

Pub. L. 98-369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to plans established after Apr. 20, 1983, except that at the election of any domestic parent corporation such amendment shall also apply to any plan established on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98-21 set out as a note under section 406 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 1016(a)(5) of Pub. L. 93-406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93-406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93-406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

Amendment by section 2005(c)(13) of Pub. L. 93-406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93-406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91-172, set out as a note under section 402 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, see section 220(d) of Pub. L. 88-272, set out as a note under section 406 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1112 and 1114 of Pub. L. 99-514, see section 1141 of Pub. L. 99-514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521-523] of title V of Pub. L. 102-318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

§ 408. Individual retirement accounts

(a) Individual retirement account

For purposes of this section, the term “individual retirement account” means a trust cre-

ated or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

(1) Except in the case of a rollover contribution described in subsection (d)(3) in¹ section 402(c), 403(a)(4), 403(b)(8), or 457(e)(16), no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A).

(2) The trustee is a bank (as defined in subsection (n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirements of this section.

(3) No part of the trust funds will be invested in life insurance contracts.

(4) The interest of an individual in the balance in his account is nonforfeitable.

(5) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(6) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

(b) Individual retirement annuity

For purposes of this section, the term “individual retirement annuity” means an annuity contract, or an endowment contract (as determined under regulations prescribed by the Secretary), issued by an insurance company which meets the following requirements:

(1) The contract is not transferable by the owner.

(2) Under the contract—

(A) the premiums are not fixed,

(B) the annual premium on behalf of any individual will not exceed the dollar amount in effect under section 219(b)(1)(A), and

(C) any refund of premiums will be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.

(3) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of the owner.

(4) The entire interest of the owner is nonforfeitable.

Such term does not include such an annuity contract for any taxable year of the owner in which it is disqualified on the application of subsection (e) or for any subsequent taxable year. For purposes of this subsection, no contract shall be treated as an endowment contract if it matures later than the taxable year in which the individ-

¹ So in original.

ual in whose name such contract is purchased attains age 70½; if it is not for the exclusive benefit of the individual in whose name it is purchased or his beneficiaries; or if the aggregate annual premiums under all such contracts purchased in the name of such individual for any taxable year exceed the dollar amount in effect under section 219(b)(1)(A).

(c) Accounts established by employers and certain associations of employees

A trust created or organized in the United States by an employer for the exclusive benefit of his employees or their beneficiaries, or by an association of employees (which may include employees within the meaning of section 401(c)(1) for the exclusive benefit of its members or their beneficiaries, shall be treated as an individual retirement account (described in subsection (a)), but only if the written governing instrument creating the trust meets the following requirements:

(1) The trust satisfies the requirements of paragraphs (1) through (6) of subsection (a).

(2) There is a separate accounting for the interest of each employee or member (or spouse of an employee or member).

The assets of the trust may be held in a common fund for the account of all individuals who have an interest in the trust.

(d) Tax treatment of distributions

(1) In general

Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

(2) Special rules for applying section 72

For purposes of applying section 72 to any amount described in paragraph (1)—

(A) all individual retirement plans shall be treated as 1 contract,

(B) all distributions during any taxable year shall be treated as 1 distribution, and

(C) the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

For purposes of subparagraph (C), the value of the contract shall be increased by the amount of any distributions during the calendar year.

(3) Rollover contribution

An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) In general

Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—

(i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an

endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to this paragraph).

For purposes of clause (ii), the term “eligible retirement plan” means an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B).

(B) Limitation

This paragraph does not apply to any amount described in subparagraph (A)(i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in that subparagraph from an individual retirement account or an individual retirement annuity which was not includible in his gross income because of the application of this paragraph.

(C) Denial of rollover treatment for inherited accounts, etc.

(i) In general

In the case of an inherited individual retirement account or individual retirement annuity—

(I) this paragraph shall not apply to any amount received by an individual from such an account or annuity (and no amount transferred from such account or annuity to another individual retirement account or annuity shall be excluded from gross income by reason of such transfer), and

(II) such inherited account or annuity shall not be treated as an individual retirement account or annuity for purposes of determining whether any other amount is a rollover contribution.

(ii) Inherited individual retirement account or annuity

An individual retirement account or individual retirement annuity shall be treated as inherited if—

(I) the individual for whose benefit the account or annuity is maintained acquired such account by reason of the death of another individual, and

(II) such individual was not the surviving spouse of such other individual.

(D) Partial rollovers permitted

(i) In general

If any amount paid or distributed out of an individual retirement account or individual retirement annuity would meet the

requirements of subparagraph (A) but for the fact that the entire amount was not paid into an eligible plan as required by clause (i) or (ii) of subparagraph (A), such amount shall be treated as meeting the requirements of subparagraph (A) to the extent it is paid into an eligible plan referred to in such clause not later than the 60th day referred to in such clause.

(ii) Eligible plan

For purposes of clause (i), the term “eligible plan” means any account, annuity, contract, or plan referred to in subparagraph (A).

(E) Denial of rollover treatment for required distributions

This paragraph shall not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6) or (b)(3).

(F) Frozen deposits

For purposes of this paragraph, rules similar to the rules of section 402(c)(7) (relating to frozen deposits) shall apply.

(G) Simple retirement accounts

In the case of any payment or distribution out of a simple retirement account (as defined in subsection (p)) to which section 72(t)(6) applies, this paragraph shall not apply unless such payment or distribution is paid into another simple retirement account.

(H) Application of section 72

(i) In general

If—

(I) a distribution is made from an individual retirement plan, and

(II) a rollover contribution is made to an eligible retirement plan described in section 402(c)(8)(B)(iii), (iv), (v), or (vi) with respect to all or part of such distribution,

then, notwithstanding paragraph (2), the rules of clause (ii) shall apply for purposes of applying section 72.

(ii) Applicable rules

In the case of a distribution described in clause (i)—

(I) section 72 shall be applied separately to such distribution,

(II) notwithstanding the pro rata allocation of income on, and investment in, the contract to distributions under section 72, the portion of such distribution rolled over to an eligible retirement plan described in clause (i) shall be treated as from income on the contract (to the extent of the aggregate income on the contract from all individual retirement plans of the distributee), and

(III) appropriate adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(I) Waiver of 60-day requirement

The Secretary may waive the 60-day requirement under subparagraphs (A) and (D)

where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

(4) Contributions returned before due date of return

Paragraph (1) does not apply to the distribution of any contribution paid during a taxable year to an individual retirement account or for an individual retirement annuity if—

(A) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year,

(B) no deduction is allowed under section 219 with respect to such contribution, and

(C) such distribution is accompanied by the amount of net income attributable to such contribution.

In the case of such a distribution, for purposes of section 61, any net income described in subparagraph (C) shall be deemed to have been earned and receivable in the taxable year in which such contribution is made.

(5) Distributions of excess contributions after due date for taxable year and certain excess rollover contributions

(A) In general

In the case of any individual, if the aggregate contributions (other than rollover contributions) paid for any taxable year to an individual retirement account or for an individual retirement annuity do not exceed the dollar amount in effect under section 219(b)(1)(A), paragraph (1) shall not apply to the distribution of any such contribution to the extent that such contribution exceeds the amount allowable as a deduction under section 219 for the taxable year for which the contribution was paid—

(i) if such distribution is received after the date described in paragraph (4),

(ii) but only to the extent that no deduction has been allowed under section 219 with respect to such excess contribution.

If employer contributions on behalf of the individual are paid for the taxable year to a simplified employee pension, the dollar limitation of the preceding sentence shall be increased by the lesser of the amount of such contributions or the dollar limitation in effect under section 415(c)(1)(A) for such taxable year.

(B) Excess rollover contributions attributable to erroneous information

If—

(i) the taxpayer reasonably relies on information supplied pursuant to subtitle F for determining the amount of a rollover contribution, but

(ii) the information was erroneous,

subparagraph (A) shall be applied by increasing the dollar limit set forth therein by that portion of the excess contribution which was attributable to such information.

For purposes of this paragraph, the amount allowable as a deduction under section 219 shall be computed without regard to section 219(g).

(6) Transfer of account incident to divorce

The transfer of an individual's interest in an individual retirement account or an individual retirement annuity to his spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse, and not of such individual. Thereafter such account or annuity for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

(7) Special rules for simplified employee pensions or simple retirement accounts**(A) Transfer or rollover of contributions prohibited until deferral test met**

Notwithstanding any other provision of this subsection or section 72(t), paragraph (1) and section 72(t)(1) shall apply to the transfer or distribution from a simplified employee pension of any contribution under a salary reduction arrangement described in subsection (k)(6) (or any income allocable thereto) before a determination as to whether the requirements of subsection (k)(6)(A)(iii) are met with respect to such contribution.

(B) Certain exclusions treated as deductions

For purposes of paragraphs (4) and (5) and section 4973, any amount excludable or excluded from gross income under section 402(h) or 402(k) shall be treated as an amount allowable or allowed as a deduction under section 219.

(8) Distributions for charitable purposes**(A) In general**

So much of the aggregate amount of qualified charitable distributions with respect to a taxpayer made during any taxable year which does not exceed \$100,000 shall not be includible in gross income of such taxpayer for such taxable year.

(B) Qualified charitable distribution

For purposes of this paragraph, the term "qualified charitable distribution" means any distribution from an individual retirement plan (other than a plan described in subsection (k) or (p))—

(i) which is made directly by the trustee to an organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any fund or account described in section 4966(d)(2)), and

(ii) which is made on or after the date that the individual for whose benefit the plan is maintained has attained age 70½.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A).

(C) Contributions must be otherwise deductible

For purposes of this paragraph, a distribution to an organization described in subparagraph (B)(i) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

(D) Application of section 72

Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts in all individual retirement plans of the individual were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(E) Denial of deduction

Qualified charitable distributions which are not includible in gross income pursuant to subparagraph (A) shall not be taken into account in determining the deduction under section 170.

(F) Termination

This paragraph shall not apply to distributions made in taxable years beginning after December 31, 2011.

(9) Distribution for health savings account funding**(A) In general**

In the case of an individual who is an eligible individual (as defined in section 223(c)) and who elects the application of this paragraph for a taxable year, gross income of the individual for the taxable year does not include a qualified HSA funding distribution to the extent such distribution is otherwise includible in gross income.

(B) Qualified HSA funding distribution

For purposes of this paragraph, the term "qualified HSA funding distribution" means a distribution from an individual retirement plan (other than a plan described in subsection (k) or (p)) of the employee to the extent that such distribution is contributed to the health savings account of the individual in a direct trustee-to-trustee transfer.

(C) Limitations**(i) Maximum dollar limitation**

The amount excluded from gross income by subparagraph (A) shall not exceed the excess of—

(I) the annual limitation under section 223(b) computed on the basis of the type

of coverage under the high deductible health plan covering the individual at the time of the qualified HSA funding distribution, over

(II) in the case of a distribution described in clause (i)(II), the amount of the earlier qualified HSA funding distribution.

(ii) One-time transfer

(I) In general

Except as provided in subclause (II), an individual may make an election under subparagraph (A) only for one qualified HSA funding distribution during the lifetime of the individual. Such an election, once made, shall be irrevocable.

(II) Conversion from self-only to family coverage

If a qualified HSA funding distribution is made during a month in a taxable year during which an individual has self-only coverage under a high deductible health plan as of the first day of the month, the individual may elect to make an additional qualified HSA funding distribution during a subsequent month in such taxable year during which the individual has family coverage under a high deductible health plan as of the first day of the subsequent month.

(D) Failure to maintain high deductible health plan coverage

(i) In general

If, at any time during the testing period, the individual is not an eligible individual, then the aggregate amount of all contributions to the health savings account of the individual made under subparagraph (A)—

(I) shall be includible in the gross income of the individual for the taxable year in which occurs the first month in the testing period for which such individual is not an eligible individual, and

(II) the tax imposed by this chapter for any taxable year on the individual shall be increased by 10 percent of the amount which is so includible.

