

ORDINANCE NO. 352-10

AN ORDINANCE AMENDING ORDINANCE NO. 316 ENTITLED "EAST BAY MUNICIPAL UTILITY DISTRICT CAMPAIGN FINANCE REFORM ORDINANCE"

Introduced by Director Katz ; Seconded by Director McIntosh

WHEREAS the Board of Directors of the East Bay Municipal Utility District enacted the Campaign Finance Reform Ordinance in 1992 and adopted it as the policy of the District; and

WHEREAS the Board of Directors has amended the CFRO a number of times since its enactment in 1992, with the last amendment taking place in 2002; and

WHEREAS numerous changes have occurred in federal and state campaign finance laws since the CFRO's last amendment in 2002, requiring corresponding changes to be made in the CFRO; and

WHEREAS, the major CFRO amendments necessitated by recent changes in the law include increasing the CFRO's contribution limit so that it is consistent with other agencies and reflects inflation; eliminating differential contribution limits as an incentive for accepting voluntary spending limits and identifying an alternative incentive; eliminating candidate disclosure requirements that are unduly burdensome; and eliminating contribution limits for independent expenditure committees; and

WHEREAS, other minor clean-up revisions are also recommended for the CFRO, such as eliminating references to campaign forms that are no longer in use; and

WHEREAS the District's Legislative/Human Resources Committee reviewed and approved the proposed amendments to the CFRO on November 10, 2009; and

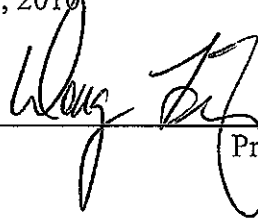
WHEREAS the Board of Directors considered a first reading of the proposed amendments to the CFRO in its public meeting of November 24, 2009; and

WHEREAS the Board of Directors considered a second reading of the proposed amendments to the CFRO in its public meeting of December 8, 2009; and

WHEREAS the Board of Directors voted to continue the second reading of the amended ordinance to its public meeting of January 12, 2010.

NOW, THEREFORE, BE IT ENACTED by the Board of Directors of the East Bay Municipal Utility District that Ordinance NO. 316 be amended as shown in Exhibit A.

THE EFFECTIVE DATE of this Ordinance shall be February 12, 2010



President

I HEREBY CERTIFY that the foregoing Ordinance was duly and regularly introduced at a regular meeting of EAST BAY MUNICIPAL UTILITY DISTRICT held on November 24, 2009 at the office of said District, 375 - 11th Street, Oakland, California, and thereupon, after being read, further action was scheduled for the regular meeting of said Board of Directors held at the same place on December 8, 2009, and for the regular meeting of said Board of Directors held at the same place on January 12, 2010, at which time the same was finally adopted by the following vote:

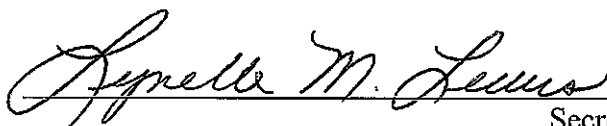
AYES: Directors Foulkes, Katz, McIntosh and President Linney.

NOES: Directors Coleman, Mellon and Patterson.

ABSENT: None.

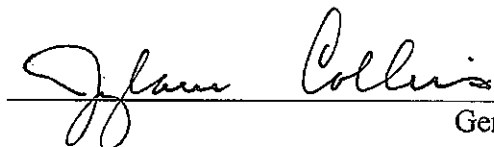
ABSTAIN: None.

ATTEST:



Secretary

APPROVED AS TO FORM AND PROCEDURE



General Counsel

EAST BAY MUNICIPAL UTILITY DISTRICT CAMPAIGN FINANCE REFORM ORDINANCE

BE IT ENACTED by the Board of Directors of East Bay Municipal Utility District that this Ordinance is adopted as the policy of East Bay Municipal Utility District setting forth that:

Campaigns for election to the Board of Directors of the East Bay Municipal Utility District be conducted fairly and that each candidate for the Board be aware of the District's commitment to fair campaigns.

Candidates for election to the Board of Directors of the East Bay Municipal Utility District be permitted to accumulate the resources necessary to effectively advocate and to campaign for election to the Board.

