceases to own a franchise and if such franchise is not sold, transferred or exchanged or otherwise disposed of to any new Member or if the assets of such franchise are sold to a new Member without compliance with the conditions of Section 4204(a) of ERISA, or if any Member completely discontinues making contributions to the Plan, such

Member shall be considered to have "withdrawn" from the Plan (within the meaning of Section 4203 of ERISA) and the provisions of paragraphs (b) and (c) of this Section shall apply to such Member (the "Withdrawing Member").

(b) All of the Players of the Withdrawing Member shall be vested with all benefits accrued to the date of such withdrawal and the Plan shall terminate as to such Member.

(c) The Withdrawing Member shall be obligated to immediately make a lump sum payment to the Plan equal to the sum of the amounts set forth below in subparagraphs (i) and (ii) ("withdrawal liability").

(i) The "unfunded accrued liability" as of the date of withdrawal for each Player for whom the Withdrawing Member is then liable to make a contribution under the provisions hereof; provided, however, that such Member shall not be liable for any further contribution for any Player to the extent that another Member becomes liable for such contributions under the terms of the Plan, by virtue of having acquired rights to such Player. For purposes of this Section 18.3, the amount of the "unfunded accrued liability" allocable to a Withdrawing Member shall be determined pursuant to the provisions of Articles X and XI of the Plan.

(ii) The Withdrawing Member's allocable share of any "unattributable liabilities" existing under the Plan. For purposes of this Section 18.3, "unattributable liabilities" shall mean the total amount of the withdrawal

liabilities of Members which have previously withdrawn from the Plan that is outstanding as of the date of the withdrawal of the Withdrawing Member. The amount of unattributable liabilities allocable to the Withdrawing Member shall equal the total amount of such liabilities multiplied by a fraction, the numerator of which shall be one and the denominator of which shall be the total number of Members of the Association as of the date of withdrawal.

In determining the amount of withdrawal liability for any Withdrawing Member under this Section 18.3, the provisions of Section 4209 of ERISA (relating to the de minimis rule) and Section 4219(c)(1)(B) of ERISA (relating to the 20-year limit on withdrawal liability payments) shall not apply.

18.4 In no event shall any merger or consolidation of any other plan with this Plan, or any transfer of assets and liabilities of this Plan to any other plan or any transfer of assets and liabilities from any other plan to this Plan take place which results in a benefit to any Player or Beneficiary (if the Plan then terminated) that is lower than the benefit he would have received immediately before the merger, consolidation or transfer (if the Plan then terminated).

ARTICLE XIX

AMENDMENT OR TERMINATION OF THE PLAN

19.1 The Members shall have the right to amend the Plan at any time by an instrument in writing executed by all Members (or by the Association as agent for its Members) and delivered to the Insurer and Trustees, provided, however, that:

(a) no amendment shall deprive any Player or Beneficiary of any of the benefits to which he is entitled under the Plan with respect to contributions previously made;

(b) no amendment shall provide for the use of the funds or assets held by the Insurer or Trustees other than for the exclusive benefit of Players and Beneficiaries and for defraying reasonable expenses of administering the Plan, and except as otherwise provided in the Plan, no funds contributed shall ever revert to or be used by the Member;

(c) no amendment shall deprive the Insurer of any of its exemptions and immunities with respect to Contracts issued by it prior to receipt by the Insurer of notice of such amendment; and

(d) no amendment shall increase the powers, duties or liabilities of the Trustees without their written consent.

Any amendment to the Plan, Contract, or Trust Agreement may be made retroactive to enable the Members to obtain rulings from the Internal Revenue Service as to the qualification of this Plan within the meaning of the Internal Revenue Code, as amended, or

as it may be replaced by any sections of Federal law of like intent and purpose.

19.2 The Members may terminate the Plan at any time and for any reason by an instrument in writing executed by all the Members and delivered to the Insurer and Trustees; provided, however, that if the Plan shall be terminated (or if there shall be a partial termination of the Plan), each Player or Beneficiary affected thereby shall be vested with all benefits accrued to the date of termination, and each Member shall make a contribution (or contributions) to the Plan in the amount required by the applicable provisions of ERISA. Upon termination, the Members may obtain deferred annuities for Players not yet retired and immediate annuities for retired Players and Beneficiaries then entitled to payments providing for the benefits to which such Player or Beneficiary is entitled, and upon termination such annuities or certificates of such annuities shall be distributed in complete discharge of all of the rights of such Players and Beneficiaries in the Plan. After discharge and satisfaction of all liabilities under the Plan, any remaining assets shall be returned to each Member in proportion to the amounts credited to each such Member's account under Articles X and XI of the Plan. Any Contract purchased under this Plan shall contain terms implementing the foregoing.

19.3 In the event that the balance in any Member's account is insufficient to discharge its liabilities in full, then such

balance shall be allocated among its Players (and their Beneficiaries) in such manner determined by the Committee as is consistent with applicable law.

ARTICLE XX

PROVISIONS PERTAINING TO PRE-1965 PLAYERS

20.1 Notwithstanding anything else in the Plan to the contrary, this Article XX contains special provisions, effective October 1, 1988, reflecting the provision of a benefit under the Plan to certain former Players ("Pre-1965 Players") who were not otherwise eligible to participate in the Plan.

20.2 For purposes of this Article XX only, the following special definitions shall apply (whether such defined term appears in this Article XX or in a Section which is incorporated into this Article XX by reference):

(a) "Active List" shall mean the list of Pre-1965 Players who, with respect to Regular Seasons prior to the Regular Season which included February 2, 1965, signed "formal contracts" with a Member and were otherwise eligible to participate in a Championship Game.

(b) "Armed Services List" shall mean the list of those Pre-1965 Players who, with respect to Regular Seasons prior to the Regular Season which included February 2, 1965, entered the Armed Services and served on active duty (as certified to the Committee by each Pre-1965 Player).

(c) "Early Retirement Benefit" shall mean a benefit commencing on a Pre-1965 Player's Early Retirement Benefit Commencement Date.

(d) "Early Retirement Benefit Commencement Date" shall mean any date after the Pre-1965 Player's attainment of age 55 and prior to his attainment of age 62 on which an election by the Pre-1965 Player to receive an Early Retirement Benefit under this Article XX becomes effective.

(e) "Member" shall mean a member or former member of the Association or the National Basketball League.

(f) "Normal Retirement Benefit" shall mean a benefit commencing on a Pre-1965 Player's Normal Retirement Benefit Commencement Date.

(g) "Normal Retirement Benefit Commencement Date" shall mean the first day of the first month following a Pre-1965 Player's attainment of age 62 or October 1, 1988, if later.

(h) "Pre-1965 Player" shall mean a Player who:

(i) had at least 5 Years of Pre-1965 Credited Service;

(ii) is not otherwise eligible to participate in this Plan under Article II; and

(iii) is living on October 1, 1988.

(i) "Year of Pre-1965 Credited Service" shall mean:

(i) each Regular Season that a Pre-1965 Player was on the Active List, and

(ii) each Regular Season that a Pre-1965 Player was on the Armed Services List; provided, however, that a Pre-1965 Player shall not receive credit for Years of Pre-1965 Credited Service for Regular Seasons during which he

was on the Armed Services List unless his period of service in the Armed Services was either immediately preceded or followed by a Regular Season during which he was on the Active List.

For purposes of this Article XX, any term used herein (or incorporated by reference herein) that is not separately defined in this Section 20.2 shall have the meaning set forth elsewhere in the Plan; provided, however, that the reference in the definition of 'Championship Game' (as set forth in Section 20.8) and in the definition of 'Regular Season' (as set forth in Section 20.30) to the term 'Association' shall also include the National Basketball League.

20.3 (a) (i) Except as provided in paragraphs (b) and (c) of this Section, a Pre-1965 Player who attains his Normal Retirement Benefit Commencement Date shall be entitled to receive a Normal Retirement Benefit of \$100 per month for each of his Years of Pre-1965 Credited Service. The Normal Retirement Benefit shall be paid to him commencing on his Normal Retirement Benefit Commencement Date, shall continue to be paid on the first day of each month up to and including the month in which such Player dies and, except as otherwise provided in paragraph (c), shall be paid as an annuity for the life of the Player ("Single Life Annuity").

(ii) Effective October 1, 1992, the Normal Retirement Benefit provided under subparagraph (i) shall be

increased to \$108.33 per month for each Year of Pre-1965 Credited Service. The benefit to be paid in accordance with this subparagraph (ii) shall apply only with respect to benefit payments due on or after October 1, 1992 and shall not require the recalculation of benefit payments made prior to such date. This increase shall also apply in determining the benefits payable to a surviving spouse under either the Qualified Joint and Survivor Annuity or the Preretirement Survivor Annuity.

(iii) Effective March 1, 1993, the Normal Retirement Benefit provided under subparagraph (ii) shall be increased to \$116.73 per month for each Year of Pre-1965 Credited Service. The benefit to be paid in accordance with this subparagraph (iii) shall apply only with respect to benefit payments due on or after March 1, 1993 and shall not require the recalculation of benefit payments made prior to such date. This increase shall also apply in determining the benefits payable to a surviving spouse under either the Qualified Joint and Survivor Annuity or the Preretirement Survivor Annuity.

(iv) Effective September 1, 1996, the Normal Retirement Benefit provided under subparagraph (iii) shall be increased to \$200.00 per month for each Year of Pre-1965 Credited Service. The benefit to be paid in accordance with this subparagraph (iv) shall apply only with respect to benefit payments due on or after September 1, 1996 and shall

not require the recalculation of benefit payments made prior to such date. This increase shall also apply in determining the benefits payable to a surviving spouse under either the Qualified Joint and Survivor Annuity or the Preretirement Survivor Annuity.

(b) (i) A Pre-1965 Player who is not yet eligible for a Normal Retirement Benefit may elect to receive, in lieu of a Normal Retirement Benefit, an Early Retirement Benefit. Such election shall be made at least 90 days prior to his Early Retirement Benefit Commencement Date and shall be made in writing delivered to the Committee.

(ii) The Early Retirement Benefit payable to a Pre-1965 Player shall be paid to him commencing on the first day of the first month following such Player's Early Retirement Benefit Commencement Date and, except as otherwise provided in paragraph (c) of this Section, shall be paid as a Single Life Annuity. The amount of the Early Retirement Benefit payable to a Pre-1965 Player shall be determined by reducing the Normal Retirement Benefit that such Player would have been entitled to on his Normal Retirement Benefit Commencement Date by the product of $1/180$ and the total number of months that the Pre-1965 Player's Early Retirement Benefit Commencement Date precedes such Player's Normal Retirement Benefit Commencement Date.

(c) (i) If a Pre-1965 Player is married on his Early Retirement Benefit Commencement Date or on his Normal

Retirement Benefit Commencement Date, as the case may be, his Early Retirement Benefit or Normal Retirement Benefit shall be paid in the form of a Qualified Joint and Survivor Annuity under which such Pre-1965 Player's benefit is reduced so that the resulting benefit payable to the Pre-1965 Player and his spouse shall be the Actuarial Equivalent of his Early Retirement Benefit or Normal Retirement Benefit otherwise payable.

(ii) Notwithstanding subparagraph (i) of this paragraph (c), a married Pre-1965 Player may elect to have his Early Retirement Benefit or Normal Retirement Benefit paid in the form of a Single Life Annuity by filing a written election with the Committee; provided, however, that the spouse of such Pre-1965 Player must consent to such an election in accordance with the provisions of Section 3.10(c)(i). Any election by a Pre-1965 Player to waive the Qualified Joint and Survivor Annuity must be made within a reasonable period prior to the date on which his benefits commence. A Pre-1965 Player who has waived the Qualified Joint and Survivor Annuity may subsequently cancel his waiver at any time prior to the date his benefits commence, by filing a proper waiver or cancellation of waiver with the Committee.

(d) Except as provided in paragraph (c)(ii) of this Section 20.3, the optional forms described in Section 3.11 shall

not be available with respect to the payment of benefits to a Pre-1965 Player.

(e) In determining the benefit to which a Pre-1965 Player may be entitled under this Section, the Pre-1965 Player shall not be credited with a Year of Pre-1965 Credited Service to the extent that such service is taken into account for benefit accrual purposes under any other qualified plan maintained or sponsored by the Association.

(f) Notwithstanding anything else in this Article XX to the contrary, the benefits payable to a Pre-1965 Player shall be subject to the applicable benefit limitations set forth in Sections 6.7, 6.9, 6.10, 6.14, 6.15, 6.17 and 6.18; provided, however, that for purposes of Sections 6.10 and 6.18, years of Member Service shall also include all Years of Pre-1965 Credited Service (within the meaning of Section 20.2(i)(i)). In making this determination, the cost-of-living adjustments provided under Sections 6.7(a)(i) and (ii), Sections 6.7(d)(v) and (vi), Sections 6.14(a)(i) and (ii), and Sections 6.14(d)(v) and (vi) shall apply.

20.4 (a) In the event of the death of a married Pre-1965 Player prior to the date as of which the payment of his Early Retirement Benefit or Normal Retirement Benefit, as the case may be, becomes effective, such Pre-1965 Player's spouse shall be entitled to a monthly benefit payable as an annuity for her life

(the "Preretirement Survivor Annuity") in an amount equal to 50% of the benefit the Pre-1965 Player would have received:

(i) in the case of a Pre-1965 Player whose date of death occurs after his attainment of age 55, had such Pre-1965 Player begun to receive his benefit under the Plan (as adjusted under Section 20.3(b)(ii), if applicable) on the day before his date of death in the form of a Qualified Joint and Survivor Annuity; or

(ii) in the case of a Pre-1965 Player whose date of death occurs prior to his attainment of age 55, had such Pre-1965 Player survived until the attainment of such age and elected to receive his benefit under the Plan (as adjusted under Section 20.3(b)(ii)) commencing on the first day of the first month following his attainment of age 55 in the form of a Qualified Joint and Survivor Annuity.

(b) Payments under the Preretirement Survivor Annuity under paragraph (a) of this Section shall commence as soon as possible after the Committee is notified of the Pre-1965 Player's death.

20.5 The annual cost of funding the benefits provided to Pre-1965 Players under this Article XX shall be paid by each Member of the Association. The amount of the annual funding cost to be paid by each Member shall be determined based on the ratio of each Member's accrued liability over the total accrued liability of all of the Members under the Plan. For purposes of

Section 18.3(c)(i) of the Plan, a Member's funding cost under this Section 20.5 shall be part of the "unfunded accrued liability" directly allocable to a Withdrawing Member.

20.6 Wherever applicable under the Plan, the term "Player" shall also include a "Pre-1965 Player."

ARTICLE XXI

PROVISIONS PERTAINING TO CANADIAN PLAYERS

21.1 Notwithstanding anything else in the Plan to the contrary, this Article XXI contains special provisions with respect to the provision of benefits under the Plan to certain Players ("Canadian Players") who were at any time entitled to receive a benefit under the Toronto Raptors Players' Pension Plan and/or the Vancouver Grizzlies Players' Pension Plan (the "Canadian Plans").

21.2 (a) Any amounts payable to a Canadian Player under Article III shall be reduced by the benefits payable to such Player under a Canadian Plan (using, where applicable, the actuarial factors specified in the Plan).

(b) Any amounts payable to a Canadian Player's Beneficiary under Article VII shall be reduced by any benefits payable on account of such Canadian Player under a Canadian Plan (using, where applicable, the actuarial factors specified in the Plan).

21.3 In determining the benefits payable to a Canadian Player or a Canadian Player's Beneficiary under a Canadian Plan for purposes of Section 21.2, such benefits shall be converted from Canadian Dollars to U.S. Dollars based upon the spot buying rate quoted by Chase Manhattan Bank for purchases of U.S. Dollars with Canadian Dollars at noon (New York time) on the date on which such Player or Beneficiary first receives or commences to

receive payment of a benefit under the Plan or, if earlier, the date on which either the Player or Beneficiary first receives or commences to receive payment of a benefit under such Canadian Plan. If the spot buying rate is not quoted on such day by Chase Manhattan Bank, the conversion from Canadian Dollars to U.S. Dollars shall be based upon such rate on the last day on which it was quoted by Chase Manhattan Bank.

ARTICLE XXII

MISCELLANEOUS

22.1 The headings and subheadings in this Plan have been inserted for the convenience of reference only, and are to be ignored in any construction of the provisions hereof.

22.2 In the construction of this Plan, the masculine shall include the feminine and the neuter and the singular shall include the plural in all cases where such meanings would be appropriate.

22.3 This Plan shall be construed, whenever possible, to be in conformity with the requirements of the Internal Revenue Code and ERISA. To the extent not in conflict with the preceding sentence, and except to the extent that state law shall not have been preempted by the provisions of ERISA or any other laws of the United States heretofore or hereafter enacted, the Plan should be construed, administered and governed in all respects under and by the laws of the State of New York.

22.4 Subject to Sections 22.5 and 22.6, this Plan is created for the exclusive benefit of the Players and their Beneficiaries. If any provision hereof is susceptible of more than one interpretation, then among those interpretations which are possible, that one shall always be adopted which will be consistent with this Plan's being a qualified Plan within the meaning of the Internal Revenue Code, as amended, or as it may be

replaced by any sections of Federal law of like intent and purpose.

22.5 If a Member makes a contribution to the Plan due to a mistake of fact or a mistake of law, such contribution shall be returned to such Member within six months after the Committee determines that the contribution was made by such a mistake.

22.6 All contributions by the Members are conditioned upon their deductibility under Section 404 of the Internal Revenue Code, and if part or all of the deduction for a Member's contribution is disallowed, the contribution, to the extent disallowed, shall be returned to the Member within one year after the disallowance of the deduction.

22.7 If any provision of this Plan is held to be illegal, invalid or unenforceable for any reason, this shall not affect any other provision of the Plan, and this Plan shall be construed as if said illegal, invalid or unenforceable provision had never been inserted herein.

22.8 Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service shall be provided in accordance with Section 414(u) of the Internal Revenue Code.

22.9 Except as otherwise provided herein, this Plan shall amend and restate, effective as of February 2, 1997, all provisions of the Plan, as in effect on February 1, 1997.

IN WITNESS WHEREOF, the National Basketball Association, as agent for its Teams, has executed this Plan on this 14th day of February, 2002.

NATIONAL BASKETBALL ASSOCIATION
(as agent for its Teams)

By: *J. M. K.*

Title: *VP*

November 7, 1969

Lawrence Fleisher, Esq.
1540 Broadway
New York, New York 10036

RE: National Basketball Association and
the Players' Association of the
National Basketball Association

Dear Mr. Fleisher:

The attached Memorandum of Understanding, together with the exhibits thereto, sets forth our understanding with respect to the Agreement reached between the members of the National Basketball Association and the representatives of the Players' Association of the National Basketball Association.

Very truly yours,

NATIONAL BASKETBALL ASSOCIATION,
a joint venture

BY 

J. Walter Kennedy, Commissioner,
per authority granted by the
National Basketball Association
at a meeting held on August 28, 1969.

AGREED TO:

BY 

Oscar Robertson,
on behalf of the Players'
Association of the National
Basketball Association

107
110

1969

MEMORANDUM OF UNDERSTANDING

1. This Memorandum shall be in effect from the date hereof to June 1, 1970, provided that the Players' Association will not ask for any change in the following items to become effective prior to the date specified:

<u>ITEM</u>	<u>DATE BEFORE WHICH NO CHANGE CAN BECOME EFFECTIVE</u>
a. Pension benefits	June 1, 1972
b. Severance pay and income sharing arrangements	June 1, 1975
c. Minimum salary schedule for a player's first playing season	October 1, 1971
d. Minimum salary for a player's second playing season	October 1, 1970
e. Amount of Players' Playoff Pool	1970-1971 season

2. This memorandum supersedes all prior Memoranda of Understanding between the parties.

C-9-000002

19. Each member will amend the Pension Plan currently in effect for its players and attached hereto as Exhibit D in the following manner, subject to the approval of such amendments by the Internal Revenue Service:

a. Effective February 2, 1970, Section 1.11 shall be amended to change "fiftieth (50th)" to "forty-fifth (45th)".

b. Effective February 2, 1974, Section 1.18 shall be amended to change "sixty-fifth (65th)" to "fifty-fifth (55th)".

c. Effective February 2, 1970, Section 2.1 shall be amended to add the following sentence thereto:

"Every Player on the Roster of any Member during the Regular Season which included February 2, 1966 shall be eligible to participate as of February 2, 1970."

d. Effective February 2, 1970, Section 4.1 shall be amended by deleting the following phrase: .:

"provided, however, that under no circumstances shall any Player be credited with more than ten years of past service."

e. Effective February 2, 1970, Section 4.3 shall be deleted.

f. Effective February 2, 1970, Section 6.6 shall be amended to change "twenty (20) years" to "thirty (30) years from the date or dates such past service benefits are effective."

g. Effective February 2, 1974, the following sentence shall be added to Section 6.6:

"Notwithstanding the foregoing, the amount necessary to fund the additional past service benefits resulting from the amendment to Section 1.18, effective February 2, 1974, shall be that amount which if paid in equal annual installments of twenty-five (25) years from February 2, 1974, will accumulate to the Actuarial Value of such benefits taking into account interest at the rate adopted by the Committee."

h. Effective February 2, 1970, Section 8.1 shall be amended to read as follows:

"Section 8.1. In the event of the death of any Player prior to his becoming entitled to receive either an Early Retirement Pension or a Normal Retirement Pension, said Player's Beneficiary shall be entitled to receive a cash settlement, in a lump sum, equal to (i) 100% of the Supplemental Pension that said Player would have been entitled to receive if his date of death had been his Normal Retirement Date, (ii) plus any contribution thereafter required to be made on his behalf, under Section 6.5(b) hereof, reduced by such amount determined by the Committee under Section 3.5 hereof for the Plan Year involved and (iii) plus the excess, if any, of an amount equal to the actuarial reserve on the date of death for the Normal Retirement Pension based on the actuarial assumptions most recently adopted pursuant to Section 14.7 hereof and based on the Credited Service earned to the date of death, over the proceeds of any group life insurance policy (exclusive of any such proceeds paid because of accidental death) maintained and paid for by a Member on the life of a Player."

Agreement

BETWEEN

National Basketball Association

AND

**National Basketball Players
Association**

November 15, 1972

C-10-000001

ARTICLE X

NATIONAL BASKETBALL ASSOCIATION PLAYERS' PENSION PLAN

SECTION 1. The National Basketball Association Players' Pension Plan will, subject to the approval of the Internal Revenue Service, be amended as follows:

(a) Effective February 2, 1974, Section 1.18 shall be amended to change "sixth-fifth (65th)" to "fifty-fifth (55th)."

(b) Effective February 2, 1976, Section 1.18 shall be amended to change "fifty-fifth (55th)" to "fifty-third (53rd)".

(c) Effective February 2, 1978, Section 1.18 shall be amended to change "fifty-third (53rd)" to "fiftieth (50th)".

(d) Effective February 2, 1976, the following sentence shall be added to Section 3.4:

"Solely for the purposes of this section, and notwithstanding the provisions of Section 1.18, as amended, "Normal Retirement Date" shall mean the fiftieth (50th) anniversary of the Player's date of birth.

(e) Effective February 2, 1974, the following sentence shall be added to Section 6.6:

"Notwithstanding the foregoing, the amounts necessary to fund the additional past service benefits resulting from the

amendments to Section 1.18, effective February 2, 1974, February 2, 1976, and February 2, 1978, and the amendment to Section 3.4, effective February 2, 1976, shall be those amounts which if paid in equal annual installments of thirty (30) years from the effective dates of said amendments will accumulate to the Actuarial Value of such benefits taking into account interest at the rate adopted by the Committee."

(f) Section 1.24 shall be amended to read as follows:

"Section 1.24 'Roster' shall mean (i) every Player on the Active List or the Injured List of any Member on February 2 of the Regular Season involved; and (ii) every Player on the Suspended List or the Armed Services List of any Member on February 2 of the Regular Season involved provided that such Player was on the Active List of any Member for 50 percent or more of the total Championship Games played by each Member during the Regular Season which includes such February 2."

(g) The second sentence of Section 2.1 shall be amended to read as follows:

"Every Player on the Roster of any Member during the regular season which included February 2, 1965, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1970."*

(h) Section 3.5 shall be amended to change "\$100.00" to "\$200.00".

SECTION 2. In performing the functions assigned to it by Sections 3.5 and 3.6, the Pension Committee shall consult with a representative designated by the Players Association. In the absence of agreement between the Committee and said representative, the Committee shall, solely with respect to the determinations required by Sections 3.5 and 3.6, follow the directives of the Players Association. The Players Association hereby accepts full and complete responsibility for the investment policy and the results thereof that flow from the Committee's compliance with the Players Association directives.

* It is understood and agreed that the players "eligible to participate as of February 2, 1970" in accordance with Section 1(f) of Article X are those whose names are set forth on Schedule I to this Agreement.

PE 789

1976 Collective Bargaining Agreement
Dated April 29, 1976
Plaintiffs' Exhibit 7
See PE 179-249.

C-11-000001

ARTICLE IX

National Basketball Association
Players' Pension Plan

Section 1. The National Basketball Association Players' Pension Plan will, subject to the approval of the Internal Revenue Service, be amended so as to effectuate the following changes:

(a) Providing for a reduction in the Normal Retirement Date to age 50, effective February 2, 1976.

(b) Crediting players with a year of credited service for each year (from and after 1965) they were on the Injured List on February 2, without regard to the period spent on the Active List during such year.

(c) Providing, with respect to Player Contracts entered into on or after May 1, 1976, and unless otherwise

PE 199

agreed between a player and a Member that a player with a "guaranteed" (or "no-cut") contract will be credited with service only for seasons of actual service (i.e., seasons during which the player was on the Active List or the Injured List of any Member on February 2; and seasons during which the player was on the Suspended List or the Armed Services List of any Member on February 2, provided the player was on the Active List of any Member for 50% or more of the Championship Games played by each Member during the seasons including such February 2).

(d) Providing for Normal Retirement Pension benefits as follows:

(1) For players who become eligible to receive the payment of Normal Retirement Pension benefits between June 1, 1978 and May 31, 1979 - \$75 per month for each year of credited service.

(2) For players who become eligible to receive the payment of Normal Retirement Pension benefits on or after June 1, 1979 and on or before December 1, 1980 - \$75 plus a cost-of-living adjustment (which shall be calculated by applying to \$75 the percentage increase in the national Consumer Price Index between September 1978 and May 1979, and which shall be rounded off to the nearest whole dollar) per month for each year of credited service.

(3) For players who become eligible to receive the payment of Normal Retirement Pension benefits on or after December 2, 1980 - the amount provided in Section 1(d)(2) above plus a cost-of-living adjustment (which shall be calculated by applying to the amount provided in Section 1(d)(2) the percentage increase in the national Consumer Price Index between June 1979 and November 1980, and which shall be rounded off to the nearest whole dollar) per month for each year of credited service.

(4) All the amounts provided for above shall be reduced by the Actuarial Equivalent as a lifetime annuity beginning on the same date of any benefit payable to a player under Article 5 of the Pension Plan.

PE 200

(e) Providing for Early Retirement Pension Benefits that are the Actuarial Equivalents of the Normal Retirement Pension benefits provided for in Section 1(d) above, with Normal Retirement Date (for these purposes only) being defined, effective immediately, as age 50.

(f) Providing for the termination of all contributions into the Supplemental Pension Accounts.

(g) Providing for such amendments as may be required by the Employee Retirement Income Security Act.

Section 2. The Players Association agrees that it will not request any further changes in the National Basketball Association Players' Pension Plan to take effect prior to June 1, 1982.

Section 3. In performing the functions assigned to it by Sections 3.5 and 3.6 of the Pension Plan, the Pension Committee shall consult with a representative designated by the Players Association. In the absence of agreement between the Committee and said representative, the Committee shall, solely with respect to the determinations required by Sections 3.5 and 3.6, follow the directives of the Players Association. The Players Association hereby accepts full and complete responsibility for the investment policy and the results thereof that flow from the Committee's compliance with the Players Association's directives.

C-11-00004

PE 250

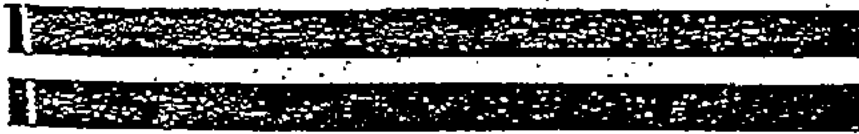
1980



COLLECTIVE

BARGAINING

AGREEMENT



NBA EXHIBIT
8

C-12-000001

ARTICLE IX

**National Basketball Association
Players' Pension Plan**

Section 1. The National Basketball Association Players' Pension Plan will, subject to the approval of the Internal Revenue Service, be amended so as to effectuate the following changes (effective as of February 2, 1981):

PE 267

(a) Section 1.10 shall be amended so as to add the following:

"Any Contract may provide for the allocation of amounts received by an Insurer under the Plan to said Insurer's general account or to one or more of its separate accounts (including separate accounts maintained for the collective investment of assets of qualified retirement plans)."

(b) A new Section 1.22 shall be added and shall provide as follows:

"Section 1.22. 'National Consumer Price Index' shall mean the Consumer Price Index for urban consumers (CPI-U)."

(c) Sections 6.2, 6.3, and 6.4 shall be amended to read as follows:

"Section 6.2. The annual cost of funding for the current and past service benefits for any Player on the Active List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1981), or on the Injured List on February 2, 1973 (or on any subsequent February 2, prior to February 2, 1981), shall be paid by the Member on whose Active List or Injured List, as the case may be, the Player appears on February 2 of the Plan Year involved. The annual cost of funding for the current and past service benefits for any Player on the Active List or Injured List on February 16, 1981 (or on any subsequent February 16) shall be paid by the Member on whose Active List or Injured List, as the case may be, the Player appears on February 16 of the Plan Year involved.

"Section 6.3. The annual cost of funding for the current and past service benefits for any Player (i) on the Suspended or Armed Services List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1981), or on the Injured List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1973); and (ii) on the Active List of any Member for 50 percent or more of the total Championship Games played by each Member during the Regular Season which includes such February 2 and which ended before February 2, 1981, shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved. The annual cost of funding for the current and past service benefits for any Player (i) on the Suspended or Armed Services List on February 16, 1981 (or on any subsequent February 16) and (ii) on the Active List of any Member for 50 percent or more of the total Championship Games played by each Member during the Regular Season which includes February 16, 1981 (or any subsequent February 16), shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved.

"Section 6.4. The annual cost of funding for the past service benefits for any Player not on any Roster during the Plan Year involved shall be paid by the Member having rights to the services of such Player, as a Player, on February 16 of the Plan Year involved (or February 2 if the Plan Year involved ended prior to February 2, 1981) or, if no Member has such rights on said February 16 (or February 2, as the case may be), by the Member last having such rights prior to said February 16 (or February 2, as the case may be)."

(d) A new Section 8.3 shall be added and shall provide as follows:

"Section 8.3. If any court of competent jurisdiction issues an order inconsistent with this Section, and the Committee hereafter notifies the Player or any Beneficiary of such order, then, unless and until such order is set aside, the following provisions shall apply:

PE 268

(a) No action shall be required by the Association, Insurer, Committee or any other person to prevent such order from being complied with.

(b) Thirty days after giving such notice, such order may be complied with."

(e) A new Section 13.15 shall be added and shall provide as follows:

"Section 13.15. The Committee may appoint an Insurer under this plan to act as an investment manager to manage any assets of the Plan provided that (a) the Insurer is qualified, under the laws of more than one state, to perform such services and (b) the Insurer has acknowledged, in a writing delivered to the Committee, that it is a fiduciary with respect to the Plan."

Section 2. In performing the functions assigned to it by Sections 3.5 and 3.6 of the Pension Plan, the Pension Committee shall consult with a representative designated by the Players Association. In the absence of agreement between the Committee and said representative, the Committee shall, solely with respect to the determinations required by Sections 3.5 and 3.6, follow the directives of the Players Association. The Players Association hereby accepts full and complete responsibility for the investment policy and the results thereof that flow from the Committee's compliance with the Players Association's directives.

C-12-000004

COLLECTIVE BARGAINING AGREEMENT



11/15/17

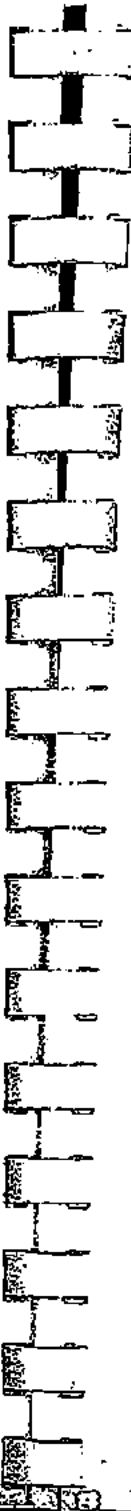
COLLECTIVE BARGAINING AGREEMENT
between the
NATIONAL BASKETBALL ASSOCIATION
and the
NATIONAL BASKETBALL PLAYERS ASSOCIATION
November 1, 1988

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Section 4. (a) The National Basketball Association Play- ers' Pension Plan (the "Plan") will, subject to the approval of the Internal Revenue Service, be amended as follows:

(1) The "Normal Retirement Pension" payable to a player under the Plan shall be increased to \$200 per month for each year of the player's "Credited Service"; provided, however, that the benefits payable under the Plan shall at all times be subject to the limitations on benefits under the Internal Reve- nue Code, as amended.

(2) The death benefit provided under the Plan for termi- nated vested players shall be modified to provide for the elimi- nation of the actuarial reduction for the commencement of such death benefit prior to the date the Player would have attained his "Normal Retirement Age" had he survived.

The applicable provisions of this Section 4(a) shall apply to those players who had not yet begun to receive a benefit under the Plan as of September 1, 1988 and to those players who were receiving monthly benefit payments under the Plan as of such date.

(b) In the event that in a season covered by this Agreement, beginning with the 1989-1990 NBA season, 4.3 DGR applicable to such season exceeds 4.3 DGR applicable to the immediately preceding season (the "excess amount"), the excess amount shall be used as follows:

(1) The excess amount shall first be used to cover (i) any additional medical, dental, disability and life insurance costs that would be incurred under the NBA Group Insurance Plans in order to maintain the level of benefits being provided to the players and their dependents under such plans as of September 1, 1988, and (ii) any costs for workers' compensation insurance and payroll taxes in excess of the costs for such items as of Sep- tember 1, 1988.

(2) If there is any portion of the excess amount remaining after the application of subsection (b)(1) above, then 50 percent of the remaining portion of the excess amount (the "50 percent excess amount") shall be used under the Plan as follows:

(i) The 50 percent excess amount shall first be used to eliminate the actuarial reduction for the Qualified Joint and Survivor Annuity for married players and their spouses provided under Section 3.10 of the Plan.

(ii) If there is any portion of the 50 percent excess amount remaining after the application of subsection (b)(2)(i) above, then the remaining portion of the 50 percent excess amount shall be used to increase the benefits payable under the Plan to the maximum amount permitted by the benefit limitations under the Internal Revenue Code, as amended.

(c) Notwithstanding anything else in this Agreement: (i) if any change or amendment made to the Internal Revenue Code, as amended (the "Code"), or the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or to any regulations (whether final, temporary or proposed regulations) or rulings issued thereunder; or (ii) if any interpretation, application or enforcement (or any proposed interpretation, application or enforcement), by a court of competent jurisdiction in the United States or by the Internal Revenue Service, of the Code, ERISA, or any regulations or rulings issued thereunder; or (iii) if any regulations (whether final, temporary or proposed regulations) or rulings issued by the Internal Revenue Service under the Code or ERISA; or (iv) if any provisions of this Agreement, including any of the amendments or benefit increases to be provided under the Plan pursuant to this Section, would result in the Plan no longer being a tax-qualified Plan under Section 401(a) of the Code, or would require the Members of the NBA to incur costs over and above any costs required to be incurred to implement the provisions of this Agreement or any prior collective bargaining agreement in order for the Plan to maintain its tax-qualified status under Section 401(a) of the Code, then any obligation to maintain and/or make contributions to the Plan pursuant to this Agreement or pursuant to any prior collective bargaining agreement shall terminate; provided, how-

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ever, that any such termination shall not impair the legally binding effect of any other provision of this Agreement or any prior collective bargaining agreement, nor shall it create any right (i) to unilaterally implement during the term of this Agreement any terms concerning the provision of pension benefits to the Players or (ii) to strike. In the event of such termination, the parties shall negotiate in good faith to reach a mutually acceptable agreement regarding the provision of pension benefits to the players. Nothing contained herein shall relieve the NBA of the obligation to pay sums or incur liabilities payable within one year for Benefits which, in the aggregate, equal 4.3 DGR for the immediately preceding season, less the amounts paid or payable for workers' compensation insurance and payroll taxes.

(d) A pension benefit will be provided (as reflected in the proposed Fifth Amendment to the Plan annexed as Exhibit B hereto) to certain former players who were not previously eligible to receive a benefit under the Plan.

NBA COLLECTIVE BARGAINING AGREEMENT



September 1995

ARTICLE IV

BENEFITS

Section 1. Player Benefits.

Except as set forth below, effective with the 1995-1996 NBA Season, and continuing for the term of this Agreement, the NBA shall provide the following benefits to NBA players and, in the case of Sections (a) and (f) below, former NBA players:

(a) (1) Subject to the provisions of Section (a)(3) below, League-wide pension benefits in accordance with the terms of the National Basketball Association Players' Pension Plan, as restated effective February 2, 1989 (the "Plan"). Beginning with the 1996-97 Season, the Plan will, subject to the approval of the Internal Revenue Service, be amended to provide for the following changes which shall be effective only throughout the period of this Agreement:

(i) The "Normal Retirement Pension" payable to a player under the Plan shall be increased to the maximum monthly amount permitted by the applicable benefit limitations under the Internal Revenue Code to be paid to the player at his "Normal Retirement Date" under the Plan (the "Maximum Monthly Benefit"). For purposes of the preceding sentence, the applicable benefit limitations shall be the limitations in effect for the year in which this Agreement is executed. Notwithstanding the foregoing:

(A) The benefits payable under the Plan shall at all times be subject to the limitations on benefits under the Internal Revenue Code, as amended (the "Code").

(B) If all or any portion of the actuarially determined contributions to be made to the Plan will not be fully deductible under the Code when paid, the Maximum Monthly Benefit shall not exceed the amount which would result in all of such contributions being fully deductible when paid. The

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parties agree that the determinations described in the preceding sentence, including any actuarial assumptions and projections related thereto, shall be made by the current actuaries of the Plan and any such determinations shall be binding and conclusive.

(C) Except as otherwise provided herein, the Maximum Monthly Benefit shall, effective as of the beginning of a Plan Year of the Plan, be adjusted for increases in the cost of living in the same manner as the cost of living adjustment for the dollar limitation under section 415(b)(1)(A) of the Code. In no event, however, shall the adjusted Maximum Monthly Benefit for a Plan Year exceed an amount that would require the actuarially determined contributions to be made to the Plan to fund for such adjusted Benefit for the Plan Year to exceed the actuarially determined contributions made to the Plan to fund for the Maximum Monthly Benefit in effect for the immediately preceding Plan Year by more than five (5) percent. The parties agree that the determinations described in the preceding sentence, including any actuarial assumptions and projections related thereto, shall be made by the current actuaries of the Plan and any such determinations shall be binding and conclusive.

(D) The applicable provisions of this Section 1(a) shall apply only to those players who had not yet begun to receive a benefit under the Plan as of July 1, 1996 and to those players who were receiving monthly benefits under the Plan as of September 1, 1996; provided, however, that in the case of those players who were receiving monthly benefits under the Plan as of September 1, 1996, this section 1(a) shall apply only with respect to benefit payments to be made on or after September 1, 1996 and shall not require the recalculation of benefit payments made prior to such date.

(ii) The actuarial reduction for the "Qualified Joint and Survivor Annuity" (as defined under section 1.29 of the Plan) for married players and their spouses currently provided

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commencing on or after September 1, 1996 in the form of a
Qualified Joint and Survivor Annuity and, in the case of a player
receiving monthly benefit payments under the Plan as of Sep-
tember 1, 1996, only if such benefit payments are currently
being made in the form of a Qualified Joint and Survivor An-
nuity.

(iii) The "Normal Retirement Benefit" payable to
a Pre-1965 Player under Article XX of the Plan shall be in-
creased to \$200 per month for each "Year of Pre-1965 Credited
Service"; provided, however, that the benefits payable under
the Plan to Pre-1965 Players shall at all times be subject to the
limitations on benefits under the Code. The benefit to be
paid in accordance with the preceding sentence shall apply
only with respect to benefit payments to be made on or af-
ter September 1, 1996 and shall not require the recalcula-
tion of benefit payments made prior to such date.

(2) Notwithstanding anything else in this Agreement:
(i) if any change or amendment made to the Code, or the Em-
ployee Retirement Income Security Act of 1974, as amended
("ERISA"), or to any regulations (whether final, temporary or
proposed regulations) or rulings issued thereunder; or (ii) if
any interpretation, application or enforcement (or any proposed
interpretation, application or enforcement), by a court of com-
petent jurisdiction in the United States or by the Internal Re-
venue Service, of the Code, ERISA, or any regulations or rul-
ings issued thereunder; or (iii) if any regulations (whether fi-
nal, temporary or proposed regulations) or rulings issued by
the Internal Revenue Service under the Code or ERISA; or
(iv) if any provisions of this Agreement, including any of the
amendments, or benefit increases to be provided under the Plan
pursuant to this Section, would result in the Plan no longer be-
ing a tax-qualified Plan under section 401(a) of the Code, or
would require NBA Teams to incur costs over and above any
costs required to be incurred to implement the provisions of

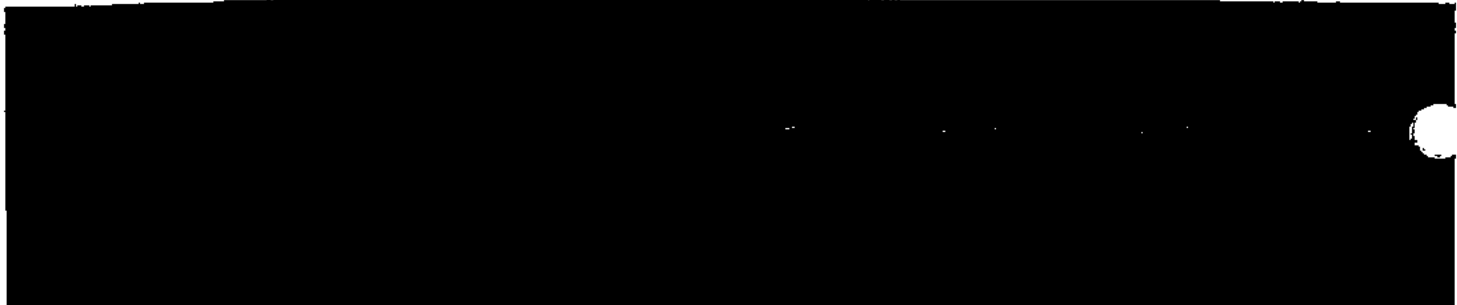
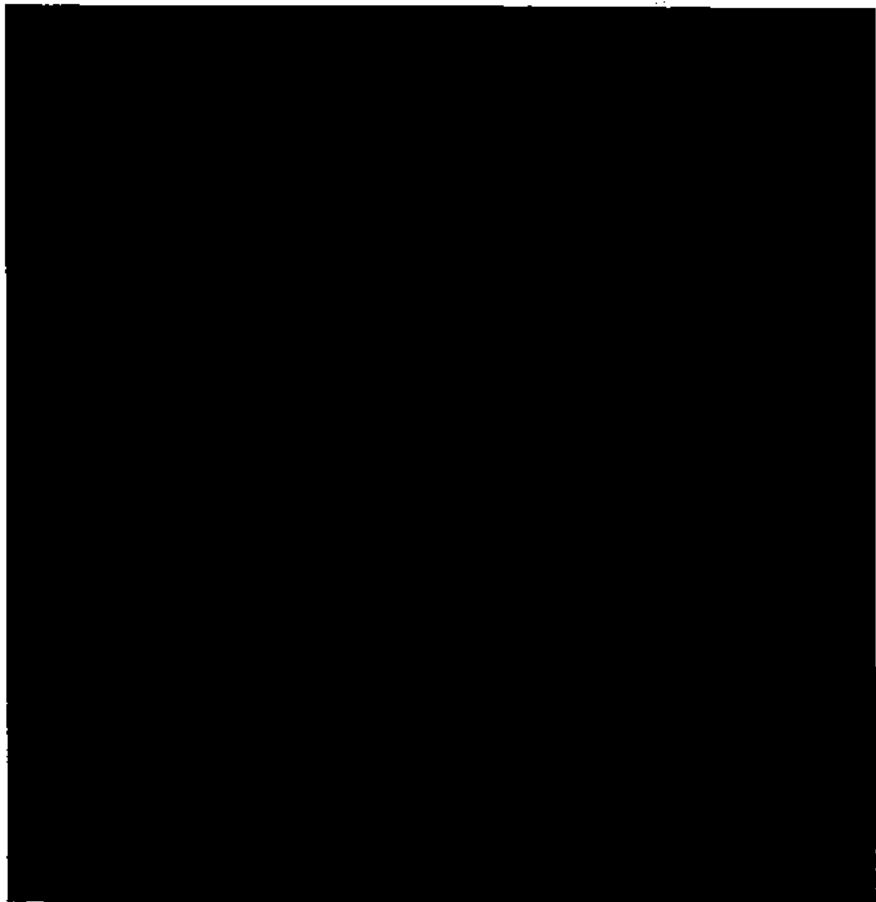
this Agreement or any prior collective bargaining agreement in order for the Plan to maintain its tax-qualified status under section 401(a) of the Code (provided, however, that such additional costs are incurred solely in connection with the provision of pension benefits to their non-player employees or to non-player employees of affiliates (within the meaning of sections 414(b), (c) or (m) of the Code) of such Teams), then any obligation to maintain and/or make contributions to the Plan pursuant to this Agreement or pursuant to any prior collective bargaining agreement shall terminate; provided, however, that any such termination shall not impair the legally binding effect of any other provision of this Agreement or any prior collective bargaining agreement, nor shall it create any right (x) to unilaterally implement during the term of this Agreement any terms concerning the provisions of pension benefits to the players, (y) to lockout, or (z) to strike. In the event of such termination, the NBA Teams shall provide alternative benefits to the players, at an annual cost (as determined on an after-tax basis) to NBA Teams equal to the annual cost that such Teams would have incurred under the Plan commencing on the date of termination. The NBA and the Players Association shall agree upon the type(s) of alternative benefits to be provided.

(3) Players employed by Toronto and Vancouver ("Canadian players") shall receive pension benefits of comparable value by means of the Plan and separate pension plans to be established and maintained by Toronto and Vancouver ("Separate Plans"); provided, however, that (i) if the provision of pension benefits under the Plan to the Canadian players would, at any time, result in the Plan being subject to Canadian Provincial Pension Legislation and/or Canadian Federal Tax Laws (to the extent that the application of such tax laws would result in adverse tax consequences to the Plan, the NBA Members and/or the Canadian players), and/or (ii) if the Separate Plans would not, upon their establishment or at any future time, either satisfy U.S. tax qualification requirements or be able to be registered under Canadian Provincial Pension Legislation and/or

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Canadian Federal Tax Laws, then any obligation to establish, maintain and/or make contributions to both the Plan with respect to Canadian players and the Separate Plans pursuant to this Agreement or pursuant to any prior collective bargaining agreement shall terminate. In the event of such termination, Toronto and Vancouver shall provide alternative benefits to the Canadian players at an annual cost (as determined on an after-tax basis) to Toronto and Vancouver equal to the annual cost that Toronto and Vancouver would have incurred under the Plan and the Separate Plans commencing on the date of termination. The NBA and the Players Association shall agree upon the type(s) of alternative benefits to be provided.



NBA COLLECTIVE BARGAINING AGREEMENT



JANUARY 1999



ARTICLE IV

BENEFITS

Section 1. Player Benefits.

Except as set forth below, effective with the date of this Agreement, and continuing for the duration thereof, the NBA shall provide the following benefits to NBA players and, in the case of Section (a) below, former NBA players:

(a) (1) Subject to the provisions of Section (a)(3) below, League-wide pension benefits in accordance with the terms of the National Basketball Association Players' Pension Plan, as restated effective February 2, 1996, as amended by the First and Second Amendments thereto (the "Plan"). In accordance with the collective bargaining agreement made as of September 18, 1995, the Plan has been amended so that the "Normal Retirement Pension" payable to a player under the Plan is the maximum monthly amount permitted by the applicable benefit limitations under the Internal Revenue Code of 1986, as amended (the "Code") to be paid to the player at his "Normal Retirement Date" under the Plan (the "Maximum Monthly Benefit").

Effective only for the duration of this Agreement or as otherwise required by the Code, the Maximum Monthly Benefit shall, except as otherwise provided herein, be adjusted for increases in the cost of living in the same manner as the cost of living adjustment for the dollar limitation under Section 415(b)(1)(A) of the Code. In no event, however, shall the adjusted Maximum Monthly Benefit for a Plan Year exceed an amount that would require the actuarially determined contributions (to be made to the Plan to fund for such adjusted benefit for the Plan Year) to exceed, by more than five (5) percent, the actuarially determined contributions that would be made to the Plan for that Plan Year using the Maximum Monthly Benefit in effect for the immediately preceding Plan Year. The parties agree that the determinations described in the preceding sentence, including any actuarial assumptions and projections related thereto, shall be made by the current actuaries of the Plan on a consistent basis and any such determinations shall be binding and conclusive. Any

his Agreement, provide the following (a) below, for-

(a)(3) below, the terms of the Plan, as restated in the First and Second Amended Plans, the collective Plan, the Plan has a "Maximum Monthly Benefit" payable to a player at his Maximum Monthly

Benefit shall, as otherwise provided, increase in the event of an adjustment for inflation in the Maximum Monthly Benefit for a period of more than five (5) years. Any such adjustment would be made only if the parties agree in writing. Any such adjustment, including any such adjustment, shall be on a consistent basis and shall be conclusive. Any

increase in the Maximum Monthly Benefit hereunder shall be effective as of the first day of the month following the beginning of the Plan Year of the Plan to which the increase relates (the "Benefit Increase Commencement Date"), shall apply only with respect to benefit payments to be made on or after the Benefit Increase Commencement Date, and shall not require the recalculation of benefit payments made prior to the Benefit Increase Commencement Date. Notwithstanding the foregoing:

- (i) The benefits payable under the Plan shall at all times be subject to the limitations on benefits under the Code.
- (ii) If all or any portion of the actuarially determined contributions to be made to the Plan will not be fully deductible under the Code when paid, the Maximum Monthly Benefit shall not exceed the amount which would result in all of such contributions being fully deductible when paid. The Players Association shall be given written notice of any such determination. The parties agree that the determinations described in this subsection (ii), including any actuarial assumptions and projections related thereto, shall be made by the current actuaries of the Plan and any such determinations shall be binding and conclusive.

(2) Notwithstanding anything else in this Agreement: (i) if any change or amendment made to the Code, or the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or to any regulations (whether final, temporary or proposed) or rulings issued thereunder; or (ii) if any interpretation, application or enforcement (or any proposed interpretation, application or enforcement), by a court of competent jurisdiction in the United States or by the Internal Revenue Service, of the Code, ERISA, or any regulations or rulings issued thereunder; or (iii) if any regulations (whether final, temporary or proposed) or rulings issued by the Internal Revenue Service under the Code or ERISA; or (iv) if any provisions of this Agreement, including any of the amendments or benefit increases to be provided under the Plan pursuant to this Section, would result in the Plan no longer being a tax-qualified Plan under Section

36 Article IV

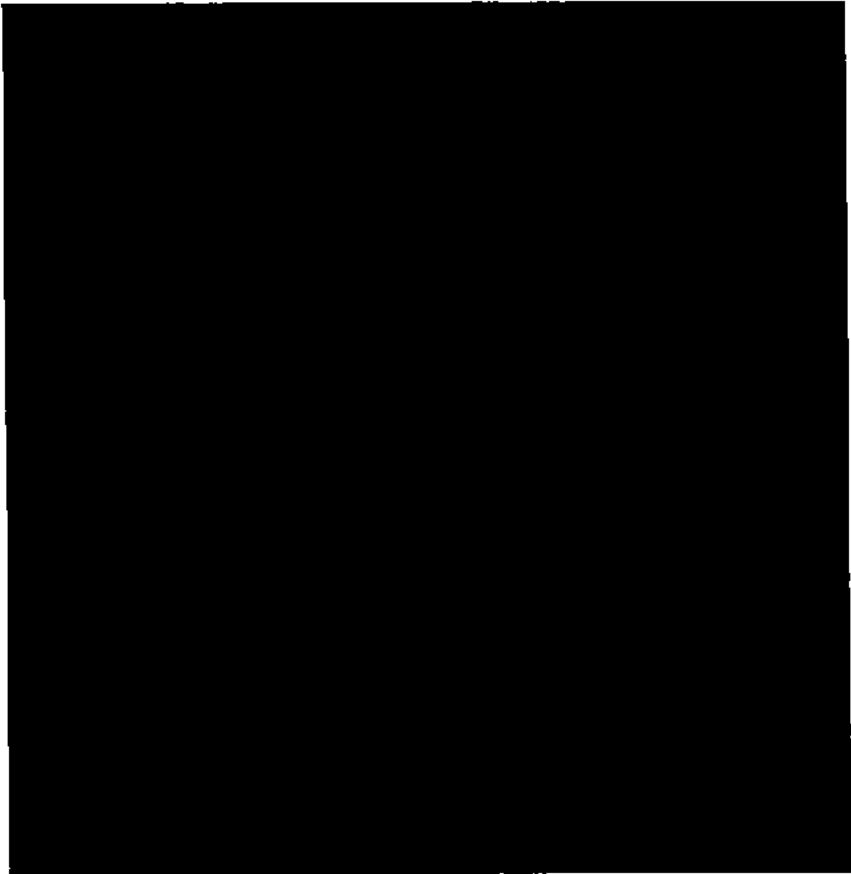
401(a) of the Code, or would require NBA Teams to incur costs over and above any costs required to be incurred to implement the provisions of this Agreement or any prior collective bargaining agreement in order for the Plan to maintain its tax-qualified status under Section 401(a) of the Code (provided, however, that such additional costs are incurred solely in connection with the provision of pension benefits to their non-player employees or to non-player employees of affiliates (within the meaning of Sections 414(b), (c) or (m) of the Code) of such Teams), then any obligation to maintain and/or make contributions to the Plan pursuant to this Agreement or pursuant to any prior collective bargaining agreement shall terminate; provided, however, that any such termination shall not impair the legally binding effect of any other provision of this Agreement or the legally binding effect (if any) of any other provision of any prior collective bargaining agreement, nor shall it create any right (x) to unilaterally implement during the term of this Agreement any terms concerning the provision of pension benefits to the players, (y) to lockout, or (z) to strike. In the event of such termination, the NBA Teams shall provide alternative benefits to the players, at an annual cost (as determined on an after-tax basis) to NBA Teams equal to the annual cost that such Teams would have incurred under the Plan commencing on the date of termination. The NBA and the Players Association shall agree upon the type(s) of alternative benefits to be provided.

(3) Players employed by Toronto and Vancouver ("Canadian Players") or by an NBA Team located in any other country other than the United States shall receive pension benefits of comparable value. Canadian Players shall receive such benefits by means of the Plan and separate pension plans established and maintained by Toronto and Vancouver ("Separate Plans"); provided, however, that (i) if the provision of pension benefits under the Plan to the Canadian Players would, at any time, result in the Plan being subject to Canadian Provincial Pension Legislation and/or Canadian Federal Tax Laws (to the extent that the application of such tax laws would result in adverse tax consequences to the Plan, the NBA Teams and/or the Canadian Players), and/or (ii) if the Separate Plans would not, upon their establishment or at any future time, either satisfy U.S. tax qualification requirements or be able to be registered under Canadian Provincial Pension Legislation and/or Canadian Federal

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Tax Laws, then any obligation to establish, maintain and/or make contributions to both the Plan with respect to Canadian Players and the Separate Plans pursuant to this Agreement or pursuant to any prior collective bargaining agreement shall terminate. In the event of such termination, Toronto and Vancouver shall provide alternative benefits to the Canadian Players at an annual cost (as determined on an after-tax basis) to Toronto and Vancouver equal to the annual cost that Toronto and Vancouver would have incurred under the Plan and the Separate Plans commencing on the date of termination. The NBA and the Players Association shall agree upon the type(s) of alternative benefits to be provided.



NBA
COLLECTIVE BARGAINING
AGREEMENT

July 2005

ARTICLE IV

BENEFITS

Section 1. Player Pension Benefits.

Except as set forth below in this Section 1, effective with the date of this Agreement, and continuing for the duration thereof, the NBA shall provide the following pension benefits to NBA players and former NBA players:

(a) Subject to the provisions of Section 1(d) below, the NBA shall provide pension benefits in accordance with the terms of the National Basketball Association Players' Pension Plan, as restated effective February 2, 1997, and as amended by the First, Second, Third and Fourth Amendments thereto (the "Pension Plan"). In accordance with the September 1995 and January 1999 Collective Bargaining Agreements between the parties, the "Normal Retirement Pension" (as defined under the Pension Plan) payable to a player under the Pension Plan is the maximum monthly amount permitted by the applicable benefit limitations under the Internal Revenue Code of 1986, as amended (the "Code"), as in effect immediately prior to the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), to be paid to the player at his "Normal Retirement Date" (as defined under the Pension Plan) under the Pension Plan, based upon a Social Security Retirement Age of 65 (the "Maximum Monthly Benefit"). The Maximum Monthly Benefit shall be increased only as specifically provided for in this Section 1(a).

Effective only for the duration of this Agreement, the Maximum Monthly Benefit shall, except as otherwise provided herein, be adjusted for increases in the cost of living in the manner provided for under Section 415(d)(2) of the Code. In no event, however, shall the adjusted

Maximum Monthly Benefit for a Plan Year exceed an amount that would require the actuarially-determined scheduled contributions (to be made to the Pension Plan to fund for such adjusted benefit for the Plan Year) to exceed, by more than five (5) percent, the actuarially-determined scheduled contributions that would be made to the Pension Plan for that Plan Year using the Maximum Monthly Benefit in effect for the immediately preceding Plan Year. The parties agree that the determinations described in the preceding sentence, including any actuarial assumptions and projections related thereto, shall be made by the actuaries of the Pension Plan and that any such determinations shall be binding and conclusive. Any increase in the Maximum Monthly Benefit hereunder shall be effective as of the first day of the month following the beginning of the Plan Year of the Pension Plan to which the increase relates (the "Benefit Increase Commencement Date"), shall apply only with respect to any benefit payment or payments to be made on or after the Benefit Increase Commencement Date, and shall not require the recalculation of any benefit payment or payments made prior to the Benefit Increase Commencement Date.

Notwithstanding the foregoing:

(1) Except as may otherwise be required under the Code, the benefit payable to any player or beneficiary under the Pension Plan shall in no event exceed the limitations on benefits under the Code, as in effect immediately prior to the enactment of EGTRRA.

(2) If all or any portion of the actuarially-determined scheduled contributions to be made to the Pension Plan will not be fully deductible under the Code when paid, the Maximum Monthly Benefit shall not exceed the amount which would result in all of

such contributions being fully deductible when paid. The Players Association shall be given written notice of any such determination. The parties agree that the determinations described in this subsection (a)(2), including any actuarial assumptions and projections related thereto, shall be reasonable and shall be made by the actuaries of the Pension Plan. Any such determinations shall be binding and conclusive.

(3) The "Normal Retirement Benefit" (as defined under the Pension Plan) payable to a "Pre-1965 Player" (as defined under the Pension Plan) under the Pension Plan shall continue to be \$200 per month for each "Year of Pre-1965 Credited Service" (as defined under the Pension Plan). Any benefits that are unable to be paid to Pre-1965 Players under the Pension Plan because of the benefit limitations imposed by Section 415 of the Code shall be paid to such Pre-1965 Players pursuant to the National Basketball Association Excess Benefit Plan for Pre-1965 Players.

(4) The benefit payable to any player or beneficiary under the Pension Plan for a Plan Year shall in no event exceed the maximum benefit that may be paid to such player or beneficiary under the applicable benefit limitations under the Code, as in effect for that Plan Year.

(5) The Maximum Monthly Benefit for a Plan Year shall in no event exceed the maximum monthly amount permitted by the applicable benefit limitations under the Code, as in effect for that Plan Year.

NBA

COLLECTIVE BARGAINING

AGREEMENT

December 2011

ARTICLE IV**BENEFITS****Section 1. Player Pension Benefits.**

Effective with the date of this Agreement, and continuing until the expiration or termination of this Agreement, the National Basketball Association Players' Pension Plan, as restated effective February 2, 2009, and as amended by the First, Second, Third and Fourth Amendments thereto (the "Pension Plan"), shall be continued and maintained in full force and effect. All capitalized terms used in this Section 1 not otherwise defined in this Agreement shall have the meanings set forth in the Pension Plan.

Subject to approval by the Internal Revenue Services (the "IRS") and to the extent permitted by applicable law, and except as provided in Section 1(f) below, the NBA shall provide the following pension benefits to NBA players and former NBA players:

(a) **Current Benefit.** As of the date of this Agreement, the Normal Retirement Pension payable under Section 3.2 of the Pension Plan shall be \$518.92 per month for each year of Credited Service payable in accordance with the provisions of the Pension Plan.

(b) **Benefit Increases.** Effective for the Plan Year commencing February 2, 2012 and for each subsequent Plan Year beginning during the term of this Agreement, the Normal Retirement Pension payable under Section 3.2 of the Pension Plan shall be adjusted (the monthly benefit amount following any such adjustment, the "New Monthly Benefit"), subject to Section 1(c) below, such that the New Monthly Benefit is equal to the amount that results in the actuarially-determined annual contributions to be made to the Pension Plan to fund for such New Monthly Benefit for the applicable Plan Year to equal the sum of (i) the actuarially-determined annual contributions to be made to the Pension Plan to fund the "Baseline Benefit" (defined below) for such Plan Year and (ii) \$10 million; provided, however, that in no event shall the New Monthly Benefit for any Plan Year be less than the New Monthly Benefit in effect for the immediately preceding Plan Year (for purposes of the foregoing, the "New Monthly Benefit" as of the date of this Agreement is

\$518.92). The "Baseline Benefit" means the Normal Retirement Pension amount in effect under the Pension Plan prior to the additions of the benefit increase amounts set forth in Sections 3.2(z) and 3.2A of the Pension Plan, as adjusted for future increases in the cost-of-living in the manner provided for in Section 415(d)(2) of the Internal Revenue Code of 1986, as amended (the "Code").

(1) Any increase in the New Monthly Benefit after the date of this Agreement shall be effective as of the first day of the month following the beginning of the Plan Year of the Pension Plan to which the increase relates (the "New Benefit Increase Commencement Date"), shall apply only to any benefit payment or payments to be made on or after the applicable New Benefit Increase Commencement Date, and shall not require the recalculation of any benefit payment or payments made prior to the applicable New Benefit Increase Commencement Date.

(2) The amount of any New Monthly Benefit which exceeds the Baseline Benefit (other than any death benefits payable to a beneficiary pursuant to Article VII of the Pension Plan) shall not be payable in any of the following forms of payment provided for under the Pension Plan: (i) a lump sum payment; (ii) monthly installments of a fixed amount; (iii) monthly installments for a fixed period; and (iv) monthly installments which are temporarily increased based upon the player's estimated social security benefit.

(c) **Limitations on Benefits.** Notwithstanding anything contained herein to the contrary:

(1) Neither (a) the benefits accrued or payable to any player or player's beneficiary under the Pension Plan for a Plan Year nor (b) the New Monthly Benefit for a Plan Year shall exceed the maximum benefit amount permitted under the Code (and the regulations issued thereunder) as in effect for that Plan Year (as adjusted in accordance with the actuarial factors specified in the Pension Plan and as in effect on the date that the benefit accrues or commences (or is paid) or for the Plan Year for which the New Monthly Benefit is determined), as such limits may be adjusted for future increases in the cost-of-living in the manner provided under Section 415(d)(2) of the Code.

50 Article IV

(2) Neither (a) the benefits accrued or payable to any player or player's beneficiary under the Pension Plan for a Plan Year nor (b) the New Monthly Benefit for a Plan Year shall exceed the maximum benefit amount permitted under the Code (and the regulations issued thereunder), as in effect for the February 2, 2010 - February 1, 2011 Plan Year, as such limits may be adjusted for future increases in the cost-of-living in the manner prescribed by Section 415(d)(2) of the Code.

(3) If all or any portion of the actuarially-determined annual contributions to be made to the Pension Plan would not be fully deductible under the Code when paid to the Pension Plan, the New Monthly Benefit shall not exceed the amount which would result in all of such contributions being fully deductible when paid. The Players Association shall be given written notice of any such determination.

(d) **Pre-1965 Players.** Pre-1965 Players shall continue to be entitled to receive the Normal Retirement Benefit in the amount and on the terms and conditions set forth in Article XX of the Pension Plan. Any benefits that are unable to be paid to Pre-1965 Players under the Pension Plan because of the benefit limitations imposed by Section 415 of the Code shall be paid to such Pre-1965 Players pursuant to the National Basketball Association Excess Benefit Plan for Pre-1965 Players (the "Pre-1965 Players Excess Benefit Plan").

(e) **Pre-1965 Retirees.** Pre-1965 Retirees shall continue to be entitled to receive the Retirement Benefit in the amount and on the terms and conditions set forth in Article XXA of the Pension Plan.

(f) **Players Employed by Toronto.**

(1) Players employed by Maple Leaf Sports & Entertainment Ltd. (or any successor thereto) ("Toronto") or by an NBA Team located in any other country other than the United States shall receive pension benefits of comparable value. Players employed by Toronto ("Toronto Players") shall continue to receive such benefits by means of the Pension Plan and a separate pension plan maintained by Toronto (the "Toronto Plan"); provided, however, that a player shall not be eligible to participate (or continue to

participate) in the Pension Plan for any period of time during which the player is both a resident of Canada and a Toronto Player (a "Canadian Resident"). Toronto shall provide an alternative arrangement to the Canadian Resident, subject to Section 1(f)(2) below.

If the participation of Toronto Players in the Pension Plan would, at any time, result in the Pension Plan becoming subject to Canadian Provincial Pension Legislation and/or Canadian Federal Tax Laws (to the extent that the application of such tax laws would result in adverse tax consequences to the Pension Plan, the NBA Teams and/or the Toronto Players) or result in the Toronto Plan's failure, at any future time, to either be qualified under the Code or registered under Canadian Provincial Pension Legislation and/or Canadian Federal Tax Laws, then any obligation to establish, maintain and/or make contributions to the Pension Plan in respect of Toronto Players and the Toronto Plan pursuant to this Agreement or pursuant to any prior collective bargaining agreement shall terminate; provided, however, that any such termination shall not impair the legally binding effect of any other provision of this Agreement or the legally binding effect (if any) of any other provision of any prior collective bargaining agreement, nor shall it create any right (i) to unilaterally implement during the term of this Agreement any terms concerning the provision of pension benefits to the players, (ii) to lockout, or (iii) to strike. In the event of such termination, Toronto shall provide an alternative arrangement to the Toronto Players, subject to Section 1(f)(2) below.

