Note: These regulations are new to the CCR.

California Code of Regulations

Title 10: Investment
Chapter 15: California Secure Choice Retirement Savings Investment Board

Section 10000. Definitions

The following definitions shall apply wherever the terms are used throughout this Chapter:

a) "Account" means a Participant's Individual Retirement Account ("IRA") held within the Program.

b) "Administrator" means the third-party administrator that operates the Program.

c) "Automatic Escalation" means an automatic annual increase in a Participating Employee's Contributions as set forth in Section 10005.

d) "Beneficiary" means the individual(s) or entity(ies) entitled to receive the proceeds of a Participating Employee's or Participating Individual's Account upon their death.

e) "Board" means the California Secure Choice Retirement Savings Investment Board.

f) "Client Employer" means an Employer that is involved in a Tri-Party Employment Relationship due to obtaining the services of a third-party entity.

g) "Compensation" has the same meaning as defined in Title 26 Code of Federal Regulations 1.415(c)-2(d)(4) (April 5, 2007) which is incorporated herein by reference. In the case of a sole proprietor, a partner in a partnership, a member of a limited liability company treated as a sole proprietor or partner, or another self-employed individual, Compensation means such individual's Earned Income.

h) "Contribution" means any monies contributed to an Account.

i) "Contribution Rate" means the percentage of a Participating Employee's Compensation to be withheld and contributed to their Account via payroll deduction under the Program.

j) "Earned Income" means an individual's net earnings from self-employment from the Participating Employer as determined under Section 401(c)(2) of Title 26 of the United States Code in which personal services of the individual are a material income-producing factor.

k) “Eligible Employee” means any Employee of an Eligible Employer who is at least eighteen years of age.

l) “Eligible Employer” means an Employer that (i) has five or more Employees, as determined under the methodology described in Section 10001(a), at least one of whom is an Eligible Employee, (ii) does not maintain or contribute to a Tax-Qualified Retirement Plan; and (iii) is not the federal government, the state, any county, any municipal corporation, or any of the state’s units or instrumentalities.

m) “Employee” means any individual who has the status of an employee under Unemployment Insurance Code Sections 621, 621.5, 622, or 623; and who receives a W-2 with California wages. In the case of an Eligible Employer that is a sole proprietorship, partnership, or a limited liability company treated as a sole proprietorship or partnership for federal income tax reporting purposes, Employee shall also mean a sole proprietor, partner, or member of a limited liability company treated as a sole proprietor or partner for federal tax purposes.

n) “Employee Information Packet” means the packet of information provided by the Program that includes the Opt-Out Form, instructions on how to opt out of the Program, and other information required under Government Code Section 100014.

o) “Employer” means a sole proprietor, partnership, limited liability company, Subchapter C or Subchapter S corporation, trust, or other entity, whether for profit or not for profit, that is an employer under California Unemployment Insurance Code Division 1, Part 1.

p) “Exempt Employer” means an Employer that (i) has fewer than five Employees, as determined under the methodology described in Section 10001(a) or has more than five Employees, but does not employ any Eligible Employees; (ii) maintains or contributes to a Tax-Qualified Retirement Plan; or (iii) is the federal government, the state, any county, any municipal corporation, or any of the state’s units or instrumentalities.

q) “IRA” means an individual retirement account or individual retirement annuity under Section 408(a), 408(b), or 408A of Title 26 of the United States Code.

r) “Open Enrollment Period” means the period during which Eligible Employees that previously opted out of the Program shall be given the Employee Information Packet with the disclosure and Opt-Out Forms, for the employee to enroll in the Program or opt out of the Program.

s) “Opt-Out Form” means the form through which Eligible Employees may note their decision to opt out of participation in the Program.

t) “Participant” means any person who is or was a Participating Employee, Participating Individual, or Beneficiary.

u) "Participating Employee" means any person who is an Eligible Employee, is enrolled in the Program, maintains a Program IRA, and is not a Participating Individual.

v) "Participating Employer" means an Eligible Employer that registered with the Program to provide its Eligible Employees access to the Program.

w) "Participating Individual" means any person who enrolled in the Program independent of an employment relationship with an Eligible Employer, as further defined in Section 10006, maintains a Program IRA, and is not a Participating Employee.

x) "Program" means the CalSavers Retirement Savings Program offered by the California Secure Choice Retirement Savings Trust.

y) "Tax-Qualified Retirement Plan" means a retirement plan that qualifies for favorable federal income tax treatment under Sections 401(a), 401(k), 403(a), 403(b), 408(k), or 408(p) of Title 26 of the United States Code. An employer-provided payroll deduction IRA program that does not provide for automatic enrollment is not a Tax-Qualified Retirement Plan.

z) "Tri-Party Employment Relationship" means a relationship in which an Employer enters into a service contract with a third-party entity for services including, but not limited to, payroll, staffing (both temporary and non-temporary), human resources, and Employer compliance with laws and regulations.