Campaigns for election to the Board of Directors of the East Bay Municipal Utility District be free of corruption or the appearance of corruption.

Campaigns for election to the Board of Directors of East Bay Municipal Utility District be free from improper influence stemming from the dependence of candidates on large campaign contributions.

Campaign contributions be reasonably limited so as to not unduly infringe upon the First Amendment rights of political expression and association and not have a significant adverse effect on the funding of campaigns for District office.

The contribution limits set forth herein shall apply for each election to the Board of Directors of the East Bay Municipal Utility District.

I. FINDINGS AND DECLARATIONS

The Board of Directors of the East Bay Municipal Utility District find and declare each of the following:

- (a) Monetary contributions to political campaigns are a legitimate form of participation in the American political process. However, disproportionately large contributions from certain persons or organizations may lead to a perception that they exercise a disproportionate or controlling influence upon candidates.
- (b) The increasing costs of political campaigns compel many candidates to raise larger percentages of money from interest groups with a specific financial stake in matters which may come before the Board of Directors. This has caused a public perception that votes may be improperly influenced by monetary contributions.

- (c) The tendency for campaign contributions to be dominated by a small number of very large contributors undermines the integrity of the governmental process, the competitiveness of campaigns, and the public's confidence in local officials and local agencies.

II. PURPOSE OF THIS ORDINANCE

The Board of Directors enacts this Ordinance to accomplish the following purposes:

- (a) To improve methods of financing campaigns in order to ensure the public's right-to-know, combat corruption and undue influence, and promote citizen participation in the political process.
- (b) To prevent parties with a specific financial interest in the District's decisions from exerting undue influence over those decisions by means of large campaign contributions.
- (c) To improve the disclosure of contribution sources in reasonable and effective ways.
- (d) To restore public trust in governmental and electoral institutions.

III. DEFINITIONS

1. Unless otherwise specifically provided in this Ordinance or required by the context, the words and phrases in this Ordinance shall have the same meanings as in the California Elections Code and in the Political Reform Act of 1974 (Government Code section 81000 et seq.) and regulations adopted thereunder.
2. "Candidate" means a candidate for election to the Board of Directors of the East Bay Municipal Utility District, or an incumbent who holds that office.
3. "Small Contributor Committee" means a committee of persons that has been in existence for more than six months and within 36 months before making a contribution has received contributions from 100 or more persons of no more than \$200 per person per calendar year and has made contributions to five or more candidates of at least \$25 each. For purposes of this paragraph, the term "Candidate" shall have the same meaning as in the Political Reform Act of 1974 (Government Code Section 82007).
4. "District" means the East Bay Municipal Utility District.
5. "Contribution" has the same meaning as in the Political Reform Act of 1974, Government Code section 82015, and includes a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make

a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. A non-monetary contribution shall be valued at the true or estimated fair market value of the goods, services, or facilities contributed to the campaign. A fair market value is the price that a person would be required to pay to acquire the same goods or services in the open market place.

The term “contribution” does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant’s home or office if the costs for the meeting or fundraising event are five hundred dollars (\$500) or less; nor does it include volunteer personal services or payments made by any individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her.

A contribution to the committee designated by the candidate for his or her election to the District board is deemed a contribution to the candidate.

6. “Person” means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, limited liability company, corporation, association, committee, and any other organization or group of persons acting in concert.
7. “Expenditure” has the same meaning as in the Political Reform Act of 1974, Government Code section 82025 and includes a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from surrounding circumstances that it is not made for political purposes. “Expenditure” does not include a candidate’s use of his or her own money to pay for either a filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code. An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.
8. “Qualified Campaign Expenditure” means any expenditure made or incurred by a candidate or his or her agent for the purpose or with the primary effect of influencing or attempting to influence the actions of the voters for or against the election of the candidate. Such expenditures shall include, but are not limited to:
 - (a) Payments for fundraising and campaign strategy expenses for election to a future term of office;
 - (b) Payments for mass mailings, political advertising, opinion polls or surveys, and other broadcast or print communications in connection with election to a future term of office. For purposes of this section, a

mass mailing, political advertisement, opinion poll or survey, or other communication shall be considered “in connection with election to a future term of office” if it makes reference to the candidate’s future election or status as a candidate for a future term of office, or if it is made by an incumbent officeholder within three (3) months prior to an election for which he or she will be a candidate and it features the candidate by name or image;