(ii) Exception for disability or death

Subclauses (I) and (II) of clause (i) shall not apply if the individual ceased to be an eligible individual by reason of the death of the individual or the individual becoming disabled (within the meaning of section 72(m)(7)).

(iii) Testing period

The term “testing period” means the period beginning with the month in which the qualified HSA funding distribution is contributed to a health savings account and ending on the last day of the 12th month following such month.

(E) Application of section 72

Notwithstanding section 72, in determining the extent to which an amount is treated as otherwise includible in gross income for purposes of subparagraph (A), the aggregate

amount distributed from an individual retirement plan shall be treated as includible in gross income to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts from all individual retirement plans were distributed. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(e) Tax treatment of accounts and annuities

(1) Exemption from tax

Any individual retirement account is exempt from taxation under this subtitle unless such account has ceased to be an individual retirement account by reason of paragraph (2) or (3). Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

(2) Loss of exemption of account where employee engages in prohibited transaction

(A) In general

If, during any taxable year of the individual for whose benefit any individual retirement account is established, that individual or his beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such account ceases to be an individual retirement account as of the first day of such taxable year. For purposes of this paragraph—

(i) the individual for whose benefit any account was established is treated as the creator of such account, and

(ii) the separate account for any individual within an individual retirement account maintained by an employer or association of employees is treated as a separate individual retirement account.

(B) Account treated as distributing all its assets

In any case in which any account ceases to be an individual retirement account by reason of subparagraph (A) as of the first day of any taxable year, paragraph (1) of subsection (d) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

(3) Effect of borrowing on annuity contract

If during any taxable year the owner of an individual retirement annuity borrows any money under or by use of such contract, the contract ceases to be an individual retirement annuity as of the first day of such taxable year. Such owner shall include in gross income for such year an amount equal to the fair market value of such contract as of such first day.

(4) Effect of pledging account as security

If, during any taxable year of the individual for whose benefit an individual retirement account is established, that individual uses the account or any portion thereof as security for a loan, the portion so used is treated as distributed to that individual.

(5) Purchase of endowment contract by individual retirement account

If the assets of an individual retirement account or any part of such assets are used to purchase an endowment contract for the benefit of the individual for whose benefit the account is established—

(A) to the extent that the amount of the assets involved in the purchase are not attributable to the purchase of life insurance, the purchase is treated as a rollover contribution described in subsection (d)(3), and

(B) to the extent that the amount of the assets involved in the purchase are attributable to the purchase of life, health, accident, or other insurance, such amounts are treated as distributed to that individual (but the provisions of subsection (f) do not apply).

(6) Commingling individual retirement account amounts in certain common trust funds and common investment funds

Any common trust fund or common investment fund of individual retirement account assets which is exempt from taxation under this subtitle does not cease to be exempt on account of the participation or inclusion of assets of a trust exempt from taxation under section 501(a) which is described in section 401(a).

[(f) Repealed. Pub. L. 99-514, title XI, § 1123(d)(2), Oct. 22, 1986, 100 Stat. 2475]

(g) Community property laws

This section shall be applied without regard to any community property laws.

(h) Custodial accounts

For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in subsection (n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an individual retirement account described in subsection (a). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

(i) Reports

The trustee of an individual retirement account and the issuer of an endowment contract described in subsection (b) or an individual retirement annuity shall make such reports regarding such account, contract, or annuity to the Secretary and to the individuals for whom the account, contract, or annuity is, or is to be, maintained with respect to contributions (and the years to which they relate), distributions aggregating \$10 or more in any calendar year, and such other matters as the Secretary may require. The reports required by this subsection—

(1) shall be filed at such time and in such manner as the Secretary prescribes, and

(2) shall be furnished to individuals—

(A) not later than January 31 of the calendar year following the calendar year to which such reports relate, and

(B) in such manner as the Secretary prescribes.

In the case of a simple retirement account under subsection (p), only one report under this subsection shall be required to be submitted each calendar year to the Secretary (at the time provided under paragraph (2)) but, in addition to the report under this subsection, there shall be furnished, within 31 days after each calendar year, to the individual on whose behalf the account is maintained a statement with respect to the account balance as of the close of, and the account activity during, such calendar year.

(j) Increase in maximum limitations for simplified employee pensions

In the case of any simplified employee pension, subsections (a)(1) and (b)(2) of this section shall be applied by increasing the amounts contained therein by the amount of the limitation in effect under section 415(c)(1)(A).

(k) Simplified employee pension defined

(1) In general

For purposes of this title, the term “simplified employee pension” means an individual retirement account or individual retirement annuity—

(A) with respect to which the requirements of paragraphs (2), (3), (4), and (5) of this subsection are met, and

(B) if such account or annuity is part of a top-heavy plan (as defined in section 416), with respect to which the requirements of section 416(c)(2) are met.

(2) Participation requirements

This paragraph is satisfied with respect to a simplified employee pension for a year only if for such year the employer contributes to the simplified employee pension of each employee who—

(A) has attained age 21,

(B) has performed service for the employer during at least 3 of the immediately preceding 5 years, and

(C) received at least \$450 in compensation (within the meaning of section 414(q)(4)) from the employer for the year.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3). For purposes of any arrangement described in subsection (k)(6), any employee who is eligible to have employer contributions made on the employee's behalf under such arrangement shall be treated as if such a contribution was made.

(3) Contributions may not discriminate in favor of the highly compensated, etc.

(A) In general

The requirements of this paragraph are met with respect to a simplified employee pension for a year if for such year the contributions made by the employer to simplified employee pensions for his employees do not discriminate in favor of any highly

compensated employee (within the meaning of section 414(q)).

(B) Special rules

For purposes of subparagraph (A), there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3).

(C) Contributions must bear uniform relationship to total compensation

For purposes of subparagraph (A), and except as provided in subparagraph (D), employer contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)) shall be considered discriminatory unless contributions thereto bear a uniform relationship to the compensation (not in excess of the first \$200,000) of each employee maintaining a simplified employee pension.

(D) Permitted disparity

For purposes of subparagraph (C), the rules of section 401(l)(2) shall apply to contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)).

(4) Withdrawals must be permitted

A simplified employee pension meets the requirements of this paragraph only if—

(A) employer contributions thereto are not conditioned on the retention in such pension of any portion of the amount contributed, and

(B) there is no prohibition imposed by the employer on withdrawals from the simplified employee pension.

(5) Contributions must be made under written allocation formula

The requirements of this paragraph are met with respect to a simplified employee pension only if employer contributions to such pension are determined under a definite written allocation formula which specifies—

(A) the requirements which an employee must satisfy to share in an allocation, and

(B) the manner in which the amount allocated is computed.

(6) Employee may elect salary reduction arrangement

(A) Arrangements which qualify

(i) In general

A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension, an employee may elect to have the employer make payments—

(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

(II) to the employee directly in cash.

(ii) 50 percent of eligible employees must elect

Clause (i) shall not apply to a simplified employee pension unless an election described in clause (i)(I) is made or is in effect with respect to not less than 50 per-

cent of the employees of the employer eligible to participate.

(iii) Requirements relating to deferral percentage

Clause (i) shall not apply to a simplified employee pension for any year unless the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product of—

(I) the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate, multiplied by

(II) 1.25.

(iv) Limitations on elective deferrals

Clause (i) shall not apply to a simplified employee pension unless the requirements of section 401(a)(30) are met.

(B) Exception where more than 25 employees

This paragraph shall not apply with respect to any year in the case of a simplified employee pension maintained by an employer with more than 25 employees who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained) at any time during the preceding year.

(C) Distributions of excess contributions

(i) In general

Rules similar to the rules of section 401(k)(8) shall apply to any excess contribution under this paragraph. Any excess contribution under a simplified employee pension shall be treated as an excess contribution for purposes of section 4979.

(ii) Excess contribution

For purposes of clause (i), the term “excess contribution” means, with respect to a highly compensated employee, the excess of elective employer contributions under this paragraph over the maximum amount of such contributions allowable under subparagraph (A)(iii).

(D) Deferral percentage

For purposes of this paragraph, the deferral percentage for an employee for a year shall be the ratio of—

(i) the amount of elective employer contributions actually paid over to the simplified employee pension on behalf of the employee for the year, to

(ii) the employee’s compensation (not in excess of the first \$200,000) for the year.

(E) Exception for State and local and tax-exempt pensions

This paragraph shall not apply to a simplified employee pension maintained by—

(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

(ii) an organization exempt from tax under this title.

(F) Exception where pension does not meet requirements necessary to insure distribution of excess contributions

This paragraph shall not apply with respect to any year for which the simplified

employee pension does not meet such requirements as the Secretary may prescribe as are necessary to insure that excess contributions are distributed in accordance with subparagraph (C), including—

- (i) reporting requirements, and
- (ii) requirements which, notwithstanding paragraph (4), provide that contributions (and any income allocable thereto) may not be withdrawn from a simplified employee pension until a determination has been made that the requirements of subparagraph (A)(iii) have been met with respect to such contributions.

(G) Highly compensated employee

For purposes of this paragraph, the term “highly compensated employee” has the meaning given such term by section 414(q).

(H) Termination

This paragraph shall not apply to years beginning after December 31, 1996. The preceding sentence shall not apply to a simplified employee pension of an employer if the terms of simplified employee pensions of such employer, as in effect on December 31, 1996, provide that an employee may make the election described in subparagraph (A).

(7) Definitions

For purposes of this subsection and subsection (l)—

(A) Employee, employer, or owner-employee

The terms “employee”, “employer”, and “owner-employee” shall have the respective meanings given such terms by section 401(c).

(B) Compensation

Except as provided in paragraph (2)(C), the term “compensation” has the meaning given such term by section 414(s).

(C) Year

The term “year” means—

- (i) the calendar year, or
- (ii) if the employer elects, subject to such terms and conditions as the Secretary may prescribe, to maintain the simplified employee pension on the basis of the employer’s taxable year.

(8) Cost-of-living adjustment

The Secretary shall adjust the \$450 amount in paragraph (2)(C) at the same time and in the same manner as under section 415(d) and shall adjust the \$200,000 amount in paragraphs (3)(C) and (6)(D)(ii) at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B); except that any increase in the \$450 amount which is not a multiple of \$50 shall be rounded to the next lowest multiple of \$50.

(9) Cross reference

For excise tax on certain excess contributions, see section 4979.

(l) Simplified employer reports

(1) In general

An employer who makes a contribution on behalf of an employee to a simplified employee pension shall provide such simplified reports

with respect to such contributions as the Secretary may require by regulations. The reports required by this subsection shall be filed at such time and in such manner, and information with respect to such contributions shall be furnished to the employee at such time and in such manner, as may be required by regulations.

(2) Simple retirement accounts

(A) No employer reports

Except as provided in this paragraph, no report shall be required under this section by an employer maintaining a qualified salary reduction arrangement under subsection (p).

(B) Summary description

The trustee of any simple retirement account established pursuant to a qualified salary reduction arrangement under subsection (p) and the issuer of an annuity established under such an arrangement shall provide to the employer maintaining the arrangement, each year a description containing the following information:

- (i) The name and address of the employer and the trustee or issuer.
- (ii) The requirements for eligibility for participation.
- (iii) The benefits provided with respect to the arrangement.
- (iv) The time and method of making elections with respect to the arrangement.
- (v) The procedures for, and effects of, withdrawals (including rollovers) from the arrangement.

(C) Employee notification

The employer shall notify each employee immediately before the period for which an election described in subsection (p)(5)(C) may be made of the employee’s opportunity to make such election. Such notice shall include a copy of the description described in subparagraph (B).

