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Section 415(m) Qualified Governmental Excess Benefit Arrangement

Summary of Operations

- A 415(m) defined contribution arrangement would be created in conjunction with a qualified plan or 403(b) plan for a select group.
- The arrangement can only receive contributions from the employer; thus, no deferrals from the individual's compensation are allowed.
- The accumulated balance may vest immediately or at a specific date.
- Income taxation will occur as distributions are made.
- Both contributions to the account and distributions from it are exempt from FICA taxation.
- Distributions can be delayed until the attainment of a specified number of years of service or a stated age.

Advantages

1. Contributions can be designed to vest immediately, but may be distributed at a later date,
2. Tax deferral may extend beyond termination from employment to the time of distribution,
3. Contributions of up to the lesser of $205,000 or 100% of compensation can be made annually on behalf of an individual,
4. Neither contributions nor distributions are subject to FICA.

Disadvantages

1. Pairing a 415(m) arrangement with a new qualified plan that benefits only a select group of highly paid individuals could be scrutinized by the IRS. No published guidance exists,
2. Additional administrative complexity is created since a new qualified plan or 403(b) plan would be created to implement the 415(m) arrangement,
3. Additional administrative procedures are necessary in order to determine how much the employer can contribute to the 415(m) arrangement on behalf of the individual,
4. Employee contributions are not allowed.

Prepared by: **Holly D. Crumpler**
Deloitte & Touche, LLP
May 13, 2004

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Section 457(f) Deferred Compensation Plan

Summary of Operations

- Contributions are made on behalf of each participant on an annual basis.
- The accumulated balance in the account becomes vested after the performance of services for a stated number of years.
- Income and FICA taxation will occur when the account becomes vested even if amounts are distributed at a later date under the terms of the plan.
- Distributions will be made according to the terms of the plan, typically when the amounts vest or at termination of employment.

Advantages

1. No annual limitation on the amount that can be contributed,
2. Delayed vesting serves as an effective handcuff to the performance of future services,
3. The original vesting date can be extended by the employer with the employee's concurrence to allow for continued tax deferral and to encourage the performance of future services,
4. Tax implications are fairly well settled.

Disadvantages

1. To allow for tax deferral, contributions must be subject to a substantial risk of forfeiture and cannot be designed to vest immediately,
2. Benefits are taxed upon vesting which is not linked to retirement,
3. Benefits will be forfeited if the individual voluntarily terminates employment or is terminated for cause before the vesting period expires.

Prepared by: **Holly D. Crumpler**
Deloitte & Touche, LLP
May 13, 2004