

### Internal Revenue Code Section 1.415(c)-1(b)(2)(ii)(B)

Limitations for defined contribution plans.

(a) General rules --(1) Maximum limitations. Under section 415(c) and this section, to satisfy the provisions of section 415(a) for any limitation year, except as provided by paragraph (a)(3) of this section, the annual additions (as defined in paragraph (b) of this section) credited to the account of a participant in a defined contribution plan for the limitation year must not exceed the lesser of--

(i) \$ 40,000 (adjusted pursuant to section 415(d) and § 1.415(d)-1(b)); or

(ii) 100 percent of the participant's compensation (as defined in § 1.415(c)-2) for the limitation year.

(2) Defined contribution plan --(i) Definition. For purposes of section 415 and regulations promulgated under section 415, the term defined contribution plan means a defined contribution plan within the meaning of section 414(i) (including the portion of a plan treated as a defined contribution plan under the rules of section 414(k)) that is--

(A) A plan described in section 401(a) which includes a trust which is exempt from tax under section 501(a);

(B) An annuity plan described in section 403(a); or

(C) A simplified employee pension described in section 408(k).

(ii) Additional plans treated as defined contribution plans --(A) In general. Contributions to the types of arrangements described in paragraphs (a)(2)(ii)(B) through (D) of this section are treated as contributions to defined contribution plans for purposes of section 415 and regulations promulgated under section 415.

(B) Employee contributions to a defined benefit plan. Mandatory employee contributions (as defined in section 411(c)(2)(C)) to a defined benefit plan are treated as contributions to a defined contribution plan. For this purpose, contributions that are picked up by the employer as described in section 414(h)(2) are not considered employee contributions.

(C) Individual medical benefit accounts under section 401(h). Pursuant to section 415(l)(1), contributions allocated to any individual medical benefit account which is part of a pension or annuity plan established pursuant to section 401(h) are treated as contributions to a defined contribution plan.

(D) Post-retirement medical accounts for key employees. Pursuant to section 419A(d)(2), amounts attributable to medical benefits allocated to an account established for a key employee (any employee who, at any time during the plan year or any preceding plan year, is or was a key employee as defined in section 416(i)) pursuant to section 419A(d)(1) are treated as contributions to a defined contribution plan.

(iii) Section 403(b) annuity contracts. Annual additions under an annuity contract described in section 403(b) are treated as annual additions under a defined contribution plan for purposes of this section.

(3) Alternative contribution limitations --(i) Church plans. For alternative contribution limitations relating to church plans, see paragraph (d) of this section.

(ii) Special rules for medical benefits. For additional rules relating to certain medical benefits, see paragraph (e) of this section.

(iii) Employee stock ownership plans. For additional rules relating to employee stock ownership plans, see paragraph (f) of this section.

(b) Annual additions --(1) In general --(i) General definition. The term annual addition means, for purposes of this section, the sum, credited to a participant's account for any limitation year, of--

(A) Employer contributions;

(B) Employee contributions; and

(C) Forfeitures.


(ii) Certain excess amounts treated as annual additions. Contributions do not fail to be annual additions merely because they are excess contributions (as described in section 401(k)(8)(B)) or excess aggregate contributions (as described in section 401(m)(6)(B)), or merely because excess contributions or excess aggregate contributions are corrected through distribution.

(iii) Direct transfers. The direct transfer of a benefit or employee contributions from a qualified plan to a defined contribution plan does not give rise to an annual addition.

(iv) Reinvested employee stock ownership plan dividends. The reinvestment of dividends on employer securities under an employee stock ownership plan pursuant to section 404(k)(2)(A)(iii)(II) does not give rise to an annual addition.

(2) Employer contributions --(i) Amounts treated as an annual addition. For purposes of paragraph (b)(1)(i)(A) of this section, the term annual addition includes employer contributions credited to the participant's account for the limitation year and other allocations described in paragraph (b)(4) of this section that are made during the limitation year. See paragraph (b)(6) of this section for timing rules applicable to annual additions with respect to employer contributions.

(ii) Amounts not treated as annual additions --(A) Certain restorations of accrued benefits. The restoration of an employee's accrued benefit by the employer in accordance with section 411(a)(3)(D) or section 411(a)(7)(C) or resulting from the repayment of cashouts (as described in section 415(k)(3)) under a governmental plan (as defined in section 414(d)) is not considered an annual addition for the limitation year in which the restoration occurs. This treatment of a restoration of an employee's accrued benefit as not giving rise to an annual addition applies regardless of whether the plan restricts the timing of repayments to the maximum extent allowed by section 411(a).