(m) Investment in collectibles treated as distributions

(1) In general

The acquisition by an individual retirement account or by an individually-directed account under a plan described in section 401(a) of any collectible shall be treated (for purposes of this section and section 402) as a distribution from such account in an amount equal to the cost to such account of such collectible.

(2) Collectible defined

For purposes of this subsection, the term “collectible” means—

- (A) any work of art,
- (B) any rug or antique,
- (C) any metal or gem,
- (D) any stamp or coin,
- (E) any alcoholic beverage, or
- (F) any other tangible personal property specified by the Secretary for purposes of this subsection.

(3) Exception for certain coins and bullion

For purposes of this subsection, the term “collectible” shall not include—

(A) any coin which is—

- (i) a gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31, United States Code,
- (ii) a silver coin described in section 5112(e) of title 31, United States Code,
- (iii) a platinum coin described in section 5112(k) of title 31, United States Code, or
- (iv) a coin issued under the laws of any State, or

(B) any gold, silver, platinum, or palladium bullion of a fineness equal to or exceeding the minimum fineness that a contract market (as described in section 7 of the Commodity Exchange Act, 7 U.S.C. 7)² requires for metals which may be delivered in satisfaction of a regulated futures contract,

if such bullion is in the physical possession of a trustee described under subsection (a) of this section.

(n) Bank

For purposes of subsection (a)(2), the term “bank” means—

- (1) any bank (as defined in section 581),
- (2) an insured credit union (within the meaning of paragraph (6) or (7) of section 101 of the Federal Credit Union Act), and
- (3) a corporation which, under the laws of the State of its incorporation, is subject to supervision and examination by the Commissioner of Banking or other officer of such State in charge of the administration of the banking laws of such State.

(o) Definitions and rules relating to nondeductible contributions to individual retirement plans

(1) In general

Subject to the provisions of this subsection, designated nondeductible contributions may be made on behalf of an individual to an individual retirement plan.

(2) Limits on amounts which may be contributed

(A) In general

The amount of the designated nondeductible contributions made on behalf of any individual for any taxable year shall not exceed the nondeductible limit for such taxable year.

(B) Nondeductible limit

For purposes of this paragraph—

(i) In general

The term “nondeductible limit” means the excess of—

- (I) the amount allowable as a deduction under section 219 (determined without regard to section 219(g)), over
- (II) the amount allowable as a deduction under section 219 (determined with regard to section 219(g)).

(ii) Taxpayer may elect to treat deductible contributions as nondeductible

If a taxpayer elects not to deduct an amount which (without regard to this

clause) is allowable as a deduction under section 219 for any taxable year, the nondeductible limit for such taxable year shall be increased by such amount.

(C) Designated nondeductible contributions

(i) In general

For purposes of this paragraph, the term “designated nondeductible contribution” means any contribution to an individual retirement plan for the taxable year which is designated (in such manner as the Secretary may prescribe) as a contribution for which a deduction is not allowable under section 219.

(ii) Designation

Any designation under clause (i) shall be made on the return of tax imposed by chapter 1 for the taxable year.

(3) Time when contributions made

In determining for which taxable year a designated nondeductible contribution is made, the rule of section 219(f)(3) shall apply.

(4) Individual required to report amount of designated nondeductible contributions

(A) In general

Any individual who—

- (i) makes a designated nondeductible contribution to any individual retirement plan for any taxable year, or
- (ii) receives any amount from any individual retirement plan for any taxable year,

shall include on his return of the tax imposed by chapter 1 for such taxable year and any succeeding taxable year (or on such other form as the Secretary may prescribe for any such taxable year) information described in subparagraph (B).

(B) Information required to be supplied

The following information is described in this subparagraph:

- (i) The amount of designated nondeductible contributions for the taxable year.
- (ii) The amount of distributions from individual retirement plans for the taxable year.

(iii) The excess (if any) of—

- (I) the aggregate amount of designated nondeductible contributions for all preceding taxable years, over
- (II) the aggregate amount of distributions from individual retirement plans which was excludable from gross income for such taxable years.

(iv) The aggregate balance of all individual retirement plans of the individual as of the close of the calendar year in which the taxable year begins.

(v) Such other information as the Secretary may prescribe.

(C) Penalty for reporting contributions not made

For penalty where individual reports designated nondeductible contributions not made, see section 6693(b).

² See References in Text note below.

(p) Simple retirement accounts**(1) In general**

For purposes of this title, the term “simple retirement account” means an individual retirement plan (as defined in section 7701(a)(37))—

(A) with respect to which the requirements of paragraphs (3), (4), and (5) are met; and

(B) with respect to which the only contributions allowed are contributions under a qualified salary reduction arrangement.

(2) Qualified salary reduction arrangement**(A) In general**

For purposes of this subsection, the term “qualified salary reduction arrangement” means a written arrangement of an eligible employer under which—

(i) an employee eligible to participate in the arrangement may elect to have the employer make payments—

(I) as elective employer contributions to a simple retirement account on behalf of the employee, or

(II) to the employee directly in cash,

(ii) the amount which an employee may elect under clause (i) for any year is required to be expressed as a percentage of compensation and may not exceed a total of the applicable dollar amount for any year,

(iii) the employer is required to make a matching contribution to the simple retirement account for any year in an amount equal to so much of the amount the employee elects under clause (i)(I) as does not exceed the applicable percentage of compensation for the year, and

(iv) no contributions may be made other than contributions described in clause (i) or (iii).

(B) Employer may elect 2-percent nonelective contribution**(i) In general**

An employer shall be treated as meeting the requirements of subparagraph (A)(iii) for any year if, in lieu of the contributions described in such clause, the employer elects to make nonelective contributions of 2 percent of compensation for each employee who is eligible to participate in the arrangement and who has at least \$5,000 of compensation from the employer for the year. If an employer makes an election under this subparagraph for any year, the employer shall notify employees of such election within a reasonable period of time before the 60-day period for such year under paragraph (5)(C).

(ii) Compensation limitation

The compensation taken into account under clause (i) for any year shall not exceed the limitation in effect for such year under section 401(a)(17).

(C) Definitions

For purposes of this subsection—

(i) Eligible employer**(I) In general**

The term “eligible employer” means, with respect to any year, an employer which had no more than 100 employees who received at least \$5,000 of compensation from the employer for the preceding year.

(II) 2-year grace period

An eligible employer who establishes and maintains a plan under this subsection for 1 or more years and who fails to be an eligible employer for any subsequent year shall be treated as an eligible employer for the 2 years following the last year the employer was an eligible employer. If such failure is due to any acquisition, disposition, or similar transaction involving an eligible employer, the preceding sentence shall not apply.

(ii) Applicable percentage**(I) In general**

The term “applicable percentage” means 3 percent.

(II) Election of lower percentage

An employer may elect to apply a lower percentage (not less than 1 percent) for any year for all employees eligible to participate in the plan for such year if the employer notifies the employees of such lower percentage within a reasonable period of time before the 60-day election period for such year under paragraph (5)(C). An employer may not elect a lower percentage under this subclause for any year if that election would result in the applicable percentage being lower than 3 percent in more than 2 of the years in the 5-year period ending with such year.

(III) Special rule for years arrangement not in effect

If any year in the 5-year period described in subclause (II) is a year prior to the first year for which any qualified salary reduction arrangement is in effect with respect to the employer (or any predecessor), the employer shall be treated as if the level of the employer matching contribution was at 3 percent of compensation for such prior year.

(D) Arrangement may be only plan of employer**(i) In general**

An arrangement shall not be treated as a qualified salary reduction arrangement for any year if the employer (or any predecessor employer) maintained a qualified plan with respect to which contributions were made, or benefits were accrued, for service in any year in the period beginning with the year such arrangement became effective and ending with the year for which the determination is being made. If only individuals other than employees described in subparagraph (A) of section

410(b)(3) are eligible to participate in such arrangement, then the preceding sentence shall be applied without regard to any qualified plan in which only employees so described are eligible to participate.

(ii) Qualified plan

For purposes of this subparagraph, the term “qualified plan” means a plan, contract, pension, or trust described in subparagraph (A) or (B) of section 219(g)(5).

(E) Applicable dollar amount; cost-of-living adjustment

(i) In general

For purposes of subparagraph (A)(ii), the applicable dollar amount shall be the amount determined in accordance with the following table:

For years beginning in calendar year:	The applicable dollar amount:
2002	\$7,000
2003	\$8,000
2004	\$9,000
2005 or thereafter	\$10,000.

(ii) Cost-of-living adjustment

In the case of a year beginning after December 31, 2005, the Secretary shall adjust the \$10,000 amount under clause (i) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter beginning July 1, 2004, and any increase under this subparagraph which is not a multiple of \$500 shall be rounded to the next lower multiple of \$500.

(3) Vesting requirements

The requirements of this paragraph are met with respect to a simple retirement account if the employee’s rights to any contribution to the simple retirement account are nonforfeitable. For purposes of this paragraph, rules similar to the rules of subsection (k)(4) shall apply.

(4) Participation requirements

(A) In general

The requirements of this paragraph are met with respect to any simple retirement account for a year only if, under the qualified salary reduction arrangement, all employees of the employer who—

(i) received at least \$5,000 in compensation from the employer during any 2 preceding years, and

(ii) are reasonably expected to receive at least \$5,000 in compensation during the year,

are eligible to make the election under paragraph (2)(A)(i) or receive the nonelective contribution described in paragraph (2)(B).

(B) Excludable employees

An employer may elect to exclude from the requirement under subparagraph (A) employees described in section 410(b)(3).

(5) Administrative requirements

The requirements of this paragraph are met with respect to any simple retirement account

if, under the qualified salary reduction arrangement—

(A) an employer must—

(i) make the elective employer contributions under paragraph (2)(A)(i) not later than the close of the 30-day period following the last day of the month with respect to which the contributions are to be made, and

(ii) make the matching contributions under paragraph (2)(A)(iii) or the nonelective contributions under paragraph (2)(B) not later than the date described in section 404(m)(2)(B),

(B) an employee may elect to terminate participation in such arrangement at any time during the year, except that if an employee so terminates, the arrangement may provide that the employee may not elect to resume participation until the beginning of the next year, and

(C) each employee eligible to participate may elect, during the 60-day period before the beginning of any year (and the 60-day period before the first day such employee is eligible to participate), to participate in the arrangement, or to modify the amounts subject to such arrangement, for such year.

(6) Definitions

For purposes of this subsection—

(A) Compensation

(i) In general

The term “compensation” means amounts described in paragraphs (3) and (8) of section 6051(a). For purposes of the preceding sentence, amounts described in section 6051(a)(3) shall be determined without regard to section 3401(a)(3).

(ii) Self-employed

In the case of an employee described in subparagraph (B), the term “compensation” means net earnings from self-employment determined under section 1402(a) without regard to any contribution under this subsection. The preceding sentence shall be applied as if the term “trade or business” for purposes of section 1402 included service described in section 1402(c)(6).

(B) Employee

The term “employee” includes an employee as defined in section 401(c)(1).

(C) Year

The term “year” means the calendar year.

(7) Use of designated financial institution

A plan shall not be treated as failing to satisfy the requirements of this subsection or any other provision of this title merely because the employer makes all contributions to the individual retirement accounts or annuities of a designated trustee or issuer. The preceding sentence shall not apply unless each plan participant is notified in writing (either separately or as part of the notice under subsection (l)(2)(C)) that the participant’s balance may be transferred without cost or penalty to

another individual account or annuity in accordance with subsection (d)(3)(G).

