

listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2004-0404. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

## II. Background

EPA is convening several public information sessions to explain the provisions of the proposed rule establishing procedural regulations for registration review. The proposed procedural regulations were published in the **Federal Register** of July 13, 2005. You may access this document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/> or from the Agency's E-docket at <http://www.epa.gov/edocket/> OPP-2004-0404. Registration review is the periodic review of a pesticide's registration to assure that each pesticide registration

continues to satisfy the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) standard for registration. The registration review program will replace the tolerance reassessment program and the reregistration program as the Agency's means for systematically reviewing existing pesticides.

The purpose of these meetings is to engage members of the public in a discussion of the proposed regulations and the proposed registration review program so that interested persons can make constructive and timely comments on the proposed rule. Staff from EPA's Office of Pesticide Programs will provide a general explanation of the registration review procedures and discuss, among other things, the Agency's goals and expectations for this program, proposed scheduling procedures, the proposed process for conducting a review, differences and similarities between reregistration and registration review, and stakeholder and public participation in the new registration review process. EPA will respond to questions that are raised during the meeting. However, in order for remarks to constitute official comments on the proposed rule, comments must be submitted in writing to the docket, as explained in Unit I. of this notice.

A 90-day comment period on the proposed procedural regulations will end on October 11, 2005. Instructions for submitting comments to docket OPP-2004-0404 are provided in the **Federal Register** notice of July 13, 2005 (70 FR 40251).

Please notify the person listed under **FOR FURTHER INFORMATION CONTACT** if you intend to attend one of these public information sessions. Your RSVP will help us plan appropriately. However, reservations are not required.

### List of Subjects in Part 155

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 19, 2005.

**James Jones,**

*Director, Office of Pesticide Programs.*

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**BILLING CODE 6560-50-S**

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

#### 48 CFR Part 9904

#### **Cost Accounting Standards Board; Accounting for the Costs of Employee Stock Ownership Plans (ESOPs) Sponsored by Government Contractors**

**AGENCY:** Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Cost Accounting Standards Board (CASB), Office of Federal Procurement Policy, invites public comments on proposed amendments to the Cost Accounting Standards (CAS) 412, "Cost accounting standard for composition and measurement of pension cost," and CAS 415, "Accounting for the cost of deferred compensation." These proposed amendments address issues concerning the recognition of the costs of Employee Stock Ownership Plans (ESOPs) under Government cost-based contracts and subcontracts. These proposed amendments provide criteria for measuring the costs of ESOPs and their assignment to cost accounting periods. The allocation of a contractor's assigned ESOP costs to contracts and subcontracts is addressed in other Standards. The proposed amendments also specify that accounting for the costs of ESOPs will be covered by the provisions of CAS 415, "Accounting for the cost of deferred compensation" and not by any other Standard.

**DATES:** Comments must be in writing and must be received by September 20, 2005.

**ADDRESSES:** Due to delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. Electronic comments may be submitted to [casb2@omb.eop.gov](mailto:casb2@omb.eop.gov). Please put the full body of your comments in the text of the electronic message and also as an attachment readable in either MS Word or Corel WordPerfect. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted by fax to (202) 395-5105. Please cite CASB Docket No. 00-03A in your comment.

**FOR FURTHER INFORMATION CONTACT:** David Capitano, Cost Accounting Standards Board (telephone: 703-847-7486).

**SUPPLEMENTARY INFORMATION:****A. Regulatory Process**

The CASB's rules, regulations and Standards are codified at 48 CFR Chapter 99. The Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires the Board, prior to the establishment of any new or revised Cost Accounting Standard, to complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of government contracts as a result of the adoption of a proposed Standard (e.g., promulgation of a Staff Discussion Paper.)

2. Promulgate an Advance Notice of Proposed Rulemaking (ANPRM).

3. Promulgate a Notice of Proposed Rulemaking (NPRM).

4. Promulgate a Final Rule.

This NPRM is issued by the Board in accordance with the requirements of 41 U.S.C. 422(g)(1)(D), and is step three of the four-step process.

