"(1) IN GENERAL.—

"(A) PERIOD FOR ROLLOVER CONTRIBUTION.—In the case of a payment described in section 402(a)(5)(A) (other than a payment described in section 402(a)(5)(A) as in effect on the day before the date of the enactment of this Act) [Apr. 15, 1976] or section 403(a)(4)(A) (other than a payment described in section 403(a)(4)(A) as in effect on the day before the date of the enactment of this Act) [Apr. 15, 1976] the Internal Revenue Code of 1986 (formerly I.R.C. 1954) (relating to distributions of the balance to the credit of the employee) which is contributed by an employee after the date of the enactment of this Act [Apr. 15, 1976] to a trust, plan, account, annuity, or bond described in section 402(a)(5)(B) or 403(a)(4)(B) of such Code, the applicable period specified in section 402(a)(5)(B) or 403(a)(4)(B) of such Code (relating to rollover distributions to another plan or retirement account) shall not expire before December 31, 1976.

"(B) TIME OF CONTRIBUTION.—

(i) GENERAL RULE.—If the initial portion of a payment the applicable period for which is determined under subparagraph (A) is contributed before December 31, 1976, by an individual to a trust, plan, account, annuity, or bond described in subparagraph (A) and the remaining portion of such payment is contributed by such individual to such a trust, plan, account, annuity, or bond not later than 30 days after the date a credit or refund is allowed by the Secretary of the Treasury or his delegate under section 6402 of the Internal Revenue Code of 1986 with respect to the contribution, then, for purposes of subparagraph (A) and sections 402(a)(5) and 403(a)(4) of such Code, at the election of the individual (made in accordance with regulations prescribed by the Secretary or his delegate), such remaining portion shall be considered to have been contributed on the date the initial portion of the payment was contributed. For purposes of this subparagraph, the initial portion of a payment is the amount by which such payment exceeds the amount of the tax imposed on such payment by chapter 1 of such Code (determined without regard to this subparagraph). [chapter 1 of this title]

(ii) REGULATIONS.—For purposes of this subparagraph, the tax imposed on a payment by chapter 1 of the Internal Revenue Code of 1986, and the date a credit or refund is allowed by the Secretary of the Treasury or his delegate under section 6402 with respect to a contribution, shall be determined under regulations prescribed by the Secretary of the Treasury or his delegate.

"(C) PERIOD OF LIMITATIONS.—If an individual has made the election provided by subparagraph (B), then—

(i) the period provided by the Internal Revenue Code of 1986 for the assessment of any deficiency for the taxable year in which the payment described in subparagraph (A) was made and each subsequent taxable year for which tax is determined by reference to the treatment of such payment under such Code or the status under such Code of any trust, plan, account, annuity, or bond described in subparagraph (A) shall, to the extent attributable to such treatment, not expire before the expiration of 3 years from the date the Secretary of the Treasury or his delegate is notified by the individual (in such manner as the Secretary of the Treasury or his delegate may prescribe) that such individual has made (or failed to make) the contribution of the remaining portion of the payment within the period specified in subparagraph (B)(i), and

(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) of such Code or the provisions of any other law or rule of law which would otherwise prevent such assessment.

"(2) ROLLOVER CONTRIBUTION FOR CERTAIN PROPERTY SOLD.—Sections 402(a)(5)(C) and 403(a)(4)(C) of the Internal Revenue Code of 1986 (relating to the requirement that rollover amounts must consist of property received in a distribution) shall not apply with respect to that portion of the property received in a payment described in section 402(a)(5)(A) (other than a payment described in section 402(a)(5)(A) as in effect on the day before the date of the enactment of this Act) [Apr. 15, 1976] or 403(a)(4)(A) (other than a payment described in section 403(a)(4)(A) as in effect on the day before the date of the enactment of this Act) [Apr. 15, 1976] of such Code which is sold or exchanged by the employee on or before the date of the enactment of this Act, [Apr. 15, 1976], if the employee transfers an amount of cash equal to the proceeds received from the sale or exchange of such property in excess of the amount considered contributed by the employee (within the meaning of section 402(a)(4)(D)(i) of such Code).