(8) Coordination with maximum limitation under subsection (a)

In the case of any simple retirement account, subsections (a)(1) and (b)(2) shall be applied by substituting “the sum of the dollar amount in effect under paragraph (2)(A)(ii) of this subsection and the employer contribution required under subparagraph (A)(iii) or (B)(i) of paragraph (2) of this subsection, whichever is applicable” for “the dollar amount in effect under section 219(b)(1)(A)”.

(9) Matching contributions on behalf of self-employed individuals not treated as elective employer contributions

Any matching contribution described in paragraph (2)(A)(iii) which is made on behalf of a self-employed individual (as defined in section 401(c)) shall not be treated as an elective employer contribution to a simple retirement account for purposes of this title.

(10) Special rules for acquisitions, dispositions, and similar transactions

(A) In general

An employer which fails to meet any applicable requirement by reason of an acquisition, disposition, or similar transaction shall not be treated as failing to meet such requirement during the transition period if—

- (i) the employer satisfies requirements similar to the requirements of section 410(b)(6)(C)(i)(II); and
- (ii) the qualified salary reduction arrangement maintained by the employer would satisfy the requirements of this subsection after the transaction if the employer which maintained the arrangement before the transaction had remained a separate employer.

(B) Applicable requirement

For purposes of this paragraph, the term “applicable requirement” means—

- (i) the requirement under paragraph (2)(A)(i) that an employer be an eligible employer;
- (ii) the requirement under paragraph (2)(D) that an arrangement be the only plan of an employer; and
- (iii) the participation requirements under paragraph (4).

(C) Transition period

For purposes of this paragraph, the term “transition period” means the period beginning on the date of any transaction described in subparagraph (A) and ending on the last day of the second calendar year following the calendar year in which such transaction occurs.

(q) Deemed IRAs under qualified employer plans

(1) General rule

If—

(A) a qualified employer plan elects to allow employees to make voluntary employee contributions to a separate account or annuity established under the plan, and

(B) under the terms of the qualified employer plan, such account or annuity meets the applicable requirements of this section or section 408A for an individual retirement account or annuity,

then such account or annuity shall be treated for purposes of this title in the same manner as an individual retirement plan and not as a qualified employer plan (and contributions to such account or annuity as contributions to an individual retirement plan and not to the qualified employer plan). For purposes of subparagraph (B), the requirements of subsection (a)(5) shall not apply.

(2) Special rules for qualified employer plans

For purposes of this title, a qualified employer plan shall not fail to meet any requirement of this title solely by reason of establishing and maintaining a program described in paragraph (1).

(3) Definitions

For purposes of this subsection—

(A) Qualified employer plan

The term “qualified employer plan” has the meaning given such term by section 72(p)(4)(A)(i); except that such term shall also include an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).

(B) Voluntary employee contribution

The term “voluntary employee contribution” means any contribution (other than a mandatory contribution within the meaning of section 411(c)(2)(C))—

- (i) which is made by an individual as an employee under a qualified employer plan which allows employees to elect to make contributions described in paragraph (1), and
- (ii) with respect to which the individual has designated the contribution as a contribution to which this subsection applies.

(r) Cross references

- (1) For tax on excess contributions in individual retirement accounts or annuities, see section 4963.**
- (2) For tax on certain accumulations in individual retirement accounts or annuities, see section 4974.**

(Added Pub. L. 93-406, title II, §2002(b), Sept. 2, 1974, 88 Stat. 959; amended Pub. L. 94-455, title XV, §1501(b)(2), (5), (10), title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1735-1737, 1834; Pub. L. 95-600, title I, §§152(a), (b), 156(c)(1), (3), 157(c)(1), (d)(1), (e)(1)(A), (g)(3), (h)(2), title VII, §703(c)(4), Nov. 6, 1978, 92 Stat. 2797, 2802, 2803, 2805, 2806, 2808, 2939; Pub. L. 96-222, title I, §101(a)(10)(A), (C), (F), (G), (J)(i), (14)(B), (E)(ii), Apr. 1, 1980, 94 Stat. 201-205; Pub. L. 96-605, title II, §225(b)(3), (4), Dec. 28, 1980, 94 Stat. 3529; Pub. L. 97-34, title III, §§311(g)(1)(A)-(C), (2), (h)(2), 312(b)(2), (c)(5), 313(b)(2), 314(b)(1), Aug. 13, 1981, 95 Stat. 281-284, 286; Pub. L. 97-248, title II, §§237(e)(3), 238(d)(3), (4), 243(a), (b)(1)(A), title III, §335(a)(1), Sept. 3, 1982, 96 Stat. 512, 513, 521, 522, 628; Pub. L. 97-448, title I, §103(d)(1), (e), Jan. 12, 1983, 96 Stat. 2378; Pub. L. 98-369, div. A, title I, §147(a), title IV, §491(d)(19)-(24), title V, §§521(b),

522(d)(12), title VII, §713(c)(2)(B), (f)(2), (5)(B), (g)(2), (j), July 18, 1984, 98 Stat. 687, 850, 867, 871, 957, 959, 960; Pub. L. 99-514, title XI, §§1102(a), (b)(2), (c), (e)(2), 1108(a), (d)-(g)(1), (4), (6), 1121(c)(2), 1122(e)(2)(B), 1123(d)(2), 1144(a), title XVIII, §§1852(a)(1), (5)(C), (7)(A), 1875(c)(6)(A), (8), 1898(a)(5), Oct. 22, 1986, 100 Stat. 2414-2416, 2431, 2433, 2434, 2465, 2470, 2475, 2490, 2864-2866, 2895, 2944; Pub. L. 100-647, title I, §§1011(b)(1)-(3), (c)(7)(C), (f)(1)-(5), (10), (i)(5), 1011A(a)(2)(A), 1018(t)(3)(D), title VI, §6057(a), Nov. 10, 1988, 102 Stat. 3456, 3458, 3461-3463, 3468, 3472, 3588, 3698; Pub. L. 101-239, title VII, §§7811(m)(7), 7841(a)(1), Dec. 19, 1989, 103 Stat. 2412, 2427; Pub. L. 102-318, title V, §521(b)(16)-(19), July 3, 1992, 106 Stat. 311; Pub. L. 103-66, title XIII, §13212(b), Aug. 10, 1993, 107 Stat. 472; Pub. L. 103-465, title VII, §732(d), Dec. 8, 1994, 108 Stat. 5005; Pub. L. 104-188, title I, §§1421(a), (b)(3)(B), (5), (6), (c), 1427(b)(3), 1431(c)(1)(B), 1455(b)(1), Aug. 20, 1996, 110 Stat. 1792, 1796-1798, 1802, 1803, 1817; Pub. L. 105-34, title III, §§302(d), 304(a), title XV, §1501(b), title XVI, §1601(d)(1)(A)-(C)(i), (D)-(G), Aug. 5, 1997, 111 Stat. 829, 831, 1058, 1087, 1088; Pub. L. 105-206, title VI, §§6015(a), 6016(a)(1), 6018(b), July 22, 1998, 112 Stat. 820-822; Pub. L. 106-554, §1(a)(7) [title III, §319(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A-646; Pub. L. 107-16, title VI, §§601(b), 602(a), 611(c)(1), (f)(1), (2), (g)(2), 641(e)(8), 642(a), (b)(2), (3), 643(c), 644(b), June 7, 2001, 115 Stat. 95, 97, 99, 121-123; Pub. L. 107-147, title IV, §411(i)(1), (j)(1), Mar. 9, 2002, 116 Stat. 46, 47; Pub. L. 108-311, title IV, §§404(d), 408(a)(12), (13), Oct. 4, 2004, 118 Stat. 1188, 1191; Pub. L. 109-280, title XII, §1201(a), Aug. 17, 2006, 120 Stat. 1063; Pub. L. 109-432, div. A, title III, §307(a), Dec. 20, 2006, 120 Stat. 2951; Pub. L. 110-172, §3(a), Dec. 29, 2007, 121 Stat. 2474; Pub. L. 110-343, div. C, title II, §205(a), Oct. 3, 2008, 122 Stat. 3865; Pub. L. 111-312, title VII, §725(a), Dec. 17, 2010, 124 Stat. 3316.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 7 of the Commodity Exchange Act, referred to in subsec. (m)(3)(B), is classified to section 11 of Title 7, Agriculture, and relates to vacation on request of designation as "contract market". Section 5 of the Commodity Exchange Act, which is classified to section 7 of Title 7, relates to designation of boards of trade as "contract markets".

Paragraph (6) or (7) of section 101 of the Federal Credit Union Act, referred to in subsec. (n)(2), is classified to section 1752(6), (7) of Title 12, Banks and Banking.

AMENDMENTS

2010—Subsec. (d)(8)(F). Pub. L. 111-312 substituted "December 31, 2011" for "December 31, 2009".

2008—Subsec. (d)(8)(F). Pub. L. 110-343 substituted "December 31, 2009" for "December 31, 2007".

2007—Subsec. (d)(8)(D). Pub. L. 110-172 substituted "all amounts in all individual retirement plans of the individual were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible" for "all amounts distributed from all individual retirement plans were treated as 1 contract under paragraph (2)(A) for purposes of determining the inclusion of such distribution under section 72".

2006—Subsec. (d)(8). Pub. L. 109-280, which directed the amendment of section 408(d) by adding par. (8),

without specifying the act to be amended, was executed by making the addition to this section, which is section 408 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

Subsec. (d)(9). Pub. L. 109-432 added par. (9).

2004—Subsec. (a)(1). Pub. L. 108-311, §408(a)(12), substituted "457(e)(16)," for "457(e)(16)".

Subsec. (n)(2). Pub. L. 108-311, §408(a)(13), substituted "paragraph (6) or (7) of section 101" for "section 101(6)".

Subsec. (p)(6)(A)(i). Pub. L. 108-311, §404(d), inserted at end "For purposes of the preceding sentence, amounts described in section 6051(a)(3) shall be determined without regard to section 3401(a)(3)."

2002—Subsec. (k)(2)(C). Pub. L. 107-147, §411(j)(1)(A), substituted "\$450" for "\$300".

Subsec. (k)(8). Pub. L. 107-147, §411(j)(1)(B), substituted "\$450" for "\$300" in two places.

Subsec. (q)(3)(A). Pub. L. 107-147, §411(i)(1), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: "The term 'qualified employer plan' has the meaning given such term by section 72(p)(4); except such term shall not include a government plan which is not a qualified plan unless the plan is an eligible deferred compensation plan (as defined in section 457(b))."

2001—Subsec. (a)(1). Pub. L. 107-16, §641(e)(8), substituted "403(b)(8), or 457(e)(16)" for "or 403(b)(8)".

Pub. L. 107-16, §601(b)(1), substituted "on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)" for "in excess of \$2,000 on behalf of any individual".

Subsec. (b). Pub. L. 107-16, §601(b)(3), substituted "the dollar amount in effect under section 219(b)(1)(A)" for "\$2,000" in concluding provisions.

Subsec. (b)(2)(B). Pub. L. 107-16, §601(b)(2), substituted "the dollar amount in effect under section 219(b)(1)(A)" for "\$2,000".

Subsec. (d)(3)(A). Pub. L. 107-16, §642(a), inserted "or" at end of cl. (i), added cl. (ii) and concluding provisions, and struck out former cls. (ii) and (iii) which read as follows:

"(ii) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution (as defined in section 402) from an employee's trust described in section 401(a) which is exempt from tax under section 501(a) or from an annuity plan described in section 403(a) (and any earnings on such contribution), and the entire amount received (including property and other money) is paid (for the benefit of such individual) into another such trust or annuity plan not later than the 60th day on which the individual receives the payment or the distribution; or

"(iii)(I) the entire amount received (including money and other property) represents the entire interest in the account or the entire value of the annuity,

"(II) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution from an annuity contract described in section 403(b) and any earnings on such rollover, and

"(III) the entire amount thereof is paid into another annuity contract described in section 403(b) (for the benefit of such individual) not later than the 60th day after he receives the payment or distribution."