**B. Background—Prior Promulgations**

The FAR has dealt with issues associated with ESOPs since the late 1970s. At first, the issues that arose were regarded as allowability matters, and the views of the CASB were sought primarily on an advisory basis. However, after issuance of the decision in Ralph Parsons Co. (ASBCA Nos. 37391, 37946, and 37947, dated December 20, 1990), various Government commenters suggested to the CASB that ESOP cost measurement and period assignment matters warranted placement on the CASB's agenda. These suggestions were amplified in light of the decision in Ball Corporation (ASBCA No. 49118, dated April 3, 2000).

The CASB first considered issuing an interpretation of its existing standards, but then decided that additional research was needed. As a result, on September 15, 2000, the CAS Board issued a Staff Discussion Paper on this topic (65 FR 56008, dated September 15, 2000). The CASB received sixteen sets of public comments in response to the Staff Discussion Paper. The CASB reviewed and discussed these public comments. Upon completion of this review, an ANPRM was drafted and published in the **Federal Register** on August 20, 2003 (68 FR 50111).

**C. Public Comments**

The Board received ten sets of public comments in response to the ANPRM.

The Board would like to thank all the organizations and individuals who provided comments and information in response to the ANPRM. A summary of the comments and the CAS Board responses are as follows:

**1. Exemption of Small Businesses**

*Comment:* One commenter requests clarification of the statement in the Supplementary Information section of the **Federal Register** Notice that states "Furthermore, this proposal does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards." This commenter notes that FAR 31.205-6(j)(8) includes a section entitled "Employee Stock Ownership Plans." The commenter asks that the CAS Board clarify the exemption status of Small Businesses as mentioned in the proposed rule because it appears to conflict with the FAR on selected costs (ESOPs) being subject to CAS.

*CAS Board Response:* There is no conflict between the **Federal Register** Notice and the FAR. The statement in the **Federal Register** Notice refers to the fact that small businesses are exempt from the rules, regulations, and standards promulgated by the CASB, not the rules and regulations promulgated under the FAR. Since small businesses are exempt from the requirements of the CAS, the requirements of FAR Part 31 are used to determine how costs are measured, assigned, and allocated for applicable contracts with small businesses (i.e., contracts that are subject to FAR Part 31). The application of FAR Part 31 to contracts that are not covered by the CAS, including the decision to measure, assign, and/or allocate costs using one or more of the CAS standards, is under the purview of the FAR Council. This NPRM does not exempt any such contracts from the requirements of FAR Part 31.

**2. Application to "C" versus "S" Corporations**

*Comment:* One commenter strongly supports the statement at CAS 9904.415-50(f)(1) that a contractor's ESOP contribution may include interest and dividends. This commenter states that it reads this provision to apply to "C" corporations and "S" corporations. The commenter recommends that the preamble to any further rule state that application.

*CAS Board Response:* The Board recognizes that the tax treatment of ESOP contributions may differ between "C" corporations and "S" corporations. However, the tax treatment of ESOP

contributions does not impact the application of the proposed rule, i.e., the proposed rule does not differentiate, nor was it intended to differentiate, between "C" and "S" corporations in the measurement of ESOP costs in accordance with CAS 9904.415-50(f)(1).

**3. Assignment of Costs Based on Award of Shares**

*Comment:* Four commenters expressed concern regarding the proposed language at CAS 9904.415-50(f)(2), which states "A contractor's contribution to an ESOP shall be assignable to the cost accounting period only to the extent that the number of shares, cash, or any combination thereof resulting from the contribution are awarded to individual employees in the accounting period."

