**Section 4445.240 415(c) Limit**

After-tax member contributions or other annual additions with respect to a member may not exceed the lesser of $40,000 (as adjusted pursuant to IRC section 415(d)) or 100% of the member's compensation.

a) Annual additions are defined to mean the sum (for any year) of employer contributions to a defined contribution plan, member contributions, and forfeitures credited to a member's individual account. Member contributions are determined without regard to rollover contributions and to picked-up employee contributions that are paid to a defined benefit plan.

b) For purposes of applying the 415(c) limits only 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 in subsection (c) and as permitted by 26 CFR 1.415(c)-2; however, member contributions picked up under IRC section 414(h) shall not be treated as compensation.

c) Unless another definition of compensation that is permitted by 26 CFR 1.415(c)-2 is specified by the plan, compensation will be defined as wages within the meaning of IRC section 3401(a) 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 IRC sections 6041(d), 6051(a)(3) and 6052 and will be determined without regard to any rules under IRC section 3401(a) 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 IRC section 3401(a)(2)).

1) However, for limitation years beginning on and after January 1, 1998, compensation will also include amounts that would otherwise be included in compensation but for an election under IRC section 125(a), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b). For limitation years beginning on and after January 1, 2001, compensation will also include any elective amounts that are not includible in the gross income of the employee by reason of IRC section 132(f)(4).

2) For limitation years beginning on and after January 1, 2009, compensation for the limitation year will also include compensation paid by the later of 2½ months after an employee's severance from employment or the end of the limitation year that includes the date of the employee's severance from employment if:

A) the payment is regular compensation for services during the employee's regular working hours, or compensation for services outside the employee'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 employee while the employee continued in employment with the employer;

B) the payment is for unused accrued bona fide sick, vacation or other leave that the employee would have been able to use if employment had continued; or

C) payments pursuant to a nonqualified unfunded deferred compensation plan, but only if the payments would have been paid to the member at the same time if the member had continued employment with the employer and only to the extent that the payment is includible in the member's gross income.

3) Any payments not described in subsection (c)(2) 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 IRC section 414(u)(1)) 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.

4) An employee who is in qualified military service (within the meaning of IRC section 414(u)(1)) shall be treated as receiving compensation from the employer during that period of qualified military service equal to:

A) the compensation the employee would have received during that 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

B) if the compensation the employee would have received during that period was not reasonably certain, the employee's average compensation from the employer during the 12 month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

5) For limitation years beginning on or after January 1, 2009, a member's compensation for purposes of this Section shall not exceed the annual limit under IRC section 401(a)(17).

6) Back pay, within the meaning of 26 CFR 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 subsection (c).

(Source: Amended at 38 Ill. Reg. 9514, effective April 16, 2014)