

Sec. 49. Compensation.

- (1) For purposes of applying 415(c) of the IRC and for no other purpose, the definition of compensation where applicable will be compensation actually paid or made available during a limitation year, except as noted below and as permitted by Treasury Regulation 1.415(c)-2, or successor regulation; provided, however, that participant contributions picked up under 414(h) of the IRC shall not be treated as compensation.
- (2) For purposes of computing contributions or benefits, the employer shall elect in the Adoption Agreement to define compensation as:
 - (i) Medicare taxable wages reported by the employer on the participant's federal form W-2 wage and tax statement; or
 - (ii) Wages within the meaning of 3401(a) of the IRC and all other payments of compensation to an employee by an employer for which the employer is required to furnish the employee a written statement under 6041(d), 6051(a)(3) and 6052 of the IRC and will be determined without regard to any rules under 3401(a) of the IRC that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in 3401(a)(2) of the IRC). Compensation will also include amounts that would otherwise be included in compensation but for an election under 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b) of the IRC; any elective amounts that are not includible in the gross income of the participant by reason of 132(f)(4) of the IRC; and, any pre-tax contributions (excluding direct employer contributions) to an integral part trust of the employer providing retiree health care benefits.
- (3) For limitation years beginning on and after January 1, 2009, compensation for the limitation year shall also include compensation paid by the later of 2½ months after a participant's severance from employment or the end of the limitation year that includes the date of the participant's severance from employment if:
 - (i) The payment is regular compensation for services during the participant's regular working hours, or compensation for services outside the participant's regular working hours (such as overtime or shift differential), commissions, bonuses or other similar payments, and, absent a severance from employment, the payments would have been paid to the participant while the participant continued in employment with the employer;
 - (ii) The payment is for unused accrued bona fide sick, vacation or other leave that the participant would have been able to use if employment had continued; or

- (iii) Payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the participant at the same time if the participant had continued employment with the employer and only to the extent that the payment is includible in the participant's gross income.
- (4) Back pay, within the meaning of Treasury Regulation section 1.415(c)-2(g)(8), shall be treated as compensation for the limitation year to which the back pay relates to the extent the back pay represents wages and compensation that would otherwise be included under this definition.
- (5) Any payments not described above are not considered compensation if paid after severance from employment, even if they are paid within 2½ months following severance from employment, except for payments to the individual who does not currently perform services for the employer by reason of qualified military service (within the meaning of 414(u)(1) of the IRC) to the extent these payments do not exceed the amounts the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service.
- (6) Pursuant to section 8, an employee who is in qualified military service (within the meaning of 414(u)(1) of the IRC) shall be treated as receiving compensation from the employer during such period of qualified military service equal to (i) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for the absence during the period of qualified military service, or (ii) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the twelve (12) month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).
- (7) For limitation years beginning on or after January 1, 2009, the compensation of each participant taken into account in determining allocations shall not exceed the annual limit under 401(a)(17) of the IRC.