"(3) NONRECOGNITION OF GAIN OR LOSS.—For purposes of the Internal Revenue Code of 1986 (this title) no gain or loss shall be recognized with respect to the sale or exchange of property described in paragraph (2) if the proceeds of such sale or exchange are transferred by an employee in accordance with this subsection and the applicable provisions of section 402(a)(5) or 403(a)(4) of such Code.

§ 402A. Optional treatment of elective deferrals as Roth contributions

(a) General rule

If an applicable retirement plan includes a qualified Roth contribution program—

(1) any designated Roth contribution made by an employee pursuant to the program shall be treated as an elective deferral for purposes of this chapter, except that such contribution shall not be excludable from gross income, and

(2) such plan (and any arrangement which is part of such plan) shall not be treated as failing to meet any requirement of this chapter solely by reason of including such program.

(b) Qualified Roth contribution program

For purposes of this section—

(1) In general

The term “qualified Roth contribution program” means a program under which an employee may elect to make designated Roth contributions in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make under the applicable retirement plan.

(2) Separate accounting required

A program shall not be treated as a qualified Roth contribution program unless the applicable retirement plan—

(A) establishes separate accounts (“designated Roth accounts”) for the designated Roth contributions of each employee and any earnings properly allocable to the contributions, and

(B) maintains separate recordkeeping with respect to each account.

(c) Definitions and rules relating to designated Roth contributions

For purposes of this section—

(1) Designated Roth contribution

The term “designated Roth contribution” means any elective deferral which—
(A) is excludable from gross income of an 
employee without regard to this section, and 
(B) the employee designates (at such time 
and in such manner as the Secretary may 
prescribe) as not being so excludable.

(2) Designation limits
The amount of elective deferrals which an 
employee may designate under paragraph (1) 
shall not exceed the excess (if any) of—
(A) the maximum amount of elective de-

ferrals excludable from gross income of the 
employee for the taxable year (without re-
gard to this section), over
(B) the aggregate amount of elective def-

errals of the employee for the taxable year 
which the employee does not designate 
under paragraph (1).

(3) Rollover contributions

(A) In general
A rollover contribution of any payment or 
distribution from a designated Roth account 
which is otherwise allowable under this 
chapter may be made only if the contribu-
tion is to—
(i) another designated Roth account of 
the individual from whose account the 
payment or distribution was made, or
(ii) a Roth IRA of such individual.

(B) Coordination with limit
Any rollover contribution to a designated 
Roth account under subparagraph (A) shall 
not be taken into account for purposes of 
paragraph (1).

(4) Taxable rollovers to designated Roth ac-
counts

(A) In general
Notwithstanding sections 402(c), 403(b)(8), 
and 457(e)(16), in the case of any distribution 
to which this paragraph applies—
(i) there shall be included in gross in-

come any amount which would be includ-
ible were it not part of a qualified rollover 
contribution,
(ii) section 72(t) shall not apply, and
(iii) unless the taxpayer elects not to 
have this clause apply, any amount re-
quired to be included in gross income for 
any taxable year beginning in 2010 by rea-
son of this paragraph shall be so included 
ratably over the 2-taxable-year period be-

ginning with the first taxable year begin-
ning in 2011.

Any election under clause (iii) for any dis-

tributions during a taxable year may not be 
changed after the due date for such taxable 
year.

(B) Distributions to which paragraph applies
In the case of an applicable retirement 
plan which includes a qualified Roth con-
tribution program, this paragraph shall 
apply to a distribution from such plan other 
than from a designated Roth account which 
is contributed in a qualified rollover con-
tribution (within the meaning of section 
408A(e)) to the designated Roth account 
maintained under such plan for the benefit 
of the individual to whom the distribution is 
made.

(C) Coordination with limit
Any distribution to which this paragraph 

applies shall not be taken into account for 
purposes of paragraph (1).

(D) Other rules
The rules of subparagraphs (D), (E), and 
(F) of section 408A(d)(3) (as in effect for tax-
able years beginning after 2009) shall apply 
for purposes of this paragraph.

(d) Distribution rules
For purposes of this title—

(1) Exclusion
Any qualified distribution from a designated 
Roth account shall not be includible in gross 
income.