(2) The NBA and the Players Association shall agree upon the type(s) of alternative arrangement to be provided pursuant to this Section 1(f) to either a Toronto Player or Canadian Resident. Such alternative arrangement shall be at an annual cost (as determined on an after-tax basis) to Toronto equal to the annual accrual cost that Toronto would have incurred under the Pension Plan and the Toronto Plan.

(g) **Pension Plan Tax-Qualification Status.** Notwithstanding anything else in this Agreement: (1) if any change or amendment made to the Code, the Employee Retirement Income Security Act of 1974, as

amended ("ERISA"), or to any regulations (whether final, temporary or proposed) or rulings issued thereunder; (2) if any interpretation, application or enforcement (or any proposed interpretation, application or enforcement), by a court of competent jurisdiction in the United States or by the IRS, of the Code, ERISA, or any regulations or rulings issued thereunder; (3) if any regulations (whether final, temporary or proposed) or rulings issued by the IRS under the Code or ERISA; or (4) if any provisions of this Agreement, including any of the amendments or benefit increases to be provided under the Pension Plan pursuant to Section 1, would result in the Pension Plan no longer being a tax-qualified plan under Section 401(a) of the Code, or would require NBA Teams to incur costs over and above any costs required to be incurred to implement the provisions of this Agreement or any prior collective bargaining agreement in order for the Pension Plan to maintain its tax-qualified status under Section 401(a) of the Code (provided, however, that such additional costs are incurred solely in connection with the provision of pension benefits to their non-player employees or to non-player employees of affiliates (within the meaning of Sections 414(b), (c) or (m) of the Code) of such Teams), then any obligation to maintain and/or make contributions to the Pension Plan pursuant to this Agreement or pursuant to any prior collective bargaining agreement shall terminate; provided, however, that any such termination shall not impair the legally binding effect of any other provision of this Agreement or the legally binding effect (if any) of any other provision of any prior collective bargaining agreement, nor shall it create any right (i) to unilaterally implement during the term of this Agreement any terms concerning the provision of pension benefits to the players, (ii) to lockout, or (iii) to strike. In the event of such termination, the NBA Teams shall provide an alternative arrangement to the players. The NBA and the Players Association shall agree upon the type(s) of alternative arrangement to be provided. The costs of the alternative arrangement to be provided shall be at an annual cost (as determined on an after-tax basis) to the NBA Teams equal to the annual accrual cost that such Teams would have incurred under the Pension Plan to fund the benefit described in this Section 1, commencing on the date of termination.

(h) Amounts to be Applied Against New Benefit Amount. The following amounts shall be applied against the New Benefit Amount provided for by Section 8 below:

(1) The greater of (A) Fifty (50) percent of the increase in the amount of the actuarially determined annual contributions to be made for any Plan Year to the Pension Plan to fund the difference between (1) the New Monthly Benefit for such Plan Year (\$518.92 for the Plan Year commencing February 2, 2011) over (2) the Baseline Benefit (the "New Benefit Cost Increase") and (B) the New Benefit Cost Increase minus \$5 million;

(2) Fifty (50) percent of the increase in the amount of the actuarially-determined annual contributions to be made for a Plan Year to the Pension Plan to fund the Normal Retirement Benefits for Pre-1965 Players described in Section 20.3(a)(v) of the Pension Plan over the amount of the actuarially determined annual contributions that would be required to be made for that Plan Year to the Pension Plan in order to fund the Normal Retirement Benefits for Pre-1965 Players described in Section 20.3(a)(iv) of the Pension Plan had Section 20.3(a)(v) of the Pension Plan never been in effect (the "Pre-1965 Player Cost Increase");

(3) Fifty (50) percent of the costs incurred for a Plan Year in order to provide the excess portion of the benefit amount described in Pension Plan Section 20.3(a)(v) under the Pre-1965 Players Excess Benefit Plan over the costs that would be incurred for that Plan Year in order to provide for the excess portion of the benefit amount described in Pension Plan Section 20.3(a)(iv) under the Pre-1965 Players Excess Benefit Plan had Section 20.3(a)(v) of the Pension Plan never been in effect (the "Pre-1965 Player Excess Benefit Cost Increase");

(4) Fifty (50) percent of the amount of the actuarially-determined annual contributions to be made for a Plan Year to the Pension Plan to fund the Retirement Benefits for Pre-1965 Retirees described in Section 20A.3(a) of the Pension Plan (the "Pre-1965 Retiree Cost Increase"); and

(5) One hundred (100) percent of the costs, including the cost of professional fees (*e.g.*, attorneys, accountants, actuaries and consultants) ("Professional Fees"), incurred in connection with the determination and implementation of any alternative benefits pursuant to Sections 1(f) and/or 1(g).

54 Article IV

For purposes of this Section 1(h), in determining the New Benefit Cost Increase, the Pre-1965 Player Cost Increase, the Pre-1965 Player Excess Benefit Cost Increase, and the Pre-1965 Retiree Cost Increase for a Plan Year, the annual contributions relating to such cost increases (and in the case of the Pre-1965 Player Excess Benefit Cost Increase, the costs incurred relating to such cost increase) shall be determined based on the law in effect for that Plan Year, taking into account (i) any new law or change or amendment made to ERISA, the Code and/or other applicable law, or to any regulations (whether final, temporary or proposed), rulings or formal guidance issued thereunder and (ii) any regulations (whether final, temporary or proposed), rulings or formal guidance issued under ERISA or the Code.

(i) **Actuarial Determinations.**

(1) The parties agree that, for each Plan Year, the determination of the New Monthly Benefit under Section 1(b), the determinations described in Section 1(c)(3), and the determination of the New Benefit Cost Increase, the Pre-1965 Player Cost Increase, the Pre-1965 Player Excess Benefit Cost Increase, and the Pre-1965 Retiree Cost Increase under Section 1(h) shall each be made by the actuaries of the Pension Plan, in all instances using reasonable actuarial assumptions, factors, methods and projections. Any such determinations shall be binding and conclusive.

(2) All relevant actuarial assumptions, factors, methods and projections used in making the determinations described in Section 1(b) shall be the same for both determining the actuarially-determined annual contributions that would have been made to the Plan for a Plan Year in order to fund for the Baseline Benefit and determining the actuarially-determined annual contributions to be made to the Pension Plan for that Plan Year in order to fund for the New Monthly Benefit.

Section 2. Player 401(k) Benefits.

Except as set forth below in this Section 2, and subject to approval by the IRS, effective with the date of this Agreement, and continuing until the

COLLECTIVE BARGAINING AGREEMENT

JANUARY 19, 2017

TABLE OF CONTENTS

ARTICLE I DEFINITIONS 1

 Section 1. Definitions. 1

ARTICLE II UNIFORM PLAYER CONTRACT 15

 Section 1. Required Form. 15

 Section 2. Limitation on Amendments. 15

 Section 3. Allowable Amendments..... 15

 Section 4. Compensation Protection..... 22

 Section 5. Conformity..... 32

 Section 6. Minimum Player Salary. 32

 Section 7. Maximum Annual Salary..... 35

 Section 8. Promotional Activities..... 43

 Section 9. 10-Day Contracts. 47

 Section 10. Rest-of-Season Contracts. 48

 Section 11. Two-Way Contracts..... 49

 Section 12. Bonuses. 56

 Section 13. General. 58

 Section 14. Void Contracts. 62

 Section 15. Moratorium Period. 62

ii Table of Contents

ARTICLE III PLAYER EXPENSES..... 64

 Section 1. Moving Expenses..... 64

 Section 2. Meal Expense Allowance..... 65

ARTICLE IV BENEFITS 67

 Section 1. Player Pension Benefits..... 67

 Section 2. Player 401(k) Benefits..... 77

 Section 3. Player Health and Welfare Benefits..... 82

 Section 4. The Post-Career Income Plan 92

 Section 5. Labor-Management Cooperation and
 Education Trust 99

 Section 6. Additional Player Benefits 102

 Section 7. Canadian Residents..... 105

 Section 8. New Benefits Funding..... 107

 Section 9. Projected Benefits..... 110

 Section 10. Benefit Exclusion Amount..... 111

ARTICLE V COMPENSATION AND EXPENSES IN
 CONNECTION WITH MILITARY DUTY.... 115

 Section 1. Salary..... 115

 Section 2. Travel Expenses..... 115

ARTICLE VI PLAYER CONDUCT 116

 Section 1. General..... 116

 Section 2. Practices..... 116

ARTICLE IV**BENEFITS****Section 1. Player Pension Benefits.**

Subject to approval by the Internal Revenue Service (the "IRS") and to the extent permitted by applicable law, the NBA shall provide the following pension benefits to NBA players and former NBA players in accordance with and subject to the terms and conditions of the National Basketball Association Players' Pension Plan, as restated effective February 2, 2014, and as amended from time to time and as to be modified as set forth herein (the "Pension Plan"). (All capitalized terms used in this Section 1 not otherwise defined in this Agreement shall have the meanings set forth in the Pension Plan.)

(a) Benefits.

(1) **Current Benefit.** As of the effective date of this Agreement, the monthly amount per Year of Credited Service payable as a Normal Retirement Pension (the "Monthly Benefit") is \$572.13.

(2) **Benefit Increases.** Effective for the Plan Year commencing February 2, 2018, and for each subsequent Plan Year during the term of this Agreement:

(i) The Monthly Benefit shall be adjusted (the Monthly Benefit following any such adjustment, the "New Monthly Benefit") such that, subject to Section 1(a)(4) below, the Normal Retirement Pension shall equal the maximum benefit amount permitted under the Internal Revenue Code of 1986, as amended (the "Code") (and the regulations issued thereunder), as in effect as of the effective date of this Agreement, as such maximum benefit amount may be adjusted for future increases in the cost-of-living in the manner prescribed by Section 415(d)(2) of the Code. Effective for the Plan Year commencing February 2, 2018, and for each subsequent Plan Year during the term of this Agreement, the amount of the New Monthly Benefit shall be determined using the modified actuarial reduction factors to

be specified in the Pension Plan by amendment effective for the Plan Year beginning February 2, 2018.

(ii) Any increase in the Normal Retirement Pension payable on or after the date of this Agreement: (A) shall apply only to those players and beneficiaries (x) who have not yet received or begun to receive a benefit under the Pension Plan as of the first day of the month following the beginning of the Plan Year to which the increase relates (the "New Benefit Increase Commencement Date") or (y) who are receiving monthly benefits under the Pension Plan as of the New Benefit Increase Commencement Date; (B) shall be effective as of the New Benefit Increase Commencement Date; (C) shall apply only to any benefit payment(s) to be made on or after the applicable New Benefit Increase Commencement Date; and (D) shall not require the recalculation of any benefit payment(s) made prior to the applicable New Benefit Increase Commencement Date.

(iii) The Pension Plan shall provide that the amount of the Normal Retirement Pension that exceeds the Fixed Part A Benefit (defined below) (other than any death benefits payable to a beneficiary pursuant to Article VII of the Pension Plan) shall not be payable in the form of a Lump Sum Option. The "Fixed Part A Benefit" shall mean that portion of the Normal Retirement Pension equal to the amount described in Section 1.21 of the Pension Plan as of the effective date of this Agreement; provided, however, that no adjustments for increases in the cost-of-living that may go into effect after the effective date of this Agreement shall be taken into account for purposes of calculating the Fixed Part A Benefit.

(iv) The Pension Plan shall be amended to provide that a player shall not be considered to be on the Roster for a Regular Season solely because he was under a 10-Day Contract or Two-Way Contract as of February 2nd of such Regular Season.

(3) **Pre-1965 Players and Pre-1965 Retirees.** Effective for the Plan Year commencing February 2, 2018, and for each subsequent Plan Year during the term of this Agreement:

(i) The Pension Plan shall be amended to provide that the Normal Retirement Benefit payable to a Pre-1965 Player and the "A portion" of the Retirement Benefit payable to a Pre-1965 Retiree shall be \$400 per month for each Year of Pre-1965 Credited Service or Year of Eligible Pre-1965 Retiree Service, respectively (the "2017-18 Pre-1965 Benefit Increase").

(ii) Any pension benefits that are unable to be paid to Pre-1965 Players and Pre-1965 Retirees because of the benefit limitations imposed by Section 415 of the Code shall be paid to such Pre-1965 Players and Pre-1965 Retirees pursuant to the National Basketball Association Excess Benefit Plan for Pre-1965 Players (the "Pre-1965 Players Excess Benefit Plan").

(iii) The increase provided by this Section 1(a)(3) shall: (A) apply only to those Pre-1965 Players, Pre-1965 Retirees or their beneficiaries who are receiving monthly pension benefits as of March 1, 2018; (B) apply only with respect to any pension benefit payment(s) made on or after March 1, 2018; and (C) not require the recalculation of any pension benefit payment(s) made prior to March 1, 2018.

(4) **Limitations on Benefits.** Notwithstanding anything contained herein to the contrary:

(i) Neither: (A) the pension benefits accrued or payable to any player or beneficiary for a Plan Year nor (B) the New Monthly Benefit for a Plan Year shall exceed the maximum benefit amount permitted under the Code (and the regulations issued thereunder) as in effect for that Plan Year (as adjusted in accordance with the actuarial factors specified in the Pension Plan and as in effect on the date that the benefit accrues or commences (or is paid) or for the Plan Year for which the New Monthly Benefit is determined), as such

70 Article IV

maximum benefit amount may be adjusted for future increases in the cost-of-living in the manner provided under Section 415(d)(2) of the Code.

(ii) Neither the pension benefits accrued nor payable to any player or beneficiary for a Plan Year shall exceed the maximum benefit amount permitted under the Code (and the regulations issued thereunder), as in effect as of the effective date of this Agreement, as adjusted in accordance with the actuarial factors specified in the Pension Plan, and as may be adjusted for future increases in the cost-of-living in the manner prescribed by Section 415(d)(2) of the Code.

(iii) If all or any portion of the actuarially-determined annual contributions to be made to the Pension Plan would not be fully deductible under the Code when paid to the Pension Plan, the New Monthly Benefit shall not exceed the amount which would result in all of such contributions being fully-deductible when paid. In the event that any such contribution or portion thereof is not fully deductible when paid, the NBA and the Players Association agree to bargain in good faith with respect to an alternative arrangement to be provided by the NBA Teams to the players. The costs of any such alternative arrangement shall be at an annual cost (as determined on an after-tax basis) to the NBA Teams substantially equal to but no greater than the annual accrual cost that such Teams would have incurred under the Pension Plan to fund the amount by which the New Monthly Benefit is reduced pursuant to this Section 1(a)(4)(iii). If despite good faith negotiations, the NBA and the Players Association fail to agree with respect to an alternative arrangement as described above, such failure to agree shall not create any right: (A) to unilaterally implement during the term of this Agreement any terms concerning the provision of pension benefits to the players; (B) to lockout; or (C) to strike.

(b) **Administration.** Effective as of the effective date of this Agreement, the NBA and the Players Association shall cause to be amended the Pension Plan and the Agreement of Trust, by and among the NBA Teams and certain individual Trustees, dated January 17, 1997 (the

“Pension Trust Agreement”) to provide that the Pension Plan shall be maintained and operated as described in this Section 1(b).

(1) Subject to Section 1(b)(5), which is expressly designed to survive the expiration or termination of this Agreement, the Pension Plan shall be jointly operated and administered by the NBA and Players Association in accordance with Section 302(c)(5) of the Labor Management Relations Act of 1947, as amended, and the provisions of the Pension Trust Agreement and the Pension Plan. The Pension Trust Agreement shall provide for a six (6)-member Board of Trustees (the “Pension Plan Trustees”), three (3) of whom are to be appointed by the NBA and three (3) of whom are to be appointed by the Players Association; provided, however, that the daily operations of the Pension Plan shall be delegated to one or more independent third-party administrators, as selected by the Pension Plan Trustees in their sole discretion. In the exercise of its responsibilities, each such independent third-party administrator shall be required to comply with ERISA and all other applicable laws and to act in a manner that is consistent with the provisions of the Pension Trust Agreement and the Pension Plan.

(2) It is intended by the NBA and the Players Association that: (i) the Pension Plan shall continue to constitute a collectively-bargained multiemployer defined benefit pension plan that is tax-qualified under Section 401(a) of the Code; and (ii) the Pension Plan’s corresponding Trust is exempt from taxation under the provisions of Section 501(a) of the Code.

(3) Subject to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), including, without limitation, ERISA’s requirements applicable to pension plan fiduciaries, or other applicable law, the Pension Plan Trustees will give due consideration to past practice with regard to administrative determinations and interpretations.

(4) An arbitration provision will be added to the Pension Trust Agreement substantially in the form as follows:

In the event that the Trustees cannot decide any question of the administration (within the meaning

of Section 302(c)(5) of the Labor Management Relations Act of 1947, as amended) of the Pension Plan or Trust because of a tie vote or lack of a quorum at two (2) successive meetings of the Trustees, then the Trustees shall, upon written application of the NBA Trustees or the Players Association Trustees, submit such dispute to an impartial umpire in accordance with the American Arbitration Association's Impartial Umpire Rules for Arbitration of Impasses Between Trustees of Joint Employee Benefit Trust Funds. The decision of said umpire shall be final, binding and conclusive upon the Trustees and all persons concerned. To the extent permitted by applicable laws, the fee of the impartial umpire and the American Arbitration Association, together with such other costs and expenses as may be authorized by the Trustees, shall be proper charges against the Trust, which the Trustees are authorized to pay.

The impartial umpire in his or her decision shall be bound by the provisions of the Pension Plan, the Pension Trust Agreement and the charters, rules, policies and procedures put in place by past or current Pension Plan fiduciaries (the "Governing Documents"). The impartial umpire shall have no power or authority to add to or subtract from the Governing Documents or to change, modify or amend the provisions of the Governing Documents or the Collective Bargaining Agreement between the NBA and the Players Association.

Notwithstanding the foregoing, neither the Trustees appointed by the NBA nor the Trustees appointed by the Players Association may compel arbitration regarding a claim for benefits that would be time-barred under the Pension Plan or applicable law.

(5) Notwithstanding anything in this Agreement to the contrary, immediately upon expiration or termination of this Agreement: (i) the Players Association shall forfeit its right to appoint Pension Plan Trustees; (ii) the appointment and Trusteeship of the then-current Pension Plan Trustees who had been appointed by the Players Association shall automatically end; and (iii) sponsorship, administration and operation of the Pension Plan shall automatically revert back to the NBA. The Pension Plan shall again become jointly operated and administered by the NBA and Players Association immediately upon their entering into a new collective bargaining agreement, and the provisions of this Section 1(b) shall be incorporated into such new agreement. Furthermore, in the event that the sponsorship and administration has reverted back to the NBA under this paragraph, and subject to ERISA, including, without limitation, ERISA's requirements applicable to pension plan fiduciaries, the Trustees who are appointed by the NBA will continue to give due consideration to past practice, including past practice established during the period of joint administration by the NBA and Players Association, with regard to administrative determinations and interpretations.

(c) **Contributions/Funding.** The NBA and Players Association acknowledge and agree that the Teams shall continue at all times to contribute to the Plan at least the amount necessary to meet the Pension Plan's statutory minimum funding requirements under Section 412, Section 431 and, if applicable, Section 432 of the Code, or any other applicable law (the "Minimum Funding Standards") for such Plan Year, as determined by the actuaries of the Pension Plan. For any period during the term of this Agreement during which a new "funding improvement plan" (a "FIP") is required to be adopted by the Pension Plan under the Minimum Funding Standards, the funding benchmark for such FIP shall equal the funding benchmark required by the Minimum Funding Standards. The Teams may, in the sole discretion of the NBA, contribute to the Pension Plan more than the amount necessary to meet the Minimum Funding Standards; provided, however, that any such additional contribution amount shall not be greater than the contribution amount determined by the actuaries of the Pension Plan in accordance with the Pension Plan's historical scheduled contribution methodology. All contributions shall be conditioned on their being fully deductible by the Teams when paid.

(d) Players Employed by Toronto.

(1) Players employed by Maple Leaf Sports & Entertainment Partnership (or any successor thereto) ("Toronto") or by an NBA Team located in any country other than the United States shall receive pension benefits of comparable value. Except as otherwise provided in Section 1(d)(2), players employed by Toronto ("Toronto Players") shall continue to receive such benefits by means of the Pension Plan and a separate pension plan maintained by Toronto (the "Toronto Plan"); provided, however, that a player shall not be eligible to participate (or continue to participate) in the Pension Plan for any period of time during which the player is both a resident of Canada for income tax purposes and a Toronto Player (a "Canadian Resident") but shall instead be eligible to receive a cash payment as described in Section 7 below.

(2) If the participation of Toronto Players in the Pension Plan would, at any time, result in the Pension Plan becoming subject to Canadian provincial pension legislation and/or Canadian federal income tax laws (to the extent that the application of such laws would result in adverse tax consequences to the Pension Plan, the NBA Teams or the Toronto Players) or result in the Toronto Plan's failure, at any future time, to either be qualified under the Code or registered under Canadian provincial pension legislation or Canadian federal tax laws, then any obligation to establish, maintain or make contributions to the Pension Plan in respect of Toronto Players and the Toronto Plan pursuant to this Agreement or pursuant to any prior collective bargaining agreement shall terminate; provided, however, that any such termination shall not impair the legally binding effect of any other provision of this Agreement or the legally binding effect (if any) of any other provision of any prior collective bargaining agreement, nor shall it create any right: (i) to unilaterally implement during the term of this Agreement any terms concerning the provision of pension benefits to the players; (ii) to lockout; or (iii) to strike. In the event of such termination, the NBA and Players Association agree to bargain in good faith with respect to an alternative arrangement to be provided by Toronto to the Toronto Players. Any such alternative arrangement shall be at an annual cost (as determined on an after-tax basis) to Toronto substantially equal to but no

greater than the annual accrual cost that Toronto would have incurred under the Pension Plan and the Toronto Plan. If despite good faith negotiations, the NBA and the Players Association fail to agree with respect to an alternative arrangement as described above, such failure to agree shall not create any right: (A) to unilaterally implement during the term of this Agreement any terms concerning the provision of pension benefits to the players; (B) to lockout; or (C) to strike.

(e) **Pension Plan Tax-Qualification Status.** Notwithstanding anything else in this Agreement: (1) if any change or amendment made to the Code, ERISA, or other applicable law, or to any regulations (whether final, temporary or proposed) or rulings issued thereunder; (2) if any interpretation, application or enforcement (or any proposed interpretation, application or enforcement), by a court of competent jurisdiction in the United States or by the IRS, of the Code, ERISA, or other applicable law, or any regulations or rulings issued thereunder; (3) if any regulations (whether final, temporary or proposed) or rulings issued by the IRS under the Code or ERISA; or (4) if any provisions of this Agreement, including, without limitation, any of the amendments or benefit increases to be provided under the Pension Plan pursuant to this Section 1, would result in the Pension Plan no longer being a tax-qualified plan under Section 401(a) of the Code, or would require NBA Teams to incur costs over and above any costs required to be incurred to implement the provisions of this Agreement or any prior collective bargaining agreement in order for the Pension Plan to maintain its tax-qualified status under Section 401(a) of the Code (but only to the extent that such additional costs are incurred in connection with the provision of pension benefits to their non-player employees or to non-player employees of affiliates (within the meaning of Sections 414(b), (c) or (m) of the Code) of such Teams), then any obligation to continue to provide for the accrual of additional benefits under the Pension Plan pursuant to this Agreement or pursuant to any prior collective bargaining agreement shall terminate; provided, however, that any such termination shall not impair the legally binding effect of any other provision of this Agreement or the legally binding effect (if any) of any other provision of any prior collective bargaining agreement, nor shall it create any right: (i) to unilaterally implement during the term of this Agreement any terms concerning the provision of pension benefits to the players; (ii) to lockout; or (iii) to strike. In the event of such termination, the NBA and Players Association agree to bargain in good faith with

76 Article IV

respect to an alternative arrangement to be provided by the NBA Teams to the players. The costs of any such alternative arrangement shall be at an annual cost (as determined on an after-tax basis) to the NBA Teams substantially equal to but no greater than the annual accrual cost that such Teams would have incurred under the Pension Plan to fund the benefit described in this Section 1, commencing on the date of termination. If despite good faith negotiations, the NBA and the Players Association fail to agree with respect to an alternative arrangement as described above, such failure to agree shall not create any right: (A) to unilaterally implement during the term of this Agreement any terms concerning the provision of pension benefits to the players; (B) to lockout; or (C) to strike.

(f) **Amounts to be Applied Against New Benefit Amount.** The following amounts shall be applied against the New Benefit Amount provided for by Section 8 below:

- (1) \$4 million to be used in respect of the cost of the benefit increases described in Section 1(a)(2);
- (2) Fifty percent (50%) of the increase in the amount of the actuarially-determined annual contributions to be made for a Plan Year to the Pension Plan to fund the Normal Retirement Benefits for Pre-1965 Players described in Section 20.3(a)(v) of the Pension Plan over the amount of the actuarially determined annual contributions that would be required to be made for that Plan Year to the Pension Plan in order to fund the Normal Retirement Benefits for Pre-1965 Players described in Section 20.3(a)(iv) of the Pension Plan had Section 20.3(a)(v) of the Pension Plan never been in effect (the "Pre-1965 Player Cost Increase");
- (3) Fifty percent (50%) of the costs incurred for a Plan Year in order to provide the excess portion of the benefit amount described in Pension Plan Section 20.3(a)(v) under the Pre-1965 Players Excess Benefit Plan over the costs that would be incurred for that Plan Year in order to provide for the excess portion of the benefit amount described in Pension Plan Section 20.3(a)(iv) under the Pre-1965 Players Excess Benefit Plan had Section 20.3(a)(v) of the Pension Plan never been in effect (the "Pre-1965 Player Excess Benefit Cost Increase");

(4) Fifty percent (50%) of the amount of the actuarially-determined annual contributions to be made for a Plan Year to the Pension Plan to fund the Retirement Benefits for Pre-1965 Retirees described in Section 21.3(a) of the Pension Plan (the "Pre-1965 Retiree Cost Increase"); and

(5) One hundred percent (100%) of the costs, including the cost of professional fees (e.g., attorneys, accountants, actuaries and consultants) ("Professional Fees"), incurred in connection with the determination and implementation of any alternative benefits pursuant to Sections 1(d) and/or 1(e).

For purposes of this Section 1(f), in determining the Pre-1965 Player Cost Increase, the Pre-1965 Player Excess Benefit Cost Increase, and the Pre-1965 Retiree Cost Increase for a Plan Year, the annual contributions relating to such cost increases (and in the case of the Pre-1965 Player Excess Benefit Cost Increase, the costs incurred relating to such cost increase) shall be determined based on the applicable laws in effect for that Plan Year, taking into account (i) any new law or change or amendment made to ERISA, the Code and/or other applicable law, or to any regulations (whether final, temporary or proposed), rulings or formal guidance issued thereunder and (ii) any regulations (whether final, temporary or proposed), rulings or formal guidance issued under ERISA, the Code or other applicable law.

(g) **Actuarial Determinations.** All actuarial determinations that need to be made in connection with, or under, the Pension Plan, including, without limitation, those necessary to implement this Section 1 and Sections 8 and 10 below, shall be made by the actuaries of the Pension Plan. Any such actuarial determinations shall be binding and conclusive.

Section 2. Player 401(k) Benefits.

To the extent permitted by the Code and applicable law, the NBA shall provide the following 401(k) benefits to NBA players and former NBA players in accordance with and subject to the terms and conditions of the NBA-NBPA 401(k) Savings Plan as restated effective November 1, 2014, and as amended from time to time and to be modified as set forth herein (the "401(k) Plan"); provided, however, that, the 401(k) Plan shall be amended, as of the effective date of this Agreement, to change the plan



NATIONAL BASKETBALL ASSOCIATION

OLYMPIC TOWER • 645 FIFTH AVENUE • NEW YORK, N. Y. 10022 • 212-828-7000

PENSION COMMITTEE

July 12, 1991

Mr. Zaid Abdul-Aziz
c/o Group Health Credit Union
115 15th Avenue East
Seattle, WA 98102


Dear Mr. Abdul-Aziz:

We have received your Application for Benefits under the terms of the National Basketball Association Players' Pension Plan and are pleased to inform you that you will be receiving monthly payments of \$1,851.64 from this Plan beginning on August 1, 1991. Since you elected to receive your benefit in the form of the 10 Year Certain Only, you will cease receiving a benefit from this Plan on July 31, 2001. As you know, if you should die before the end of this 10 Year Period your beneficiary will receive the remaining payments.

In addition, you are entitled to a supplemental benefit which is valued at benefit commencement date. The estimated lump sum amount as of January 1, 1991 was \$3,313.92.

Please accept our best wishes for many years of enjoyable retirement.

Sincerely,



Gary B. Bettman

C-19-000001



National Basketball Association

Direct Dial: 201 974-6744
Direct Fax: 201 974-1143

October 30, 1997

Nolan L. Wright, Esq.
Pioneer Building
600 First Avenue, Suite 314
Seattle, WA 98104

Dear Mr. Wright:

This in response to your letter regarding Zaid Abdul-Aziz's NBA Players' Pension Plan benefits.

Zaid elected to receive benefits beginning August 1, 1991. At that time, he began receiving a monthly benefit in the amount of \$1,851.64 and a lump sum payment of \$3,438.31, representing his supplemental benefit. Effective September 1, 1996, his monthly benefit was increased to \$2,479.53 pursuant to the Collective Bargaining Agreement. His benefits are scheduled to cease July 31, 2001.

If you have any questions or require additional information, please call me.

Sincerely,

A handwritten signature in cursive script that reads "Meryl Steinberg".

Meryl Steinberg
Benefits Manager

/enc.

(212) 903-8733

March 5, 1998

Mr. Zaid Abdul-Aziz
5001 College Street S.F.
Apt. F301
Lacey, WA 98503

Ms. Tayyibah F. Taylor
4021 S. 154th #C-30
Tukwila, WA 98188

Re: Preliminary Determination of Qualified
Status of Domestic Relations Order

Dear Mr. Abdul-Aziz and Ms. Taylor:

On behalf of the Pension Committee of the National Basketball Association Players' Pension Plan (the "Plan"), I am writing regarding the Domestic Relations Order (No. 96-3-08894-7 SEA) issued by the Superior Court of the State of Washington, King County, on December 24, 1997, (the "Order"), concerning the payment of a portion of the benefits of Zaid Abdul-Aziz under the Plan to Tayyibah Taylor.

The Pension Committee has made a preliminary determination ("Preliminary Determination") to treat the Order as a "qualified domestic relations order" (within the meaning of Section 414(p) of the Internal Revenue Code of 1986 and Section 206(d)(3) of the Employee Retirement Income Security Act of 1974).

The Pension Committee has also made the following determinations based upon the Order and the applicable provisions of the Plan which will be effective should this Preliminary Determination become final:

36965-1

C-21-000001

Mr. Zaid Abdul-Aziz
Ms. Tayyibah F. Taylor

- 2 -

March 5, 1998

1. Zaid Abdul-Aziz is presently receiving monthly payments of his pension benefit under the Plan over a ten-year period. As soon as administratively feasible following this Preliminary Determination becoming a final determination, Tayyibah Taylor will be entitled to receive a monthly payment in an amount equal to 50% of Zaid Abdul-Aziz's monthly benefit under the Plan (as determined prior to any income tax withholding and adjusted to reflect any subsequent increases in benefits that may be under the Plan) and the monthly payments to Zaid Abdul-Aziz will be reduced by such amount.¹ Payments under the Plan with respect to both Zaid Abdul-Aziz and Tayyibah Taylor will cease effective July 31, 2001 and neither Zaid Abdul-Aziz, Tayyibah Taylor nor their beneficiaries will be entitled to any further payments under the Plan after such date.
2. Should Tayyibah Taylor predecease Zaid Abdul-Aziz while she is still entitled to receive payment of a monthly benefit under the Plan, such benefit will be paid to any beneficiary(ies) she has named by prior written notice to the Pension Committee. If no such written notice is provided to the Pension Committee, Tayyibah Taylor's benefit will be paid to her estate.
3. Should Zaid Abdul-Aziz predecease Tayyibah Taylor prior to the expiration of the ten-year payment period (i.e., July 31, 2001),

¹ The Order provides that Tayyibah Taylor is to receive payments from the Plan commencing January, 1998. However, in a February 4, 1998 letter to Meryl Steinberg of the National Basketball Association, Tayyibah Taylor stated that in January and February, 1998, she received monthly payments from Zaid Abdul-Aziz of \$1,110.99 which reflect 50% of the monthly amount being paid to Zaid Abdul-Aziz under the Plan. Based on this information, payments to Tayyibah Taylor will be made effective as of the first month that Zaid Abdul-Aziz ceases making any further payments to Tayyibah Taylor.

Mr. Zaid Abdul-Aziz
Ms. Tayyibah F. Taylor

- 3 -

March 5, 1998

Tayyibah Taylor would remain entitled to her Plan benefit described above. However, Tayyibah Taylor will not be entitled to any additional benefits under the Plan on account of Zaid Abdul-Aziz's death.

If the Pension Committee does not receive a written request to review this Preliminary Determination within 15 days after the date of his letter, then this Preliminary Determination shall automatically become the final determination. Tayyibah Taylor would then receive a portion of Zaid Abdul-Aziz's benefits under the Plan, as described above. However, if the Pension Committee does receive a timely request for review, then both Tayyibah Taylor and Zaid Abdul-Aziz will receive a written notice of the Pension Committee's final determination within a reasonable time after the receipt of the request for review. The final determination will include the specific reasons for the Pension Committee's conclusions.

Please note that you are obliged to notify the Pension Committee of any change in mailing address or legal name.

Sincerely,

Norman J. Misher

NJM/jw

cc: Ms. Meryl Steinberg
Nolan L. Wright, Esq.
Pauline V. Smetka, Esq.

bcc: Mr. Robert Crique
Ms. June Zieve
Ms. Ruth Kaplan

(212) 903-8733

March 31, 1998.

Mr. Zaid Abdul-Aziz
5001 College Street S.F.
Apt. F301
Lacey, WA 98503

Ms. Tayyibah F. Taylor
4021 S. 154th #C-30
Tukwila, WA 98188

Re: Final Determination of Qualified
Status of Domestic Relations Order

Dear Mr. Abdul-Aziz and Ms. Taylor:

On behalf of the Pension Committee of the National Basketball Association Players' Pension Plan (the "Plan"), I am writing regarding the Domestic Relations Order (No. 96-3-08894-7 SEA) issued by the Superior Court of the State of Washington, King County, on December 24, 1997, (the "Order"), concerning the payment of a portion of the benefits of Zaid Abdul-Aziz under the Plan to Tayyibah Taylor.

On March 5, 1998, the Pension Committee made a preliminary determination ("Preliminary Determination") to treat the Order as a "qualified domestic relations order" (within the meaning of Section 414(p) of the Internal Revenue Code of 1986 and Section 206(d)(3) of the Employee Retirement Income Security Act of 1974).

In response to comments received in connection with the Preliminary Determination, the Pension Committee has made the following final determinations based upon the Order and the applicable provisions of the Plan:

38250-1

C-22-000001

Mr. Zaid Abdul-Aziz
Ms. Tayyibah F. Taylor

-2-

March 31, 1998

1. Zaid Abdul-Aziz is presently receiving monthly payments of his pension benefit under the Plan over a ten-year period. As soon as administratively feasible following this Preliminary Determination becoming a final determination, Tayyibah Taylor will be entitled to receive a monthly payment in an amount equal to 50% of Zaid Abdul-Aziz's monthly benefit under the Plan (as determined prior to any income tax withholding and adjusted to reflect any subsequent increases in benefits that may be under the Plan) and the monthly payments to Zaid Abdul-Aziz will be reduced by such amount.¹ Payments under the Plan with respect to both Zaid Abdul-Aziz and Tayyibah Taylor will cease effective July 31, 2001 and neither Zaid Abdul-Aziz, Tayyibah Taylor nor their beneficiaries will be entitled to any further payments under the Plan after such date.
2. Should Tayyibah Taylor predecease Zaid Abdul-Aziz while she is still entitled to receive payment of a monthly benefit under the Plan, such benefit will be paid to any beneficiary(ies) she has named by prior written notice to the Pension Committee. If no such written notice is provided to the Pension Committee, Tayyibah Taylor's benefit will be paid to her estate.
3. Should Zaid Abdul-Aziz predecease Tayyibah Taylor prior to the expiration of the ten-year payment period (i.e., July 31, 2001),

¹ The Order provides that Tayyibah Taylor is to receive payments from the Plan commencing January, 1998. However, in a February 4, 1998 letter to Meryl Steinberg of the National Basketball Association, Tayyibah Taylor stated that in January and February, 1998, she received monthly payments from Zaid Abdul-Aziz of \$1,110.99 which reflect 50% of the monthly amount being paid to Zaid Abdul-Aziz under the Plan. Based on this information, payments to Tayyibah Taylor will be made effective as of the first month that Zaid Abdul-Aziz ceases making any further payments to Tayyibah Taylor.

Mr. Zaid Abdul-Aziz
Ms. Tayyibah F. Taylor

-3-

March 31, 1998

Tayyibah Taylor would remain entitled to her Plan benefit described above. However, Tayyibah Taylor will not be entitled to any additional benefits under the Plan on account of Zaid Abdul-Aziz's death.

4. Because (i) Zaid Abdul-Aziz has elected to receive monthly payments of his pension benefit under the Plan over a ten-year period and (ii) Tayyibah Taylor has agreed, under the specific terms of the Order, that Zaid Abdul-Aziz shall have the right to change the current designation of his beneficiary under the Plan, Zaid Abdul-Aziz may change his current designation of Tayyibah Taylor as his beneficiary under the Plan.

Please note that you are obliged to notify the Pension Committee of any change in mailing address or legal name.

Sincerely,

Norman J. Misher

NJM/jw

cc: Ms. Meryl Steinberg
Nolan L. Wright, Esq.
Pauline V. Smetka, Esq.

bcc: Mr. Robert Criquei
Ms. June Zieve
Ms. Theresa Lovi



DANIEL S. FRIEDBERG
206.389.1554
dfriedberg@riddellwilliams.com

T 206.624.3600 1001 Fourth Avenue, Suite 4500
F 206.389.1708 Seattle, Washington 98154-1192

April 26, 2015

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED 7013 2250 0000 3210 1171

NBA Benefits Department
100 Plaza Drive
Secaucus, NJ 07094
Attention: LEGAL NOTICE

**Re: Zaid Abdul-Aziz
Unlawful Pension Buy-Out**

Dear Sir or Madam:

We are the attorneys for Zaid Abdul-Aziz, a 10-year NBA journeyman who retired from the league in 1978.

We understand that the NBA purports to have purchased all of Zaid's lifetime pension benefits in exchange for a payment which was less than the amount Zaid would in every year receive without such buy-out transaction. Zaid was not represented during such purported buy-out transaction and has no records with respect to such transaction.

Per your request, we attach the original Appointment of Legal Representative authorizing us to deal on Zaid's behalf with respect to this claim.

Please provide as follows without delay:

1. A confirmation by email to me that you have accepted his Appointment of Legal Representative;
2. The buy-out documents including any disclosures provided to Zaid prior to or at the time of the purported buy-out;
3. The amount of cash paid to Zaid for the purported buy-out and the dates of such payment(s);
4. The amount of yearly benefit Zaid would now be entitled to in the absence of the purported buy-out;

4852-7583-1075.01
65533.00001

NBA Benefits Department

April 26, 2015

Page 2

5. A copy of each version of the NBA collective bargaining agreement in effect from 1969 (Zaid's rookie year) to the present;
6. A copy of each version of the relevant pension plan to which Zaid participated from 1969 to the present; and
7. A copy of each version of the relevant summary plan description sent to Zaid from 1969 to the present.

This letter merely lists certain preliminary documents which we need to review on behalf of our client. This letter shall not act as any waiver of Zaid's rights with respect to this matter. Zaid was unaware of the facts giving rise to his claim until he met with me several months ago. All rights reserved.

Sincerely,
RIDDELL WILLIAMS P.S.

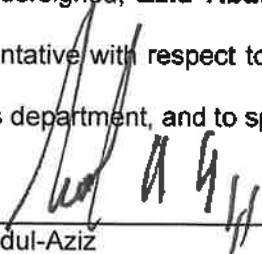
By:


Daniel S. Friedberg

cc: Mr. Abdul-Aziz (via US Mail)

APPOINTMENT OF LEGAL REPRESENTATIVE

The undersigned, **Zaid Abdul-Aziz**, hereby appoints **Daniel S. Friedberg** as his attorney-in-fact and representative with respect to any inquiries to the National Basketball Association ("NBA"), including the benefits department, and to speak with the NBA on his behalf.



Zaid Abdul-Aziz

Date: 9/26/2014

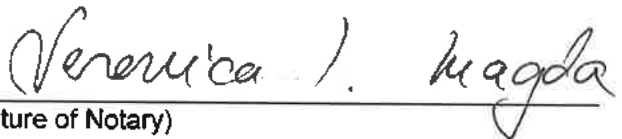
STATE OF WASHINGTON)
)SS.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Zaid Abdul-Aziz is the person who appeared before me, and said person acknowledged that said person signed this instrument to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: 9/26/14

Notary Seal





(Signature of Notary)
VERONICA MAGDA

(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: 11/29/15

ACCEPTANCE

The undersigned, **Daniel S. Friedberg**, hereby accepts the above appointment.



Daniel S. Friedberg

Date: 9/26/2014

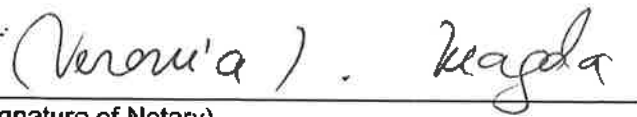
STATE OF WASHINGTON)
)SS.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Daniel S. Friedberg is the person who appeared before me, and said person acknowledged that said person signed this instrument to be his/her free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: 9/26/14

Notary Seal





(Signature of Notary)
VERONICA MAGDA

(Legibly Print or Stamp Name of Notary)
Notary Public in and for the State of Washington
My appointment expires: 11/29/15



National Basketball Association

OFFICE OF THE GENERAL COUNSEL

June 3, 2015

By Federal Express

Daniel S. Friedberg, Esq.
1001 Fourth Avenue, Suite 4500
Seattle, Washington 98154

Dear Mr. Friedberg:

We write on behalf of the Pension Committee of the National Basketball Association Players' Pension Plan ("Pension Committee") in response to your letter dated April 26, 2015, which we received on May 1, 2015. You asserted that the National Basketball Association ("NBA") "bought out" the lifetime pension benefits of your client, Zaid Abdul-Aziz. However, contrary to your assertion, no such buy-out concerning Mr. Abdul-Aziz's pension benefits occurred.

Mr. Abdul-Aziz's pension benefits under the National Basketball Association Players' Pension Plan ("Plan") were paid in full over the period from August 1, 1991 through July 31, 2001. Since any potential benefit claim by your client would relate to events that occurred over thirteen years ago or more, any such claim would be time-barred by the statute of limitations applicable to benefit claims under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the federal statute that governs the Plan. Although the Pension Committee is responding to the assertions in your letter, this response is without prejudice to the Plan's, Pension Committee's, and NBA's defenses (including, without limitation, statute of limitations defenses), which are expressly reserved.

With regard to the substance of your letter, the operative facts are as follows.

Mr. Abdul-Aziz elected to receive his pension benefits in the form of installments paid over a ten (10) year fixed period commencing on August 1, 1991 and ending on July 31, 2001. He made his election after the Plan provided him with a benefit illustration that described each potential form of payment under the Plan, as well as the amount he would receive under each potential form of payment under the Plan. Mr. Abdul-Aziz's benefit application explained that: (a) the form of payment he elected would provide for monthly payments over a fixed period; (b) upon the expiration of the fixed period, all benefits would cease;

Daniel Friedberg, Esq.
June 3, 2015
Page - 2 -

and (c) the payments over the fixed period would equal the entire amount of his pension benefits. Moreover, the Plan notified Mr. Abdul-Aziz before his pension payments commenced (by letter dated July 12, 1991) that, under the payment option he elected, he would cease receiving benefits from the Plan on July 31, 2001, which was the last date of the ten (10) year fixed payment period.¹

Pursuant to his benefit election, from August 1, 1991 until August 31, 1996, Mr. Abdul-Aziz received monthly payments equal to \$1,851.64 each.² During the remainder of the fixed payment period, the monthly payment amounts were increased periodically to reflect collectively-bargained for benefit formula increases and/or cost of living adjustments to the federal maximum benefit limitations applicable to the Plan.³ However, effective March 1, 1998, an amount equal to 50% of each monthly payment was assigned and paid to Tayyibah Taylor, Mr. Abdul-Aziz's former spouse, pursuant to a Qualified Domestic Relations Order; accordingly, the monthly amounts paid to Mr. Abdul-Aziz after that time were reduced to reflect that assignment. Mr. Abdul-Aziz's monthly payments stopped after July 31, 2001, consistent with his form of payment election.

In summary, there was no buy-out of Mr. Abdul-Aziz's pension benefits. Instead, the Plan paid him the full value of pension benefits owing to him in accordance with the form of payment that he elected and subject to the assignment of his benefit pursuant to the Qualified Domestic Relations Order described above.

With respect to your document and information requests, since the Plan paid the full value of pension benefits owing to Mr. Abdul-Aziz under the Plan as of 2001, Mr. Abdul-Aziz ceased to be a "participant" in the Plan (within the meaning of the Plan and ERISA) at that time. Therefore, the Plan has no obligation to provide the documents and information that you requested. However, as a courtesy, and, without waiving any applicable rights, we enclose: (a) a copy of Mr. Abdul-Aziz's pension application; (b) copies of the letters

¹ In fact, letters dated October 30, 1997, March 5, 1998, and March 31, 1998 reiterated to Mr. Abdul-Aziz and/or his authorized legal representative that all pension payments from the Plan would cease effective July 31, 2001 because he elected to be paid in installments over a ten (10) year fixed period.

² In addition, Mr. Abdul-Aziz was entitled to, and was sent, a single sum payment in the amount of \$3,438.31 as a supplemental pension benefit.

³ In particular, before giving effect to an assignment of Mr. Abdul-Aziz's benefit pursuant to a Qualified Domestic Relations Order, Mr. Abdul-Aziz's monthly payments increased to \$2,479.53 beginning on September 1, 1996; \$2,582.91 beginning on January 1, 1997; \$2,686.22 beginning on January 1, 1998; \$2,789.58 beginning on January 1, 2000; and \$2,892.88 beginning on January 1, 2001.

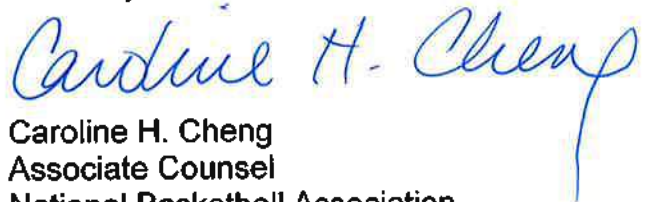
Daniel Friedberg, Esq.
June 3, 2015
Page - 3 -

described above dated July 12, 1991, October 30, 1997, March 5, 1998, and March 31, 1998; (c) the Plan document and summary plan descriptions in effect from 1969 to 2001, while Mr. Abdul-Aziz was a participant in the Plan; and (d) the pension benefits provisions of collective bargaining agreements in effect from 1969 to 2001, while Mr. Abdul-Aziz was a participant in the Plan.

Finally, we note that the Plan's claim procedures require any benefit claim to set forth enough information for the Pension Committee to be able to decide the claim. Your letter did not provide the necessary factual details, and accordingly, the Pension Committee determined not to treat your letter as a benefit claim by your client under the Plan.

We trust this information fully responds to your request. If you have any questions, please feel free to contact me directly.

Sincerely,



Caroline H. Cheng
Associate Counsel
National Basketball Association

cc: Zaid Abdul-Aziz (letter only)

Enclosures

NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN

APPLICATION FOR RETIREMENT BENEFITS*

Name	ZAID ABDUL-AZIZ		Soc. Sec. No.	
Club	Date of Birth	Marital Status	Spouse's Date of Birth	
HOUSTON	APRIL 7, 1946	MARRIED	SEPT. 15, 1952	
Effective Date of Payments				
8/1/91 AND ENDING 7/31/2001				
Address Checks should be mailed to:				
GROUP HEALTH CREDIT UNION 115 15th AVE. EAST / ATTN ZAID A				
SEATTLE, WASHINGTON 98102				

STANDARD FORM OF PAYMENT

- MARRIED - 50% Qualified Joint and Survivor Annuity
- NOT MARRIED - Straight Life Annuity

EXPLANATION OF STANDARD FORMS OF PAYMENT

Married: 50% Qualified Joint and Survivor

Benefit -- This form of payment is automatically paid to you. It provides you with a monthly benefit for your lifetime and upon your death, your spouse will receive a monthly benefit equal to half of the monthly benefit you were receiving. This benefit will be paid for her lifetime. All benefits will cease upon death of your spouse. However, if your spouse should predecease you, no benefits will become payable upon your death.

In order to reject this benefit, you and your spouse must sign the attached election form in front of a notary.

Not Married: Straight Life Annuity

This form of payment provides you with a monthly benefit, unreduced, for your lifetime. Upon your death, all benefits will cease.

* Application must be made IN ADVANCE. The rules are:

Normal Retirement (No Option) Age 50 -- 30 days advance notice.

Early Retirement (No Option) Ages 45 to 49 -- 90 days advance notice.

OPTIONAL FORMS OF PAYMENT

Life Annuity (OPTIONAL only for married participants)

Installments for a Fixed Amount OPTION -- \$1,813.17 (specify amount)

Installments for a Fixed Period OPTION -- 10 YRS (specify period: 5, 10, 15 or 20 years)
 - TWO YEAR CERTAIN ONLY.

Installments for a Fixed Guaranteed Period and Life Thereafter OPTION -- (specify period: 5, 10, 15 or 20 years)

Joint and Survivor OPTION -- % (specify %: 25, 50, 75 or 100 percent)

Social Security OPTION -- Age 62 Age 65

Lump Sum OPTION

EXPLANATION OF OPTIONAL FORMS OF PAYMENT

Life Annuity (Optional only for Married Participants) -- Same as Standard Form -- Not Married.

Installments of a Fixed Amount -- The total of all payments, in the amount that you select, will equal the entire value of your retirement benefit. When the total value is exhausted, all benefits will cease.

Installments for a Fixed Period -- A benefit will be paid for a fixed number of payments, for the period you select (e.g. 5 years, 10 years). Upon the expiration of this period, all benefits will cease. The total of all payments you receive will equal the entire value of your retirement benefit.

Installments for a Fixed Period and Life Thereafter -- A reduced monthly benefit will be payable for your lifetime with the provision that if you die before receiving a fixed number of payments, for the period you select (e.g. 5 years, 10 years, 15 years), your monthly benefit will continue to your beneficiary for the remainder of the fixed period. If you should die after this fixed period, no benefits will be paid to your beneficiary. However, you will continue to receive a monthly benefit, regardless of the fixed period, for as long as you live.

Joint and Survivor -- A reduced monthly benefit will be paid to you during your lifetime and upon your death, a percentage of your benefit, as you select (e.g. 25%, 50%, 75%, 100%), will be paid to your designated beneficiary. If your beneficiary should predecease you, no benefits will become payable upon your death.

Social Security Adjustment -- A monthly payment, temporarily increased, will be paid to you until you reach age 62, 63, 64 or 65 (whatever age you will elect to have Social Security benefits start). When your Social Security payment starts, your retirement benefit is reduced. In this way, your retirement income will be substantially level both before and after you receive your Social Security benefits.

Lump Sum -- A single sum payment, based on the value of your retirement benefit, will be paid to you.

Designation of Beneficiary

Any death benefits which become payable under the plan should be paid to:

Name TAMMARA TAYLOR
 Address 3023 S.W. VANDERLINDA
VANHOE WA 98070

Note: If a Joint and Survivor benefit is in effect, please indicate Survivor's name and address

To: Pension Committee

I am applying for retirement benefits as indicated above. All statements made are true to the best of my knowledge. I understand the Plan has the right to recover any benefits paid to me as a result of any false statements.

6/22/91
 Date

[Signature]
 Signature

(Participant's Statement)

NOTE: Every Participant must complete Section A and Participant Notarization form on opposite page in order to receive benefits under the Plan.

SECTION A

I, Zaid Abdul-Aziz hereby swear:
(Participant's name)

that I am not legally married at this time (must complete Section D).

that the person co-signing this document is my current and legal spouse (must complete Section B or C).

that I am unable to locate my spouse. (Additional proof is needed if you check this box.) (Must complete Section D.)

6/28/91
Date

[Signature]
Participant's signature

SECTION B - If you elect the Qualified Joint and Survivor Annuity form of payment, complete this Section and do not complete Sections C, D, E and F.

I, _____, wish to receive my pension benefit in the form of a
(Participant's name)
Qualified Joint and Survivor Annuity.

Date

Participant's signature

SECTION C - If you reject the Qualified Joint and Survivor Annuity form of payment; you must complete this Section and Section D, and your spouse must complete Section F.

I, Zaid Abdul-Aziz do not elect to receive my pension benefit in the form
(Participant's name)
of a Qualified Joint and Survivor Annuity. I understand that rejecting this form of pension means that no benefit will be paid to my spouse by the Retirement Plan after my death, unless I elect another option which provides a spousal death benefit or unless benefits are payable under other sections of the Plan.

6/28/91
Date

[Signature]
Participant's signature

SECTION D - If the form of payment provides a death benefit, then complete Section E.

I, Zaid Abdul-Aziz, wish to receive my pension benefit in the form
(Participant's name)
of a 10 YEAR CERTAIN ANNUITY
(specify the standard form of payment or the optional form of payment elected)

6/28/91
Date

[Signature]
Participant's signature

SECTION E - Upon my death, any benefits payable are to be paid to:

Spouse _____

Designated Beneficiary (other than the spouse)
Name _____
Address _____

Date

Participant's signature

NOTARIZATION

State of _____)
County of _____) SS:
On the _____ day of _____ 19____ before me
came _____, known to me to be the person described
(Participant's name)
in and who executed the foregoing statement and he duly acknowledged to me that he executed the same.

Notary Public

SECTION 7 Spouse's Statement

I, TAYYIBAH TAYLOR, swear that I am the legal spouse of the participant described on the opposite page.
(name)

I hereby consent to my spouse's rejection of the Qualified Joint and Survivor Pension. I understand that my spouse (the Participant) has elected a TEN (10)-YEAR CERTAIN ANNUITY (specify optional form of payment) and that my spouse (the Participant) has named: TAYYIBAH TAYLOR (Designated Beneficiary/Contingent Annuitant) to receive any benefits that are payable upon his/her death.

I further understand that as a result of this election, that I, TAYYIBAH TAYLOR, the legal spouse, will not be paid a pension (Participant's spouse's name) from the Retirement Plan after my spouse's death unless my spouse (the Participant) has designated me in his/her sole discretion as beneficiary to receive any death benefits otherwise payable under this Plan upon his/her death.

6/22/91
Date

Tayyibah Taylor
Spouse's signature

NOTARIZATION

State of Washington)
County of King) SS:

On the 22nd day of June 1991 before me
came TAYYIBAH TAYLOR, known to me to be the person described (Spouse's name) in and who executed the foregoing statement and he duly acknowledged to me that he executed the same.

[Signature]
Notary Public

**NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN**

BENEFIT CALCULATION

PLAYER	Zaid Abdul-Aziz
DATE OF BIRTH	Apr-46
YEARS OF CREDITED SERVICE	8
YEARS OF PROFESSIONAL CORPORATION	0
NORMAL RETIREMENT DATE	May-96
EARLY RETIREMENT DATE	May-91
LATE RETIREMENT DATE	N/A
BENEFIT COMMENCEMENT DATE	May-91 AUGUST-91
SPOUSE'S DATE OF BIRTH	Sep-52

BENEFIT CALCULATION PAYABLE AT NRD:

May-96

\$200.00 x 8 = \$1,600.00 /mo. @ NRD

50% JOINT & SURVIVOR BENEFIT:

May-96

\$1,600.00 x 0.920 = \$1,472.00 /mo. to Player
\$736.00 /mo. to Surviving Spouse

LUMP SUM PAYMENT: PBGC RATE 7.25%

May-96

\$1,600.00 x 136.85 = \$218,960.00 (Estimate)

TIA ACCOUNT VALUED AS OF

01-Jan-91

\$532.89 x 6.2187701 = \$3,313.92

aid Abdul-Aziz

PAGE-2

03/18/91

EARLY RETIREMENT BENEFIT

May-91

$$\$1,600.00 \times 0.667 = \$1,067.20 \text{ /mo. @ERD}$$

50% JOINT & SURVIVOR BENEFIT

May-91

$$\$1,067.20 \times 0.939 = \$1,002.10 \text{ /mo. to Player}$$

$$\$501.05 \text{ /mo. to Surviving Spouse}$$

LUMP SUM PAYMENT: PBGC RATE 7.25%

May-91

$$\$1,067.20 \times 145.02 = \$154,765.34 \text{ (Estimate)}$$

ADDITIONAL FORMS OF PAYMENT REQUESTED:**5 YEAR CERTAIN ONLY**

BEGINNING ON 05/01/91 AND ENDING 04/30/96

$$\$1,067.20 \times 2.9103 = \$3,105.87 \text{ /mo.}$$

10 YEAR CERTAIN ONLY

BEGINNING ON 05/01/91 AND ENDING 04/30/2001

$$\$1,067.20 \times 1.6990 = \$1,813.17 \text{ /mo.}$$

5 YEAR CERTAIN ONLY

BEGINNING ON 05/01/96 AND ENDING 04/30/2001

$$\$1,600.00 \times 2.7413 = \$4,386.08 \text{ /mo.}$$

10 YEAR CERTAIN ONLY

BEGINNING ON 05/01/96 AND ENDING 04/30/2006

$$\$1,600.00 \times 1.6003 = \$2,560.48 \text{ /mo.}$$

C-24-000009



NATIONAL BASKETBALL ASSOCIATION

OLYMPIC TOWER • 645 FIFTH AVENUE • NEW YORK, N. Y. 10022 • 212-826-7000

PENSION COMMITTEE

July 12, 1991

Mr. Zaid Abdul-Aziz
c/o Group Health Credit Union
115 15th Avenue East
Seattle, WA 98102

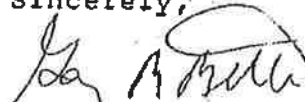
Dear Mr. Abdul-Aziz:

We have received your Application for Benefits under the terms of the National Basketball Association Players' Pension Plan and are pleased to inform you that you will be receiving monthly payments of \$1,851.64 from this Plan beginning on August 1, 1991. Since you elected to receive your benefit in the form of the 10 Year Certain Only, you will cease receiving a benefit from this Plan on July 31, 2001. As you know, if you should die before the end of this 10 Year Period your beneficiary will receive the remaining payments.

In addition, you are entitled to a supplemental benefit which is valued at benefit commencement date. The estimated lump sum amount as of January 1, 1991 was \$3,313.92.

Please accept our best wishes for many years of enjoyable retirement.

Sincerely,



Gary B. Bettman

C-24-000010

C-24-000011



National Basketball Association

Direct Dial: 201 974-6744

Direct Fax: 201 974-1143

October 30, 1997

Nolan L. Wright, Esq.
Pioneer Building
600 First Avenue, Suite 314
Seattle, WA 98104

Dear Mr. Wright:

This in response to your letter regarding Zaid Abdul-Aziz's NBA Players' Pension Plan benefits.

Zaid elected to receive benefits beginning August 1, 1991. At that time, he began receiving a monthly benefit in the amount of \$1,851.64 and a lump sum payment of \$3,438.31, representing his supplemental benefit. Effective September 1, 1996, his monthly benefit was increased to \$2,479.53 pursuant to the Collective Bargaining Agreement. His benefits are scheduled to cease July 31, 2001.

If you have any questions or require additional information, please call me.

Sincerely,

A handwritten signature in cursive script that reads "Meryl Steinberg".

Meryl Steinberg
Benefits Manager

/enc.

C-24-000013

(212) 903-8733

March 5, 1998

Mr. Zaid Abdul-Aziz
5001 College Street S.F.
Apt. F301
Lacey, WA 98503

Ms. Tayyibah F. Taylor
4021 S. 154th #C-30
Tukwila, WA 98188

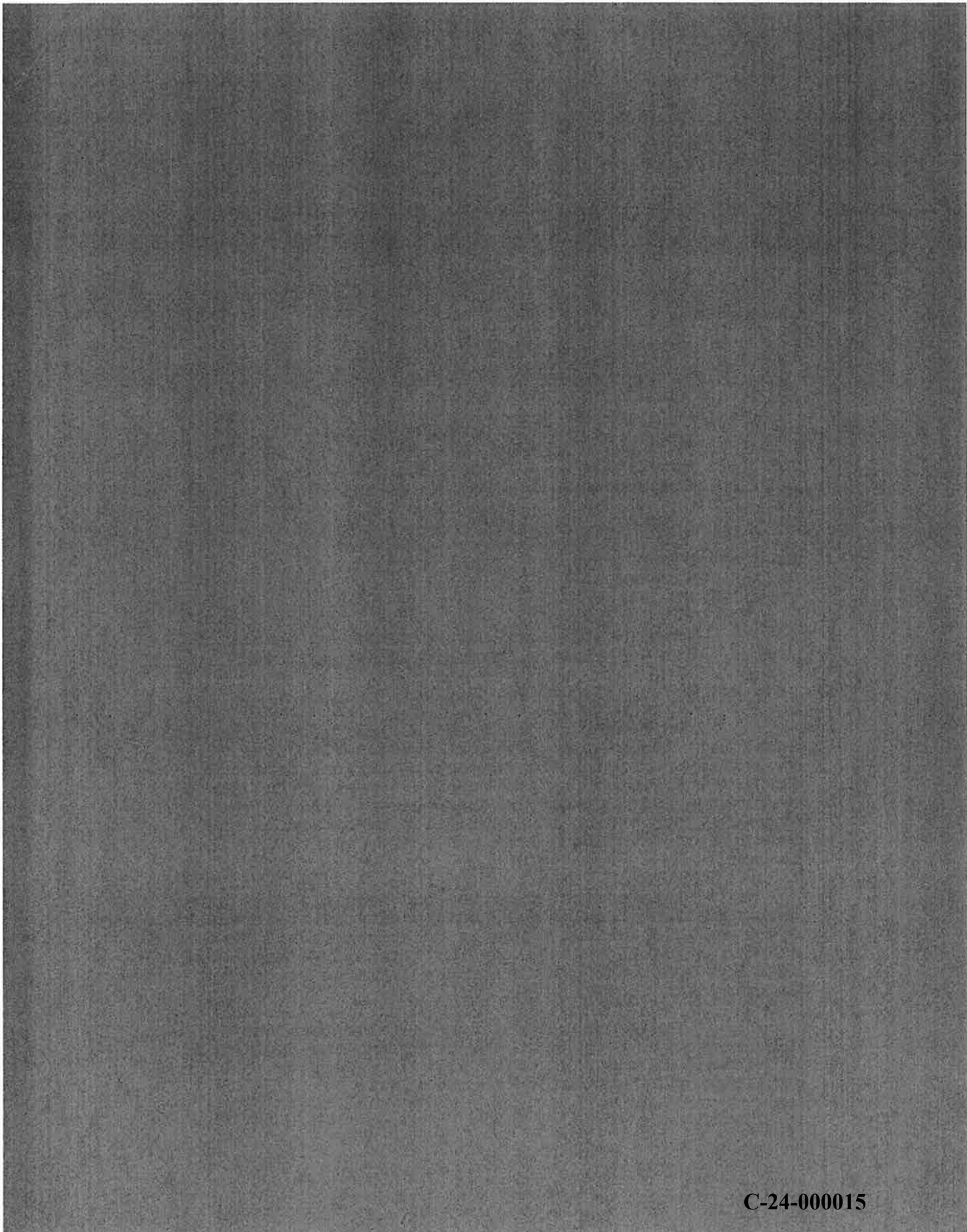
Re: Preliminary Determination of Qualified
Status of Domestic Relations Order

Dear Mr. Abdul-Aziz and Ms. Taylor:

On behalf of the Pension Committee of the National Basketball Association Players' Pension Plan (the "Plan"), I am writing regarding the Domestic Relations Order (No. 96-3-08894-7 SEA) issued by the Superior Court of the State of Washington, King County, on December 24, 1997, (the "Order"), concerning the payment of a portion of the benefits of Zaid Abdul-Aziz under the Plan to Tayyibah Taylor.

The Pension Committee has made a preliminary determination ("Preliminary Determination") to treat the Order as a "qualified domestic relations order" (within the meaning of Section 414(p) of the Internal Revenue Code of 1986 and Section 206(d)(3) of the Employee Retirement Income Security Act of 1974).

The Pension Committee has also made the following determinations based upon the Order and the applicable provisions of the Plan which will be effective should this Preliminary Determination become final:



Mr. Zaid Abdul-Aziz
Ms. Tayyibah F. Taylor

- 2 -

March 5, 1998

1. Zaid Abdul-Aziz is presently receiving monthly payments of his pension benefit under the Plan over a ten-year period. As soon as administratively feasible following this Preliminary Determination becoming a final determination, Tayyibah Taylor will be entitled to receive a monthly payment in an amount equal to 50% of Zaid Abdul-Aziz's monthly benefit under the Plan (as determined prior to any income tax withholding and adjusted to reflect any subsequent increases in benefits that may be under the Plan) and the monthly payments to Zaid Abdul-Aziz will be reduced by such amount.¹ Payments under the Plan with respect to both Zaid Abdul-Aziz and Tayyibah Taylor will cease effective July 31, 2001 and neither Zaid Abdul-Aziz, Tayyibah Taylor nor their beneficiaries will be entitled to any further payments under the Plan after such date.
2. Should Tayyibah Taylor predecease Zaid Abdul-Aziz while she is still entitled to receive payment of a monthly benefit under the Plan, such benefit will be paid to any beneficiary(ies) she has named by prior written notice to the Pension Committee. If no such written notice is provided to the Pension Committee, Tayyibah Taylor's benefit will be paid to her estate.
3. Should Zaid Abdul-Aziz predecease Tayyibah Taylor prior to the expiration of the ten-year payment period (i.e., July 31, 2001),

¹ The Order provides that Tayyibah Taylor is to receive payments from the Plan commencing January, 1998. However, in a February 4, 1998 letter to Meryl Steinberg of the National Basketball Association, Tayyibah Taylor stated that in January and February, 1998, she received monthly payments from Zaid Abdul-Aziz of \$1,110.99 which reflect 50% of the monthly amount being paid to Zaid Abdul-Aziz under the Plan. Based on this information, payments to Tayyibah Taylor will be made effective as of the first month that Zaid Abdul-Aziz ceases making any further payments to Tayyibah Taylor.

Mr. Zaid Abdul-Aziz
Ms. Tayyibah F. Taylor

- 3 -

March 5, 1998

Tayyibah Taylor would remain entitled to her Plan benefit described above. However, Tayyibah Taylor will not be entitled to any additional benefits under the Plan on account of Zaid Abdul-Aziz's death.

If the Pension Committee does not receive a written request to review this Preliminary Determination within 15 days after the date of his letter, then this Preliminary Determination shall automatically become the final determination. Tayyibah Taylor would then receive a portion of Zaid Abdul-Aziz's benefits under the Plan, as described above. However, if the Pension Committee does receive a timely request for review, then both Tayyibah Taylor and Zaid Abdul-Aziz will receive a written notice of the Pension Committee's final determination within a reasonable time after the receipt of the request for review. The final determination will include the specific reasons for the Pension Committee's conclusions.