Note – Authority Cited: Section 100048, California Government Code.
Reference: Sections 100000, 100012, 100014 and 100032, California Government Code.

Section 10001. Eligible Employers

(a) To determine whether an Employer is an Eligible Employer, an Employer's number of employees shall be the average number of employees as reported to the Employment Development Department for the quarter ending December 31 and the previous three quarters of available data from the reports.

(b) An Employer shall cease to be an Eligible Employer either upon the effective date of its adoption of, or participation in, the proceeding Tax-Qualified Retirement Plan or if its average number of employees drops below five for a calendar year, as determined under the methodology prescribed in subsection (a).

(c) Each Participating Employer that ceases to be an Eligible Employer shall notify the Program within 30 days through one of the methods established in Section 10002(e).

(d) The Program will notify Employers about the Program and its registration deadlines and require Eligible Employers that have not previously registered for the Program to do so on or before the deadlines set forth in Section 10002(a). Exempt Employers may, but need not, inform the Program of their exemption from the Program using one of the methods established under Section 10002(e).

(e) For Employers in a Tri-Party Employment Relationship, the Eligible Employer shall be:

(1) For a temporary services Employer or leasing Employer, as defined in California Unemployment Insurance Code Section 606.5(b): the temporary services Employer or leasing Employer.
(2) For a professional employer organization described under Section 7705of Title 26 of the United States Code, without regard to whether the organization is certified under Section 7705, that enters into a contract with a Client Employer: the Client Employer.
(3) For a motion picture payroll services company defined under California Unemployment Insurance Code Section 679(f)(4): the motion picture production company defined under California Unemployment Insurance Code Section 679(f)(5).

Note – Authority Cited: Section 100048, California Government Code.
Reference: Sections 100000, 100012, 100032 and 100043, California Government Code.

Section 10002. Employer Registration

(a) Each Eligible Employer shall register with the Program no later than:
    (1) For Eligible Employers employing more than 100 employees, June 30, 2020.
    (2) For Eligible Employers employing more than 50 employees, June 30, 2021.
    (3) For all other Eligible Employers, June 30, 2022.
(b) An Employer that becomes an Eligible Employer after July 1, 2019 shall register with the Program not later than the applicable dates in subsection (a) or within 24 months after the date on which it becomes an Eligible Employer, whichever is later.
(c) An Employer's number of employees shall be determined under the methodology prescribed in Section 10001(a).
(d) Exempt Employers are prohibited from participating in the Program.
(e) An Eligible Employer may register with the Program by providing the information required in subsection (f) using the Program's website (employer.calsavers.com), by phone (855-660-6916), by overnight mail (CalSavers, 95 Wells Avenue, Suite 155, Newton, MA 02459), or by regular mail (CalSavers, P.O. Box 55759, Boston, MA 02205-5759).
(f) In order to register, an Eligible Employer shall provide the following information to the Administrator through one of the methods listed in subsection (e):
    (1) Employer name, legal name, and "doing business as" name, if applicable;
    (2) Federal Employer Identification Number and California Employer Payroll Tax Account Number;
    (3) Employer mailing address; and
    (4) Name, title, phone number, and email address of an individual designated by the Employer as the primary contact for the Program.

Note – Authority Cited: Section 100048, California Government Code.
Reference: Sections 100032 and 100043, California Government Code.

Section 10003. Participating Employer Duties

(a) Within 30 days of registration, a Participating Employer shall provide the following

information to the Administrator for each Eligible Employee:

(1) Eligible Employee's full legal name;
(2) Eligible Employee's Social Security Number or Individual Taxpayer Identification Number;
(3) Eligible Employee's date of birth;
(4) Eligible Employee's mailing address;
(5) Eligible Employee's phone number, if available; and
(6) Eligible Employee's email address(es), if available.

(b) For each Eligible Employee hired by a Participating Employer after it has registered with the Program, the Participating Employer shall provide the same information included in subsection (a) to the Administrator within 30 days of the Eligible Employee's hire date.