Three of the commenters assert that many companies do not make final decisions about the amount of their contribution to ESOP's until after the end of the fiscal year. Thus, the precise number of shares awarded to individual employees cannot be determined until after the total contribution for an accounting period is known. One of these commenters further asserts that, for non-publicly traded companies, the amount of the shares to be awarded is also not known until the annual stock evaluation is performed. The three commenters suggest that the language be clarified by adopting language similar to that in CAS 9904.412-50(d)(4), which recognizes funding of pension costs "within a cost accounting period if it is accomplished by the corporate tax filing date for such period including any permissible extensions thereto." One of these commenters suggests the following specific language:

A contractor's contribution to an ESOP shall be assignable to the cost accounting period only to the extent that the number of shares, cash, or any combination thereof resulting from the contribution are awarded to individual employees for the accounting period using funds contributed to the plan for that period by the tax filing date for that period, including any permissible extensions thereof.

Another commenter recommends that the term "allocated" be substituted for the term "award" at CAS 9904.415-50(f)(2). This commenter states that under qualified plan rules for defined contribution plans, all contributions made to an ESOP must be allocated to the accounts of plan participants. The commenter asserts that even if a contractor makes an award of stock that does not use up all of a contribution, the remainder is still allocated to employee accounts as cash. The commenter further states that, since the employer's

contribution is irrevocable, the entire amount of the contribution should be assigned to the cost accounting period in which the contribution is made.

*CAS Board Response:* While current tax laws may require that all contributions made to an ESOP must be allocated to the accounts of plan participants in the period of the contribution, the ANPRM definition of an ESOP is broader than the tax law definition. In addition, tax laws often change; thus, it is important that the Board consider the various possibilities in promulgating this revision.

The Board believes the proposed rule should assure that amounts are not assigned to an accounting period unless the stock has been both awarded to employees and allocated to individual employee accounts by the tax filing date (or any extension thereof) for that accounting period. However, the Board also believes the rule should recognize that an ESOP contribution for work performed in a particular accounting period may not be made until shortly after the end of the accounting period, similar to the circumstances that sometimes arise for defined contribution pension plans. The language at CAS 9904.415–50(f)(2) has therefore been revised accordingly.

#### 4. Transition Method

*Comment:* One commenter states that the transition method is unnecessary and inequitable. This commenter asserts that “the proposed transition method is inconsistent with past CASB decisions,” and would be the first time that contractors would be required to follow a former cost accounting practice (even though it may be non-compliant with existing Standards) until a cost no longer exists. This commenter states that perhaps an advance agreement should not be disturbed, but application of the transition method to any other “arrangements” is vague, open-ended, unnecessary, and inequitable. A second commenter asserts that the transition method makes “no good sense and would result in tremendous inconsistencies in the treatment of ESOPs within the government contracting community.”

A third commenter believes the proposed transition method would place contractors without advance agreements in a difficult position. This commenter states that they agree completely that where the Government and contractor have reached an advance agreement, those agreements should continue to control. However, the commenter is concerned that many small companies will continue to have their ESOP costs questioned every year

if existing ESOPs are not covered by the new language. A fourth commenter also believes the proposed transition method unnecessarily complicates ESOP accounting and does not achieve the uniformity and consistency in cost accounting that is the CASB’s objective.

The fourth and fifth commenters assert that the transition method would create three classes of ESOPs, (1) those created after the effective date of the provision (to which the new rules would apply); (2) pre-existing ESOPs with advance agreements, in which case the parties would have to comply with the advance agreements; and (3) pre-existing ESOPs without advance agreements, which would remain subject to the Cost Accounting Standard(s) that were applicable to such plans prior to the applicability date of the new rule.

The fourth commenter believes there is significant uncertainty on whether ESOPs are governed by CAS 412 or 415, which should not be perpetuated. This commenter believes “more flexibility is required where ESOP costs are governed by advance agreements, and that the parties should be free to adopt the new ESOP accounting provisions.” The commenter therefore proposes the following transition provision in lieu of the proposed language (this language was endorsed by a second commenter):

“(a) For contractors and subcontracts that were subject to Standard 9904.415 in effect prior to the effective date of the final rule, the requirements of this Standard, as amended, shall apply to the costs of pre-existing ESOPs and the costs of ESOPs that are established after the effective date of this Standard.