Please note that you are obliged to notify the Pension Committee of any change in mailing address or legal name.

Sincerely,

Norman J. Misher

NJM/jw

cc: Ms. Meryl Steinberg
Nolan L. Wright, Esq.
Pauline V. Smetka, Esq.

bcc: Mr. Robert Criqui
Ms. June Zieve
Ms. Ruth Kaplan

C-24-000018

(212) 903-8733

March 31, 1998

Mr. Zaid Abdul-Aziz
5001 College Street S.F.
Apt. F301
Lacey, WA 98503

Ms. Tayyibah F. Taylor
4021 S. 154th #C-30
Tukwila, WA 98188

Re: Final Determination of Qualified
Status of Domestic Relations Order

Dear Mr. Abdul-Aziz and Ms. Taylor:

On behalf of the Pension Committee of the National Basketball Association Players' Pension Plan (the "Plan"), I am writing regarding the Domestic Relations Order (No. 96-3-08894-7 SEA) issued by the Superior Court of the State of Washington, King County, on December 24, 1997, (the "Order"), concerning the payment of a portion of the benefits of Zaid Abdul-Aziz under the Plan to Tayyibah Taylor.

On March 5, 1998, the Pension Committee made a preliminary determination ("Preliminary Determination") to treat the Order as a "qualified domestic relations order" (within the meaning of Section 414(p) of the Internal Revenue Code of 1986 and Section 206(d)(3) of the Employee Retirement Income Security Act of 1974).

In response to comments received in connection with the Preliminary Determination, the Pension Committee has made the following final determinations based upon the Order and the applicable provisions of the Plan:

Mr. Zaid Abdul-Aziz
Ms. Tayyibah F. Taylor

-2-

March 31, 1998

1. Zaid Abdul-Aziz is presently receiving monthly payments of his pension benefit under the Plan over a ten-year period. As soon as administratively feasible following this Preliminary Determination becoming a final determination, Tayyibah Taylor will be entitled to receive a monthly payment in an amount equal to 50% of Zaid Abdul-Aziz's monthly benefit under the Plan (as determined prior to any income tax withholding and adjusted to reflect any subsequent increases in benefits that may be under the Plan) and the monthly payments to Zaid Abdul-Aziz will be reduced by such amount.¹ Payments under the Plan with respect to both Zaid Abdul-Aziz and Tayyibah Taylor will cease effective July 31, 2001 and neither Zaid Abdul-Aziz, Tayyibah Taylor nor their beneficiaries will be entitled to any further payments under the Plan after such date.
2. Should Tayyibah Taylor predecease Zaid Abdul-Aziz while she is still entitled to receive payment of a monthly benefit under the Plan, such benefit will be paid to any beneficiary(ies) she has named by prior written notice to the Pension Committee. If no such written notice is provided to the Pension Committee, Tayyibah Taylor's benefit will be paid to her estate.
3. Should Zaid Abdul-Aziz predecease Tayyibah Taylor prior to the expiration of the ten-year payment period (i.e., July 31, 2001),

¹ The Order provides that Tayyibah Taylor is to receive payments from the Plan commencing January, 1998. However, in a February 4, 1998 letter to Meryl Steinberg of the National Basketball Association, Tayyibah Taylor stated that in January and February, 1998, she received monthly payments from Zaid Abdul-Aziz of \$1,110.99 which reflect 50% of the monthly amount being paid to Zaid Abdul-Aziz under the Plan. Based on this information, payments to Tayyibah Taylor will be made effective as of the first month that Zaid Abdul-Aziz ceases making any further payments to Tayyibah Taylor.

Mr. Zaid Abdul-Aziz
Ms. Tayyibah F. Taylor

-3-

March 31, 1998

Tayyibah Taylor would remain entitled to her Plan benefit described above. However, Tayyibah Taylor will not be entitled to any additional benefits under the Plan on account of Zaid Abdul-Aziz's death.

4. Because (i) Zaid Abdul-Aziz has elected to receive monthly payments of his pension benefit under the Plan over a ten-year period and (ii) Tayyibah Taylor has agreed, under the specific terms of the Order, that Zaid Abdul-Aziz shall have the right to change the current designation of his beneficiary under the Plan, Zaid Abdul-Aziz may change his current designation of Tayyibah Taylor as his beneficiary under the Plan.

Please note that you are obliged to notify the Pension Committee of any change in mailing address or legal name.

Sincerely,

Norman J. Misher

NJM/jw

cc: Ms. Meryl Steinberg
Nolan L. Wright, Esq.
Pauline V. Smetka, Esq.

bcc: Mr. Robert Criqui
Ms. June Zieve
Ms. Theresa Lovi

NBA
COLLECTIVE BARGAINING
AGREEMENT

July 2005

C-24-000022

ARTICLE IV

BENEFITS

Section 1. Player Pension Benefits.

Except as set forth below in this Section 1, effective with the date of this Agreement, and continuing for the duration thereof, the NBA shall provide the following pension benefits to NBA players and former NBA players:

(a) Subject to the provisions of Section 1(d) below, the NBA shall provide pension benefits in accordance with the terms of the National Basketball Association Players' Pension Plan, as restated effective February 2, 1997, and as amended by the First, Second, Third and Fourth Amendments thereto (the "Pension Plan"). In accordance with the September 1995 and January 1999 Collective Bargaining Agreements between the parties, the "Normal Retirement Pension" (as defined under the Pension Plan) payable to a player under the Pension Plan is the maximum monthly amount permitted by the applicable benefit limitations under the Internal Revenue Code of 1986, as amended (the "Code"), as in effect immediately prior to the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), to be paid to the player at his "Normal Retirement Date" (as defined under the Pension Plan) under the Pension Plan, based upon a Social Security Retirement Age of 65 (the "Maximum Monthly Benefit"). The Maximum Monthly Benefit shall be increased only as specifically provided for in this Section 1(a).

Effective only for the duration of this Agreement, the Maximum Monthly Benefit shall, except as otherwise provided herein, be adjusted for increases in the cost of living in the manner provided for under Section 415(d)(2) of the Code. In no event, however, shall the adjusted

Maximum Monthly Benefit for a Plan Year exceed an amount that would require the actuarially-determined scheduled contributions (to be made to the Pension Plan to fund for such adjusted benefit for the Plan Year) to exceed, by more than five (5) percent, the actuarially-determined scheduled contributions that would be made to the Pension Plan for that Plan Year using the Maximum Monthly Benefit in effect for the immediately preceding Plan Year. The parties agree that the determinations described in the preceding sentence, including any actuarial assumptions and projections related thereto, shall be made by the actuaries of the Pension Plan and that any such determinations shall be binding and conclusive. Any increase in the Maximum Monthly Benefit hereunder shall be effective as of the first day of the month following the beginning of the Plan Year of the Pension Plan to which the increase relates (the "Benefit Increase Commencement Date"), shall apply only with respect to any benefit payment or payments to be made on or after the Benefit Increase Commencement Date, and shall not require the recalculation of any benefit payment or payments made prior to the Benefit Increase Commencement Date.

Notwithstanding the foregoing:

(1) Except as may otherwise be required under the Code, the benefit payable to any player or beneficiary under the Pension Plan shall in no event exceed the limitations on benefits under the Code, as in effect immediately prior to the enactment of EGTRRA.

(2) If all or any portion of the actuarially-determined scheduled contributions to be made to the Pension Plan will not be fully deductible under the Code when paid, the Maximum Monthly Benefit shall not exceed the amount which would result in all of

such contributions being fully deductible when paid. The Players Association shall be given written notice of any such determination. The parties agree that the determinations described in this subsection (a)(2), including any actuarial assumptions and projections related thereto, shall be reasonable and shall be made by the actuaries of the Pension Plan. Any such determinations shall be binding and conclusive.

(3) The "Normal Retirement Benefit" (as defined under the Pension Plan) payable to a "Pre-1965 Player" (as defined under the Pension Plan) under the Pension Plan shall continue to be \$200 per month for each "Year of Pre-1965 Credited Service" (as defined under the Pension Plan). Any benefits that are unable to be paid to Pre-1965 Players under the Pension Plan because of the benefit limitations imposed by Section 415 of the Code shall be paid to such Pre-1965 Players pursuant to the National Basketball Association Excess Benefit Plan for Pre-1965 Players.

(4) The benefit payable to any player or beneficiary under the Pension Plan for a Plan Year shall in no event exceed the maximum benefit that may be paid to such player or beneficiary under the applicable benefit limitations under the Code, as in effect for that Plan Year.

(5) The Maximum Monthly Benefit for a Plan Year shall in no event exceed the maximum monthly amount permitted by the applicable benefit limitations under the Code, as in effect for that Plan Year.

NBA COLLECTIVE BARGAINING AGREEMENT



JANUARY 1999



ARTICLE IV

BENEFITS

Section 1. Player Benefits.

Except as set forth below, effective with the date of this Agreement, and continuing for the duration thereof, the NBA shall provide the following benefits to NBA players and, in the case of Section (a) below, former NBA players:

(a) (1) Subject to the provisions of Section (a)(3) below, League-wide pension benefits in accordance with the terms of the National Basketball Association Players' Pension Plan, as restated effective February 2, 1996, as amended by the First and Second Amendments thereto (the "Plan"). In accordance with the collective bargaining agreement made as of September 18, 1995, the Plan has been amended so that the "Normal Retirement Pension" payable to a player under the Plan is the maximum monthly amount permitted by the applicable benefit limitations under the Internal Revenue Code of 1986, as amended (the "Code") to be paid to the player at his "Normal Retirement Date" under the Plan (the "Maximum Monthly Benefit").

Effective only for the duration of this Agreement or as otherwise required by the Code, the Maximum Monthly Benefit shall, except as otherwise provided herein, be adjusted for increases in the cost of living in the same manner as the cost of living adjustment for the dollar limitation under Section 415(b)(1)(A) of the Code. In no event, however, shall the adjusted Maximum Monthly Benefit for a Plan Year exceed an amount that would require the actuarially determined contributions (to be made to the Plan to fund for such adjusted benefit for the Plan Year) to exceed, by more than five (5) percent, the actuarially determined contributions that would be made to the Plan for that Plan Year using the Maximum Monthly Benefit in effect for the immediately preceding Plan Year. The parties agree that the determinations described in the preceding sentence, including any actuarial assumptions and projections related thereto, shall be made by the current actuaries of the Plan on a consistent basis and any such determinations shall be binding and conclusive. Any

his Agreement, provide the following (a) below, for-

(a)(3) below, the terms of the Plan, as restated in the First and Second Amended Restatement of the collective bargaining agreement, the Plan has a "Maximum Monthly Benefit" payable to a participant as permitted by Section 401(a)(9) of the Revenue Code for a participant who is a player at his Maximum Monthly

as other- Maximum Monthly Benefit shall, be adjusted for increases in the Maximum Monthly Benefit for a participant as determined by the Internal Revenue Service, or any proposed interpretation, application or enforcement (or any proposed interpretation, application or enforcement), by a court of competent jurisdiction in the United States or by the Internal Revenue Service, of the Code, ERISA, or any regulations or rulings issued thereunder; or (iii) if any regulations (whether final, temporary or proposed) or rulings issued by the Internal Revenue Service under the Code or ERISA; or (iv) if any provisions of this Agreement, including any of the amendments or benefit increases to be provided under the Plan pursuant to this Section, would result in the Plan no longer being a tax-qualified Plan under Section

increase in the Maximum Monthly Benefit hereunder shall be effective as of the first day of the month following the beginning of the Plan Year of the Plan to which the increase relates (the "Benefit Increase Commencement Date"), shall apply only with respect to benefit payments to be made on or after the Benefit Increase Commencement Date, and shall not require the recalculation of benefit payments made prior to the Benefit Increase Commencement Date. Notwithstanding the foregoing:

- (i) The benefits payable under the Plan shall at all times be subject to the limitations on benefits under the Code.
- (ii) If all or any portion of the actuarially determined contributions to be made to the Plan will not be fully deductible under the Code when paid, the Maximum Monthly Benefit shall not exceed the amount which would result in all of such contributions being fully deductible when paid. The Players Association shall be given written notice of any such determination. The parties agree that the determinations described in this subsection (ii), including any actuarial assumptions and projections related thereto, shall be made by the current actuaries of the Plan and any such determinations shall be binding and conclusive.

(2) Notwithstanding anything else in this Agreement: (i) if any change or amendment made to the Code, or the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or to any regulations (whether final, temporary or proposed) or rulings issued thereunder; or (ii) if any interpretation, application or enforcement (or any proposed interpretation, application or enforcement), by a court of competent jurisdiction in the United States or by the Internal Revenue Service, of the Code, ERISA, or any regulations or rulings issued thereunder; or (iii) if any regulations (whether final, temporary or proposed) or rulings issued by the Internal Revenue Service under the Code or ERISA; or (iv) if any provisions of this Agreement, including any of the amendments or benefit increases to be provided under the Plan pursuant to this Section, would result in the Plan no longer being a tax-qualified Plan under Section

36 Article IV

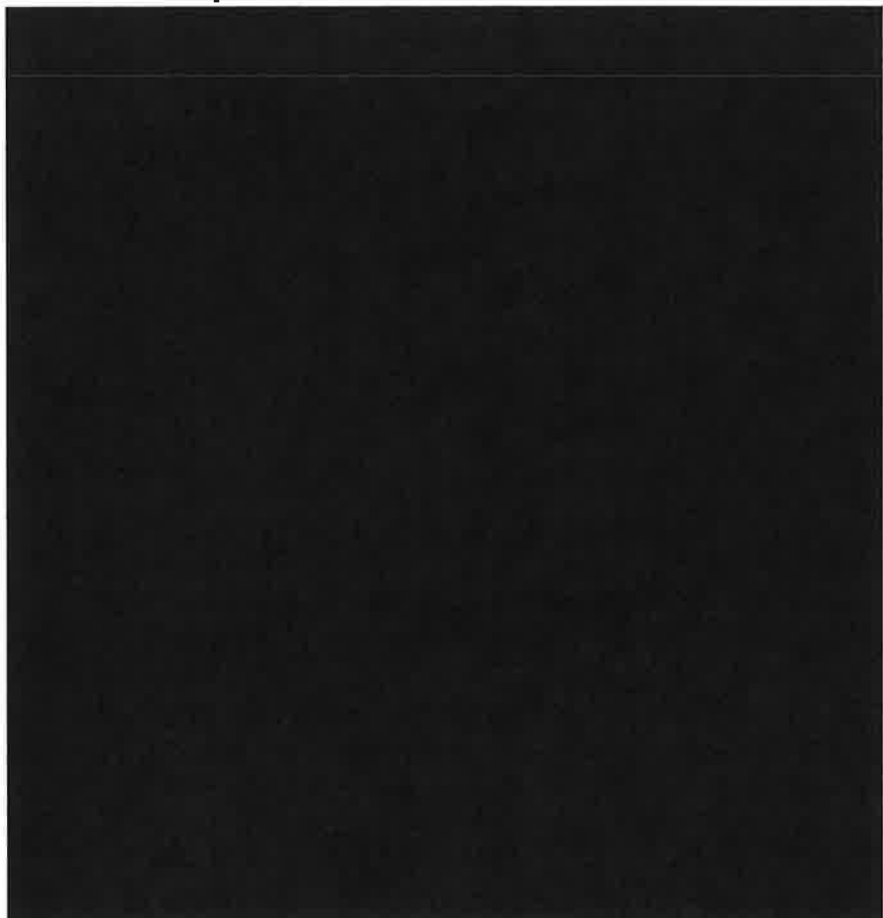
401(a) of the Code, or would require NBA Teams to incur costs over and above any costs required to be incurred to implement the provisions of this Agreement or any prior collective bargaining agreement in order for the Plan to maintain its tax-qualified status under Section 401(a) of the Code (provided, however, that such additional costs are incurred solely in connection with the provision of pension benefits to their non-player employees or to non-player employees of affiliates (within the meaning of Sections 414(b), (c) or (m) of the Code) of such Teams), then any obligation to maintain and/or make contributions to the Plan pursuant to this Agreement or pursuant to any prior collective bargaining agreement shall terminate; provided, however, that any such termination shall not impair the legally binding effect of any other provision of this Agreement or the legally binding effect (if any) of any other provision of any prior collective bargaining agreement, nor shall it create any right (x) to unilaterally implement during the term of this Agreement any terms concerning the provision of pension benefits to the players, (y) to lockout, or (z) to strike. In the event of such termination, the NBA Teams shall provide alternative benefits to the players, at an annual cost (as determined on an after-tax basis) to NBA Teams equal to the annual cost that such Teams would have incurred under the Plan commencing on the date of termination. The NBA and the Players Association shall agree upon the type(s) of alternative benefits to be provided.

(3) Players employed by Toronto and Vancouver ("Canadian Players") or by an NBA Team located in any other country other than the United States shall receive pension benefits of comparable value. Canadian Players shall receive such benefits by means of the Plan and separate pension plans established and maintained by Toronto and Vancouver ("Separate Plans"); provided, however, that (i) if the provision of pension benefits under the Plan to the Canadian Players would, at any time, result in the Plan being subject to Canadian Provincial Pension Legislation and/or Canadian Federal Tax Laws (to the extent that the application of such tax laws would result in adverse tax consequences to the Plan, the NBA Teams and/or the Canadian Players), and/or (ii) if the Separate Plans would not, upon their establishment or at any future time, either satisfy U.S. tax qualification requirements or be able to be registered under Canadian Provincial Pension Legislation and/or Canadian Federal

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Tax Laws, then any obligation to establish, maintain and/or make contributions to both the Plan with respect to Canadian Players and the Separate Plans pursuant to this Agreement or pursuant to any prior collective bargaining agreement shall terminate. In the event of such termination, Toronto and Vancouver shall provide alternative benefits to the Canadian Players at an annual cost (as determined on an after-tax basis) to Toronto and Vancouver equal to the annual cost that Toronto and Vancouver would have incurred under the Plan and the Separate Plans commencing on the date of termination. The NBA and the Players Association shall agree upon the type(s) of alternative benefits to be provided.



NBA COLLECTIVE BARGAINING AGREEMENT



September 1995

ty, in accordance with

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rival before 11:30 a.m.,

rival before 5:30 p.m.,

expense allowance for applicable daily meal (not less than one whole dollar); the amount shall be deemed to be 28% of the applicable daily meal expense allowance for dinner (rounded off to the nearest whole dollar).

and paragraph 4 of the Agreement shall be applicable at the facility regularly and at any other location provided that such other location is in the same city.

ARTICLE IV

BENEFITS

Section 1. Player Benefits.

Except as set forth below, effective with the 1995-1996 NBA Season, and continuing for the term of this Agreement, the NBA shall provide the following benefits to NBA players and, in the case of Sections (a) and (f) below, former NBA players:

(a) (1) Subject to the provisions of Section (a)(3) below, League-wide pension benefits in accordance with the terms of the National Basketball Association Players' Pension Plan, as restated effective February 2, 1989 (the "Plan"). Beginning with the 1996-97 Season, the Plan will, subject to the approval of the Internal Revenue Service, be amended to provide for the following changes which shall be effective only throughout the period of this Agreement:

(i) The "Normal Retirement Pension" payable to a player under the Plan shall be increased to the maximum monthly amount permitted by the applicable benefit limitations under the Internal Revenue Code to be paid to the player at his "Normal Retirement Date" under the Plan (the "Maximum Monthly Benefit"). For purposes of the preceding sentence, the applicable benefit limitations shall be the limitations in effect for the year in which this Agreement is executed. Notwithstanding the foregoing:

(A) The benefits payable under the Plan shall at all times be subject to the limitations on benefits under the Internal Revenue Code, as amended (the "Code").

(B) If all or any portion of the actuarially determined contributions to be made to the Plan will not be fully deductible under the Code when paid, the Maximum Monthly Benefit shall not exceed the amount which would result in all of such contributions being fully deductible when paid. The

parties agree that the determinations described in the preceding sentence, including any actuarial assumptions and projections related thereto, shall be made by the current actuaries of the Plan and any such determinations shall be binding and conclusive.

(C) Except as otherwise provided herein, the Maximum Monthly Benefit shall, effective as of the beginning of a Plan Year of the Plan, be adjusted for increases in the cost of living in the same manner as the cost of living adjustment for the dollar limitation under section 415(b)(1)(A) of the Code. In no event, however, shall the adjusted Maximum Monthly Benefit for a Plan Year exceed an amount that would require the actuarially determined contributions to be made to the Plan to fund for such adjusted Benefit for the Plan Year to exceed the actuarially determined contributions made to the Plan to fund for the Maximum Monthly Benefit in effect for the immediately preceding Plan Year by more than five (5) percent. The parties agree that the determinations described in the preceding sentence, including any actuarial assumptions and projections related thereto, shall be made by the current actuaries of the Plan and any such determinations shall be binding and conclusive.

(D) The applicable provisions of this Section 1(a) shall apply only to those players who had not yet begun to receive a benefit under the Plan as of July 1, 1996 and to those players who were receiving monthly benefits under the Plan as of September 1, 1996; provided, however, that in the case of those players who were receiving monthly benefits under the Plan as of September 1, 1996, this section 1(a) shall apply only with respect to benefit payments to be made on or after September 1, 1996 and shall not require the recalculation of benefit payments made prior to such date.

(ii) The actuarial reduction for the "Qualified Joint and Survivor Annuity" (as defined under section 1.29 of the Plan) for married players and their spouses currently provided

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commencing on or after September 1, 1996 in the form of a
Qualified Joint and Survivor Annuity and, in the case of a player
receiving monthly benefit payments under the Plan as of Sep-
tember 1, 1996, only if such benefit payments are currently
being made in the form of a Qualified Joint and Survivor An-
nuity.

(iii) The "Normal Retirement Benefit" payable to
a Pre-1965 Player under Article XX of the Plan shall be in-
creased to \$200 per month for each "Year of Pre-1965 Credited
Service"; provided, however, that the benefits payable under
the Plan to Pre-1965 Players shall at all times be subject to the
limitations on benefits under the Code. The benefit to be
paid in accordance with the preceding sentence shall apply
only with respect to benefit payments to be made on or af-
ter September 1, 1996 and shall not require the recalcula-
tion of benefit payments made prior to such date.

(2) Notwithstanding anything else in this Agreement:
(i) if any change or amendment made to the Code, or the Em-
ployee Retirement Income Security Act of 1974, as amended
("ERISA"), or to any regulations (whether final, temporary or
proposed regulations) or rulings issued thereunder; or (ii) if
any interpretation, application or enforcement (or any proposed
interpretation, application or enforcement), by a court of com-
petent jurisdiction in the United States or by the Internal Re-
venue Service, of the Code, ERISA, or any regulations or rul-
ings issued thereunder; or (iii) if any regulations (whether fi-
nal, temporary or proposed regulations) or rulings issued by
the Internal Revenue Service under the Code or ERISA; or
(iv) if any provisions of this Agreement, including any of the
amendments or benefit increases to be provided under the Plan
pursuant to this Section, would result in the Plan no longer be-
ing a tax-qualified Plan under section 401(a) of the Code, or
would require NBA Teams to incur costs over and above any
costs required to be incurred to implement the provisions of

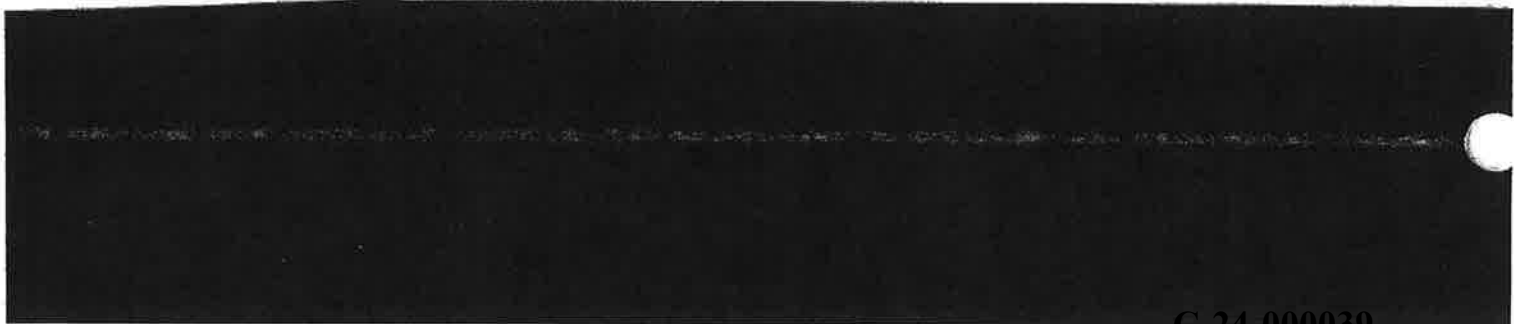
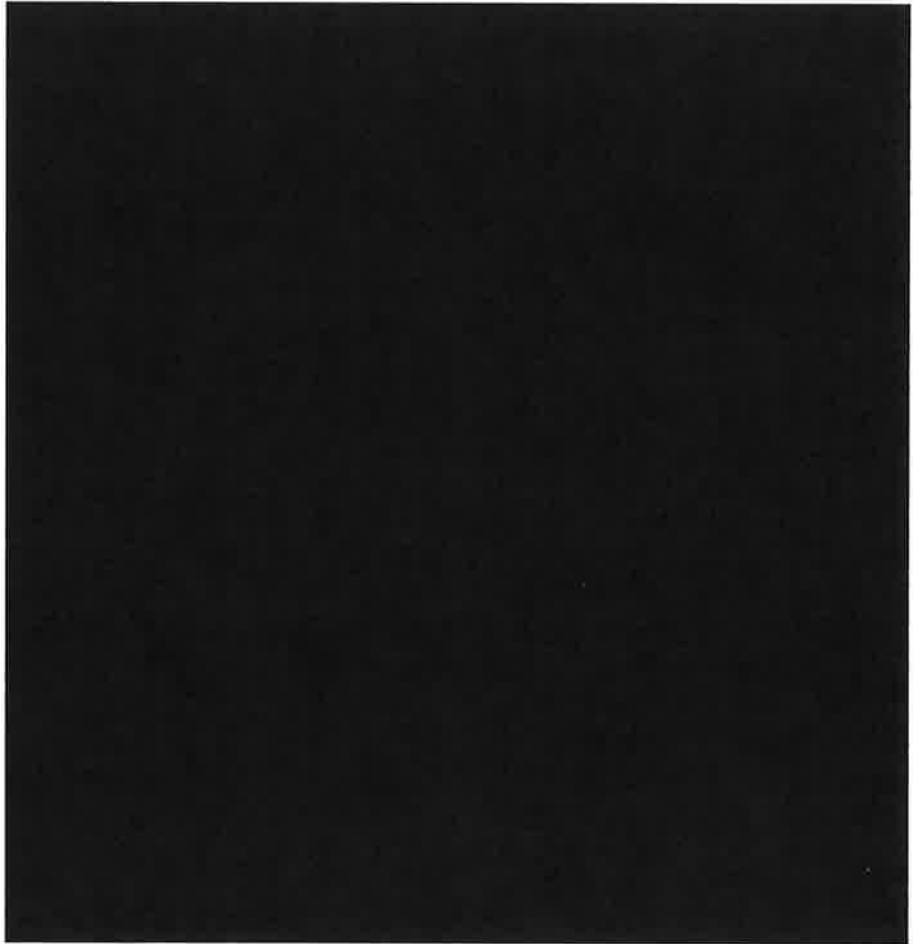
this Agreement or any prior collective bargaining agreement in order for the Plan to maintain its tax-qualified status under section 401(a) of the Code (provided, however, that such additional costs are incurred solely in connection with the provision of pension benefits to their non-player employees or to non-player employees of affiliates (within the meaning of sections 414(b), (c) or (m) of the Code) of such Teams), then any obligation to maintain and/or make contributions to the Plan pursuant to this Agreement or pursuant to any prior collective bargaining agreement shall terminate; provided, however, that any such termination shall not impair the legally binding effect of any other provision of this Agreement or any prior collective bargaining agreement, nor shall it create any right (x) to unilaterally implement during the term of this Agreement any terms concerning the provisions of pension benefits to the players, (y) to lockout, or (z) to strike. In the event of such termination, the NBA Teams shall provide alternative benefits to the players, at an annual cost (as determined on an after-tax basis) to NBA Teams equal to the annual cost that such Teams would have incurred under the Plan commencing on the date of termination. The NBA and the Players Association shall agree upon the type(s) of alternative benefits to be provided.

(3) Players employed by Toronto and Vancouver ("Canadian players") shall receive pension benefits of comparable value by means of the Plan and separate pension plans to be established and maintained by Toronto and Vancouver ("Separate Plans"); provided, however, that (i) if the provision of pension benefits under the Plan to the Canadian players would, at any time, result in the Plan being subject to Canadian Provincial Pension Legislation and/or Canadian Federal Tax Laws (to the extent that the application of such tax laws would result in adverse tax consequences to the Plan, the NBA Members and/or the Canadian players), and/or (ii) if the Separate Plans would not, upon their establishment or at any future time, either satisfy U.S. tax qualification requirements or be able to be registered under Canadian Provincial Pension Legislation and/or

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Canadian Federal Tax Laws, then any obligation to establish, maintain and/or make contributions to both the Plan with respect to Canadian players and the Separate Plans pursuant to this Agreement or pursuant to any prior collective bargaining agreement shall terminate. In the event of such termination, Toronto and Vancouver shall provide alternative benefits to the Canadian players at an annual cost (as determined on an after-tax basis) to Toronto and Vancouver equal to the annual cost that Toronto and Vancouver would have incurred under the Plan and the Separate Plans commencing on the date of termination. The NBA and the Players Association shall agree upon the type(s) of alternative benefits to be provided.



COLLECTIVE BARGAINING AGREEMENT



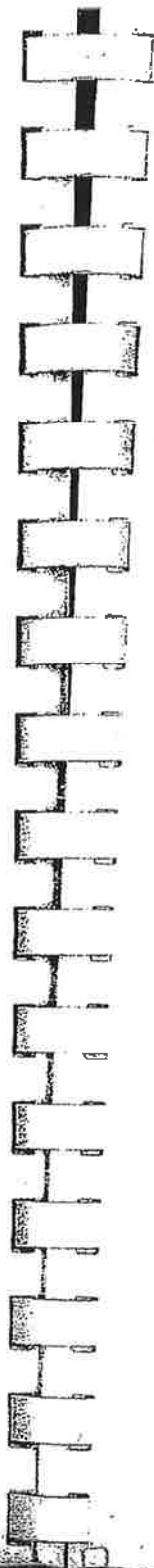
COLLECTIVE BARGAINING AGREEMENT
between the
NATIONAL BASKETBALL ASSOCIATION
and the
NATIONAL BASKETBALL PLAYERS ASSOCIATION
November 1, 1988

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Section 4. (a) The National Basketball Association Play- ers' Pension Plan (the "Plan") will, subject to the approval of the Internal Revenue Service, be amended as follows:

(1) The "Normal Retirement Pension" payable to a player under the Plan shall be increased to \$200 per month for each year of the player's "Credited Service"; provided, however, that the benefits payable under the Plan shall at all times be subject to the limitations on benefits under the Internal Reve- nue Code, as amended.

(2) The death benefit provided under the Plan for termi- nated vested players shall be modified to provide for the elimi- nation of the actuarial reduction for the commencement of such death benefit prior to the date the Player would have attained his "Normal Retirement Age" had he survived.

The applicable provisions of this Section 4(a) shall apply to those players who had not yet begun to receive a benefit under the Plan as of September 1, 1988 and to those players who were receiving monthly benefit payments under the Plan as of such date.

(b) In the event that in a season covered by this Agreement, beginning with the 1989-1990 NBA season, 4.3 DGR applicable to such season exceeds 4.3 DGR applicable to the immediately preceding season (the "excess amount"), the excess amount shall be used as follows:

(1) The excess amount shall first be used to cover (i) any additional medical, dental, disability and life insurance costs that would be incurred under the NBA Group Insurance Plans in order to maintain the level of benefits being provided to the players and their dependents under such plans as of September 1, 1988, and (ii) any costs for workers' compensation insurance and payroll taxes in excess of the costs for such items as of Sep- tember 1, 1988.

(2) If there is any portion of the excess amount remaining after the application of subsection (b)(1) above, then 50 percent of the remaining portion of the excess amount (the "50 percent excess amount") shall be used under the Plan as follows:

(i) The 50 percent excess amount shall first be used to eliminate the actuarial reduction for the Qualified Joint and Survivor Annuity for married players and their spouses provided under Section 3.10 of the Plan.

(ii) If there is any portion of the 50 percent excess amount remaining after the application of subsection (b)(2)(i) above, then the remaining portion of the 50 percent excess amount shall be used to increase the benefits payable under the Plan to the maximum amount permitted by the benefit limitations under the Internal Revenue Code, as amended.

(c) Notwithstanding anything else in this Agreement: (i) if any change or amendment made to the Internal Revenue Code, as amended (the "Code"), or the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or to any regulations (whether final, temporary or proposed regulations) or rulings issued thereunder; or (ii) if any interpretation, application or enforcement (or any proposed interpretation, application or enforcement), by a court of competent jurisdiction in the United States or by the Internal Revenue Service, of the Code, ERISA, or any regulations or rulings issued thereunder; or (iii) if any regulations (whether final, temporary or proposed regulations) or rulings issued by the Internal Revenue Service under the Code or ERISA; or (iv) if any provisions of this Agreement, including any of the amendments or benefit increases to be provided under the Plan pursuant to this Section, would result in the Plan no longer being a tax-qualified Plan under Section 401(a) of the Code, or would require the Members of the NBA to incur costs over and above any costs required to be incurred to implement the provisions of this Agreement or any prior collective bargaining agreement in order for the Plan to maintain its tax-qualified status under Section 401(a) of the Code, then any obligation to maintain and/or make contributions to the Plan pursuant to this Agreement or pursuant to any prior collective bargaining agreement shall terminate; provided, how-

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ever, that any such termination shall not impair the legally binding effect of any other provision of this Agreement or any prior collective bargaining agreement, nor shall it create any right (i) to unilaterally implement during the term of this Agreement any terms concerning the provision of pension benefits to the Players or (ii) to strike. In the event of such termination, the parties shall negotiate in good faith to reach a mutually acceptable agreement regarding the provision of pension benefits to the players. Nothing contained herein shall relieve the NBA of the obligation to pay sums or incur liabilities payable within one year for Benefits which, in the aggregate, equal 4.3 DGR for the immediately preceding season, less the amounts paid or payable for workers' compensation insurance and payroll taxes.

(d) A pension benefit will be provided (as reflected in the proposed Fifth Amendment to the Plan annexed as Exhibit B hereto) to certain former players who were not previously eligible to receive a benefit under the Plan.

PE 250

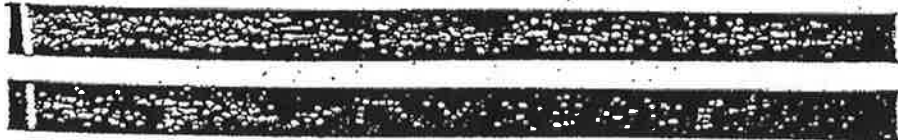
1980



COLLECTIVE

BARGAINING

AGREEMENT



NBA EXHIBIT
8

C-24-000047

ARTICLE IX

**National Basketball Association
Players' Pension Plan**

Section 1. The National Basketball Association Players' Pension Plan will, subject to the approval of the Internal Revenue Service, be amended so as to effectuate the following changes (effective as of February 2, 1981):

PE 267

(a) Section 1.10 shall be amended so as to add the following:

"Any Contract may provide for the allocation of amounts received by an Insurer under the Plan to said Insurer's general account or to one or more of its separate accounts (including separate accounts maintained for the collective investment of assets of qualified retirement plans)."

(b) A new Section 1.22 shall be added and shall provide as follows:

"Section 1.22 "National Consumer Price Index" shall mean the Consumer Price Index for urban consumers ("CPI-U")."

(c) Sections 6.2, 6.3, and 6.4 shall be amended to read as follows:

"Section 6.2. The annual cost of funding for the current and past service benefits for any Player on the Active List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1981), or on the Injured List on February 2, 1973 (or on any subsequent February 2, prior to February 2, 1981), shall be paid by the Member on whose Active List or Injured List, as the case may be, the Player appears on February 2 of the Plan Year involved. The annual cost of funding for the current and past service benefits for any Player on the Active List or Injured List on February 16, 1981 (or on any subsequent February 16) shall be paid by the Member on whose Active List or Injured List, as the case may be, the Player appears on February 16 of the Plan Year involved.

"Section 6.3. The annual cost of funding for the current and past service benefits for any Player (i) on the Suspended or Armed Services List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1981), or on the Injured List on February 2, 1968 (or on any subsequent February 2, prior to February 2, 1973), and (ii) on the Active List of any Member for 50 percent or more of the total Championship Games played by each Member during the Regular Season which includes such February 2 and which ended before February 2, 1981, shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved. The annual cost of funding for the current and past service benefits for any Player (i) on the Suspended or Armed Services List on February 16, 1981 (or on any subsequent February 16) and (ii) on the Active List of any Member for 50 percent or more of the total Championship Games played by each Member during the Regular Season which includes February 16, 1981 (or any subsequent February 16), shall be paid by the Member on whose Active List the Player appears for the most days during the Regular Season involved.

"Section 6.4. The annual cost of funding for the past service benefits for any Player not on any Roster during the Plan Year involved shall be paid by the Member having rights to the services of such Player, as a Player, on February 16 of the Plan Year involved (or February 2, if the Plan Year involved ended prior to February 2, 1981) or, if no Member has such rights on said February 16 (or February 2, as the case may be), by the Member last having such rights prior to said February 16 (or February 2, as the case may be)."

(d) A new Section 8.3 shall be added and shall provide as follows:

"Section 8.3. If any court of competent jurisdiction issues an order inconsistent with this Section, and the Committee thereafter notifies the Player or any Beneficiary of such order, then, unless and until such order is set aside, the following provisions shall apply:

PE 268

(a) No action shall be required by the Association, Insurer, Committee or any other person to prevent such order from being complied with.

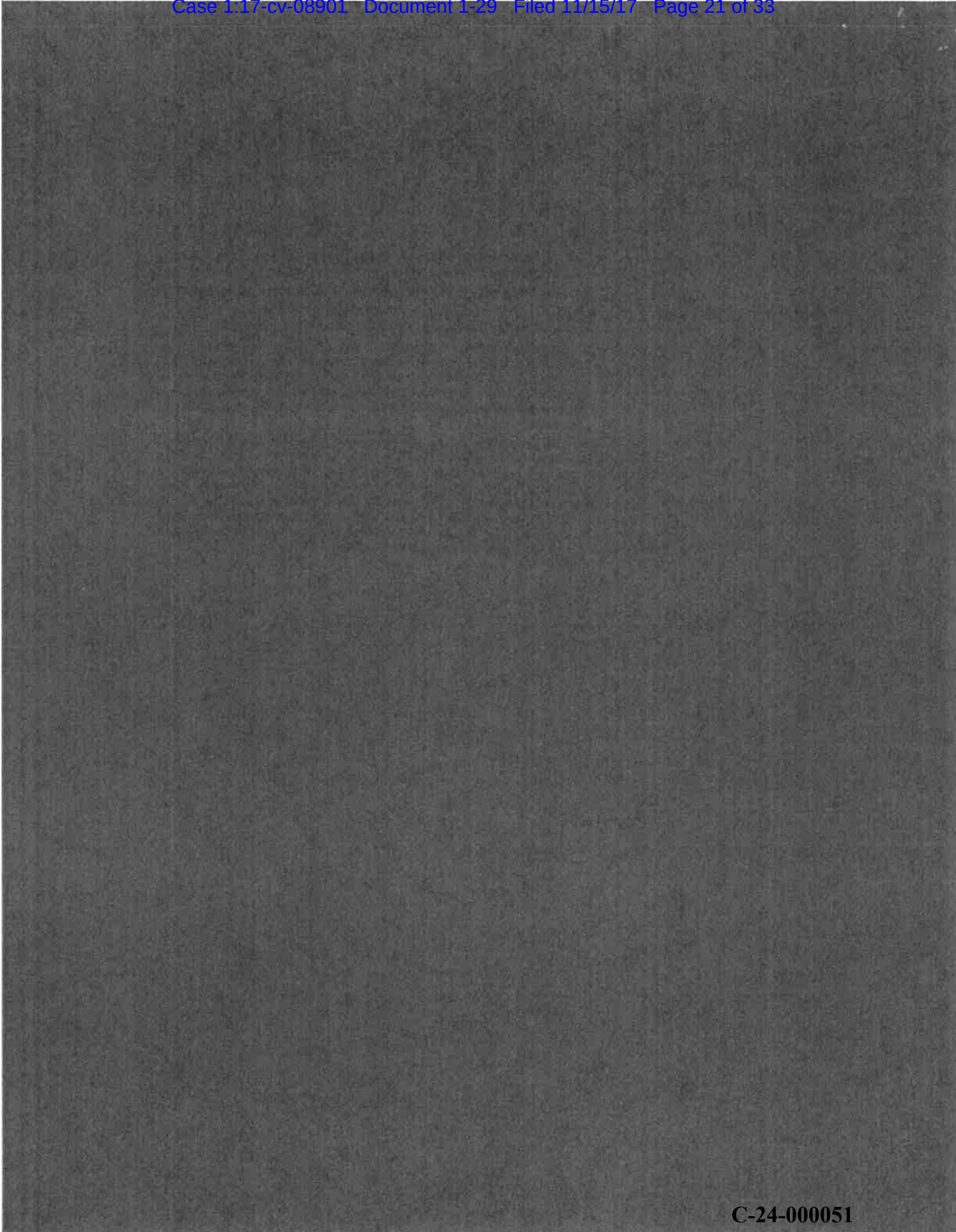
(b) Thirty days after giving such notice, such order may be complied with."

(e) A new Section 13.16 shall be added and shall provide as follows:

"Section 13.16. The Committee may appoint an Insurer under this plan to act as an investment manager to manage any assets of the Plan; provided that (a) the Insurer is qualified, under the laws of more than one state, to perform such services and (b) the Insurer has acknowledged, in a writing delivered to the Committee, that it is a fiduciary with respect to the Plan."

Section 2. In performing the functions assigned to it by Sections 3.5 and 3.6 of the Pension Plan, the Pension Committee shall consult with a representative designated by the Players Association. In the absence of agreement between the Committee and said representative, the Committee shall, solely with respect to the determinations required by Sections 3.5 and 3.6, follow the directives of the Players Association. The Players Association hereby accepts full and complete responsibility for the investment policy and the results thereof that flow from the Committee's compliance with the Players Association's directives.

C-24-000050



PE 789

1976 Collective Bargaining Agreement
Dated April 29, 1976
Plaintiffs' Exhibit 7
See PE 179-249.

ARTICLE IX

National Basketball Association
Players' Pension Plan

Section 1. The National Basketball Association Players' Pension Plan will, subject to the approval of the Internal Revenue Service, be amended so as to effectuate the following changes:

(a) Providing for a reduction in the Normal Retirement Date to age 50, effective February 2, 1978.

(b) Crediting players with a year of credited service for each year (from and after 1965) they were on the Injured List on February 2, without regard to the period spent on the Active List during such year.

(c) Providing, with respect to Player Contracts entered into on or after May 1, 1976, and unless otherwise

PE 199

agreed between a player and a Member that a player with a "guaranteed" (or "no-cut") contract will be credited with service only for seasons of actual service (i.e., seasons during which the player was on the Active List or the Injured List of any Member on February 2; and seasons during which the player was on the Suspended List or the Armed Services List of any member on February 2, provided the player was on the Active List of any member for 50% or more of the Championship Games played by each member during the seasons including such February 2).

(d) Providing for Normal Retirement Pension benefits as follows:

(1) For players who become eligible to receive the payment of Normal Retirement Pension benefits between June 1, 1976 and May 31, 1979 - \$75 per month for each year of credited service.

(2) For players who become eligible to receive the payment of Normal Retirement Pension benefits on or after June 1, 1979 and on or before December 1, 1980 - \$75 plus a cost-of-living adjustment (which shall be calculated by applying to \$75 the percentage increase in the national Consumer Price Index between September 1975 and May 1979, and which shall be rounded off to the nearest whole dollar) per month for each year of credited service.

(3) For players who become eligible to receive the payment of Normal Retirement Pension benefits on or after December 2, 1980 - the amount provided in Section 1(d)(2) above plus a cost-of-living adjustment (which shall be calculated by applying to the amount provided in Section 1(d)(2) the percentage increase in the national Consumer Price Index between June 1979 and November 1980, and which shall be rounded off to the nearest whole dollar) per month for each year of credited service.

(4) All the amounts provided for above shall be reduced by the Actuarial Equivalent as a lifetime annuity beginning on the same date of any benefit payable to a player under Article 3 of the Pension Plan.

PE 200

(e) Providing for Early Retirement Pension Benefits that are the Actuarial Equivalents of the Normal Retirement Pension benefits provided for in Section 1(d) above, with Normal Retirement Date (for these purposes only) being defined, effective immediately, as age 50.

(f) Providing for the termination of all contributions into the Supplemental Pension Accounts.

(g) Providing for such amendments as may be required by the Employee Retirement Income Security Act.

Section 2. The Players Association agrees that it will not request any further changes in the National Basketball Association Players' Pension Plan to take effect prior to June 2, 1982.

Section 3. In performing the functions assigned to it by Sections 3.5 and 3.6 of the Pension Plan, the Pension Committee shall consult with a representative designated by the Players Association. In the absence of agreement between the Committee and said representative, the Committee shall, solely with respect to the determinations required by Sections 3.5 and 3.6, follow the directives of the Players Association. The Players Association hereby accepts full and complete responsibility for the investment policy and the results thereof that flow from the Committee's compliance with the Players Association's directives.

C-24-000055

Agreement

BETWEEN

National Basketball Association

AND

**National Basketball Players
Association**

November 15, 1972

C-24-000057

ARTICLE X

NATIONAL BASKETBALL ASSOCIATION PLAYERS' PENSION PLAN

SECTION 1. The National Basketball Association Players' Pension Plan will, subject to the approval of the Internal Revenue Service, be amended as follows:

(a) Effective February 2, 1974, Section 1.18 shall be amended to change "sixth-fifth (65th)" to "fifty-fifth (55th)."

(b) Effective February 2, 1976, Section 1.18 shall be amended to change "fifty-fifth (55th)" to "fifty-third (53rd)".

(c) Effective February 2, 1978, Section 1.18 shall be amended to change "fifty-third (53rd)" to "fiftieth (50th)".

(d) Effective February 2, 1976, the following sentence shall be added to Section 3.4:

"Solely for the purposes of this section, and notwithstanding the provisions of Section 1.18, as amended, "Normal Retirement Date" shall mean the fiftieth (50th) anniversary of the Player's date of birth.

(e) Effective February 2, 1974, the following sentence shall be added to Section 6.6:

"Notwithstanding the foregoing, the amounts necessary to fund the additional past service benefits resulting from the

amendments to Section 1.18, effective February 2, 1974, February 2, 1976, and February 2, 1978, and the amendment to Section 3.4, effective February 2, 1976, shall be those amounts which if paid in equal annual installments of thirty (30) years from the effective dates of said amendments will accumulate to the Actuarial Value of such benefits taking into account interest at the rate adopted by the Committee."

(f) Section 1.24 shall be amended to read as follows:

"Section 1.24 'Roster' shall mean (i) every Player on the Active List or the Injured List of any Member on February 2 of the Regular Season involved; and (ii) every Player on the Suspended List or the Armed Services List of any Member on February 2 of the Regular Season involved provided that such Player was on the Active List of any Member for 50 percent or more of the total Championship Games played by each Member during the Regular Season which includes such February 2."

(g) The second sentence of Section 2.1 shall be amended to read as follows:

"Every Player on the Roster of any Member during the regular season which included February 2, 1965, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1970."*

(h) Section 3.5 shall be amended to change "\$100.00" to "\$200.00".

SECTION 2. In performing the functions assigned to it by Sections 3.5 and 3.6, the Pension Committee shall consult with a representative designated by the Players Association. In the absence of agreement between the Committee and said representative, the Committee shall, solely with respect to the determinations required by Sections 3.5 and 3.6, follow the directives of the Players Association. The Players Association hereby accepts full and complete responsibility for the investment policy and the results thereof that flow from the Committee's compliance with the Players Association directives.

* It is understood and agreed that the players "eligible to participate as of February 2, 1970" in accordance with Section 1(f) of Article X are those whose names are set forth on Schedule I to this Agreement.

November 7, 1969

Lawrence Fleisher, Esq.
1540 Broadway
New York, New York 10036

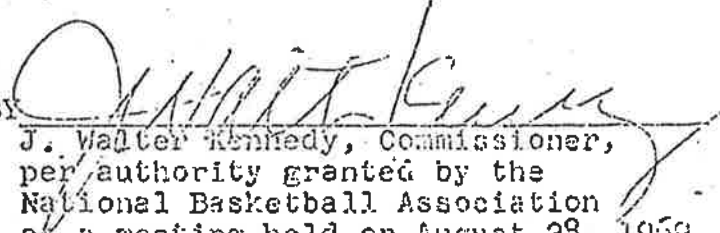
RE: National Basketball Association and
the Players' Association of the
National Basketball Association

Dear Mr. Fleisher:


The attached Memorandum of Understanding, together with the exhibits thereto, sets forth our understanding with respect to the Agreement reached between the members of the National Basketball Association and the representatives of the Players' Association of the National Basketball Association.

Very truly yours,

NATIONAL BASKETBALL ASSOCIATION,
a joint venture

BY 
J. Walter Kennedy, Commissioner,
per authority granted by the
National Basketball Association
at a meeting held on August 28, 1959.

AGREED TO:

BY 
Oscar Robertson,
on behalf of the Players'
Association of the National
Basketball Association

92
11/15

C-24-000060

1969

MEMORANDUM OF UNDERSTANDING

1. This Memorandum shall be in effect from the date hereof to June 1, 1970, provided that the Players' Association will not ask for any change in the following items to become effective prior to the date specified:

<u>ITEM</u>	<u>DATE BEFORE WHICH NO CHANGE CAN BECOME EFFECTIVE</u>
a. Pension benefits	June 1, 1972
b. Severance pay and income sharing arrangements	June 1, 1975
c. Minimum salary schedule for a player's first playing season	October 1, 1971
d. Minimum salary for a player's second playing season	October 1, 1970
e. Amount of Players' Playoff Pool	1970-1971 season

2. This memorandum supersedes all prior Memoranda of Understanding between the parties.

C-24-000061

19. Each member will amend the Pension Plan currently in effect for its players and attached hereto as Exhibit D in the following manner, subject to the approval of such amendments by the Internal Revenue Service:

a. Effective February 2, 1970, Section 1.11 shall be amended to change "fiftieth (50th)" to "forty-fifth (45th)".

b. Effective February 2, 1974, Section 1.18 shall be amended to change "sixty-fifth (65th)" to "fifty-fifth (55th)".

c. Effective February 2, 1970, Section 2.1 shall be amended to add the following sentence thereto:

"Every Player on the Roster of any Member during the Regular Season which included February 2, 1966 shall be eligible to participate as of February 2, 1970."

d. Effective February 2, 1970, Section 4.1 shall be amended by deleting the following phrase:

"provided, however, that under no circumstances shall any Player be credited with more than ten years of past service."

e. Effective February 2, 1970, Section 4.3 shall be deleted.

f. Effective February 2, 1970, Section 6.6 shall be amended to change "twenty (20) years" to "thirty (30) years from the date or dates such past service benefits are effective."

g. Effective February 2, 1974, the following sentence shall be added to Section 6.6:

"Notwithstanding the foregoing, the amount necessary to fund the additional past service benefits resulting from the amendment to Section 1.18, effective February 2, 1974, shall be that amount which if paid in equal annual installments of twenty-five (25) years from February 2, 1974, will accumulate to the Actuarial Value of such benefits taking into account interest at the rate adopted by the Committee."

h. Effective February 2, 1970, Section 8.1 shall be amended to read as follows:

"Section 8.1. In the event of the death of any Player prior to his becoming entitled to receive either an Early Retirement Pension or a Normal Retirement Pension, said Player's Beneficiary shall be entitled to receive a cash settlement, in a lump sum, equal to (i) 100% of the Supplemental Pension that said Player would have been entitled to receive if his date of death had been his Normal Retirement Date, (ii) plus any contribution thereafter required to be made on his behalf, under Section 6.5(b) hereof, reduced by such amount determined by the Committee under Section 3.5 hereof for the Plan Year involved and (iii) plus the excess, if any, of an amount equal to the actuarial reserve on the date of death for the Normal Retirement Pension based on the actuarial assumptions most recently adopted pursuant to Section 14.7 hereof and based on the Credited Service earned to the date of death, over the proceeds of any group life insurance policy (exclusive of any such proceeds paid because of accidental death) maintained and paid for by a Member on the life of a Player."



DANIEL S. FRIEDBERG
206.389.1554
dfriedberg@riddellwilliams.com

T 206.624.3600 1001 Fourth Avenue, Suite 4500
F 206.389.1708 Seattle, Washington 98154-1192

June 19, 2015

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ms. Caroline H. Cheng
NBA Associate Counsel
Olympic Tower
645 Fifth Avenue
New York, NY 10022

Re: Zaid Abdul-Aziz

Dear Ms. Cheng:

As you are aware, we are the attorneys for Zaid Abdul-Aziz.

Thank you for your response dated June 3, 2015 to some of our inquiries. We understand that you are the attorney for the Pension Committee of the NBA Player's Pension Plan. We are continuing to review the documents provided.

We have two initial concerns after our precursory review, and a continued important outstanding request. Please provide the following without delay:

1. Your documents included an "Application for Retirement Benefits" dated June 22, 1991 (the "Application Form"). The benefit calculation therein was based on 8 years of service. Zaid was on the active roster of an NBA team for 10 seasons. Please provide an explanation of this inconsistency.
2. Your June 3, 2015 cover letter concedes as follows in the final paragraph of page 1:

He [Zaid] made his election after the Plan provided him with a benefit illustration that described each potential form of payment under the Plan as well as the amount he would receive under each potential form of payment under the Plan.

The Application Form fails to provide the required benefit illustration. Without limitation, it fails to indicate the payments that the applicant would have been entitled to in the case of normal retirement. Please provide any additional material that may have been circulated with the

4823-2313-6036.01
65533.00001

NBA Benefits Department
June 19, 2015
Re: Zaid Abdul-Aziz
Page 2

Application Form that included the required benefit illustration, or confirm that the only information provided to Zaid to make his investment decision was the Application Form.

3. As requested in our letter sent to you nearly 2 months ago (on April 26, 2015), please advise as to the amount of monthly benefit that Zaid would now be entitled to if he were currently treated as being a participant in the NBA Player's Pension Plan.

In light of the information provided, please advise as to the amount of monthly benefit that Zaid would now be entitled to if he were: (1) currently treated as being a participant in the NBA Player's Pension Plan; and (2) was credited with: (a) 8 years of service; and (b) the correct number (i.e., 10) of seasons.

This letter merely lists certain preliminary documents which we need to review on behalf of our client. This letter shall not act as any waiver of Zaid's rights with respect to this matter. Zaid was unaware of the facts giving rise to his claim until he met with me several months ago. All rights reserved.

Sincerely,
RIDDELL WILLIAMS P.S.

By: 
Daniel S. Friedberg

cc: Mr. Abdul-Aziz (via US Mail)



National Basketball Association

OFFICE OF THE GENERAL COUNSEL

July 23, 2015

By Federal Express

Daniel S. Friedberg, Esq.
1001 Fourth Avenue, Suite 4500
Seattle, Washington 98154

Dear Mr. Friedberg:

We write on behalf of the Pension Committee of the National Basketball Association Players' Pension Plan ("Pension Committee") in response to your letter dated June 19, which we received on June 23. In that letter, you: (i) asked why the pension benefit of your client, Zaid Abdul-Aziz, under the National Basketball Association Players' Pension Plan (the "Plan"), was calculated based on eight rather than ten years of service; (ii) asserted incorrectly that a benefit illustration was not sent to Mr. Abdul-Aziz with his benefit application; and (iii) re-raised a previously-denied information request. As described in more detail below: (i) Mr. Abdul-Aziz's pension benefit was correctly calculated under applicable Plan terms based on his having earned eight years of credited service under the Plan; (ii) we previously sent you a copy of the benefit illustration that was provided to Mr. Abdul-Aziz with his benefit application; and (iii) the Plan is not obligated to provide a hypothetical benefit calculation based on counterfactual circumstances.

As an initial matter, we reiterate that, since the Plan paid the full value of pension benefits owing to Mr. Abdul-Aziz under the Plan as of 2001, Mr. Abdul-Aziz ceased at that time to be a "participant" in the Plan (within the meaning of the Plan and the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) and is no longer entitled to receive Plan information. In addition, because any potential benefit claim by Mr. Abdul-Aziz under the Plan would relate to events that occurred over thirteen years ago or more, any such claim would now be time-barred by the statute of limitations applicable to benefit claims under ERISA. The Pension Committee's responses to your letters continue to be without prejudice to the Plan's, Pension Committee's, and National Basketball Association's ("NBA") defenses (including, without limitation, statute of limitations defenses), which are expressly reserved.

Daniel Friedberg, Esq.
July 23, 2015
Page - 2 -

Mr. Abdul-Aziz's Years of Service under the Plan

First, you asked why Mr. Abdul-Aziz's pension benefit was calculated based on eight years of service when he played in the NBA for portions of ten seasons. Mr. Abdul-Aziz received eight years of credited service under the Plan for playing in the NBA in the 1968-1969 season through the 1975-1976 season. He properly was not credited with additional years of service, as set forth in more detail below.

While Mr. Abdul-Aziz played in the NBA for portions of the 1976-1977 and 1977-1978 seasons, he did not earn credited service for those seasons under applicable Plan terms. The Plan document as in effect during the 1976-1977 and 1977-1978 seasons provides that a player eligible to participate in the Plan is credited with one year of service for each regular season that the player is on the "Roster" of an NBA member team. Under applicable Plan terms, a player is on the Roster of an NBA member team for a regular season if: (i) the player is on the team's active list as of February 2 of the regular season or (ii) the player is on the team's suspended, armed services, or injured list as of February 2 of the regular season and on the active list of one or more NBA teams for 50% or more of the games in the regular season. The definition of Roster later was expanded retroactively to include any player on a team's injured list as of February 2 of the regular season without regard to whether the player was on the active list of any team during the season.¹

With respect to the 1976-1977 season, Plan records indicate that Mr. Abdul-Aziz signed with the Buffalo Braves on November 26, 1976 and was released on January 20, 1977 for the remainder of the season. With respect to the 1977-1978 season, Plan records indicate that Mr. Abdul-Aziz was under contract with the Boston Celtics after signing on February 14, 1978, and that he was under contract with the Houston Rockets from March 2, 1978 through the end of the season. Mr. Abdul-Aziz: (i) was not on an active or injured list of any NBA member team on either February 2, 1977 or February 2, 1978 and (ii) was neither on a suspended or armed services list on such dates nor on the active list of one or more NBA teams for 50% or more of regular season games in the 1976-1977 season or 1977-1978 season. Since Mr. Abdul-Aziz was not on the Roster of an NBA member team under applicable Plan terms for either the 1976-1977 or the 1977-1978 seasons, he did not earn credited service for those two seasons.

¹ We have enclosed another copy of the relevant provisions of the Plan for your reference.

Daniel Friedberg, Esq.
July 23, 2015
Page - 3 -

Mr. Abdul-Aziz's Benefit Illustration

Second, you asserted that no benefit illustration was provided with Mr. Abdul-Aziz's pension benefit application and, in particular, that the application failed to indicate the payments to which Mr. Abdul-Aziz would be entitled in the case of normal retirement. However, this assertion is incorrect. A benefit illustration, labelled "Benefit Calculation," was included as the fifth and sixth pages of Mr. Abdul-Aziz's application packet. The illustration provided Mr. Abdul-Aziz with the amount of his pension benefit under the forms of payment available under the Plan, calculated both: (i) assuming that he commenced payment as of his early retirement date under the Plan (age 45) and (ii) assuming that he commenced payment as of his normal retirement date under the Plan (age 50). In addition, the first and second pages of the application provided an explanation of the forms of payment available under the Plan.^{2, 3}

Information Request

Finally, you requested the amount of monthly benefit that Mr. Abdul-Aziz would be entitled to if: (i) he were treated as being a current participant in the Plan and (ii) he were credited with ten years of service. We reiterate that the Plan has no obligation to provide Plan information to Mr. Abdul-Aziz because he is no longer a Plan participant. We provided documents and information in response to your request as a courtesy, and we denied any request for items that we did not provide. For these and other reasons, the Plan will not supply a calculation of a hypothetical amount to which Mr. Abdul-Aziz might have been entitled if he had been able to prevail on a benefit claim under the Plan.

We believe this information fully responds to the matters raised in your letter.

Sincerely,


Caroline H. Cheng
Associate Counsel
National Basketball Association

² As set forth in my letter of June 3, Mr. Abdul-Aziz made his election after the Plan provided him with a description of the potential forms of payment under the Plan as well as the amount he would receive under each form.

³ We have enclosed another copy of Mr. Abdul-Aziz's benefit application, including the benefit illustration.

Daniel Friedberg, Esq.
July 23, 2015
Page - 4 -

cc: Zaid Abdul-Aziz

Enclosures

February 2,
1976

File: Plan document

NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN

The following members of the National Basketball Association do hereby adopt and restate in its entirety their pension plan established on December 7, 1964 and effective on February 2, 1965, such restated plan to be known as the "National Basketball Association Players' Pension Plan":

ATLANTA FALCONS BASKETBALL, INC.
106 Techwood Drive NW
Atlanta, Ga. 30303

BOSTON CELTICS BASKETBALL CLUB, INC.
Boston Garden
North Station
Boston, Mass. 02114

BUFFALO BRAVES, INC.
Memorial Auditorium
Main & Terrace
Buffalo, N.Y. 14202

THE CHICAGO PROFESSIONAL STORES CORPORATION
333 North Michigan Avenue
Chicago, Illinois 60661

CLEVELAND PROFESSIONAL BASKETBALL COMPANY
P.O. Box 355
Richfield, Ohio 44286

DETROIT PISTONS BASKETBALL COMPANY
Cobo Arena
One Washington Blvd.
Detroit, Michigan 48226

SAN FRANCISCO WARRIORS
Oakland Coliseum Arena
Nimitz Freeway &
Hegenberger Road
Oakland, California 94621

TEXAS FMO SPORTS, INC.
The Summit
Houston, Texas 77046

KINGS PROFESSIONAL BASKETBALL CLUB, INC.
1800 Georgece Street
Kansas City, Missouri 64102

CALIFORNIA SPORTS INCORPORATED
P.O. Box 30
Inglewood, California 90306

Player and continued upon his death for the life of the deceased Player's surviving spouse, if any, with the surviving spouse's periodic benefit to be at a level of 50% of the actuarially reduced benefit paid or payable for each such period to the Player during his lifetime.

Section 1.20. "Regular Season" shall mean the period beginning on the date of the first game of the Association's schedule of Championship Games and ending at the end of the day before the first Playoff Game is played.

Section 1.30. "Roster" shall mean, for Plan Years ended on or before February 1, 1965, (i) every Player on the Active List of any Member on February 2 of the Regular Season involved and (ii) every Player on either the Suspended, Armed Services or Injured List of any Member on February 2 of the Regular Season involved provided that such Player was on the Active List of any Member for 50 percent or more of the total Championship Games played by the Member during the Regular Season which includes such February 2. For Plan Years ended after February 2, 1965, "Roster" shall mean (i) every Player on the Active List or the Injured List of any Member on February 2 of the Regular Season involved; and (ii) every Player on the Suspended List or the Armed Services List of any Member on February 2 of the Regular Season involved provided that such Player was on the Active List of any Member for 50 percent or more of the total Championship Games played by the Member during the Regular Season which includes such February 2. A Player, not otherwise considered to be on the Roster of any Member pursuant to the terms hereof, shall not be considered to be on the Roster of any Member by virtue of the fact that he has entered into a "guaranteed" or "no-cut"

contract on or after May 1, 1976, except to the extent that the Player and a Member have agreed that the Player shall be considered to be on the Roster with respect to any Plan Year during which such contract is in effect.

Section 1.31. "Supplemental Pension" shall mean the pension payable to a Player from his Supplemental Pension Account.

Section 1.32. "Supplemental Pension Account" shall mean a segregated account to be maintained by the Insurer for each Player, as directed by the Committee and subject to the terms of this Plan.

Section 1.33. "Suspended List" shall mean the list of those Players who, for proper cause, have been suspended by the Association or by the Member having the right to so suspend as certified to the Committee by each Member.

ARTICLE 2 - ELIGIBILITY

Section 2.1. Every Player on the Roster of any Member during the Regular Season which included February 2, 1967 shall be eligible to participate as of February 2, 1968. Every Player on the Roster of any Member during the Regular Season which included February 2, 1966, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1970. Every Player on the Roster of any Member during the Regular Season which included February 2, 1965, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1973.

Section 2.2. Every Player on the Roster of any Member during any Regular Season beginning subsequent to the Regular Season which includes February 2, 1967, not otherwise eligible hereunder, shall be eligible to participate as of the Anniversary

NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN

INDEX

<u>Item</u>	<u>Article No.</u>	<u>Page No.</u>
Names of Participating Employers	- - -	1
Definitions	1	2
Eligibility	2	7
Benefits	3	7
Credited Service	4	14
Former Pension Benefits	5	14
Member's Contributions	6	15
Death Benefits	7	18
Non-alienation of Benefits	8	20
Forfeitures	9	20
Income and Expenses	10	21
Member's Accounts	11	21
Insurance Contracts	12	22
Administration of Plan	13	23
Liability and Standards of Care of Committee	14	27
Claims Procedure	15	29
Limitation of Rights of the Players	16	31
Participating Members	17	32
Amendment or Termination of the Plan	18	33
Miscellaneous	19	34

(As Amended February 4, 1978)

shall mean a pension benefit payable for the life of a retired Player and continued upon his death for the life of the deceased Player's surviving spouse, if any, with the surviving spouse's periodic benefit to be at a level of 50% of the actuarially reduced benefit paid or payable for each such period to the Player during his lifetime.

Section 1.29. "Regular Season" shall mean the period beginning on the date of the first game of the Association's schedule of Championship Games and ending at the end of the day before the first Playoff Game is played.

Section 1.30. "Roster" shall mean (i) every Player on the Active List of any Member on February 2 of the Regular Season involved, (ii) every Player on either the Suspended, Armed Services or Injured List of any Member on February 2 of the Regular Season involved provided that such Player was on the Active List of any Member for 50 percent or more of the total Championship Games played by the Member during the Regular Season which includes such February 2 and (iii) for any Regular Season ending after February 2, 1965, every additional Player on the Injured List on February 2 of the Regular Season involved, without regard to whether such additional Player was on the Active List of any Member during such Regular Season. A Player, not otherwise considered to be on the Roster of any Member pursuant to the terms hereof, shall not be considered to be on the Roster of any Member by virtue of the fact that he has entered into a "guaranteed" or "no-cut" contract on or after May 1, 1976, except to the extent that the Player and a Member have agreed that the Player shall be considered to be on the Roster with respect to any Plan Year during which such contract is in effect. Notwithstanding anything to the contrary, no Player shall be treated as having been on the Roster of any Member for any Plan Year for which all or part of his benefits were forfeited under

the provisions of this Plan in existence prior to the Restatement Effective Date. "Roster" shall also include any Player on the Armed Services List of any Member on February 2 of the Regular Season involved, who is not otherwise considered to be on the Roster for such Regular Season, if, and to the extent, that applicable law requires the Player to be so treated.