(c) Participating Employers shall ensure the Employee Information Packet is delivered to all Eligible Employees no later than 30 days after complying with subsection (a) or (b). Participating Employers shall satisfy this obligation by providing the Program with contact information for their Eligible Employees. The Program will deliver the packet directly to the Eligible Employees using the provided contact information.

(d) Participating Employers shall remit each Participating Employee's Contribution each payroll period to the Administrator at the applicable Contribution Rate. The Contribution Rate shall be established by the Participating Employee and reported to the Employer by the Administrator through the Program's website (employer.calsavers.com).

(1) Participating Employers shall remit all Compensation withheld to the Administrator as soon as administratively possible, not to exceed seven business days from the date of deduction.

(e) Participating Employers shall not:

(1) Require, endorse, encourage, prohibit, restrict, or discourage employee participation in the Program.
(2) Provide Participating Employees or Beneficiaries of deceased Participating Employees advice or direction regarding investment choices, Contribution Rates, participation in Automatic Escalation, or any other decision about the Program.
(3) Remit any Contributions for any Eligible Employee who opted out of the Program.
(4) Exercise any authority, control, or responsibility regarding the Program other than as set forth in this Section.

Note – Authority Cited: Section 100048, California Government Code.
Reference: Sections 100000, 100012, 100014, 100032, 100034, 100043 and 100046, California Government Code.

Section 10004. Employee Enrollment

(a) An Eligible Employee shall be enrolled into the Program if they do not opt out within 30 days after the date the Employee Information Packet is delivered. The information prescribed in Section 10003(a) will be used by the Administrator to execute the enrollment.

(1) The Participating Employer shall facilitate Contributions for each Participating

Employee no later than the first payroll period following 30 days after notification by the Administrator of the Participating Employee's enrollment.

(b) An Eligible Employee who does not opt out of the Program is deemed to have read and understood the content in the Employee Information Packet if the Eligible Employee has been furnished a copy of the Employee Information Packet pursuant to Section 10003(c) and has been provided an opportunity to opt out of the Program.

(c) An Eligible Employee may opt out of the Program at any time. Eligible Employees may opt out either electronically (saver.calsavers.com), by phone (855-650-6918), or by completing the Opt-Out Form and submitting the form by overnight mail (CalSavers, 95 Wells Avenue, Suite 155, Newton, MA 02459) or by regular mail (CalSavers, P.O. Box 55759, Boston, MA, 02205-5759).
    (1) To opt out by overnight mail or regular mail, Eligible Employees must provide the last four digits of their Social Security Number or Individual Tax Identification Number, date of birth, ZIP Code, and sign the form.
    (2) To opt out electronically or by phone, Eligible Employees must provide the last four digits of their Social Security Number or Individual Tax Identification Number, date of birth, and ZIP Code.

(d) Eligible Employees who opt out of the Program may enroll at any time through one of the methods established in subsection (c), by providing the information pursuant to Section 10003(a) to the Administrator.
    (1) The Participating Employer shall facilitate Contributions for such Participating Employees no later than the first payroll period following 30 days after notification by the Administrator of the Participating Employee's enrollment.

(e) If the Administrator is unable to enroll an Employee for any reason, the Administrator shall notify the Participating Employer with instructions not to remit Contributions for the Eligible Employee within 15 days after the Administrator's attempt to enroll the Eligible Employee. The Administrator shall also notify the Eligible Employee about the inability to enroll by regular mail or, if the Administrator has the Eligible Employee's email address, by email within 15 days of the Administrator's attempt to enroll the Eligible Employee.

(f) The Program shall deliver the Employee Information Packet prior to the start of the Open Enrollment Period to all Eligible Employees who opted out of the Program at least one year prior to the Open Enrollment Period through the procedures identified in Section 10003(c).
    (1) The Open Enrollment Period shall begin November 1 and conclude November 30.
    (2) Such Eligible Employees shall be enrolled if they do not opt out using one of the methods described in subsection (c) by November 30.
    (3) The Open Enrollment Period shall be held once every two years for each Participating Employer. The first Open Enrollment Period will begin the second November after a Participating Employer registers for the Program.

Note – Authority Cited: Section 100048, California Government Code.
Reference: Sections 100000, 100012, 100014, 100032, 100043 and 100046, California Government Code.

Section 10005. Default Program Options and Alternative Elections for Contributions, Automatic Escalation, and Investment Options for Participants

(a) Upon enrollment, a Participating Employee who has not made an alternative election as specified in this Section shall make Contributions to the Program according to the following default elections:

(1) At a Contribution Rate of 5%.