- (c) Payments for services and actual expenses of political consultants, the campaign treasurer and other campaign staff, pollsters and other persons providing services directly in connection with a future election;
- (d) Payments for office space, postage, office supplies, stationery, newsletters, and equipment which is used primarily for the administration of the candidate’s campaign to a future term of office;
- (e) Payments for voter registration and get-out-the-vote drives;
- (f) That portion of the total cost of a slate mailing or mailing of other campaign literature produced or authorized by more than one candidate which is the cost actually paid or incurred by the candidate; and
- (g) A non-monetary contribution provided at the request of or with the approval of the candidate or his or her agent which is made in connection with the candidate’s future election.

“Qualified campaign expenditure” does not include officeholder expenses.

9. “Officeholder expenses” means those expenditures that arise out of the performance of the officeholder’s official duties, directly assist the officeholder in performing his or her official duties, or are directly related to a governmental purpose. Officeholder expenses include:

- (a) Donations to charitable organizations;
- (b) Cost of tickets to political or community events;
- (c) Postage, office supplies, stationery and similar expenses related to the conduct or performance of the officeholder’s governmental activities and duties;
- (d) Reasonable expenses for travel to conferences, seminars, educational events or similar activities related to the officeholder’s position; or

- (e) Costs of books or publications reasonably related to the officeholder's position.

The expenses listed in (a) through (e) shall be considered officeholder expenses as long as they are not used in connection with the candidate's election to a future term of office.

IV. CAMPAIGN CONTRIBUTION LIMITATIONS

1. Limitations on Contributions from Persons

- (a) Except as provided in Paragraph IV.2 of this Ordinance, no person shall make to any candidate and no such candidate shall solicit or accept any contribution which would cause the total amount contributed by that person to that candidate to exceed \$600 for each election. The District shall adjust this amount in January of every odd-numbered year based on the increase or decrease in the San Francisco/Oakland Consumer Price Index for Urban Wage Earners and Clerical Workers. This adjustment shall be rounded to the nearest ten dollars (\$10).
- (b) No person shall make an anonymous contribution or contributions to a candidate, and no candidate shall accept or solicit an anonymous contribution, totaling twenty-five dollars (\$25) or more for an election.
- (c) A candidate shall maintain a written record of the name and address of each person from whom contributions of twenty-five dollars (\$25) or more are received for an election.
- (d) The provisions of this paragraph shall not apply to a candidate's contribution of his or her own personal funds to his or her designated committee. "Personal funds" includes a loan obtained from a commercial lending institution.
- (e) A candidate may not personally loan to his or her campaign an amount, the outstanding balance of which exceeds ten thousand dollars (\$10,000).

2. Limitations on Contributions from Small Contributor Committees

No small contributor committee shall make contributions to any candidate and no candidate shall solicit or accept any contribution which would cause the total amount contributed by that small contributor committee to that candidate to exceed \$1,200 for each election.

3. Return of Excess Contributions

A contribution need not be reported nor shall it be deemed accepted if it is not cashed, negotiated, or deposited and is returned to the contributor before the closing date of the campaign statement on which the contribution would otherwise be reported.

4. Prohibition on Contributions From Contractors Doing Business With the District

- (a) No person who contracts with the District, pursuant to a contract approved by the Board of Directors for the rendition of personal services, for the furnishing of any material, supplies, or equipment to the District or for selling of any land or building to the District, whenever the contract was not obtained as a result of a competitive bidding process, shall make any contribution to a candidate at any time between the submittal of a proposal for said contract and one year following the completion of the performance under such contract.
- (b) No person who submits a proposal to contract with the District, pursuant to a contract to be approved by the Board of Directors for the rendition of personal services, for the furnishing of any material, supplies, or equipment to the District or for the selling of any land or building to the District, when the contract is not subject to the competitive bidding process, shall make any contribution to a candidate at any time between the submission of a proposal for said contract and a final determination by the District to reject the proposal.
- (c) No candidate, or his or her agent, shall knowingly solicit or accept any contribution from any person or organization prohibited by Paragraph IV.4(a) or (b) of this Ordinance from making such contribution.
- (d) No person who knowingly violates Paragraph IV.4(a) or (b) of this Ordinance shall be awarded a contract which is not obtained as a result of a competitive bidding process for one (1) year after the date of the violation.