Subsec. (d)(3)(D)(i). Pub. L. 107-16, §642(b)(2), substituted "(i) or (ii)" for "(i), (ii), or (iii)".

Subsec. (d)(3)(G). Pub. L. 107-16, §642(b)(3), reenacted heading without change and amended text of subpar. (G) generally. Prior to amendment, text read as follows: "This paragraph shall not apply to any amount paid or distributed out of a simple retirement account (as defined in subsection (p)) unless—

"(i) it is paid into another simple retirement account, or

"(ii) in the case of any payment or distribution to which section 72(t)(6) does not apply, it is paid into an individual retirement plan."

Subsec. (d)(3)(H). Pub. L. 107-16, §643(c), added subpar. (H).

Subsec. (d)(3)(I). Pub. L. 107-16, §644(b), added subpar. (I).

Subsec. (j). Pub. L. 107-16, §601(b)(4), struck out “\$2,000” before “amounts”.

Subsec. (k)(3)(C), (6)(D)(ii), (8). Pub. L. 107-16, §611(c)(1), substituted “\$200,000” for “\$150,000”.

Subsec. (p)(2)(A)(ii). Pub. L. 107-16, §611(f)(1), substituted “the applicable dollar amount” for “\$6,000”.

Subsec. (p)(2)(E). Pub. L. 107-16, §611(f)(2), amended heading and text of subpar. (E) generally. Prior to amendment, text read as follows: “The Secretary shall adjust the \$6,000 amount under subparagraph (A)(ii) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter ending September 30, 1996, and any increase under this subparagraph which is not a multiple of \$500 shall be rounded to the next lower multiple of \$500.”

Subsec. (p)(6)(A)(ii). Pub. L. 107-16, §611(g)(2), inserted at end “The preceding sentence shall be applied as if the term ‘trade or business’ for purposes of section 1402 included service described in section 1402(c)(6).”

Subsec. (p)(8). Pub. L. 107-16, §601(b)(5), substituted “the dollar amount in effect under section 219(b)(1)(A)” for “\$2,000”.

Subsecs. (q), (r). Pub. L. 107-16, §602(a), added subsec. (q) and redesignated former subsec. (q) as (r).

2000—Subsec. (d)(5). Pub. L. 106-554 amended heading generally. Prior to amendment, heading read as follows: “Certain distributions of excess contributions after due date for taxable year”.

1998—Subsec. (d)(7). Pub. L. 105-206, §6018(b)(2), inserted “or simple retirement accounts” after “pensions” in heading.

Subsec. (d)(7)(B). Pub. L. 105-206, §6018(b)(1), inserted “or 402(k)” after “section 402(h)”.

Subsec. (p)(2)(C)(i)(II). Pub. L. 105-206, §6016(a)(1)(C)(i), substituted “the preceding sentence shall not apply” for “the preceding sentence shall apply only in accordance with rules similar to the rules of section 410(b)(6)(C)(i)” in last sentence.

Subsec. (p)(2)(D)(i). Pub. L. 105-206, §6016(a)(1)(A), struck out “or (B)” after “(A)” in last sentence.

Subsec. (p)(2)(D)(iii). Pub. L. 105-206, §6016(a)(1)(C)(ii), struck out heading and text of cl. (iii). Text read as follows: “In the case of an employer who establishes and maintains a plan under this subsection for 1 or more years and who fails to meet any requirement of this subsection for any subsequent year due to any acquisition, disposition, or similar transaction involving another such employer, rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this subsection.”

Subsec. (p)(8), (9). Pub. L. 105-206, §6015(a), redesignated par. (8), relating to matching contributions on behalf of self-employed individuals not treated as elective employer contributions, as (9).

Subsec. (p)(10). Pub. L. 105-206, §6016(a)(1)(B), added par. (10).

1997—Subsec. (i). Pub. L. 105-34, §1601(d)(1)(A), substituted “31 days” for “30 days” in concluding provisions.

Pub. L. 105-34, §302(d), struck out “under regulations” after “may require” in introductory provisions and struck out “in such regulations” after “prescribes” in pars. (1) and (2)(B).

Subsec. (k)(6)(H). Pub. L. 105-34, §1601(d)(1)(B), substituted “of an employer if the terms of simplified employee pensions of such employer” for “if the terms of such pension”.

Subsec. (l)(2)(B). Pub. L. 105-34, §1601(d)(1)(C)(i), inserted “and the issuer of an annuity established under such an arrangement” after “under subsection (p)” in introductory provisions and “or issuer” after “trustee” in cl. (i).

Subsec. (m)(3). Pub. L. 105-34, §304(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: “In the case of an individual retirement account, paragraph (2) shall not apply to—

“(A) any gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31,

“(B) any silver coin described in section 5112(e) of title 31, or

“(C) any coin issued under the laws of any State.”

Subsec. (p)(2)(D)(i). Pub. L. 105-34, §1601(d)(1)(E), inserted at end “If only individuals other than employees described in subparagraph (A) or (B) of section 410(b)(3) are eligible to participate in such arrangement, then the preceding sentence shall be applied without regard to any qualified plan in which only employees so described are eligible to participate.”

Subsec. (p)(2)(D)(iii). Pub. L. 105-34, §1601(d)(1)(F), added cl. (iii).

Subsec. (p)(5). Pub. L. 105-34, §1601(d)(1)(G), substituted “simple” for “simplified” in introductory provisions.

Subsec. (p)(8). Pub. L. 105-34, §1601(d)(1)(D), added par. (8) relating to coordination with maximum limitation under subsection (a).

Pub. L. 105-34, §1501(b), added par. (8) relating to matching contributions on behalf of self-employed individuals not treated as elective employer contributions.

1996—Subsec. (d)(3)(G). Pub. L. 104-188, §1421(b)(3)(B), added subpar. (G).

Subsec. (d)(5)(A). Pub. L. 104-188, §1427(b)(3), substituted “the dollar amount in effect under section 219(b)(1)(A)” for “\$2,250” in introductory provisions.

Subsec. (i). Pub. L. 104-188, §1455(b)(1), inserted “aggregating \$10 or more in any calendar year” after “distributions” in introductory provisions.

Pub. L. 104-188, §1421(b)(6), inserted at end “In the case of a simple retirement account under subsection (p), only one report under this subsection shall be required to be submitted each calendar year to the Secretary (at the time provided under paragraph (2)) but, in addition to the report under this subsection, there shall be furnished, within 30 days after each calendar year, to the individual on whose behalf the account is maintained a statement with respect to the account balance as of the close of, and the account activity during, such calendar year.”

Subsec. (k)(2)(C). Pub. L. 104-188, §1431(c)(1)(B), substituted “section 414(q)(4)” for “section 414(q)(7)”.

Subsec. (k)(6)(H). Pub. L. 104-188, §1421(c), added subpar. (H).

Subsec. (l). Pub. L. 104-188, §1421(b)(5), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsecs. (p), (q). Pub. L. 104-188, §1421(a), added subsec. (p) and redesignated former subsec. (p) as (q).

1994—Subsec. (k)(8). Pub. L. 103-465 inserted before period at end “; except that any increase in the \$300 amount which is not a multiple of \$50 shall be rounded to the next lowest multiple of \$50”.

1993—Subsec. (k)(3)(C), (6)(D)(ii). Pub. L. 103-66, §13212(b)(1), substituted “\$150,000” for “\$200,000”.

Subsec. (k)(8). Pub. L. 103-66, §13212(b)(2), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: “The Secretary shall adjust the \$300 amount in paragraph (2)(C) and the \$200,000 amount in paragraphs (3)(C) and (6)(D)(ii) at the same time and in the same manner as under section 415(d), except that in the case of years beginning after 1988, the \$200,000 amount (as so adjusted) shall not exceed the amount in effect under section 401(a)(17).”

1992—Subsec. (a)(1). Pub. L. 102-318, §521(b)(16), substituted “402(c)” for “402(a)(5), 402(a)(7)”.

Subsec. (d)(3)(A)(ii). Pub. L. 102-318, §521(b)(17), amended clause (ii) generally. Prior to amendment, clause (ii) read as follows: “the entire amount received (including money and any other property) represents the entire amount in the account or the entire value of the annuity and no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution of a qualified total distribution (as defined in section 402(a)(5)(E)(i)) from an employee’s trust described in section 401(a) which is exempt from tax under section 501(a), or an annuity plan described in section 403(a) and any earnings on such sums and the entire amount thereof is paid into another such trust (for the benefit of such individ-

ual) or annuity plan not later than the 60th day on which he receives the payment or distribution; or”.

Subsec. (d)(3)(B). Pub. L. 102-318, §521(b)(18), struck out at end “Clause (ii) of subparagraph (A) shall not apply to any amount paid or distributed out of an individual retirement account or an individual retirement annuity to which an amount was contributed which was treated as a rollover contribution by section 402(a)(7) (or in the case of an individual retirement annuity, such section as made applicable by section 403(a)(4)(B)).”

Subsec. (d)(3)(F). Pub. L. 102-318, §521(b)(19), substituted “402(c)(7)” for “402(a)(6)(H)”.

1989—Subsecs. (a)(6), (b)(3). Pub. L. 101-239, §7811(m)(7), struck out “(without regard to subparagraph (C)(ii) thereof)” after “section 401(a)(9)”.

Subsec. (d)(6). Pub. L. 101-239, §7841(a)(1), substituted “his spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2)” for “his former spouse under a divorce decree or under a written instrument incident to such divorce”.

1988—Subsec. (d)(2)(C). Pub. L. 100-647, §1011(b)(1), substituted “in which the taxable year begins” for “with or within which the taxable year ends”.

Subsec. (d)(3)(A). Pub. L. 100-647, §1011A(a)(2)(A), struck out at end “Clause (ii) shall not apply during the 5-year period beginning on the date of the qualified total distribution referred to in such clause if the individual was treated as a 5-percent owner with respect to such distribution under section 402(a)(5)(F)(ii).”

Subsec. (d)(3)(E). Pub. L. 100-647, §1018(t)(3)(D), substituted “paragraph” for “subparagraph”.

Subsec. (d)(4). Pub. L. 100-647, §1011(b)(2), substituted “Contributions” for “Excess contributions” in heading, struck out “to the extent that such contribution exceeds the amount allowable as a deduction under section 219” after “individual retirement annuity” in introductory provisions, and substituted “such contribution” for “such excess contribution” in subpars. (B) and (C) and in last sentence.

Subsec. (d)(5). Pub. L. 100-647, §1011(b)(3), substituted “shall be computed without regard to section 219(g)” for “(after application of section 408(o)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(o)(2)(B)” in last sentence.

Subsec. (d)(7). Pub. L. 100-647, §1011(f)(5), added par. (7).

Subsec. (k)(3)(B). Pub. L. 100-647, §1011(i)(5), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “For purposes of subparagraph (A)—

“(i) there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3), and

“(ii) an individual shall be considered a shareholder if he owns (with the application of section 318) more than 10 percent of the value of the stock of the employer.”

Subsec. (k)(3)(C). Pub. L. 100-647, §1011(f)(3)(C), struck out “total” before “compensation”.

Subsec. (k)(6)(A). Pub. L. 100-647, §1011(f)(1), substituted “Arrangements which qualify” for “In general” in heading and amended text generally. Prior to amendment, text read as follows: “A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension—

“(i) an employee may elect to have the employer make payments—

“(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

“(II) to the employee directly in cash,

“(ii) an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer, and

“(iii) the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product derived by multiplying the average of the deferral percentages for such year

of all employees (other than highly compensated employees) eligible to participate by 1.25.”