(2) Have Contributions subject to Automatic Escalation whereby the Contribution Rate shall increase by an additional 1% of Compensation on each January 1 following the Participating Employee's enrollment up to a maximum Contribution Rate of 8%.

(A) Participating Employees who choose an alternative Contribution Rate shall have Contributions subject to Automatic Escalation unless they choose to opt out of Automatic Escalation by notifying the Program using one of the methods identified in Section 10004(c).

(B) A Participating Employee who has not participated in the Program for at least six calendar months during a calendar year shall not have Contributions subject to Automatic Escalation until the January 1 that follows the next calendar year in which the Participating Employee has at least six calendar months of participation.

1. The Administrator shall notify the Participating Employee of the Automatic Escalation increase at least 60 days before January 1 to provide the Participating Employee an opportunity to modify their Contribution Rate if they do not wish the Automatic Escalation provision to apply.

(3) Have Contributions made to a Roth IRA, which the Program will establish on behalf of Participating Employees that have not established an IRA for themselves through the Program's website by providing the information required by Section 10004(c).

(4) The first $1,000 in Contributions shall be invested in a capital preservation investment. All subsequent contributions shall be invested in a Target Date Fund based on the Participating Employee's age as reported on the Program's records and an assumed retirement at age 65. The applicable Target Date Fund shall be determined as described in the following table:

Date of Birth	Target Retirement Years	CalSavers Fund Name
12/31/1947 or Earlier	2012 or earlier	CalSavers Target Retirement Fund
1/1/1948 - 12/31/1952	2013 - 2017	CalSavers Target Retirement 2015 Fund

1/1/1953 - 12/31/1957	**2018**	**-**	**2022**	CalSavers Target Retirement 2020 Fund
1/1/1958 - 12/31/1962	**2023**	**-**	**2027**	CalSavers Target Retirement 2025 Fund
1/1/1963 - 12/31/1967	**2028**	**-**	**2032**	CalSavers Target Retirement 2030 Fund
1/1/1968 - 12/31/1972	**2033**	**-**	**2037**	CalSavers Target Retirement 2035 Fund
1/1/1973 - 12/31/1977	**2038**	**-**	**2042**	CalSavers Target Retirement 2040 Fund
1/1/1978 - 12/31/1982	**2043**	**-**	**2047**	CalSavers Target Retirement 2045 Fund
1/1/1983 - 12/31/1987	**2048**	**-**	**2052**	CalSavers Target Retirement 2050 Fund
1/1/1988 - 12/31/1992	**2053**	**-**	**2057**	CalSavers Target Retirement 2055 Fund
1/1/1993 - 12/31/1997	**2058**	**-**	**2062**	CalSavers Target Retirement 2060 Fund
1/1/1998 - 12/31/2002	**2063**	**-**	**2067**	CalSavers Target Retirement 2065 Fund
1/1/2003 or Later	**2068**	**or**	**later**	[Funds to be added later - not a valid Participant age]

(b) Participants may make an alternative election at any time through one of the methods established under Section 10004(c).

(1) A Participating Employee may elect a Contribution Rate other than the default Contribution Rate at any integer between 0% and 100% of Compensation.

(2) A Participating Employee may opt out of Automatic Escalation or elect an alternative Automatic Escalation percentage at any time by notifying the Administrator using one of the methods established in Section 10004(c).

(3) A Participant may elect to make recurring non-payroll Contributions of at least $10 each to their Account. Such recurring non-payroll Contributions must be made at least as frequently as quarterly and contributed electronically.

(4) A Participating Employee or Participating Individual may also elect to make non-recurring non-payroll Contributions.
Such Contributions may be made electronically or by personal check and must

be a minimum of $50 each.

(5) A Participant may elect one or more investment options other than the default investment option by notifying the Administrator using one of the methods established in Section 10004(c) that the Participant wishes to invest future contributions or change investment elections for any portion of their existing balance in their Account directly in another investment alternative or alternatives offered by the Program.

(6) Alternative contribution elections (including Contribution Rates, Automatic Escalation and opt out elections) shall be implemented as quickly as administratively practicable but in any event no later than the first payroll period following 30 days after notification by the Administrator of the alternative election.

(c) Other Contribution and Investment Election Rules

(1) Participating Employers are prohibited from contributing to a Participating Employee's Account.

(2) An individual who is both a Participating Employer and a Participating Employee may make Contributions to their own Account under the same terms and conditions as other Participating Employees.

(3) Amounts withheld by the Participating Employer shall not exceed the amount of the Participating Employee's Compensation remaining after any payroll deductions required by law to have higher precedence, including a court order.