Section 1.31. "Supplemental Pension" shall mean the pension payable to a Player from his Supplemental Pension Account.

Section 1.32. "Supplemental Pension Account" shall mean a segregated account to be maintained by the Insurer for each Player, as directed by the Committee and subject to the terms of this Plan.

Section 1.33. "Suspended List" shall mean the list of those Players who, for proper cause, have been suspended by the Association or by a Member as certified to the Committee by each Member.

ARTICLE 2 - ELIGIBILITY

Section 2.1. Every Player on the Roster of any Member during the Regular Season which included February 2, 1967 shall be eligible to participate as of February 2, 1968. Every Player on the Roster of any Member during the Regular Season which included February 2, 1966, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1970. Every Player on the Roster of any Member during the Regular Season which included February 2, 1965, not otherwise eligible hereunder, shall be eligible to participate as of February 2, 1973.

Section 2.2. Every Player on the Roster of any Member during any Regular Season beginning subsequent to the Regular Season which includes February 2, 1967, not otherwise eligible hereunder, shall be eligible to participate as of the Anniversary Date during such subsequent Regular Season.

Section 2.3. Notwithstanding anything herein to the contrary, for the sole purpose of determining when a Player is first eligible to participate hereunder, any Player on the Roster of any Member for any Regular Season ended before February 2, 1973 solely by reason of Section 1.30 (iii) hereof shall not be eligible

NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN

APPLICATION FOR RETIREMENT BENEFITS*

Name ZAID ABDUL-AZIZ	Soc. Sec. No. [REDACTED]
Club HOUSTON	Date of Birth APRIL 7, 1946
	Marital Status MARRIED
	Spouse's Date of Birth SEPT. 15, 1952
Effective Date of Payments 8/1/91 AND ENDING 7/31/2001	
Address Checks should be mailed to: GROUP MERRILL CREDIT UNION 115 15th AVE. EAST / ATTN ZAID A. A. SEATTLE, WASHINGTON 98102	

STANDARD FORM OF PAYMENT

- MARRIED - 50% Qualified Joint and Survivor Annuity
- NOT MARRIED - Straight Life Annuity

EXPLANATION OF STANDARD FORMS OF PAYMENT

Married: 50% Qualified Joint and Survivor

Benefit -- This form of payment is automatically paid to you. It provides you with a monthly benefit for your lifetime and upon your death, your spouse will receive a monthly benefit equal to half of the monthly benefit you were receiving. This benefit will be paid for her lifetime. All benefits will cease upon death of your spouse. However, if your spouse should predecease you, no benefits will become payable upon your death.

In order to reject this benefit, you and your spouse must sign the attached election form in front of a notary.

Not Married: Straight Life Annuity

This form of payment provides you with a monthly benefit, unreduced, for your lifetime. Upon your death, all benefits will cease.

* Application must be made IN ADVANCE. The rules are:

- Normal Retirement (No Option) Age 50 -- 30 days advance notice.
Early Retirement (No Option) Ages 45 to 49 -- 90 days advance notice.

OPTIONAL FORMS OF PAYMENT

Life Annuity (OPTIONAL only for married participants)

Installments for a Fixed Amount OPTION -- \$1,813.17 (specify amount)

Installments for a Fixed Period OPTION -- 10 YRS (specify period: 5, 10, 15 or 20 years)
 - FEW YEAR CERTAIN ONLY.

Installments for a Fixed Guaranteed Period and Life Thereafter OPTION -- (specify period: 5, 10, 15 or 20 years)

Joint and Survivor OPTION -- % (specify %: 25, 50, 75 or 100 percent)

Social Security OPTION -- Age 62 Age 65

Lump Sum OPTION

EXPLANATION OF OPTIONAL FORMS OF PAYMENT

Life Annuity (Optional only for Married Participants) -- Same as Standard Form -- Not Married.

Installments of a Fixed Amount -- The total of all payments, in the amount that you select, will equal the entire value of your retirement benefit. When the total value is exhausted, all benefits will cease.

Installments for a Fixed Period -- A benefit will be paid for a fixed number of payments, for the period you select (e.g. 5 years, 10 years). Upon the expiration of this period, all benefits will cease. The total of all payments you receive will equal the entire value of your retirement benefit.

Installments for a Fixed Period and Life Thereafter -- A reduced monthly benefit will be payable for your lifetime with the provision that if you die before receiving a fixed number of payments, for the period you select (e.g. 5 years, 10 years, 15 years), your monthly benefit will continue to your beneficiary for the remainder of the fixed period. If you should die after this fixed period, no benefits will be paid to your beneficiary. However, you will continue to receive a monthly benefit, regardless of the fixed period, for as long as you live.

Joint and Survivor -- A reduced monthly benefit will be paid to you during your lifetime and upon your death, a percentage of your benefit, as you select (e.g. 25%, 50%, 75%, 100%), will be paid to your designated beneficiary. If your beneficiary should predecease you, no benefits will become payable upon your death.

Social Security Adjustment -- A monthly payment, temporarily increased, will be paid to you until you reach age 62, 63, 64 or 65 (whichever age you will elect to have Social Security benefits start). When your Social Security payment starts, your retirement benefit is reduced. In this way, your retirement income will be substantially level both before and after you receive your Social Security benefits.

Lump Sum -- A single sum payment, based on the value of your retirement benefit, will be paid to you.

Designation of Beneficiary

Any death benefits which become payable under the plan should be paid to:

Name TAYLOR TAYLOR
 Address 3003 S.W. VAW OTIWA
VAHAWA WA 98070

Note: If a Joint and Survivor benefit is in effect, please indicate Survivor's name and address

To: Pension Committee

I am applying for retirement benefits as indicated above. All statements made are true to the best of my knowledge. I understand the Plan has the right to recover any benefits paid to me as a result of any false statements.

6/22/91
 Date

[Signature]
 Signature

BENEFICIARY DESIGNATION AND SPOUSAL ELECT FORM
(Participant's Statement)

NOTE: Every Participant must complete Section A and Participant Notarization form on opposite page in order to receive benefits under the Plan.

SECTION A
I, ZAID ABDUL-AZIZ hereby swear:
(Participant's name)

that I am not legally married at this time (must complete Section D).

that the person co-signing this document is my current and legal spouse (must complete Section B or C).

that I am unable to locate my spouse. (Additional proof is needed if you check this box.) (Must complete Section D.)

6/22/91
Date

[Signature]
Participant's signature

SECTION B - If you elect the Qualified Joint and Survivor Annuity form of payment, complete this Section and do not complete Sections C, D, E and F.

I, _____, wish to receive my pension benefit in the form of a
(Participant's name)
Qualified Joint and Survivor Annuity.

Date

Participant's signature

SECTION C - If you reject the Qualified Joint and Survivor Annuity form of payment, you must complete this Section and Section D, and your spouse must complete Section F.

I, ZAID ABDUL-AZIZ do not elect to receive my pension benefit in the form
(Participant's name)
of a Qualified Joint and Survivor Annuity. I understand that rejecting this form of pension means that no benefit will be paid to my spouse by the Retirement Plan after my death, unless I elect another option which provides a spousal death benefit or unless benefits are payable under other sections of the Plan.

6/22/91
Date

[Signature]
Participant's signature

SECTION D - If the form of payment provides a death benefit, then complete Section E.

I, ZAID A. AZIZ, wish to receive my pension benefit in the form
(Participant's name)
of a TEW YEAR CERTAIN ONLY
(specify the standard form of payment or the optional form of payment elected)

6/22/91
Date

[Signature]
Participant's signature

SECTION E - Upon my death, any benefits payable are to be paid to:

Spouse _____

Designated Beneficiary (other than the spouse)
Name _____
Address _____

Date

Participant's signature

NOTARIZATION

State of _____)
County of _____) SS:

On the _____ day of _____ 19____ before me
came _____, known to me to be the person described
(Participant's name)
in and who executed the foregoing statement and he duly acknowledged to me that he
executed the same.

Notary Public

SECTION F Spouse's Statement

I, TAYYIBAH TAYLOR, swear that I am the legal spouse of the participant
(name)
described on the opposite page.

I hereby consent to my spouse's rejection of the Qualified Joint and Survivor Pension. I understand that my spouse (the Participant) has elected a
TEN (10)-YEAR CERTAIN ONLY
(specify optional form of payment)
and that my spouse (the Participant) has named: TAYYIBAH TAYLOR
(Designated Beneficiary/
Contingent Annuitant)
to receive any benefits that are payable upon his/~~her~~ death.

I further understand that as a result of this election, that
I, TAYYIBAH TAYLOR, the legal spouse, will not be paid a pension
(Participant's spouse's name)
from the Retirement Plan after my spouse's death unless my spouse (the Participant) has designated me in his/her sole discretion as beneficiary to receive any death benefits otherwise payable under this Plan upon his/her death.

6/22/91
Date

Tayyibah Taylor
Spouse's signature

NOTARIZATION

State of Washington)
County of King) SS:

On the 22nd day of June 1991 before me
came TAYYIBAH TAYLOR, known to me to be the person described
(Spouse's name)
in and who executed the foregoing statement and he duly acknowledged to me that he executed the same.

[Signature]
Notary Public

**NATIONAL BASKETBALL ASSOCIATION
PLAYERS' PENSION PLAN**

BENEFIT CALCULATION

PLAYER	Zaid Abdul-Aziz
DATE OF BIRTH	Apr-46
YEARS OF CREDITED SERVICE	8
YEARS OF PROFESSIONAL CORPORATION	0
NORMAL RETIREMENT DATE	May-96
EARLY RETIREMENT DATE	May-91
LATE RETIREMENT DATE	N/A
BENEFIT COMMENCEMENT DATE	May-91
SPOUSE'S DATE OF BIRTH	Sep-52

AUG-05T-91

BENEFIT CALCULATION PAYABLE AT NRD:

May-96

\$200.00 x 8 = \$1,600.00 /mo. @ NRD

50% JOINT & SURVIVOR BENEFIT:

May-96

\$1,600.00 x 0.920 = \$1,472.00 /mo. to Player
\$736.00 /mo. to Surviving Spouse

LUMP SUM PAYMENT: PBGC RATE 7.25%

May-96

\$1,600.00 x 136.85 = \$218,960.00 (Estimate)

TIA ACCOUNT VALUED AS OF

01-Jan-91

\$532.89 x 6.2187701 = \$3,313.92

aid Abdul-Aziz

PAGE-2

03/18/91

EARLY RETIREMENT BENEFIT

May-91

$$\$1,600.00 \times 0.667 = \$1,067.20 \text{ /mo. @ERD}$$

50% JOINT & SURVIVOR BENEFIT

May-91

$$\$1,067.20 \times 0.939 = \$1,002.10 \text{ /mo. to Player}$$

$$\$501.05 \text{ /mo. to Surviving Spouse}$$

LUMP SUM PAYMENT: PBGC RATE 7.25%

May-91

$$\$1,067.20 \times 145.02 = \$154,765.34 \text{ (Estimate)}$$

ADDITIONAL FORMS OF PAYMENT REQUESTED:**5 YEAR CERTAIN ONLY**

BEGINNING ON 05/01/91 AND ENDING 04/30/96

$$\$1,067.20 \times 2.9103 = \$3,105.87 \text{ /mo.}$$

10 YEAR CERTAIN ONLY

BEGINNING ON 05/01/91 AND ENDING 04/30/2001

$$\$1,067.20 \times 1.6990 = \$1,813.17 \text{ /mo.}$$

5 YEAR CERTAIN ONLY

BEGINNING ON 05/01/96 AND ENDING 04/30/2001

$$\$1,600.00 \times 2.7413 = \$4,386.08 \text{ /mo.}$$

10 YEAR CERTAIN ONLY

BEGINNING ON 05/01/96 AND ENDING 04/30/2006

$$\$1,600.00 \times 1.6003 = \$2,560.48 \text{ /mo.}$$

26 USCS § 415

Current through PL 115-43, approved 6/30/17

United States Code Service - Titles 1 through 54 > TITLE 26. INTERNAL REVENUE CODE > SUBTITLE A. INCOME TAXES > CHAPTER 1. NORMAL TAXES AND SURTAXES > SUBCHAPTER D. DEFERRED COMPENSATION, ETC. > PART I. PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC. > SUBPART B. SPECIAL RULES

§ 415. Limitations on benefits and contributions under qualified plans.

(a) General rule.

(1) Trusts. A trust which is a part of a pension, profit-sharing, or stock bonus plan shall not constitute a qualified trust under section 401(a) [26 USCS § 401(a)] if--

(A) in the case of a defined benefit plan, the plan provides for the payment of benefits with respect to a participant which exceed the limitation of subsection (b), or

(B) in the case of a defined contribution plan, contributions and other additions under the plan with respect to any participant for any taxable year exceed the limitation of subsection (c).

(2) Section applies to certain annuities and accounts. In the case of--

(A) an employee annuity plan described in section 403(a) [26 USCS § 403(a)],

(B) an annuity contract described in section 403(b) [26 USCS § 403(b)], or

(C) a simplified employee pension described in section 408(k) [26 USCS § 408(k)], such a contract, plan, or pension shall not be considered to be described in section 403(a), 403(b), or 408(k) [26 USCS § 403(a), 403(b), or 408(k)], as the case may be, unless it satisfies the requirements of subparagraph (A) or subparagraph (B) of paragraph (1), whichever is appropriate, and has not been disqualified under subsection (g). In the case of an annuity contract described in section 403(b) [26 USCS § 403(b)], the preceding sentence shall apply only to the portion of the annuity contract which exceeds the limitation of subsection (b) or the limitation of subsection (c), whichever is appropriate.

(b) Limitation for defined benefit plans.

(1) In general. Benefits with respect to a participant exceed the limitation of this subsection if, when expressed as an annual benefit (within the meaning of paragraph (2)), such annual benefit is greater than the lesser of--

(A) \$ 160,000, or

(B) 100 percent of the participant's average compensation for his high 3 years.

(2) Annual benefit.

(A) In general. For purposes of paragraph (1), the term "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16) [26 USCS §§ 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)]) are made.

(B) Adjustment for certain other forms of benefit. If the benefit under the plan is payable in any form other than the form described in subparagraph (A), or if the employees contribute to the plan or

26 USCS § 415

make rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16) [26 USCS §§ 402(c), 403(a)(4), 403(b)(8), [408\(d\)\(3\)](#), and [457\(e\)\(16\)](#)]), the determinations as to whether the limitation described in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by adjusting such benefit so that it is equivalent to the benefit described in subparagraph (A). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity (as defined in section 417 [[26 USCS § 417](#)]) shall not be taken into account.

- (C)** Adjustment to \$ 160,000 limit where benefit begins before age 62. If the retirement income benefit under the plan begins before age 62, the determination as to whether the \$ 160,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by reducing the limitation of paragraph (1)(A) so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a \$ 160,000 annual benefit beginning at age 62.
- (D)** Adjustment to \$ 160,000 limit where benefit begins after age 65. If the retirement income benefit under the plan begins after age 65, the determination as to whether the \$ 160,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by increasing the limitation of paragraph (1)(A) so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a \$ 160,000 annual benefit beginning at age 65.
- (E)** Limitation on certain assumptions.
- (i)** For purposes of adjusting any limitation under subparagraph (C) and, except as provided in clause (ii), for purposes of adjusting any benefit under subparagraph (B), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan.
- (ii)** For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3) [[26 USCS § 417\(e\)\(3\)](#)], the interest rate assumption shall not be less than the greatest of--
- (I)** 5.5 percent,
- (II)** the rate that provides a benefit of not more than 105 percent of the benefit that would be provided if the applicable interest rate (as defined in section 417(e)(3) [[26 USCS § 417\(e\)\(3\)](#)]) were the interest rate assumption, or
- (III)** the rate specified under the plan.
- (iii)** For purposes of adjusting any limitation under subparagraph (D), the interest rate assumption shall not be greater than the lesser of 5 percent or the rate specified in the plan.
- (iv)** For purposes of this subsection, no adjustments under subsection (d)(1) shall be taken into account before the year for which such adjustment first takes effect.
- (v)** For purposes of adjusting any benefit or limitation under subparagraph (B), (C), or (D), the mortality table used shall be the applicable mortality table (within the meaning of section 417(e)(3)(B) [[26 USCS § 417\(e\)\(3\)\(B\)](#)]).
- (vi)** In the case of a plan maintained by an eligible employer (as defined in section 408(p)(2)(C)(i) [[26 USCS § 408\(p\)\(2\)\(C\)\(i\)](#)]), clause (ii) shall be applied without regard to subclause (II) thereof.
- (F)** [Deleted]
- (G)** Special limitation for qualified police or firefighters. In the case of a qualified participant, subparagraph (C) of this paragraph shall not apply.

26 USCS § 415

- (H)** Qualified participant defined. For purposes of subparagraph (G), the term "qualified participant" means a participant--
- (i)** in a defined benefit plan which is maintained by a State, Indian tribal government (as defined in section 7701(a)(40) [[26 USCS § 7701\(a\)\(40\)](#)]), or any political subdivision thereof,
 - (ii)** with respect to whom the period of service taken into account in determining the amount of the benefit under such defined benefit plan includes at least 15 years of service of the participant--
 - (I)** as a full-time employee of any police department or fire department which is organized and operated by the State, Indian tribal government (as so defined), or any political subdivision maintaining such defined benefit plan to provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State, Indian tribal government (as so defined), or any political subdivision, or
 - (II)** as a member of the Armed Forces of the United States.
- (I)** Exemption for survivor and disability benefits provided under governmental plans. Subparagraph (C) of this paragraph and paragraph (5) shall not apply to--
- (i)** income received from a governmental plan (as defined in section 414(d) [[26 USCS § 414\(d\)](#)]) as a pension, annuity, or similar allowance as the result of the recipient becoming disabled by reason of personal injuries or sickness, or
 - (ii)** amounts received from a governmental plan by the beneficiaries, survivors, or the estate of an employee as the result of the death of the employee.
- (3)** Average compensation for high 3 years. For purposes of paragraph (1), a participant's high 3 years shall be the period of consecutive calendar years (not more than 3) during which the participant had the greatest aggregate compensation from the employer. In the case of an employee within the meaning of section 401(c)(1) [[26 USCS § 401\(c\)\(1\)](#)], the preceding sentence shall be applied by substituting for "compensation from the employer" the following: "the participant's earned income (within the meaning of section 401(c)(2) [[26 USCS § 401\(c\)\(2\)](#)] but determined without regard to any exclusion under section 911 [[26 USCS § 911](#)])".
- (4)** Total annual benefits not in excess of \$ 10,000. Notwithstanding the preceding provisions of this subsection, the benefits payable with respect to a participant under any defined benefit plan shall be deemed not to exceed the limitation of this subsection if--
- (A)** the retirement benefits payable with respect to such participant under such plan and under all other defined benefit plans of the employer do not exceed \$ 10,000 for the plan year, or for any prior plan year, and
 - (B)** the employer has not at any time maintained a defined contribution plan in which the participant participated.
- (5)** Reduction for participation or service of less than 10 years.
- (A)** Dollar limitation. In the case of an employee who has less than 10 years of participation in a defined benefit plan, the limitation referred to in paragraph (1)(A) shall be the limitation determined under such paragraph (without regard to this paragraph) multiplied by a fraction--
 - (i)** the numerator of which is the number of years (or part thereof) of participation in the defined benefit plan of the employer, and
 - (ii)** the denominator of which is 10.
 - (B)** Compensation and benefits limitations. The provisions of subparagraph (A) shall apply to the limitations under paragraphs (1)(B) and (4), except that such subparagraph shall be applied with respect to years of service with an employer rather than years of participation in a plan.

26 USCS § 415

- (C) Limitation on reduction. In no event shall subparagraph (A) or (B) reduce the limitations referred to in paragraphs (1) and (4) to an amount less than 1/10 of such limitation (determined without regard to this paragraph).
- (D) Application to changes in benefit structure. To the extent provided in regulations, subparagraph (A) shall be applied separately with respect to each change in the benefit structure of a plan.
- (6) Computation of benefits and contributions. The computation of--
- (A) benefits under a defined contribution plan, for purposes of section 401(a)(4) [26 USCS § 401(a)(4)],
- (B) contributions made on behalf of a participant in a defined benefit plan, for purposes of section 401(a)(4) [26 USCS § 401(a)(4)], and
- (C) contributions and benefits provided for a participant in a plan described in section 414(k) [26 USCS § 414(k)], for purposes of this section shall not be made on a basis inconsistent with regulations prescribed by the Secretary.
- (7) Benefits under certain collectively bargained plans. For a year, the limitation referred to in paragraph (1)(B) shall not apply to benefits with respect to a participant under a defined benefit plan (other than a multiemployer plan)--
- (A) which is maintained for such year pursuant to a collective bargaining agreement between employee representatives and one or more employers,
- (B) which, at all times during such year, has at least 100 participants,
- (C) under which benefits are determined solely by reference to length of service, the particular years during which service was rendered, age at retirement, and date of retirement,
- (D) which provides that an employee who has at least 4 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions, and
- (E) which requires, as a condition of participation in the plan, that an employee complete a period of not more than 60 consecutive days of service with the employer or employers maintaining the plan. This paragraph shall not apply to a participant whose compensation for any 3 years during the 10-year period immediately preceding the year in which he separates from service exceeded the average compensation for such 3 years of all participants in such plan. This paragraph shall not apply to a participant for any period for which he is a participant under another plan to which this section applies which is maintained by an employer maintaining this plan. For any year for which the paragraph applies to benefits with respect to a participant, paragraph (1)(A) and subsection (d)(1)(A) shall be applied with respect to such participant by substituting one-half the amount otherwise applicable for such year under paragraph (1)(A) for "\$ 160,000".
- (8) Social security retirement age defined. For purposes of this subsection, the term "social security retirement age" means the age used as the retirement age under section 216(l) of the Social Security Act [42 USCS § 416(l)], except that such section shall be applied--
- (A) without regard to the age increase factor, and
- (B) as if the early retirement age under section 216(l)(2) of such Act [42 USCS § 416(l)(2)] were 62.
- (9) Special rule for commercial airline pilots.
- (A) In general. Except as provided in subparagraph (B), in the case of any participant who is a commercial airline pilot, if, as of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before age 62, paragraph (2)(C) shall be applied by substituting such age for age 62.
- (B) Individuals who separate from service before age 60. If a participant described in subparagraph (A) separates from service before age 60, the rules of paragraph (2)(C) shall apply.

26 USCS § 415

(10) Special rule for State, Indian tribal, and local government plans.

(A) Limitation to equal accrued benefit. In the case of a plan maintained for its employees by any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, or a governmental plan described in the last sentence of section 414(d) [26 USCS § 414(d)] (relating to plans of Indian tribal governments), the limitation with respect to a qualified participant under this subsection shall not be less than the accrued benefit of the participant under the plan (determined without regard to any amendment of the plan made after October 14, 1987).

(B) Qualified participant. For purposes of this paragraph, the term "qualified participant" means a participant who first became a participant in the plan maintained by the employer before January 1, 1990.

(C) Election.

(i) In general. This paragraph shall not apply to any plan unless each employer maintaining the plan elects before the close of the 1st plan year beginning after December 31, 1989, to have this subsection (other than paragraph (2)(G)) [sic].

(ii) Revocation of election. An election under clause (i) may be revoked not later than the last day of the third plan year beginning after the date of the enactment of this clause [enacted Aug. 20, 1996]. The revocation shall apply to all plan years to which the election applied and to all subsequent plan years. Any amount paid by a plan in a taxable year ending after the revocation shall be includible in income in such taxable year under the rules of this chapter [26 USCS §§ 1 et seq.] in effect for such taxable year, except that, for purposes of applying the limitations imposed by this section, any portion of such amount which is attributable to any taxable year during which the election was in effect shall be treated as received in such taxable year.

(11) Special limitation rule for governmental and multiemployer plans. In the case of a governmental plan (as defined in section 414(d) [26 USCS § 414(d)]) or a multiemployer plan (as defined in section 414(f) [26 USCS § 414(f)]), subparagraph (B) of paragraph (1) shall not apply. Subparagraph (B) of paragraph (1) shall not apply to a plan maintained by an organization described in section 3121(w)(3)(A) [26 USCS § 3121(w)(3)(A)] except with respect to highly compensated benefits. For purposes of this paragraph, the term "highly compensated benefits" means any benefits accrued for an employee in any year on or after the first year in which such employee is a highly compensated employee (as defined in section 414(q) [26 USCS § 414(q)]) of the organization described in section 3121(w)(3)(A) [26 USCS § 3121(w)(3)(A)]. For purposes of applying paragraph (1)(B) to highly compensated benefits, all benefits of the employee otherwise taken into account (without regard to this paragraph) shall be taken into account.

(c) Limitation for defined contribution plans.

(1) In general. Contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition (within the meaning of paragraph (2)) to the participant's account, such annual addition is greater than the lesser of--

(A) \$ 40,000, or

(B) 100 percent of the participant's compensation.

(2) Annual addition. For purposes of paragraph (1), the term "annual addition" means the sum for any year of--

(A) employer contributions,

(B) the employee contributions, and

(C) forfeitures. For the purposes of this paragraph, employee contributions under subparagraph (B) are determined without regard to any rollover contributions (as defined in sections 402(c), 403(a)(4),

26 USCS § 415

403(b)(8), 408(d)(3), and 457(e)(16) [26 USCS §§ 402(c), 403(a)(4), 403(b)(8), [408\(d\)\(3\)](#), and [457\(e\)\(16\)](#)] without regard to employee contributions to a simplified employee pension which are excludable from gross income under section 408(k)(6) [[26 USCS § 408\(k\)\(6\)](#)]. Subparagraph (B) of paragraph (1) shall not apply to any contribution for medical benefits (within the meaning of section 419A(f)(2) [[26 USCS § 419A\(f\)\(2\)](#)]) after separation from service which is treated as an annual addition.

(3) Participant's compensation. For purposes of paragraph (1)--

- (A)** In general. The term "participant's compensation" means the compensation of the participant from the employer for the year.
- (B)** Special rule for self- employed individuals. In the case of an employee within the meaning of section 401(c)(1) [26 USCS § 401(c)(1)], subparagraph (A) shall be applied by substituting "the participant's earned income (within the meaning of section 401(c)(2) [26 USCS § 401(c)(2)] but determined without regard to any exclusion under section 911 [26 USCS § 911]" for "compensation of the participant from the employer".
- (C)** Special rules for permanent and total disability. In the case of a participant in any defined contribution plan--
- (i)** who is permanently and totally disabled (as defined in section 22(e)(3) [26 USCS § 22(e)(3)]),
- (ii)** who is not a highly compensated employee (within the meaning of section 414(q) [[26 USCS § 414\(q\)](#)]), and
- (iii)** with respect to whom the employer elects, at such time and in such manner as the Secretary may prescribe, to have this subparagraph apply, the term "participant's compensation" means the compensation the participant would have received for the year if the participant was paid at the rate of compensation paid immediately before becoming permanently and totally disabled. This subparagraph shall apply only if contributions made with respect to amounts treated as compensation under this subparagraph are nonforfeitable when made. If a defined contribution plan provides for the continuation of contributions on behalf of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii).
- (D)** Certain deferrals included. The term "participant's compensation" shall include--
- (i)** any elective deferral (as defined in section 402(g)(3) [26 USCS § 402(g)(3)]), and
- (ii)** 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 section 125, 132(f)(4), or 457 [26 USCS § 125, [132\(f\)\(4\)](#), or [457](#)].
- (E)** Annuity contracts. In the case of an annuity contract described in section 403(b) [26 USCS § 403(b)], the term "participant's compensation" means the participant's includible compensation determined under section 403(b)(3) [26 USCS § 403(b)(3)].

(4) [Deleted]

(5) [Repealed.]

(6) Special rule for employee stock ownership plans. If no more than one-third of the employer contributions to an employee stock ownership plan (as described in section 4975(e)(7) [[26 USCS § 4975\(e\)\(7\)](#)]) for a year which are deductible under paragraph (9) of section 404(a) [26 USCS § 404(a)] are allocated to highly compensated employees (within the meaning of section 414(q) [[26 USCS § 414\(q\)](#)]), the limitations imposed by this section shall not apply to--

- (A)** forfeitures of employer securities (within the meaning of section 409 [[26 USCS § 409](#)]) under such an employee stock ownership plan if such securities were acquired with the proceeds of a loan (as described in section 404(a)(9)(A) [26 USCS § 404(a)(9)(A)]), or

26 USCS § 415

- (B)** employer contributions to such an employee stock ownership plan which are deductible under section 404(a)(9)(B) [26 USCS § 404(a)(9)(B)] and charged against the participant's account. The amount of any qualified gratuitous transfer (as defined in section 664(g)(1) [26 USCS § 664(g)(1)]) allocated to a participant for any limitation year shall not exceed the limitations imposed by this section, but such amount shall not be taken into account in determining whether any other amount exceeds the limitations imposed by this section.
- (7)** Special rules relating to church plans.
- (A)** Alternative contribution limitation.
- (i)** In general. Notwithstanding any other provision of this subsection, at the election of a participant who is an employee of a church or a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii) [26 USCS § 414(e)(3)(B)(ii)], contributions and other additions for an annuity contract or retirement income account described in section 403(b) [26 USCS § 403(b)] with respect to such participant, when expressed as an annual addition to such participant's account, shall be treated as not exceeding the limitation of paragraph (1) if such annual addition is not in excess of \$ 10,000.
- (ii)** \$ 40,000 aggregate limitation. The total amount of additions with respect to any participant which may be taken into account for purposes of this subparagraph for all years may not exceed \$ 40,000.
- (B)** Number of years of service for duly ordained, commissioned, or licensed ministers or lay employees. For purposes of this paragraph--
- (i)** all years of service by--
- (I)** a duly ordained, commissioned, or licensed minister of a church, or
- (II)** a lay person, as an employee of a church, a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii) [26 USCS § 414(e)(3)(B)(ii)], shall be considered as years of service for 1 employer, and
- (ii)** all amounts contributed for annuity contracts by each such church (or convention or association of churches) or such organization during such years for such minister or lay person shall be considered to have been contributed by 1 employer.
- (C)** Foreign missionaries. In the case of any individual described in subparagraph (B) performing services outside the United States, contributions and other additions for an annuity contract or retirement income account described in section 403(b) [26 USCS § 403(b)] with respect to such employee, when expressed as an annual addition to such employee's account, shall not be treated as exceeding the limitation of paragraph (1) if such annual addition is not in excess of \$ 3,000. This subparagraph shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to community property laws) exceeds \$ 17,000.
- (D)** Annual addition. For purposes of this paragraph, the term "annual addition" has the meaning given such term by paragraph (2).
- (E)** Church, convention or association of churches. For purposes of this paragraph, the terms "church" and "convention or association of churches" have the same meaning as when used in section 414(e) [26 USCS § 414(e)].
- (d)** Cost-of-living adjustments.
- (1)** In general. The Secretary shall adjust annually--
- (A)** the \$ 160,000 amount in subsection (b)(1)(A),
- (B)** in the case of a participant who separated from service, the amount taken into account under subsection (b)(1)(B), and

26 USCS § 415

- (C) the \$ 40,000 amount in subsection (c)(1)(A), for increases in the cost-of-living in accordance with regulations prescribed by the Secretary.
- (2) Method. The regulations prescribed under paragraph (1) shall provide for--
- (A) an adjustment with respect to any calendar year based on the increase in the applicable index for the calendar quarter ending September 30 of the preceding calendar year over such index for the base period, and
- (B) adjustment procedures which are similar to the procedures used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act [[42 USCS § 415\(i\)\(2\)\(A\)](#)].
- (3) Base period. For purposes of paragraph (2)--
- (A) \$ 160,000 amount. The base period taken into account for purposes of paragraph (1)(A) is the calendar quarter beginning July 1, 2001.
- (B) Separations after December 31, 1994. The base period taken into account for purposes of paragraph (1)(B) with respect to individuals separating from service with the employer after December 31, 1994, is the calendar quarter beginning July 1 of the calendar year preceding the calendar year in which such separation occurs.
- (C) Separations before January 1, 1995. The base period taken into account for purposes of paragraph (1)(B) with respect to individuals separating from service with the employer before January 1, 1995, is the calendar quarter beginning October 1 of the calendar year preceding the calendar year in which such separation occurs.
- (D) \$ 40,000 amount. The base period taken into account for purposes of paragraph (1)(C) is the calendar quarter beginning July 1, 2001.
- (4) Rounding.
- (A) \$ 160,000 amount. Any increase under subparagraph (A) of paragraph (1) which is not a multiple of \$ 5,000 shall be rounded to the next lowest multiple of \$ 5,000. This subparagraph shall also apply for purposes of any provision of this title that provides for adjustments in accordance with the method contained in this subsection, except to the extent provided in such provision.
- (B) \$ 40,000 amount. Any increase under subparagraph (C) of paragraph (1) which is not a multiple of \$ 1,000 shall be rounded to the next lowest multiple of \$ 1,000.
- (e) [Repealed]
- (f) Combining of plans.
- (1) In general. For purposes of applying the limitations of subsections (b) and (c)--
- (A) all defined benefit plans (whether or not terminated) of an employer are to be treated as one defined benefit plan, and
- (B) all defined contribution plans (whether or not terminated) of an employer are to be treated as one defined contribution plan.
- (2) Exception for multiemployer plans. Notwithstanding paragraph (1) and subsection (g), a multiemployer plan (as defined in section 414(f) [[26 USCS § 414\(f\)](#)]) shall not be combined or aggregated--
- (A) with any other plan which is not a multiemployer plan for purposes of applying subsection (b)(1)(B) to such other plan, or
- (B) with any other multiemployer plan for purposes of applying the limitations established in this section.
- (g) Aggregation of plans. Except as provided in subsection (f)(3), the Secretary, in applying the provisions of this section to benefits or contributions under more than one plan maintained by the same employer, and to any trusts, contracts, accounts, or bonds referred to in subsection (a)(2), with respect to which the

26 USCS § 415

participant has the control required under section 414(b) or (c), as modified by subsection (h), shall, under regulations prescribed by the Secretary, disqualify one or more trusts, plans, contracts, accounts, or bonds, or any combination thereof until such benefits or contributions do not exceed the limitations contained in this section. In addition to taking into account such other factors as may be necessary to carry out the purposes of subsection (f), the regulations prescribed under this paragraph shall provide that no plan which has been terminated shall be disqualified until all other trusts, plans, contracts, accounts, or bonds have been disqualified.

- (h)** 50 percent control. For purposes of applying subsections (b) and (c) of section 414 [[26 USCS § 414](#)] to this section, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1563(a)(1) [[26 USCS § 1563\(a\)\(1\)](#)].
- (i)** Records not available for past periods. Where for the period before January 1, 1976, or (if later) the first day of the first plan year of the plan, the records necessary for the application of this section are not available, the Secretary may by regulations prescribe alternative methods for determining the amounts to be taken into account for such period.
- (j)** Regulations; definition of year. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including, but not limited to, regulations defining the term "year" for purposes of any provision of this section.
- (k)** Special rules.
- (1)** Defined benefit plan and defined contribution plan. For purposes of this title, the term "defined contribution plan" or "defined benefit plan" means a defined contribution plan (within the meaning of section 414(i) [[26 USCS § 414\(i\)](#)]) or a defined benefit plan (within the meaning of section 414(j) [[26 USCS § 414\(j\)](#)]), whichever applies, which is--
- (A)** a plan described in section 401(a) [[26 USCS § 401\(a\)](#)] which includes a trust which is exempt from tax under section 501(a) [[26 USCS § 501\(a\)](#)],
- (B)** an annuity plan described in section 403(a) [[26 USCS § 403\(a\)](#)],
- (C)** an annuity contract described in section 403(b) [[26 USCS § 403\(b\)](#)], or
- (D)** a simplified employee pension.
- (2)** Contributions to provide cost-of-living protection under defined benefit plans.
- (A)** In general. In the case of a defined benefit plan which maintains a qualified cost-of-living arrangement--
- (i)** any contribution made directly by an employee under such an arrangement shall not be treated as an annual addition for purposes of subsection (c), and
- (ii)** any benefit under such arrangement which is allocable to an employer contribution which was transferred from a defined contribution plan and to which the requirements of subsection (c) were applied shall, for purposes of subsection (b), be treated as a benefit derived from an employee contribution (and subsection (c) shall not again apply to such contribution by reason of such transfer).
- (B)** Qualified cost-of-living arrangement defined. For purposes of this paragraph, the term "qualified cost-of-living arrangement" means an arrangement under a defined benefit plan which--
- (i)** provides a cost-of-living adjustment to a benefit provided under such plan or a separate plan subject to the requirements of section 412, and
- (ii)** meets the requirements of subparagraphs (C), (D), (E), and (F) and such other requirements as the Secretary may prescribe.
- (C)** Determination of amount of benefit. An arrangement meets the requirement of this subparagraph only if the cost-of-living adjustment of participants is based--

26 USCS § 415

- (i) on increases in the cost-of-living after the annuity starting date, and
 - (ii) on average cost-of-living increases determined by reference to 1 or more indexes prescribed by the Secretary, except that the arrangement may provide that the increase for any year will not be less than 3 percent of the retirement benefit (determined without regard to such increase).
- (D) Arrangement elective; time for election. An arrangement meets the requirements of this subparagraph only if it is elective, it is available under the same terms to all participants, and it provides that such election may at least be made in the year in which the participant--
 - (i) attains the earliest retirement age under the defined benefit plan (determined without regard to any requirement of separation from service), or
 - (ii) separates from service.
- (E) Nondiscrimination requirements. An arrangement shall not meet the requirements of this subparagraph if the Secretary finds that a pattern of discrimination exists with respect to participation.
- (F) Special rules for key employees.
 - (i) In general. An arrangement shall not meet the requirements of this paragraph if any key employee is eligible to participate.
 - (ii) Key employee. For purposes of this subparagraph, the term "key employee" has the meaning given such term by section 416(i)(1) [26 USCS § 416(i)(1)], except that in the case of a plan other than a top-heavy plan (within the meaning of section 416(g) [26 USCS § 416(g)]), such term shall not include an individual who is a key employee solely by reason of section 416(i)(1)(A)(i) [26 USCS § 416(i)(1)(A)(i)].
- (3) Repayments of cashouts under governmental plans. In the case of any repayment of contributions (including interest thereon) to the governmental plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or under another governmental plan maintained by a State or local government employer within the same State, any such repayment shall not be taken into account for purposes of this section.
- (4) Special rules for sections 403(b) and 408. For purposes of this section, any annuity contract described in section 403(b) [26 USCS § 403(b)] for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 [26 USCS § 414] (as modified by subsection (h)). For purposes of this section, any contribution by an employer to a simplified employee pension plan for an individual for a taxable year shall be treated as an employer contribution to a defined contribution plan for such individual for such year.
- (I) Treatment of certain medical benefits.
 - (1) In general. For purposes of this section, contributions allocated to any individual medical benefit account which is part of a pension or annuity plan shall be treated as an annual addition to a defined contribution plan for purposes of subsection (c). Subparagraph (B) of subsection (c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence.
 - (2) Individual medical benefit account. For purposes of paragraph (1), the term "individual medical benefit account" means any separate account--
 - (A) which is established for a participant under a pension or annuity plan, and
 - (B) from which benefits described in section 401(h) [26 USCS § 401(h)] are payable solely to such participant, his spouse, or his dependents.
- (m) Treatment of qualified governmental excess benefit arrangements.

26 USCS § 415

- (1) Governmental plan not affected. In determining whether a governmental plan (as defined in section 414(d) [26 USCS § 414(d)]) meets the requirements of this section, benefits provided under a qualified governmental excess benefit arrangement shall not be taken into account. Income accruing to a governmental plan (or to a trust that is maintained solely for the purpose of providing benefits under a qualified governmental excess benefit arrangement) in respect of a qualified governmental excess benefit arrangement shall constitute income derived from the exercise of an essential governmental function upon which such governmental plan (or trust) shall be exempt from tax under section 115 [26 USCS § 115].
- (2) Taxation of participant. For purposes of this chapter [26 USCS §§ 1 et seq.]--

 - (A) the taxable year or years for which amounts in respect of a qualified governmental excess benefit arrangement are includible in gross income by a participant, and
 - (B) the treatment of such amounts when so includible by the participant, shall be determined as if such qualified governmental excess benefit arrangement were treated as a plan for the deferral of compensation which is maintained by a corporation not exempt from tax under this chapter [26 USCS §§ 1 et seq.] and which does not meet the requirements for qualification under section 401 [26 USCS § 401].
- (3) Qualified governmental excess benefit arrangement. For purposes of this subsection, the term "qualified governmental excess benefit arrangement" means a portion of a governmental plan if--

 - (A) such portion is maintained solely for the purpose of providing to participants in the plan that part of the participant's annual benefit otherwise payable under the terms of the plan that exceeds the limitations on benefits imposed by this section,
 - (B) under such portion no election is provided at any time to the participant (directly or indirectly) to defer compensation, and
 - (C) benefits described in subparagraph (A) are not paid from a trust forming a part of such governmental plan unless such trust is maintained solely for the purpose of providing such benefits.
- (n) Special rules relating to purchase of permissive service credit.

 - (1) In general. If a participant makes 1 or more contributions to a defined benefit governmental plan (within the meaning of section 414(d) [26 USCS § 414(d)]) to purchase permissive service credit under such plan, then the requirements of this section shall be treated as met only if--

 - (A) the requirements of subsection (b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of subsection (b), or
 - (B) the requirements of subsection (c) are met, determined by treating all such contributions as annual additions for purposes of subsection (c).
 - (2) Application of limit. For purposes of--

 - (A) applying paragraph (1)(A), the plan shall not fail to meet the reduced limit under subsection (b)(2)(C) solely by reason of this subsection, and
 - (B) applying paragraph (1)(B), the plan shall not fail to meet the percentage limitation under subsection (c)(1)(B) solely by reason of this subsection.
 - (3) Permissive service credit. For purposes of this subsection--

 - (A) In general. The term "permissive service credit" means service credit--

 - (i) recognized by the governmental plan for purposes of calculating a participant's benefit under the plan,
 - (ii) which such participant has not received under such governmental plan, and

26 USCS § 415

- (iii) which such participant may receive only by making a voluntary additional contribution, in an amount determined under such governmental plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit. Such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (ii), may include service credited in order to provide an increased benefit for service credit which a participant is receiving under the plan.
- (B) Limitation on nonqualified service credit. A plan shall fail to meet the requirements of this section if--
- (i) more than 5 years of nonqualified service credit are taken into account for purposes of this subsection, or
 - (ii) any nonqualified service credit is taken into account under this subsection before the employee has at least 5 years of participation under the plan.
- (C) Nonqualified service credit. For purposes of subparagraph (B), the term "nonqualified service credit" means permissive service credit other than that allowed with respect to--
- (i) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in subsection (k)(3)),
 - (ii) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (i)) of an educational organization described in section 170(b)(1)(A)(ii) [26 USCS § 170(b)(1)(A)(ii)] which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,
 - (iii) service as an employee of an association of employees who are described in clause (i), or
 - (iv) military service (other than qualified military service under section 414(u) [26 USCS § 414(u)]) recognized by such governmental plan. In the case of service described in clause (i), (ii), or (iii), such service will be nonqualified service if recognition of such service would cause a participant to receive a retirement benefit for the same service under more than one plan.
- (D) Special rules for trustee-to-trustee transfers. In the case of a trustee-to-trustee transfer to which section 403(b)(13)(A) or 457(e)(17)(A) [26 USCS § 403(b)(13)(A) or 457(e)(17)(A)] applies (without regard to whether the transfer is made between plans maintained by the same employer)--
- (i) the limitations of subparagraph (B) shall not apply in determining whether the transfer is for the purchase of permissive service credit, and
 - (ii) the distribution rules applicable under this title to the defined benefit governmental plan to which any amounts are so transferred shall apply to such amounts and any benefits attributable to such amounts.

History

(Added Sept. 2, 1974, *P.L.* 93-406, Title II, § 2004(a)(2), [88 Stat. 979](#); Oct. 4, 1976, *P.L.* 94-455, Title VIII, § 803(b)(4), (f), Title XV, §§ 1501(b)(3), 1502(a)(1), 1511(a), Title XIX, §§ 1901(a)(65), (b)(8)(D), 1906(b)(13)(A), [90 Stat. 1584](#), 1589, 1735-1737, 1741, 1775, 1794, 1834; Nov. 6, 1978, *P.L.* 95-600, Title I, §§ 141(f)(7), 152(g), 153(a), [92 Stat. 2795](#), 2800; April 1, 1980, *P.L.* 96-222, Title I, § 101(a)(7)(L)(i)(VII), (iv)(I), (10)(I), (J)(iii), (11), [94 Stat. 199](#), 200, 203, 204; Dec. 28, 1980, *P.L.* 96-605, Title II, § 222(a), [94 Stat. 3528](#); Aug. 13, 1981, *P.L.* 97-34, Title III, §§ 311(g)(4), (h)(3), 333(b)(1), [95 Stat. 281](#), 282, 297; Sept. 3, 1982, *P.L.* 97-248, Title II, §§ 235(a)-(e), 238(d)(5), 251(c)(1), (2), 253(a), [96 Stat. 505-507](#), 513, 530, 532; April 20, 1983, *P.L.* 98-21, Title I, § 122(c)(5), [97](#)

26 USCS § 415

[Stat. 87](#); July 18, 1984, *P.L. 98-369*, Div A, Title I, § 15, Title IV, § 491(d)(28)-(32), (e)(6), Title (V), § 528(a), Title VII, § 713(a)(1), (3), (d)(4)(B), (7), (k), [98 Stat. 505](#), 850, 853, 876, 955, 956, 958, 960; Oct. 22, 1986, *P.L. 99-514*, Title XI, §§ 1106(a)-(c)(1), (e)-(g), 1108(g)(5), 1114(b)(12), 1174(d)(1), (2), Title XVIII, §§ 1847(b)(4), 1852(h)(2), (3), 1875(c)(9), (11), 1898(b)(15)(C), 1899A(13), [100 Stat. 2420](#), 2422, 2424, 2425, 2434, 2451, 2518, 2856, 2869, 2895, 2951, 2958; Nov. 10, 1988, *P.L. 100-647*, Title I, §§ 1011(d)(2), (3), (6), (7), 1018(t)(3)(B), (8)(D), Title VI, §§ 6054(a), 6059(a), *102 Stat. 3459*, 3460, 3588, 3589, 3696, 3699; Dec. 19, 1989, *P.L. 101-239*, Title VII, § 7304(c)(1), *103 Stat. 2353*; July 3, 1992, *P.L. 102-318*, Title V, § 521(b)(23)-(25), *106 Stat. 311*, 312; Dec. 8, 1994, *P.L. 103-465*, Title VII, §§ 732(b), 767(b), *108 Stat. 5004*, 5038; Aug. 20, 1996, *P.L. 104-188*, Title I, §§ 1434(a), 1444(a), (b)(1), (c), (d), 1446(a), 1449(b), 1452(a), (c)(1)-(6), 1704(t)(75), *110 Stat. 1807*, 1809-1811, 1814, 1816, 1891; Aug. 5, 1997, *P.L. 105-34*, Title XV, §§ 1526(a), (b), 1527(a), 1530(c)(3), (4), *111 Stat. 1072-1074*, 1078; Dec. 21, 2000, *P.L. 106-554*, § 1(a)(7) (Title III, § 314(e)(1)), *114 Stat. 2763*, 2763A-643; June 7, 2001, *P.L. 107-16*, Title VI, §§ 611(a), (b), (h), 632(a)(1), (3)(C)-(F), (b)(1), 641(e)(9), (10), 654(a), (b), *115 Stat. 96*, 97, 100, 113-115, 121, 130, 131; March 9, 2002, *P.L. 107-147*, Title IV, Subtitle B, § 411(p)(4), *116 Stat. 50*; April 10, 2004, *P.L. 108-218*, Title I, § 101(b)(4), *118 Stat. 598*; Oct. 4, 2004, *P.L. 108-311*, Title IV, §§ 404(b)(2), 408(a)(17), *118 Stat. 1188*, 1192; Dec. 21, 2005, *P.L. 109-135*, Title IV, Subtitle A, §§ 407(b), 412(y), (z), *119 Stat. 2635*, 2638; Aug. 17, 2006, *P.L. 109-280*, Title III, § 303(a), Title VIII, Subtitle C, §§ 821(a)-(c), 832(a), Subtitle F, § 867(a), Title IX, § 906(b)(1)(A), (B), *120 Stat. 921*, 997, 1003, 1025, 1051; Dec. 23, 2008, *P.L. 110-458*, Title I, Subtitle A, §§ 103(b)(2)(B)(i), 108(g), 109(d)(1), Subtitle B, § 122(a), *122 Stat. 5103*, 5109, 5112, 5114.)

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26 USCS § 411

Current through PL 115-43, approved 6/30/17

United States Code Service - Titles 1 through 54 > TITLE 26. INTERNAL REVENUE CODE > SUBTITLE A. INCOME TAXES > CHAPTER 1. NORMAL TAXES AND SURTAXES > SUBCHAPTER D. DEFERRED COMPENSATION, ETC. > PART I. PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC. > SUBPART B. SPECIAL RULES

§ 411. Minimum vesting standards.

(a) General rule. A trust shall not constitute a qualified trust under section 401(a) [26 USCS § 401(a)] unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in paragraph (8)) and in addition satisfies the requirements of paragraphs (1), (2), and (11) of this subsection and the requirements of subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2).

(1) Employee contributions. Except as provided in paragraph (12), a plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

(2) Employer contributions.

(A) Defined benefit plans.

(i) In general. In the case of a defined benefit plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

(ii) 5-year vesting. A plan satisfies the requirements of this clause if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

(iii) 3 to 7 year vesting. A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

Years of service:	The
	nonforfeitable
	percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

(B) Defined contribution plans.

26 USCS § 411

- (i) In general. In the case of a defined contribution plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).
- (ii) 3-year vesting. A plan satisfies the requirements of this clause if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.
- (iii) 2 to 6 year vesting. A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

"Years of service:		The
		nonforfeitable
		percentage is:
2	20	
3	40	
4	60	
5	80	
6 or more	100.	

(3) Certain permitted forfeitures, suspensions, etc. For purposes of this subsection--

- (A) Forfeiture on account of death.** A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 401(a)(11) [26 USCS § 401(a)(11)]).
- (B) Suspension of benefits upon reemployment of retiree.** A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits--
 - (i) in the case of a plan other than a multiemployer plan, by the employer who maintains the plan under which such benefits were being paid; and
 - (ii) in the case of a multiemployer plan, in the same industry, the same trade or craft, and the same geographic area covered by the plan as when such benefits commenced. The Secretary of Labor shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term "employed".
- (C) Effect of retroactive plan amendments.** A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 412(d)(2) [26 USCS § 412(d)(2)].
- (D) Withdrawal of mandatory contribution.**
 - (i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C)) made by such participant.
 - (ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the

26 USCS § 411

participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of subsection (c)(2)(C) on the date of such repayment (computed annually from the date of such withdrawal). The plan provision required under this clause may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.

- (iii) In the case of accrued benefits derived from employer contributions which accrued before September 2, 1974, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions (as defined in subsection (c)(2)(C)) made by such participant before September 2, 1974, if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after September 2, 1974. The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this clause.
 - (iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of employee contributions on a plan year by plan year basis in succeeding order of time.
 - (v) For nonforfeitability where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 401(a)(19) [26 USCS § 401(a)(19)].
- (E) Cessation of contributions under a multiemployer plan. A right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because the plan provides that benefits accrued as a result of service with the participant's employer before the employer had an obligation to contribute under the plan may not be payable if the employer ceases contributions to the multiemployer plan.
- (F) Reduction and suspension of benefits by a multiemployer plan. A participant's right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because--
- (i) the plan is amended to reduce benefits under section 418D [26 USCS § 418D] or under section 4281 of the Employee Retirement Income Security Act of 1974 [29 USCS § 1441], or
 - (ii) benefit payments under the plan may be suspended under section 418E [26 USCS § 418E] or under section 4281 of the Employee Retirement Income Security Act of 1974 [29 USCS § 1441].
- (G) Treatment of matching contributions forfeited by reason of excess deferral or contribution or permissible withdrawal. A matching contribution (within the meaning of section 401(m) [26 USCS § 401(m)]) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under section 401(k)(8)(B) [26 USCS § 401(k)(8)(B)], an excess deferral under section 402(g)(2)(A) [26 USCS § 402(g)(2)(A)], a permissible withdrawal under section 414(w) [26 USCS § 414(w)], or an excess aggregate contribution under section 401(m)(6)(B) [26 USCS § 401(m)(6)(B)].
- (4) Service included in determination of nonforfeitable percentage. In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under paragraph (2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:
- (A) years of service before age 18,

26 USCS § 411

- (B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions;
 - (C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan (as defined under regulations prescribed by the Secretary);
 - (D) service not required to be taken into account under paragraph (6);
 - (E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970;
 - (F) years of service before the first plan year to which this section applies, if such service would have been disregarded under the rules of the plan with regard to breaks in service as in effect on the applicable date; and
 - (G) in the case of a multiemployer plan, years of service--
 - (i) with an employer after--
 - (I) a complete withdrawal of that employer from the plan (within the meaning of section 4203 of the Employee Retirement Income Security Act of 1974 [\[29 USCS § 1383\]](#)), or
 - (II) to the extent permitted in regulations prescribed by the Secretary, a partial withdrawal described in section 4205(b)(2)(A)(i) of such Act [\[29 USCS § 1385\(b\)\(2\)\(A\)\(i\)\]](#) in conjunction with the decertification of the collective bargaining representative, and
 - (ii) with any employer under the plan after the termination date of the plan under section 4048 of such Act [\[29 USCS § 1348\]](#).
- (5) Year of service.
- (A) General rule. For purposes of this subsection, except as provided in subparagraph (C), the term "year of service" means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has completed 1,000 hours of service.
 - (B) Hours of service. For purposes of this subsection, the term "hours of service" has the meaning provided by section 410(a)(3)(C) [\[26 USCS § 410\(a\)\(3\)\(C\)\]](#).
 - (C) Seasonal industries. In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as may be determined under regulations prescribed by the Secretary of Labor.
 - (D) Maritime industries. For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary of Labor may prescribe regulations to carry out the purposes of this subparagraph.
- (6) Breaks in service.
- (A) Definition of 1-year break in service. For purposes of this paragraph, the term "1-year break in service" means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has not completed more than 500 hours of service.
 - (B) 1 year of service after 1-year break in service. For purposes of paragraph (4), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.
 - (C) 5 consecutive 1-year breaks in service under defined contribution plan. For purposes of paragraph (4), in the case of any participant in a defined contribution plan, or an insured defined benefit plan which satisfies the requirements of subsection (b)(1)(F), who has 5 consecutive 1-year breaks in service, years of service after such 5-year period shall not be required to be taken into account for

26 USCS § 411

purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such 5-year period.

(D) Nonvested participants.

- (i)** In general. For purposes of paragraph (4), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of--
 - (I)** 5, or
 - (II)** the aggregate number of years of service before such period.
- (ii)** Years of service not taken into account. If any years of service are not required to be taken into account by reason of a period of breaks in service to which clause (i) applies, such years of service shall not be taken into account in applying clause (i) to a subsequent period of breaks in service.
- (iii)** Nonvested participant defined. For purposes of clause (i), the term "nonvested participant" means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(E) Special rule for maternity or paternity absences.

- (i)** General rule. In the case of each individual who is absent from work for any period--
 - (I)** by reason of the pregnancy of the individual,
 - (II)** by reason of the birth of a child of the individual,
 - (III)** by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or
 - (IV)** for purposes of caring for such child for a period beginning immediately following such birth or placement, the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service has occurred, the hours described in clause (ii).
- (ii)** Hours treated as hours of service. The hours described in this clause are--
 - (I)** the hours of service which otherwise would normally have been credited to such individual but for such absence, or
 - (II)** in any case in which the plan is unable to determine the hours described in subclause (I), 8 hours of service per day of absence, except that the total number of hours treated as hours of service under this clause by reason of any such pregnancy or placement shall not exceed 501 hours.
- (iii)** Year to which hours are credited. The hours described in clause (ii) shall be treated as hours of service as provided in this subparagraph--
 - (I)** only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in clause (i); or
 - (II)** in any other case, in the immediately following year.
- (iv)** Year defined. For purposes of this subparagraph, the term "year" means the period used in computations pursuant to paragraph (5).
- (v)** Information required to be filed. A plan shall not fail to satisfy the requirements of this subparagraph solely because it provides that no credit will be given pursuant to this

26 USCS § 411

subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish--

- (I) that the absence from work is for reasons referred to in clause (i), and
- (II) the number of days for which there was such an absence.

(7) Accrued benefit.

(A) In general. For purposes of this section, the term "accrued benefit" means--

(i) in the case of a defined benefit plan, the employee's accrued benefit determined under the plan and, except as provided in subsection (c)(3), expressed in the form of an annual benefit commencing at normal retirement age, or

(ii) in the case of a plan which is not a defined benefit plan, the balance of the employee's account.

(B) Effect of certain distributions. Notwithstanding paragraph (4), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received--

(i) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than the dollar limit under section 411(a)(11)(A) [\[26 USCS § 411\(a\)\(11\)\(A\)\]](#)) permitted under regulations prescribed by the Secretary, or

(ii) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive. Clause (i) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan. Clause (ii) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary.

(C) Repayment of subparagraph (B) distributions. For purposes of determining the employee's accrued benefit under a plan, the plan may not disregard service as provided in subparagraph (B) unless the plan provides an opportunity for the participant to repay the full amount of the distribution described in such subparagraph (B) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subparagraph shall apply only in the case of a participant who--

(i) received such a distribution in any plan year to which this section applies, which distribution was less than the present value of his accrued benefit,

(ii) resumes employment covered under the plan, and

(iii) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C). The plan provision required under this subparagraph may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(D) Accrued benefit attributable to employee contributions. The accrued benefit of an employee shall not be less than the amount determined under subsection (c)(2)(B) with respect to the employee's accumulated contributions.

(8) Normal retirement age. For purposes of this section, the term "normal retirement age" means the earlier of--

(A) the time a plan participant attains normal retirement age under the plan, or

- (B) the later of--
- (i) the time a plan participant attains age 65, or
 - (ii) the 5th anniversary of the time a plan participant commenced participation in the plan.
- (9) Normal retirement benefit. For purposes of this section, the term "normal retirement benefit" means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. The normal retirement benefit shall be determined without regard to--
- (A) medical benefits, and
 - (B) disability benefits not in excess of the qualified disability benefit. For purposes of this paragraph, a qualified disability benefit is a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if he separated from the service at normal retirement age. For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any benefits commencing before benefits payable under title II of the Social Security Act [42 USCS §§ 401 et seq.] become payable which--(i) do not exceed such social security benefits, and (ii) terminate when such social security benefits commence.
- (10) Changes in vesting schedule.
- (A) General rule. A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.
 - (B) Election of former schedule. A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) unless each participant having not less than 3 years of service is permitted to elect, within a reasonable period after the adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.
- (11) Restrictions on certain mandatory distributions.
- (A) In general. If the present value of any nonforfeitable accrued benefit exceeds \$ 5,000, a plan meets the requirements of this paragraph only if such plan provides that such benefit may not be immediately distributed without the consent of the participant.
 - (B) Determination of present value. For purposes of subparagraph (A), the present value shall be calculated in accordance with section 417(e)(3) [26 USCS § 417(e)(3)].
 - (C) Dividend distributions of ESOPs arrangement. This paragraph shall not apply to any distribution of dividends to which section 404(k) [26 USCS § 404(k)] applies.
 - (D) Special rule for rollover contributions. A plan shall not fail to meet the requirements of this paragraph if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term "rollover contributions" means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) [26 USCS §§ 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16)].
- (12) [Deleted]
- (13) Special rules for plans computing accrued benefits by reference to hypothetical account balance or equivalent amounts.
- (A) In general. An applicable defined benefit plan shall not be treated as failing to meet--

26 USCS § 411

- (i) subject to subparagraph (B), the requirements of subsection (a)(2), or
 - (ii) the requirements of subsection (a)(11) or (c), or the requirements of section 417(e) [26 USCS § 417(e)], with respect to accrued benefits derived from employer contributions, solely because the present value of the accrued benefit (or any portion thereof) of any participant is, under the terms of the plan, equal to the amount expressed as the balance in the hypothetical account described in subparagraph (C) or as an accumulated percentage of the participant's final average compensation.
- (B)** 3-year vesting. In the case of an applicable defined benefit plan, such plan shall be treated as meeting the requirements of subsection (a)(2) only if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.
- (C)** Applicable defined benefit plan and related rules. For purposes of this subsection--
- (i) In general. The term "applicable defined benefit plan" means a defined benefit plan under which the accrued benefit (or any portion thereof) is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant's final average compensation.
 - (ii) Regulations to include similar plans. The Secretary shall issue regulations which include in the definition of an applicable defined benefit plan any defined benefit plan (or any portion of such a plan) which has an effect similar to an applicable defined benefit plan.
- (b)** Accrued benefit requirements.
- (1)** Defined benefit plans.
- (A)** 3-percent method. A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than--
- (i) 3 percent of the normal retirement benefit to which he would be entitled if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by
 - (ii) the number of years (not in excess of $33 \frac{1}{3}$) of his participation in the plan. In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.
- (B)** 133 $\frac{1}{3}$ percent rule. A defined benefit plan satisfies the requirements of this paragraph for a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133 $\frac{1}{3}$ percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph--
- (i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;
 - (ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

26 USCS § 411

- (iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and
 - (iv) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.
- (C) Fractional rule. A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date on which any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.
- (D) Accrual for service before effective date. Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this section applies, but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only if the accrued benefit of any participant with respect to such years of participation is not less than the greater of--
 - (i) his accrued benefit determined under the plan, as in effect from time to time prior to September 2, 1974 or
 - (ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.
- (E) First two years of service. Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term "years of service" has the meaning provided by section 410(a)(3)(A) [\[26 USCS § 410\(a\)\(3\)\(A\)\]](#).
- (F) Certain insured defined benefit plans. Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan--
 - (i) is funded exclusively by the purchase of insurance contracts, and
 - (ii) satisfies the requirements of subparagraphs (B) and (C) of section 412(e)(3) [\[26 USCS § 412\(e\)\(3\)\]](#) (relating to certain insurance contract plans), but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of subparagraphs (D), (E), and (F) of section 412(e)(3) [\[26 USCS § 412\(e\)\(3\)\]](#) were satisfied.
- (G) Accrued benefit may not decrease on account of increasing age or service. Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before entitlement to benefits payable under title II of the Social Security Act [\[42 USCS §§ 401 et seq.\]](#) which benefits under the plan--
 - (i) do not exceed such social security benefits, and

26 USCS § 411

- (ii) terminate when such social security benefits commence.
- (H) Continued accrual beyond normal retirement age.
 - (i) In general. Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the plan, an employee's benefit accrual is ceased, or the rate of an employee's benefit accrual is reduced, because of the attainment of any age.
 - (ii) Certain limitations permitted. A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.
 - (iii) Adjustments under plan for delayed retirement taken into account. In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan--
 - (I) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and
 - (II) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 401(a)(14)(C) [26 USCS § 401(a)(14)(C)], and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to subsection (a)(3)(B), then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age. The preceding provisions of this clause shall apply in accordance with regulations of the Secretary. Such regulations may provide for the application of the preceding provisions of this clause, in the case of any such employee, with respect to any period of time within a plan year. (iv) Disregard of subsidized portion of early retirement benefit. A plan shall not be treated as failing to meet the requirements of clause (i) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals. (v) Coordination with other requirements. The Secretary shall provide by regulation for the coordination of the requirements of this subparagraph with the requirements of subsection (a), sections 404, 410, and 415 [26 USCS §§ 404, 410, and 415], and the provisions of this subchapter [26 USCS §§ 401 et seq.] precluding discrimination in favor of highly compensated employees.
- (2) Defined contribution plans.
 - (A) In general. A defined contribution plan satisfies the requirements of this paragraph if, under the plan, allocations to the employee's account are not ceased, and the rate at which amounts are allocated to the employee's account is not reduced, because of the attainment of any age.
 - (B) Application to target benefit plans. The Secretary shall provide by regulation for the application of the requirements of this paragraph to target benefit plans.
 - (C) Coordination with other requirements. The Secretary may provide by regulation for the coordination of the requirements of this paragraph with the requirements of subsection (a), sections 404, 410, and 415 [26 USCS §§ 404, 410, and 415], and the provisions of this subchapter [26 USCS §§ 401 et seq.] precluding discrimination in favor of highly compensated employees.

26 USCS § 411

- (3) Separate accounting required in certain cases. A plan satisfies the requirements of this paragraph if--
- (A) in the case of a defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and
 - (B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.
- (4) Year of participation.
- (A) Definition. For purposes of determining an employee's accrued benefit, the term "year of participation" means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 410(a)(5) [26 USCS § 410(a)(5)], determined without regard to section 410(a)(5)(E) [26 USCS § 410(a)(5)(E)]) as determined under regulations prescribed by the Secretary of Labor which provide for the calculation of such period on any reasonable and consistent basis.
 - (B) Less than full time service. For purposes of this paragraph, except as provided in subparagraph (C), in the case of any employee whose customary employment is less than full time, the calculation of such employee's service on any basis which provides less than a ratable portion of the accrued benefit to which he would be entitled under the plan if his customary employment were full time shall not be treated as made on a reasonable and consistent basis.
 - (C) Less than 1,000 hours of service during year. For purposes of this paragraph, in the case of any employee whose service is less than 1,000 hours during any calendar year, plan year or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis solely because such service is not taken into account.
 - (D) Seasonal industries. In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of participation" shall be such period as determined under regulations prescribed by the Secretary of Labor.
 - (E) Maritime industries. For purposes of this subsection, in the case of any maritime industry, 125 days of service shall be treated as a year of participation. The Secretary of Labor may prescribe regulations to carry out the purposes of this subparagraph.
- (5) Special rules relating to age.
- (A) Comparison to similarly situated younger individual.
 - (i) In general. A plan shall not be treated as failing to meet the requirements of paragraph (1)(H)(i) if a participant's accrued benefit, as determined as of any date under the terms of the plan, would be equal to or greater than that of any similarly situated, younger individual who is or could be a participant.
 - (ii) Similarly situated. For purposes of this subparagraph, a participant is similarly situated to any other individual if such participant is identical to such other individual in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.
 - (iii) Disregard of subsidized early retirement benefits. In determining the accrued benefit as of any date for purposes of this subparagraph, the subsidized portion of any early retirement benefit or retirement-type subsidy shall be disregarded.
 - (iv) Accrued benefit. For purposes of this subparagraph, the accrued benefit may, under the terms of the plan, be expressed as an annuity payable at normal retirement age, the balance of a hypothetical account, or the current value of the accumulated percentage of the employee's final average compensation.

26 USCS § 411

(B) Applicable defined benefit plans.**(i)** Interest credits.

(I) In general. An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the terms of the plan provide that any interest credit (or an equivalent amount) for any plan year shall be at a rate which is not greater than a market rate of return. A plan shall not be treated as failing to meet the requirements of this subclause merely because the plan provides for a reasonable minimum guaranteed rate of return or for a rate of return that is equal to the greater of a fixed or variable rate of return.