 (B) Catch-up contributions. A catch-up contribution made in accordance with section 414(v) and § 1.414(v)-1 does not give rise to an annual addition.

(C) Restorative payments. A restorative payment that is allocated to a participant's account does not give rise to an annual addition for any limitation year. For this purpose, restorative

payments are payments made to restore losses to a plan resulting from actions by a fiduciary for which there is reasonable risk of liability for breach of a fiduciary duty under Title I of the Employee Retirement Income Security Act of 1974 (88 Stat. 829), Public Law 93-406 (ERISA) or under other applicable federal or state law, where plan participants who are similarly situated are treated similarly with respect to the payments. Generally, payments to a defined contribution plan are restorative payments only if the payments are made in order to restore some or all of the plan's losses due to an action (or a failure to act) that creates a reasonable risk of liability for such a breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the plan). This includes payments to a plan made pursuant to a Department of Labor order, the Department of Labor's Voluntary Fiduciary Correction Program, or a court-approved settlement, to restore losses to a qualified defined contribution plan on account of the breach of fiduciary duty (other than a breach of fiduciary duty arising from failure to remit contributions to the plan). Payments made to a plan to make up for losses due merely to market fluctuations and other payments that are not made on account of a reasonable risk of liability for breach of a fiduciary duty under Title I of ERISA are not restorative payments and generally constitute contributions that give rise to annual additions under paragraph (b)(4) of this section.

(D) Excess deferrals. Excess deferrals that are distributed in accordance with § 1.402(g)-1(e)(2) or (3) do not give rise to annual additions.

(3) Employee contributions. For purposes of paragraph (b)(1)(i)(B) of this section, the term annual addition includes mandatory employee contributions (as defined in section 411(c)(2)(C) and regulations promulgated under section 411) as well as voluntary employee contributions. The term annual addition does not include--

(i) Rollover contributions (as described in sections 401(a)(31), 402(c)(1), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16));

(ii) Repayments of loans made to a participant from the plan;

(iii) Repayments of amounts described in section 411(a)(7)(B) (in accordance with section 411(a)(7)(C)) and section 411(a)(3)(D) or repayment of contributions to a governmental plan (as defined in section 414(d)) as described in section 415(k)(3);

(iv) Repayments that would have been described in paragraph (b)(3)(iii) of this section except that the plan does not restrict the timing of repayments to the maximum extent permitted by section 411(a); or

(v) Employee contributions to a qualified cost of living arrangement within the meaning of section 415(k)(2)(B).

(4) Transactions with plan. The Commissioner may in an appropriate case, considering all of the facts and circumstances, treat transactions between the plan and the employer, transactions between the plan and the employee, or certain allocations to participants' accounts as giving rise to annual additions. Further, where an employee or employer transfers assets to a plan in exchange for consideration that is less than the fair market value of the assets transferred to the plan, there is an annual addition in the amount of the difference between the value of the assets transferred and the consideration. A transaction described in this paragraph (b)(4) may constitute a prohibited transaction with the meaning of section 4975(c)(1).

(5) Contributions other than cash. For purposes of this paragraph (b), a contribution by the employer or employee of property rather than cash is considered to be a contribution in an amount equal to the fair market value of the property on the date the contribution is made. For this purpose, the fair market value is the price at which the property would change hands

between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. In addition, a contribution described in this paragraph (b)(5) may constitute a prohibited transaction within the meaning of section 4975(c)(1).

(6) Timing rules --(i) In general --(A) Date of allocation. For purposes of this paragraph (b), an annual addition is credited to the account of a participant for a particular limitation year if it is allocated to the participant's account under the terms of the plan as of any date within that limitation year. Similarly, an annual addition that is made pursuant to a corrective amendment that complies with the requirements of § 1.401(a)(4)-11(g) is credited to the account of a participant for a particular limitation year if it is allocated to the participant's account under the terms of the corrective amendment as of any date within that limitation year. However, if the allocation of an annual addition is dependent upon the satisfaction of a condition (such as continued employment or the occurrence of an event) that has not been satisfied by the date as of which the annual addition is allocated under the terms of the plan, then the annual addition is considered allocated for purposes of this paragraph (b) as of the date the condition is satisfied.