(4) A Participant may elect, using one of the methods established in Section 10004(c), to make all or some of their Contributions to a Traditional IRA. This option is not yet available. After complying with the Administrative Procedure Act Chapter 3.5, the Administrator shall post notice of the option on the Program's website (saver.calsavers.com).

Note – Authority Cited: Section 100048, California Government Code.
Reference: Sections 100002, 100004, 100008, 100012, 100032 and 100043.

Section 10006. Individual Participation

(a) An individual who is at least eighteen years of age, and who is not an Eligible Employee may elect to participate in the Program as a Participating Individual outside of an employment relationship with an Eligible Employer. This option may not yet be available. After complying with the Administrative Procedure Act Chapter 3.5, the Administrator shall post notice of the option on the Program's website (calsavers.com).

(b) Any recurring Contribution by a Participating Individual must be made at least as frequently as quarterly, must be made electronically, and be at least $10.

(c) Participating Individuals may make non-recurring Contributions electronically or by personal check in an amount of at least $50.

(d) Businesses that use the services of Participating Individuals have not elected to participate in the Program merely because they, at the request of Participating Individuals, choose to facilitate remittance to the Administrator for deposit into a Participant's Account all or a portion of the money owed to such Participating

Individuals. Exempt Employers that choose to facilitate deposits to a Participant's Account shall take all steps necessary to ensure their payroll deduction IRA programs shall not be an employee benefit plan regulated under Title 1 of the Employee Retirement Income Security Act (ERISA).

Note – Authority Cited: Section 100048, California Government Code.
Reference: Sections 100002 and 100012, California Government Code.

Section 10007. Contributions and Distributions

(a) It shall be the responsibility of the Participant to determine whether they are eligible to make Contributions to a Roth IRA or Traditional IRA (when available) and whether the amount of their Contributions to a Roth IRA or Traditional IRA (when available) complies with the limits established under Title 26 of the United States Code.

(b) A Participant may choose to rollover or transfer funds into their Account. This option is not yet available. After complying with the Administrative Procedure Act Chapter 3.5, the Administrator shall post notice of the option on the Program's website (saver.calsavers.com).

Note – Authority Cited: Section 100048, California Government Code.
Reference: Sections 100002, 100008 and 100012, California Government Code.

415(b) is consistent with the requirements of this paragraph (g).

Example 4. (i) G begins employment with Employer D on January 1, 2003, at the age of 58. Employer D maintains a noncontributory defined benefit plan which provides for a straight life annuity beginning at age 65 and uses the calendar year for the limitation and plan year. G becomes a participant in Employer D's plan on January 1, 2004, and works through December 31, 2009, when G is age 65. G performs sufficient service to be credited with a year of service under the plan for each year during 2003 through 2009 (although G is not credited with a year of service for 2003 because G is not yet a plan participant). G begins to receive benefits under the plan during 2010. The plan's accrual computation period is the plan year. The plan provides that, for purposes of applying the rules of section 415(b)(5)(B), a participant is credited with a year of service (computed to fractional parts of a year) for each plan year for which the participant is credited with sufficient service to accrue a benefit for the plan year. G's average compensation for the period of G's high-3 years of service is $200,000. It is assumed for purposes of this example that the dollar limitation of section 415(b)(1)(A) for limitation years ending in 2010 is $195,000.

(ii) G has 7 years of service and 6 years of participation in the plan at the time G begins to receive benefits under the plan. Accordingly, the limitation under section 415(b)(1)(B) based on G's average compensation for the period of G's high-3 years of service that applies pursuant to the adjustment required under section 415(b)(5)(B) is $140,000 ($200,000 multiplied by 7/10), and the dollar limitation under section 415(b)(1)(A) that applies to G pursuant to the adjustment required under section 415(b)(5)(A) is $117,000 ($195,000 multiplied by 6/10).

(h) *Retirement Protection Act of 1994 transition rules.* For special rules affecting the actuarial adjustment for form of benefit under paragraph (c) of this section and the adjustment to the dollar limit for early or late commencement under paragraphs (d) and (e) of this section for certain plans adopted and in effect before December 8, 1994, see section 767(d)(3)(A) of the Uruguay Round Agreements Act of 1994, Public Law 103–465 (108 Stat. 4809) as amended by section 1449(a) of the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1755). The Commissioner may provide guidance regarding these special rules in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See §601.601(d) of this chapter.