(b) For pre-existing ESOPs, the requirements of this Standard shall apply as of the beginning of the contractor’s next full fiscal year following the Standard’s effective date. The parties may mutually agree to apply the requirements of this Standard earlier if they so desire.

(c) Where ESOP costs are subject to the terms of an advance agreement, the parties shall comply with the provisions of such advance agreement, which may be modified by mutual agreement to incorporate the requirements of this Standard.”

A final commenter strongly endorses the proposed transition provision. This commenter states that where a contractor and the Government have established advance agreements regarding the recognition of ESOP costs, contractors and the Government should comply with the provision of such advance agreement(s) for existing ESOPs. This commenter asserts that “to do otherwise would disrupt a long-term accounting construct (both for the measurement and assignment of cost) in mid-stream, thereby causing harm to one of the contracting parties due to the

uneven nature of contractor contributions between the early and later years of leveraged ESOPs.”

*CAS Board Response:* The Board believes it is imperative that the subject revision not infringe on existing advance agreements between the Government and the contractor. However, the Board also believes the proposed rule should limit the transition to only those instances in which there is an existing advance agreement between the contractor and the Government. The Board believes this would be consistent with the historical application of revised or new standards. The Board therefore has deleted CAS 9904.415–64, and added a new paragraph (d) to CAS 9904.415–63 that reads as follows:

(d) For contractors and subcontractors that have established advance agreements prior to the effective date of this amended Standard regarding the recognition of the costs of existing ESOPs, the awarding agency and contractor shall comply with the provisions of such advance agreement(s) for these existing ESOPs. These advance agreements may be modified, by mutual agreement, to incorporate the requirements of this revised standard.

#### 5. Definition of an ESOP

*Comment:* One commenter is concerned that the proposed definition of an ESOP is overly broad and “could sweep within its reach other types of defined contribution plans that should not be subject to the ESOP accounting rules.” This commenter states that “the proposed definition is broader than the definitions used by the Internal Revenue Service, ERISA, or GAAP.” The commenter asserts that the definition could include “thrift plans” or other 401(k) defined contribution plans such as the plan at issue in a recent case decided by the U.S. Court of Federal Claims, *Newport News Shipbuilding and Drydock Co. v. Unites States* (2003 U.S. Claims LEXIS 255, dated September 10, 2003). This commenter recommends that the CASB align the definition with established definitions of the IRS, ERISA, or GAAP. Alternatively, the commenter recommends that the CASB explain why a broader definition is necessary or desirable.

A second commenter believes the definition of an ESOP, and in particular the term “designed to invest primarily in the stock of the contractor’s corporation” is too vague, could cause confusion, and could “result in a contractor’s deferred compensation plan changing between CAS 412 and CAS 415 in any given costing period, depending on the percentage of

investment in contractor stock.” This commenter recommends that additional analysis concerning what additional requirements, such as those of the Internal Revenue Service Code, should be considered. In particular, the commenter recommends that the definition of an ESOP be revised to include specific requirements similar to the Internal Revenue Service Code 4975(e)(7) definition and the additional guidance provided in the Internal Revenue Service Manual. The commenter states that, although they are not proposing the Internal Revenue Service definition be used, the CASB should “look closer at the definition as proposed to ensure it includes the appropriate requirements.” This commenter also recommends that the definition include the requirement that the plan “invests most or all of the assets in the stock of the contractor’s corporation.”

*CAS Board Response:* The definition in the ANPRM is very similar, but not identical, to the definition contained in AICPA Statement of Position (SOP) 93–6. The definition in SOP 93–6, which is the current GAAP for ESOP accounting, reads as follows:

ESOP means an employee benefit plan that is described by the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC) of 1986 as a stock bonus plan, or combination stock bonus and money purchase pension plan, designed to invest primarily in employer stock.