(B) Date of employer contributions. For purposes of this paragraph (b), employer contributions are not treated as credited to a participant's account for a particular limitation year unless the contributions are actually made to the plan no later than 30 days after the end of the period described in section 404(a)(6) applicable to the taxable year with or within which the particular limitation year ends. If, however, contributions are made by an employer exempt from Federal income tax (including a governmental employer), the contributions must be made to the plan no later than the 15th day of the tenth calendar month following the end of the calendar year or fiscal year (as applicable, depending on the basis on which the employer keeps its books) with or within which the particular limitation year ends. If contributions are made to a plan after the end of the period during which contributions can be made and treated as credited to a participant's account for a particular limitation year, allocations attributable to those contributions are treated as credited to the participant's account for the limitation year during which those contributions are made.

(C) Date of employee contributions. For purposes of this paragraph (b), employee contributions, whether voluntary or mandatory, are not treated as credited to a participant's account for a particular limitation year unless the contributions are actually made to the plan no later than 30 days after the close of that limitation year.

(D) Date for forfeitures. A forfeiture is treated as an annual addition for the limitation year that contains the date as of which it is allocated to a participant's account as a forfeiture.

(E) Treatment of elective contributions as plan assets. The extent to which elective contributions constitute plan assets for purposes of the prohibited transaction provisions of section 4975 and Title I of ERISA, is determined in accordance with regulations and rulings issued by the Department of Labor. See 29 CFR 2510.3-102.

(ii) Special timing rules --(A) Corrective contributions. For purposes of this section, if, in a particular limitation year, an employer allocates an amount to a participant's account because of an erroneous forfeiture in a prior limitation year, or because of an erroneous failure to allocate amounts in a prior limitation year, the corrective allocation will not be considered an annual addition with respect to the participant for that particular limitation year, but will be considered an annual addition for the prior limitation year to which it relates. An example of a situation in which an employer contribution might occur under the circumstances described in the preceding sentence is a retroactive crediting of service for an employee under 29 CFR 2530.200b-2(a)(3) in

accordance with an award of back pay. For purposes of this paragraph (b)(6)(ii), if the amount so contributed in the particular limitation year takes into account actual investment gains attributable to the period subsequent to the year to which the contribution relates, the portion of the total contribution that consists of such gains is not considered as an annual addition for any limitation year.

(B) Contributions for accumulated funding deficiencies and previously waived contributions --(1) Accumulated funding deficiency. In the case of a defined contribution plan to which the rules of section 412 apply, a contribution made to reduce an accumulated funding deficiency will be treated as if it were timely made for purposes of determining the limitation year in which the annual additions arising from the contribution are made, but only if the contribution is allocated to those participants who would have received an annual addition if the contribution had been timely made.

(2) Previously waived contributions. In the case of a defined contribution plan to which the rules of section 412 apply and for which there has been a waiver of the minimum funding standard in a prior limitation year in accordance with section 412(d), that portion of an employer contribution in a subsequent limitation year which, if not for the waiver, would have otherwise been required in the prior limitation year under section 412(a) will be treated as if it were timely made (without regard to the funding waiver) for purposes of determining the limitation year in which the annual additions arising from the contribution are made, but only if the contribution is allocated to those participants who would have received an annual addition if the contribution had been timely made (without regard to the funding waiver).

(3) Interest. For purposes of determining the amount of the annual addition under paragraphs (b)(6)(ii)(B)(1) and (2) of this section, a reasonable amount of interest paid by the employer is disregarded. However, any interest paid by the employer that is in excess of a reasonable amount, as determined by the Commissioner, is taken into account as an annual addition for the limitation year during which the contribution is made.

(C) Simplified employee pensions. For purposes of this paragraph (b), amounts contributed to a simplified employee pension described in section 408(k) are treated as allocated to the individual's account as of the last day of the limitation year ending with or within the taxable year for which the contribution is made.

(D) Treatment of certain contributions made pursuant to veterans' reemployment rights. If, in a particular limitation year, an employer contributes an amount to an employee's account with respect to a prior limitation year and such contribution is required by reason of such employee's rights under chapter 43 of title 38, United States Code, resulting from qualified military service, as specified in section 414(u)(1), then such contribution is not considered an annual addition with respect to the employee for that particular limitation year in which the contribution is made, but, in accordance with section 414(u)(1)(B), is considered an annual addition for the limitation year to which the contribution relates.

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