[T.D. 9319, 72 FR 16899, Apr. 5, 2007; 72 FR 28854, May 23, 2007]

§1.415(b)–2 Multiple annuity starting dates. [Reserved]

§1.415(c)–1 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) and §1.411(c)–1(c)(4), regardless of whether the plan is subject to the requirements of section 411) 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.

(c) *Examples.* The following examples illustrate the rules of paragraphs (a) and (b) of this section:

Example 1. (i) P is a participant in a qualified profit-sharing plan maintained by his employer, ABC Corporation. The limitation year for the plan is the calendar year. P's compensation (as defined in §1.415(c)–2) for the current limitation year is $30,000.

(ii) Because the compensation limitation described in section 415(c)(1)(B) applicable to P for the current limitation year is lower than the dollar limitation described in section 415(c)(1)(A), the maximum annual addition which can be allocated to P's account for the current limitation year is $30,000 (100 percent of $30,000).

Example 2. (i) The facts are the same as in *Example 1*, except that P's compensation for the current limitation year is $140,000.

(ii) The maximum amount of annual additions that may be allocated to P's account in the current limitation year is the lesser of $140,000 (100 percent of P's compensation) or the dollar limitation of section 415(c)(1)(A) as in effect as of January 1 of the calendar year in which the current limitation year ends. If, for example, the dollar limitation of section 415(c)(1)(A) in effect as of January 1 of the calendar year in which the current limitation year ends is $45,000, then the maximum annual addition that can be allocated to P's account for the current limitation year is $45,000.

Example 3. (i) Employer N maintains a qualified profit-sharing plan that uses the calendar year as its plan year and its limitation year. N's taxable year is a fiscal year beginning June 1 and ending May 31. Under the terms of the profit-sharing plan maintained by N, employer contributions are made to the plan two months after the close of N's taxable year and are allocated as of the last day of the plan year ending within the taxable year (and are not dependent on the satisfaction of a condition). Thus, employer contributions for the 2008 calendar year limitation year are made on July 31, 2009 (the date that is two months after the close of N's taxable year ending May 31, 2009) and are allocated as of December 31, 2008.

(ii) Because the employer contributions are actually made to the plan no later than 30 days after the end of the period described in section 404(a)(6) with respect to N's taxable year ending May 31, 2009, the contributions will be considered annual additions for the 2008 calendar year limitation year.

Example 4. (i) The facts are the same as in *Example 3,* except that the plan year for the profit-sharing plan maintained by N is the 12-month period beginning on February 1 and ending on January 31. The limitation year continues to be the calendar year. Under the terms of the plan, an employer contribution which is made to the plan on July 31, 2009, is allocated to participants' accounts as of January 31, 2009.

(ii) Because the last day of the plan year is in the 2009 calendar year limitation year, and because, under the terms of the plan, employer contributions are allocated to participants' accounts as of the last day of the plan year, the contributions are considered annual additions for the 2009 calendar year limitation year.

Example 5. (i) XYZ Corporation maintains a profit-sharing plan to which a participant may make voluntary employee contributions for any year not to exceed 10 percent of the participant's compensation for the year. The plan permits a participant to make retroactive make-up contributions for any year for which the participant contributed less than 10 percent of compensation. XYZ uses the calendar year as the plan year and the limitation year. Under the terms of the plan, voluntary employee contributions are credited to a participant's account for a particular limitation year if such contributions are allocated to the participant's account as of any date within that limitation year. Participant A's compensation is as follows—

Limitation year	Compensation
2008	$30,000
2009	$32,000
2010	$34,000
2011	$36,000

(ii) Participant A makes no voluntary employee contributions during limitation years 2008, 2009, and 2010. On October 1, 2011, participant A makes a voluntary employee contribution of $13,200 (10 percent of A's aggregate compensation for limitation years 2008, 2009, 2010, and 2011 of $132,000). Under the terms of the plan, $3,000 of this 2011 contribution is allocated to A's account as of limitation year 2008; $3,200 is allocated to A's account of limitation year 2009; $3,400 is allocated to A's account as of limitation year 2010, and $3,600 is allocated to A's account as of limitation year 2011.

(iii) Under the rule set forth in paragraph (b)(6)(i)(C) of this section, employee contributions will not be considered credited to a participant's account for a particular limitation year for section 415 purposes unless the contributions are actually made to the plan no later than 30 days after the close of that limitation year. Thus, A's voluntary employee contribution of $13,200 made on October 1, 2011, would be considered as credited to A's account only for the 2011 calendar year limitation year, notwithstanding the plan provisions.