5. Limitations on Transfers from Candidate Controlled Committees

Contributions received by any other committee controlled by a candidate shall be subject to the contribution limitations set forth in this Ordinance when such contributions are transferred to the candidate's committee for election to the District board. The following method shall be utilized to calculate the amount that is in compliance with the contribution limitations.

- (a) The candidate shall review the contributions which have been received by the candidate controlled committee beginning with the last contribution received and working back in time until the total amount of cash and cash equivalents held by the candidate controlled committee is reached.
- (b) Should the review indicate that the aggregate amount of contributions from a contributor in the candidate controlled committee and in the candidate's committee for election to the District board exceeds any applicable limitation, the total amount that may be transferred shall be reduced by the amount in excess of the applicable contribution limitation.

6. Post-Election Fundraising

- (a) A contribution for an election may be accepted by a candidate after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.
- (b) "Net debts outstanding from the election" includes all of the following:
 - (1) An amount necessary to cover the cost of raising funds as permitted under this Ordinance.
 - (2) Costs related to complying with the post-election filing requirements of this Ordinance and the Political Reform Act of 1974 and for other reasonable and necessary administrative costs related to winding down the campaign, including office space rental, staff salaries, and office supplies.
 - (3) Legal fees and expenses incurred directly in connection with monitoring the count of absentee or provisional ballots for the election, or with a ballot recount.
 - (4) The total amount of unpaid debts, loans and accrued expenditures incurred with respect to the election, less the sum of both of the following:
 - (A) The total cash on hand available to pay those debts and obligations, including: currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks; certificates of

deposit; treasury bills; and any other committee investments valued at fair market value.

- (B) The total amounts owed to the candidate controlled committee in the form of credits, refunds of deposits, returns, or receivables, or a commercially reasonable amount based on the collectability of those credits, refunds, returns, or receivables.
- (c) **Raising Funds.** A candidate may accept contributions after the date of the election only up to the amount of net debts outstanding from the election. The contributions accepted are subject to the applicable contribution limit for that election. The candidate shall reduce the total amount of net debts outstanding as additional funds are received. The candidate and his or her controlled committee(s) may not accept a contribution that exceeds the total amount of net debts outstanding on the date the contribution is received. A contribution that exceeds the amount of net debts outstanding shall be treated in the same manner as a contribution in excess of the contribution limits.
- (d) **Paying Net Debt.** A candidate may only use a contribution accepted after the election for payment of net debts outstanding from the election. The candidate shall use available funds to pay net debts outstanding as soon as practicable.
- (e) **Transfer.** A candidate may transfer campaign funds from another of his or her controlled committees for the purpose of paying the net debts outstanding of his or her District committee. A transfer of this type is subject to the contribution limits and attribution requirements of this Ordinance.

7. Surplus Funds

- (a) Funds remaining in the committee established by the candidate for his or her election to the District board as of the end of the first postelection reporting period after the candidate is defeated or has left office may be used only for the following purposes:
 - (1) To pay campaign debts or debts from officeholder expenses;
 - (2) To refund contributions;
 - (3) To donate to any bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on

the candidate, any member of his or her immediate family, or his or her campaign treasurer; and

(4) To pay professional services reasonably required by the committee to assist in the performance of its administrative functions, including payment for attorney's fees for litigation arising directly out of the candidate's duties or status as a candidate or elected officer, including, but not limited to, an action to enjoin defamation, defense of an action brought of a violation of state or local campaign, disclosure, or election laws, and an action from an election contest or recount.

(b) Funds remaining in the committee established by the candidate for his or her election to the District board as of the end of the first postelection reporting period after the candidate is defeated or has left office may not be used for his or her election to any other office unless they are first transferred to a committee set up for that other office.