Subsec. (k)(6)(A)(iv). Pub. L. 100-647, §1011(c)(7)(C), added cl. (iv).

Subsec. (k)(6)(B). Pub. L. 100-647, §1011(f)(2), inserted “who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained)” after “than 25 employees”.

Subsec. (k)(6)(D)(ii). Pub. L. 100-647, §1011(f)(3)(A), substituted “(not in excess of the first \$200,000)” for “(within the meaning of section 414(s))”.

Subsec. (k)(6)(F), (G). Pub. L. 100-647, §1011(f)(4), added subpar. (f) and redesignated former subpar. (F) as (G).

Subsec. (k)(7)(B). Pub. L. 100-647, §1011(f)(3)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “The term ‘compensation’ means, in the case of an employee within the meaning of section 401(c)(1), earned income within the meaning of section 401(c)(2).”

Subsec. (k)(8). Pub. L. 100-647, §1011(f)(3)(D), (10), substituted “paragraphs (3)(C) and (6)(D)(ii)” for “paragraph (3)(C)” and inserted “, except that in the case of years beginning after 1988, the \$200,000 amount (as so adjusted) shall not exceed the amount in effect under section 401(a)(17)” after “under section 415(d)”.

Subsec. (m)(3). Pub. L. 100-647, §6057(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “In the case of an individual retirement account, paragraph (2) shall not apply to any gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31 or any silver coin described in section 5112(e) of title 31.”

Subsec. (o)(4)(B)(iv). Pub. L. 100-647, §1011(b)(1), substituted “in which the taxable year begins” for “with or within which the taxable year ends”.

1986—Subsecs. (a)(6), (b)(3). Pub. L. 99-514, §1852(a)(1), substituted “(without regard to subparagraph (C)(ii) thereof) and the incidental death benefit requirements of section 401(a)” for “(relating to required distributions)”.

Subsec. (c)(1). Pub. L. 99-514, §1852(a)(7)(A), substituted “paragraphs (1) through (6)” for “paragraphs (1) through (7)”.

Subsec. (d)(1). Pub. L. 99-514, §1102(c), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement account or under an individual retirement annuity shall be included in gross income by the payee or distributee, as the case may be, for the taxable year in which the payment or distribution is received. Notwithstanding any other provision of this title (including chapters 11 and 12), the basis any person in such an account or annuity is zero.”

Subsec. (d)(2). Pub. L. 99-514, §1102(c), substituted “Special rules for applying section 72” for “Distributions of annuity contracts” in heading and amended par. generally. Prior to amendment, par. (2) read as follows: “Paragraph (1) does not apply to any annuity contract which meets the requirements of paragraphs (1), (3), (4), and (5) of subsection (b) and which is distributed from an individual retirement account. Section 72 applies to any such annuity contract, and for purposes of section 72 the investment in such contract is zero.”

Subsec. (d)(3)(A). Pub. L. 99-514, §1875(c)(8)(C), inserted at end “Clause (ii) shall not apply during the 5-year period beginning on the date of the qualified total distribution referred to in such clause if the individual was treated as a 5-percent owner with respect to such distribution under section 402(a)(5)(F)(ii).”

Subsec. (d)(3)(A)(ii). Pub. L. 99-514, §1875(c)(8)(A), (B), struck out “(other than a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan)” after “section 501(a)” and struck out “(other than a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan)” after “section 403(a)”.

Pub. L. 99-514, §1121(c)(2), made amendment identical to Pub. L. 99-514, §1875(c)(8)(A), (B), see above.

Subsec. (d)(3)(E). Pub. L. 99-514, §1852(a)(5)(C), added subpar. (E).

Subsec. (d)(3)(F). Pub. L. 99-514, §1122(e)(2)(B), added subpar. (F).

Subsec. (d)(5). Pub. L. 99-514, §1102(b)(2), inserted at end "For purposes of this paragraph, the amount allowable as a deduction under section 219 (after application of section 408(o)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(o)(2)(B)."

Subsec. (d)(5)(A). Pub. L. 99-514, §1875(c)(6)(A), substituted "the dollar limitation in effect under section 415(c)(1)(A) for such taxable year" for "\$15,000".

Subsec. (f). Pub. L. 99-514, §1123(d)(2), struck out subsec. (f) which related to additional tax on certain amounts included in gross income before age 59½.

Subsec. (i). Pub. L. 99-514, §1102(e)(2), amended last sentence generally. Prior to amendment, last sentence read as follows: "The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations."

Subsec. (k)(2). Pub. L. 99-514, §1108(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "This paragraph is satisfied with respect to a simplified employee pension for a calendar year only if for such year the employer contributes to the simplified employee pension of each employee who—

"(A) has attained age 21, and

"(B) has performed service for the employer during at least 3 of the immediately preceding 5 calendar years.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3)."

Subsec. (k)(2)(A). Pub. L. 99-514, §1898(a)(5), substituted "age 21" for "age 25".

Subsec. (k)(3)(A). Pub. L. 99-514, §1108(g)(4), substituted "year" for "calendar year".

Pub. L. 99-514, §1108(g)(1)(A), substituted "any highly compensated employee (within the meaning of section 414(q))" for "any employee who is—

"(i) an officer,

"(ii) a shareholder,

"(iii) a self-employed individual, or

"(iv) highly compensated".

Subsec. (k)(3)(C). Pub. L. 99-514, §1108(g)(1)(B), inserted "and except as provided in subparagraph (D)," and "(other than contributions under an arrangement described in paragraph (6))", and struck out end sentence which read as follows: "The Secretary shall annually adjust the \$200,000 amount contained in the preceding sentence at the same time and in the same manner as he adjusts the dollar amount contained in section 415(c)(1)(A)."

Subsec. (k)(3)(D), (E). Pub. L. 99-514, §1108(g)(1)(C), added subpar. (D) and struck out former subpar. (D), treatment of certain contributions and taxes, which read "Except as provided in this subparagraph, employer contributions do not meet the requirements of this paragraph unless such contributions meet the requirements of this paragraph without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contribution Act), title II of the Social Security Act, or any other Federal or State law. If the employer does not maintain an integrated plan at any time during the taxable year, OASDI contributions (as defined in section 401(l)(2)) may, for purposes of this paragraph, be taken into account as contributions by the employer to the employee's simplified employee pension, but only if such contributions are so taken into account with respect to each employee maintaining a simplified employee pension.", and former subpar. (E), integrated plan defined, which read "For purposes of subparagraph (D), the term 'integrated plan' means a plan which meets the requirements of section 401(a) or 403(a) but would not meet such requirements if contributions or benefits

under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law were not taken into account."

Subsec. (k)(6). Pub. L. 99-514, §1108(a), added par. (6).

Subsec. (k)(7)(C). Pub. L. 99-514, §1108(f), added subpar. (C).

Subsec. (k)(8). Pub. L. 99-514, §1108(e), added par. (8).

Subsec. (k)(9). Pub. L. 99-514, §1108(g)(6), added par. (9).

Subsec. (m)(3). Pub. L. 99-514, §1144(a), added par. (3).

Subsecs. (o), (p). Pub. L. 99-514, §1102(a), added subsec. (o) and redesignated former subsec. (o) as (p).

1984—Subsec. (a)(1). Pub. L. 98-369, §491(d)(19), substituted "or 403(b)(8)" for "403(b)(8), 405(d)(3), or 409(b)(3)(C)".

Subsec. (a)(6). Pub. L. 98-369, §521(b)(1), added par. (6) and struck out former par. (6) which provided that the entire interest of an individual for whose benefit the trust is maintained will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, commencing before the close of such taxable year, in accordance with regulations prescribed by the Secretary, over (A) the life of such individual or the lives of such individual and his spouse, or (B) a period not extending beyond the life expectancy of such individual or the life expectancy of such individual and his spouse.

Subsec. (a)(7). Pub. L. 98-369, §521(b)(1), struck out par. (7) which provided that if (A) an individual for whose benefit the trust is maintained dies before his entire interest has been distributed to him, or (B) distribution has been commenced as provided in paragraph (6) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will be distributed within 5 years after his death (or the death of the surviving spouse). The preceding sentence shall not apply if distributions over a term certain commenced before the death of the individual for whose benefit the trust was maintained and the term certain is for a period permitted under paragraph (6).

Subsec. (b)(3). Pub. L. 98-369, §521(b)(2), added par. (3) and struck out former par. (3) which provided that the entire interest of the owner will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, in accordance with regulations prescribed by the Secretary, over (A) the life of such owner or the lives of such owner and his spouse, or (B) a period not extending beyond the life expectancy of such owner or the life expectancy of such owner and his spouse.

Subsec. (b)(4), (5). Pub. L. 98-369, §521(b)(2), redesignated par. (5) as (4) and struck out former par. (4) which provided that if (A) the owner dies before his entire interest has been distributed to him, or (B) distribution has been commenced as provided in paragraph (3) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will be distributed within 5 years after his death (or the death of the surviving spouse). The preceding sentence shall not apply if distributions over a term certain commenced before the death of the owner and the term certain is for a period permitted under paragraph (3).

Subsec. (d)(3)(A)(i). Pub. L. 98-369, §491(d)(20), struck out "or retirement bond" before "for the benefit".

Subsec. (d)(3)(A)(ii). Pub. L. 98-369, §522(d)(12), substituted "rollover contribution of a qualified total distribution (as defined in section 402(a)(5)(E)(i)) from an employee's trust" for "rollover contribution from an employee's trust".

Subsec. (d)(3)(B). Pub. L. 98-369, §491(d)(21), substituted "or an individual retirement annuity" for "individual retirement annuity, or a retirement bond".

Subsec. (d)(3)(C), (D). Pub. L. 98-369, §713(g)(2), designated the subpar. (C), as added by section 335(a)(1) of

Pub. L. 97-248, relating to permitting partial rollovers, as subpar. (D).

Subsec. (d)(3)(D)(ii). Pub. L. 98-369, § 491(d)(22), struck out “bond,” after “annuity.”

Subsec. (d)(6). Pub. L. 98-369, § 491(d)(23), substituted “or an individual retirement annuity” for “, individual retirement annuity, or retirement bond”, and “or annuity” for “, annuity, or bond”.

Subsec. (h). Pub. L. 98-369, § 713(c)(2)(B), substituted “(as defined in subsection (n))” for “(as defined in section 401(d)(1))”.

Subsec. (i). Pub. L. 98-369, § 147(a), inserted “(and the years to which they relate)”.

Subsec. (k)(1). Pub. L. 98-369, § 713(f)(2), amended par. (1) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

Subsec. (k)(3)(C). Pub. L. 98-369, § 713(f)(5)(B), inserted provision which required annual adjustment of the \$200,000 amount concurrently with the dollar amount adjustment in section 415(c)(1)(A).

Subsec. (k)(3)(D). Pub. L. 98-369, § 713(j), substituted in penultimate sentence “OASDI contributions (as defined in section 401(l)(2))” for “taxes paid under section 3111 (relating to tax on employers) with respect to an employee” and “as contributions by the employer to the employee’s simplified employee pension, but only if such contributions are so taken into account with respect to each employee maintaining a simplified employee pension” for “as a contribution by the employer to an employee’s simplified pension” and struck out third sentence which provided “If contributions are made to the simplified employee pension of an owner-employee, the preceding sentence shall not apply unless taxes paid by all such owner-employees under chapter 2, and the taxes which would be payable under chapter 2 by such owner-employees but for paragraphs (4) and (5) of section 1402(c), are taken into account as contributions by the employer on behalf of such owner-employees.”

Subsec. (k)(3)(E). Pub. L. 98-369, § 491(d)(24), substituted “or 403(a)” for “, 403(a), or 405(a)”.