(d) *Special rules relating to church plans*—(1) *Alternative contribution limitation*—(i) *In general.* Pursuant to section 415(c)(7)(A), notwithstanding the general rule of paragraph (a)(1) of this section, additions for a section 403(b) annuity contract for a year with respect to a participant who is an employee of a church or a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), when expressed as an annual addition to such participant's account, are treated as not exceeding the limitation of paragraph (a)(1) of this section if such annual additions for the year are not in excess of $10,000.

(ii) *$40,000 aggregate limitation.* With respect to any participant, the total amount of annual additions that are in excess of the limitation of paragraph (a)(1) of this section but, pursuant to the rule of paragraph (d)(1)(i) of this section, are treated as not exceeding that limitation (taking into account the rule of paragraph (d)(3) of this section) cannot exceed $40,000. Thus, the aggregate of annual additions for all limitation years that would exceed the limitation of this section but for this paragraph (d)(1) is limited to $40,000.

(2) *Years of service taken into account for duly ordained, commissioned, or licensed ministers or lay employees.* For purposes of this paragraph (d)—

(i) All years of service by an individual as an employee of a church, or a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), are considered as years of service for one employer; and

(ii) All amounts contributed for annuity contracts by each such church (or convention or association of churches) during such years for the employee are considered to have been contributed by one employer.

(3) *Foreign missionaries.* Pursuant to section 415(c)(7)(C), in the case of any individual described in paragraph (d)(1) of this section performing any services for the church outside the United States during the limitation year, additions for an annuity contract under section 403(b) for any year are not treated as exceeding the limitation of

paragraph (a)(1) of this section if such annual additions for the year do not exceed $3,000. The preceding sentence shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to community property law) exceeds $17,000.

(4) *Church, convention or association of churches.* For purposes of this paragraph (d), the terms ''church'' and ''convention or association of churches'' have the same meaning as when used in section 414(e).

(5) *Examples.* The following examples illustrate the rules of this paragraph (d):

Example 1. (i) E is an employee of ABC Church earning $7,000 during each calendar year. E participates in a section 403(b) annuity contract maintained by ABC Church beginning in the year 2008. E's taxable year is the calendar year, and the limitation year for the plan coincides with the calendar year. ABC Church contributes $10,000 to be allocated to E's account under the plan for the year 2008.

(ii) Under paragraph (d)(1) of this section, this allocation is treated as not violating the limits established in paragraph (a)(1) of this section because it does not exceed $10,000. Moreover, since an annual addition of $10,000 would otherwise exceed the limitation of paragraph (a)(1) of this section by $3,000, $3,000 is counted toward the aggregate limitation specified in paragraph (d)(1)(ii) of this section for year 2008. Accordingly, ABC Church may make such allocations for 13 years (for example, for years 2008 through 2020) without exceeding the aggregate limitation of $40,000 specified in paragraph (d) of this section. For the fourteenth year, ABC Church could allocate only $8,000 to E's account (the sum of the $7,000 limitation computed under paragraph (a)(1)(ii) of this section and the remaining $1,000 of the $40,000 aggregate limitation under paragraph (d)(1)(ii) of this section on annual additions in excess of the limits under paragraph (a)(1) of this section).

Example 2. (i) F is an employee of XYZ Church and F's taxable year is the calendar year. F earns $2,000 during each calendar year for services he provides to XYZ Church, all of which are performed outside the United States during each calendar year. F participates in a section 403(b) annuity contract maintained by ABC Church beginning in the year 2008. The limitation year for the plan coincides with the calendar year. ABC Church contributes $10,000 to be allocated to F's account under the plan for the year 2008. F's adjusted gross income for each taxable year (determined separately and without regard to community property law) does not exceed $17,000.

(ii) Under paragraph (d)(1) of this section, this allocation is treated as not violating the limits established in paragraph (a)(1) of this section because it does not exceed $10,000. Moreover, since an annual addition of $10,000 would otherwise exceed the limitation of paragraph (a)(1) of this section by $7,000 (the excess of $10,000 over the greater of the $2,000 compensation limitation under section 415(c)(1)(B) or the $3,000 section 415(c)(7)(C) amount), XYZ Church may make such allocations for 5 years (for example, for years 2008 through 2012) without exceeding the aggregate limitation of $40,000 specified in paragraph (d) of this section. In year 2013, XYZ church may contribute $8,000 to be allocated to F's account under the plan (the sum of the $3,000 limitation computed under paragraph (d)(3) of this section and the remaining $5,000 of the $40,000 aggregate limitation under paragraph (d)(1)(ii) of this section on annual additions in excess of the limits under paragraph (a)(1) of this section). For years after 2013, pursuant to paragraph (d)(3) of this section, XYZ Church could allocate $3,000 per year to F's account.