There is a key difference between the GAAP definition and the definition in the ANPRM. The GAAP definition refers to plans described under ERISA and the IRC. However, the ERISA and IRC include only definitions of plans for purposes of tax deductibility. The Board is concerned that two plans with identical contribution requirements would have different cost accounting treatment solely because of differences in tax deductibility. To exclude one or the other of these two plans from the revised coverage would likely perpetuate the uncertain treatment of the excluded plan under the existing rules. Therefore, the Board does not believe that the definition of an ESOP, for purposes of applying CAS 415, should be limited to the GAAP definition. However, the Board recognizes that the definition in the ANPRM should be revised to clearly include all plans that meet the GAAP definition, as well as any other plans that are designed to invest primarily in the stock of the contractor. Therefore, the Board has revised the definition at CAS 9904.415–30(a)(3) to read as follows:

Employee Stock Ownership Plan (ESOP) means (i) an employee benefit plan that is described by the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC) of 1986 as a stock bonus plan, or combination stock bonus and money purchase pension plan, designed to invest primarily in employer stock, and (ii) any other deferred compensation plan designed to invest primarily in the stock of the contractor’s corporation including, but not limited to, plans covered by ERISA.

#### 6. Assignment Based on “Award”

*Comment:* One commenter questions the necessity to tie the assignment of cost to the period in which the ESOP trust (ESOT) makes an “award” to an individual employee. This commenter asserts that the term “award” may have little relevance to the operation of ESOPs. The commenter states that “IRC rules require that the entire contribution to an ESOP, to the extent not used to service debt, be allocated to employee accounts in accordance with a definite formula.” The commenter further states that as a result of these requirements, there would be no excess to assign to future years.

*CAS Board Response:* The Board believes it is important to tie the assignment of the cost for a period to the award of the shares to employees and the allocation of the shares to individual employee accounts. This provides consistency in the assignment of costs to the period and the subsequent allocation of those costs to final cost objectives.

#### 7. ESOP Contributions

*Comment:* One commenter states that the ANPRM will permit contractors that sponsor leveraged ESOPs to treat the entirety of the ESOP contribution as a form of employee compensation under CAS 9904.415, thereby masking the true nature of the underlying transaction. This commenter states that the ANPRM will permit contractors to treat the entire contribution paid to the ESOT, including principal payments and interest expenses incurred to finance a leveraged ESOP, as deferred compensation. The commenter believes that interest expense incurred to finance leveraged ESOPs should be reflected as such under Government cost accounting rules. The commenter believes that if the CASB adopts a rule requiring the separate accounting for interest expense for leveraged ESOPs, current Government cost allowance rules (FAR 31.205–20) would probably require these costs to be disallowed. The commenter also believes that whether

Congress or the Executive Branch agencies choose to allow or disallow interest costs associated with leveraged ESOP financing should be discussed and debated as a public policy matter separate and apart from the CASB’s role in defining and measuring contract costs. This commenter asserts that the approach in the ANPRM seems to pretend that there is no interest being paid to contractors. The commenter recommends that, at a minimum, the CASB’s proposal be amended to require segregation of the components of periodic ESOP expense, so that repayments of loan principal can be distinguished from interest expense. The commenter believes that the CASB’s only concern should be one of financial transparency and full disclosure, and not whether interest expense on leveraged ESOPs should be an allowable cost under cost-based Government contracts.

*CAS Board Response:* The ANPRM and the NPRM are intended to recognize the resources used by the contractor to fund the current year’s award to employees, whether those shares are purchased by the ESOP in the year of award or made available for allocation by repayment of ESOP debt. In proposing this rule, the Board believes that it is providing for the measurement of ESOP costs in a manner that reflects the CAS objective of consistency in cost accounting practices. With this objective in mind, the Board believes the proposed rule best measures ESOP contributions for contract costing purposes.

