



Ohio Administrative Code

Rule 145-2-65 Internal Revenue Code limitations on benefits.

Effective: [March 24, 2013](#)

(A) In addition to other limitations set forth in Chapter 145. of the Revised Code, the defined benefit payable to a member under the traditional pension plan or the defined benefit payable to a member under the combined plan shall not exceed the applicable limits under section 415(b) of the Internal Revenue Code, as periodically adjusted by the secretary of the treasury under section 415(d) of the Internal Revenue Code. This adjustment shall also apply to a member who has had a severance from employment or, if earlier, an annuity starting date. Benefits that are subject to section 415(b) of the Internal Revenue Code shall comply with the foregoing limit in each year during which payments are made. The foregoing limit shall be adjusted pursuant to the requirements of sections 415(b)(2)(C) and (D) of the Internal Revenue Code relating to the commencement of benefits at a date prior to age sixty-two or after age sixty-five, subject to other applicable rules. Any member whose benefits were limited by the application of section 415 of the Internal Revenue Code immediately prior to its amendment by the Economic Growth and Tax Relief Reconciliation Act of 2001 shall, for limitation years ending on or after July 1, 2002, have his or her benefit increased to the amount computed under the applicable plan, but not in excess of the limits of section 415(b)(1)(A) of the Internal Revenue Code of 1986, 26 U.S.C.A. 415(b)(1)(A), as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001.

(1) For purposes of this rule, "compensation" means compensation as defined in section 415(c)(3) of the Internal Revenue Code and section 1.415(c)-2(d)(3) of the Treasury Regulations, 72 Fed. Reg. 16878, April 5, 2007. In general, section 415(c)(3) of the Internal Revenue Code defines compensation as all of a member's wages as defined in section 3401(a) of the Internal Revenue Code for the purposes of income tax withholding at the source, but determined without regard to any rules 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 section 3401(a)(2) of the Internal Revenue Code). Compensation shall also include the amount of any elective deferrals, as defined in section 402(g)(3) of the Internal Revenue Code; any amount contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of sections 125, 132(f)(4) or 457 of the Internal Revenue Code; and effective



January 1, 2009, differential wage payments as defined in section 3401(h)(2) of the Internal Revenue Code.

(2) In addition, compensation shall include the following amounts:

(a) Regular compensation for services. Compensation shall include regular compensation for services that, absent a severance from service, would have been paid to the member if the member continued in employment with the employer, in accordance with section 1.415(c)-2(e)(3)(ii) of the Treasury Regulations, to the extent required under section 1.415(c)-2(e)(3)(i) of the Treasury Regulations.

(b) Payments to reservists. Compensation shall include payments to a member who does not currently perform services for an employer by reason of qualified military service made in accordance with the employer's current policy with regard to such qualified military service, to the extent these payments do not exceed the amount the individual would have received if the individual had continued to perform services for the employer rather than entering qualified military service, in accordance with section 1.415(c)-2(e)(4) of the Treasury Regulations.

(c) Back pay. Compensation shall include payments of back pay within the meaning of section 1.415(c)-2(g)(8) of the Treasury Regulations.

(3) "Compensation" shall not include the following amounts:

(a) Foreign compensation. Compensation shall not include amounts paid as compensation to a nonresident alien, as defined in section 7701(b)(1)(B) of the Internal Revenue Code, who is not a member, to the extent the compensation is excludable from gross income and is not effectively connected with the conduct of a trade or business within the United States, in accordance with section 1.415(c)-2(g)(5)(ii) of the Treasury Regulations.

(b) Scheduled deferred compensation payments. Compensation shall not include payments to a member in accordance with a nonqualified unfunded deferred compensation plan, even if such amount would have been paid at the same time if employment had continued, in accordance with section 1.415(c)-2(e)(3)(iii)(B) of the Treasury Regulations.



(c) Disability payments. Compensation shall not include amounts received on account of the member's permanent and total disability (as defined in section 22(e)(3) of the Internal Revenue Code and described in section 1.415(c)-2(g)(4) of the Treasury Regulations).

(d) Cross-over year payments. Compensation shall not include amounts earned during the limitation year but not paid during that limitation year solely because of the timing of pay periods and pay dates if these amounts are paid during the first few weeks of the next limitation year as permitted under section 1.415(c)-2(e)(2) of the Treasury Regulations.

(C) The application of this rule shall not cause the maximum annual retirement allowance for any member to be less than the member's accrued benefit under all applicable defined benefit plans as of the end of the last limitation year beginning before July 1, 2007, under provisions of the plans that were both adopted and in effect before April 5, 2007. The preceding sentence applies only if the provisions of such defined benefit plans that were both adopted and in effect before April 5, 2007 satisfied the applicable requirements of statutory provisions, regulations, and other published guidance relating to section 415 of the Internal Revenue Code in effect as of the end of the last limitation year beginning before July 1, 2007, as described in section 1.415(a)-1(g)(4) of the Treasury Regulations.

(D) No adjustment shall be required to a benefit subject to an automatic benefit increase feature described in section 1.415(b)-1(c)(5) of the Treasury Regulations.

(E) To the extent that section 415 of the Internal Revenue Code and the Treasury Regulations thereunder require that an interest rate under section 417(e) of the Internal Revenue Code apply, the applicable look-back month shall be the fourth calendar month preceding the start of a plan year.

(F) Notwithstanding any provision of Chapter 145. of the Revised Code to the contrary, the defined benefit payable to a member under the traditional pension plan or the defined benefit payable to a member under the combined plan shall be determined in accordance with the requirements of section 415(b) of the Internal Revenue Code and the Treasury Regulations thereunder. The limitation year is the plan year. For purposes of the foregoing, any changes required by the Pension Funding Equity Act of 2004 are also incorporated herein by reference.



(G) Notwithstanding any provision of Chapter 145. of the Revised Code to the contrary, to the extent that any defined contribution feature of any plan under this chapter is subject to section 415(c) of the Internal Revenue Code and such feature does not already have section 415(c) of the Internal Revenue Code limitation language applicable to the feature, the feature shall comply with section 415(c) of the Internal Revenue Code and the Treasury Regulations thereunder. For such purposes, the definition of "compensation" in paragraph (B) of this rule shall apply.

(H) Effective January 1, 2007, notwithstanding any provision of Chapter 145. of the Revised Code to the contrary, the survivor of a member on a leave of absence to perform military service with reemployment rights described in section 414(u) of the Internal Revenue Code, where the member cannot return to employment on account of his or her death, shall be entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) that would be provided under Chapter 145. of the Revised Code had the member died as an actively contributing member to the extent required by section 401(a)(37) of the Internal Revenue Code.