1983—Subsec. (j). Pub. L. 97-448, § 103(d)(1)(B), substituted “\$17,000” for “\$15,000” in provisions preceding par. (1).

Subsec. (k)(3)(C)(iii). Pub. L. 97-448, § 103(d)(1)(A), inserted “(other than an employee within the meaning of section 401(c)(1))” after “a simplified employee pension on behalf of each employee”.

Subsecs. (m), (n). Pub. L. 97-448, § 103(e)(1), amended directory language of Pub. L. 97-34, § 314(b)(1), thereby correcting subsec. designations. See 1981 Amendment note below for subsecs. (m) and (n).

1982—Subsec. (a)(2). Pub. L. 97-248, § 237(e)(3)(A), substituted reference to subsection (n) of this section, for reference to section 401(d)(1).

Subsec. (a)(7). Pub. L. 97-248, § 243(a)(1), amended par. (7) generally, designating existing provisions as subpars. (A) and (B), in subpar. (B), as so designated, striking out “if” before “distribution”, in provisions following subpar. (B) substituting “will be distributed within 5 years after his death (or the death of the surviving spouse)” for “will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries”, and substituting “shall not apply” for “does not apply”.

Subsec. (b)(4). Pub. L. 97-248, § 243(a)(2), amended par. (4) generally, designating existing provisions, as subpars. (A) and (B), in subpar. (B), as so redesignated, striking out “if” before “distribution”, in provisions following subpar. (B) substituting “will be distributed within 5 years after his death (or the death of the surviving spouse)” for “will, within 5 years after his death (or the death of the surviving spouse), be distributed, or

applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries”, and substituting “shall not apply” for “shall have no application”.

Subsec. (d)(3)(C). Pub. L. 97-248, § 243(b)(1)(A), added subpar. (C) relating to denial of rollover treatment for inherited accounts.

Pub. L. 97-248, § 335(a)(1), added subpar. (C) relating to permitting partial rollovers.

Subsec. (j). Pub. L. 97-248, § 238(d)(3), amended subsec. (j) generally, substituting provisions increasing amount by the amount of the limitation in effect under section 415(c)(1)(A), for provisions increasing amount by substituting “\$15,000” for “\$2,000”.

Subsec. (k)(1). Pub. L. 97-248, § 238(d)(4)(B), struck out reference to par. (6) of this subsection.

Subsec. (k)(3)(C). Pub. L. 97-248, § 238(d)(4)(C), amended subpar. (C) generally, striking out cl. “(i)” designation and cl. (ii) which related to taking into account compensation in excess of \$100,000 with respect to a simplified employee pension.

Subsec. (k)(6). Pub. L. 97-248, § 238(d)(4)(A), struck out par. (6) which related to prohibition on employer maintaining plan to which section 401(j) applies.

Subsecs. (n), (o). Pub. L. 97-248, § 237(e)(3)(B), added subsec. (n) and redesignated former subsec. (n) as (o).

1981—Subsec. (a)(1). Pub. L. 97-34, § 313(b)(2), inserted reference to section 405(d)(3).

Pub. L. 97-34, § 311(g)(1)(A), substituted “\$2,000” for “\$1,500”.

Subsec. (b). Pub. L. 97-34, § 311(g)(1)(B), substituted in par. (2)(B) and provision following par. (5) “\$2,000” for “\$1,500”.

Subsec. (d)(4). Pub. L. 97-34, § 311(h)(2), substituted section “219” for “219 or 220” in provision preceding subpar. (A) and in subpar. (B).

Subsec. (d)(5)(A). Pub. L. 97-34, § 312(c)(5), substituted “\$15,000” for “\$7,500”.

Pub. L. 97-34, § 311(g)(2), (h)(2), substituted “\$2,250” for “\$1,750” and “219” for “219 or 220” in two places.

Subsec. (j). Pub. L. 97-34, § 312(c)(5), substituted “\$15,000” for “\$7,500”.

Pub. L. 97-34, § 311(g)(1)(C), substituted “\$2,000” for “\$1,500”.

Subsec. (k)(3)(C). Pub. L. 97-34, § 312(b)(2), designated provision relating to compensation bearing a uniform relationship to total compensation as cl. (i), and in cl. (i) as so designated, substituted “\$200,000” for “\$100,000”, and added cl. (ii).

Subsecs. (m), (n). Pub. L. 97-34, § 314(b)(1), as amended by Pub. L. 97-448, § 103(e)(1), added subsec. (m) and redesignated former subsec. (m) as (n).

1980—Subsec. (a)(1). Pub. L. 96-222, § 101(a)(14)(B), inserted reference to section 402(a)(7).

Subsec. (d)(5). Pub. L. 96-222, § 101(a)(10)(C), (14)(E)(ii), in subpar. (A) inserted provisions requiring that if employer contributions on behalf of the individual are paid for the taxable year to a simplified employee pension, the dollar amount of the preceding sentence be increased by the lessor of the amount of such contributions or \$7,500 and restructured subpar. (B).

Subsec. (j)(3). Pub. L. 96-222, § 101(a)(10)(J)(i), struck out par. (3) which made reference to paragraph (5) of subsection (b).

Subsec. (k). Pub. L. 96-222, § 101(a)(10)(A), (F), (G), substituted in par. (1) “(5), and (6)” for “and (5)” and in par. (3)(D) “If the employer does not maintain an integrated plan at any time during the taxable year, taxes paid” for “Taxes paid”, inserted in par. (2) provisions requiring that for purposes of this paragraph there be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(2) and pars. (3)(E) and (6), and redesignated former par. (6) as (7).

Subsec. (k)(2), (3)(B)(i). Pub. L. 96-605, § 225(b)(3), (4), substituted “section 410(b)(3)” for “section 410(b)(2)”.

1978—Subsec. (a)(1). Pub. L. 95-600, §156(c)(3), inserted reference to section 403(b)(8).

Subsec. (b)(2). Pub. L. 95-600, §157(d)(1), (e)(1)(A), designated existing provisions as subpars. (B) and (C) and added subpar. (A), and in subpar. (B) as so designated, inserted “on behalf of any individual” after “annual premium”, respectively.

Subsec. (d)(3)(A)(iii). Pub. L. 95-600, §156(c)(1), added cl. (iii).

Subsec. (d)(3)(B). Pub. L. 95-600, §157(g)(3), (h)(2), inserted provision relating to the applicability of clause (ii) of subparagraph (A) to any amount paid or distributed out of an individual retirement account or annuity to which an amount was contributed which was treated as a rollover contribution by section 402(a)(7) and substituted “1-year period” for “3-year period”.

Subsec. (d)(4). Pub. L. 95-600, §703(c)(4), amended Pub. L. 94-455, §1501(b)(5). See 1976 Amendment note below.

Subsec. (d)(5), (6). Pub. L. 95-600, §157(c)(1), added par. (5) and redesignated former par. (5) as (6).

Subsecs. (j) to (m). Pub. L. 95-600, §152(a), added subsecs. (j) to (l) and redesignated former subsec. (j) as (m). 1976—Subsecs. (a)(2), (6), (b). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (c)(2). Pub. L. 94-455, §1501(b)(2), substituted “member (or spouse of an employee or member)” for “member”.

Subsec. (d)(1). Pub. L. 94-455, §1501(b)(10), substituted “Notwithstanding any other provision of this title (including chapters 11 and 12), the basis” for “The basis”.

Subsec. (d)(4). Pub. L. 94-455, §1501(b)(5), as amended by Pub. L. 95-600, §703(c)(4), inserted reference to section 220 and substituted “In the case of such a distribution, for purposes of section 61, any net income described in subparagraph (C) shall be deemed to have been earned and receivable in the taxable year in which such excess contribution is made” for “Any net income described in subparagraph (C) shall be included in the gross income of the individual for the taxable year in which received”.

Subsecs. (h), (i). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-312, title VII, §725(b), Dec. 17, 2010, 124 Stat. 3316, provided that:

“(1) EFFECTIVE DATE.—The amendment made by this section [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2009.

“(2) SPECIAL RULE.—For purposes of subsections (a)(6), (b)(3), and (d)(8) of section 408 of the Internal Revenue Code of 1986, at the election of the taxpayer (at such time and in such manner as prescribed by the Secretary of the Treasury) any qualified charitable distribution made after December 31, 2010, and before February 1, 2011, shall be deemed to have been made on December 31, 2010.”

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-343, div. C, title II, §205(b), Oct. 3, 2008, 122 Stat. 3865, provided that: “The amendment made by this section [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2007.”

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109-280, to which such amendment relates, see section 3(j) of Pub. L. 110-172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109-432 applicable to taxable years beginning after Dec. 31, 2006, see section 307(c) of Pub. L. 109-432, set out as a note under section 223 of this title.

Pub. L. 109-280, title XII, §1201(c)(1), Aug. 17, 2006, 120 Stat. 1066, provided that: “The amendment made by subsection (a) [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2005.”

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(d) of Pub. L. 108-311 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 404(f) of Pub. L. 108-311, set out as a note under section 45A of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 411(x) of Pub. L. 107-147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 601(b) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2001, see section 601(c) of Pub. L. 107-16, set out as an Effective and Termination Dates of 2001 Amendment note under section 219 of this title.

Pub. L. 107-16, title VI, §602(c), June 7, 2001, 115 Stat. 96, provided that: “The amendments made by this section [amending this section and section 1003 of Title 29, Labor] shall apply to plan years beginning after December 31, 2002.”

Amendment by section 611(c)(1), (f)(1), (2), (g)(2) of Pub. L. 107-16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107-16, set out as a note under section 415 of this title.

Amendment by section 641(e)(8) of Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107-16, set out as a note under section 402 of this title.

Pub. L. 107-16, title VI, §642(c), June 7, 2001, 115 Stat. 122, provided that:

“(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and section 403 of this title] shall apply to distributions after December 31, 2001.

“(2) SPECIAL RULE.—Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 [Pub. L. 99-514, set out as a note under section 402 of this title] shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of the amendments made by this section.”

Amendment by section 643(c) of Pub. L. 107-16 applicable to distributions made after Dec. 31, 2001, see section 643(d) of Pub. L. 107-16, set out as a note under section 401 of this title.

Amendment by section 644(b) of Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see section 644(c) of Pub. L. 107-16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6018(b) of Pub. L. 105-206 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which such amendment relates, see section 6018(h) of Pub. L. 105-206, set out as a note under section 23 of this title.

Amendment by sections 6015(a) and 6016(a)(1) of Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 302(d) of Pub. L. 105-34 applicable to taxable years beginning after Dec. 31, 1997, see section 302(f) of Pub. L. 105-34, set out as a note under section 219 of this title.

Section 304(b) of Pub. L. 105-34 provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997."

Section 1501(c)(2) of Pub. L. 105-34 provided that: "The amendment made by subsection (b) [amending this section] shall apply to years beginning after December 31, 1996."

Amendment by section 1601(d)(1)(A)-(C)(i), (D)-(G) of Pub. L. 105-34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which it relates, see section 1601(j) of Pub. L. 105-34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(a), (b)(3)(B), (5), (6), (c) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104-188, set out as a note under section 72 of this title.

Amendment by section 1427(b)(3) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1427(c) of Pub. L. 104-188, set out as a note under section 219 of this title.

Amendment by section 1431(c)(1)(B) of Pub. L. 104-188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, such amendment to be treated as having been in effect for years beginning in 1996, see section 1431(d)(1) of Pub. L. 104-188, set out as a note under section 414 of this title.

Section 1455(e) of Pub. L. 104-188 provided that: "The amendments made by this section [amending this section and sections 6047, 6652, 6693, and 6724 of this title] shall apply to returns, reports, and other statements the due date for which (determined without regard to extensions) is after December 31, 1996."