The proposal does not affect the allowability of interest or other cost components of an ESOP and is not intended to “mask” the true nature of ESOP financing. Whether interest or other cost components associated with financing a leveraged ESOP are allowable costs is determined under FAR Part 31. The proposed rule does not, in any manner, preclude the FAR Council from drafting rules that explicitly allow or disallow interest or any other cost component associated with an ESOP. Should the FAR Council decide to explicitly disallow interest or any other cost component associated with an ESOP, CAS 405 already requires that such costs be segregated in the contractor’s accounting records. In addition, CAS 405 also requires that such costs be identified and excluded from any billing, claim, or proposal applicable to a Government contract. Therefore, the Board does not believe it is necessary to add a separate requirement in CAS 415.

### 8. Editorial Changes

*Comment:* One commenter suggested several editorial changes for clarity, including minor revisions to CAS 9904.412–20(b), 9904.415–30(a)(4), 9904.415–50(f)(1), and 9904.415–60.

*CAS Board Response:* The Board agrees with the recommended editorial changes and has incorporated them in the NPRM.

### D. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this proposal, because these amendments impose no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.*

### E. Executive Order 12866 and the Regulatory Flexibility Act

The transition provision incorporated into this proposal ensures that arrangements for determining costs for existing ESOPs are not changed. Thus, the economic impact of these amendments, if any, on contractors is expected to be minor. As a result, this rule is not “significant” under E.O. 12866. Furthermore, this proposal does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis in accordance with the Regulatory Flexibility Act of 1980.

### F. Additional Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to this NPRM. All comments must be in writing and submitted in accordance with the instructions indicated in the ADDRESSES section.

### List of Subjects in 48 CFR Part 9904

Accounting, Government procurement.

### David H. Safavian,

*Chair, Cost Accounting Standards Board.*

Accordingly, for the reasons set forth in the preamble, it is proposed to amend Part 9904 as follows:

### PART 9904—COST ACCOUNTING STANDARDS

1. The authority citation for part 9904 continues to read as follows:

**Authority:** Pub. L. 100–679, 102 Stat 4056, 41 U.S.C. 422.

2. Section 9904.412–20 is revised to read as follows:

### 9904.412–20 Purpose.

(a) The purpose of this Standard 9904.412 is to provide guidance for determining and measuring the components of pension cost. The Standard establishes the basis on which pension costs shall be assigned to cost accounting periods. The provisions of this Cost Accounting Standard should enhance uniformity and consistency in accounting for pension costs and thereby increase the probability that those costs are properly allocated to cost objectives.

(b) This Standard does not cover the cost of Employee Stock Ownership Plans (ESOPs) that meet the definition of a pension plan. Such plans are considered a form of deferred compensation and are covered under 9904.415.

3. Section 9904.415–20 is revised to read as follows:

### 9904.415–20 Purpose.

(a) The purpose of this Standard 9904.415 is to provide criteria for the measurement of the cost of deferred compensation and the assignment of such cost to cost accounting periods. The application of these criteria should increase the probability that the cost of deferred compensation is allocated to cost objectives in a uniform and consistent manner.

(b) This Standard is applicable to the cost of all deferred compensation except the following which are covered in other Cost Accounting Standards:

(1) The cost for compensated personal absence, and

(2) The cost for pension plans that do not meet the definition of an Employee Stock Ownership Plan (ESOP).

4. Section 9904.415–30 is amended by revising paragraph (a) introductory text, adding paragraphs (a) (2) and (3), and revising paragraph (b) to read as follows:

### 9904.415–30 Definitions.

(a) The following are definitions of terms which are prominent in this Standard 9904.415. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this section requires otherwise.

(1) \* \* \*

(2) Employee Stock Ownership Plan (ESOP) means:

(i) An employee benefit plan that is described by the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC) of 1986 as a stock bonus plan, or combination stock bonus and money purchase pension plan, designed to invest primarily in employer stock, and

(ii) Any other deferred compensation plan designed to invest primarily in the

stock of the contractor's corporation including, but not limited to, plans covered by ERISA.