(II) Preservation of capital. An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the plan provides that an interest credit (or equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.

(III) Market rate of return. The Secretary may provide by regulation for rules governing the calculation of a market rate of return for purposes of subclause (I) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subclause (I).

(ii) Special rule for plan conversions. If, after June 29, 2005, an applicable plan amendment is adopted, the plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the requirements of clause (iii) are met with respect to each individual who was a participant in the plan immediately before the adoption of the amendment.

(iii) Rate of benefit accrual. Subject to clause (iv), the requirements of this clause are met with respect to any participant if the accrued benefit of the participant under the terms of the plan as in effect after the amendment is not less than the sum of--

(I) the participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus

(II) the participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

(iv) Special rules for early retirement subsidies. For purposes of clause (iii)(I), the plan shall credit the accumulation account or similar amount with the amount of any early retirement benefit or retirement-type subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

(v) Applicable plan amendment. For purposes of this subparagraph--

(I) In general. The term "applicable plan amendment" means an amendment to a defined benefit plan which has the effect of converting the plan to an applicable defined benefit plan.

(II) Special rule for coordinated benefits. If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in subclause (I), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

(III) Multiple amendments. The Secretary shall issue regulations to prevent the avoidance of the purposes of this subparagraph through the use of 2 or more plan amendments rather than a single amendment.

26 USCS § 411

- (IV) Applicable defined benefit plan. For purposes of this subparagraph, the term "applicable defined benefit plan" has the meaning given such term by section 411(a)(13) [26 USCS § 411(a)(13)].
- (vi) Termination requirements. An applicable defined benefit plan shall not be treated as meeting the requirements of clause (i) unless the plan provides that, upon the termination of the plan--
- (I) if the interest credit rate (or an equivalent amount) under the plan is a variable rate, the rate of interest used to determine accrued benefits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date, and
- (II) the interest rate and mortality table used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age shall be the rate and table specified under the plan for such purpose as of the termination date, except that if such interest rate is a variable rate, the interest rate shall be determined under the rules of subclause (I).
- (C) Certain offsets permitted. A plan shall not be treated as failing to meet the requirements of paragraph (1)(H)(i) solely because the plan provides offsets against benefits under the plan to the extent such offsets are otherwise allowable in applying the requirements of section 401(a) [26 USCS § 401(a)].
- (D) Permitted disparities in plan contributions or benefits. A plan shall not be treated as failing to meet the requirements of paragraph (1)(H) solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) [26 USCS § 401(l)] are met.
- (E) Indexing permitted.
- (i) In general. A plan shall not be treated as failing to meet the requirements of paragraph (1)(H) solely because the plan provides for indexing of accrued benefits under the plan.
- (ii) Protection against loss. Except in the case of any benefit provided in the form of a variable annuity, clause (i) shall not apply with respect to any indexing which results in an accrued benefit less than the accrued benefit determined without regard to such indexing.
- (iii) Indexing. For purposes of this subparagraph, the term "indexing" means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.
- (F) Early retirement benefit or retirement-type subsidy. For purposes of this paragraph, the terms "early retirement benefit" and "retirement-type subsidy" have the meaning given such terms in subsection (d)(6)(B)(i).
- (G) Benefit accrued to date. For purposes of this paragraph, any reference to the accrued benefit shall be a reference to such benefit accrued to date.
- (c) Allocation of accrued benefits between employer and employee contributions.
- (1) Accrued benefit derived from employer contributions. For purposes of this section, an employee's accrued benefit derived from employer contributions as of any applicable date is the excess, if any, of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.
- (2) Accrued benefit derived from employee contributions.
- (A) Plans other than defined benefit plans. In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is--
- (i) except as provided in clause (ii), the balance of the employee's separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

26 USCS § 411

- (ii) if a separate account is not maintained with respect to an employee's contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee's contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).
 - (B)** Defined benefit plans. In the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 417(e)(3) [\[26 USCS § 417\(e\)\(3\)\]](#) (as of the determination date).
 - (C)** Definition of accumulated contributions. For purposes of this subsection, the term "accumulated contributions" means the total of--
 - (i)** all mandatory contributions made by the employee,
 - (ii)** interest (if any) under the plan to the end of the last plan year to which subsection (a)(2) does not apply (by reason of the applicable effective date), and
 - (iii)** interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually--
 - (I)** at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 [\[26 USCS § 1274\]](#) for the 1st month of a plan year) for the period beginning with the 1st plan year to which subsection (a)(2) applies (by reason of the applicable effective date) and ending with the date on which the determination is being made, and
 - (II)** at the interest rate which would be used under the plan under section 417(e)(3) [\[26 USCS § 417\(e\)\(3\)\]](#) (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age. For purposes of this subparagraph, the term "mandatory contributions" means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.
 - (D)** Adjustments. The Secretary is authorized to adjust by regulation the conversion factor described in subparagraph (B) from time to time as he may deem necessary. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.
- (3)** Actuarial adjustment. For purposes of this section, in the case of any defined benefit plan, if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee's accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).
- (d)** Special rules.
- (1)** Coordination with section 401(a)(4). A plan which satisfies the requirements of this section shall be treated as satisfying any vesting requirements resulting from the application of section 401(a)(4) [\[26 USCS § 401\(a\)\(4\)\]](#) unless--
 - (A)** there has been a pattern of abuse under the plan (such as a dismissal of employees before their accrued benefits become nonforfeitable) tending to discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q) [\[26 USCS § 414\(q\)\]](#)), or

26 USCS § 411

- (B) there have been, or there is reason to believe there will be, an accrual of benefits or forfeitures tending to discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q) [26 USCS § 414(q)]).
- (2) Prohibited discrimination. Subsection (a) shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary to preclude the discrimination prohibited by section 401(a)(4) [26 USCS § 401(a)(4)].
- (3) Termination or partial termination; discontinuance of contributions. Notwithstanding the provisions of subsection (a), a trust shall not constitute a qualified trust under section 401(a) [26 USCS § 401(a)] unless the plan of which such trust is a part provides that--
- (A) upon its termination or partial termination, or
- (B) in the case of a plan to which section 412 [26 USCS § 412] does not apply, upon complete discontinuance of contributions under the plan, the rights of all affected employees to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the employees' accounts, are nonforfeitable. This paragraph shall not apply to benefits or contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary to preclude the discrimination prohibited by section 401(a)(4) [26 USCS § 401(a)(4)], may not be used for designated employees in the event of early termination of the plan. For purposes of this paragraph, in the case of the complete discontinuance of contributions under a profit-sharing or stock bonus plan, such plan shall be treated as having terminated on the day on which the plan administrator notifies the Secretary (in accordance with regulations) of the discontinuance.
- (4) [Repealed.]
- (5) Treatment of voluntary employee contributions. In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee's accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.
- (6) Accrued benefit not to be decreased by amendment.
- (A) In general. A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(d)(2) [26 USCS § 412(d)(2)], or section 4281 of the Employee Retirement Income Security Act of 1974 [29 USCS § 1441].
- (B) Treatment of certain plan amendments. For purposes of subparagraph (A), a plan amendment which has the effect of--
- (i) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or
- (ii) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. The Secretary shall by regulations provide that this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis manner. The Secretary may by regulations provide that this subparagraph shall not apply to a plan amendment described in clause (ii) (other than a plan amendment having an effect described in clause (i)).
- (C) Special rule for ESOPs. For purposes of this paragraph, any--

26 USCS § 411

- (i) tax credit employee stock ownership plan (as defined in section 409(a) [\[26 USCS § 409\(a\)\]](#)), or
 - (ii) employee stock ownership plan (as defined in section 4975(e)(7) [\[26 USCS § 4975\(e\)\(7\)\]](#)), shall not be treated as failing to meet the requirements of this paragraph merely because it modifies distribution options in a nondiscriminatory manner.
- (D) Plan transfers.**
- (i) In general. A defined contribution plan (in this subparagraph referred to as the "transferee plan") shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this subparagraph referred to as the "transferor plan") to the extent that--
 - (I) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan,
 - (II) the terms of both the transferor plan and the transferee plan authorize the transfer described in subclause (I),
 - (III) the transfer described in subclause (I) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan,
 - (IV) the election described in subclause (III) was made after the participant or beneficiary received a notice describing the consequences of making the election, and
 - (V) the transferee plan allows the participant or beneficiary described in subclause (III) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.
 - (ii) Special rule for mergers, etc. Clause (i) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.
- (E) Elimination of form of distribution.** Except to the extent provided in regulations, a defined contribution plan shall not be treated as failing to meet the requirements of this section merely because of the elimination of a form of distribution previously available thereunder. This subparagraph shall not apply to the elimination of a form of distribution with respect to any participant unless--
- (i) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated, and
 - (ii) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.
- (e) Application of vesting standards to certain plans.**
- (1) The provisions of this section (other than paragraph (2)) shall not apply to--
 - (A) a governmental plan (within the meaning of section 414(d) [\[26 USCS § 414\(d\)\]](#)),
 - (B) a church plan (within the meaning of section 414(e) [\[26 USCS § 414\(e\)\]](#)) with respect to which the election provided by section 410(d) [\[26 USCS § 410\(d\)\]](#) has not been made,
 - (C) a plan which has not, at any time after September 2, 1974, provided for employer contributions, and
 - (D) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) [\[26 USCS § 501\(c\)\(8\) or \(9\)\]](#), if no part of the contributions to or under such plan are made by employers of participants in such plan.

26 USCS § 411

- (2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section, for purposes of section 401(a) [26 USCS § 401(a)], if such plan meets the vesting requirements resulting from the application of sections 401(a)(4) and 401(a)(7) [26 USCS §§ 401(a)(4) and 401(a)(7)] as in effect on September 1, 1974.
- (f) Special rule for determining normal retirement age for certain existing defined benefit plans.
- (1) In general. Notwithstanding subsection (a)(8), an applicable plan shall not be treated as failing to meet any requirement of this subchapter, or as failing to have a uniform normal retirement age for purposes of this subchapter, solely because the plan provides for a normal retirement age described in paragraph (2).
- (2) Applicable plan. For purposes of this subsection--
- (A) In general. The term "applicable plan" means a defined benefit plan the terms of which, on or before December 8, 2014, provided for a normal retirement age which is the earlier of--
- (i) an age otherwise permitted under subsection (a)(8), or
- (ii) the age at which a participant completes the number of years (not less than 30 years) of benefit accrual service specified by the plan. A plan shall not fail to be treated as an applicable plan solely because the normal retirement age described in the preceding sentence only applied to certain participants or only applied to employees of certain employers in the case of a plan maintained by more than 1 employer.
- (B) Expanded application. Subject to subparagraph (C), if, after December 8, 2014, an applicable plan is amended to expand the application of the normal retirement age described in subparagraph (A) to additional participants or to employees of additional employers maintaining the plan, such plan shall also be treated as an applicable plan with respect to such participants or employees.
- (C) Limitation on expanded application. A defined benefit plan shall be an applicable plan only with respect to an individual who--
- (i) is a participant in the plan on or before January 1, 2017, or
- (ii) is an employee at any time on or before January 1, 2017, of any employer maintaining the plan, and who becomes a participant in such plan after such date.

History

(Added Sept. 2, 1974, P.L. 93-406, Title II, § 1012(a), [88 Stat. 901](#); Oct. 4, 1976, P.L. 94-455, Title XIX, §§ 1901(a)(62), 1906(b)(13)(A), [90 Stat. 1774, 1834](#); Sept. 26, 1980, P.L. 96-364, Title II, § 206, [94 Stat. 1287](#); Aug. 23, 1984, P.L. 98-397, Title II, §§ 202(b), (c), (d)(2), (e)(2), (3), (f), 205, Title III, § 301(a)(1), [98 Stat. 1437, 1439, 1440, 1449, 1450](#); Oct. 21, 1986, P.L. 99-509, Title IX, §§ 9202(b), 9203(b)(2), [100 Stat. 1977, 1979](#); Oct. 22, 1986, P.L. 99-514, Title XI, §§ 1113(a), (b), (d)(B), 1114(b)(10), 1139(a), Title XVIII, § 1898(a)(1)(A), (4)(A), (d)(1)(A), (2)(A), (f)(1)(A), [100 Stat. 2446, 2447, 2451, 2487, 2941, 2943, 2955, 2956](#); Dec. 22, 1987, P.L. 100-203, Title IX, § 9346(b), [101 Stat. 1330-374](#); Nov. 10, 1988, P.L. 100-647, Title I, § 1018(t)(8)(B), [102 Stat. 3589](#); Dec. 19, 1989, P.L. 101-239, Title VII, §§ 7861(a)(5)(A), (6)(A), 7871(a)(1), (2), (b)(1), 7881(m)(1), [103 Stat. 2430, 2435, 2443](#); July 3, 1992, P.L. 102-318, Title V, § 521(b)(44), [106 Stat. 313](#); Dec. 8, 1994, P.L. 103-465, Title VII, § 767(a)(1), [108 Stat. 5037](#); Aug. 20, 1996, P.L. 104-188, Title I, § 1442(a), [110 Stat. 1808](#); Aug. 5, 1997, P.L. 105-34, Title X, § 1071(a)(1), (2)(A), [111 Stat. 948](#); June 7, 2001, P.L. 107-16, Title VI, §§ 633(a), 645(a)(1), (b)(1), 648(a)(1), [115 Stat. 115, 123, 125, 127](#); Oct. 4, 2004, P.L. 108-311, Title IV, § 408(a)(14), [118 Stat. 1192](#); Aug. 17, 2006, P.L. 109-280, Title I, Subtitle B, § 114(b), Title VII, § 701(b), Title IX, §§ 902(d)(2)(A), (B), 904(a), [120 Stat. 853, 984, 1038, 1048](#); Dec. 23, 2008, P.L. 110-458, Title I, Subtitle A, §§ 101(d)(2)(D), 107(b), 109(b)(2), [122 Stat. 5099, 5107, 5111](#); Dec. 16, 2014, P.L. 113-235, Div P, § 2(b), [128 Stat. 2828](#).)

26 USCS § 411

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26 CFR 1.417(e)-1

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Code of Federal Regulations > TITLE 26 -- INTERNAL REVENUE > CHAPTER I -- INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY > SUBCHAPTER A -- INCOME TAX > PART 1 -- INCOME TAXES > NORMAL TAXES AND SURTAXES > DEFERRED COMPENSATION, ETC. > PENSION, PROFIT-SHARING, STOCK BONUS PLANS ETC.

§ 1.417(e)-1 Restrictions and valuations of distributions from plans subject to sections 401(a)(11) and 417 [26 USCS §§ 401(a)(11) and 417].

(a) Scope --

(1)In general. A plan does not satisfy the requirements of sections 401(a)(11) and 417 [26 USCS §§ 401(a)(11) and 417] unless it satisfies the consent requirements, the determination of present value requirements and the other requirements set forth in this section. See section 401(a)(11) [26 USCS § 401(a)(11)] and § 1.401(a)-20 for other rules regarding the survivor annuity requirements.

(2)Additional requirements. See § 1.411(a)-11 for other rules applicable to the consent requirements.

(3)Accrued benefit. The definition of "accrued benefit" in § 1.411(a)-11 applies when that term is used in this section.

(b)Consent, etc. requirements -- (1) General rule. Generally plans may not commence the distribution of any portion of a participant's accrued benefit in any form unless the applicable consent requirements are satisfied. No consent of the participant or spouse is needed for distribution of a QJSA or QPSA after the benefit is no longer immediately distributable (after the participant attains (or would have attained if not dead) the later of normal retirement age (as defined in section 411(a)(8) [26 USCS § 411(a)(8)]) or age 62). No consent of the spouse is needed for distribution of a QJSA at any time. After the participant's death, a benefit may be paid to a nonspouse beneficiary without the beneficiary's consent. A distribution cannot be made at any time in a form other than a QJSA unless such QJSA has been waived by the participant and such waiver has been consented to by the spouse. A QJSA is an annuity that commences immediately. Thus, for example, a plan may not offer a participant separating from service at age 45 a choice only between a single sum distribution at separation of service and a joint and survivor annuity that satisfies all the requirements of a QJSA except that it commences at normal retirement age rather than immediately. To satisfy this section, the plan must also offer a QJSA (i.e., an annuity that satisfies all the requirements for a QJSA including the requirement that it commences immediately).

(2) Consent.

(i)Written consent of the participant and, if the participant is married at the annuity starting date and the benefit is to be paid in a form other than a QJSA, the participant's spouse (or, if either the participant or the spouse has died, the survivor) is required before the commencement of the distribution of any part of an accrued benefit if the present value of the nonforfeitable benefit is greater than the cash-out limit in effect under § 1.411(a)-11(c)(3)(ii). No consent is valid unless the participant has received a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the plan in a manner which would satisfy the notice requirements of section 417(a)(3) [26 USCS § 417(a)(3)]. See § 1.417(a)(3)-1. No consent is required before the annuity starting date if the present value of the nonforfeitable benefit

26 CFR 1.417(e)-1

is not more than the cash-out limit in effect under § 1.411(a)-11(c)(3)(ii). After the annuity starting date, consent is required for the immediate distribution of the present value of the accrued benefit being distributed in any form, including a qualified joint and survivor annuity or a qualified preretirement survivor annuity, regardless of the amount of such present value.

(ii)In determining the present value of any nonforfeitable accrued benefit, a defined benefit plan is limited by the interest rate restriction as set forth in paragraph (d) of this section.

(iii)Paragraph (b)(2)(i) of this section applies to distributions made on or after October 17, 2000. For distributions prior to October 17, 2000, § 1.417(e)-1(b)(2)(i) in effect prior to October 17, 2000 (as contained in 26 CFR part 1 revised as of April 1, 2000) applies.

(3) Time of consent.

(i)Written consent of the participant and the participant's spouse to the distribution must be made not more than 90 days before the annuity starting date, and, except as otherwise provided in paragraphs (b)(3)(iii) and (b)(3)(iv) of this section, no later than the annuity starting date.

(ii)A plan must provide participants with the written explanation of the QJSA required by section 417(a)(3) [26 USCS § 417(a)(3)] no less than 30 days and no more than 90 days before the annuity starting date, except as provided in paragraph (b)(3)(iv) of this section regarding retroactive annuity starting dates. However, if the participant, after having received the written explanation of the QJSA, affirmatively elects a form of distribution and the spouse consents to that form of distribution (if necessary), a plan will not fail to satisfy the requirements of section 417(a) [26 USCS § 417(a)] merely because the written explanation was provided to the participant less than 30 days before the annuity starting date, provided that the following conditions are met:

(A)The plan administrator provides information to the participant clearly indicating that (in accordance with the first sentence of this paragraph (b)(3)(ii)) the participant has a right to at least 30 days to consider whether to waive the QJSA and consent to a form of distribution other than a QJSA.

(B)The participant is permitted to revoke an affirmative distribution election at least until the annuity starting date, or, if later, at any time prior to the expiration of the 7-day period that begins the day after the explanation of the QJSA is provided to the participant.

(C)The annuity starting date is after the date that the explanation of the QJSA is provided to the participant.

(D)Distribution in accordance with the affirmative election does not commence before the expiration of the 7-day period that begins the day after the explanation of the QJSA is provided to the participant.

(iii)The plan may permit the annuity starting date to be before the date that any affirmative distribution election is made by the participant (and before the date that distribution is permitted to commence under paragraph (b)(3)(ii)(D) of this section), provided that, except as otherwise provided in paragraph (b)(3)(vii) of this section regarding administrative delay, distributions commence not more than 90 days after the explanation of the QJSA is provided.

(iv)Retroactive annuity starting dates. (A) Notwithstanding the requirements of paragraphs (b)(3)(i) and (ii) of this section, pursuant to section 417(a)(7) [26 USCS § 417(a)(7)], a defined benefit plan is permitted to provide benefits based on a retroactive annuity starting date if the requirements described in paragraph (b)(3)(v) of this section are satisfied. A defined benefit plan is not required to provide for retroactive annuity starting dates. If a plan does provide for a retroactive annuity starting date, it may impose conditions on the availability of a retroactive annuity starting date in addition to those imposed by paragraph (b)(3)(v) of this section, provided that imposition of those additional conditions does not violate any of the rules applicable to qualified plans. For example, a plan that includes a single sum payment as a benefit option may limit the election of a retroactive

annuity starting date to those participants who do not elect the single sum payment. A defined contribution plan is not permitted to have a retroactive annuity starting date.

(B)For purposes of this section, a "retroactive annuity starting date" is an annuity starting date affirmatively elected by a participant that occurs on or before the date the written explanation required by section 417(a)(3) [26 USCS § 417(a)(3)] is provided to the participant. In order for a plan to treat a participant as having elected a retroactive annuity starting date, future periodic payments with respect to a participant who elects a retroactive annuity starting date must be the same as the future periodic payments, if any, that would have been paid with respect to the participant had payments actually commenced on the retroactive annuity starting date. The participant must receive a make-up payment to reflect any missed payment or payments for the period from the retroactive annuity starting date to the date of the actual make-up payment (with an appropriate adjustment for interest from the date the missed payment or payments would have been made to the date of the actual make-up payment). Thus, the benefit determined as of the retroactive annuity starting date must satisfy the requirements of sections 417(e)(3) [26 USCS §§ 417(e)(3)], if applicable, and section 415 [26 USCS § 415] with the applicable interest rate and applicable mortality table determined as of that date. Similarly, a participant is not permitted to elect a retroactive annuity starting date that precedes the date upon which the participant could have otherwise started receiving benefits (e.g., in the case of an ongoing plan, the earlier of the participant's termination of employment or the participant's normal retirement age) under the terms of the plan in effect as of the retroactive annuity starting date. A plan does not fail to treat a participant as having elected a retroactive annuity starting date as described in this paragraph (b)(3)(iv)(B) merely because the distributions are adjusted to the extent necessary to satisfy the requirements of paragraph (b)(3)(v)(B) and (C) of this section relating to sections 415 and 417(e)(3) [26 USCS §§ 415 and 417(e)(3)].

(C)If the participant's spouse as of the retroactive annuity starting date would not be the participant's spouse determined as if the date distributions commence was the participant's annuity starting date, consent of that former spouse is not needed to waive the QJSA with respect to the retroactive annuity starting date, unless otherwise provided under a qualified domestic relations order (as defined in section 414(p) [26 USCS § 414(p)]).

(D)A distribution payable pursuant to a retroactive annuity starting date election is treated as excepted from the present value requirements of paragraph (d) of this section under paragraph (d)(6) of this section if the distribution form would have been described in paragraph (d)(6) of this section had the distribution actually commenced on the retroactive annuity starting date. Similarly, annuity payments that otherwise satisfy the requirements of a QJSA under section 417(b) [26 USCS § 417(b)] will not fail to be treated as a QJSA for purposes of section 415(b)(2)(B) [26 USCS § 415(b)(2)(B)] merely because a retroactive annuity starting date is elected and a make-up payment is made. Also, for purposes of section 72(t)(2)(A)(iv) [26 USCS § 72(t)(2)(A)(iv)], a distribution that would otherwise be one of a series of substantially equal periodic payments will be treated as one of a series of substantially equal periodic payments notwithstanding the distribution of a make-up payment provided for in paragraph (b)(3)(iv)(B) of this section.

(E)The following example illustrates the application of paragraph (b)(3)(iv)(D) of this section:

Example. Under the terms of a defined benefit plan, participant A is entitled to a QJSA with a monthly payment of \$ 1,500 beginning as of his annuity starting date. Due to administrative error, the QJSA explanation is provided to A after the annuity starting date. After receiving the QJSA explanation A elects a retroactive annuity starting date. Pursuant to this election, A begins to receive a monthly payment of \$ 1,500 and also receives a make-up payment of \$ 10,000. Under these circumstances the monthly payments may be treated as a QJSA for purposes of section 415(b)(2)(B) [26 USCS § 415(b)(2)(B)]. In addition, the monthly payments of \$ 1,500 and the make-up payment of \$ 10,000 may be treated as part of as series of

26 CFR 1.417(e)-1

substantially equal periodic payments for purpose of section 72(t)(2)(A)(iv) [\[26 USCS § 72\(t\)\(2\)\(A\)\(iv\)\]](#).

(v) Requirements applicable to retroactive annuity starting dates. A distribution is permitted to have a retroactive annuity starting date with respect to a participant's benefit only if the following requirements are met:

(A) The participant's spouse (including an alternate payee who is treated as the spouse under a qualified domestic relations order (QDRO), as defined in section 414(p) [\[26 USCS § 414\(p\)\]](#)), determined as if the date distributions commence were the participant's annuity starting date, consents to the distribution in a manner that would satisfy the requirements of section 417(a)(2) [\[26 USCS § 417\(a\)\(2\)\]](#). The spousal consent requirement of this paragraph (b)(3)(v)(A) is satisfied if such spouse consents to the distribution under paragraph (b)(2)(i) of this section. The spousal consent requirement of this paragraph (b)(3)(v)(A) does not apply if the amount of such spouse's survivor annuity payments under the retroactive annuity starting date election is no less than the amount that the survivor payments to such spouse would have been under an optional form of benefit that would satisfy the requirements to be a QJSA under section 417(b) [\[26 USCS § 417\(b\)\]](#) and that has an annuity starting date after the date that the explanation was provided.

(B) The distribution (including appropriate interest adjustments) provided based on the retroactive annuity starting date would satisfy the requirements of section 415 [\[26 USCS § 415\]](#) if the date the distribution commences is substituted for the annuity starting date for all purposes, including for purposes of determining the applicable interest rate and the applicable mortality table. However, in the case of a form of benefit that would have been excepted from the present value requirements of paragraph (d) of this section under paragraph (d)(6) of this section if the distribution had actually commenced on the retroactive annuity starting date, the requirement to apply section 415 [\[26 USCS § 415\]](#) as of the date distribution commences set forth in this paragraph (b)(3)(v)(B) does not apply if the date distribution commences is twelve months or less from the retroactive annuity starting date.

(C) In the case of a form of benefit that would have been subject to section 417(e)(3) [\[26 USCS § 417\(e\)\(3\)\]](#) and paragraph (d) of this section if distributions had commenced as of the retroactive annuity starting date, the distribution is no less than the benefit produced by applying the applicable interest rate and the applicable mortality table determined as of the date the distribution commences to the annuity form that corresponds to the annuity form that was used to determine the benefit amount as of the retroactive annuity starting date. Thus, for example, if a distribution paid pursuant to an election of a retroactive annuity starting date is a single-sum distribution that is based on the present value of the straight life annuity payable at normal retirement age, then the amount of the distribution must be no less than the present value of the annuity payable at normal retirement age, determined as of the distribution date using the applicable mortality table and applicable interest rate that apply as of the distribution date. Likewise, if a distribution paid pursuant to an election of a retroactive annuity starting date is a single-sum distribution that is based on the present value of the early retirement annuity payable as of the retroactive annuity starting date, then the amount of the distribution must be no less than the present value of the early retirement annuity payable as of the distribution date, determined as of the distribution date using the applicable mortality table and applicable interest rate that apply as of the distribution date.

(vi) Timing of notice and consent requirements in the case of retroactive annuity starting dates. In the case of a retroactive annuity starting date, the date of the first actual payment of benefits based on the retroactive annuity starting date is substituted for the annuity starting date for purposes of satisfying the timing requirements for giving consent and providing an explanation of the QJSA provided in paragraphs (b)(3)(i) and (ii) of this section, except that the substitution does not apply for purposes of paragraph (b)(3)(iii) of this section. Thus, the written explanation required by section 417(a)(3)(A) [\[26 USCS § 417\(a\)\(3\)\(A\)\]](#) must generally be provided no less than 30 days

26 CFR 1.417(e)-1

and no more than 90 days before the date of the first payment of benefits and the election to receive the distribution must be made after the written explanation is provided and on or before the date of the first payment. Similarly, the written explanation may also be provided less than 30 days prior to the first payment of benefits if the requirements of paragraph (b)(3)(ii) of this section would be satisfied if the date of the first payment is substituted for the annuity starting date.

(vii)Administrative delay. A plan will not fail to satisfy the 90-day timing requirements of paragraphs (b)(3)(iii) and (vi) of this section merely because, due solely to administrative delay, a distribution commences more than 90 days after the written explanation of the QJSA is provided to the participant.

(viii)The following example illustrates the provisions of this paragraph (b)(3):

Example. Employee E, a married participant in a defined benefit plan who has terminated employment, is provided with the explanation of the QJSA on November 28.

Employee E elects (with spousal consent) on December 2 to waive the QJSA and receive an immediate distribution in the form of a single life annuity. The plan may permit Employee E to receive payments with an annuity starting date of December 1, provided that the first payment is made no earlier than December 6 and the participant does not revoke the election before that date. The plan can make the remaining monthly payments on the first day of each month thereafter in accordance with its regular payment schedule.

(ix)The additional rules of this paragraph (b)(3) concerning the notice and consent requirements of section 417 [\[26 USCS § 417\]](#) apply to distributions on or after September 22, 1995. For distributions before September 22, 1995, the additional rules concerning the notice and consent requirements of section 417 [\[26 USCS § 417\]](#) in § 1.417(e)-1(b)(3) in effect prior to September 22, 1995 (see § 1.417(e)-1 (b)(3) in 26 CFR Part 1 revised as of April 1, 1995) apply.

(4)Delegation to Commissioner. The Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, may modify, or provide additional guidance with respect to, the notice and consent requirements of this section. See § 601.601(d)(2)(ii)(b) of this chapter.

(c)Permitted distributions. A plan may not require that a participant or surviving spouse begin to receive benefits without satisfying paragraph (b) of this section while such benefits are immediately distributable, (see paragraph (b)(1) of this section). Once benefits are no longer immediately distributable, all benefits that the plan requires to begin must be provided in the form of a QJSA and QPSA unless the applicable written explanation, election and consent requirements of section 417 [\[26 USCS § 417\]](#) are satisfied.

(d)Present value requirement --(1) General rule --(i) Defined benefit plans. Except as provided in section 411(a)(13) and the regulations thereunder, a defined benefit plan must provide that the present value of any accrued benefit and the amount (subject to sections 411(c)(3) and 415 [\[26 USCS §§ 411\(c\)\(3\) and 415\]](#)) of any distribution, including a single sum, must not be less than the amount calculated using the applicable interest rate described in paragraph (d)(3) of this section (determined for the month described in paragraph (d)(4) of this section) and the applicable mortality table described in paragraph (d)(2) of this section. The present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit determined in accordance with the preceding sentence. The same rules used for the plan under this paragraph (d) must also be used to compute the present value of the benefit for purposes of determining whether consent for a distribution is required under paragraph (b) of this section.

(ii)Defined contribution plans. Because the accrued benefit under a defined contribution plan equals the account balance, a defined contribution plan is not subject to the requirements of this paragraph (d), regardless of whether the requirements of section 401(a)(11) apply to the plan.

(2)Applicable mortality table. The applicable mortality table is the mortality table based on the prevailing commissioners' standard table (described in section 807(d)(5)(A) [\[26 USCS § 807\(d\)\(5\)\(A\)\]](#)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5) [\[26 USCS § 807\(d\)\(5\)\]](#)), that is prescribed by the Commissioner in revenue rulings,

notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter). The Commissioner may prescribe rules that apply in the case of a change to the prevailing commissioners' standard table (described in section 807(d)(5)(A) [26 USCS § 807(d)(5)(A)]) used to determine reserves for group annuity contracts, in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(3) Applicable interest rate --

(i)General rule. The applicable interest rate for a month is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for that month in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter).

(ii)Example. This example illustrates the rules of this paragraph (d)(3):

Example. Plan A is a calendar year plan. For its 1995 plan year, Plan A provides that the applicable mortality table is the table described in Rev. Rul. 95-6 (1995-1 C.B. 80), and that the applicable interest rate is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for the first full calendar month preceding the calendar month that contains the annuity starting date. Participant P is age 65 in January 1995, which is the month that contains P's annuity starting date. P has an accrued benefit payable monthly of \$ 1,000 and has elected to receive a distribution in the form of a single sum in January 1995. The annual interest rate on 30-year Treasury securities as published by the Commissioner for December 1994 is 7.87 percent. To satisfy the requirements of section 417(e)(3) [26 USCS § 417(e)(3)] and this paragraph (d), the single sum received by P may not be less than \$ 111,351.

(4) Time for determining interest rate --

(i)General rule. Except as provided in paragraph (d)(4)(iv) or (v) of this section, the applicable interest rate to be used for a distribution is the rate determined under paragraph (d)(3) of this section for the applicable lookback month. The applicable lookback month for a distribution is the lookback month (as described in paragraph (d)(4)(iii) of this section) for the month (or other longer stability period described in paragraph (d)(4)(ii) of this section) that contains the annuity starting date for the distribution. The time and method for determining the applicable interest rate for each participant's distribution must be determined in a consistent manner that is applied uniformly to all participants in the plan.

(ii)Stability period. A plan must specify the period for which the applicable interest rate remains constant. This stability period may be one calendar month, one plan quarter, one calendar quarter, one plan year, or one calendar year.

(iii)Lookback month. A plan must specify the lookback month that is used to determine the applicable interest rate. The lookback month may be the first, second, third, fourth, or fifth full calendar month preceding the first day of the stability period.

(iv)Permitted average interest rate. A plan may apply the rules of paragraph (d)(4)(i) of this section by substituting a permitted average interest rate with respect to the plan's stability period for the rate determined under paragraph (d)(3) of this section for the applicable lookback month for the stability period. For this purpose, a permitted average interest rate with respect to a stability period is an interest rate that is computed by averaging the applicable interest rates determined under paragraph (d)(3) of this section for two or more consecutive months from among the first, second, third, fourth, and fifth calendar months preceding the first day of the stability period. For this paragraph (d)(4)(iv) to apply, a plan must specify the manner in which the permitted average interest rate is computed.

(v)Additional determination dates. The Commissioner may prescribe, in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin (see §

26 CFR 1.417(e)-1

601.601(d)(2)(ii)(b)), other times that a plan may provide for determining the applicable interest rate.

(vi) Example. This example illustrates the rules of this paragraph (d)(4):

Example. Employer X maintains Plan A, a calendar year plan. Employer X wishes to amend Plan A so that the applicable interest rate will remain fixed for each plan quarter, and so that the applicable interest rate for distributions made during each plan quarter can be determined approximately 80 days before the beginning of the plan quarter. To comply with the provisions of this paragraph (d)(4), Plan A is amended to provide that the applicable interest rate is the annual interest rate on 30-year Treasury securities as specified by the Commissioner for the fourth calendar month preceding the first day of the plan quarter during which the annuity starting date occurs.

(5) Use of alternative interest rate and mortality table. If a plan provides for use of an interest rate or mortality table other than the applicable interest rate or the applicable mortality table, the plan must provide that a participant's benefit must be at least as great as the benefit produced by using the applicable interest rate and the applicable mortality table. For example, if a plan provides for use of an interest rate of 7% and the UP-1984 Mortality Table (see § 1.401(a)(4)-12, Standard mortality table) in calculating single-sum distributions, the plan must provide that any single-sum distribution is calculated as the greater of the single-sum benefit calculated using 7% and the UP-1984 Mortality Table and the single-sum benefit calculated using the applicable interest rate and the applicable mortality table.

(6) Exceptions. This paragraph (d) (other than the provisions relating to section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#) requirements in paragraph (d)(10) of this section) does not apply to the amount of a distribution paid in the form of an annual benefit that --

(i) Does not decrease during the life of the participant, or, in the case of a QPSA, the life of the participant's spouse; or

(ii) Decreases during the life of the participant merely because of --

(A) The death of the survivor annuitant (but only if the reduction is to a level not below 50% of the annual benefit payable before the death of the survivor annuitant); or

(B) The cessation or reduction of Social Security supplements or qualified disability benefits (as defined in section 411(a)(9) [\[26 USCS § 411\(a\)\(9\)\]](#)).

(7) Application to portion of a participant's benefit --(i) In general. This paragraph (d)(7) provides rules under which the requirements of this paragraph (d) apply to the distribution of only a portion of a participant's accrued benefit. Paragraph (d)(7)(ii) of this section provides rules for how a participant's accrued benefit may be bifurcated into separate components for purposes of applying this paragraph (d). Paragraph (d)(7)(iii) of this section provides rules of application. Paragraph (d)(7)(iv) of this section provides certain limited section 411(d)(6) relief, and paragraph (d)(7)(v) of this section provides examples of the application of the rules of this paragraph (d)(7).

(ii) Bifurcation of accrued benefit --(A) Explicit plan-specified bifurcation. A plan is permitted to provide that the requirements of this paragraph (d) apply to a specified portion of a participant's accrued benefit as if that portion were the participant's entire accrued benefit. For example, a plan is permitted to provide that a distribution in the form of a single-sum payment described in this paragraph (d)(7)(ii)(A) is made to settle a specified percentage of the participant's accrued benefit. As another example, a plan is permitted to provide that a distribution in the form of a single-sum payment described in this paragraph (d)(7)(ii)(A) is made to settle the accrued benefit derived from contributions made by an employee. In both examples, the distribution must satisfy the requirements of this paragraph (d) with respect to the specified portion of the accrued benefit, and the remaining portion of the accrued benefit (the participant's total accrued benefit less the portion of the accrued benefit settled by the single-sum payment) can be paid in some other form of distribution that is available under the plan.

26 CFR 1.417(e)-1

(B)Distribution of specified amount. A plan that provides for a distribution of a single-sum payment that is not described in paragraph (d)(7)(ii)(A) of this section satisfies the requirements of this paragraph (d) with respect to that distribution if the portion of the participant's accrued benefit, expressed in the normal form of benefit under the plan and commencing at normal retirement age (or at the current date, if later), that is not settled by the distribution is no less than the excess of--

(1)The participant's total accrued benefit expressed in that form; over

(2)The annuity payable in that form that is actuarially equivalent to the single-sum payment, determined using the applicable interest rate and the applicable mortality table.

(iii)Rules of operation --(A) Multiple distribution options. If a participant selects different distribution options with respect to two separate portions of the participant's accrued benefit that were determined in accordance with paragraph (d)(7)(ii) of this section, then the two different distribution options are treated as two separate optional forms of benefit for purposes of applying the requirements of section 417(e)(3) and this paragraph (d), even if the distribution options have the same annuity starting date. Thus, if the exception from the requirements of section 417(e)(3) and this paragraph (d) that is contained in paragraph (d)(6) of this section applies to one of those optional forms of benefit, then this paragraph (d) applies only to the other optional form of benefit.

(B)Repeated application of rule. If a participant's accrued benefit has been bifurcated in accordance with paragraph (d)(7)(ii) of this section, then the provisions of paragraph (d)(7)(ii) of this section may be applied again to bifurcate the remaining accrued benefit.

(C)Requirement to use explicit plan-specified bifurcation in certain cases --(1) Section 411(d)(6)--protected optional form. If the amount of a distribution in an optional form of benefit to which this paragraph (d) applies is determined by reference to the portion of a participant's accrued benefit as of the applicable amendment date for an amendment that eliminates that optional form of benefit (but, in accordance with section 411(d)(6), retains the optional form of benefit with respect to benefits accrued as of the applicable amendment date), then the plan must provide for explicit bifurcation of the accrued benefit as described in paragraph (d)(7)(ii)(A) of this section.

(2)Single-sum available with respect to entire accrued benefit. If a plan provides that a single-sum distribution is available to settle a participant's entire accrued benefit, then, in order to also provide for a distribution in the form of a single-sum payment that settles only a portion of a participant's accrued benefit, the plan must provide for explicit bifurcation of the accrued benefit as described in paragraph (d)(7)(ii)(A) of this section.

(D)Application of different factors to different portions of the accrued benefit. If a plan provides for an early retirement benefit, a retirement-type subsidy, an optional form of benefit, or an ancillary benefit, that applies only to a portion of a participant's accrued benefit, and the plan provides for a distribution that settles some, but not all, of the participant's accrued benefit, then the plan must specify which portion of the participant's total accrued benefit is settled by that distribution. For example, if a plan had one set of early retirement factors that applied to the accrued benefit as of December 31, 2005, but a different set of early retirement factors that applied to benefit accruals earned after that date, and the plan provides for a single-sum distribution that settles only a portion of a participant's accrued benefit, then the plan must specify which portion of the accrued benefit is settled by that distribution (in order to determine which early retirement factors apply to the remaining portion of the accrued benefit).

(iv)Limited section 411(d)(6) anti-cutback relief. This paragraph (d)(7)(iv) applies in the case of a plan that, for plan years beginning before January 1, 2017, uses the section 417(e)(3) applicable interest rate and applicable mortality table to calculate the amount of a distribution that is made to settle a portion of the accrued benefit if, pursuant to this paragraph (d)(7), the requirements of section 417(e)(3) and this paragraph (d) need not apply to the distribution. In such a case, section 411(d)(6) is not violated merely because, in accordance with this paragraph (d)(7), the plan is amended on or before December 31, 2017, to provide that the amount of a distribution described in the preceding sentence is determined for an annuity starting date on or after the applicable amendment date (within the meaning of § 1.411(d)-3(g)(4)) using the same actuarial assumptions that apply to calculate the amount of a distribution in the same form of benefit that is made to settle the participant's entire accrued benefit.

(v)Examples. The following examples illustrate the rules of this paragraph (d)(7). Unless otherwise indicated, these examples are based on the following assumptions: The taxpayers elect to apply the rules of this paragraph (d)(7) in 2016; each plan is a noncontributory defined benefit plan with a calendar-year plan year and a normal retirement age of age 65; a one-year stability period coinciding with the calendar year and a two-month lookback are used for determining the applicable interest rate; and all participant elections are made with proper spousal consent. The November 2015 segment rates are 1.76%, 4.15% and 5.13%.

Example 1.

(i)Plan A offers a number of optional forms of payment, including a qualified joint and survivor annuity and a single-sum payment. The single-sum payment is equal to the present value of the participant's immediate benefit (but not less than the present value of the participant's accrued benefit payable at normal retirement age) using the applicable interest and mortality rates under section 417(e)(3). The amount of the joint and survivor annuity is determined using plan factors that are not based on the applicable interest and mortality rates under section 417(e)(3). Plan A permits a participant to elect to receive a percentage of the accrued benefit as a single sum and the remainder in any annuity form provided under the plan, with the amount of the single-sum payment determined by multiplying the amount that would be payable if the entire benefit were paid as a single sum by the percentage of the accrued benefit settled by the single-sum payment.

(ii)Participant S retires at age 62 in 2016, with an accrued benefit of \$ 1,000 per month payable as a straight life annuity at normal retirement age. Participant S is eligible for an unreduced early retirement benefit and can therefore collect a straight life annuity benefit of \$ 1,000 per month beginning immediately. Alternatively, Participant S can elect to receive the benefit in other forms, including a single-sum payment of \$ 168,516 (based on the applicable interest and mortality rates under section 417(e), which are the November 2015 segment rates and the 2016 applicable mortality table), or a 100% joint and survivor annuity of \$ 850 per month (based on the plan's actuarial equivalence factors). Participant S elects to receive 25% of the accrued benefit in the form of a single-sum payment and the remaining 75% of the accrued benefit as a 100% joint and survivor annuity.

(iii)Participant S receives a single-sum payment with respect to 25% of the accrued benefit. Accordingly, this single-sum payment is equal to 25% of the full single-sum amount, or \$ 42,129. The remaining portion of the accrued benefit is 75% of the total accrued benefit, or \$ 750 per month payable as a straight life annuity at normal retirement age.

(iv)To settle the remaining portion of the accrued benefit, in addition to the single-sum payment of \$ 42,129, Participant S receives a 100% joint and survivor annuity in the amount of \$ 637.50 per month, which is determined by applying the plan's unreduced early retirement and actuarial equivalence factors to the remaining portion of the accrued benefit

26 CFR 1.417(e)-1

of \$ 750 per month payable as a straight life annuity at normal retirement age. The joint and survivor annuity benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(iii)(A) of this section.

Example 2.

(i) Plan B is a contributory defined benefit plan that permits a participant to elect a single sum distribution equal to the participant's employee contributions, accumulated with interest, with the remainder payable as an annuity. Plan B provides that the probability of death before normal retirement age is not taken into account for purposes of determining actuarial equivalence between the single-sum payment and an annuity at normal retirement age. Based on the applicable mortality table for 2016 and the November 2015 segment rates, the deferred annuity factor at age 60 for lifetime payments commencing at age 65 (determined without taking mortality before age 65 into account) is 10.209.

(ii) Participant T retires at age 60 in 2016 with an accrued benefit of \$ 1,500 per month payable as a straight life annuity commencing at normal retirement age. For benefits commencing at age 60, Plan B provides for an early retirement reduction factor of 75% and an actuarial equivalence factor of 98% for adjusting a straight life annuity to a 10-year certain and life annuity, neither of which is based on the applicable interest and mortality rates under section 417(e)(3). Participant T's benefit commencing at age 60 in the form of a 10-year certain and life annuity would be $\$ 1,500 \times 75\% \times 98\% = \$ 1,102.50$ per month. Participant T elects to receive a single sum payment of \$ 32,000 equal to T's accumulated contributions with interest, and the remainder as a 10-year certain and life annuity.

(iii) The single-sum payment elected by Participant T is a distribution that is determined by reference to Participant T's contributions and interest, and not by reference to a specified portion of the participant's accrued benefit. Therefore, the single-sum payment is not described in paragraph (d)(7)(ii)(A) of this section. In order to satisfy paragraph (d)(7)(ii)(B) of this section, the portion of the participant's accrued benefit that is not settled by the single-sum payment must be no less than the excess of (A) the participant's total accrued benefit over (B) the annuity that is actuarially equivalent to the single-sum payment, (determined using the applicable interest and mortality rates under section 417(e)(3) as applicable), both expressed in the normal form of benefit commencing at normal retirement age. The amount of that actuarially equivalent annuity is determined by dividing Participant T's single-sum payment of \$ 32,000 by the deferred annuity factor for lifetime payments commencing at age 65 under the terms of Plan B (10.209, not considering mortality for the deferral period) and dividing by 12 for an actuarially equivalent monthly benefit commencing at age 65 of \$ 261.21. Thus, in order to satisfy paragraph (d)(7)(ii)(B) of this section, the remaining portion of T's accrued benefit must be at least \$ 1,238.79 per month ($\$ 1,500.00 - \$ 261.21$) payable as a straight life annuity at normal retirement age.

(iv) Based on Plan B's early retirement and optional form factors applied to the remaining portion, the annuity benefit payable to Participant T in the form of a 10-year certain and life annuity beginning at age 60 cannot be less than \$ 910.51 per month ($\$ 1,238.79 \times 75\% \times 98\%$). Participant T receives this in addition to the single-sum payment of \$ 32,000. The 10-year certain and life benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(iii)(A) of this section.

(v) If, instead, Plan B's terms had provided for a single-sum payment equal to the present value of the participant's employee-provided accrued benefit as determined

26 CFR 1.417(e)-1

under section 411(c)(3), then the plan is determining the single-sum payment as the present value of a specified portion of the accrued benefit. In such a case, the plan is using explicit bifurcation as described in paragraph (d)(7)(ii)(A) of this section and the single-sum payment would have to be set equal to the present value, determined under Plan B's terms, of T's employee-provided accrued benefit (which may or may not be equal to T's accumulated contributions and interest, depending on the plan's terms). The remaining annuity benefit payable to Participant T would have been based on an accrued benefit equal to \$ 1,500 per month minus the amount of T's employee-provided accrued benefit.

Example 3.

(i)The facts are the same as in Example 2 of this paragraph (d)(7)(v), except that Plan B also offers a single-sum payment option with respect to a participant's entire benefit. The single-sum payment is determined as the present value of the participant's early retirement benefit (but no less than the present value of the participant's accrued benefit) using the applicable interest and mortality rates under section 417(e)(3). Based on the applicable mortality table for 2016 and the November 2015 segment rates, the immediate annuity factor for lifetime payments commencing at age 60 is 14.632. Under the terms of the plan, the early retirement benefit payable as a straight life annuity to Participant T at age 60 with respect to T's full accrued benefit is \$ 1,125 ($\$ 1,500 \times 75\%$), and the corresponding single-sum amount payable to T is $\$ 1,125 \times 14.632 \times 12 = \$ 197,532$. (Note that this amount is larger than the age-60 present value of T's accrued benefit without taking mortality before age 65 into account, $\$ 1,500 \times 10.209 \times 12 = \$ 183,762$.) Participant T elects to receive a partial single-sum payment of \$ 32,000, equal to T's accumulated contributions with interest and to take the remaining accrued benefit in the form of a 10-year certain and life annuity commencing at age 60.

(ii)Because the plan also provides for a single-sum payment option with respect to a participant's entire benefit, pursuant to paragraph (d)(7)(iii)(C)(2) of this section the partial single-sum payment must be determined pursuant to the explicit bifurcation rules of paragraph (d)(7)(ii)(A) of this section.

(iii)The portion of the participant's accrued benefit that is settled by the single-sum payment of \$ 32,000 is determined as the amount that bears the same ratio to the total accrued benefit as that single-sum payment bears to the single-sum payment with respect to the entire accrued benefit ($(\$ 32,000 / \$ 197,532) \times \$ 1,500$), which is \$ 243 per month payable as a straight life annuity at normal retirement age. Thus, the remaining portion of the accrued benefit is \$ 1,257.00 per month payable as a straight life annuity at normal retirement age.

(iv)Based on Plan B's early retirement and optional form factors applied to the remaining portion, the annuity benefit payable to Participant T in the form of a 10-year certain and life annuity beginning at age 60 is \$ 923.90 per month ($\$ 1,257 \times 75\% \times 98\%$). Participant T receives this benefit in addition to the single sum payment of \$ 32,000. The 10-year certain and life benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(iii)(A) of this section.

Example 4.

(i)Plan C was amended to freeze benefits under a traditional defined benefit formula as of December 31, 2016, and to provide benefits under a cash balance formula beginning January 1, 2017. The plan provides that participants may elect separate distribution options for the portion of the benefit accrued under the traditional formula as of December 31, 2016, and the

26 CFR 1.417(e)-1

portion of the benefit earned under the cash balance formula. Furthermore, the plan provides that a participant may elect to receive a single-sum payment only with respect to the portion of the benefit earned under the cash balance formula.

(ii)In accordance with paragraph (d)(7)(ii)(A) of this section, Plan C provides for an explicitly bifurcated accrued benefit because the portion of the accrued benefit settled by a distribution is determined separately for the portion under the traditional formula and the portion under the cash balance formula. As provided under paragraph (d)(7)(iii)(A) of this section, a single-sum payment under the cash balance formula and a distribution option under the traditional formula are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and this paragraph (d). Therefore, whether a participant elects to receive a single-sum payment of the portion of the benefit earned under the cash balance formula does not affect whether the distribution elected with respect to the portion of the benefit earned as of December 31, 2016, is subject to the minimum present value requirements of section 417(e)(3).

Example 5.

(i)The facts are the same as in Example 4 of this paragraph (d)(7)(v), except that Plan C also permits a participant to elect, with respect to the cash balance portion of the benefit, to receive a percentage of that portion as a single sum and the remainder in any annuity form provided under the plan, with the amount of the single-sum payment determined by multiplying the amount that would be payable if the entire cash balance portion were paid as a single sum by the percentage of the cash balance portion settled by the single-sum payment. Participant W retires at age 65, with an accrued benefit under the traditional defined benefit formula (earned as of December 31, 2016) of \$ 500 per month payable as a straight life annuity at normal retirement age and a cash balance hypothetical account balance of \$ 45,000. Based on Plan C's actuarial equivalence factors, Participant W's accrued benefit derived from the cash balance hypothetical account is \$ 320 per month, payable as a straight life annuity at normal retirement age. Participant W elects to receive 1/3 or \$ 15,000 of the current hypothetical account balance in the form of a single sum and to receive the remainder of the total accrued benefit as a straight life annuity.

(ii)Under the analysis set forth in Example 4 of this paragraph (d)(7)(v), Plan C provides for an explicitly bifurcated accrued benefit with respect to the traditional defined benefit portion and the cash balance portion because the portion of the accrued benefit settled by a distribution is determined separately for the portion under the traditional formula and the portion under the cash balance formula. As provided under paragraph (d)(7)(iii)(A) of this section, a single-sum payment under the cash balance formula and a distribution option under the traditional formula are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and this paragraph (d). Thus, a separate distribution option may be chosen for each of these two portions, and section 417(e)(3) applies separately to each portion.

(iii)In accordance with paragraph (d)(7)(ii)(A) of this section, Plan C also provides for an explicitly bifurcated accrued benefit with respect to the cash balance benefit because the plan provides that a distribution in the

26 CFR 1.417(e)-1

form of a single-sum payment is made to settle a specified percentage of the cash balance benefit. As provided under paragraph (d)(7)(iii)(A) of this section, the single-sum payment and the annuity selected by Participant W with respect to the cash balance benefit are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and this paragraph (d). Thus, in accordance with paragraph (d)(7)(ii)(A) of this section, 1/3 of the cash balance hypothetical account is settled by the distribution paid out as a single sum (that is, \$ 15,000 / \$ 45,000). After the single-sum payment, the remaining portion of the accrued benefit derived from the cash balance account is 2/3 of the initial accrued benefit derived from the cash balance account, or a straight life annuity at normal retirement age of \$ 213.33 per month (2/3 x \$ 320).

(iv)To settle the remaining portion of the entire accrued benefit (the portion of the benefit attributable to service as of December 31, 2016 plus the remaining portion of the cash balance benefit), Participant W receives a monthly life annuity of \$ 713.33 per month payable as a straight life annuity at normal retirement age (equal to the \$ 500 straight life annuity at normal retirement age earned as of December 31, 2016 plus the remaining benefit derived from the cash balance portion of a straight life annuity payable at normal retirement age of \$ 213.33 per month). Participant W's election to receive a single-sum payment of part of the benefit earned under the cash balance formula does not affect whether the remainder of Participant W's distribution is subject to the minimum present value requirements of section 417(e)(3).

Example 6.

(i)Plan D permits participants to elect a single-sum payment of up to \$ 10,000 with the remaining benefit payable in the form of an annuity. Participant X retires in 2016 at age 55 with an accrued benefit of \$ 1,000 per month payable as a straight life annuity at normal retirement age. Participant X is eligible for an unreduced early retirement benefit of \$ 1,000 per month payable as a straight life annuity. Alternatively, based on Plan D's definition of actuarial equivalence (which is not based on the applicable interest and mortality rates under section 417(e)(3)), Participant X can receive an immediate benefit in the form of a 100% joint and survivor annuity of \$ 800 per month. Participant X elects to receive a single-sum payment of \$ 10,000, with the balance of the benefit payable as a 100% joint and survivor annuity beginning at age 55. Based on the applicable mortality table for 2016 and the November 2015 segment rates, the deferred annuity factor at age 55 for lifetime payments commencing at age 65 is 7.602.

(ii)Plan D provides for a single-sum distribution of a portion of the participant's accrued benefit but, because the plan initially specifies the amount of the single-sum distribution (rather than the portion of the accrued benefit that is being settled by that distribution), Plan D is described in paragraph (d)(7)(ii)(B) of this section. As provided under paragraph (d)(7)(iii)(A) of this section, the single-sum payment and the joint-and-survivor annuity selected by Participant X are treated as two separate optional forms of benefit for purposes of applying the provisions of the plan implementing the requirements of section 417(e)(3) and this paragraph (d).

26 CFR 1.417(e)-1

(iii)A straight life annuity of \$ 109.62 per month payable at normal retirement age is actuarially equivalent to the \$ 10,000 single-sum payment, determined using the applicable mortality table for 2016 and the November 2015 segment rates (\$ 10,000 / 12 / 7.602). Therefore, pursuant to paragraph (d)(7)(ii)(B) of this section, in order to satisfy this paragraph (d) the remaining portion of the accrued benefit after the single-sum payment of \$ 10,000 must be no less than \$ 890.38 per month payable as a straight life annuity at normal retirement age (\$ 1,000.00-\$ 109.62).

(iv)Based on Plan D's early retirement and optional form factors, in order to satisfy this paragraph (d), the annuity benefit payable to Participant X in the form of a 100% joint-and-survivor annuity beginning at age 55 must be no less than \$ 712.30 per month (\$ 890.38 x .8). Participant X receives this benefit in addition to the single sum payment of \$ 10,000. The joint and survivor annuity benefit is not subject to the minimum present value requirements of section 417(e)(3) because it is treated as a separate optional form of benefit under paragraph (d)(7)(iii)(A) of this section.

Example 7.

(i)Plan E provides for an unreduced early retirement benefit for participants who have met certain age and service requirements. Prior to amendment, Plan E permitted participants to elect a single-sum payment equal to the present value of the participant's unreduced early retirement benefit, determined using the applicable interest rate and applicable mortality table under section 417(e)(3). Plan E did not permit participants to elect a single-sum payment with respect to only a portion of their benefits. Effective December 31, 2012, Plan E was amended to eliminate the single-sum payment with respect to benefits accrued after that date.

(ii)Participant Y retires on December 31, 2016, at age 60, after meeting Plan E's age and service requirements for an unreduced early retirement benefit. Participant Y's accrued benefit is \$ 1,000 per month payable as a straight life annuity commencing at normal retirement age, of which \$ 800 per month was accrued as of December 31, 2012. Participant Y elects to take a single-sum payment based on the benefit accrued as of December 31, 2012, with the remainder paid as a lifetime annuity commencing at age 60. Based on the applicable mortality table for 2016 and the November 2015 segment rates, the immediate annuity factor for lifetime payments commencing at age 60 is 14.632, so Y's single-sum payment is \$ 800 x 12 x 14.632 = \$ 140,467.20.

(iii)In accordance with paragraph (d)(7)(iii)(C)(1) of this section, Plan E provides for explicit bifurcation of the accrued benefit as described in paragraph (d)(7)(ii)(A) of this section. Therefore, Participant Y must receive an annuity of \$ 200 earned after December 31, 2012 in addition to the single-sum payment of \$ 140,467. Plan E is not permitted to use the approach described in paragraph (d)(7)(ii)(B) of this section to reduce or eliminate the \$ 200 annuity earned after December 31, 2012.

(8)Effective/applicability date --- (i) In general. Except as otherwise provided in this paragraph (d)(8), this paragraph (d) applies to distributions with annuity starting dates in plan years beginning on or after January 1, 1995.

(ii)Optional delayed effective date of Retirement Protection Act of 1994 (RPA '94)(108 Stat. 5012) rules for plans adopted and in effect before December 8, 1994. For a plan adopted and in effect before December 8, 1994, the application of the rules relating to the applicable

26 CFR 1.417(e)-1

mortality table and applicable interest rate under paragraphs (d)(2) through (4) of this section is delayed to the extent provided in this paragraph (d)(8)(ii), if the plan provisions in effect on December 7, 1994, met the requirements of section 417(e)(3) [26 USCS § 417(e)(3)] and § 1.417(e)-1(d) as in effect on December 7, 1994 (as contained in 26 CFR part 1 revised April 1, 1995). In the case of a distribution from such a plan with an annuity starting date that precedes the optional delayed effective date described in paragraph (d)(8)(iv) of this section, and that precedes the first day of the first plan year beginning after December 31, 1999, the rules of paragraph (d)(9) of this section (which generally apply to distributions with annuity starting dates in plan years beginning before January 1, 1995) apply in lieu of the rules of paragraphs (d)(2) through (4) of this section. The interest rate under the rules of paragraph (d)(9) of this section is determined under the provisions of the plan as in effect on December 7, 1994, reflecting the interest rate or rates published by the Pension Benefit Guaranty Corporation (PBGC) and the provisions of the plan for determining the date on which the interest rate is fixed. The above described interest rate or rates published by the PBGC are those determined by the PBGC (for the date determined under those plan provisions) pursuant to the methodology under the regulations of the PBGC for determining the present value of a lump sum distribution on plan termination under 29 CFR part 2619 that were in effect on September 1, 1993 (as contained in 29 CFR part 2619 revised July 1, 1994).

(iii)Optional accelerated effective date of RPA '94 rules. This paragraph (d) is also effective for a distribution with an annuity starting date after December 7, 1994, during a plan year beginning before January 1, 1995, if the employer elects, on or before the annuity starting date, to make the rules of this paragraph (d) effective with respect to the plan as of the optional accelerated effective date described in paragraph (d)(8)(iv) of this section. An employer is treated as making this election by making the plan amendments described in paragraph (d)(8)(iv) of this section.

(iv)Determination of delayed or accelerated effective date by plan amendment adopting RPA '94 rules. The optional delayed effective date of paragraph (d)(8)(ii) of this section, or the optional accelerated effective date of paragraph (d)(8)(iii) of this section, whichever is applicable, is the date plan amendments applying both the applicable mortality table of paragraph (d)(2) of this section and the applicable interest rate of paragraph (d)(3) of this section are adopted or, if later, are made effective.

(v)Effective date for special rules applicable to the payment of a portion of a participant's benefit. Paragraph (d)(7) of this section applies to distributions with annuity starting dates in plan years beginning on or after January 1, 2017. However, taxpayers may elect to apply the rules of paragraph (d)(7) of this section to earlier periods.

(9)Plan years beginning before January 1, 1995 -- (i) Interest rate. (A) For distributions made in plan years beginning after December 31, 1986, and before January 1, 1995, the following interest rate described in paragraph (d)(9)(i)(A)(1) or (2) of this section, whichever applies, is substituted for the applicable interest rate for purposes of this section --

(1)The rate or rates that would be used by the PBGC for a trustee single-employer plan to value the participant's (or beneficiary's) vested benefit (PBGC interest rate) if the present value of such benefit does not exceed \$ 25,000; or

(2)120 percent of the PBGC interest rate, as determined in accordance with paragraph (d)(9)(i)(A)(1) of this section, if such present value exceeds \$ 25,000. In no event shall the present value determined by use of 120 percent of the PBGC interest rate result in a present value less than \$ 25,000.

(B)The PBGC interest rate may be a series of interest rates for any given date. For example, the PBGC interest rate for immediate annuities for November 1994 is 6%, and the PBGC interest rates for the deferral period for that month are as follows: 5.25% for the first 7 years of the deferral period, 4% for the following 8 years of the deferral period, and

26 CFR 1.417(e)-1

4% for the remainder of the deferral period. For November 1994, 120 percent of the PBGC interest rate is 7.2% (1.2 times 6%) for an immediate annuity, 6.3% (1.2 times 5.25%) for the first 7 years of the deferral period, 4.8% (1.2 times 4%) for the following 8 years of the deferral period, and 4.8% (1.2 times 4%) for the remainder of the deferral period. The PBGC interest rates are the interest rates that would be used (as of the date of the distribution) by the PBGC for purposes of determining the present value of that benefit upon termination of an insufficient trustee single employer plan. Except as otherwise provided by the Commissioner, the PBGC interest rates are determined by PBGC regulations. See subpart B of 29 CFR part 4044 for the applicable PBGC rates.

(ii)Time for determining interest rate. (A) Except as provided in paragraph (d)(9)(ii)(B) of this section, the PBGC interest rate or rates are determined on either the annuity starting date or the first day of the plan year that contains the annuity starting date. The plan must provide which date is applicable.

(B)The plan may provide for the use of any other time for determining the PBGC interest rate or rates provided that such time is not more than 120 days before the annuity starting date if such time is determined in a consistent manner and is applied uniformly to all participants.

(C)The Commissioner may, in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b), prescribe other times for determining the PBGC interest rate or rates.

(iii)No applicable mortality table. In the case of a distribution to which this paragraph (d)(9) applies, the rules of this paragraph (d) are applied without regard to the applicable mortality table described in paragraph (d)(2) of this section.

(10)Relationship with section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#) -- (i) In general. A plan amendment that changes the interest rate, the time for determining the interest rate, or the mortality assumptions used for the purposes described in paragraph (d)(1) of this section is subject to section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#). But see § 1.411(d)-4, Q&A-2(b)(2)(v) (regarding plan amendments relating to involuntary distributions). In addition, a plan amendment that changes the interest rate or the mortality assumptions used for the purposes described in paragraph (d)(1) of this section merely to eliminate use of the interest rate described in paragraph (d)(3) or paragraph (d)(9) of this section, or the applicable mortality table, with respect to a distribution form described in paragraph (d)(6) of this section, for distributions with annuity starting dates occurring after a specified date that is after the amendment is adopted, does not violate the requirements of section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#) if the amendment is adopted on or before the last day of the last plan year ending before January 1, 2000.

(ii)Section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#) relief for change in time for determining interest rate. Notwithstanding the general rule of paragraph (d)(10)(i) of this section, if a plan amendment changes the time for determining the applicable interest rate (including an indirect change as a result of a change in plan year), the amendment will not be treated as reducing accrued benefits in violation of section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#) merely on account of this change if the conditions of this paragraph (d)(10)(ii) are satisfied. If the plan amendment is effective on or after the adoption date, any distribution for which the annuity starting date occurs in the one-year period commencing at the time the amendment is effective must be determined using the interest rate provided under the plan determined at either the date for determining the interest rate before the amendment or the date for determining the interest rate after the amendment, whichever results in the larger distribution. If the plan amendment is adopted retroactively (that is, the amendment is effective prior to the adoption date), the plan must use the interest rate determination date resulting in the larger distribution for the period beginning with the effective date and ending one year after the adoption date.

26 CFR 1.417(e)-1

(iii) Section 411(d)(6) [26 USCS § 411(d)(6)] relief for plan amendments pursuant to changes to section 417 [26 USCS § 417] made by RPA '94 providing for statutory interest rate determination date. Notwithstanding the general rule of paragraph (d)(10)(i) of this section, except as provided in paragraph (d)(10)(vi)(B) of this section, a participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) [26 USCS § 411(d)(6)] merely because of a plan amendment that changes any interest rate or mortality assumption used to calculate the present value of a participant's benefit under the plan, if the following conditions are satisfied --

(A) The amendment replaces the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) as the interest rate used under the plan in determining the present value of a participant's benefit under this paragraph (d); and

(B) After the amendment is effective, the present value of a participant's benefit under the plan cannot be less than the amount calculated using the applicable mortality table and the applicable interest rate for the first full calendar month preceding the calendar month that contains the annuity starting date.

(iv) Section 411(d)(6) [26 USCS § 411(d)(6)] relief for plan amendments pursuant to changes to section 417 [26 USCS § 417] made by RPA '94 providing for prior determination date or up to two months earlier. Notwithstanding the general rule of paragraph (d)(10)(i) of this section, except as provided in paragraph (d)(10)(vi)(B) of this section, a participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) [26 USCS § 411(d)(6)] merely because of a plan amendment that changes any interest rate or mortality assumption used to calculate the present value of a participant's benefit under the plan, if the following conditions are satisfied --

(A) The amendment replaces the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) as the interest rate used under the plan in determining the present value of a participant's benefit under this paragraph (d); and

(B) After the amendment is effective, the present value of a participant's benefit under the plan cannot be less than the amount calculated using the applicable mortality table and the applicable interest rate, but only if the applicable interest rate is the annual interest rate on 30-year Treasury securities for the calendar month that contains the date as of which the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) was determined immediately before the amendment, or for one of the two calendar months immediately preceding such month.