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 applicable to years beginning after Dec. 31, 1994, and, to the extent of providing for the rounding of indexed amounts, not applicable to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994, see section 732(e) of Pub. L. 103-465, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-66 applicable, except as otherwise provided, to benefits accruing in plan years beginning after Dec. 31, 1993, see section 13212(d) of Pub. L. 103-66, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102-318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(m)(7) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

Section 7841(a)(3) of Pub. L. 101-239 provided that: "The amendments made by this subsection [amending this section and section 414 of this title] shall apply to transfers after the date of the enactment of this Act [Dec. 19, 1989] in taxable years ending after such date."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(c)(7)(C) of Pub. L. 100-647 applicable to plan years beginning after Dec. 31, 1987,

with exception in case of a plan described in section 1105(c)(2) of Pub. L. 99-514, see section 1011(c)(7)(E) of Pub. L. 100-647, set out as a note under section 401 of this title.

Section 1011A(a)(2)(B) of Pub. L. 100-647 provided that: "The amendment made by subparagraph (A) [amending this section] shall apply to rollover contributions made in taxable years beginning after December 31, 1986."

Amendment by sections 1011(b)(1)-(3), (f)(1)-(5), (10), (i)(5) and 1018(t)(3)(D) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Section 6057(b) of Pub. L. 100-647 provided that: "The amendments made by subsection (a) [amending this section] shall apply to acquisitions after the date of the enactment of this Act [Nov. 10, 1988]."

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1102(a), (b)(2), (c), (e)(2) of Pub. L. 99-514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99-514, set out as a note under section 219 of this title.

Amendment by section 1108(a), (d)-(g)(1), (4), (6) of Pub. L. 99-514 applicable to years beginning after Dec. 31, 1986, except that section 408(k)(3)(D) and (E) of the Internal Revenue Code of 1954 (as in effect before the amendments made by section 1108 of Pub. L. 99-514) shall continue to apply for years beginning after Dec. 31, 1986, and before Jan. 1, 1989, except that employer contributions under an arrangement under section 408(k)(6) of the Internal Revenue Code of 1986 (as added by section 1108 of Pub. L. 99-514) may not be integrated under section 408(k)(3)(D) and (E) of the Internal Revenue Code of 1954, see section 1108(h) of Pub. L. 99-514, as amended, set out as a note under section 219 of this title.

Amendment by section 1121(c)(2) of Pub. L. 99-514 applicable to years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and transition rules, see section 1121(d) of Pub. L. 99-514, set out as a note under section 401 of this title.

Amendment by section 1122(e)(2)(B) of Pub. L. 99-514 applicable, except as otherwise provided, to amounts distributed after Dec. 31, 1986, in taxable years ending after such date, see section 1122(h) of Pub. L. 99-514, set out as a note under section 402 of this title.

Amendment by section 1123(d)(2) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1123(e) of Pub. L. 99-514, set out as a note under section 72 of this title.

Section 1144(b) of Pub. L. 99-514 provided that: "The amendment made by this section [amending this section] shall apply to acquisitions after December 31, 1986."

Amendment by sections 1852(a)(1), (5)(C), (7)(A) and 1875(c)(8) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

Amendment by section 1875(c)(6)(A) of Pub. L. 99-514 effective as if included in the amendments made by section 238 of Pub. L. 97-248, see section 1875(c)(12) of Pub. L. 99-514, set out as a note under section 62 of this title.

Section 1898(a)(5) of Pub. L. 99-514 provided that the amendment made by that section is effective with respect to plan years beginning after Oct. 22, 1986.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 147(a) of Pub. L. 98-369 applicable to contributions made after Dec. 31, 1984, see section 147(d)(1) of Pub. L. 98-369, set out as a note under section 219 of this title.

Amendment by section 491(d)(19)-(24) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see

section 491(f)(1) of Pub. L. 98-369, set out as a note under section 62 of this title.

Amendment by section 521(b) of Pub. L. 98-369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 522(d)(12) of Pub. L. 98-369 applicable to distributions made after July 18, 1984, in taxable years ending after that date, see section 522(e) of Pub. L. 98-369, set out as a note under section 402 of this title.

Amendment by section 713 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by sections 237 and 238 of Pub. L. 97-248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97-248, set out as an Effective Date note under section 416 of this title.

Section 243(c) of Pub. L. 97-248, as amended by Pub. L. 98-369, div. A, title VII, §713(g)(1), July 18, 1984, 98 Stat. 960, provided that: "The amendments made by this section [amending this section and sections 219 and 409 of this title] shall apply with respect to individuals dying after December 31, 1983."

Section 335(b) of Pub. L. 97-248 provided that: "The amendments made by subsection (a) [amending this section and section 409 of this title] shall apply to distributions made after December 31, 1982, in taxable years ending after such date."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(g)(1)(A)-(C), (2), (h)(2) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i) of Pub. L. 97-34, set out as a note under section 219 of this title.

Amendment by section 312(b)(2), (c)(5) of Pub. L. 97-34 applicable to plans which include employees within the meaning of section 401(c)(1) with respect to taxable years beginning after Dec. 31, 1981, see section 312(f) of Pub. L. 97-34, set out as a note under section 72 of this title.

Amendment by section 313(b)(2) of Pub. L. 97-34 applicable to redemptions after Aug. 13, 1981, in taxable years ending after such date, see section 313(c) of Pub. L. 97-34, set out as a note under section 219 of this title.

Section 314(b)(2) of Pub. L. 97-34 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to property acquired after December 31, 1981, in taxable years ending after such date."

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96-605 applicable with respect to plan years beginning after Dec. 31, 1980, see section 225(c) of Pub. L. 96-605, set out as a note under section 401 of this title.

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 152(h) of Pub. L. 95-600 provided that: "The amendments made by this section [amending this section and sections 219, 401, 404, 414, and 415 of this title] shall apply to taxable years beginning after December 31, 1978."

Amendment by section 156(c)(1), (3) of Pub. L. 95-600 applicable to distributions or transfers made after Dec. 31, 1977, in taxable years beginning after such date, see section 156(d) of Pub. L. 95-600, set out as a note under section 403 of this title.

Section 157(c)(2)(A) of Pub. L. 95-600 provided that: "The amendments made by paragraph (1) [amending this section] shall apply to distributions in taxable years beginning after December 31, 1975."

Section 157(d)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to contracts issued after the date of the enactment of this Act [Nov. 6, 1978]."

Amendment by section 157(h)(2) of Pub. L. 95-600 applicable to payments made in taxable years beginning after Dec. 31, 1977, see section 157(h)(3)(A) of Pub. L. 95-600, set out as a note under section 402 of this title.

Section 157(e)(2) of Pub. L. 95-600 provided that: "The amendments made by paragraph (1) [amending this section and section 409 of this title] shall apply to taxable years beginning after December 31, 1976."

Amendment by section 157(g)(3) of Pub. L. 95-600 applicable to lump-sum distributions completed after Dec. 31, 1978, in taxable years ending after such date, see section 157(g)(4) of Pub. L. 95-600, set out as a note under section 402 of this title.

Amendment by section 703(c)(4) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1976, see section 703(c)(5) of Pub. L. 95-600, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(2), (5), (10) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94-455, set out as a note under section 62 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1974, see section 2002(i)(1) of Pub. L. 93-406, set out as a note under section 219 of this title.

DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS

Pub. L. 109-280, title VIII, §830, Aug. 17, 2006, 120 Stat. 1002, provided that:

"(a) IN GENERAL.—The Secretary of the Treasury (or the Secretary's delegate) shall make available a form (or modify existing forms) for use by individuals to direct that a portion of any refund of overpayment of tax imposed by chapter 1 of the Internal Revenue Code of 1986 be paid directly to an individual retirement plan (as defined in section 7701(a)(37) of such Code) of such individual.

"(b) EFFECTIVE DATE.—The form required by subsection (a) shall be made available for taxable years beginning after December 31, 2006."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521-523] of title V of Pub. L. 102-318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101-1147 and 1171-1177] or title XVIII [§§ 1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE FOR CONTRIBUTIONS FOR TAXABLE
YEARS BEGINNING BEFORE JANUARY 1, 1978

Section 157(c)(2)(B) of Pub. L. 95-600, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of contributions for taxable years beginning before January 1, 1978, paragraph (5) of section 408(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied as if such paragraph did not contain any dollar limitation."

EXCHANGE OF FIXED PREMIUM ANNUITY OR ENDOWMENT
CONTRACT ISSUED ON OR BEFORE NOV. 6, 1978, FOR
INDIVIDUAL RETIREMENT ANNUITY

Section 157(d)(3) of Pub. L. 95-600, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "In the case of any annuity or endowment contract issued on or before the date of the enactment of this Act [Nov. 6, 1978] which would be an individual retirement annuity within the meaning of section 408(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by paragraph (1) [amending subsec. (b)(2) of this section]) but for the fact that the premiums under the contract are fixed, at the election of the taxpayer an exchange before January 1, 1981, of that contract for an individual retirement annuity within the meaning of such section 408(b) (as amended by paragraph (1)) shall be treated as a nontaxable exchange which does not constitute a distribution."

§ 408A. Roth IRAs

(a) General rule

Except as provided in this section, a Roth IRA shall be treated for purposes of this title in the same manner as an individual retirement plan.

(b) Roth IRA

For purposes of this title, the term "Roth IRA" means an individual retirement plan (as defined in section 7701(a)(37)) which is designated (in such manner as the Secretary may prescribe) at the time of establishment of the plan as a Roth IRA. Such designation shall be made in such manner as the Secretary may prescribe.

(c) Treatment of contributions

(1) No deduction allowed

No deduction shall be allowed under section 219 for a contribution to a Roth IRA.

(2) Contribution limit

The aggregate amount of contributions for any taxable year to all Roth IRAs maintained for the benefit of an individual shall not exceed the excess (if any) of—

(A) the maximum amount allowable as a deduction under section 219 with respect to such individual for such taxable year (computed without regard to subsection (d)(1) or (g) of such section), over

(B) the aggregate amount of contributions for such taxable year to all other individual retirement plans (other than Roth IRAs) maintained for the benefit of the individual.

(3) Limits based on modified adjusted gross income

(A) Dollar limit

The amount determined under paragraph (2) for any taxable year shall not exceed an amount equal to the amount determined under paragraph (2)(A) for such taxable year, reduced (but not below zero) by the amount which bears the same ratio to such amount as—

(i) the excess of—

(I) the taxpayer's adjusted gross income for such taxable year, over

(II) the applicable dollar amount, bears to

(ii) \$15,000 (\$10,000 in the case of a joint return or a married individual filing a separate return).

The rules of subparagraphs (B) and (C) of section 219(g)(2) shall apply to any reduction under this subparagraph.

(B) Definitions

For purposes of this paragraph—

(i) adjusted gross income shall be determined in the same manner as under section 219(g)(3), except that any amount included in gross income under subsection (d)(3) shall not be taken into account, and

(ii) the applicable dollar amount is—

(I) in the case of a taxpayer filing a joint return, \$150,000,

(II) in the case of any other taxpayer (other than a married individual filing a separate return), \$95,000, and

(III) in the case of a married individual filing a separate return, zero.

(C) Marital status

Section 219(g)(4) shall apply for purposes of this paragraph.

(D) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2006, the dollar amounts in subclauses (I) and (II) of subparagraph (B)(ii) shall each be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2005" for "calendar year 1992" in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of \$1,000.

(4) Contributions permitted after age 70½

Contributions to a Roth IRA may be made even after the individual for whom the account is maintained has attained age 70½.

(5) Mandatory distribution rules not to apply before death

Notwithstanding subsections (a)(6) and (b)(3) of section 408 (relating to required distributions), the following provisions shall not apply to any Roth IRA:

(A) Section 401(a)(9)(A).