(3) Fair value means the amount that a seller would reasonably expect to receive in a current arm's length transaction between a willing buyer and a willing seller, other than a forced or liquidation sale.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard:

(1) Market value means the current or prevailing price of a stock or other property as indicated by market quotations.

(2) [Reserved].

5. Section 9904.415–40 is revised to read as follows:

### 9904.415–40 Fundamental requirement.

(a) The cost of deferred compensation shall be assigned to the cost accounting period in which the contractor incurs an obligation to compensate the employee. In the event no obligation is incurred prior to payment, the cost of deferred compensation shall be the amount paid and shall be assigned to the cost accounting period in which the payment is made.

(b) Measurement of deferred compensation costs.

(1) For deferred compensation other than ESOPs, the deferred compensation cost shall be the present value of the future benefits to be paid by the contractor.

(2) For an ESOP, the deferred compensation cost shall be the amount contributed to the ESOP by the contractor.

(c) The cost of each award of deferred compensation shall be considered separately for purposes of measurement and assignment of such costs to cost accounting periods. However, if the cost of deferred compensation for the employees covered by a deferred compensation plan can be measured and assigned with reasonable accuracy on a group basis, separate computations for each employee are not required.

6. Section 9904.415–50 is amended by revising paragraph (d) introductory text and (e) introductory text and adding paragraph (f) to read as follows:

### 9904.415–50 Techniques for application.

\* \* \* \* \*

(d) The following provisions are applicable for plans, other than ESOPs, that meet the conditions of 9904.415–50(a) and the compensation is to be paid in money.

\* \* \* \* \*

(e) The following provisions are applicable for plans, other than ESOPs, that meet the conditions of 9904.415–

50(a) and the compensation is received by the employee in other than money. The measurements set forth in this paragraph constitute the present value of future benefits for awards made in other than money and, therefore, shall be deemed to be a reasonable measure of the amount of the future payment:

\* \* \* \* \*

(f)(1) For an ESOP, the contractor's cost shall be measured by the contractor's contribution, including interest and dividends if applicable, to the ESOP. The measurement of contributions made in the form of stock of the corporation or property, shall be based on the market value of the stock or property at the time the contributions are made. If the market value is not available, then fair value of the stock or property shall be used.

(2) A contractor's contribution to an ESOP shall be assignable to a cost accounting period only to the extent that the stock, cash, or any combination thereof resulting from the contribution is awarded to employees and allocated to individual employee accounts by the tax filing date for that period, including any permissible extensions thereof. All stock or cash that is allocated to the individual employee accounts between the end of the cost accounting period and the tax filing date for that period must be assigned to the cost accounting period in which the employee is awarded the stock or cash. Any portion of the stock or cash resulting from a contractor's contribution that is not awarded to employees or allocated to individual employee accounts by the tax filing date for that period, including any permissible extensions thereof, shall be assigned to a future cost accounting period or periods when the remaining portion of stock or cash has been awarded to employees and allocated to individual employee accounts. This stock shall retain the value established when it was originally purchased by or otherwise made available to the ESOP.

7. Section 9904.415-60 is amended by adding paragraphs (f), (g), (h) and (i) to read as follows:

**9904.415-60 Illustrations.**

\* \* \* \* \*

(f) Contractor F has a non-leveraged ESOP. Under the contractor's plan, employees are awarded 5,000 shares of stock for the year ended December 31, 2007. On February 5, 2008, when the shares have a market value of \$10.00 each, the 5,000 shares are contributed to the ESOP and allocated to the individual employee accounts. The total measured and assigned deferred compensation cost for FY 2007 is \$50,000 (5,000 × \$10 = \$50,000). The

market value of the contractor's stock when awarded to the employees, whether higher or lower than the \$10.00 per share market value when the contractor's contribution was made to the ESOP, is irrelevant to the measurement of the contractor's ESOP costs.