(v) Section 411(d)(6) [26 USCS § 411(d)(6)] relief for plan amendments pursuant to changes to section 417 [26 USCS § 417] made by RPA '94 providing for other interest rate determination date. Notwithstanding the general rule of paragraph (d)(10)(i) of this section, except as provided in paragraph (d)(10)(vi)(B) of this section, a participant's accrued benefit is not considered to be reduced in violation of section 411(d)(6) [26 USCS § 411(d)(6)] merely because of a plan amendment that changes any interest rate or mortality assumption used to calculate the present value of a participant's benefit under the plan, if the following conditions are satisfied --

(A) The amendment replaces the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) as the interest rate used under the plan in determining the present value of a participant's benefit under this paragraph (d);

(B) After the amendment is effective, the present value of a participant's benefit under the plan cannot be less than the amount calculated using the applicable mortality table and the applicable interest rate; and

(C) The plan amendment satisfies either the condition of paragraph (d)(10)(ii) of this section (determined using the interest rate provided under the terms of the plan after the effective

26 CFR 1.417(e)-1

date of the amendment) or the special early transition interest rate rule of paragraph (d)(10)(vi)(C) of this section.

(vi) Special rules -- (A) Provision of temporary additional benefits. A plan amendment described in paragraph (d)(10)(iii), (iv), or (v) of this section is not considered to reduce a participant's accrued benefit in violation of section 411(d)(6) [26 USCS § 411(d)(6)] even if the plan amendment provides for temporary additional benefits to accommodate a more gradual transition from the plan's old interest rate to the new rules.

(B) Replacement of non-PBGC interest rate. The section 411(d)(6) [26 USCS § 411(d)(6)] relief provided in paragraphs (d)(10)(iii) through (v) of this section does not apply to a plan amendment that replaces an interest rate other than the PBGC interest rate (or an interest rate or rates based on the PBGC interest rate) as an interest rate used under the plan in determining the present value of a participant's benefit under this paragraph (d). Thus, the accrued benefit determined using that interest rate and the associated mortality table is protected under section 411(d)(6) [26 USCS § 411(d)(6)]. For purposes of this paragraph (d), an interest rate is based on the PBGC interest rate if the interest rate is defined as a specified percentage of the PBGC interest rate, the PBGC interest rate minus a specified number of basis points, or an average of such interest rates over a specified period.

(C) Special early transition interest rate rule for paragraph (d)(10)(v). A plan amendment satisfies the special rule of this paragraph (d)(10)(vi)(C) if any distribution for which the annuity starting date occurs in the one-year period commencing at the time the plan amendment is effective is determined using whichever of the following two interest rates results in the larger distribution --

(1) The interest rate as provided under the terms of the plan after the effective date of the amendment, but determined at a date that is either one month or two months (as specified in the plan) before the date for determining the interest rate used under the terms of the plan before the amendment; or

(2) The interest rate as provided under the terms of the plan after the effective date of the amendment, determined at the date for determining the interest rate after the amendment.

(vii) Examples. The provisions of this paragraph (d)(10) are illustrated by the following examples:

Example 1. On December 31, 1994, Plan A provided that all single-sum distributions were to be calculated using the UP-1984 Mortality Table and 100% of the PBGC interest rate for the date of distribution. On January 4, 1995, and effective on February 1, 1995, Plan A was amended to provide that all single-sum distributions are calculated using the applicable mortality table and the annual interest rate on 30-year Treasury securities for the first full calendar month preceding the calendar month that contains the annuity starting date. Pursuant to paragraph (d)(10)(iii) of this section, this amendment of Plan A is not considered to reduce the accrued benefit of any participant in violation of section 411(d)(6) [26 USCS § 411(d)(6)].

Example 2. On December 31, 1994, Plan B provided that all single-sum distributions were to be calculated using the UP-1984 Mortality Table and an interest rate equal to the lesser of 100% of the PBGC interest rate for the date of distribution, or 6%. On January 4, 1995, and effective on February 1, 1995, Plan B was amended to provide that all single-sum distributions are calculated using the applicable mortality table and the annual interest rate on 30-year Treasury securities for the second full calendar month preceding the calendar month that contains the annuity starting date. Pursuant to paragraph (d)(10)(iv) of this section, this amendment of Plan B is not considered to reduce the accrued benefit of any participant in violation of section 411(d)(6) [26 USCS § 411(d)(6)] merely because of the replacement of the PBGC interest rate. However, under paragraph (d)(10)(vi)(B) of this section, the section 411(d)(6) [26 USCS § 411(d)(6)] relief provided in paragraphs (d)(10)(iii) through (v) of this

26 CFR 1.417(e)-1

section does not apply to a plan amendment that replaces an interest rate other than the PBGC interest rate (or a rate based on the PBGC interest rate). Therefore, pursuant to paragraph (d)(10)(vi)(B) of this section, to satisfy the requirements of section 411(d)(6) [26 USCS § 411(d)(6)], the plan must provide that the single-sum distribution payable to any participant must be no less than the single-sum distribution calculated using the UP-1984 Mortality Table and an interest rate of 6%, based on the participant's benefits under the plan accrued through January 31, 1995, and based on the participant's age at the annuity starting date.

Example 3. On December 31, 1994, Plan C, a calendar year plan, provided that all single sum distributions were to be calculated using the UP-1984 Mortality Table and an interest rate equal to the PBGC interest rate for January 1 of the plan year. On March 1, 1995, and effective on July 1, 1995, Plan C was amended to provide that all single-sum distributions are calculated using the applicable mortality table and the annual interest rate on 30-year Treasury securities for August of the year before the plan year that contains the annuity starting date. The plan amendment provides that each distribution with an annuity starting date after June 30, 1995, and before July 1, 1996, is calculated using the 30-year Treasury rate for August of the year before the plan year that contains the annuity starting date, or the 30-year Treasury rate for January of the plan year that contains the annuity starting date, whichever produces the larger benefit. Pursuant to paragraph (d)(10)(v) of this section, the amendment of Plan C is not considered to have reduced the accrued benefit of any participant in violation of section 411(d)(6) [26 USCS § 411(d)(6)].

Example 4. (a) Employer X maintains Plan D, a calendar year plan. As of December 7, 1994, Plan D provided for single-sum distributions to be calculated using the PBGC interest rate as of the annuity starting date for distributions not greater than \$ 25,000, and 120% of that interest rate (but not an interest rate producing a present value less than \$ 25,000) for distributions over \$ 25,000. Employer X wishes to delay the effective date of the RPA '94 rules for a year, and to provide for an extended transition from the use of the PBGC interest rate to the new applicable interest rate under section 417(e)(3) [26 USCS § 417(e)(3)]. On December 1, 1995, and effective on January 1, 1996, Employer X amends Plan D to provide that single-sum distributions are determined as the sum of --

(i) The single-sum distribution calculated based on the applicable mortality table and the annual interest rate on 30-year Treasury securities for the first full calendar month preceding the calendar month that contains the annuity starting date; and

(ii) A transition amount.

(b) The amendment provides that the transition amount for distributions in the years 1996-99 is a transition percentage of the excess, if any, of the amount that the single-sum distribution would have been under the plan provisions in effect prior to this amendment over the amount of the single sum described in paragraph (a)(i) of this Example 4. The transition percentages are 80% for 1996, decreasing to 60% for 1997, 40% for 1998 and 20% for 1999. The amendment also provides that the transition amount is zero for plan years beginning on or after the year 2000. Pursuant to paragraphs (d)(10)(iii) and (vi)(A) of this section, the amendment of Plan D is not considered to have reduced the accrued benefit of any participant in violation of section 411(d)(6) [26 USCS § 411(d)(6)].

Example 5. On December 31, 1994, Plan E, a calendar year plan, provided that all single sum distributions were to be calculated using the UP-1984 Mortality Table and an interest rate equal to the PBGC interest rate for January 1 of the plan year. On March 1, 1995, and effective on July 1, 1995, Plan E was amended to provide that all single-sum distributions are calculated using the applicable mortality table and the annual interest rate on 30-year Treasury securities for August of the year before the plan year that contains the annuity starting date. The plan amendment provides that each distribution with an annuity starting date after June 30, 1995, and before July 1,

26 CFR 1.417(e)-1

1996, is calculated using the 30-year Treasury rate for August of the year before the plan year that contains the annuity starting date, or the 30-year Treasury rate for November of the plan year preceding the plan year that contains the annuity starting date, whichever produces the larger benefit. Pursuant to paragraphs (d)(10)(v) and (vi)(C) of this section, the amendment of Plan E is not considered to have reduced the accrued benefit of any participant in violation of section 411(d)(6) [26 USCS § 411(d)(6)].

(e) Special rules for annuity contracts --

(1)General rule. Any annuity contract purchased by a plan subject to section 401(a)(11) [26 USCS § 401(a)(11)] and distributed to or owned by a participant must provide that benefits under the contract are provided in accordance with the applicable consent, present value, and other requirements of sections 401(a)(11) and 417 [26 USCS §§ 401(a)(11) and 417] applicable to the plan.

(2)[Reserved]

(f)Effective dates -- (1) Annuity contracts. (i) Paragraph (e) of this section does not apply to contracts distributed to or owned by a participant prior to September 17, 1985, unless additional contributions are made under the plan by the employer with respect to such contracts.

(ii)In the case of a contract owned by the employer or distributed to or owned by a participant prior to the first plan year beginning after December 31, 1988, paragraph (e) of this section shall be satisfied if the annuity contracts described therein satisfy the requirements in §§ 1.401(a)-11T and 1.417(e)-1T. The preceding sentence shall not apply if additional contributions are made under the plan by the employer with respect to such contracts on or after the beginning of the first plan year beginning after December 31, 1988.

(2) Interest rates.

(i)A plan that uses the PBGC immediate interest rate as required by § 1.417(e)-1T(e) for distributions commencing in plan years beginning before January 1, 1987, shall be deemed to satisfy paragraph (d) of this section for such years.

(ii)For a special exception to the requirements of section 411(d)(6) [26 USCS § 411(d)(6)] for certain plan amendments that incorporate applicable interest rates, see section 1139(d)(2) of the Tax Reform Act of 1986.

(3) Other effective dates and transitional rules.

(i)Except as otherwise provided, a plan will be treated as satisfying sections 401(a)(11) and 417 [26 USCS §§ 401(a)(11) and 417] for plan years beginning before the first plan year that the requirements of section 410(b) [26 USCS § 410(b)] as amended by TRA 86 apply to such plan, if the plan satisfied the requirements in §§ 1.401(a)-11T and 1.417(e)-1T.

(ii)See § 1.401(a)-20 for other effective dates and transitional rules that apply to plans subject to sections 401(a)(11) and 417 [26 USCS §§ 401(a)(11) and 417].

Statutory Authority

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

[26 U.S.C. 7805.](#)

History

26 CFR 1.417(e)-1

[Treas. Dec. 8219, [53 FR 31854](#), Aug. 22, 1988; [53 FR 48534](#), Dec. 1, 1988; Treas. Dec. 8591, [60 FR 17219](#), Apr. 5, 1995; Treas. Dec. 8620, [60 FR 49218](#), [49221](#), Sept. 22, 1995; Treas. Dec. 8768, [63 FR 16895](#), [16898](#), April 7, 1998; Treas. Dec. 8796, [63 FR 70009](#), [70011](#), Dec. 18, 1998; Treas. Dec. 8794, [63 FR 70335](#), [70338](#), Dec. 21, 1998; Treas. Dec. 8891, [65 FR 44679](#), [44681](#), [44682](#), July 19, 2000; Treas. Dec. 9076, [68 FR 41906](#), [41909](#), July 16, 2003; Treas. Dec. 9099, [68 FR 70141](#), [70149](#), Dec. 17, 2003; [81 FR 62359](#), [62361](#), Sept. 9, 2016, Treas. Dec. 9783]

Annotations

Notes

Section 1.417(e)-1 also issued under [26 U.S.C. 417\(e\)\(3\)\(A\)\(ii\)\(II\)](#).

[EFFECTIVE DATE NOTE:

[81 FR 62359](#), [62361](#), Sept. 9, 2016, amended this section, effective Sept. 9, 2016.]

Case Notes

LexisNexis® Notes

Estate, Gift & Trust Law : Trusts : Trustees : General Overview

Governments : Legislation : Effect & Operation : Retrospective Operation

International Trade Law : Trade Agreements : General Overview

Pensions & Benefits Law : Employee Benefit Plans : Defined Benefit Plans

Pensions & Benefits Law : Employee Benefit Plans : Single-Employer Plans

Pensions & Benefits Law : Employee Benefit Plans : Welfare Benefit Plans

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Claim Procedures

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Disclosure, Notice & Reporting :

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Fiduciaries : General Overview

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Funding

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting :

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting : Accrual

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting : Annuities

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting :

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting :

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting : Vesting

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Plan Amendment

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Plan Termination : General

Overview

Pensions & Benefits Law : U.S. Pension Benefit Guaranty Corporation

Tax Law : Federal Income Tax Computation : Retirement Plans : General Overview

Tax Law : Federal Income Tax Computation : Retirement Plans : Contributions (IRC secs. 401-404A, 406-408A, 410-420)

Tax Law : Federal Income Tax Computation : Retirement Plans : Defined Benefit & Hybrid Plans (IRC secs. 411, 414, 415)

Tax Law : Federal Income Tax Computation : Retirement Plans : Distributions (IRC secs. 402-403)

Tax Law : Federal Income Tax Computation : Retirement Plans : Nondiscrimination Rules (IRC sec. 401)

Tax Law : Federal Income Tax Computation : Retirement Plans : Qualified Plans (IRC secs. 401, 410-412)

Tax Law : Federal Tax Administration & Procedure : Effect of Regulations : General Overview

26 CFR 1.417(e)-1

Tax Law : Federal Tax Administration & Procedure : Revenue Rulings

Tax Law : State & Local Taxes : Income Tax : General Overview

Estate, Gift & Trust Law : Trusts : Trustees : General Overview

[Piggly Wiggly S. v. Pension Benefit Guar. Corp., 1995 U.S. Dist. LEXIS 21934](#) (ND Ala Apr. 4, 1995).

Overview:

- [Treas. Reg. § 1.411\(a\)-11](#) is entitled Restriction and Valuation of Distributions, and [Treas. Reg. 1.411\(a\)-11\(d\)](#) states: In determining the present value of any distribution of any accrued benefit from a defined benefit plan, the plan must take into account specified valuation rules. For this purpose, the valuation rules are the same valuation rules for valuing distribution as set forth in Treas. Reg. § 417(e). [Treas. Reg. § 1.417\(e\)-1\(d\)\(2\)](#) is entitled Section 417 Interest Rate, and states that the applicable interest rates are the interest rates that would be used as of the date of the distribution by the PBGC for purposes of determining the present value of that benefit upon termination of an insufficiently funded single employer plan. [Go To Headnote](#)

Governments : Legislation : Effect & Operation : Retrospective Operation

[Costantino v. Trw, Inc., 13 F.3d 969, 1994 U.S. App. LEXIS 370](#) (6th Cir Jan. 10, 1994).

Overview: *Employer's amendment to its pension plan that eliminated an early retirement subsidy violated ERISA; employees were entitled to have the present value of their benefit based on an applicable interest rate that resulted in the greatest benefit.*

- Temp. and Prop. Treas. Reg. § 1.417(e)-1T, [50 Fed. Reg. 29,371, 29,436 \(1985\)](#), state that it was intended only to provide guidance until the issuance of final regulations. The final regulations, issued in 1988, are retroactive to January 1, 1985. [Treas. Reg. § 1.417\(e\)-1](#) (1993). [Go To Headnote](#)
- The temporary Treasury Department regulations, [Temp. Treas. Reg. § 1.417\(e\)-1T\(b\)\(2\)\(ii\)](#) (1985), issued under the Retirement Equity Act, Pub. L. No. 98-397, [98 Stat. 1426 \(1984\)](#), and the permanent regulations, [Treas. Reg. § 1.417\(e\)-1\(f\)](#) (1993), issued in 1988 (retroactively effective as of January 1, 1985) both provide that a retirement benefits plan may use either the interest rate in effect at the time of distribution or the rate in effect at the beginning of the plan year. [Temp. Treas. Reg. § 1.417\(e\)-1T\(b\)\(2\)\(ii\)](#) (1985); [Treas. Reg. § 1.417\(e\)-1\(f\)](#) (1993). [Go To Headnote](#)

International Trade Law : Trade Agreements : General Overview

[Myers-Garrison v. Johnson & Johnson, 210 F.3d 425, 2000 U.S. App. LEXIS 6942](#) (5th Cir Apr. 18, 2000).

Overview: *The case was remanded because it was unclear whether appellees complied with the Retirement Protection Act of 1994's transition rules regarding any class members who would otherwise have received a lump sum distribution.*

- The [Treas. Reg. § 1.417\(e\)-1\(d\)\(10\)](#) (1999) give the employer several options about which month may be used to determine the General Agreement on Tariffs and Trade rate employer can use in switching from Pension Benefit Guaranty Corporation rates. The employer may permanently adopt the applicable interest rate for the first full month preceding the annuity starting date, § 1.417(e)-1(d)(10)(iii)(B), the interest rate for the month the old rate was determined, § 1.417(e)-1(d)(10)(iv)(B), or one or two months immediately preceding that date, § 1.417(e)-1(d)(10)(iv)(B). [Go To Headnote](#)

Pensions & Benefits Law : Employee Benefit Plans : Defined Benefit Plans

[Lyons v. Georgia-Pacific Corp. Salaried Emples. Retirement Plan, 66 F. Supp. 2d 1328, 1999 U.S. Dist. LEXIS 5736](#) (ND Ga Mar. 22, 1999).

Overview: Former employee was not entitled to allege that his employer had miscalculated his lump sum retirement benefits because the employee's contention was based upon an agency's faulty interpretation of ERISA.

- [Treas. Reg. § 1.417\(e\)-1\(d\)](#) provides that, for the purposes of determining the present value of any accrued benefit and for purposes of determining the amount (subject to [I.R.C. §§ 411\(c\)\(3\)](#) and [415](#)) of any distribution including a single sum, a defined benefit plan is subject to the interest rate limitations described in § 1.417(e)-1(d)(2) at the time set forth in § 1.417(e)-1(d)(3). A plan amendment that changes the rate described is subject to § 411(d)(6). The present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit determined in accordance with this paragraph. [Go To Headnote](#)

[Esden v. Retirement Plan of the First Nat'l Bank of Boston, 1998 U.S. Dist. LEXIS 15536](#) (D Vt Sept. 28, 1998).

Overview: While a retirement plan was entitled to summary judgment on the issue of the proper discount rate, an ERISA suit was certified as a class action where the participant's theory of recovery was not limited to the rate used.

- [Treas. Reg. § 1.417\(e\)-1](#) generally provides that a benefit plan must satisfy certain requirements, including those relating to the determination of present value, in order for plan distributions to be accorded tax-deferred treatment. [Treas. Reg. 1.417\(e\)-1\(d\)](#) requires a defined benefit plan to determine the present value of any accrued benefit by using the interest rates that would be used by the Pension Benefit Guaranty Corporation. Subsection (d) of Regulation 1.417(e)-1 also states that the present value of any optional form of benefit, such as a pre-retirement lump sum distribution, cannot be less than the present value of the participant's normal retirement benefit. [I.R.C. § 411\(a\)\(9\)](#) defines "normal retirement benefit" as the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. [Go To Headnote](#)

Pensions & Benefits Law : Employee Benefit Plans : Single-Employer Plans

[Piggly Wiggly S. v. Pension Benefit Guar. Corp., 1995 U.S. Dist. LEXIS 21934](#) (ND Ala Apr. 4, 1995).

Overview:

- [Treas. Reg. § 1.411\(a\)-11](#) is entitled Restriction and Valuation of Distributions, and [Treas. Reg. 1.411\(a\)-11\(d\)](#) states: In determining the present value of any distribution of any accrued benefit from a defined benefit plan, the plan must take into account specified valuation rules. For this purpose, the valuation rules are the same valuation rules for valuing distribution as set forth in Treas. Reg. § 417(e). [Treas. Reg. § 1.417\(e\)-1\(d\)\(2\)](#) is entitled Section 417 Interest Rate, and states that the applicable interest rates are the interest rates that would be used as of the date or the distribution by the PBGC for purposes of determining the present value of that benefit upon termination of an insufficient trusteed single employer plan. [Go To Headnote](#)

Pensions & Benefits Law : Employee Benefit Plans : Welfare Benefit Plans

[Myers-Garrison v. Johnson & Johnson, 210 F.3d 425, 2000 U.S. App. LEXIS 6942](#) (5th Cir Apr. 18, 2000).

26 CFR 1.417(e)-1

Overview: The case was remanded because it was unclear whether appellees complied with the Retirement Protection Act of 1994's transition rules regarding any class members who would otherwise have received a lump sum distribution.

- The [Treas. Reg. § 1.417\(e\)-1\(d\)\(10\)](#) (1999) give the employer several options about which month may be used to determine the General Agreement on Tariffs and Trade rate employer can use in switching from Pension Benefit Guaranty Corporation rates. The employer may permanently adopt the applicable interest rate for the first full month preceding the annuity starting date, § 1.417(e)-1(d)(10)(iii)(B), the interest rate for the month the old rate was determined, § 1.417(e)-1(d)(10)(iv)(B), or one or two months immediately preceding that date, § 1.417(e)-1(d)(10)(iv)(B). [Go To Headnote](#)
- The transition regulations, [Treas. Reg. § 1.417\(e\)-1\(d\)\(10\)](#) (1999), only apply, if the plan amendment at issue reduces benefits in violation of the anti-cutback rule. [Go To Headnote](#)
- [Treas. Reg. § 1.417\(e\)-1\(d\)\(4\)\(i\)](#) requires that the time for determining the general interest rate must be determined in a consistent manner for all participants in the plan. [Go To Headnote](#)
- [Treas. Reg. § 1.417\(e\)-1\(d\)\(4\)\(i\)](#) make no reference to their applicability beyond the distributions protected by the anti-cutback rule. [Go To Headnote](#)

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Claim Procedures

[Hampton v. Henry Ford Health Sys., 2005 U.S. Dist. LEXIS 20091](#) (ED Mich Sept. 15, 2005).

Overview: In an employee's action under 29 U.S.C.S. § 1132 of ERISA, pension plan administrator's calculation of employee's "Opening Account Balance" for merged accrued benefit was not arbitrary and capricious because the balance was calculated in a manner consistent not only with the plan but also with [26 U.S.C.S. § 417\(e\)](#) and [29 U.S.C.S. § 1055\(g\)\(3\)](#).

- Both [26 U.S.C.S. § 417\(e\)](#) and § 205(g)(3) of the Employee Retirement Income Security Act (ERISA), [29 U.S.C.S. § 1055\(g\)\(3\)](#), provide that the determination of the present value of a distribution of an annuity should be calculated using an "applicable interest rate," which is defined as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary of the Treasury may by regulations prescribe. [Treas. Reg. § 1.417\(e\)-1\(d\)\(4\)](#) allows a plan provider to set a lookback month that is used to determine the applicable interest rate. That "lookback month" may be any one of the first through fifth months preceding the first day of the stability period. This stability period may be one calendar month, one plan quarter, one calendar quarter, one plan year, or one calendar year before the date of distribution. [Treas. Reg. § 1.417\(e\)-1\(d\)\(4\)](#) also requires that the ERISA plan must specify the lookback month. [Go To Headnote](#)

[Franklin v. Thornton, 983 F.2d 939, 1993 U.S. App. LEXIS 211](#) (9th Cir Jan. 11, 1993).

Overview: A retirement plan trustee who made a lump sum distribution of a participant's pension, in excess of \$ 3,500, without her written consent violated ERISA provisions and his fiduciary duty under the act.

- [Treas. Reg. 1.417\(e\)-1](#) provides: No consent is valid unless the participant has received a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the plan in a manner which would satisfy the notice requirements of [26 U.S.C.S. § 417\(a\)\(3\)](#). [Treas. Reg. § 1.417\(e\)-1\(b\)\(2\)\(i\)](#). [Go To Headnote](#)

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Disclosure, Notice & Reporting :

[Jordan v. Federal Express Corp., 914 F. Supp. 1180, 1996 U.S. Dist. LEXIS 1059](#) (WD Pa Jan. 18, 1996).

26 CFR 1.417(e)-1

Overview: *Because an administrator of an employee's fixed pension plan lacked any fiduciary duty to notify an employee regarding the irrevocability of his election regarding his annuitant on his account under ERISA, 29 U.S.C.S. § 1132, the employee was not entitled to summary judgment or relief in his action against the employer and the administrator.*

- [Treas. Reg. § 1.417\(e\)-1\(b\)\(3\)](#) provides that a written explanation of election of benefits options must be sent to each participant no less than 30 days and no more than 90 days before the annuity starting date. [Go To Headnote](#)

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Fiduciaries : General Overview

[Franklin v. Thornton, 983 F.2d 939, 1993 U.S. App. LEXIS 211](#) (9th Cir Jan. 11, 1993).

Overview: *A retirement plan trustee who made a lump sum distribution of a participant's pension, in excess of \$ 3,500, without her written consent violated ERISA provisions and his fiduciary duty under the act.*

- [Treas. Reg. § 1.417\(e\)-1\(b\)\(2\)\(i\)](#) provides: Written consent of the participant and, if the participant is married at the annuity starting date and the benefit is to be paid in a form other than a qualified joint and survivorship annuity, the participant's spouse, or, if either the participant or the spouse has died, the survivor, is required before the commencement of the distribution of any part of an accrued benefit if the present value of the nonforfeitable benefit is greater than \$ 3,500. [Go To Headnote](#)

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Funding

[Hampton v. Henry Ford Health Sys., 2005 U.S. Dist. LEXIS 20091](#) (ED Mich Sept. 15, 2005).

Overview: *In an employee's action under 29 U.S.C.S. § 1132 of ERISA, pension plan administrator's calculation of employee's "Opening Account Balance" for merged accrued benefit was not arbitrary and capricious because the balance was calculated in a manner consistent not only with the plan but also with [26 U.S.C.S. § 417\(e\)](#) and [29 U.S.C.S. § 1055\(g\)\(3\)](#).*

- Both [26 U.S.C.S. § 417\(e\)](#) and [§ 205\(g\)\(3\)](#) of the Employee Retirement Income Security Act (ERISA), [29 U.S.C.S. § 1055\(g\)\(3\)](#), provide that the determination of the present value of a distribution of an annuity should be calculated using an "applicable interest rate," which is defined as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary of the Treasury may by regulations prescribe. [Treas. Reg. § 1.417\(e\)-1\(d\)\(4\)](#) allows a plan provider to set a lookback month that is used to determine the applicable interest rate. That "lookback month" may be any one of the first through fifth months preceding the first day of the stability period. This stability period may be one calendar month, one plan quarter, one calendar quarter, one plan year, or one calendar year before the date of distribution. [Treas. Reg. § 1.417\(e\)-1\(d\)\(4\)](#) also requires that the ERISA plan must specify the lookback month. [Go To Headnote](#)

[Brinker v. Pension Plan for Assocs. of Nine West Group, Inc., 347 F. Supp. 2d 10, 347 F. Supp. 2d 10, 2004 U.S. Dist. LEXIS 24778](#) (SD NY Dec. 3, 2004).

Overview: *Plaintiff's action for recovery of benefits under ERISA was dismissed because plaintiff failed to comply with the statutory requirements for obtaining payment prior to age 65, and in any form other than an annuity, which were clear and not waivable.*

- Under the terms of the Employee Retirement Income Security Act (ERISA) and the regulations promulgated thereunder, the accrued benefit under a defined benefit plan must be paid in the form of a qualified joint

26 CFR 1.417(e)-1

and survivor annuity, [29 U.S.C.S. § 1055\(a\)](#), or, for a single person, an annuity for the life of the participant. [26 C.F.R. § 1.401\(a\)-20](#) Q&A-25(a). ERISA allows a plan participant to waive this form of payment, but such waiver may only be made in writing submitted no later than the participant's "annuity starting date" -- the first day of the first period for which an amount is scheduled to be paid. [26 C.F.R. §§ 1.417\(e\)-1\(b\)\(3\)](#) and [1.401\(a\)-20](#) Q&A-10. ERISA also mandates that payment of benefits may not commence prior to the participant's normal retirement age -- i.e., age 65 -- without the participant's consent, which must be given either on a written paper document or via electronic media. [26 C.F.R. § 1.411\(a\)-11\(f\)\(2\)](#). [Go To Headnote](#)

[Rybarczyk v. Trw, Inc., 1997 U.S. Dist. LEXIS 3186](#) (ND Ohio Mar. 14, 1997).

Overview: *Retirees won summary judgment in ERISA suit against an employer for using an improper interest rate to calculate the present value of lump sum subsidized early retirement benefits. The issue had been decided against the employer in prior litigation.*

- [Treas. Reg. § 1.411\(a\)-11](#) expressly states that its valuation rules are the same as those specified in [Treas. Reg. § 1.417\(e\)-1\(d\)](#). [Go To Headnote](#)

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting

[Esden v. Bank of Boston, 229 F.3d 154, 2000 U.S. App. LEXIS 23227](#) (2d Cir Sept. 12, 2000).

Overview: *Plan beneficiary received less than actuarial equivalent of accrued benefit in violation of ERISA and part of her benefit was made conditional on distribution option chosen in violation of ERISA's anti-forfeiture provisions.*

- In general, for the purposes of testing under these safe harbor regulations, a plan may determine actuarial equivalence by using a standard mortality table and an interest rate equal to the interest rate specified in the plan for making interest adjustments to the cash balance. That is, for the purposes of the test only, a plan may assume a discount rate equal to the interest credit rate. However, the plan must still provide that if it allows for alternative distributions subject to the interest rate restrictions of [I.R.C. § 417\(e\)](#), it must pay out at least the actuarial present value, calculated in accordance with [Treas. Reg. § 1.417\(e\)-1\(d\)](#) of the employee's accrued benefit. [Treas. Reg. § 1.401\(a\)\(4\)-8\(c\)\(3\)\(vii\)\(C\)\(2\)](#). Thus for the purposes of showing compliance with cross-testing for nondiscrimination, the plan may assume reasonable actuarial assumptions, but for the purposes of an actual distribution, it must still use the prescribed assumptions, including the [I.R.C. § 417\(e\)](#) applicable rate. [Go To Headnote](#)

[Myers-Garrison v. Johnson & Johnson, 210 F.3d 425, 2000 U.S. App. LEXIS 6942](#) (5th Cir Apr. 18, 2000).

Overview: *The case was remanded because it was unclear whether appellees complied with the Retirement Protection Act of 1994's transition rules regarding any class members who would otherwise have received a lump sum distribution.*

- [Treas. Reg. § 1.417\(e\)-1\(d\)\(4\)\(i\)](#) requires that the time for determining the general interest rate must be determined in a consistent manner for all participants in the plan. [Go To Headnote](#)
- [Treas. Reg. § 1.417\(e\)-1\(d\)\(4\)\(i\)](#) make no reference to their applicability beyond the distributions protected by the anti-cutback rule. [Go To Headnote](#)

[Horvath v. California Fed. Bank, 1999 U.S. App. LEXIS 32174](#) (9th Cir Dec. 3, 1999).

Overview: *Summary judgment for pension plan was affirmed where interest rate was properly calculated and where plaintiff proved no damages even if interest rate had been improperly calculated.*

26 CFR 1.417(e)-1

- The time and method for determining the applicable interest rate for each participant's distribution must be determined in a consistent manner that is applied uniformly to all participants in the plan. [Treas. Reg. 1.417\(e\)-1\(d\)\(4\)\(i\)](#). [Go To Headnote](#)

[Costantino v. Trw, Inc., 13 F.3d 969, 1994 U.S. App. LEXIS 370](#) (6th Cir Jan. 10, 1994).

Overview: *Employer's amendment to its pension plan that eliminated an early retirement subsidy violated ERISA; employees were entitled to have the present value of their benefit based on an applicable interest rate that resulted in the greatest benefit.*

- The temporary Treasury Department regulations, [Temp. Treas. Reg. § 1.417\(e\)-1T\(b\)\(2\)\(ii\)](#) (1985), issued under the Retirement Equity Act, Pub. L. No. 98-397, [98 Stat. 1426 \(1984\)](#), and the permanent regulations, [Treas. Reg. § 1.417\(e\)-1\(f\)](#) (1993), issued in 1988 (retroactively effective as of January 1, 1985) both provide that a retirement benefits plan may use either the interest rate in effect at the time of distribution or the rate in effect at the beginning of the plan year. [Temp. Treas. Reg. § 1.417\(e\)-1T\(b\)\(2\)\(ii\)](#) (1985); [Treas. Reg. § 1.417\(e\)-1\(f\)](#) (1993). [Go To Headnote](#)

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting :

[Lyons v. Georgia-Pacific Corp. Salaried Emples. Ret. Plan, 221 F.3d 1235, 2000 U.S. App. LEXIS 19180](#) (11th Cir Aug. 11, 2000).

Overview: *Judgment reversed on finding the method used by defendants to calculate ERISA plan participant's pre-retirement lump sum cash distributions was improper and agency regulations were reasonable and should have been applied.*

- The present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit. [Treas. Reg. § 1.417\(e\)-1\(d\)](#). [Go To Headnote](#)

[Rybarczyk v. Trw, Inc., 1997 U.S. Dist. LEXIS 3186](#) (ND Ohio Mar. 14, 1997).

Overview: *Retirees won summary judgment in ERISA suit against an employer for using an improper interest rate to calculate the present value of lump sum subsidized early retirement benefits. The issue had been decided against the employer in prior litigation.*

- [Treas. Reg. § 1.411\(a\)-11](#) expressly states that its valuation rules are the same as those specified in [Treas. Reg. § 1.417\(e\)-1\(d\)](#). [Go To Headnote](#)

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting : Accrual

[Brinker v. Pension Plan for Assocs. of Nine West Group, Inc., 347 F. Supp. 2d 10, 347 F. Supp. 2d 10, 2004 U.S. Dist. LEXIS 24778](#) (SD NY Dec. 3, 2004).

Overview: *Plaintiff's action for recovery of benefits under ERISA was dismissed because plaintiff failed to comply with the statutory requirements for obtaining payment prior to age 65, and in any form other than an annuity, which were clear and not waivable.*

- Under the terms of the Employee Retirement Income Security Act (ERISA) and the regulations promulgated thereunder, the accrued benefit under a defined benefit plan must be paid in the form of a qualified joint and survivor annuity, [29 U.S.C.S. § 1055\(a\)](#), or, for a single person, an annuity for the life of the participant. [26 C.F.R. § 1.401\(a\)-20](#) Q&A-25(a). ERISA allows a plan participant to waive this form of payment, but such waiver may only be made in writing submitted no later than the participant's "annuity starting date" --

26 CFR 1.417(e)-1

the first day of the first period for which an amount is scheduled to be paid. [26 C.F.R. §§ 1.417\(e\)-1\(b\)\(3\)](#) and [1.401\(a\)-20](#) Q&A-10. ERISA also mandates that payment of benefits may not commence prior to the participant's normal retirement age -- i.e., age 65 -- without the participant's consent, which must be given either on a written paper document or via electronic media. [26 C.F.R. § 1.411\(a\)-11\(f\)\(2\)](#). [Go To Headnote](#)

[Berger v. Xerox Ret. Income Guar. Plan, 231 F. Supp. 2d 804, 2002 U.S. Dist. LEXIS 18402](#) (SD Ill Sept. 30, 2002).

Overview: *Projected rate previously set by the court was not changed because it was contrary to the purpose of ERISA to allow the pension plan to violate ERISA dictates and then reward it for its good fortune in a recent interest rate decline.*

- Under [29 U.S.C.S. § 1054\(g\)\(3\)](#) and [I.R.C. § 417\(e\)\(3\)](#), as implemented by [Treas. Reg. § 1.417\(e\)-1\(d\)](#), the present value of any optional form cannot be less than the present value of the normal retirement benefit. This requirement must be fulfilled the date the plan made the original distribution. Thus, an Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1001](#) et seq., plan could not pay part of what it supposes the accrued benefit normal retirement benefit to be, and then make up the shortfall, if any, at some later date. [Treas. Reg. § 1.401\(a\)-1\(b\)\(1\)](#). [Go To Headnote](#)

[Laurenzano v. Blue Cross & Blue Shield of Mass., Inc. Retirement Income Trust, 134 F. Supp. 2d 189, 2001 U.S. Dist. LEXIS 3923](#) (D Mass Mar. 27, 2001).

Overview: *A cause of action under ERISA to recalculate benefits accrued upon distribution of the benefits, unless the participant chose to seek internal remedies, in which case the cause of action accrued upon exhaustion of the internal remedies.*

- [29 U.S.C.S. § 1055\(a\)](#) requires pension plans to pay accrued benefits in the form of a qualified joint and survivor annuity, which is defined as an annuity (i) for the life of the participant with a survivor annuity for the life of the spouse and (ii) which is the actuarial equivalent of a single annuity for the life of the participant. In the alternative, [29 U.S.C.S. § 1055\(g\)](#) allows the plan to provide a lump sum that is the present value of the qualified joint and survivor annuity. [Treas. Reg. § 1.417\(e\)-1\(d\)](#) specifies the mechanics of the present value calculation and notes that the present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit. [Go To Headnote](#)

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting : Annuities

[Hampton v. Henry Ford Health Sys., 2005 U.S. Dist. LEXIS 20091](#) (ED Mich Sept. 15, 2005).

Overview: *In an employee's action under 29 U.S.C.S. § 1132 of ERISA, pension plan administrator's calculation of employee's "Opening Account Balance" for merged accrued benefit was not arbitrary and capricious because the balance was calculated in a manner consistent not only with the plan but also with [26 U.S.C.S. § 417\(e\)](#) and [29 U.S.C.S. § 1055\(g\)\(3\)](#).*

- Both [26 U.S.C.S. § 417\(e\)](#) and [§ 205\(g\)\(3\)](#) of the Employee Retirement Income Security Act (ERISA), [29 U.S.C.S. § 1055\(g\)\(3\)](#), provide that the determination of the present value of a distribution of an annuity should be calculated using an "applicable interest rate," which is defined as the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary of the Treasury may by regulations prescribe. [Treas. Reg. § 1.417\(e\)-1\(d\)\(4\)](#) allows a plan provider to set a lookback month that is used to determine the applicable interest rate. That "lookback month" may be any one of the first through fifth months preceding the first day of the stability period. This stability period may be one calendar month, one plan quarter, one calendar quarter, one plan year, or one calendar year before the date of distribution. [Treas. Reg. § 1.417\(e\)-1\(d\)\(4\)](#) also requires that the ERISA plan must specify the lookback month. [Go To Headnote](#)

26 CFR 1.417(e)-1

[Brinker v. Pension Plan for Assocs. of Nine West Group, Inc., 347 F. Supp. 2d 10, 347 F. Supp. 2d 10, 2004 U.S. Dist. LEXIS 24778](#) (SD NY Dec. 3, 2004).

Overview: Plaintiff's action for recovery of benefits under ERISA was dismissed because plaintiff failed to comply with the statutory requirements for obtaining payment prior to age 65, and in any form other than an annuity, which were clear and not waivable.

- Under the terms of the Employee Retirement Income Security Act (ERISA) and the regulations promulgated thereunder, the accrued benefit under a defined benefit plan must be paid in the form of a qualified joint and survivor annuity, [29 U.S.C.S. § 1055\(a\)](#), or, for a single person, an annuity for the life of the participant. [26 C.F.R. § 1.401\(a\)-20](#) Q&A-25(a). ERISA allows a plan participant to waive this form of payment, but such waiver may only be made in writing submitted no later than the participant's "annuity starting date" -- the first day of the first period for which an amount is scheduled to be paid. [26 C.F.R. §§ 1.417\(e\)-1\(b\)\(3\)](#) and [1.401\(a\)-20](#) Q&A-10. ERISA also mandates that payment of benefits may not commence prior to the participant's normal retirement age -- i.e., age 65 -- without the participant's consent, which must be given either on a written paper document or via electronic media. [26 C.F.R. § 1.411\(a\)-11\(f\)\(2\)](#). [Go To Headnote](#)

[Laurenzano v. Blue Cross & Blue Shield of Mass., Inc. Retirement Income Trust, 134 F. Supp. 2d 189, 2001 U.S. Dist. LEXIS 3923](#) (D Mass Mar. 27, 2001).

Overview: A cause of action under ERISA to recalculate benefits accrued upon distribution of the benefits, unless the participant chose to seek internal remedies, in which case the cause of action accrued upon exhaustion of the internal remedies.

- [29 U.S.C.S. § 1055\(a\)](#) requires pension plans to pay accrued benefits in the form of a qualified joint and survivor annuity, which is defined as an annuity (i) for the life of the participant with a survivor annuity for the life of the spouse and (ii) which is the actuarial equivalent of a single annuity for the life of the participant. In the alternative, [29 U.S.C.S. § 1055\(g\)](#) allows the plan to provide a lump sum that is the present value of the qualified joint and survivor annuity. [Treas. Reg. § 1.417\(e\)-1\(d\)](#) specifies the mechanics of the present value calculation and notes that the present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit. [Go To Headnote](#)

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting :

[Stepnowski v. Comm'r, 124 T.C. 198, 124 T.C. No. 12, 2005 U.S. Tax Ct. LEXIS 12](#) (Apr. 26, 2005).

Overview: Employer's amendment to the lump-sum payment option in its retirement plan did not violate the anti-cutback rule where the amendment, inter alia, provided that the present value of a participant's accrued benefit would be no less than the amount calculated using the applicable mortality table and the applicable interest rate.

- The Uruguay Round Agreements Act, Pub. L. No. 103-465, § 767(d)(2), *108 Stat. 5040*, provides that a participant's accrued benefit is not considered to be reduced in violation of [26 U.S.C.S. § 411\(d\)\(6\)](#) merely because the benefit is determined in accordance with the applicable interest rate under [26 U.S.C.S. § 417\(e\)\(3\)\(A\)](#), i.e., the annual interest rate on 30-year United States Department of the Treasury securities. [26 C.F.R. § 1.417\(e\)-1\(d\)\(10\)](#) explains the scope of this relief from the anti-cutback rule of [26 U.S.C.S. § 411\(d\)\(6\)](#). Section 1.417(e)-1(d)(10)(i) provides the general rule that a plan amendment that changes the interest rate, the time for determining the interest rate, or the mortality assumptions used for the purposes described in [26 C.F.R. § 1.417\(e\)-1\(d\)\(1\)](#) (relating to the calculation of the present value of a participant's accrued benefit), is subject to [26 U.S.C.S. § 411\(d\)\(6\)](#). Subdivisions (ii) through (v) of [26 C.F.R. § 1.417\(e\)-1\(d\)\(10\)](#) provide safe harbors from the general rule of [26 C.F.R. § 1.417\(e\)-1\(d\)\(10\)\(i\)](#). [Go To Headnote](#)

[Berger v. Xerox Ret. Income Guar. Plan, 231 F. Supp. 2d 804, 2002 U.S. Dist. LEXIS 18402](#) (SD Ill Sept. 30, 2002).

Overview: Projected rate previously set by the court was not changed because it was contrary to the purpose of ERISA to allow the pension plan to violate ERISA dictates and then reward it for its good fortune in a recent interest rate decline.

- Under [29 U.S.C.S. § 1054\(g\)\(3\)](#) and [I.R.C. § 417\(e\)\(3\)](#), as implemented by [Treas. Reg. § 1.417\(e\)-1\(d\)](#), the present value of any optional form cannot be less than the present value of the normal retirement benefit. This requirement must be fulfilled the date the plan made the original distribution. Thus, an Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1001](#) et seq., plan could not pay part of what it supposes the accrued benefit normal retirement benefit to be, and then make up the shortfall, if any, at some later date. [Treas. Reg. § 1.401\(a\)-1\(b\)\(1\)](#). [Go To Headnote](#)

[Myers-Garrison v. Johnson & Johnson, 210 F.3d 425, 2000 U.S. App. LEXIS 6942](#) (5th Cir Apr. 18, 2000).

Overview: The case was remanded because it was unclear whether appellees complied with the Retirement Protection Act of 1994's transition rules regarding any class members who would otherwise have received a lump sum distribution.

- The transition regulations, [Treas. Reg. § 1.417\(e\)-1\(d\)\(10\)](#) (1999), only apply, if the plan amendment at issue reduces benefits in violation of the anti-cutback rule. [Go To Headnote](#)

[Costantino v. Trw, Inc., 13 F.3d 969, 1994 U.S. App. LEXIS 370](#) (6th Cir Jan. 10, 1994).

Overview: Employer's amendment to its pension plan that eliminated an early retirement subsidy violated ERISA; employees were entitled to have the present value of their benefit based on an applicable interest rate that resulted in the greatest benefit.

- [Treas. Reg. § 1.417\(e\)-1\(d\)\(3\)\(iv\)](#) provides in part: If a plan amendment changes the time for determining the interest rate in § 1139 of the Tax Reform Act of 1986, Pub. L. No. 99-514 § 1139, [100 Stat. 2085, 2487 \(1986\)](#), codified at [29 U.S.C.S. § 1053\(e\)](#), and [26 U.S.C.S. § 411\(a\)\(11\)](#), the amendment will not be treated as reducing an accrued benefit if the conditions of this subdivision (iv) are satisfied. If the plan amendment is adopted retroactively (that is, the plan amendment is effective prior to the adoption date), the plan must use the rate resulting in the larger accrued benefit for the period beginning with the effective date and ending one year after the adoption date. [Go To Headnote](#)

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting :

[Williams v. Rohm & Haas Pension Plan, 497 F.3d 710, 2007 U.S. App. LEXIS 19275](#) (7th Cir Aug. 14, 2007), writ of certiorari denied by [552 U.S. 1276, 128 S. Ct. 1657, 170 L. Ed. 2d 386, 2008 U.S. LEXIS 2636, 76 U.S.L.W. 3498, 43 Employee Benefits Cas. \(BNA\) 2696 \(2008\)](#).

Overview: Defined benefit pension plan violated [29 U.S.C.S. § 1054\(c\)\(3\)](#) of ERISA by paying COLAs to participants who chose payment by annuity while failing to pay the present value of a COLA to a beneficiary who chose a lump sum payment; a COLA that applied to a defined benefit pension plan annuity was an accrued benefit under ERISA.

- The Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code prescribe that if a defined benefit pension plan allows for a lump sum distribution, then that distribution must equal the present value of the accrued benefit expressed in the form of a single-life annuity. [29 U.S.C.S. § 1054\(c\)\(3\)](#), [26 U.S.C.S. § 411\(c\)\(3\)](#), [26 C.F.R. § 1.417\(e\)-1\(d\)](#). ERISA requires that any lump-sum substitute for an accrued pension benefit be the actuarial equivalent of that benefit. [Go To Headnote](#)

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting : Vesting

26 CFR 1.417(e)-1

[Crosby v. Bowater Ret. Plan for Salaried Emples. of Great N. Paper, 2002 U.S. Dist. LEXIS 22797](#) (WD Mich Nov. 26, 2002).

Overview: Retirement plan, by giving payment to survivors in the event of death, only provided a mechanism for easy payment; it did not intend to deprive survivors of the right to receive payment nor leave open the possibility of depriving them in the future.

- Section 203(a)(2)(A) of the Employee Retirement Income Security Act, [29 U.S.C.S. § 1001](#) et seq., provides that an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions. [29 U.S.C.S. § 1053\(a\)\(2\)\(A\)](#). When an employee elects to take a lump sum distribution, certain deductions are proper under Internal Revenue Service regulations. The Internal Revenue Code and Regulations permit use of the applicable mortality table and the applicable interest rate in computing present value. [26 U.S.C.S. § 417\(e\)\(3\)](#); [Treas. Reg. § 1.417\(e\)-1\(d\)](#). [Go To Headnote](#)

[Lyons v. Georgia-Pacific Corp. Salaried Emples. Ret. Plan, 221 F.3d 1235, 2000 U.S. App. LEXIS 19180](#) (11th Cir Aug. 11, 2000).

Overview: Judgment reversed on finding the method used by defendants to calculate ERISA plan participant's pre-retirement lump sum cash distributions was improper and agency regulations were reasonable and should have been applied.

- The rules for valuing distributions as set forth in [I.R.C. § 417\(e\)](#), which are incorporated into [Treas. Reg. § 1.411\(a\)-11\(d\)](#), are the same ones set forth in the Employee Retirement Income Security Act § 203(e), [29 U.S.C.S. § 1053\(e\)](#), as interpreted in [Treas. Reg. § 1.417\(e\)-1\(d\)](#). [Go To Headnote](#)

[Costantino v. Trw, Inc., 13 F.3d 969, 1994 U.S. App. LEXIS 370](#) (6th Cir Jan. 10, 1994).

Overview: Employer's amendment to its pension plan that eliminated an early retirement subsidy violated ERISA; employees were entitled to have the present value of their benefit based on an applicable interest rate that resulted in the greatest benefit.

- [Treas. Reg. § 1.417\(e\)-1\(d\)\(3\)\(iv\)](#) provides in part: If a plan amendment changes the time for determining the interest rate in § 1139 of the Tax Reform Act of 1986, Pub. L. No. 99-514 § 1139, [100 Stat. 2085, 2487 \(1986\)](#), codified at [29 U.S.C.S. § 1053\(e\)](#), and [26 U.S.C.S. § 411\(a\)\(11\)](#), the amendment will not be treated as reducing an accrued benefit if the conditions of this subdivision (iv) are satisfied. If the plan amendment is adopted retroactively (that is, the plan amendment is effective prior to the adoption date), the plan must use the rate resulting in the larger accrued benefit for the period beginning with the effective date and ending one year after the adoption date. [Go To Headnote](#)

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Plan Amendment

[Costantino v. Trw, Inc., 13 F.3d 969, 1994 U.S. App. LEXIS 370](#) (6th Cir Jan. 10, 1994).

Overview: Employer's amendment to its pension plan that eliminated an early retirement subsidy violated ERISA; employees were entitled to have the present value of their benefit based on an applicable interest rate that resulted in the greatest benefit.

- [Treas. Reg. § 1.417\(e\)-1\(d\)\(3\)\(iv\)](#) provides in part: If a plan amendment changes the time for determining the interest rate in § 1139 of the Tax Reform Act of 1986, Pub. L. No. 99-514 § 1139, [100 Stat. 2085, 2487 \(1986\)](#), codified at [29 U.S.C.S. § 1053\(e\)](#), and [26 U.S.C.S. § 411\(a\)\(11\)](#), the amendment will not be treated as reducing an accrued benefit if the conditions of this subdivision (iv) are satisfied. If the plan amendment is adopted retroactively (that is, the plan amendment is effective prior to the adoption date), the plan must

26 CFR 1.417(e)-1

use the rate resulting in the larger accrued benefit for the period beginning with the effective date and ending one year after the adoption date. [Go To Headnote](#)

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Plan Termination : General Overview

[Piggly Wiggly S. v. Pension Benefit Guar. Corp., 1995 U.S. Dist. LEXIS 21934](#) (ND Ala Apr. 4, 1995).

Overview:

- [Treas. Reg. § 1.411\(a\)-11](#) is entitled Restriction and Valuation of Distributions, and [Treas. Reg. 1.411\(a\)-11\(d\)](#) states: In determining the present value of any distribution of any accrued benefit from a defined benefit plan, the plan must take into account specified valuation rules. For this purpose, the valuation rules are the same valuation rules for valuing distribution as set forth in Treas. Reg. § 417(e). [Treas. Reg. § 1.417\(e\)-1\(d\)\(2\)](#) is entitled Section 417 Interest Rate, and states that the applicable interest rates are the interest rates that would be used as of the date or the distribution by the PBGC for purposes of determining the present value of that benefit upon termination of an insufficient trusteed single employer plan. [Go To Headnote](#)

Pensions & Benefits Law : U.S. Pension Benefit Guaranty Corporation

[Esden v. Retirement Plan of the First Nat'l Bank of Boston, 1998 U.S. Dist. LEXIS 15536](#) (D Vt Sept. 28, 1998).

Overview: *While a retirement plan was entitled to summary judgment on the issue of the proper discount rate, an ERISA suit was certified as a class action where the participant's theory of recovery was not limited to the rate used.*

- [Treas. Reg. § 1.417\(e\)-1](#) generally provides that a benefit plan must satisfy certain requirements, including those relating to the determination of present value, in order for plan distributions to be accorded tax-deferred treatment. [Treas. Reg. 1.417\(e\)-1\(d\)](#) requires a defined benefit plan to determine the present value of any accrued benefit by using the interest rates that would be used by the Pension Benefit Guaranty Corporation. Subsection (d) of Regulation 1.417(e)-1 also states that the present value of any optional form of benefit, such as a pre-retirement lump sum distribution, cannot be less than the present value of the participant's normal retirement benefit. [I.R.C. § 411\(a\)\(9\)](#) defines "normal retirement benefit" as the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. [Go To Headnote](#)

Tax Law : Federal Income Tax Computation : Retirement Plans : General Overview

[Berger v. Xerox Ret. Income Guar. Plan, 231 F. Supp. 2d 804, 2002 U.S. Dist. LEXIS 18402](#) (SD Ill Sept. 30, 2002).

Overview: *Projected rate previously set by the court was not changed because it was contrary to the purpose of ERISA to allow the pension plan to violate ERISA dictates and then reward it for its good fortune in a recent interest rate decline.*

- Under [29 U.S.C.S. § 1054\(g\)\(3\)](#) and [I.R.C. § 417\(e\)\(3\)](#), as implemented by [Treas. Reg. § 1.417\(e\)-1\(d\)](#), the present value of any optional form cannot be less than the present value of the normal retirement benefit. This requirement must be fulfilled the date the plan made the original distribution. Thus, an Employee Retirement Income Security Act of 1974, [29 U.S.C.S. § 1001](#) et seq., plan could not pay part of what it supposes the accrued benefit normal retirement benefit to be, and then make up the shortfall, if any, at some later date. [Treas. Reg. § 1.401\(a\)-1\(b\)\(1\)](#). [Go To Headnote](#)

26 CFR 1.417(e)-1

[Lyons v. Georgia-Pacific Corp. Salaried Emples. Ret. Plan, 221 F.3d 1235, 2000 U.S. App. LEXIS 19180](#) (11th Cir Aug. 11, 2000).

Overview: Judgment reversed on finding the method used by defendants to calculate ERISA plan participant's pre-retirement lump sum cash distributions was improper and agency regulations were reasonable and should have been applied.

- The present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit. [Treas. Reg. § 1.417\(e\)-1\(d\)](#). [Go To Headnote](#)

[Myers-Garrison v. Johnson & Johnson, 210 F.3d 425, 2000 U.S. App. LEXIS 6942](#) (5th Cir Apr. 18, 2000).

Overview: The case was remanded because it was unclear whether appellees complied with the Retirement Protection Act of 1994's transition rules regarding any class members who would otherwise have received a lump sum distribution.

- The [Treas. Reg. § 1.417\(e\)-1\(d\)\(10\)](#) (1999) give the employer several options about which month may be used to determine the General Agreement on Tariffs and Trade rate employer can use in switching from Pension Benefit Guaranty Corporation rates. The employer may permanently adopt the applicable interest rate for the first full month preceding the annuity starting date, § 1.417(e)-1(d)(10)(iii)(B), the interest rate for the month the old rate was determined, § 1.417(e)-1(d)(10)(iv)(B), or one or two months immediately preceding that date, § 1.417(e)-1(d)(10)(iv)(B). [Go To Headnote](#)
- [Treas. Reg. § 1.417\(e\)-1\(d\)\(4\)\(i\)](#) requires that the time for determining the general interest rate must be determined in a consistent manner for all participants in the plan. [Go To Headnote](#)
- [Treas. Reg. § 1.417\(e\)-1\(d\)\(4\)\(i\)](#) make no reference to their applicability beyond the distributions protected by the anti-cutback rule. [Go To Headnote](#)

[Horvath v. California Fed. Bank, 1999 U.S. App. LEXIS 32174](#) (9th Cir Dec. 3, 1999).

Overview: Summary judgment for pension plan was affirmed where interest rate was properly calculated and where plaintiff proved no damages even if interest rate had been improperly calculated.

- The time and method for determining the applicable interest rate for each participant's distribution must be determined in a consistent manner that is applied uniformly to all participants in the plan. [Treas. Reg. 1.417\(e\)-1\(d\)\(4\)\(i\)](#). [Go To Headnote](#)

[Costantino v. Trw, Inc., 13 F.3d 969, 1994 U.S. App. LEXIS 370](#) (6th Cir Jan. 10, 1994).

Overview: Employer's amendment to its pension plan that eliminated an early retirement subsidy violated ERISA; employees were entitled to have the present value of their benefit based on an applicable interest rate that resulted in the greatest benefit.

- Temp. and Prop. [Treas. Reg. § 1.417\(e\)-1T, 50 Fed. Reg. 29,371, 29,436 \(1985\)](#), state that it was intended only to provide guidance until the issuance of final regulations. The final regulations, issued in 1988, are retroactive to January 1, 1985. [Treas. Reg. § 1.417\(e\)-1](#) (1993). [Go To Headnote](#)

[Franklin v. Thornton, 983 F.2d 939, 1993 U.S. App. LEXIS 211](#) (9th Cir Jan. 11, 1993).

Overview: A retirement plan trustee who made a lump sum distribution of a participant's pension, in excess of \$ 3,500, without her written consent violated ERISA provisions and his fiduciary duty under the act.

- [Treas. Reg. § 1.417\(e\)-1\(b\)\(2\)\(i\)](#) provides: Written consent of the participant and, if the participant is married at the annuity starting date and the benefit is to be paid in a form other than a qualified joint and survivorship annuity, the participant's spouse, or, if either the participant or the spouse has died, the survivor, is

26 CFR 1.417(e)-1

required before the commencement of the distribution of any part of an accrued benefit if the present value of the nonforfeitable benefit is greater than \$ 3,500. [Go To Headnote](#)

- [Treas. Reg. 1.417\(e\)-1](#) provides: No consent is valid unless the participant has received a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the plan in a manner which would satisfy the notice requirements of [26 U.S.C.S. § 417\(a\)\(3\)](#). [Treas. Reg. § 1.417\(e\)-1\(b\)\(2\)\(i\)](#). [Go To Headnote](#)

Tax Law : Federal Income Tax Computation : Retirement Plans : Contributions (IRC secs. 401-404A, 406-408A, 410-420)

[Hampton v. Henry Ford Health Sys., 2005 U.S. Dist. LEXIS 20315](#) (ED Mich July 1, 2005).

Overview: *It was recommended that judgment be entered for pension plan administrators where they had substantially complied with the procedural protections afforded participants under ERISA and the plan's provisions; the rate chosen for calculating opening account balances following merger was the same used for all distribution calculations under the plan.*

- [Treas. Reg. § 1.417\(e\)-1\(d\)](#) explains the language provided by [I.R.C. § 417\(e\)](#), which provides that "applicable interest rate" means the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary may by regulations prescribe. [I.R.C. § 417\(e\)\(3\)\(A\)\(ii\)\(III\)](#). [Go To Headnote](#)
- The language of [Treas. Reg. § 1.417\(e\)-1\(d\)\(1\)](#) clearly indicates that [Treas. Reg. § 1.417\(e\)-1\(d\)\(3\)](#) and [Treas. Reg. § 1.417\(e\)-1\(d\)\(4\)](#) are to be construed together to determine which period's applicable 30-year Treasury interest rate should be utilized for calculating a lump sum benefit's actuarial equivalence. [Go To Headnote](#)

[Crosby v. Bowater Ret. Plan for Salaried Emples. of Great N. Paper, 2002 U.S. Dist. LEXIS 22797](#) (WD Mich Nov. 26, 2002).

Overview: *Retirement plan, by giving payment to survivors in the event of death, only provided a mechanism for easy payment; it did not intend to deprive survivors of the right to receive payment nor leave open the possibility of depriving them in the future.*

- Section 203(a)(2)(A) of the Employee Retirement Income Security Act, [29 U.S.C.S. § 1001](#) et seq., provides that an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions. [29 U.S.C.S. § 1053\(a\)\(2\)\(A\)](#). When an employee elects to take a lump sum distribution, certain deductions are proper under Internal Revenue Service regulations. The Internal Revenue Code and Regulations permit use of the applicable mortality table and the applicable interest rate in computing present value. [26 U.S.C.S. § 417\(e\)\(3\)](#); [Treas. Reg. § 1.417\(e\)-1\(d\)](#). [Go To Headnote](#)

Tax Law : Federal Income Tax Computation : Retirement Plans : Defined Benefit & Hybrid Plans (IRC secs. 411, 414, 415)

[Williams v. Rohm & Haas Pension Plan, 497 F.3d 710, 2007 U.S. App. LEXIS 19275](#) (7th Cir Aug. 14, 2007), writ of certiorari denied by [552 U.S. 1276, 128 S. Ct. 1657, 170 L. Ed. 2d 386, 2008 U.S. LEXIS 2636, 76 U.S.L.W. 3498, 43 Employee Benefits Cas. \(BNA\) 2696 \(2008\)](#).

Overview: *Defined benefit pension plan violated [29 U.S.C.S. § 1054\(c\)\(3\)](#) of ERISA by paying COLAs to participants who chose payment by annuity while failing to pay the present value of a COLA to a beneficiary who chose a lump sum payment; a COLA that applied to a defined benefit pension plan annuity was an accrued benefit under ERISA.*

26 CFR 1.417(e)-1

- The Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code prescribe that if a defined benefit pension plan allows for a lump sum distribution, then that distribution must equal the present value of the accrued benefit expressed in the form of a single-life annuity. [29 U.S.C.S. § 1054\(c\)\(3\)](#), [26 U.S.C.S. § 411\(c\)\(3\)](#), [26 C.F.R. § 1.417\(e\)-1\(d\)](#). ERISA requires that any lump-sum substitute for an accrued pension benefit be the actuarial equivalent of that benefit. [Go To Headnote](#)

[Stepnowski v. Comm'r, 124 T.C. 198, 124 T.C. No. 12, 2005 U.S. Tax Ct. LEXIS 12](#) (Apr. 26, 2005).

Overview: *Employer's amendment to the lump-sum payment option in its retirement plan did not violate the anti-cutback rule where the amendment, inter alia, provided that the present value of a participant's accrued benefit would be no less than the amount calculated using the applicable mortality table and the applicable interest rate.*

- With the publication of [Rev. Proc. 2001-55, 2001-2 C.B. 552](#), the Commissioner of Internal Revenue extended the deadline for plan sponsors to adopt the amendments enumerated in [Rev. Proc. 99-23, 1999-1 C.B. 920](#) (modified by [Rev. Proc. 2000-27, 2000-1 C.B. 1272](#)), until February 28, 2002. The amendments enumerated in [Rev. Proc. 99-23](#) included amendments of defined benefit plans to provide that the present value of a participant's accrued benefit would be determined in accordance with the applicable interest rate rules and applicable mortality table rules of [26 C.F.R. § 1.417\(e\)-1\(d\)](#). Thus, it follows that plan sponsors had until February 28, 2002, to adopt plan amendments falling under the safe harbors provided by [26 C.F.R. §§ 1.417\(e\)-1\(d\)\(10\)\(ii\)](#) through (v). [Go To Headnote](#)

[Lyons v. Georgia-Pacific Corp. Salaried Emples. Retirement Plan, 66 F. Supp. 2d 1328, 1999 U.S. Dist. LEXIS 5736](#) (ND Ga Mar. 22, 1999).

Overview: *Former employee was not entitled to allege that his employer had miscalculated his lump sum retirement benefits because the employee's contention was based upon an agency's faulty interpretation of ERISA.*

- [Treas. Reg. § 1.417\(e\)-1\(d\)](#) provides that, for the purposes of determining the present value of any accrued benefit and for purposes of determining the amount (subject to [I.R.C. §§ 411\(c\)\(3\)](#) and [415](#)) of any distribution including a single sum, a defined benefit plan is subject to the interest rate limitations described in § 1.417(e)-1(d)(2) at the time set forth in § 1.417(e)-1(d)(3). A plan amendment that changes the rate described is subject to § 411(d)(6). The present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit determined in accordance with this paragraph. [Go To Headnote](#)

[Esden v. Retirement Plan of the First Nat'l Bank of Boston, 1998 U.S. Dist. LEXIS 15536](#) (D Vt Sept. 28, 1998).

Overview: *While a retirement plan was entitled to summary judgment on the issue of the proper discount rate, an ERISA suit was certified as a class action where the participant's theory of recovery was not limited to the rate used.*

- [Treas. Reg. § 1.417\(e\)-1](#) generally provides that a benefit plan must satisfy certain requirements, including those relating to the determination of present value, in order for plan distributions to be accorded tax-deferred treatment. [Treas. Reg. 1.417\(e\)-1\(d\)](#) requires a defined benefit plan to determine the present value of any accrued benefit by using the interest rates that would be used by the Pension Benefit Guaranty Corporation. Subsection (d) of Regulation 1.417(e)-1 also states that the present value of any optional form of benefit, such as a pre-retirement lump sum distribution, cannot be less than the present value of the participant's normal retirement benefit. [I.R.C. § 411\(a\)\(9\)](#) defines "normal retirement benefit" as the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. [Go To Headnote](#)

Tax Law : Federal Income Tax Computation : Retirement Plans : Distributions (IRC secs. 402-403)

26 CFR 1.417(e)-1

[Stepnowski v. Comm'r, 124 T.C. 198, 124 T.C. No. 12, 2005 U.S. Tax Ct. LEXIS 12](#) (Apr. 26, 2005).

Overview: *Employer's amendment to the lump-sum payment option in its retirement plan did not violate the anti-cutback rule where the amendment, inter alia, provided that the present value of a participant's accrued benefit would be no less than the amount calculated using the applicable mortality table and the applicable interest rate.*

- A lump-sum payment is not a distribution form described in [26 C.F.R. § 1.417\(e\)-1\(d\)\(6\)](#). Rather, 26 C.F.R. § 1.417(e)-1(d)(6) describes distributions that are paid in certain annuity forms. This conclusion is supported by the preamble accompanying the issuance of the final regulations at [26 C.F.R. § 1.417\(e\)-1\(d\)](#). [Go To Headnote](#)
- Because [26 U.S.C.S. § 417\(e\)](#) specifically deals with the calculation of the present value of a participant's accrued benefit for purposes of determining the amount of a lump-sum payment to that participant, lump-sum payments would not be excepted from the present value requirements of [26 C.F.R. § 1.417\(e\)-1\(d\)](#). [Go To Headnote](#)
- With the publication of [Rev. Proc. 2001-55, 2001-2 C.B. 552](#), the Commissioner of Internal Revenue extended the deadline for plan sponsors to adopt the amendments enumerated in [Rev. Proc. 99-23, 1999-1 C.B. 920](#) (modified by [Rev. Proc. 2000-27, 2000-1 C.B. 1272](#)), until February 28, 2002. The amendments enumerated in [Rev. Proc. 99-23](#) included amendments of defined benefit plans to provide that the present value of a participant's accrued benefit would be determined in accordance with the applicable interest rate rules and applicable mortality table rules of [26 C.F.R. § 1.417\(e\)-1\(d\)](#). Thus, it follows that plan sponsors had until February 28, 2002, to adopt plan amendments falling under the safe harbors provided by [26 C.F.R. §§ 1.417\(e\)-1\(d\)\(10\)\(ii\)](#) through (v). [Go To Headnote](#)

[Pension Benefit Guar. Corp. v. Wilson N. Jones Mem. Hosp., 250 F. Supp. 2d 676, 2003 U.S. Dist. LEXIS 4077](#) (ED Tex Mar. 14, 2003).