(e) *Special rules for medical benefits.* The limit under paragraph (a)(1)(ii) of this section (100 percent of the participant's compensation for the limitation year) does not apply to—

(1) An individual medical benefit account (as defined in section 415(l)); or

(2) A post-retirement medical benefits account for a key employee (as defined in section 419A(d)(1)).

(f) *Special rules for employee stock ownership plans*—(1) *In general.* Special rules apply to employee stock ownership plans, as provided in paragraphs (f)(2) through (f)(4) of this section.

(2) *Determination of annual additions for leveraged employee stock ownership plans*—(i) *In general.* Except as provided in this paragraph (f) of this section, in the case of an employee stock ownership plan to which an exempt loan as described in §54.4975–7(b) of this chapter has been made, the amount of employer contributions that is considered an annual addition for the limitation year is calculated with respect to employer contributions of both principal and interest used to repay that exempt loan for the limitation year.

(ii) *Employer stock that has decreased in value.* A plan may provide that, in lieu of computing annual additions in accordance with paragraph (f)(2)(i) of

this section, annual additions with respect to a loan repayment described in paragraph (f)(2)(i) of this section are determined as the fair market value of shares released from the suspense account on account of the repayment and allocated to participants for the limitation year if that amount is less than the amount determined in accordance with paragraph (f)(2)(i) of this section.

(3) *Exclusions from annual additions for certain employee stock ownership plans that allocate to a broad range of participants*—(i) *General rule.* Pursuant to section 415(c)(6), in the case of an employee stock ownership plan (as described in section 4975(e)(7)) that meets the requirements of paragraph (f)(3)(ii) of this section for a limitation year, the limitations imposed by this section do not apply to—

(A) Forfeitures of employer securities (within the meaning of section 409(l)) under such an employee stock ownership plan if such securities were acquired with the proceeds of a loan (as described in section 404(a)(9)(A)); or

(B) Employer contributions to such an employee stock ownership plan which are deductible under section 404(a)(9)(B) and charged against the participant's account.

(ii) *Employee stock ownership plans to which the special exclusion applies.* An employee stock ownership plan meets the requirements of this paragraph (f)(3)(ii) for a limitation year if no more than one-third of the employer contributions for the limitation year that are deductible under section 404(a)(9) are allocated to highly compensated employees (within the meaning of section 414(q)).

(4) *Gratuitous transfers under section 664(g)(1).* The amount of any qualified gratuitous transfer (as defined in section 664(g)(1)) allocated to a participant for any limitation year is not taken into account in determining whether any other annual addition exceeds the limitations imposed by this section, but only if the amount of the qualified gratuitous transfer does not exceed the limitations imposed by section 415.

[T.D. 9319, 72 FR 16911, Apr. 5, 2007]

§ 1.415(c)–2 Compensation.

(a) *General definition.* Except as otherwise provided in this section, *compensation from the employer within the meaning of section 415(c)(3), which is used for purposes of section 415 and regulations promulgated under section 415*, means all items of remuneration described in paragraph (b) of this section, but excludes the items of remuneration described in paragraph (c) of this section. Paragraph (d) of this section provides safe harbor definitions of compensation that are permitted to be provided in a plan in lieu of the generally applicable definition of compensation. Paragraph (e) of this section provides timing rules relating to compensation. Paragraph (f) of this section provides rules regarding the application of the rules of section 401(a)(17) to the definition of compensation for purposes of section 415. Paragraph (g) of this section provides special rules relating to the determination of compensation, including rules for determining compensation for a section 403(b) annuity contract, rules for determining the compensation of employees of controlled groups or affiliated service groups, rules for disabled employees, rules relating to foreign compensation, rules regarding deemed section 125 compensation, rules for employees in qualified military service, and rules relating to back pay.

(b) *Items includible as compensation.* For purposes of applying the limitations of section 415, except as otherwise provided in this section, the term *compensation* means remuneration for services of the following types—

(1) The employee's wages, salaries, fees for professional services, and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan, to the extent that the amounts are includible in gross income (or to the extent amounts would have been received and includible in gross income but for an election under section 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k), or 457(b)). These amounts include, but are not limited to, commissions paid to salespersons, compensation for services on the basis of a percentage of profits, commissions on insurance premiums,