V. VOLUNTARY EXPENDITURE CEILING

1. Ballot Designation of Candidate Accepting Voluntary Expenditure Ceiling

Candidates who adopt the voluntary expenditure ceiling as defined below shall be designated in the voter information portion of the sample ballot as having voluntarily agreed to the expenditure ceiling set forth in this paragraph.

2. Statement Accepting Voluntary Expenditure Ceiling

All candidates who accept the voluntary campaign expenditure ceiling as defined below must file a statement with the Secretary of the District indicating acceptance of the expenditure ceiling and acknowledging such decision to be irrevocable. Said statement shall be filed no later than the time for filing the FPPC Form 501 (Candidate Statement of Intention). A candidate who does not adopt the voluntary campaign expenditure ceiling by filing the required statement shall be presumed to have rejected the expenditure ceiling.

3. Statement Declining Voluntary Expenditure Ceiling

Candidates who decline to accept the campaign expenditure ceiling shall file a statement with the Secretary of the District indicating their decision not to adopt the expenditure ceiling. Said statement shall be filed no later than the time for filing the FPPC Form 501 (Candidate Statement of Intention). A candidate who has filed a statement with the Secretary of the District indicating his or her decision not to accept the expenditure ceiling may, no later than the deadline for filing nomination papers within section 8020 of the Elections Code, revoke such decision by filing with the Secretary of the

District a statement accepting the expenditure ceiling and a separate statement, signed under penalty of perjury, verifying that the candidate's qualified campaign expenditures to date have not exceeded the expenditure ceiling.

4. Amount of Expenditure Ceiling

Candidates who agree to expenditure ceilings shall not incur qualified campaign expenditures during the election cycle exceeding \$0.53 (fifty-three cents) multiplied by the number of residents in the ward in which the candidate seeks election. At the beginning of each election cycle, the number of residents in each ward shall be determined by the Secretary of the District based upon EBMUD's redistricting plan or federal census data, whichever provides the most current information.

The District shall adjust the amount otherwise determined under Paragraph V.4 in January of every odd-numbered year based on the increase or decrease in the San Francisco/ Oakland Consumer Price Index for Urban Wage Earners and Clerical Workers. This adjustment shall be rounded to the nearest one hundred dollars (\$100).

5. Expenditure Ceiling Lifted

If any candidate declines to accept the campaign expenditure ceiling by the deadline provided in paragraph 3 of this section, then the expenditure ceiling shall no longer be binding on any candidate.

VI. DISCLOSURE

1. Statements of Organization, Candidate Intention Statements, and Campaign Statements.

Any Statement of Organization (Form 410), Candidate Intention Statement (Form 501) and Campaign Statements (including Forms 460, 465, 470, 495, 496 or 497) required to be filed under the Political Reform Act of 1974 (Government Code Section 81000 et seq.) shall also be filed at the same time with the Secretary of the District. The candidate's obligation to file such campaign statements with the Secretary of the District shall continue until such time as the candidate has filed all campaign statements required by the Political Reform Act of 1974 for the period ending December 31 following the election, including the Semi-Annual Campaign Statement (Form 460) due on January 31 following the election.

2. Statement Accepting or Declining Voluntary Expenditure Ceiling

Each candidate shall file a statement with the Secretary of the District accepting or declining the voluntary expenditure ceiling for each election as set forth in paragraphs VI.1 and VI.2 of this Ordinance. The Secretary shall provide each candidate with a form that may be used for this purpose.

3. Press Disclosure

The Secretary of the District shall, upon determining that a candidate has failed to comply with any filing deadline set forth in this Ordinance, immediately notify the candidate of the apparent violation by any method that provides for confirmation of receipt, including but not limited to certified mail, telephone call and e-mail. The candidate shall be given five (5) working days from the date of actual notification to either cure the violation or to demonstrate that the required filings have been made. Upon conclusion of the five-day period, if the candidate has not demonstrated that full compliance has occurred, the Secretary shall disclose to the public by press release the name of any candidate who has failed to file any statements required under this Ordinance in the current election.