(g) Contractor G has a leveraged ESOP. Under the contractor's plan, employees are awarded 10,000 shares of stock for the year ended December 31, 2007. On February 15, 2008, the contractor contributes \$780,000 in cash to the ESOP trust (ESOT) to satisfy the principal and interest payment on the ESOT loan for FY 2007, resulting in the bank releasing 9,000 shares of stock, and 1,000 shares of stock valued at \$60,000 to the ESOT, representing the balance of the 10,000 shares. On February 22, 2008, the ESOP allocates 10,000 shares to the individual employee accounts. The total measured and assigned deferred compensation cost for FY 2007 is \$840,000—the contractor's total contribution required to satisfy the deferred compensation obligation totaling 10,000 shares.

(h)(1) Contractor H has a leveraged ESOP. Under the contractor's plan, employees are awarded 8,000 shares of stock for the year ended December 31, 2007. On January 31, 2008, the contractor contributes \$500,000 in cash to the ESOT to satisfy the principal and interest payment on the ESOT loan for 2007, resulting in the bank releasing 10,000 shares of stock. On February 10, 2008, 8,000 shares are allocated to individual employee accounts, satisfying the deferred compensation obligation for 2007. The total measured deferred compensation cost for 2007 is \$500,000—the contractor's contribution for the cost accounting period. However, the total assignable deferred compensation cost for 2007 is \$400,000—the portion of the contribution that satisfies the 2007 deferred compensation obligation of 8,000 shares [(8,000 shares / 10,000 shares) × \$500,000 = \$400,000]. The remaining \$100,000 of the contribution made in 2007 is assignable to future periods in which the remaining 2,000 shares of stock are awarded to employees and allocated to individual employee accounts.

(2) At December 31, 2008, the employees are awarded 12,000 shares of stock. On January 31, 2009, Contractor H contributes \$500,000 in cash to the ESOT to satisfy the principal and interest payment on the ESOT loan for 2008, resulting in the bank releasing 10,000 shares of stock. On February 10, 2009, 12,000 shares are allocated to individual employee accounts satisfying

the deferred compensation obligation for 2008. The total deferred compensation assignable to 2008 is \$600,000, the cost of the 12,000 shares awarded to employees and allocated to individual employee accounts for 2008. The cost of the award is comprised of the contractor's contribution for the current cost accounting period (10,000 shares at \$500,000) and the 2007 contribution carryover (2,000 shares at \$100,000).

(i) Contractor I has a leveraged ESOP. Under the contractor's plan, employees are awarded 10,000 shares for FY 2007, which ended December 31, 2007. On February 10, 2008, Contractor I contributes \$700,000 in cash to satisfy the principal and interest payment for the ESOP loan for FY 2007. This contribution results in the bank releasing 10,000 shares of stock. On March 1, 2008, the ESOP allocates the 10,000 shares to individual employee accounts satisfying the 2007 obligation. The 10,000 shares of stock must be assigned to FY 2007 (these shares cannot be assigned to 2008).

8. Section 9904.415-63 is revised to read as follows:

**9904.415-63 Effective date.**

(a) This Standard 9904.415 is effective as of [effective date of final rule].

(b) This Standard shall be followed by each contractor on or after the start of its next cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable.

(c) Contractors with prior CAS-covered contracts with full coverage shall continue to follow Standard 9904.415 in effect prior to [effective date of final rule] until this Standard, effective [effective date of final rule], becomes applicable following receipt of a contract or subcontract to which this revised Standard applies.

(d) For contractors and subcontractors that have established advance agreements prior to [the effective date of the final rule] regarding the recognition of the costs of existing ESOPs, the awarding agency and contractor shall comply with the provisions of such advance agreement(s) for these existing ESOPs. These advance agreements may be modified, by mutual agreement, to incorporate the requirements effective on [the effective date of the final rule].

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