Overview: *The Pension Benefit Guaranty Corporation properly found that a pension plan administrator's termination of a pension plan violated Title IV of ERISA where an incorrect interest rate was used in calculating the plan participants' lump sum benefits.*

- Certain distributions may not take place without written consent of the participant and the participant's spouse. [26 U.S.C.S. § 417\(e\)\(1\)-\(2\)](#). Such consent must be obtained not more than 90 days before the annuity starting date. [Treas. Reg. § 1.417\(e\)-1\(b\)\(3\)](#) (1988). [Go To Headnote](#)

[Crosby v. Bowater Ret. Plan for Salaried Emples. of Great N. Paper, 2002 U.S. Dist. LEXIS 22797](#) (WD Mich Nov. 26, 2002).

Overview: *Retirement plan, by giving payment to survivors in the event of death, only provided a mechanism for easy payment; it did not intend to deprive survivors of the right to receive payment nor leave open the possibility of depriving them in the future.*

- Section 203(a)(2)(A) of the Employee Retirement Income Security Act, [29 U.S.C.S. § 1001](#) et seq., provides that an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions. [29 U.S.C.S. § 1053\(a\)\(2\)\(A\)](#). When an employee elects to take a lump sum distribution, certain deductions are proper under Internal Revenue Service regulations. The Internal Revenue Code and Regulations permit use of the applicable mortality table and the applicable interest rate in computing present value. [26 U.S.C.S. § 417\(e\)\(3\)](#); [Treas. Reg. § 1.417\(e\)-1\(d\)](#). [Go To Headnote](#)

[Esden v. Bank of Boston, 229 F.3d 154, 2000 U.S. App. LEXIS 23227](#) (2d Cir Sept. 12, 2000).

Overview: *Plan beneficiary received less than actuarial equivalent of accrued benefit in violation of ERISA and part of her benefit was made conditional on distribution option chosen in violation of ERISA's anti-forfeiture provisions.*

26 CFR 1.417(e)-1

- In general, for the purposes of testing under these safe harbor regulations, a plan may determine actuarial equivalence by using a standard mortality table and an interest rate equal to the interest rate specified in the plan for making interest adjustments to the cash balance. That is, for the purposes of the test only, a plan may assume a discount rate equal to the interest credit rate. However, the plan must still provide that if it allows for alternative distributions subject to the interest rate restrictions of [I.R.C. § 417\(e\)](#), it must pay out at least the actuarial present value, calculated in accordance with [Treas. Reg. § 1.417\(e\)-1\(d\)](#) of the employee's accrued benefit. [Treas. Reg. § 1.401\(a\)\(4\)-8\(c\)\(3\)\(vii\)\(C\)\(2\)](#). Thus for the purposes of showing compliance with cross-testing for nondiscrimination, the plan may assume reasonable actuarial assumptions, but for the purposes of an actual distribution, it must still use the prescribed assumptions, including the [I.R.C. § 417\(e\)](#) applicable rate. [Go To Headnote](#)

Tax Law : Federal Income Tax Computation : Retirement Plans : Nondiscrimination Rules (IRC sec. 401)

[Esden v. Bank of Boston, 229 F.3d 154, 2000 U.S. App. LEXIS 23227](#) (2d Cir Sept. 12, 2000).

Overview: *Plan beneficiary received less than actuarial equivalent of accrued benefit in violation of ERISA and part of her benefit was made conditional on distribution option chosen in violation of ERISA's anti-forfeiture provisions.*

- In general, for the purposes of testing under these safe harbor regulations, a plan may determine actuarial equivalence by using a standard mortality table and an interest rate equal to the interest rate specified in the plan for making interest adjustments to the cash balance. That is, for the purposes of the test only, a plan may assume a discount rate equal to the interest credit rate. However, the plan must still provide that if it allows for alternative distributions subject to the interest rate restrictions of [I.R.C. § 417\(e\)](#), it must pay out at least the actuarial present value, calculated in accordance with [Treas. Reg. § 1.417\(e\)-1\(d\)](#) of the employee's accrued benefit. [Treas. Reg. § 1.401\(a\)\(4\)-8\(c\)\(3\)\(vii\)\(C\)\(2\)](#). Thus for the purposes of showing compliance with cross-testing for nondiscrimination, the plan may assume reasonable actuarial assumptions, but for the purposes of an actual distribution, it must still use the prescribed assumptions, including the [I.R.C. § 417\(e\)](#) applicable rate. [Go To Headnote](#)

Tax Law : Federal Income Tax Computation : Retirement Plans : Qualified Plans (IRC secs. 401, 410-412)

[Stepnowski v. Comm'r, 124 T.C. 198, 124 T.C. No. 12, 2005 U.S. Tax Ct. LEXIS 12](#) (Apr. 26, 2005).

Overview: *Employer's amendment to the lump-sum payment option in its retirement plan did not violate the anti-cutback rule where the amendment, inter alia, provided that the present value of a participant's accrued benefit would be no less than the amount calculated using the applicable mortality table and the applicable interest rate.*

- The Uruguay Round Agreements Act, Pub. L. No. 103-465, § 767(d)(2), *108 Stat. 5040*, provides that a participant's accrued benefit is not considered to be reduced in violation of [26 U.S.C.S. § 411\(d\)\(6\)](#) merely because the benefit is determined in accordance with the applicable interest rate under [26 U.S.C.S. § 417\(e\)\(3\)\(A\)](#), i.e., the annual interest rate on 30-year United States Department of the Treasury securities. [26 C.F.R. § 1.417\(e\)-1\(d\)\(10\)](#) explains the scope of this relief from the anti-cutback rule of [26 U.S.C.S. § 411\(d\)\(6\)](#). Section 1.417(e)-1(d)(10)(i) provides the general rule that a plan amendment that changes the interest rate, the time for determining the interest rate, or the mortality assumptions used for the purposes described in [26 C.F.R. § 1.417\(e\)-1\(d\)\(1\)](#) (relating to the calculation of the present value of a participant's accrued benefit), is subject to [26 U.S.C.S. § 411\(d\)\(6\)](#). Subdivisions (ii) through (v) of [26 C.F.R. § 1.417\(e\)-1\(d\)\(10\)](#) provide safe harbors from the general rule of [26 C.F.R. § 1.417\(e\)-1\(d\)\(10\)\(i\)](#). [Go To Headnote](#)

[Laurenzano v. Blue Cross & Blue Shield of Mass., Inc. Retirement Income Trust, 134 F. Supp. 2d 189, 2001 U.S. Dist. LEXIS 3923](#) (D Mass Mar. 27, 2001).

26 CFR 1.417(e)-1

Overview: A cause of action under ERISA to recalculate benefits accrued upon distribution of the benefits, unless the participant chose to seek internal remedies, in which case the cause of action accrued upon exhaustion of the internal remedies.

- [29 U.S.C.S. § 1055\(a\)](#) requires pension plans to pay accrued benefits in the form of a qualified joint and survivor annuity, which is defined as an annuity (i) for the life of the participant with a survivor annuity for the life of the spouse and (ii) which is the actuarial equivalent of a single annuity for the life of the participant. In the alternative, [29 U.S.C.S. § 1055\(g\)](#) allows the plan to provide a lump sum that is the present value of the qualified joint and survivor annuity. [Treas. Reg. § 1.417\(e\)-1\(d\)](#) specifies the mechanics of the present value calculation and notes that the present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit. [Go To Headnote](#)

[Lyons v. Georgia-Pacific Corp. Salaried Emples. Ret. Plan, 221 F.3d 1235, 2000 U.S. App. LEXIS 19180](#) (11th Cir Aug. 11, 2000).

Overview: Judgment reversed on finding the method used by defendants to calculate ERISA plan participant's pre-retirement lump sum cash distributions was improper and agency regulations were reasonable and should have been applied.

- The rules for valuing distributions as set forth in [I.R.C. § 417\(e\)](#), which are incorporated into [Treas. Reg. § 1.411\(a\)-11\(d\)](#), are the same ones set forth in the Employee Retirement Income Security Act § 203(e), [29 U.S.C.S. § 1053\(e\)](#), as interpreted in [Treas. Reg. § 1.417\(e\)-1\(d\)](#). [Go To Headnote](#)

[Myers-Garrison v. Johnson & Johnson, 210 F.3d 425, 2000 U.S. App. LEXIS 6942](#) (5th Cir Apr. 18, 2000).

Overview: The case was remanded because it was unclear whether appellees complied with the Retirement Protection Act of 1994's transition rules regarding any class members who would otherwise have received a lump sum distribution.

- The transition regulations, [Treas. Reg. § 1.417\(e\)-1\(d\)\(10\)](#) (1999), only apply, if the plan amendment at issue reduces benefits in violation of the anti-cutback rule. [Go To Headnote](#)

[Lyons v. Georgia-Pacific Corp. Salaried Emples. Retirement Plan, 66 F. Supp. 2d 1328, 1999 U.S. Dist. LEXIS 5736](#) (ND Ga Mar. 22, 1999).

Overview: Former employee was not entitled to allege that his employer had miscalculated his lump sum retirement benefits because the employee's contention was based upon an agency's faulty interpretation of ERISA.

- [Treas. Reg. § 1.417\(e\)-1\(d\)](#) provides that, for the purposes of determining the present value of any accrued benefit and for purposes of determining the amount (subject to [I.R.C. §§ 411\(c\)\(3\)](#) and [415](#)) of any distribution including a single sum, a defined benefit plan is subject to the interest rate limitations described in § 1.417(e)-1(d)(2) at the time set forth in § 1.417(e)-1(d)(3). A plan amendment that changes the rate described is subject to § 411(d)(6). The present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit determined in accordance with this paragraph. [Go To Headnote](#)

[Rybarczyk v. Trw, Inc., 1997 U.S. Dist. LEXIS 3186](#) (ND Ohio Mar. 14, 1997).

Overview: Retirees won summary judgment in ERISA suit against an employer for using an improper interest rate to calculate the present value of lump sum subsidized early retirement benefits. The issue had been decided against the employer in prior litigation.

- [Treas. Reg. § 1.411\(a\)-11](#) expressly states that its valuation rules are the same as those specified in [Treas. Reg. § 1.417\(e\)-1\(d\)](#). [Go To Headnote](#)

Tax Law : Federal Tax Administration & Procedure : Effect of Regulations : General Overview

[Franklin v. Thornton, 983 F.2d 939, 1993 U.S. App. LEXIS 211](#) (9th Cir Jan. 11, 1993).

Overview: *A retirement plan trustee who made a lump sum distribution of a participant's pension, in excess of \$ 3,500, without her written consent violated ERISA provisions and his fiduciary duty under the act.*

- [Treas. Reg. § 1.417\(e\)-1\(b\)\(2\)\(i\)](#) provides: Written consent of the participant and, if the participant is married at the annuity starting date and the benefit is to be paid in a form other than a qualified joint and survivorship annuity, the participant's spouse, or, if either the participant or the spouse has died, the survivor, is required before the commencement of the distribution of any part of an accrued benefit if the present value of the nonforfeitable benefit is greater than \$ 3,500. [Go To Headnote](#)
- [Treas. Reg. 1.417\(e\)-1](#) provides: No consent is valid unless the participant has received a general description of the material features, and an explanation of the relative values of, the optional forms of benefit available under the plan in a manner which would satisfy the notice requirements of [26 U.S.C.S. § 417\(a\)\(3\)](#). [Treas. Reg. § 1.417\(e\)-1\(b\)\(2\)\(i\)](#). [Go To Headnote](#)

Tax Law : Federal Tax Administration & Procedure : Revenue Rulings

[Costantino v. Trw, Inc., 13 F.3d 969, 1994 U.S. App. LEXIS 370](#) (6th Cir Jan. 10, 1994).

Overview: *Employer's amendment to its pension plan that eliminated an early retirement subsidy violated ERISA; employees were entitled to have the present value of their benefit based on an applicable interest rate that resulted in the greatest benefit.*

- The temporary Treasury Department regulations, [Temp. Treas. Reg. § 1.417\(e\)-1T\(b\)\(2\)\(ii\)](#) (1985), issued under the Retirement Equity Act, Pub. L. No. 98-397, [98 Stat. 1426 \(1984\)](#), and the permanent regulations, [Treas. Reg. § 1.417\(e\)-1\(f\)](#) (1993), issued in 1988 (retroactively effective as of January 1, 1985) both provide that a retirement benefits plan may use either the interest rate in effect at the time of distribution or the rate in effect at the beginning of the plan year. [Temp. Treas. Reg. § 1.417\(e\)-1T\(b\)\(2\)\(ii\)](#) (1985); [Treas. Reg. § 1.417\(e\)-1\(f\)](#) (1993). [Go To Headnote](#)

Tax Law : State & Local Taxes : Income Tax : General Overview

[Stepnowski v. Comm'r, 124 T.C. 198, 124 T.C. No. 12, 2005 U.S. Tax Ct. LEXIS 12](#) (Apr. 26, 2005).

Overview: *Employer's amendment to the lump-sum payment option in its retirement plan did not violate the anti-cutback rule where the amendment, inter alia, provided that the present value of a participant's accrued benefit would be no less than the amount calculated using the applicable mortality table and the applicable interest rate.*

- The Uruguay Round Agreements Act, Pub. L. No. 103-465, § 767(d)(2), [108 Stat. 5040](#), provides that a participant's accrued benefit is not considered to be reduced in violation of [26 U.S.C.S. § 411\(d\)\(6\)](#) merely because the benefit is determined in accordance with the applicable interest rate under [26 U.S.C.S. § 417\(e\)\(3\)\(A\)](#), i.e., the annual interest rate on 30-year United States Department of the Treasury securities. [26 C.F.R. § 1.417\(e\)-1\(d\)\(10\)](#) explains the scope of this relief from the anti-cutback rule of [26 U.S.C.S. § 411\(d\)\(6\)](#). Section 1.417(e)-1(d)(10)(i) provides the general rule that a plan amendment that changes the interest rate, the time for determining the interest rate, or the mortality assumptions used for the purposes described in [26 C.F.R. § 1.417\(e\)-1\(d\)\(1\)](#) (relating to the calculation of the present value of a participant's accrued benefit), is subject to [26 U.S.C.S. § 411\(d\)\(6\)](#). Subdivisions (ii) through (v) of [26 C.F.R. § 1.417\(e\)-1\(d\)\(10\)](#) provide safe harbors from the general rule of [26 C.F.R. § 1.417\(e\)-1\(d\)\(10\)\(i\)](#). [Go To Headnote](#)
- A lump-sum payment is not a distribution form described in [26 C.F.R. § 1.417\(e\)-1\(d\)\(6\)](#). Rather, [26 C.F.R. § 1.417\(e\)-1\(d\)\(6\)](#) describes distributions that are paid in certain annuity forms. This conclusion is supported

26 CFR 1.417(e)-1

by the preamble accompanying the issuance of the final regulations at [26 C.F.R. § 1.417\(e\)-1\(d\)](#). [Go To Headnote](#)

- Because [26 U.S.C.S. § 417\(e\)](#) specifically deals with the calculation of the present value of a participant's accrued benefit for purposes of determining the amount of a lump-sum payment to that participant, lump-sum payments would not be excepted from the present value requirements of [26 C.F.R. § 1.417\(e\)-1\(d\)](#). [Go To Headnote](#)
- With the publication of [Rev. Proc. 2001-55, 2001-2 C.B. 552](#), the Commissioner of Internal Revenue extended the deadline for plan sponsors to adopt the amendments enumerated in [Rev. Proc. 99-23, 1999-1 C.B. 920](#) (modified by [Rev. Proc. 2000-27, 2000-1 C.B. 1272](#)), until February 28, 2002. The amendments enumerated in [Rev. Proc. 99-23](#) included amendments of defined benefit plans to provide that the present value of a participant's accrued benefit would be determined in accordance with the applicable interest rate rules and applicable mortality table rules of [26 C.F.R. § 1.417\(e\)-1\(d\)](#). Thus, it follows that plan sponsors had until February 28, 2002, to adopt plan amendments falling under the safe harbors provided by [26 C.F.R. §§ 1.417\(e\)-1\(d\)\(10\)\(ii\)](#) through (v). [Go To Headnote](#)

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE CHAPTER:

EDITORIAL NOTE: IRS published a document at *45 FR 6088*, Jan. 25, 1980, deleting statutory sections from their regulations. In Chapter I, cross references to the deleted material have been changed to the corresponding sections of the IRS Code of 1954 or to the appropriate regulations sections. When either such change produced a redundancy, the cross reference has been deleted. For further explanation, see *45 FR 20795*, March 31, 1980.

[The OMB control numbers for title 26 appear in §§ 601.9000 and 602.101 of this chapter.]

NOTES APPLICABLE TO ENTIRE SUBCHAPTER:

Supplementary Publications: Internal Revenue Service Looseleaf Regulations System, Alcohol and Tobacco Tax Regulations, and Regulations Under Tax Conventions.

EDITORIAL NOTE: Treasury Decision 6091, *19 FR 5167*, Aug. 17, 1954, provides in part as follows:

PARAGRAPH 1. All regulations (including all Treasury decisions) prescribed by, or under authority duly delegated by, the Secretary of the Treasury, or jointly by the Secretary and the Commissioner of Internal Revenue, or by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, or jointly by the Commissioner of Internal Revenue and the Commissioner of Customs or the Commissioner of Narcotics with the approval of the Secretary of the Treasury, applicable under any provision of law in effect on the date of enactment of the Code, to the extent such provision of law is repealed by the Code, are hereby prescribed under and made applicable to the provisions of the Code corresponding to the provision of law so repealed insofar as any such regulation is not inconsistent with the Code. Such regulations shall become effective as regulations under the various provisions of the Code as of the dates the corresponding provisions of law are repealed by the Code, until superseded by regulations issued under the Code.

PAR. 2. With respect to any provision of the Code which depends for its application upon the promulgation of regulations or which is to be applied in such manner as may be prescribed by regulations, all instructions or rules in effect immediately prior to the enactment of the Code, to the extent such instructions or rules could be prescribed as regulations under authority of such provision of the Code, shall be applied as regulations under such provision insofar as such instructions or rules are not inconsistent with the Code. Such instructions or rules shall be applied as regulations under the applicable provision of the Code as of the date such provision takes effect.

26 CFR 1.417(e)-1

PAR. 3. If any election made or other act done pursuant to any provision of the Internal Revenue Code of 1939 or prior internal revenue laws would (except for the enactment of the Code) be effective for any period subsequent to such enactment, and if corresponding provisions are contained in the Code, such election or other act shall be given the same effect under the corresponding provisions of the Code to the extent not inconsistent therewith. The term "act" includes, but is not limited to, an allocation, identification, declaration, agreement, option, waiver, relinquishment, or renunciation.

PAR. 4. The limits of the various internal revenue districts have not been changed by the enactment of the Code. Furthermore, delegations of authority made pursuant to the provisions of Reorganization Plan No. 26 of 1950 and Reorganization Plan No. 1 of 1952 (as well as redelegation thereunder), including those governing the authority of the Commissioner of Internal Revenue, the Regional Commissioners of Internal Revenue, or the District Directors of Internal Revenue, are applicable to the provisions of the Code to the extent consistent therewith.

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End of Document

26 CFR 1.411(d)-3

This document is current through the July 19, 2017 issue of the Federal Register. Pursuant to 82 FR 8346 ("Regulatory Freeze Pending Review"), certain regulations will be delayed pending further review. See Publisher's Note under affected rules. Title 3 is current through July 7, 2017.

Code of Federal Regulations > TITLE 26 -- INTERNAL REVENUE > CHAPTER I -- INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY > SUBCHAPTER A -- INCOME TAX > PART 1 -- INCOME TAXES > NORMAL TAXES AND SURTAXES > DEFERRED COMPENSATION, ETC. > PENSION, PROFIT-SHARING, STOCK BONUS PLANS ETC.

§ 1.411(d)-3 Section 411(d)(6) [26 USCS § 411(d)(6)] protected benefits.

(a)Protection of accrued benefits --(1) General rule. Under section 411(d)(6)(A) [\[26 USCS § 411\(d\)\(6\)\(A\)\]](#), a plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) if a plan amendment decreases the accrued benefit of any plan participant, except as provided in section 412(d)(2) [\[26 USCS § 412\(d\)\(2\)\]](#) (section 412(c)(8) [\[26 USCS § 412\(c\)\(8\)\]](#) for plan years beginning before January 1, 2008), section 4281 of the Employee Retirement Income Security Act of 1974 as amended (ERISA), or other applicable law (see, for example, [sections 418D](#) and [418E of the Internal Revenue Code \[26 USCS §§ 418D](#) and [418E\]](#), and section 1107 of the Pension Protection Act of 2006, Public Law 109-280 (*120 Stat. 780, 1063*)). However, such an amendment does not violate section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#) to the extent it applies with respect to benefits that accrue after the applicable amendment date. The protection of section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#) applies to a participant's entire accrued benefit under the plan as of the applicable amendment date, without regard to whether the entire accrued benefit was accrued before a participant's severance from employment or whether any portion was the result of an increase in the accrued benefit of the participant pursuant to a plan amendment adopted after the participant's severance from employment.

(2) Plan provisions taken into account --

(i)Direct or indirect reduction in accrued benefit. For purposes of determining whether a participant's accrued benefit is decreased, all of the amendments to the provisions of a plan affecting, directly or indirectly, the computation of accrued benefits are taken into account. Plan provisions indirectly affecting the computation of accrued benefits include, for example, provisions relating to years of service and compensation.

(ii)Amendments effective with the same applicable amendment date. In determining whether a reduction in a participant's accrued benefit has occurred, all plan amendments with the same applicable amendment date are treated as one amendment. Thus, if two amendments have the same applicable amendment date and one amendment, standing alone, increases participants' accrued benefits and the other amendment, standing alone, decreases participants' accrued benefits, the amendments are treated as one amendment and will only violate section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#) if, for any participant, the net effect is to decrease participants' accrued benefit as of that applicable amendment date.

(iii)Multiple amendments -- (A) General rule. A plan amendment violates the requirements of section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#) if it is one of a series of plan amendments that, when taken together, have the effect of reducing or eliminating a section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#) protected benefit in a manner that would be prohibited by section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#) if accomplished through a single amendment.

26 CFR 1.411(d)-3

(B)Determination of the time period for combining plan amendments. For purposes of applying the rule in paragraph (a)(2)(iii)(A) of this section, generally only plan amendments adopted within a 3-year period are taken into account.

(3)Application of section 411(a) [26 USCS § 411(a)] nonforfeitability provisions with respect to section 411(d)(6) [26 USCS § 411(d)(6)] protected benefits -- (i) In general. The rules of this paragraph (a) apply to a plan amendment that decreases a participant's accrued benefits, or otherwise places greater restrictions or conditions on a participant's rights to section 411(d)(6) [26 USCS § 411(d)(6)] protected benefits, even if the amendment merely adds a restriction or condition that is permitted under the vesting rules in section 411(a)(3) through (11) [26 USCS § 411(a)(3) -- (11)]. However, such an amendment does not violate section 411(d)(6) [26 USCS § 411(d)(6)] to the extent it applies with respect to benefits that accrued prior to the applicable amendment date. See section 411(a)(10) [26 USCS § 411(a)(10)] and § 1.411(a)-8 for additional rules relating to changes in a plan's vesting schedule.

(ii)Exception for changes in a plan's vesting computation period. Notwithstanding paragraph (a)(3)(i) of this section, a plan amendment that satisfies the applicable requirements under [29 CFR 2530.203-2\(c\)](#) (rules relating to vesting computation periods) does not fail to satisfy the requirements of section 411(d)(6) [26 USCS § 411(d)(6)] merely because the plan amendment changes the plan's vesting computation period.

(4)Examples. The following examples illustrate the application of this paragraph (a):

Example 1. (i) Facts. Plan A provides an annual benefit of 2% of career average pay times years of service commencing at normal retirement age (age 65). Plan A is amended on November 1, 2006, effective as of January 1, 2007, to provide for an annual benefit of 1.3% of final pay times years of service, with final pay computed as the average of a participant's highest 3 consecutive years of compensation. As of January 1, 2007, Participant M has 16 years of service, M's career average pay is \$ 37,500, and the average of M's highest 3 consecutive years of compensation is \$ 67,308. Thus, Participant M's accrued benefit as of the applicable amendment date is increased from \$ 12,000 per year at normal retirement age (2% times \$ 37,500 times 16 years of service) to \$ 14,000 per year at normal retirement age (1.3% times \$ 67,308 times 16 years of service). As of January 1, 2007, Participant N has 6 years of service, N's career average pay is \$ 50,000, and the average of N's highest 3 consecutive years of compensation is \$ 51,282. Participant N's accrued benefit as of the applicable amendment date is decreased from \$ 6,000 per year at normal retirement age (2% times \$ 50,000 times 6 years of service) to \$ 4,000 per year at normal retirement age (1.3% times \$ 51,282 times 6 years of service).

(ii)Conclusion. While the plan amendment increases the accrued benefit of Participant M, the plan amendment fails to satisfy the requirements of section 411(d)(6)(A) [26 USCS § 411(d)(6)(A)] because the amendment decreases the accrued benefit of Participant N below the level of the accrued benefit of Participant N immediately before the applicable amendment date.

Example 2 (i) Facts. The facts are the same as Example 1, except that Plan A includes a provision under which Participant N's accrued benefit cannot be less than what it was immediately before the applicable amendment date (so that Participant N's accrued benefit could not be less than \$ 6,000 per year at normal retirement age).

(ii)Conclusion. The amendment does not violate the requirements of section 411(d)(6)(A) [26 USCS § 411(d)(6)(A)] with respect to Participant M (whose accrued benefit has been increased) or with respect to Participant N (although Participant N would not accrue any benefits until the point in time at which the new formula amount would exceed the amount payable under the minimum provision, approximately 3 years after the amendment becomes effective).

Example 3. (i) Facts. Employer N maintains Plan C, a qualified defined benefit plan under which an employee becomes a participant upon completion of 1 year of service and is vested in 100% of the employer-derived accrued benefit upon completion of 5 years of service. Plan C

26 CFR 1.411(d)-3

provides that a former employee's years of service prior to a break in service will be reinstated upon completion of 1 year of service after being rehired. Plan C has participants who have fewer than 5 years of service and who are accordingly 0% vested in their employer-derived accrued benefits. On December 31, 2007, effective January 1, 2008, Plan C is amended, in accordance with section 411(a)(6)(D) [26 USCS § 411(a)(6)(D)], to provide that any nonvested participant who has at least 5 consecutive 1-year breaks in service and whose number of consecutive 1-year breaks in service exceeds his or her number of years of service before the breaks will have his or her pre-break service disregarded in determining vesting under the plan.

(ii)Conclusion. Under paragraph (a)(3) of this section, the plan amendment does not satisfy the requirements of this paragraph (a), and thus violates section 411(d)(6) [26 USCS § 411(d)(6)], because the amendment places greater restrictions or conditions on the rights to section 411(d)(6) [26 USCS § 411(d)(6)] protected benefits, as of January 1, 2008, for participants who have fewer than 5 years of service, by restricting the ability of those participants to receive further vesting protections on benefits accrued as of that date.

Example 4. (i) Facts. (A) Employer O sponsors Plan D, a qualified profit sharing plan under which each employee has a nonforfeitable right to a percentage of his or her employer-derived accrued benefit based on the following tableGOES

Completed years of service	Nonforfeitable percentage
Fewer than 3	0
3	20
4	40
5	60
6	80
7	100

(B)In January 2006, Employer O acquires Company X, which maintains Plan E, a qualified profit sharing plan under which each employee who has completed 5 years of service has a nonforfeitable right to 100% of the employer-derived accrued benefit. In 2007, Plan E is merged into Plan D. On the effective date for the merger, Plan D is amended to provide that the vesting schedule for participants of Plan E is the 7-year graded vesting schedule of Plan D. In accordance with section 411(a)(10)(A) [26 USCS § 411(a)(10)(A)], the plan amendment provides that any participant of Plan E who had completed 5 years of service prior to the amendment is fully vested. In addition, as required under section 411(a)(10)(B) [26 USCS § 411(a)(10)(B)], the amendment provides that any participant in Plan E who has at least 3 years of service prior to the amendment is permitted to make an irrevocable election to have the vesting of his or her nonforfeitable right to the employer-derived accrued benefit determined under either the 5-year cliff vesting schedule or the 7-year graded vesting schedule. Participant G, who has an account balance of \$ 10,000 on the applicable amendment date, is a participant in Plan E with 2 years of service as of the applicable amendment date. As of the date of the merger, Participant G's nonforfeitable right to G's employer-derived accrued benefit is 0% under both the 7-year graded vesting schedule of Plan D and the 5-year cliff vesting schedule of Plan E.

(ii)Conclusion. Under paragraph (a)(3) of this section, the plan amendment does not satisfy the requirements of this paragraph (a) and violates section 411(d)(6) [26 USCS § 411(d)(6)], because the amendment places greater restrictions or conditions on the rights to section 411(d)(6) [26 USCS § 411(d)(6)] protected benefits with respect to G and any participant who has fewer than 5 years of service and who elected (or was made subject to) the new vesting schedule. A

26 CFR 1.411(d)-3

method of avoiding a section 411 (d)(6) [\[26 USCS § 411 \(d\)\(6\)\]](#) violation with respect to account balances attributable to benefits accrued as of the applicable amendment date and earnings thereon would be for Plan D to provide for the vested percentage of G and each other participant in Plan E to be no less than the greater of the vesting percentages under the two vesting schedules (for example, for G and each other participant in Plan E to be 20% vested upon completion of 3 years of service, 40% vested upon completion of 4 years of service, and fully vested upon completion of 5 years of service) for those account balances and earnings.

(b)Protection of section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefits -- (1) General rule -- (i) Prohibition against plan amendments eliminating or reducing section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefits. Except as provided in this section, a plan is treated as decreasing an accrued benefit if it is amended to eliminate or reduce a section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefit as defined in paragraph (g)(15) of this section. This paragraph (b)(1) applies to participants who satisfy (either before or after the plan amendment) the preamendment conditions for a section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefit.

(ii)Contingent benefits. The rules of paragraph (b)(1)(i) of this section apply to participants who satisfy (either before or after the plan amendment) the preamendment conditions for the section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefit even if the condition on which the eligibility for the section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefit depends is an unpredictable contingent event (e.g., a plant shutdown).

(iii)Application of general rules in paragraph (a) of this section to section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefits. For purposes of determining whether a participant's section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefit is eliminated or reduced, the rules of paragraph (a) of this section apply to section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefits in the same manner as they apply to accrued benefits described in section 411(d)(6)(A) [\[26 USCS § 411\(d\)\(6\)\(A\)\]](#). As an example of the application of paragraph (a)(2)(ii) of this section to section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefits, if there are two amendments with the same applicable amendment date and one amendment increases accrued benefits and the other amendment decreases the early retirement factors that are used to determine the early retirement annuity, the amendments are treated as one amendment and only violate section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#) if, after the two amendments, the net dollar amount of any early retirement annuity with respect to the accrued benefit of any participant as of the applicable amendment date is lower than it would have been without the two amendments. As an example of the application of paragraph (a)(2)(iii) of this section to section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefits, a series of amendments made within a 3-year period that, when taken together, have the effect of reducing or eliminating early retirement benefits or retirement-type subsidies in a manner that adversely affects the rights of any participant in a more than de minimis manner violates section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) even if each amendment would be permissible pursuant to paragraphs (c), (d), or (f) of this section.

(2)Permissible elimination of section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefits -- (i) In general. A plan is permitted to be amended to eliminate a section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefit if the elimination is in accordance with this section or § 1.411(d)-4.

(ii)Increases in payment amounts do not eliminate an optional form of benefit. An amendment is not treated as eliminating an optional form of benefit or eliminating or reducing an early retirement benefit or retirement-type subsidy under the plan, if, effective after the plan amendment, there is another optional form of benefit available to the participant under the plan that is of inherently equal or greater value (within the meaning of § 1.401(a)(4)-4(d)(4)(i)(A)). Thus, for example, a change in the method of calculating a joint and survivor annuity from using a 90% adjustment factor on account of the survivorship payment at particular ages for a participant and a spouse to using a 91% adjustment factor at the same ages is not treated as an elimination of an optional form of benefit. Similarly, a plan that offers a subsidized qualified

26 CFR 1.411(d)-3

joint and survivor annuity option for married participants under which the amount payable during the participant's lifetime is not less than the amount payable under the plan's straight life annuity is permitted to be amended to eliminate the straight life annuity option for married participants.

(3) Permissible elimination of benefits that are not section 411(d)(6) [26 USCS § 411(d)(6)] protected benefits -- (i) In general. Section 411(d)(6) [26 USCS § 411(d)(6)] does not provide protection for benefits that are ancillary benefits, other rights and features, or any other benefits that are not described in section 411(d)(6) [26 USCS § 411(d)(6)]. See § 1.411(d)-4, Q&A-1(d). However, a plan may not be amended to recharacterize a retirement-type benefit as an ancillary benefit. Thus, for example, a plan amendment to recharacterize any portion of an early retirement subsidy as a social security supplement that is an ancillary benefit violates section 411(d)(6) [26 USCS § 411(d)(6)].

(ii) No protection for future benefit accruals. Section 411(d)(6) [26 USCS § 411(d)(6)] only protects benefits that accrue before the applicable amendment date. Thus, a plan is permitted to be amended to eliminate or reduce an early retirement benefit, a retirement-type subsidy, or an optional form of benefit with respect to benefits that accrue after the applicable amendment date without violating section 411(d)(6) [26 USCS § 411(d)(6)]. However, *section 4980F(e) of the Internal Revenue Code* [26 USCS § 4980F(e)] and section 204(h) of ERISA require notice of an amendment to an applicable pension plan that either provides for a significant reduction in the rate of future benefit accrual or that eliminates or significantly reduces an early retirement benefit or a retirement-type subsidy. See § 54.4980F-1 of this chapter generally, and see § 54.4980F-1, Q&A-7(b) and Q&A-8(c) of this chapter, with respect to the circumstances under which such notice is required for a reduction in an early retirement benefit or retirement-type subsidy.

(4) Examples. The following examples illustrate the application of this paragraph (b):

Example 1. (i) Facts involving amendments to an early retirement subsidy. Plan A provides an annual benefit of 2% of career average pay times years of service commencing at normal retirement age (age 65). Plan A is amended on November 1, 2006, effective as of January 1, 2007, to provide for an annual benefit of 1.3% of final pay times years of service, with final pay computed as the average of a participant's highest 3 consecutive years of compensation. Participant M is age 50, M has 16 years of service, M's career average pay is \$ 37,500, and the average of M's highest 3 consecutive years of compensation is \$ 67,308. Thus, M's accrued benefit as of the effective date of the amendment is increased from \$ 12,000 per year at normal retirement age (2% times \$ 37,500 times 16 years of service) to \$ 14,000 per year at normal retirement age (1.3% times \$ 67,308 times 16 years of service). (These facts are similar to the facts in Example 1 in paragraph (a)(4) of this section.) Before the amendment, Plan A permitted a former employee to commence distribution of benefits as early as age 55 and, for a participant with at least 15 years of service, actuarially reduced the amount payable in the form of a straight life annuity commencing before normal retirement age by 3% per year from age 60 to age 65 and by 7% per year from age 55 through age 59. Thus, before the amendment, the amount of M's early retirement benefit that would be payable for commencement at age 55 was \$ 6,000 per year (\$ 12,000 per year minus 3% for 5 years and minus 7% for 5 more years). The amendment also alters the actuarial reduction factor so that, for a participant with at least 15 years of service, the amount payable in a straight life annuity commencing before normal retirement age is reduced by 6% per year. As a result, the amount of M's early retirement benefit at age 55 becomes \$ 5,600 per year after the amendment (\$ 14,000 minus 6% for 10 years).

(ii) Conclusion. The straight life annuity payable under Plan A at age 55 is an optional form of benefit that includes an early retirement subsidy. The plan amendment fails to satisfy the requirements of section 411(d)(6)(B) [26 USCS § 411(d)(6)(B)] because the amendment decreases the optional form of benefit payable to Participant M below the level that Participant M was entitled to receive immediately before the effective date of the amendment. If instead

26 CFR 1.411(d)-3

Plan A had included a provision under which M's straight life annuity payable at any age could be not be less than what it was immediately before the amendment (so that M's straight life annuity payable at age 55 could not be less than \$ 6,000 per year), then the amendment would not fail to satisfy the requirements of section 411(d)(6)(B) [26 USCS § 411(d)(6)(B)] with respect to M's straight life annuity payable at age 55 (although the straight life annuity payable to M at age 55 would not increase until the point in time at which the new formula amount with the new actuarial reduction factors exceeds the amount payable under the minimum provision, approximately 14 months after the amendment becomes effective).

Example 2. (i) Facts involving plant shutdown benefits. Plan B permits participants who have a severance from employment before normal retirement age (age 65) to commence distributions at any time after age 55 with the amount payable to be actuarially reduced using reasonable actuarial assumptions regarding interest and mortality specified in the plan, but provides that the annual reduction for any participant who has at least 20 years of service and who has a severance from employment after age 55 is only 3% per year (which is a smaller reduction than would apply under reasonable actuarial reductions). Plan B also provides 2 plant shutdown benefits to participants who have a severance of employment as a result of a plant shutdown. First, the favorable 3% per year actuarial reduction applies for commencement of benefits after age 55 and before age 65 for any participant who has at least 10 years of service and who has a severance from employment as a result of a plant shutdown. Second, all participants who have at least 20 years of service and who have a severance from employment after age 55 (and before normal retirement age at age 65) as a result of a plant shutdown will receive supplemental payments. Under the supplemental payments, an additional amount equal to the participant's estimated old-age insurance benefit under the Social Security Act is payable until age 65. The supplemental payments are not a QSUPP, as defined in § 1.401(a)(4)-12, because the plan's terms do not state that the supplement is treated as an early retirement benefit that is protected under section 411(d)(6) [26 USCS § 411(d)(6)].

(ii) Conclusion with respect to plant shutdown benefits. The benefits payable with the 3% annual reduction are retirement-type benefits. The excess of the actuarial present value of the early retirement benefit using the 3% annual reduction over the actuarial present value of the normal retirement benefit is a retirement-type subsidy and the right to receive payments of the benefit at age 55 is an early retirement benefit. These conclusions apply not only with respect to the rights that apply to participants who have at least 20 years of service, but also to participants with at least 10 years of service who have a severance from employment as a result of a plant shutdown. Thus, the right to receive benefits based on a 3% annual reduction for participants with at least 10 years of service at the time of a plant shutdown is an early retirement benefit that provides a retirement-type subsidy and is a section 411(d)(6)(B) [26 USCS § 411(d)(6)(B)] protected benefit (even though no plant shutdown has occurred). Therefore, a plan amendment cannot eliminate this benefit with respect to benefits accrued before the applicable amendment date, even before the occurrence of the plant shutdown. Because the plan provides that the supplemental payments cannot exceed the OASDI benefit under the Social Security Act, the supplemental payments constitute a social security supplement (but not a QSUPP as defined in § 1.401(a)(4)-12), which is an ancillary benefit that is not a section 411(d)(6)(B) [26 USCS § 411(d)(6)(B)] protected benefit and accordingly is not taken into account in determining whether a prohibited reduction has occurred.

Example 3. (i) Facts. Plan C, a multiemployer defined benefit plan in which participation is limited to electricians in the construction industry, provides that a participant may elect to commence distributions only if the participant is not currently employed by a participating employer and provides that, if the participant has a specified number of years of service and attains a specified age, the distribution is without any actuarial reduction for commencement before normal retirement age. Since the plan's inception, Plan C has provided for suspension of pension benefits during periods of disqualifying employment

26 CFR 1.411(d)-3

(ERISA section 203(a)(3)(B) service). Before 2007, the plan defined disqualifying employment to include any job as an electrician in the particular industry and geographic location to which Plan C applies. This definition of disqualifying employment did not cover a job as an electrician supervisor. In 2005, Participant E, having rendered the specified number of years of service and attained the specified age to retire with a fully subsidized early retirement benefit, retires from E's job as an electrician with Employer Y and starts a position with Employer Z as an electrician supervisor. Employer Z is not a participating employer in Plan C but is an employer in the same industry and geographic location as Employer Y. When E left service with Employer Y, E's position as an electrician supervisor was not disqualifying employment for purposes of Plan C's suspension of pension benefit provision, and E elected to commence benefit payments in 2005. In 2006, effective January 1, 2007, Plan C is amended to expand the definition of disqualifying employment to include any job (including supervisory positions) as an electrician in the same industry and geographic location to which Plan C applies. The plan's definition of disqualifying employment satisfies the requirements of section 411(a)(3)(B) [26 USCS § 411(a)(3)(B)]. On January 1, 2007, E's pension benefits are suspended because of E's disqualifying employment as an electrician supervisor.

(ii)Conclusion. Under paragraphs (a)(3) and (b)(1) of this section, the 2007 plan amendment violates section 411(d)(6) [26 USCS § 411(d)(6)], because the amendment places greater restrictions or conditions on a participant's rights to section 411(d)(6) [26 USCS § 411(d)(6)] protected benefits to the extent it applies with respect to benefits that accrued before January 1, 2007. The result would be the same even if the amendment did not apply to former employees and instead applied only to participants who were actively employed at the time of the applicable amendment.

(c)Permissible elimination of optional forms of benefit that are redundant -- (1) General rule. Except as otherwise provided in paragraph (c)(5) of this section, a plan is permitted to be amended to eliminate an optional form of benefit for a participant with respect to benefits accrued before the applicable amendment date if --

(i)The optional form of benefit is redundant with respect to a retained optional form of benefit, within the meaning of paragraph (c)(2) of this section;

(ii)The plan amendment is not applicable with respect to an optional form of benefit with an annuity commencement date that is earlier than the number of days in the maximum QJSA explanation period (as defined in paragraph (g)(9) of this section) after the date the amendment is adopted; and

(iii)The requirements of paragraph (e) of this section are satisfied in any case in which either:

(A)The retained optional form of benefit for the participant does not commence on the same annuity commencement date as the optional form of benefit that is being eliminated; or

(B)As of the date the amendment is adopted, the actuarial present value of the retained optional form of benefit for the participant is less than the actuarial present value of the optional form of benefit that is being eliminated.

(2)Similar types of optional forms of benefit are redundant -- (i) General rule. An optional form of benefit is redundant with respect to a retained optional form of benefit if, after the amendment becomes applicable --

(A)There is a retained optional form of benefit available to the participant that is in the same family of optional forms of benefit, within the meaning of paragraphs (c)(3) and (4) of this section, as the optional form of benefit being eliminated; and

(B)The participant's rights with respect to the retained optional form of benefit are not subject to materially greater restrictions (such as conditions relating to eligibility, restrictions on a participant's ability to designate the person who is entitled to benefits following the

26 CFR 1.411(d)-3

participant's death, or restrictions on a participant's right to receive an in-kind distribution) than applied to the optional form of benefit being eliminated.

(ii) Special rule for core options. An optional form of benefit that is a core option as defined in paragraph (g)(5) of this section may not be eliminated as a redundant benefit under the rules of this paragraph (c) unless the retained optional form of benefit and the eliminated core option are identical except for differences described in paragraph (c)(3)(ii) of this section. Thus, for example, a particular 10-year term certain and life annuity may not be eliminated by plan amendment unless the retained optional form of benefit is another 10-year term certain and life annuity.

(3) Family of optional forms of benefit --

(i) In general. Paragraph (c)(4) of this section describes certain families of optional forms of benefits. Not every optional form of benefit that is offered under a plan necessarily fits within a family of optional forms of benefit as described in paragraph (c)(4) of this section. Each optional form of benefit that is not included in any particular family of optional forms of benefit listed in paragraph (c)(4) of this section is in a separate family of optional forms of benefit with other optional forms of benefit that would be identical to that optional form of benefit but for differences that are disregarded under paragraph (c)(3)(ii) of this section.

(ii) Certain differences among optional forms of benefit -- (A) Differences in actuarial factors and annuity starting dates. The determination of whether two optional forms of benefit are within a family of optional forms of benefit is made without regard to actuarial factors or annuity starting dates. Thus, any optional forms of benefit that are part of the same generalized optional form (within the meaning of paragraph (g)(8) of this section) are in the same family of optional forms of benefit. For example, if a plan has a single-sum distribution option for some participants that is calculated using a 5% interest rate and a specific mortality table (but no less than the minimum present value as determined under section 417(e) [\[26 USCS § 417\(e\)\]](#)) and another single-sum distribution option for other participants that is calculated using the applicable interest rate as defined in section 417(e)(3)(A)(ii)(II) [\[26 USCS § 417\(e\)\(3\)\(A\)\(ii\)\(II\)\]](#) and the applicable mortality table as defined in section 417(e)(3)(A)(ii)(I) [\[26 USCS § 417\(e\)\(3\)\(A\)\(ii\)\(I\)\]](#), both single-sum distribution options are part of the same generalized optional form and thus in the same family of optional forms of benefit under the rules of paragraph (c)(3)(i) of this section. However, differences in actuarial factors and annuity starting dates are taken into account for purposes of the requirements in paragraph (e)(3) of this section.

(B) Differences in pop-up provisions and cash refund features for joint and contingent options. The determination of whether two optional forms of benefit are within a family of optional forms of benefit relating to joint and contingent families (as described in paragraph (c)(4)(i) and (ii) of this section) is made without regard to the following features --

(1) Pop-up provisions (under which payments increase upon the death of the beneficiary or another event that causes the beneficiary not to be entitled to a survivor annuity);

(2) Cash refund features (under which payment is provided upon the death of the last annuitant in an amount that is not greater than the excess of the present value of the annuity at the annuity starting date over the total of payments before the death of the last annuitant); or

(3) Term-certain provisions for optional forms of benefit within a joint and contingent family.

(C) Differences in social security leveling features, refund of employee contributions features, and retroactive annuity starting date features. The determination of whether 2 optional forms of benefit are within a family of optional forms of benefit is made without regard to social security leveling features, refund of employee contributions features, or retroactive annuity starting date features. But see paragraph (c)(5) of this section for special rules relating to social security leveling, refund of employee contributions, and retroactive annuity starting date features in optional forms of benefit.

(4)List of families. The following are families of optional forms of benefit for purposes of this paragraph (c):

(i)Joint and contingent options with continuation percentages of 50% to 100%. An optional form of benefit is within the 50% or more joint and contingent family if it provides a life annuity to the participant and a survivor annuity to an individual that is at least 50% and no more than 100% of the annuity payable during the joint lives of the participant and the participant's survivor.

(ii)Joint and contingent options with continuation percentages less than 50%. An optional form of benefit is within the less than 50% joint and contingent family if it provides a life annuity to the participant and a survivor annuity to an individual that is less than 50% of the annuity payable during the joint lives of the participant and the participant's survivor.

(iii)Term certain and life annuity options with a term of 10 years or less. An optional form of benefit is within the 10 years or less term certain and life family if it is a life annuity with a guarantee that payments will continue to the participant's beneficiary for the remainder of a fixed period that is 10 years or less if the participant dies before the end of the fixed period.

(iv)Term certain and life annuity options with a term longer than 10 years. An optional form of benefit is within the longer than 10 years term certain and life family if it is a life annuity with a guarantee that payments will continue to the participant's beneficiary for the remainder of a fixed period that is in excess of 10 years if the participant dies before the end of the fixed period.

(v)Level installment payment options over a period of 10 years or less. An optional form of benefit is within the 10 years or less installment family if it provides for substantially level payments to the participant for a fixed period of at least 2 years and not in excess of 10 years with a guarantee that payments will continue to the participant's beneficiary for the remainder of the fixed period if the participant dies before the end of the fixed period.

(vi)Level installment payment options over a period of more than 10 years. An optional form of benefit is within the more than 10 years installment family if it provides for substantially level payments to the participant for a fixed period that is in excess of 10 years with a guarantee that payments will continue to the participant's beneficiary for the remainder of the fixed period if the participant dies before the end of the fixed period.

(5)Special rules for certain features included in optional forms of benefit. For purposes of applying this paragraph (c), to the extent an optional form of benefit that is being eliminated includes either a social security leveling feature or a refund of employee contributions feature, the retained optional form of benefit must also include that feature, and, to the extent that the optional form of benefit that is being eliminated does not include a social security leveling feature or a refund of employee contributions feature, the retained optional form of benefit must not include that feature. For purposes of applying this paragraph (c), to the extent an optional form of benefit that is being eliminated does not include a retroactive annuity starting date feature, the retained optional form of benefit must not include the feature.

(6)Separate application of redundancy rules for bifurcated benefits. If a plan permits the participant to make different distribution elections with respect to two or more separate portions of the participant's benefit, the rules of this paragraph (c) are permitted to be applied separately to each such portion of the participant's benefit as if that portion were the participant's entire benefit. Thus, for example, if one set of distribution elections applies to a portion of the participant's accrued benefit and another set of distribution elections applies to the other portion of the participant's accrued benefit, then with respect to one portion of the participant's benefit, the determination of whether any optional form of benefit is within a family of optional forms of benefit is permitted to be made disregarding elections that apply to the other portion of the participant's benefit. Similarly, if a participant can elect to receive any portion of the accrued

26 CFR 1.411(d)-3

benefit in a single sum and the remainder pursuant to a set of distribution elections, the rules of this paragraph (c) are permitted to be applied separately to the set of distribution elections that apply to the portion of the participant's accrued benefit that is not payable in a single sum (for example, for the portion of a participant's benefit that is not paid in a single sum, the determination of whether any optional form of benefit is within a family of optional forms of benefit is permitted to be made disregarding the fact that the other portion of the participant's benefit is paid in a single sum).

(d) Permissible elimination of noncore optional forms of benefit where core options are offered -- (1) General rule. Except as otherwise provided in paragraph (d)(2) of this section, a plan is permitted to be amended to eliminate an optional form of benefit for a participant with respect to benefits accrued before the applicable amendment date if --

(i) After the amendment becomes applicable, each of the core options described in paragraph (g)(5) of this section is available to the participant with respect to benefits accrued before and after the amendment;

(ii) The plan amendment is not applicable with respect to an optional form of benefit with an annuity commencement date that is earlier than 4 years after the date the amendment is adopted; and

(iii) The requirements of paragraph (e) of this section are satisfied in any case in which either:

(A) One or more of the core options are not available commencing on the same annuity commencement date as the optional form of benefit that is being eliminated; or

(B) As of the date the amendment is adopted, the actuarial present value of the benefit payable under any core option with the same annuity commencement date is less than the actuarial present value of benefits payable under the optional form of benefit that is being eliminated.

(2) Special rules --

(i) Treatment of certain features included in optional forms of benefit. For purposes of applying this paragraph (d), to the extent an optional form of benefit that is being eliminated includes either a social security leveling feature or a refund of employee contributions feature, at least one of the core options must also be available with that feature, and, to the extent that the optional form of benefit that is being eliminated does not include a social security leveling feature or a refund of employee contributions feature, each of the core options must be available without that feature. For purposes of applying this paragraph (d), to the extent an optional form of benefit that is being eliminated does not include a retroactive annuity starting date feature, each of the core options must be available without that feature.

(ii) Eliminating the most valuable option for a participant with a short life expectancy. For purposes of applying this paragraph (d), if the most valuable option for a participant with a short life expectancy (as defined in paragraph (g)(5)(iii) of this section) is eliminated, then, after the plan amendment, an optional form of benefit that is identical, except for differences described in paragraph (c)(3)(ii) of this section, must be available to the participant. However, such a plan amendment cannot eliminate a refund of employee contributions feature from the most valuable option for a participant with a short life expectancy.

(iii) Single-sum distributions. A plan amendment is not treated as satisfying this paragraph (d) if it eliminates an optional form of benefit that includes a single-sum distribution that applies with respect to at least 25% of the participant's accrued benefit as of the date the optional form of benefit is eliminated. But see § 1.411(d)-4, Q&A-2(b)(2)(v), relating to involuntary single-sum distributions for benefits with a present value not in excess of the maximum dollar amount in section 411(a)(11) [\[26 USCS § 411\(a\)\(11\)\]](#).

26 CFR 1.411(d)-3

(iv)Application of multiple amendment rule to core option rule. Notwithstanding paragraph (a)(2)(iii)(B) of this section, if a plan is amended to eliminate an optional form of benefit using the core options rule in this paragraph (d), then the employer must wait 3 years after the first annuity commencement date for which the optional form of benefit is no longer available before making any changes to the core options offered under the plan (other than a change that is not treated as an elimination under paragraph (b)(2)(ii) of this section). Thus, for example, if a plan amendment eliminates an optional form of benefit for a participant using the core options rule under this paragraph (d), with an adoption date of January 1, 2006 and an effective date of January 1, 2010, the plan would not be permitted to be amended to make changes to the core options offered under the plan (and the core options would continue to apply with respect to the participant's accrued benefit) until January 1, 2013.

(v)Special rule for joint and contingent annuity core option. If a plan offers joint and contingent annuities under which a participant is entitled to a life annuity with a survivor annuity for the individual designated by the participant (including a non-spousal contingent annuitant) with continuation percentage options of both 50% and 100% (after adjustments permitted under paragraph (g)(5)(ii) of this section to comply with applicable law), the plan is permitted to treat both of these options as core options for purposes of this paragraph (d), in lieu of a 75% joint and contingent annuity. Thus, such a plan is permitted to use the rules of this paragraph (d) if the plan satisfies all of the requirements of this paragraph (d) (taking into account the modification rule in paragraph (g)(5)(ii) of this section) other than the requirement of offering a 75% joint and contingent annuity as described in paragraph (g)(5)(i)(B) of this section.

(e)Permissible plan amendments under paragraphs (c) and (d) eliminating or reducing section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefits that are burdensome and of de minimis value -- (1) In general. A plan amendment that, pursuant to paragraph (c)(1)(iii) or (d)(1)(iii) of this section, is required to satisfy this paragraph (e) satisfies this paragraph (e) if --

(i)The amendment eliminates section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefits that create significant burdens or complexities for the plan and its participants as described in paragraph (e)(2) of this section; and

(ii)The amendment does not adversely affect the rights of any participant in a more than de minimis manner as described in paragraph (e)(3) of this section.

(2)Plan amendments eliminating section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefits that create significant burdens and complexities -- (i) Facts and circumstances analysis -- (A) In general. The determination of whether a plan amendment eliminates section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefits that create significant burdens or complexities for the plan and its participants is based on facts and circumstances.

(B)Early retirement benefits. In the case of an amendment that eliminates an early retirement benefit, relevant factors include whether the annuity starting dates under the plan considered in the aggregate are burdensome or complex (e.g., the number of categories of early retirement benefits, whether the terms and conditions applicable to the plan's early retirement benefits are difficult to summarize in a manner that is concise and readily understandable to the average plan participant, and whether those different early retirement benefits were added to the plan as a result of a plan merger, transfer, or consolidation), and whether the effect of the plan amendment is to reduce the number of categories of early retirement benefits.

(C)Retirement-type subsidies and actuarial factors. In the case of a plan amendment eliminating a retirement-type subsidy or changing the actuarial factors used to determine optional forms of benefit, relevant factors include whether the actuarial factors used for determining optional forms of benefit available under the plan considered in the aggregate are burdensome or complex (e.g., the number of different retirement-type subsidies and other

26 CFR 1.411(d)-3

actuarial factors available under the plan, whether the terms and conditions applicable to the plan's retirement-type subsidies are difficult to summarize in a manner that is concise and readily understandable to the average plan participant, whether the plan is eliminating one or more generalized optional forms, whether the plan is replacing a complex optional form of benefit that contains a retirement-type subsidy with a simpler form, and whether the different retirement-type subsidies and other actuarial factors were added to the plan as a result of a plan merger, transfer, or consolidation), and whether the effect of the plan amendment is to reduce the number of categories of retirement-type subsidies or other actuarial factors.

(D) Example. The following example illustrates the application of this paragraph (e)(2)(i)

(i) Facts. Plan A is a defined benefit plan under which employees may select a distribution in the form of a straight life annuity, a straight life annuity with cost-of-living increases, a 50% qualified joint and survivor annuity with a pop-up provision, or a 10-year term certain and life annuity. On January 15, 2007, Plan A is amended, effective June 1, 2007, to eliminate the 50% qualified joint and survivor annuity with a pop-up provision as described in paragraph (c)(3)(ii)(B)(1) of this section and replace it with a 50% qualified joint and survivor annuity without the pop-up provision (and using the same actuarial factor).

(ii) Conclusion. Plan A satisfies the requirements of paragraph (e)(2)(i)(B) of this section because, based on the relevant facts and circumstances (e.g., the amendment replaces a complex optional form of benefit with a simpler form), the amendment eliminates section 411(d)(6)(B) [26 USCS § 411(d)(6)(B)] protected benefits that create significant burdens and complexities. Accordingly, the plan amendment is permitted to eliminate the pop-up provision, provided that the plan amendment satisfies all the other applicable requirements in paragraph (c) or (d) of this section. For example, the plan amendment must not eliminate the most valuable option for a participant with a short life expectancy (as defined in paragraph (g)(5)(iii) of this section) and the plan amendment must not adversely affect the rights of any participant in a more than de minimis manner, taking into account the actuarial factors for the joint and survivor annuity with the pop-up provision and the joint and survivor annuity without the pop-up provision, as described in paragraph (e)(3) of this section.

(ii) Presumptions for certain amendments -- (A) Presumption for amendments eliminating certain annuity starting dates. If the annuity starting dates under the plan considered in the aggregate are burdensome or complex, then elimination of any one of the annuity starting dates is presumed to eliminate section 411(d)(6)(B) [26 USCS § 411(d)(6)(B)] protected benefits that create significant burdens or complexities for the plan and its participants. However, if the effect of a plan amendment with respect to a set of optional forms of benefit is merely to substitute one set of annuity starting dates for another set of annuity starting dates, without any reduction in the number of different annuity starting dates, then the plan amendment does not satisfy the requirements of this paragraph (e)(2).

(B) Presumption for amendments changing certain actuarial factors. If the actuarial factors used for determining benefit distributions available under a generalized optional form considered in the aggregate are burdensome or complex, then replacing some of the actuarial factors for the generalized optional form is presumed to eliminate section 411(d)(6)(B) [26 USCS § 411(d)(6)(B)] protected benefits that create significant burdens or complexities for the plan and its participants. However, if the effect is merely to substitute one set of actuarial factors for another set of actuarial factors, without any reduction in the number of different actuarial factors or the complexity of those factors, then the plan amendment does not satisfy the requirements of this paragraph (e)(2) unless the change of actuarial factors is merely to replace one or more of the plan's actuarial factors for determining optional forms of benefit with new actuarial factors that are

26 CFR 1.411(d)-3

more accurate (e.g., reflecting more recent mortality experience or more recent market rates of interest).

(iii)Restrictions against creating burdens or complexities. See paragraphs (a)(2)(iii) and (b)(1)(iii) of this section for general rules applicable to multiple amendments. In accordance with these rules, a plan amendment does not eliminate a section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefit that creates burdens and complexities for a plan and its participants if, less than 3 years earlier, a plan was previously amended to add another retirement-type subsidy in order to facilitate the elimination of the original retirement-type subsidy, even if the elimination of the other subsidy would not adversely affect the rights of any plan participant in a more than de minimis manner as provided in paragraph (e)(3) of this section.

(3)Elimination of early retirement benefits or retirement-type subsidies that are de minimis -- (i) Rules for retained optional forms of benefit under paragraph (c) of this section. For purposes of paragraph (c) of this section, the elimination of an optional form of benefit does not adversely affect the rights of any participant in a more than de minimis manner if --

(A)The retained optional form of benefit described in paragraph (c) of this section has substantially the same annuity commencement date as the optional form of benefit that is being eliminated, as described in paragraph (e)(4) of this section; and

(B)Either the actuarial present value of the benefit payable in the optional form of benefit that is being eliminated does not exceed the actuarial present value of the benefit payable in the retained optional form of benefit by more than a de minimis amount, as described in paragraph (e)(5) of this section, or the amendment satisfies the requirements of paragraph (e)(6) of this section relating to a delayed effective date.

(ii)Rules for core options under paragraph (d) of this section. For purposes of paragraph (d) of this section, the elimination of an optional form of benefit does not adversely affect the rights of any participant in a more than de minimis manner if, with respect to each of the core options --

(A)The core option is available after the amendment with substantially the same annuity commencement date as the optional form of benefit that is being eliminated, as described in paragraph (e)(4) of this section; and

(B)Either the actuarial present value of the benefit payable in the optional form of benefit that is being eliminated does not exceed the actuarial present value of the benefit payable under the core option by more than a de minimis amount, as described in paragraph (e)(5) of this section, or the amendment satisfies the requirements of paragraph (e)(6) of this section.

(4)Definition of substantially the same annuity starting dates. For purposes of applying paragraphs (e)(3)(i)(A) and (ii)(A) of this section, annuity starting dates are considered substantially the same if they are within 6 months of each other.

(5)Definition of de minimis difference in actuarial present value. For purposes of applying paragraph (e)(3)(i)(B) and (ii)(B) of this section, a difference in actuarial present value between the optional form of benefit being eliminated and the retained optional form of benefit or core option is not more than a de minimis amount if, as of the date the amendment is adopted, the difference between the actuarial present value of the eliminated optional form of benefit and the actuarial present value of the retained optional form of benefit or core option is not more than the greater of -

(i)2% of the present value of the retirement-type subsidy (if any) under the eliminated optional form of benefit prior to the amendment; or

26 CFR 1.411(d)-3

(ii) 1% of the greater of the participant's compensation (as defined in section 415(c)(3) [26 USCS § 415(c)(3)]) for the prior plan year or the participant's average compensation for his or her high 3 years (within the meaning of section 415(b)(1)(B) and (b)(3) [26 USCS § 415(b)(1)(B) and (b)(3)]).

(6) Delayed effective date --

(i) General rule. For purposes of applying paragraph (e)(3)(i)(B) and (ii)(B) of this section, an amendment that eliminates an optional form of benefit satisfies the requirements of this paragraph (e)(6) if the elimination of the optional form of benefit is not applicable to any annuity commencement date before the end of the expected transition period for that optional form of benefit.

(ii) Determination of expected transition period -- (A) General rule. The expected transition period for a plan amendment eliminating an optional form of benefit is the period that begins when the amendment is adopted and ends when it is reasonable to expect, with respect to a section 411(d)(6)(B) [26 USCS § 411(d)(6)(B)] protected benefit (i.e., not taking into account benefits that accrue in the future), that the form being eliminated would be subsumed by another optional form of benefit after taking into account expected future benefit accruals.

(B) Determination of expected transition period using conservative actuarial assumptions. The expected transition period for a plan amendment eliminating an optional form of benefit must be determined in accordance with actuarial assumptions that are reasonable at the time of the amendment and that are conservative (i.e., reasonable actuarial assumptions that are likely to result in the longest period of time until the eliminated optional form of benefit would be subsumed). For this purpose, actuarial assumptions are not treated as conservative unless they include assumptions that a participant's compensation will not increase and that future benefit accruals will not exceed accruals in recent periods.

(C) Effect of subsequent amendments reducing future benefit accruals on the expected transition period. If, during the expected transition period for a plan amendment eliminating an optional form of benefit, the plan is subsequently amended to reduce the rate of future benefit accrual (or otherwise to lengthen the expected transition period), thus that subsequent plan amendment must provide that the elimination of the optional form of benefit is void or must provide for the effective date for elimination of the optional form of benefit to be further extended to a new expected transition period that satisfies this paragraph (e)(6) taking into account the subsequent amendment.

(iii) Applicability of the delayed effective date rule limited to employees who continue to accrue benefits through the end of expected transition period. An amendment eliminating an optional form of benefit under this paragraph (e)(6) must be limited to participants who continue to accrue benefits under the plan through the end of the expected transition period. Thus, for example, the plan amendment may not apply to any participant who has a severance from employment during the expected transition period.

(iv) Special rule for section 204(h) notice. See § 54.4980F-1(b), Q&A-8(c) of this chapter for a special rule relating to this paragraph (e)(6).

(f) Utilization test -- (1) General rule. A plan is permitted to be amended to eliminate all of the optional forms of benefit that comprise a generalized optional form (as defined in paragraph (g)(8) of this section) for a participant with respect to benefits accrued before the applicable amendment date if --

(i) None of the optional forms of benefit being eliminated is a core option, within the meaning of paragraph (g)(5) of this section;

(ii) The plan amendment is not applicable with respect to an optional form of benefit with an annuity commencement date that is earlier than the number of days in the maximum Qualified Joint and

26 CFR 1.411(d)-3

Survivor Annuity explanation period (as defined in paragraph (g)(9) of this section) after the date the amendment is adopted;

(iii) During the look-back period --

(A) The generalized optional form has been available to at least the applicable number of participants who are taken into account under paragraph (f)(3) and (4) of this section; and

(B) No participant has elected any optional form of benefit that is part of the generalized optional form with an annuity commencement date that is within the look-back period.

(2) Look-back period -- (i) In general. For purposes of this paragraph (f), the look-back period is the period that includes --

(A) The portion of the plan year in which such plan amendment is adopted that precedes the date of adoption (the pre-adoption period); and

(B) The 2 plan years immediately preceding the pre-adoption period.

(ii) Special look-back period rules -- (A) 12-month plan year. In the look-back period, at least 1 of the plan years must be a 12-month plan year.

(B) Permitted 3-month exclusion in the pre-adoption period. A plan is permitted to exclude from the look-back period the calendar month in which the amendment is adopted and the preceding 1 or 2 calendar months to the extent those preceding months are contained within the pre-adoption period.

(C) Permission to extend the look-back period. In order to have a look-back period that satisfies the minimum applicable number of participants requirement in paragraph (f)(1)(iii)(A) of this section, the look-back period described in paragraph (f)(2)(i)(B) of this section is permitted to be expanded, so as to include the 3, 4, or 5 plan years immediately preceding the plan year in which the amendment is adopted. Thus, in determining the look-back period, a plan is permitted to substitute the 3, 4, or 5 plan years immediately preceding the pre-adoption period for the 2 plan years described in paragraph (f)(2)(i)(B) of this section. However, if a plan does not satisfy the minimum applicable number of participants requirement of paragraph (f)(1)(iii)(A) of this section using the pre-adoption period and the immediately preceding 5 plan years, the plan is not permitted to be amended in accordance with the utilization test in this paragraph (f).

(3) Participants taken into account. A participant is taken into account for purposes of this paragraph (f) only if the participant was eligible to elect to commence payment of an optional form of benefit that is part of the generalized optional form being eliminated with an annuity commencement date that is within the look-back period. However, a participant is not taken into account if the participant --

(i) Did not elect any optional form of benefit with an annuity commencement date that was within the look-back period;

(ii) Elected an optional form of benefit that included a single-sum distribution that applied with respect to at least 25% of the participant's accrued benefit;

(iii) Elected an optional form of benefit that was only available during a limited period of time and that contained a retirement-type subsidy where the subsidy that is part of the generalized optional form being eliminated was not extended to any optional form of benefit with the same annuity commencement date; or

(iv) Elected an optional form of benefit with an annuity commencement date that was more than 10 years before normal retirement age.

(4) Determining the applicable number of participants. For purposes of applying the rules in this paragraph (f), the applicable number of participants is 50 participants. However,

26 CFR 1.411(d)-3

notwithstanding paragraph (f)(3)(ii) of this section, a plan is permitted to take into account any participant who elected an optional form of benefit that included a single-sum distribution that applied with respect to at least 25% of the participant's accrued benefit, but only if the applicable number of participants is increased to 1,000 participants.

(5)Default elections. For purposes of this paragraph (f), an election includes the payment of an optional form of benefit that applies in the absence of an affirmative election.

(g)Definitions and use of terms. The definitions in this paragraph (g) apply for purposes of this section.