VII. INDEPENDENT EXPENDITURES IN DISTRICT ELECTIONS

1. Campaign Advertising Disclosure

Any committee primarily formed to support or oppose candidates in the District Board election that makes, during the calendar year in which the election is held, more than \$1000 in independent expenditures to support or oppose any candidate for the District Board shall list the following information in a clear and legible manner on the bottom one-third of the front page of any printed communication, including mailings, yard signs, billboards, bumper stickers and campaign buttons 10 inches in diameter or larger, paid for by the committee that mentions a candidate or the election: "Paid for by [name of committee]. Major funding by [name and occupation of two largest contributors to the committee within the prior 12 months]."

The requirements of this paragraph shall not apply to any communication distributed by an organization solely to its own members, employees, shareholders, or families of members, employees, or shareholders.

2. Independent Expenditure Reports

Any committee that makes independent expenditures totaling five hundred dollars (\$500) or more in a calendar year to support or oppose a candidate for election to the District Board shall file with the Secretary of the District a copy of all campaign

statements required to be filed under the California Political Reform Act of 1974. The deadline for filing such campaign statements with the Secretary shall be the same deadline for filing campaign statements with the California Secretary of State or any county clerk as set forth in the California Political Reform Act of 1974.

VIII. ENFORCEMENT

1. Campaign Statement Review

- (a) The Secretary of the District shall monitor all campaign forms and statements filed by candidates for the District Board and shall notify the candidate of any of the following apparent violations of this Ordinance:
 - (i) The non-filing or late filing of any required campaign forms or statements.
 - (ii) A statement that does not conform on its face with the requirements of this Ordinance.
 - (iii) Any reported contributions that exceed the allowable maximums established under this Ordinance.
- (b) The Secretary of the District shall also investigate any report or information received indicating that a candidate may have failed to file a statement required under this Ordinance, if the Secretary has sufficient information to reasonably conduct such investigation.
- (c) The candidate shall be allowed to correct any reports within five days after receipt of notice of an apparent violation by the Secretary of the District.
- (d) The Secretary of the District shall refer to the Fair Political Practices Commission any complaint alleging a violation of the Political Reform Act of 1974 (Government Code Section 81000 et seq.) by any candidate or committee and shall cooperate in any investigation conducted by the Commission as a result of such referral.

2. Violations

- (a) In addition to any other remedies provided in this Ordinance, the East Bay Municipal Utility District and any person residing in the District may bring a civil action against any person or committee who intentionally or negligently violates the reporting requirements or the contribution and expenditure limitations set forth herein, and may also sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this Ordinance. Any such action must be brought within 4 (four) years of the date of the violation.
- (b) In any legal action brought under this Ordinance for injunctive relief or civil liability, the court may award to a plaintiff or defendant who prevails his or her costs of litigation, including reasonable attorney's fees.
- (c) In any legal action brought under this Ordinance for injunctive relief or civil liability, where it is determined that the candidate has accepted a contribution or contributions in excess of the applicable limit set forth herein, the full amount of said contribution(s) shall be forfeited to the District general fund. If funds are not available in the candidate's designated committee account for this purpose, the candidate shall be personally liable to pay said amount to the District general fund.

3. Enforcement by Other Agencies

Nothing in Paragraph VII shall be construed as limiting the authority of any law enforcement agency, prosecuting attorney or other person to enforce the provisions of this Ordinance, under any circumstances where such law enforcement agency, prosecuting attorney or other person has lawful authority to do so.

IX. APPLICABILITY OF OTHER LAWS

Nothing in this Ordinance shall exempt any person or committee from applicable provisions of any other laws of this State.

X. SEVERABILITY

If any provision of this Ordinance shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, shall not be affected thereby, and to this extent the provisions of this Ordinance are severable.

THE EFFECTIVE DATE of this Ordinance shall be May 26, 1992; the amendments adopted on February 8, 1994 shall take effect on May 11, 1994 provided however that the contribution limits specified in Paragraphs IV.1 (a) and IV.2(a) shall take effect on, January 25, 1994; the amendments adopted on March 12, 1996 shall take effect on April 11, 1996; the amendments adopted on June 9, 1998 shall take effect on July 9, 1998; the amendments adopted on August 11, 1998 shall take effect on September 10, 1998; the amendments adopted on January 8, 2002 shall take effect on February 7, 2002; the amendments adopted on January 12, 2010 shall take effect on February 12, 2010.

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