



[CLICK HERE](#) to return to the home page

## **Internal Revenue Code Section 408(p)(3)**

### Individual retirement accounts

#### (a) Individual retirement account.

For purposes of this section, the term "individual retirement account" means a trust created 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) or in 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 individual in whose name such contract is purchased attains age 72; 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).

(3) There is a separate accounting for any interest of an employee or member (or spouse of an employee or member) in a Roth IRA.

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 clause (i) of section 121(d)(3)(C) 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. The amount of distributions not includible in gross income by reason of the preceding sentence for a taxable year (determined without regard to this sentence) shall be reduced (but not below zero) by an amount equal to the excess of-

(i) the aggregate amount of deductions allowed to the taxpayer under section 219 for all taxable years ending on or after the date the taxpayer attains age 70 $\frac{1}{2}$ , over

(ii) the aggregate amount of reductions under this sentence for all taxable years preceding the current 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 70  $\frac{1}{2}$ .

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) Repealed.

(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 (ii)(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.

(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(1)(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 percent 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 (1) -

(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 5 of the Commodity Exchange Act, 7 U.S.C. 7) 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) .

(5) Special rule for difficulty of care payments excluded from gross income.

In the case of an individual who for a taxable year excludes from gross income under section 131 a qualified foster care payment which is a difficulty of care payment, if-

(A) the deductible amount in effect for the taxable year under subsection (b), exceeds

(B) the amount of compensation includible in the individual's gross income for the taxable year, the individual may elect to increase the nondeductible limit under paragraph (2) for the taxable year by an amount equal to the lesser of such excess or the amount so excluded.

(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) except in the case of a rollover contribution described in subsection (d)(3)(G) or a rollover contribution otherwise described in subsection (d)(3) or in section 402(c) , 403(a)(4) , 403(b)(8) , or 457(e)(16) , which is made after the 2-year period described in section 72(t)(6) , 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 is \$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 (1)(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 4973.

(2) For tax on certain accumulations in individual retirement accounts or annuities, see section 4974.