(2) Qualified distribution
For purposes of this subsection—

(A) In general
The term "qualified distribution" has the 
meaning given such term by section 
408A(d)(2)(A) (without regard to clause (iv) 
thereof).

(B) Distributions within nonexclusion period
A payment or distribution from a des-

ignated Roth account shall not be treated as 
as a qualified distribution if such payment or 
distribution is made within the 5-taxable-

year period beginning with the earlier of—
(i) the first taxable year for which the 
individual made a designated Roth con-
tribution to any designated Roth account 
established for such individual under the 
same applicable retirement plan, or
(ii) if a rollover contribution was made 
to such designated Roth account from a 
designated Roth account previously estab-
lished for such individual under another 
applicable retirement plan, the first tax-
able year for which the individual made a 
designated Roth contribution to such pre-

viously established account.

(C) Distributions of excess deferrals and con-

tribution corrections and earnings thereon
The term "qualified distribution" shall 
not include any distribution of any excess 
deferral under section 402(g)(2) or any excess 
contribution under section 401(k)(8), and any 
income on the excess deferral or contribu-
tion.

(3) Treatment of distributions of certain excess 
deferrals
Notwithstanding section 72, if any excess de-

ferral under section 402(g)(2) attributable to a 
designated Roth contribution is not distrib-
uted on or before the 1st April 15 following the 
close of the taxable year in which such excess 
deferral is made, the amount of such excess 
deferral shall—
(A) not be treated as investment in the 
contract, and
(B) be included in gross income for the tax-

able year in which such excess is distributed.

(4) Aggregation rules
Section 72 shall be applied separately with 
respect to distributions and payments from a
designated Roth account and other distributions and payments from the plan.

(e) Other definitions

For purposes of this section—

(1) Applicable retirement plan

The term “applicable retirement plan” means—

(A) an employees’ trust described in section 401(a) which is exempt from tax under section 501(a),

(B) a plan under which amounts are contributed by an individual’s employer for an annuity contract described in section 403(b), and

(C) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).

(2) Elective deferral

The term “elective deferral” means—

(A) any elective deferral described in subparagraph (A) or (C) of section 402(g)(3), and

(B) any elective deferral of compensation by an individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).

(3) Foreign distribution

Notwithstanding any other provision of this Act—

(A) the term “foreign distribution” means—

(i) a distribution to a nonresident alien individual, or

(ii) a distribution to a resident of a possession of the United States,

if—

(i) the distributee (in the year in which so distributed) is treated as a resident of a possession of the United States, or

(ii) the distributee is a nonresident alien individual who receives the distribution in a possession of the United States and is treated as resident of such possession for income tax purposes; and

(B) such distribution shall apply for purposes of subparagraph (A).

(4) Foreign annuity insurance

To the extent provided in section 402(f)(1)(D), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this section.

(5) Certain Foreign trust

If—

(A) the foreign trust is not subject to Federal income tax under section 54,

(B) the foreign trust is not subject to any income tax imposed by this title, and

(C) the foreign trust is subject to any tax imposed by this title under section 54,

then such distribution shall not be includible in gross income for the taxable year in which paid.

 § 403. Taxation of employee annuities

(a) Taxability of beneficiary under a qualified annuity plan

(1) Distributee taxable under section 72

If an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 401(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the amount actually distributed to any distributee under the contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities).

(b) Special rule for health and long-term care insurance

To the extent provided in section 402(i), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.

(c) Special rules

For purposes of this subsection, the term “employee” includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4).

(d) Rollover amounts

(A) General rule

If—

(i) any portion of the balance of the credit of an employee in an employee annuity described in paragraph (1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

The rules of paragraphs (2) through (7) and (11) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

(c) Direct trustee-to-trustee transfer

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of such transfer.

(b) Taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school

(1) General rule

If—

(A) an annuity contract is purchased—

(i) for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),

(ii) for an employee (other than an employee described in clause (i)), who performs services for an educational organization described in section 170(b)(1)(A)(ii), by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing, or

(iii) for the minister described in section 414(e)(5)(A) by the minister or by an employer,

(B) such annuity contract is not subject to subsection (a),