(1)Actuarial present value. The term actuarial present value means actuarial present value (within the meaning of § 1.401(a)(4)-12) determined using reasonable actuarial assumptions.

(2)Ancillary benefit. The term ancillary benefit means --

(i)A social security supplement under a defined benefit plan (other than a QSUPP as defined in § 1.401(a)(4)-12);

(ii)A benefit payable under a defined benefit plan in the event of disability (to the extent that the benefit exceeds the benefit otherwise payable), but only if the total benefit payable in the event of disability does not exceed the maximum qualified disability benefit, as defined in section 411(a)(9) [\[26 USCS § 411\(a\)\(9\)\]](#);

(iii)A life insurance benefit;

(iv)A medical benefit described in section 401(h) [\[26 USCS § 401\(h\)\]](#);

(v)A death benefit under a defined benefit plan other than a death benefit which is a part of an optional form of benefit; or

(vi)A plant shutdown benefit or other similar benefit in a defined benefit plan that does not continue past retirement age and does not affect the payment of the accrued benefit, but only to the extent that such plant shutdown benefit, or other similar benefit (if any), is permitted in a qualified pension plan (see § 1.401-1(b)(1)(i)).

(3)Annuity commencement date. The term annuity commencement date generally means the annuity starting date, except that, in the case of a retroactive annuity starting date under section 417(a)(7) [\[26 USCS § 417\(a\)\(7\)\]](#), annuity commencement date means the date of the first payment of benefits pursuant to a participant election of a retroactive annuity starting date, as defined in § 1.417(e)-1(b)(3)(iv).

(4)Applicable amendment date. The term applicable amendment date, with respect to a plan amendment, means the later of the effective date of the amendment or the date the amendment is adopted.

(5)Core options -- (i) General rule. With respect to a plan, the term core options means --

(A)A straight life annuity generalized optional form under which the participant is entitled to a level life annuity with no benefit payable after the participant's death;

(B)A 75% joint and contingent annuity generalized optional form under which the participant is entitled to a life annuity with a survivor annuity for any individual designated by the participant (including a non-spousal contingent annuitant) that is 75% of the amount payable during the participant's life (but see paragraph (d)(2)(v) of this section for a special rule relating to the joint and contingent annuity core option);

(C)A 10-year term certain and life annuity generalized optional form under which the participant is entitled to a life annuity with a guarantee that payments will continue to any person designated by the participant for the remainder of a fixed period of 10 years if the participant dies before the end of the 10-year period; and

26 CFR 1.411(d)-3

(D)The most valuable option for a participant with a short life expectancy (as defined in paragraph (g)(5)(iii) of this section).

(ii)Modification of core options to satisfy other requirements. An annuity does not fail to be a core option (e.g., a joint and contingent annuity described in paragraph (g)(5)(i)(B) of this section or a 10-year term certain and life annuity described in paragraph (g)(5)(i)(C) of this section) as a result of differences to comply with applicable law, such as limitations on death benefits to comply with the incidental benefit requirement of § 1.401-1(b)(1)(i) or on account of the spousal consent rules of section 417 [\[26 USCS § 417\]](#).

(iii)Most valuable option for a participant with a short life expectancy -- (A) General definition. Except as provided in paragraph (g)(5)(iii)(B) of this section, most valuable option for a participant with a short life expectancy means, for an annuity starting date, the optional form of benefit that is reasonably expected to result in payments that have the largest actuarial present value in the case of a participant who dies shortly after the annuity starting date, taking into account both payments due to the participant prior to the participant's death and any payments due after the participant's death. For this purpose, a plan is permitted to assume that the spouse of the participant is the same age as the participant. In addition, a plan is permitted to assume that the optional form of benefit that is the most valuable option for a participant with a short life expectancy when the participant is age $70\frac{1}{2}$ also is the most valuable option for a participant with a short life expectancy at all older ages, and that the most valuable option for a participant with a short life expectancy at age 55 is the most valuable option for a participant with a short life expectancy at all younger ages.

(B) Safe harbor hierarchy --

(1)A plan is permitted to treat a single-sum distribution option with an actuarial present value that is not less than the actuarial present value of any optional form of benefit eliminated by the plan amendment as the most valuable option for a participant with a short life expectancy for all of a participant's annuity starting dates if such single-sum distribution option is available at all such dates, without regard to whether the option was available before the plan amendment.

(2)If the plan before the amendment does not offer a single-sum distribution option as described in paragraph (g)(5)(iii)(B)(1) of this section, a plan is permitted to treat a joint and contingent annuity with a continuation percentage that is at least 75% and that is at least as great as the highest continuation percentage available before the amendment as the most valuable option for a participant with a short life expectancy for all of a participant's annuity starting dates if such joint and contingent annuity is available at all such dates, without regard to whether the option was available before the plan amendment.

(3)If the plan before the amendment offers neither a single-sum distribution option as described in paragraph (g)(5)(iii)(B)(1) of this section nor a joint and contingent annuity with a continuation percentage as described in paragraph (g)(5)(iii)(B)(2) of this section, a plan is permitted to treat a term certain and life annuity with a term certain period no less than 15 years as the most valuable option for a participant with a short life expectancy for each annuity starting date if such 15-year term certain and life annuity is available at all annuity starting dates, without regard to whether the option was available before the plan amendment.

(6)Definitions of types of section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefits -- (i) Early retirement benefit. The term early retirement benefit means the right, under the terms of a plan, to commence distribution of a retirement-type benefit at a particular date after severance from employment with the employer and before normal retirement age. Different early retirement benefits result from differences in terms relating to timing.

26 CFR 1.411(d)-3

(ii) Optional form of benefit -- (A) In general. The term optional form of benefit means a distribution alternative (including the normal form of benefit) that is available under the plan with respect to an accrued benefit or a distribution alternative with respect to a retirement-type benefit. Different optional forms of benefit exist if a distribution alternative is not payable on substantially the same terms as another distribution alternative. The relevant terms include all terms affecting the value of the optional form, such as the method of benefit calculation and the actuarial factors or assumptions used to determine the amount distributed. Thus, for example, different optional forms of benefit may result from differences in terms relating to the payment schedule, timing, commencement, medium of distribution (e.g., in cash or in kind), election rights, differences in eligibility requirements, or the portion of the benefit to which the distribution alternative applies. Likewise, differences in the normal retirement ages of employees or in the form in which the accrued benefit of employees is payable at normal retirement age under a plan are taken into account in determining whether a distribution alternative constitutes one or more optional forms of benefit.

(B) Death benefits. If a death benefit is payable after the annuity starting date for a specific optional form of benefit and the same death benefit would not be provided if another optional form of benefit were elected by a participant, then that death benefit is part of the specific optional form of benefit and is thus protected under section 411(d)(6) [26 USCS § 411(d)(6)]. A death benefit is not treated as part of a specific optional form of benefit merely because the same benefit is not provided to a participant who has received his or her entire accrued benefit prior to death. For example, a \$ 5,000 death benefit that is payable to all participants except any participant who has received his or her accrued benefit in a single-sum distribution is not part of a specific optional form of benefit.

(iii) Retirement-type benefit. The term retirement-type benefit means --

(A) The payment of a distribution alternative with respect to an accrued benefit; or

(B) The payment of any other benefit under a defined benefit plan (including a QSUPP as defined in § 1.401(a)(4)-12) that is permitted to be in a qualified pension plan, continues after retirement, and is not an ancillary benefit.

(iv) Retirement-type subsidy. The term retirement-type subsidy means the excess, if any, of the actuarial present value of a retirement-type benefit over the actuarial present value of the accrued benefit commencing at normal retirement age or at actual commencement date, if later, with both such actuarial present values determined as of the date the retirement-type benefit commences. Examples of retirement-type subsidies include a subsidized early retirement benefit and a subsidized qualified joint and survivor annuity.

(v) Subsidized early retirement benefit or early retirement subsidy. The terms subsidized early retirement benefit or early retirement subsidy mean the right, under the terms of a plan, to commence distribution of a retirement-type benefit at a particular date after severance from employment with the employer and before normal retirement age where the actuarial present value of the optional forms of benefit available to the participant under the plan at that annuity starting date exceeds the actuarial present value of the accrued benefit commencing at normal retirement age (with such actuarial present values determined as of the annuity starting date). Thus, an early retirement subsidy is an early retirement benefit that provides a retirement-type subsidy.

(7) Eliminate; elimination; reduce; reduction. The terms eliminate or elimination when used in connection with a section 411(d)(6)(B) [26 USCS § 411(d)(6)(B)] protected benefit mean to eliminate or the elimination of an optional form of benefit or an early retirement benefit and to reduce or a reduction in a retirement-type subsidy. The terms reduce or reduction when used in connection with a retirement-type subsidy mean to reduce or a reduction in the amount of the subsidy. For purposes of this section, an elimination includes a reduction and a reduction includes an elimination.

26 CFR 1.411(d)-3

- (8)**Generalized optional form. The term generalized optional form means a group of optional forms of benefit that are identical except for differences due to the actuarial factors that are used to determine the amount of the distributions under those optional forms of benefit and the annuity starting dates.
- (9)**Maximum QJSA explanation period. The term maximum QJSA explanation period means the maximum number of days before an annuity starting date for a qualified joint and survivor annuity for which a written explanation relating to the qualified joint and survivor annuity would satisfy the timing requirements of section 417(a)(3) [\[26 USCS § 417\(a\)\(3\)\]](#) and § 1.417(e)-1(b)(3)(ii).
- (10)**Other right and feature. The term other right or feature has the meaning set forth at § 1.401(a)(4)-4(e)(3)(ii).
- (11)**Refund of employee contributions feature. The term refund of employee contributions features means a feature with respect to an optional form of benefit that provides for employee contributions and interest thereon to be paid in a single sum at the annuity starting date with the remainder to be paid in another form beginning on that date.
- (12)**Retirement; retirement age. For purposes of this section, the date of retirement means the annuity starting date. Thus, retirement age means a participant's age at the annuity starting date.
- (13)**Retroactive annuity starting date feature. The term retroactive annuity starting date feature means a feature with respect to an optional form of benefit under which the annuity starting date for the distribution occurs on or before the date the written explanation required by section 417(a)(3) [\[26 USCS § 417\(a\)\(3\)\]](#) is provided to the participant.
- (14)**Section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#) protected benefit. The term section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#) protected benefit means the accrued benefit of a participant as of the applicable amendment date described in section 411(d)(6)(A) [\[26 USCS § 411\(d\)\(6\)\(A\)\]](#) and any section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefit.
- (15)**Section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefit. The term section 411(d)(6)(B) [\[26 USCS § 411\(d\)\(6\)\(B\)\]](#) protected benefit means the portion of an early retirement benefit, a retirement-type subsidy, or an optional form of benefit attributable to benefits accrued before the applicable amendment date.
- (16)**Social security leveling feature. The term social security leveling feature means a feature with respect to an optional form of benefit commencing prior to a participant's expected commencement of social security benefits that provides for a temporary period of higher payments which is designed to result in an approximately level amount of income when the participant's estimated old age benefits from Social Security are taken into account.
- (h)**Examples. The following examples illustrate the application of paragraphs (c) through (g) of this section:
- Example 1. (i) Facts involving elimination of optional forms of benefit as redundant. Plan C is a defined benefit plan under which employees may elect to commence distributions at any time after the later of termination of employment or attainment of age 55. At each potential annuity commencement date, Plan C permits employees to select, with spousal consent where required, a straight life annuity or any of a number of actuarially equivalent alternative forms of payment, including a straight life annuity with cost-of-living increases and a joint and contingent annuity with the participant having the right to select any beneficiary and any continuation percentage from 1% to 100%, subject to modification to the extent necessary to satisfy the requirements of the incidental benefit requirement of § 1.401-1(b)(1)(i). The amount of any alternative payment is determined as the actuarial equivalent of the straight life annuity payable at the same age using reasonable actuarial assumptions. On June 2, 2006, Plan C is amended to delete all continuation percentages for joint and contingent options other than 25%, 50%, 75%, or 100%, effective with respect to annuity commencement dates that are on or after January 1, 2007.
- (ii)Conclusion -- (A) Categorization of family members under the redundancy rule. The optional forms of benefit described in paragraph (i) of this Example 1 are members of 4 families: a straight life annuity; a straight life annuity with cost-of-living increases; joint and contingent options with continuation

26 CFR 1.411(d)-3

percentages of less than 50%; and joint and contingent options with continuation percentages of 50% or more. The amendment does not affect either of the first 2 families, but affects the 2 families relating to joint and contingent options.

(B)Conclusion for elimination of optional forms of benefit as redundant. The amendment satisfies the requirements of paragraph (c) of this section. First, the eliminated optional forms of benefit are redundant with respect to the retained optional forms of benefit because each eliminated joint and contingent annuity option with a continuation percentage of less than 50% is redundant with respect to the 25% continuation option and each eliminated joint and contingent annuity option with a continuation percentage of 50% or higher is redundant with respect to any one of the retained 50%, 75%, or 100% continuation options. In addition, to the extent that the optional form of benefit that is being eliminated does not include a social security leveling feature, return of employee contribution feature, or retroactive annuity starting date feature, the retained optional form of benefit does not include that feature. Second, the amendment is not effective with respect to annuity commencement dates before September 1, 2006, as required under paragraph (c)(1)(ii) of this section. Third, the plan amendment does not eliminate any available core option, including the most valuable option for a participant with a short life expectancy, treating a joint and contingent annuity with a 100% continuation percentage as this optional form of benefit pursuant to paragraph (g)(5)(iii)(B)(2) of this section. Finally, the amendment need not satisfy the requirements of paragraph (e) of this section because the retained optional forms of benefit are available on the same annuity commencement dates and have the same actuarial present value as the optional forms of benefit that are being eliminated.

Example 2. (i) Facts involving elimination of optional forms of benefit as redundant if additional restrictions are imposed. The facts are the same as Example 1, except that the plan amendment also restricts the class of beneficiaries that may be elected under the 4 retained joint and contingent annuities to the employee's spouse.

(ii)Conclusion. The amendment fails to satisfy the requirements of paragraph (c)(2)(i)(B) of this section because the retained joint and contingent annuities have materially greater restrictions on the beneficiary designation than did the eliminated joint and contingent annuities. Thus, the joint and contingent annuities being eliminated are not redundant with respect to the retained joint and contingent annuities. In addition, the amendment fails to satisfy the requirements of the core option rules in paragraph (d) of this section because the amendment fails to be limited to annuity commencement dates that are at least 4 years after the date the amendment is adopted, the amendment fails to include the core option in paragraph (g)(5)(i)(B) of this section because the participant does not have the right to designate any beneficiary, and the amendment fails to include the core option described in paragraph (g)(5)(i)(C) of this section because the plan does not provide a 10-year term certain and life annuity.

Example 3. (i) Facts involving elimination of a social security leveling feature and a period certain annuity as redundant. Plan D is a defined benefit plan under which participants may elect to commence distributions in the following actuarially equivalent forms, with spousal consent if applicable: a straight life annuity; a 50%, 75%, or 100% joint and contingent annuity; a 5-year, 10-year, or a 15-year term certain and life annuity; and an installment refund annuity (i.e., an optional form of benefit that provides a period certain, the duration of which is based on the participant's age), with the participant having the right to select any beneficiary. In addition, each annuity offered under the plan, if payable to a participant who is less than age 65, is available both with and without a social security leveling feature. The social security leveling feature provides for an assumed commencement of social security benefits at any age selected by the participant between age 62 and 65. Plan D is amended on June 2, 2006, effective as of January 1, 2007, to eliminate the installment refund form of benefit and to restrict the social security leveling feature to an assumed social security commencement age of 65.

(ii)Conclusion. The amendment satisfies the requirements of paragraph (c) of this section. First, the installment refund annuity option is redundant with respect to the 15-year certain

26 CFR 1.411(d)-3

and life annuity (except for advanced ages where, because of shorter life expectancies, the installment refund annuity option is redundant with respect to the 5-year certain and life annuity and also redundant with respect to the 10-year certain and life annuity). Second, with respect to restricting the social security leveling feature to an assumed social security commencement age of 65, under paragraph (c)(3)(ii)(C) of this section, straight life annuities with social security leveling features that have different social security commencement ages are treated as members of the same family as straight life annuities without social security leveling features. To the extent an optional form of benefit that is being eliminated includes a social security leveling feature, the retained optional form of benefit must also include that feature, but it is permitted to have a different assumed age for commencement of social security benefits. Third, to the extent that the optional form of benefit that is being eliminated does not include a social security leveling feature, a return of employee contribution feature, or retroactive annuity starting date feature, the retained optional form of benefit must not include that feature. Fourth, the plan amendment does not eliminate any available core option, including the most valuable option for a participant with a short life expectancy, treating a joint and contingent annuity with a 100% continuation percentage as this optional form of benefit pursuant to paragraph (g)(5)(iii)(B)(2) of this section. Fifth, the amendment is not effective with respect to annuity commencement dates before September 1, 2006, as required under paragraph (c)(1)(ii) of this section. The amendment need not satisfy the requirements of paragraph (e) of this section because the retained optional forms of benefit are available on the same annuity commencement dates and have the same actuarial present value as the optional forms of benefit that are being eliminated.

Example 4. (i) Facts involving elimination of noncore options. Employer N sponsors Plan E, a defined benefit plan that permits every participant to elect payment in the following actuarially equivalent optional forms of benefit (Plan E's uniformly available options), with spousal consent if applicable: a straight life annuity; a 50%, 75%, or 100% joint and contingent annuity with no restrictions on designation of beneficiaries; and a 5-, 10-, or 15-year term certain and life annuity. In addition, each can be elected in conjunction with a social security leveling feature, with the participant permitted to select a social security commencement age from age 62 to age 67. None of Plan E's uniformly available options include a single-sum distribution. The plan has been in existence for over 30 years, during which time Employer N has acquired a large number of other businesses, including merging over 20 defined benefit plans of acquired entities into Plan E. Many of the merged plans offered optional forms of benefit that were not among Plan E's uniformly available options, including some plans funded through insurance products, often offering all of the insurance annuities that the insurance carrier offers, and with some of the merged plans offering single-sum distributions. In particular, under the XYZ acquisition that occurred in 1990, the XYZ acquired plan offered a single-sum distribution option that was frozen at the time of the acquisition. On April 1, 2006, each single-sum distribution option applies to less than 25% of the XYZ participants' accrued benefits. Employer N has generally, but not uniformly, followed the practice of limiting the optional forms of benefit for an acquired unit to an employee's service before the date of the merger, and has uniformly followed this practice with respect to each of the early retirement subsidies in the acquired unit's plan. As a result, as of April 1, 2007, Plan E includes a large number of generalized optional forms which are not members of families of optional forms of benefit identified in paragraph (c)(4) of this section, but there are no participants who are entitled to any early retirement subsidies because any subsidies have been subsumed by the actuarially reduced accrued benefit. Plan E is amended in April of 2007 to eliminate all of the optional forms of benefit that Plan E offers other than Plan E's uniformly available options, except that the amendment does not eliminate any single-sum distribution option except with respect to XYZ participants and permits any commencement date that was permitted under Plan E before the amendment. Plan E also eliminates the single-sum distribution option for XYZ

26 CFR 1.411(d)-3

participants. Further, each of Plan E's uniformly available options has an actuarial present value that is not less than the actuarial present value of any optional form of benefit offered before the amendment. The amendment is effective with respect to annuity commencement dates that are on or after May 1, 2011.

(ii) Conclusion. The amendment satisfies the requirements of paragraph (d) of this section. First, Plan E, as amended, does not eliminate any single-sum distribution option as provided in paragraph (d)(2)(iii) of this section except for single-sum distribution options that apply to less than 25% of a plan participant's accrued benefit as of the date the option is eliminated (May 1, 2011). Second, Plan E, as amended, includes each of the core options as defined in paragraph (g)(5) of this section, including offering the most valuable option for a participant with a short life expectancy (treating the 100% joint and contingent annuity as this benefit, under paragraph (g)(5)(iii)(B)(2) of this section). The 100% joint and contingent annuity option (and not the grandfathered single-sum distribution option) is the most valuable option for a participant with a short life expectancy because the grandfathered single-sum distribution option is not available with respect to a participant's entire accrued benefit. In addition, as required under paragraph (d)(2) of this section, to the extent an optional form of benefit that is being eliminated includes either a social security leveling feature or a refund of employee contributions feature, at least one of the core options is available with that feature and, to the extent that the optional form of benefit that is being eliminated does not include a social security leveling feature or a refund of employee contributions feature, each of the core options is available without that feature. Third, the amendment is not effective with respect to annuity commencement dates that are less than 4 years after the date the amendment is adopted. Finally, the amendment need not satisfy the requirements of paragraph (e) of this section because the retained optional forms of benefit are available on the same annuity commencement date and have the same actuarial present value as the optional forms of benefit that are being eliminated. The conclusion that the amendment satisfies the requirements of paragraph (d) of this section assumes that no amendments are made to change the core options before May 1, 2014.

Example 5. (i) Facts involving reductions in actuarial present value. (A) Plan F is a defined benefit plan providing an accrued benefit of 1% of the average of a participant's highest 3 consecutive years' pay times years of service, payable as a straight life annuity beginning at the normal retirement age at age 65. Plan F permits employees to elect to commence actuarially reduced distributions at any time after the later of termination of employment or attainment of age 55. At each potential annuity commencement date, Plan F permits employees to select, with spousal consent, either a straight life annuity, a joint and contingent annuity with the participant having the right to select any beneficiary and a continuation percentage of 50%, 66 2/3%, 75%, or 100%, or a 10-year certain and life annuity with the participant having the right to select any beneficiary, subject to modification to the extent necessary to satisfy the requirements of the incidental benefit requirement of § 1.401-1(b)(1)(i). The amount of any joint and contingent annuity and the 10-year certain and life annuity is determined as the actuarial equivalent of the straight life annuity payable at the same age using reasonable actuarial assumptions. The plan covers employees at 4 divisions, one of which, Division X, was acquired on January 1, 1999. The plan provides for distributions before normal retirement age to be actuarially reduced, but, if a participant retires after attainment of age 55 and completion of 10 years of service, the applicable early retirement reduction factor is 3% per year for the years between age 65 and 62 and 6% per year for the ages from 62 to 55 for all employees at any division, except for employees who were in Division X on January 1, 1999, for whom the early retirement reduction factor for retirement after age 55 and 10 years of service is 5% for each year

26 CFR 1.411(d)-3

before age 65. On June 2, 2006, effective January 1, 2007, Plan F is amended to change the early retirement reduction factors for all employees of Division X to be the same as for other employees, effective with respect to annuity commencement dates that are on or after January 1, 2008, but only with respect to participants who are employees on or after January 1, 2008 and only if Plan F continues accruals at the current rate through January 1, 2008 (or the effective date of the change in reduction factors is delayed to reflect the change in the accrual rate). For purposes of this Example 5, it is assumed that an actuarially equivalent early retirement factor would have a reduction shown in column 4 of the following table, which compares the reduction factors for Division X before and after the amendment:

Age	Old division X factor (as a %)	New factor (as a %)	Actuarially equivalent factor (as a %)	Column 3 minus column 2
1	2	3	4	5
65	NA	NA	NA	NA
64	95	97	91.1	+2
63	90	94	83.2	+4
62	85	91	76.1	+5
61	80	85	69.8	+5
60	75	79	64.1	+4
59	70	73	59.0	+3
58	65	67	54.3	+2
57	60	61	50.1	+1
56	55	55	46.3	0
55	50	49	42.8	-1

(B) On January 1, 2007, the employee with the largest number of years of service is Employee E, who is age 54 and has 20 years of service. For 2006, Employee E's compensation is \$ 80,000 and E's highest 3 consecutive years of pay on January 1, 2007 is \$ 75,000. Employee E's accrued benefit as of the January 1, 2007 effective date of the amendment is a life annuity of \$ 15,000 per year at normal retirement age (1% times \$ 75,000 times 20 years of service) and E's early retirement benefit commencing at age 55 has a present value of \$ 91,397 as of January 1, 2007. It is assumed for purposes of this example that the longest expected transition period for any active employee does not exceed 5 months (20 years and 5 months, times 1% times 49% exceeds 20 years times 1% times 50%). Finally, it is assumed for purposes of this example that the amendment reduces optional forms of benefit which are burdensome or complex.

(ii) Conclusion concerning application of section 411(d)(6)(B) [26 USCS § 411(d)(6)(B)]. The amendment reducing the early retirement factors has the effect of eliminating the existing optional forms of benefit (where the amount of the benefit is based on preamendment early retirement factors in any case where the new factors result in a smaller amount payable) and adding new optional forms of benefit (where the amount of benefit is based on the different early retirement factors). Accordingly, the elimination must satisfy the requirements of

26 CFR 1.411(d)-3

paragraph (c) or (d) of this section if the amount payable at any date is less than would have been payable under the plan before the amendment.

(iii) Conclusion concerning application of redundancy rules. The amendment satisfies the requirements of paragraph (c)(1)(i) and (ii) of this section (see paragraphs (iv) through (vi) of this Example 5 below for the requirements of paragraph (c)(1)(iii) of this section). First, with respect to each eliminated optional form of benefit (i.e., with respect to each optional form of benefit with the Old Division X Factor), after the amendment there is a retained optional form of benefit that is in the same family of optional forms of benefit (i.e., the optional form of benefit with the New Factor). Second, the amendment is not effective with respect to annuity commencement dates that are less than the time period required under paragraph (c)(1)(ii) of this section. Third, to the extent that the plan amendment eliminates the most valuable option for a participant with a short life expectancy, the retained optional form of benefit is identical except for differences in actuarial factors.

(iv) Conclusion concerning application of the requirements under paragraph (e) of this section. The plan amendment must satisfy the requirements of paragraph (e) of this section because, as of the December 2, 2006 adoption date, the actuarial present value of the early retirement subsidy is less than the actuarial present value of the early retirement subsidy being eliminated. The plan amendment satisfies the requirements under paragraph (e)(1)(i) and (2) of this section because the amendment eliminates optional forms of benefit that create significant burdens or complexities for the plan and its participants. See below for the de minimis requirement under paragraph (e)(1)(ii) and (3) of this section.

(v) Conclusion concerning application of de minimis rules under paragraph (e)(5) of this section. In order to satisfy the requirements under paragraph (e)(1)(ii) and (3) of this section, the amendment must satisfy the requirements of either paragraph (e)(5) or paragraph (e)(6) of this section. The amendment does not satisfy the requirements of paragraph (e)(5) of this section because the reduction in the actuarial present value is more than a de minimis amount under paragraph (e)(5) of this section. For example, for Employee E, the amount of the joint and contingent annuity payable at age 55 is reduced from \$ 7,500 (50% of \$ 15,000) to \$ 7,350 (49% of \$ 15,000) and the reduction in present value as a result of the amendment is \$ 1,828 (\$ 91,397 -- \$ 89,569). In this case, the retirement-type subsidy at age 55 is the excess of the present value of the 50% early retirement benefit over the present value of the deferred payment of the accrued benefit, or \$ 13,921 (\$ 97,269 -- \$ 83,348) and the present value at age 54 of the retirement-type subsidy is \$ 13,081. The reduction in present value is more than the greater of 2% of the present value of the retirement-type subsidy and 1% of E's compensation because the reduction in present value exceeds \$ 800 (the greater of \$ 262, which is 2% of the present value of the retirement-type subsidy for the benefit being eliminated, and \$ 800, which is 1% of E's compensation of \$ 80,000).

(vi) Conclusion involving application of de minimis rules under paragraph (e)(6) of this section relating to expected transition period. The amendment satisfies the requirements of paragraph (e)(6) of this section and, thus, satisfies the requirements of paragraph (c) of this section, including the requirement in paragraph (c)(1)(iii) of this section that paragraph (e) of this section be satisfied. First, as assumed under the facts above, the amendment reduces optional forms of benefit that are burdensome or complex. Second, the plan amendment is not effective for annuity commencement dates before January 1, 2008, and that date is not earlier than the longest expected transition period for any participant in Plan F on the date of the amendment. Third, the amendment does not apply to any participant who has a severance from employment during the transition period. If, however, a later plan amendment reduces accruals under Plan F, the initial plan amendment will no longer satisfy the requirements of paragraph (e)(6) of this section (and must be voided) unless, as part of the later amendment, the expected transition period is extended to reflect the reduction in accruals under Plan F.

26 CFR 1.411(d)-3

Example 6. (i) Facts involving elimination of noncore options using utilization test -- (A) In general. Plan G is a calendar year defined benefit plan under which participants may elect to commence distributions after termination of employment in the following actuarially equivalent forms, with spousal consent, if applicable: a straight life annuity; a 50%, 75%, or 100% joint and contingent annuity; or a 5-year, 10-year, or a 15-year term certain and life annuity. A participant is permitted to elect a single-sum distribution if the present value of the participant's nonforfeitable accrued benefit is not greater than \$ 5,000. The annuities offered under the plan are generally available both with and without a social security leveling feature. The social security leveling feature provides for an assumed commencement of social security benefits at any age selected by the participant between the ages of 62 and 67. Under Plan G, the normal retirement age is defined as age 65.

(B)Utilization test. In 2007, the plan sponsor of Plan G, after reviewing participants' benefit elections, determines that, during the period from January 1, 2005, through June 30, 2007, no participant has elected a 5-year term certain and life annuity with a social security leveling option. During that period, Plan G has made the 5-year term certain and life annuity with a social security leveling option available to 142 participants who were at least age 55 and who elected optional forms of benefit with an annuity commencement dates during that period. In addition, during that period, 20 of the 142 participants elected a single-sum distribution and there was no retirement-type subsidy available for a limited period of time. Plan G, in accordance with paragraph (f)(1) of this section, is amended on September 15, 2007, effective as of January 1, 2008, to eliminate all 5-year term certain and life annuities with a social security leveling option for all annuity commencement dates on or after January 1, 2008.

(ii)Conclusion. The amendment satisfies the requirements of paragraph (f) of this section. First, the 5-year term certain and life annuity with a social security leveling option is not a core option as defined in paragraph (g)(5) of this section. Second, the plan amendment is not applicable with respect to an optional form of benefit with an annuity commencement date that is earlier than the number of days in the maximum QJSA explanation period after the date the amendment is adopted. Third, the 5-year term certain and life annuity with a social security leveling option has been available to at least 50 participants who are taken into account for purposes of paragraph (f) of this section during the look-back period. Fourth, during the look-back period, no participant elected any optional form that is part of the generalized optional form being eliminated (for example, the 5-year term and life annuity with a social security leveling option).

(i)[RESERVED].

(j) Effective dates --

(1)General effective date. Except as otherwise provided in this paragraph (j), the rules of this section apply to amendments adopted on or after August 12, 2005.

(2)Effective date for rules relating to contingent event benefits. Paragraph (b)(1)(ii) of this section applies to amendments adopted after December 31, 2005.

(3)Effective dates for rules relating to section 411(a) [\[26 USCS § 411\(a\)\]](#) nonforfeitability provisions --
(i) Application of suspension of benefit rules to section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#) protected benefits. With respect to a plan amendment that places greater restrictions or conditions on a participant's rights to section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#) protected benefits by adding or modifying a plan provision relating to suspension of benefit payments during a period of employment or reemployment, the rules provided in paragraph (a)(3) of this section apply to periods beginning on or after June 7, 2004.

(ii)Application of section 411(a) [\[26 USCS § 411\(a\)\]](#) nonforfeitability provisions to section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#) protected benefits. With respect to a plan amendment that places greater restrictions or conditions on a participant's rights to section 411(d)(6) [\[26 USCS § 411\(d\)\(6\)\]](#)

26 CFR 1.411(d)-3

protected benefits other than a plan amendment described in paragraph (j)(3)(i) of this section, the rules provided in paragraph (a)(3) of this section apply to plan amendments adopted after August 9, 2006.

(4)Effective date for change to redundancy rule regarding bifurcation of benefits. The rules provided in paragraph (c)(6) of this section are applicable for amendments adopted after August 9, 2006.

(5)Effective date for rules relating to utilization test. The rules provided in paragraph (f) of this section are applicable for amendments adopted after December 31, 2006.

Statutory Authority

AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

[26 U.S.C. 7805.](#)

History

[[42 FR 42340](#), Aug. 23, 1977, Treas. Dec. 7501, as amended by [50 FR 29375](#), July 19, 1985, Treas. Dec. 8038; [53 FR 31854](#), Aug. 22, 1988, Treas. Dec. 8219; [53 FR 48534](#), Dec. 1, 1988; [70 FR 47109, 47116](#), Aug. 12, 2005, Treas. Dec. 9219; [71 FR 45379, 45383](#), Aug. 9, 2006, Treas. Dec. 9280, as corrected at [71 FR 55108](#), Sept. 21, 2006, Treas. Dec. 9280; [74 FR 61270, 61276](#), Nov. 24, 2009, Treas. Dec. 9472]

Annotations

Notes

§ 1.411(d)-3 also issued under [26 U.S.C. 411](#)(d)(6) and section 645(b) of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107-16 (*115 Stat. 38*).

[EFFECTIVE DATE NOTE:

[74 FR 61270, 61276](#), Nov. 24, 2009, amended paragraph (a)(1), effective Nov. 24, 2009.]

Case Notes

NOTES TO DECISIONS: COURT AND ADMINISTRATIVE DECISIONS SIGNIFICANTLY DISCUSSING SECTION --

[Robinson v Sheet Metal Workers' Nat'l Pension Fund \(2006, DC Conn\) 441 F Supp 2d 405, 39 EBC 2000](#)

LexisNexis® Notes

Case Notes Applicable to Entire Part

Pensions & Benefits Law : Employee Benefit Plans : Defined Benefit Plans

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting :

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting : Accrual

26 CFR 1.411(d)-3

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting :
Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Plan Amendment
Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Prohibited Transactions : General Overview
Tax Law : Federal Income Tax Computation : Retirement Plans : Contributions (IRC secs. 401-404A, 406-408A, 410-420)
Tax Law : Federal Income Tax Computation : Retirement Plans : Defined Benefit & Hybrid Plans (IRC secs. 411, 414, 415)
Tax Law : Federal Income Tax Computation : Retirement Plans : Qualified Plans (IRC secs. 401, 410-412)
Tax Law : Federal Income Tax Computation : Retirement Plans : Rollovers, Vesting & Mergers (IRC secs. 401, 408-409, 411)
Tax Law : Federal Income Tax Computation : Sales & Exchanges : Installment Sales (IRC secs. 1001, 1031, 1231)
:

Case Notes Applicable to Entire Part[Part Note](#)**Pensions & Benefits Law : Employee Benefit Plans : Defined Benefit Plans**

[Savani v. Wash. Safety Mgmt. Solutions Llc, 703 F. Supp. 2d 529, 2010 U.S. Dist. LEXIS 31710](#) (D SC Mar. 31, 2010), reversed by, remanded by [474 Fed. Appx. 310, 2012 U.S. App. LEXIS 6022, 52 Employee Benefits Cas. \(BNA\) 2520 \(4th Cir. S.C. 2012\)](#), vacated by [2012 U.S. Dist. LEXIS 62107](#) (D.S.C. May 2, 2012).

Overview: *A particular monthly supplemental benefit was not protected by ERISA's anti-cutback rules because, based on the plan language, applicable regulations, and plan promotional materials, the supplement was not an early retirement benefit or any type of accrued benefit since it was paid in lieu of postretirement medical benefits, and it did not accrue.*

- An early retirement benefit is defined as the right, under the terms of a plan, to commence distribution of a retirement-type benefit at a particular date after severance from employment with the employer and before normal retirement age. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(i\)](#). The same regulations define "retirement-type benefit" as (A) the payment of a distribution alternative with respect to an accrued benefit; or (B) The payment of any other benefit under a defined benefit plan, including a qualified social security supplement as defined in § 1.401(a)(4)-12 that is permitted to be in a qualified pension plan, continues after retirement, and is not an ancillary benefit. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(iii\)](#). In other words, an early retirement benefit is a retirement-type benefit that is paid before one retires. [Go To Headnote](#)

[Kerber v. Qwest Pension Plan, 572 F.3d 1135, 2009 U.S. App. LEXIS 15757](#) (10th Cir July 17, 2009).

Overview: *Under 29 U.S.C.S. § 1054(g), the discounted version of the petitioner death benefit did not fall within the definition of the term "early retirement benefit" to mean the right, under the terms of a plan, to commence distribution of a retirement-type benefit at a particular date after severance from employment and before normal retirement age.*

- [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(iv\)](#), defines the phrase "retirement-type subsidy" to mean the excess, if any, of the actuarial present value of a retirement-type benefit over the actuarial present value of the accrued benefit commencing at normal retirement age or at actual commencement date, if later, with both such actuarial present values determined as of the date the retirement-type benefit commences. Examples of retirement-type subsidies include a subsidized early retirement benefit and a subsidized qualified joint and survivor annuity. [26 C.F.R. §§ 1.411\(d\)-3\(g\)\(6\)\(iv\) \(2008\)](#). In turn, the Secretary of the Treasury has defined the phrase "retirement-type benefit" to mean: (A) the payment of a distribution alternative with

respect to an accrued benefit; or (B) the payment of any other benefit under a defined benefit plan. that is permitted to be in a qualified pension plan, continues after retirement, and is not an ancillary benefit. 26 C.F.R. § 1.411(d)-3(g)(6)(iii). Lastly, the phrase "defined benefit plan" is defined under ERISA to mean a pension plan other than an individual account plan. [29 U.S.C.S. § 1002\(35\)](#). Nothing in [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(iv\)](#) undercuts the relevant legislative history of the anti-cutback provision, which clearly suggests that the term "subsidy" was intended to refer to benefits that continue over a period of time following retirement. [Go To Headnote](#)

- The Employee Retirement Income Security Act of 1974 (ERISA), [29 U.S.C.S. § 1001](#) et seq., does not contain a definition of the phrase "early retirement benefit." Instead, Congress contemplated that the Treasury Department would promulgate regulations setting forth a definition of that phrase. [29 U.S.C.S. § 1054\(g\)\(2\)\(A\)](#). The Secretary of the Treasury promulgated a regulation defining the phrase "early retirement benefit" to mean the right, under the terms of a plan, to commence distribution of a retirement-type benefit at a particular date after severance from employment with the employer and before normal retirement age. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(i\) \(2008\)](#). As previously noted, that same regulation, in turn, defined the phrase "retirement-type benefit" to mean: (A) the payment of a distribution alternative with respect to an accrued benefit; or (B) the payment of any other benefit under a defined benefit plan that is permitted to be in a qualified pension plan, continues after retirement, and is not an ancillary benefit. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(iii\)](#). Lastly, the phrase "defined benefit plan" is defined under ERISA to mean a pension plan other than an individual account plan. [29 U.S.C.S. § 1002\(35\)](#). [Go To Headnote](#)

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting :

[Savani v. Wash. Safety Mgmt. Solutions Llc, 703 F. Supp. 2d 529, 2010 U.S. Dist. LEXIS 31710](#) (D SC Mar. 31, 2010), reversed by, remanded by [474 Fed. Appx. 310, 2012 U.S. App. LEXIS 6022, 52 Employee Benefits Cas. \(BNA\) 2520 \(4th Cir. S.C. 2012\)](#), vacated by [2012 U.S. Dist. LEXIS 62107](#) (D.S.C. May 2, 2012).

Overview: *A particular monthly supplemental benefit was not protected by ERISA's anti-cutback rules because, based on the plan language, applicable regulations, and plan promotional materials, the supplement was not an early retirement benefit or any type of accrued benefit since it was paid in lieu of postretirement medical benefits, and it did not accrue.*

- An early retirement benefit is defined as the right, under the terms of a plan, to commence distribution of a retirement-type benefit at a particular date after severance from employment with the employer and before normal retirement age. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(i\)](#). The same regulations define "retirement-type benefit" as (A) the payment of a distribution alternative with respect to an accrued benefit; or (B) The payment of any other benefit under a defined benefit plan, including a qualified social security supplement as defined in § 1.401(a)(4)-12 that is permitted to be in a qualified pension plan, continues after retirement, and is not an ancillary benefit. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(iii\)](#). In other words, an early retirement benefit is a retirement-type benefit that is paid before one retires. [Go To Headnote](#)

[American Stores Co. v. American Stores Co. Retirement Plan, 928 F.2d 986, 1991 U.S. App. LEXIS 4770](#) (10th Cir Mar. 26, 1991).

Overview: *Plaintiffs were improperly determined to have violated ERISA by eliminating a retirement plan's provision for unreduced early retirement where benefit was not an "accrued benefit" because it did not commence at a normal age of retirement.*

- [Treas. Reg. § 1.411\(d\)-3\(b\)](#) provides in part: Prohibition against accrued benefit decrease. Under § 411(d)(6) a plan is not a qualified plan if a plan amendment decreases the accrued benefit of any plan participant. For purposes of determining whether or not any participant's accrued benefit is decreased, all the provisions of a plan affecting directly or indirectly the computation of accrued benefits which are amended with the same adoption and effective dates shall be treated as one plan amendment. Plan provisions indirectly affecting

26 CFR 1.411(d)-3

accrued benefits include, for example, actuarial factors for determining optional or early retirement benefits. C.F.R. § 1.411(d)-3(b) (1984). [Go To Headnote](#)

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting : Accrual

[Myers v. Bricklayers & Masons Local 22 Pension Plan, 2015 U.S. App. LEXIS 18586](#) (6th Cir Oct. 22, 2015) (Unpublished).

Overview: *Employee whose disability benefits were cut off after he violated an eligibility condition failed to state a claim against plan trustees for violation of ERISA's anti-forfeiture and anti-cutback provisions, [29 U.S.C.S. §§ 1053, 1054\(g\)](#), because these provisions were inapplicable to disability benefits.*

- A Treasury regulation defines certain types of accrued benefits as: (1) the excess of the actuarial present value of a benefit over the actuarial present value of the accrued benefit commencing at normal retirement age; and (2) a benefit where the actuarial present value of the benefit available to the participant under the plan at that annuity starting date exceeds the actuarial present value of the accrued benefit commencing at normal retirement age. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(iv\)](#), (v). [Go To Headnote](#)
- Treasury regulation 26 C.F.R. § 1.411's definition of accrued benefits applies only to benefit plans amended on or after August 12, 2005. [26 C.F.R. § 1.411\(d\)-3\(j\)\(1\)](#). [Go To Headnote](#)

[Aroostook Med. Ctr. v. Leavitt, 365 F. Supp. 2d 51, 2005 U.S. Dist. LEXIS 6868](#) (D Me Apr. 13, 2005).

Overview: *Where a hospital sought an exception to a payment rate, the Provider Reimbursement Review Board abused its discretion pursuant to 5 U.S.C.S. § 706(2)(A) in failing to issue a subpoena under [42 C.F.R. § 405.1857](#) for the representative of the fiscal intermediary who recommended that the Centers for Medicare and Medicaid Services grant the exception.*

- The anti-cutback provision, [29 U.S.C.S. § 1054\(g\)](#), keeps plans from reducing an optional form of benefit offered in the pension plan. [29 U.S.C.S. § 1054\(g\)\(1\)\(2\)\(B\)](#). The Employment Retirement Income Security Act of 1974, [29 U.S.C.S. § 1001](#) et seq., does not define the phrase "optional form of benefit," but the Treasury regulations define it as: a distribution alternative (including the normal form of benefit) that is available under the plan with respect to an accrued benefit or a distribution alternative with respect to a retirement-type benefit. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(iii\)](#). Although that is not a particularly clear definition, parsing the language gives some clarity to the regulation's meaning. The "distribution alternative" the regulation refers to means a beneficiary's right to choose how his pension payments will be made. So, for example, a beneficiary can opt for a lump-sum payment instead of a fixed annuity when he retires. [26 C.F.R. § 1.411\(d\)-4\(b\)\(2\)](#). Regardless of the form that the distribution alternative takes, an "optional form of benefit" is always tied to an accrued benefit or a retirement-type benefit. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(ii\)](#). That is, with immaterial exceptions, the lump-sum payment has to be connected with the employee actually retiring. [29 U.S.C.S. § 1002\(23\)](#). [Go To Headnote](#)

[Depenbrock v. Cigna Corp., 389 F.3d 78, 2004 U.S. App. LEXIS 23487](#) (3rd Cir Nov. 10, 2004).

Overview: *District court erred in granting summary judgment to employer in ERISA suit; pension plan had to be amended in writing, and doctrine of ratification did not apply because retroactive ratification would reduce a returning employee's accrued benefits.*

- [26 C.F.R. § 1.411\(d\)-3\(b\)](#) prohibits Employee Retirement Income Security Act, [29 U.S.C.S. § 1001](#) et seq., plan amendments that directly or indirectly affect accrued benefits. Plan provisions indirectly affecting accrued benefits include, for example, provisions relating to years of service and breaks in service for determining benefit accrual. [Go To Headnote](#)

26 CFR 1.411(d)-3

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Participation & Vesting :

[Shaver v. Siemens Corp., 670 F.3d 462, 2012 U.S. App. LEXIS 4081](#) (3rd Cir Feb. 29, 2012).

Overview: *Employees could not recover permanent job separation (PJS) benefits from an employer, as adoption of pension plans that lacked PJS benefits following the employer's purchase of a business unit did not violate [29 U.S.C.S. §§ 1054\(g\)](#) and 1058; the employees did not and could not satisfy the conditions for PJS benefits under a predecessor's plan.*

- A [26 U.S.C.S. § 411\(d\)\(6\)\(B\)](#) protected benefit is defined as the portion of an early retirement benefit, retirement-type subsidy, or an optional form of benefit attributable to benefits accrued before the applicable amendment date. [26 C.F.R. § 1.411\(d\)-3\(g\)\(15\)](#). Accordingly, an early retirement benefit is considered accrued for purposes of § 411, and thus for purposes of § 204(g) ([29 U.S.C.S. § 1054\(g\)](#)) of the Employee Retirement Income Security Act of 1974, only where the plan participant at some point satisfies the preamendment conditions for the benefit. [Go To Headnote](#)

[Kerber v. Qwest Pension Plan, 572 F.3d 1135, 2009 U.S. App. LEXIS 15757](#) (10th Cir July 17, 2009).

Overview: *Under [29 U.S.C.S. § 1054\(g\)](#), the discounted version of the petitioner death benefit did not fall within the definition of the term "early retirement benefit" to mean the right, under the terms of a plan, to commence distribution of a retirement-type benefit at a particular date after severance from employment and before normal retirement age.*

- The Employee Retirement Income Security Act of 1974 (ERISA), [29 U.S.C.S. § 1001](#) et seq., does not contain a definition of the phrase "early retirement benefit." Instead, Congress contemplated that the Treasury Department would promulgate regulations setting forth a definition of that phrase. [29 U.S.C.S. § 1054\(g\)\(2\)\(A\)](#). The Secretary of the Treasury promulgated a regulation defining the phrase "early retirement benefit" to mean the right, under the terms of a plan, to commence distribution of a retirement-type benefit at a particular date after severance from employment with the employer and before normal retirement age. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(i\) \(2008\)](#). As previously noted, that same regulation, in turn, defined the phrase "retirement-type benefit" to mean: (A) the payment of a distribution alternative with respect to an accrued benefit; or (B) the payment of any other benefit under a defined benefit plan that is permitted to be in a qualified pension plan, continues after retirement, and is not an ancillary benefit. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(iii\)](#). Lastly, the phrase "defined benefit plan" is defined under ERISA to mean a pension plan other than an individual account plan. [29 U.S.C.S. § 1002\(35\)](#). [Go To Headnote](#)

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Plan Amendment

[Aroostook Med. Ctr. v. Leavitt, 365 F. Supp. 2d 51, 2005 U.S. Dist. LEXIS 6868](#) (D Me Apr. 13, 2005).

Overview: *Where a hospital sought an exception to a payment rate, the Provider Reimbursement Review Board abused its discretion pursuant to 5 U.S.C.S. § 706(2)(A) in failing to issue a subpoena under [42 C.F.R. § 405.1857](#) for the representative of the fiscal intermediary who recommended that the Centers for Medicare and Medicaid Services grant the exception.*

- The anti-cutback provision, [29 U.S.C.S. § 1054\(g\)](#), keeps plans from reducing an optional form of benefit offered in the pension plan. [29 U.S.C.S. § 1054\(g\)\(1\)\(2\)\(B\)](#). The Employment Retirement Income Security Act of 1974, [29 U.S.C.S. § 1001](#) et seq., does not define the phrase "optional form of benefit," but the Treasury regulations define it as: a distribution alternative (including the normal form of benefit) that is available under the plan with respect to an accrued benefit or a distribution alternative with respect to a retirement-type benefit. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(ii\)](#). Although that is not a particularly clear definition, parsing the language gives some clarity to the regulation's meaning. The "distribution alternative" the regulation refers to means a beneficiary's right to choose how his pension payments will be made. So, for

26 CFR 1.411(d)-3

example, a beneficiary can opt for a lump-sum payment instead of a fixed annuity when he retires. [26 C.F.R. § 1.411\(d\)-4\(b\)\(2\)](#). Regardless of the form that the distribution alternative takes, an "optional form of benefit" is always tied to an accrued benefit or a retirement-type benefit. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(ii\)](#). That is, with immaterial exceptions, the lump-sum payment has to be connected with the employee actually retiring. [29 U.S.C.S. § 1002\(23\)](#). [Go To Headnote](#)

[Meehan v. Atl. Mut. INS. Co., 2008 U.S. Dist. LEXIS 6920](#) (ED NY Jan. 30, 2008).

Overview: Notice of ERISA plan amendment was sent to employees in February 2004, which was no later than 210 days after end of plan year in which change was adopted as required by [29 U.S.C.S. § 1024\(b\)\(1\)\(B\)](#). Although employees were correct they received notice of amendment prior to actual adoption date, nothing required notice to be received pre-adoption.

- The Internal Revenue Code and the Employee Retirement Income Security Act of 1974 (ERISA), [29 U.S.C.S. § 1001](#) et seq., restrict a plan's right to amend a plan to eliminate certain protected benefits. [I.R.C. § 411\(d\)\(6\)](#). ERISA § 204(g) mirrors [I.R.C. § 411\(d\)\(6\)](#). Generally, accrued benefits, early retirement benefits, retirement-type subsidies, and optional forms of benefit are protected benefits that cannot be eliminated by amendment. [I.R.C. § 411\(d\)\(6\)](#); ERISA § 204(g). This rule is referred to as ERISA's anti-cutback rule. Not all benefits provided for under a plan are protected under these sections, however. [I.R.C. § 411\(d\)\(6\)](#) does not provide protection for benefits that are ancillary benefits, or any other benefits that are not described in § 411(d)(6). [26 C.F.R. § 1.411\(d\)-3\(b\)\(3\)\(i\)](#). Thus, ancillary benefits may be reduced or eliminated via amendment. [Go To Headnote](#)

[Depenbrock v. Cigna Corp., 389 F.3d 78, 2004 U.S. App. LEXIS 23487](#) (3rd Cir Nov. 10, 2004).

Overview: District court erred in granting summary judgment to employer in ERISA suit; pension plan had to be amended in writing, and doctrine of ratification did not apply because retroactive ratification would reduce a returning employee's accrued benefits.

- [26 C.F.R. § 1.411\(d\)-3\(b\)](#) prohibits Employee Retirement Income Security Act, [29 U.S.C.S. § 1001](#) et seq., plan amendments that directly or indirectly affect accrued benefits. Plan provisions indirectly affecting accrued benefits include, for example, provisions relating to years of service and breaks in service for determining benefit accrual. [Go To Headnote](#)

[American Stores Co. v. American Stores Co. Retirement Plan, 716 F. Supp. 1392, 1989 U.S. Dist. LEXIS 7511](#) (D Utah May 22, 1989).

Overview: Early retirement provision was an "accrued benefit" under the Employee Retirement Income Security Act of 1974 because it was calculated with the same formula used for normal retirement benefits and thus could not be eliminated from a pension plan.

- [Treas. Reg. § 1.411\(d\)-3\(b\)](#), issued in 1977 and codified in 1984, construes the Internal Revenue Code equivalent of § 204(g) the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. §§ 1001-1368](#), [I.R.C. § 411\(d\)\(6\)](#). It states: (b) Prohibition against accrued benefit decrease. Under § 411 (d)(6) a plan is not a qualified plan, and a trust forming a part of such plan is not a qualified trust, if a plan amendment decreases the accrued benefit of any plan participant. For purposes of determining whether or not any participant's accrued benefit is decreased, all the provisions of a plan affecting directly or indirectly the computation of accrued benefits which are amended with the same adoption and effective dates shall be treated as one plan amendment. Plan provisions indirectly affecting accrued benefits include, for example, actuarial factors for determining optional or early retirement benefits. [26 C.F.R. § 1.411\(d\)-3\(b\) \(1984\)](#). [Go To Headnote](#)

26 CFR 1.411(d)-3

Pensions & Benefits Law : Employee Retirement Income Security Act (ERISA) : Prohibited Transactions : General Overview

[American Stores Co. v. American Stores Co. Retirement Plan, 928 F.2d 986, 1991 U.S. App. LEXIS 4770](#) (10th Cir Mar. 26, 1991).

Overview: *Plaintiffs were improperly determined to have violated ERISA by eliminating a retirement plan's provision for unreduced early retirement where benefit was not an "accrued benefit" because it did not commence at a normal age of retirement.*

- [Treas. Reg. § 1.411\(d\)-3\(b\)](#) provides in part: Prohibition against accrued benefit decrease. Under § 411(d)(6) a plan is not a qualified plan if a plan amendment decreases the accrued benefit of any plan participant. For purposes of determining whether or not any participant's accrued benefit is decreased, all the provisions of a plan affecting directly or indirectly the computation of accrued benefits which are amended with the same adoption and effective dates shall be treated as one plan amendment. Plan provisions indirectly affecting accrued benefits include, for example, actuarial factors for determining optional or early retirement benefits. C.F.R. § 1.411(d)-3(b) (1984). [Go To Headnote](#)

Tax Law : Federal Income Tax Computation : Retirement Plans : Contributions (IRC secs. 401-404A, 406-408A, 410-420)

[Savani v. Wash. Safety Mgmt. Solutions Llc, 703 F. Supp. 2d 529, 2010 U.S. Dist. LEXIS 31710](#) (D SC Mar. 31, 2010), reversed by, remanded by [474 Fed. Appx. 310, 2012 U.S. App. LEXIS 6022, 52 Employee Benefits Cas. \(BNA\) 2520 \(4th Cir. S.C. 2012\)](#), vacated by [2012 U.S. Dist. LEXIS 62107](#) (D.S.C. May 2, 2012).

Overview: *A particular monthly supplemental benefit was not protected by ERISA's anti-cutback rules because, based on the plan language, applicable regulations, and plan promotional materials, the supplement was not an early retirement benefit or any type of accrued benefit since it was paid in lieu of postretirement medical benefits, and it did not accrue.*

- An early retirement benefit is defined as the right, under the terms of a plan, to commence distribution of a retirement-type benefit at a particular date after severance from employment with the employer and before normal retirement age. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(i\)](#). The same regulations define "retirement-type benefit" as (A) the payment of a distribution alternative with respect to an accrued benefit; or (B) The payment of any other benefit under a defined benefit plan, including a qualified social security supplement as defined in § 1.401(a)(4)-12 that is permitted to be in a qualified pension plan, continues after retirement, and is not an ancillary benefit. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(iii\)](#). In other words, an early retirement benefit is a retirement-type benefit that is paid before one retires. [Go To Headnote](#)

Tax Law : Federal Income Tax Computation : Retirement Plans : Defined Benefit & Hybrid Plans (IRC secs. 411, 414, 415)

[Savani v. Wash. Safety Mgmt. Solutions Llc, 703 F. Supp. 2d 529, 2010 U.S. Dist. LEXIS 31710](#) (D SC Mar. 31, 2010), reversed by, remanded by [474 Fed. Appx. 310, 2012 U.S. App. LEXIS 6022, 52 Employee Benefits Cas. \(BNA\) 2520 \(4th Cir. S.C. 2012\)](#), vacated by [2012 U.S. Dist. LEXIS 62107](#) (D.S.C. May 2, 2012).

Overview: *A particular monthly supplemental benefit was not protected by ERISA's anti-cutback rules because, based on the plan language, applicable regulations, and plan promotional materials, the supplement was not an early retirement benefit or any type of accrued benefit since it was paid in lieu of postretirement medical benefits, and it did not accrue.*

26 CFR 1.411(d)-3

- An early retirement benefit is defined as the right, under the terms of a plan, to commence distribution of a retirement-type benefit at a particular date after severance from employment with the employer and before normal retirement age. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(i\)](#). The same regulations define "retirement-type benefit" as (A) the payment of a distribution alternative with respect to an accrued benefit; or (B) The payment of any other benefit under a defined benefit plan, including a qualified social security supplement as defined in § 1.401(a)(4)-12) that is permitted to be in a qualified pension plan, continues after retirement, and is not an ancillary benefit. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(iii\)](#). In other words, an early retirement benefit is a retirement-type benefit that is paid before one retires. [Go To Headnote](#)

Tax Law : Federal Income Tax Computation : Retirement Plans : Qualified Plans (IRC secs. 401, 410-412)

[Aroostook Med. Ctr. v. Leavitt, 365 F. Supp. 2d 51, 2005 U.S. Dist. LEXIS 6868](#) (D Me Apr. 13, 2005).

Overview: *Where a hospital sought an exception to a payment rate, the Provider Reimbursement Review Board abused its discretion pursuant to 5 U.S.C.S. § 706(2)(A) in failing to issue a subpoena under [42 C.F.R. § 405.1857](#) for the representative of the fiscal intermediary who recommended that the Centers for Medicare and Medicaid Services grant the exception.*

- The anti-cutback provision, [29 U.S.C.S. § 1054\(g\)](#), keeps plans from reducing an optional form of benefit offered in the pension plan. [29 U.S.C.S. § 1054\(g\)\(1\)\(2\)\(B\)](#). The Employment Retirement Income Security Act of 1974, [29 U.S.C.S. § 1001](#) et seq., does not define the phrase "optional form of benefit," but the Treasury regulations define it as: a distribution alternative (including the normal form of benefit) that is available under the plan with respect to an accrued benefit or a distribution alternative with respect to a retirement-type benefit. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(ii\)](#). Although that is not a particularly clear definition, parsing the language gives some clarity to the regulation's meaning. The "distribution alternative" the regulation refers to means a beneficiary's right to choose how his pension payments will be made. So, for example, a beneficiary can opt for a lump-sum payment instead of a fixed annuity when he retires. [26 C.F.R. § 1.411\(d\)-4\(b\)\(2\)](#). Regardless of the form that the distribution alternative takes, an "optional form of benefit" is always tied to an accrued benefit or a retirement-type benefit. [26 C.F.R. § 1.411\(d\)-3\(g\)\(6\)\(ii\)](#). That is, with immaterial exceptions, the lump-sum payment has to be connected with the employee actually retiring. [29 U.S.C.S. § 1002\(23\)](#). [Go To Headnote](#)

[Depenbrock v. Cigna Corp., 389 F.3d 78, 2004 U.S. App. LEXIS 23487](#) (3rd Cir Nov. 10, 2004).

Overview: *District court erred in granting summary judgment to employer in ERISA suit; pension plan had to be amended in writing, and doctrine of ratification did not apply because retroactive ratification would reduce a returning employee's accrued benefits.*

- [26 C.F.R. § 1.411\(d\)-3\(b\)](#) prohibits Employee Retirement Income Security Act, [29 U.S.C.S. § 1001](#) et seq., plan amendments that directly or indirectly affect accrued benefits. Plan provisions indirectly affecting accrued benefits include, for example, provisions relating to years of service and breaks in service for determining benefit accrual. [Go To Headnote](#)

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Overview: *Plaintiffs were improperly determined to have violated ERISA by eliminating a retirement plan's provision for unreduced early retirement where benefit was not an "accrued benefit" because it did not commence at a normal age of retirement.*

- [Treas. Reg. § 1.411\(d\)-3\(b\)](#) provides in part: Prohibition against accrued benefit decrease. Under § 411(d)(6) a plan is not a qualified plan if a plan amendment decreases the accrued benefit of any plan participant. For purposes of determining whether or not any participant's accrued benefit is decreased, all the provisions of

26 CFR 1.411(d)-3

a plan affecting directly or indirectly the computation of accrued benefits which are amended with the same adoption and effective dates shall be treated as one plan amendment. Plan provisions indirectly affecting accrued benefits include, for example, actuarial factors for determining optional or early retirement benefits. C.F.R. § 1.411(d)-3(b) (1984). [Go To Headnote](#)

[American Stores Co. v. American Stores Co. Retirement Plan, 716 F. Supp. 1392, 1989 U.S. Dist. LEXIS 7511](#) (D Utah May 22, 1989).

Overview: *Early retirement provision was an "accrued benefit" under the Employee Retirement Income Security Act of 1974 because it was calculated with the same formula used for normal retirement benefits and thus could not be eliminated from a pension plan.*

- [Treas. Reg. § 1.411\(d\)-3\(b\)](#), issued in 1977 and codified in 1984, construes the Internal Revenue Code equivalent of § 204(g) the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. §§ 1001-1368, I.R.C. § 411\(d\)\(6\)](#). It states: (b) Prohibition against accrued benefit decrease. Under § 411 (d)(6) a plan is not a qualified plan, and a trust forming a part of such plan is not a qualified trust, if a plan amendment decreases the accrued benefit of any plan participant. For purposes of determining whether or not any participant's accrued benefit is decreased, all the provisions of a plan affecting directly or indirectly the computation of accrued benefits which are amended with the same adoption and effective dates shall be treated as one plan amendment. Plan provisions indirectly affecting accrued benefits include, for example, actuarial factors for determining optional or early retirement benefits. [26 C.F.R. § 1.411\(d\)-3\(b\) \(1984\)](#). [Go To Headnote](#)

Tax Law : Federal Income Tax Computation : Retirement Plans : Rollovers, Vesting & Mergers (IRC secs. 401, 408-409, 411)

[Shaver v. Siemens Corp., 670 F.3d 462, 2012 U.S. App. LEXIS 4081](#) (3rd Cir Feb. 29, 2012).

Overview: *Employees could not recover permanent job separation (PJS) benefits from an employer, as adoption of pension plans that lacked PJS benefits following the employer's purchase of a business unit did not violate [29 U.S.C.S. §§ 1054\(g\)](#) and 1058; the employees did not and could not satisfy the conditions for PJS benefits under a predecessor's plan.*

- A [26 U.S.C.S. § 411\(d\)\(6\)\(B\)](#) protected benefit is defined as the portion of an early retirement benefit, retirement-type subsidy, or an optional form of benefit attributable to benefits accrued before the applicable amendment date. [26 C.F.R. § 1.411\(d\)-3\(g\)\(15\)](#). Accordingly, an early retirement benefit is considered accrued for purposes of § 411, and thus for purposes of § 204(g) ([29 U.S.C.S. § 1054\(g\)](#)) of the Employee Retirement Income Security Act of 1974, only where the plan participant at some point satisfies the preamendment conditions for the benefit. [Go To Headnote](#)

Tax Law : Federal Income Tax Computation : Sales & Exchanges : Installment Sales (IRC secs. 1001, 1031, 1231) :

[American Stores Co. v. American Stores Co. Retirement Plan, 716 F. Supp. 1392, 1989 U.S. Dist. LEXIS 7511](#) (D Utah May 22, 1989).

Overview: *Early retirement provision was an "accrued benefit" under the Employee Retirement Income Security Act of 1974 because it was calculated with the same formula used for normal retirement benefits and thus could not be eliminated from a pension plan.*

- [Treas. Reg. § 1.411\(d\)-3\(b\)](#), issued in 1977 and codified in 1984, construes the Internal Revenue Code equivalent of § 204(g) the Employee Retirement Income Security Act of 1974, [29 U.S.C.S. §§ 1001-1368](#),

26 CFR 1.411(d)-3

[I.R.C. § 411\(d\)\(6\)](#). It states: (b) Prohibition against accrued benefit decrease. Under § 411 (d)(6) a plan is not a qualified plan, and a trust forming a part of such plan is not a qualified trust, if a plan amendment decreases the accrued benefit of any plan participant. For purposes of determining whether or not any participant's accrued benefit is decreased, all the provisions of a plan affecting directly or indirectly the computation of accrued benefits which are amended with the same adoption and effective dates shall be treated as one plan amendment. Plan provisions indirectly affecting accrued benefits include, for example, actuarial factors for determining optional or early retirement benefits. [26 C.F.R. § 1.411\(d\)-3\(b\) \(1984\)](#). [Go To Headnote](#)

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE CHAPTER:

EDITORIAL NOTE: IRS published a document at *45 FR 6088*, Jan. 25, 1980, deleting statutory sections from their regulations. In Chapter I, cross references to the deleted material have been changed to the corresponding sections of the IRS Code of 1954 or to the appropriate regulations sections. When either such change produced a redundancy, the cross reference has been deleted. For further explanation, see *45 FR 20795*, March 31, 1980.

[The OMB control numbers for title 26 appear in §§ 601.9000 and 602.101 of this chapter.]

NOTES APPLICABLE TO ENTIRE SUBCHAPTER:

Supplementary Publications: Internal Revenue Service Looseleaf Regulations System, Alcohol and Tobacco Tax Regulations, and Regulations Under Tax Conventions.

EDITORIAL NOTE: Treasury Decision 6091, *19 FR 5167*, Aug. 17, 1954, provides in part as follows:

PARAGRAPH 1. All regulations (including all Treasury decisions) prescribed by, or under authority duly delegated by, the Secretary of the Treasury, or jointly by the Secretary and the Commissioner of Internal Revenue, or by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, or jointly by the Commissioner of Internal Revenue and the Commissioner of Customs or the Commissioner of Narcotics with the approval of the Secretary of the Treasury, applicable under any provision of law in effect on the date of enactment of the Code, to the extent such provision of law is repealed by the Code, are hereby prescribed under and made applicable to the provisions of the Code corresponding to the provision of law so repealed insofar as any such regulation is not inconsistent with the Code. Such regulations shall become effective as regulations under the various provisions of the Code as of the dates the corresponding provisions of law are repealed by the Code, until superseded by regulations issued under the Code.

PAR. 2. With respect to any provision of the Code which depends for its application upon the promulgation of regulations or which is to be applied in such manner as may be prescribed by regulations, all instructions or rules in effect immediately prior to the enactment of the Code, to the extent such instructions or rules could be prescribed as regulations under authority of such provision of the Code, shall be applied as regulations under such provision insofar as such instructions or rules are not inconsistent with the Code. Such instructions or rules shall be applied as regulations under the applicable provision of the Code as of the date such provision takes effect.

PAR. 3. If any election made or other act done pursuant to any provision of the Internal Revenue Code of 1939 or prior internal revenue laws would (except for the enactment of the Code) be effective for any period subsequent to such enactment, and if corresponding provisions are contained in the Code, such election or other act shall be given the same effect under the corresponding provisions of the Code to the extent not inconsistent therewith. The term "act" includes, but is not limited to, an allocation, identification, declaration, agreement, option, waiver, relinquishment, or renunciation.

PAR. 4. The limits of the various internal revenue districts have not been changed by the enactment of the Code. Furthermore, delegations of authority made pursuant to the provisions of Reorganization Plan No. 26 of 1950 and

26 CFR 1.411(d)-3

Reorganization Plan No. 1 of 1952 (as well as redelegation thereunder), including those governing the authority of the Commissioner of Internal Revenue, the Regional Commissioners of Internal Revenue, or the District Directors of Internal Revenue, are applicable to the provisions of the Code to the extent consistent therewith.

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