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Internal Revenue Code Section 402A

Optional treatment of elective deferrals as Roth contributions

(a) General rule.

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

- (1) any designated Roth contribution made by an employee pursuant to the program shall be treated as an elective deferral for purposes of this chapter, except that such contribution shall not be excludable from gross income,
- (2) any designated Roth contribution which pursuant to the program is made by the employer on the employee's behalf on account of the employee's contribution, elective deferral, or (subject to the requirements of section 401(m)(13)) qualified student loan payment shall be treated as a matching contribution for purposes of this chapter, except that such contribution shall not be excludable from gross income,
- (3) any designated Roth contribution which pursuant to the program is made by the employer on the employee's behalf and which is a nonelective contribution shall be nonforfeitable and shall not be excludable from gross income, and
- (4) such plan (and any arrangement which is part of such plan) shall not be treated as failing to meet any requirement of this chapter solely by reason of including such program.

(b) Qualified Roth contribution program.

For purposes of this section -

(1) In general.

The term "qualified Roth contribution program" means a program under which an employee may elect to make, or to have made on the employee's behalf, designated Roth contributions in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make, or of matching contributions or nonelective contributions which may otherwise be made on the employee's behalf, under the applicable retirement plan.

(2) Separate accounting required.

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

- (A) establishes separate accounts ("designated Roth accounts") for the designated Roth contributions of each employee and any earnings properly allocable to the contributions, and
- (B) maintains separate recordkeeping with respect to each account.

(c) Definitions and rules relating to designated Roth contributions.

For purposes of this section -

(1) Designated Roth contribution.

The term "designated Roth contribution" means any elective deferral , matching contribution, or nonelective contribution which-

(A) is excludable from gross income of an employee without regard to this section , and

(B) the employee designates (at such time and in such manner as the Secretary may prescribe) as not being so excludable.

(2) Designation limits.

The amount of elective deferrals which an employee may designate under paragraph (1) shall not exceed the excess (if any) of-

(A) the maximum amount of elective deferrals excludable from gross income of the employee for the taxable year (without regard to this section) , over

(B) the aggregate amount of elective deferrals of the employee for the taxable year which the employee does not designate under paragraph (1) .

(3) Rollover contributions.

(A) In general. A rollover contribution of any payment or distribution from a designated Roth account which is otherwise allowable under this chapter may be made only if the contribution is to-

(i) another designated Roth account of the individual from whose account the payment or distribution was made, or

(ii) a Roth IRA of such individual.

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

(4) Taxable rollovers to designated Roth accounts.

(A) In general. Notwithstanding sections 402(c) , 403(b)(8) , and 457(e)(16) , in the case of any distribution to which this paragraph applies-

(i) there shall be included in gross income any amount which would be includible were it not part of a qualified rollover contribution,

(ii) section 72(t) shall not apply, and

(iii) unless the taxpayer elects not to have this clause apply, any amount required to be included in gross income for any taxable year beginning in 2010 by reason of this paragraph shall be so included ratably over the 2-taxable-year period beginning with the first taxable year beginning in 2011.

Any election under clause (iii) for any distributions during a taxable year may not be changed after the due date for such taxable year.

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

(C) Coordination with limit. Any distribution to which this paragraph applies shall not be taken into account for purposes of paragraph (1) .

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

(E) Special rule for certain transfers. In the case of an applicable retirement plan which includes a qualified Roth contribution program-

(i) the plan may allow an individual to elect to have the plan transfer any amount not otherwise distributable under the plan to a designated Roth account maintained for the benefit of the individual,

(ii) such transfer shall be treated as a distribution to which this paragraph applies which was contributed in a qualified rollover contribution (within the meaning of section 408A(e)) to such account, and

(iii) the plan shall not be treated as violating the provisions of section 401(k)(2)(B)(i) , 403(b)(7)(A)(ii) , 403(b)(11) , or 457(d)(1)(A) , or of section 8433 of title 5, United States Code, solely by reason of such transfer.

(d) Distribution rules.

For purposes of this title-

(1) Exclusion.

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

(2) Qualified distribution.

For purposes of this subsection -

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

(B) Distributions within nonexclusion period. A payment or distribution from a designated Roth account shall not be treated as a qualified distribution if such payment or distribution is made within the 5-taxable-year period beginning with the earlier of-

(i) the first taxable year for which the individual made a designated Roth contribution to any designated Roth account established for such individual under the same applicable retirement plan, or

(ii) if a rollover contribution was made to such designated Roth account from a designated Roth account previously established for such individual under another applicable retirement plan, the first taxable year for which the individual made a designated Roth contribution to such previously established account.

(C) Distributions of excess deferrals and contributions and earnings thereon. The term "qualified distribution" shall not include any distribution of any excess deferral under section 402(g)(2) or any excess contribution under section 401(k)(8) , and any income on the excess deferral or contribution.

(3) Treatment of distributions of certain excess deferrals.

Notwithstanding section 72 , if any excess deferral under section 402(g)(2) attributable to a designated Roth contribution is not distributed on or before the 1st April 15 following the close of the taxable year in which such excess deferral is made, the amount of such excess deferral shall-

(A) not be treated as investment in the contract, and

(B) be included in gross income for the taxable year in which such excess is distributed.

(4) Aggregation rules.

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

Note: Section 402A(d)(5), below, is effective for tax years beginning after Dec. 31, 2023.

(5) Mandatory distribution rules not to apply before death.

Notwithstanding sections 403(b)(10) and 457(d)(2) , the following provisions shall not apply to any designated Roth account:

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

(B) The incidental death benefit requirements of section 401(a) .

Note: Section 402A(e), below, is effective for plan years beginning before Jan. 1, 2024. See below for Section 402A(e)-(f)(1)-(2), effective for plan years beginning after Dec. 31, 2023.

(e) Other definitions.

For purposes of this section -

(1) Applicable retirement plan.

The term "applicable retirement plan" means-

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

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

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

(2) Elective deferral.

The term "elective deferral" means-

- (A) any elective deferral described in subparagraph (A) or (C) of section 402(g)(3) , and
- (B) any elective deferral of compensation by an individual under an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A) .

Note: Section 402A(e)-(f)(1)-(2), below, is effective for plan years beginning after Dec. 31, 2023. See above for Section 402A(e), effective for plan years beginning before Jan. 1, 2024.

(e) Pension-linked emergency savings accounts.

(1) In general.

An applicable retirement plan-

- (A) may-
 - (i) include a pension-linked emergency savings account established pursuant to section 801 of the Employee Retirement Income Security Act of 1974, which, except as otherwise provided in this subsection, shall be treated for purposes of this title as a designated Roth account, and
 - (ii) either-
 - (I) offer to enroll an eligible participant in such pension-linked emergency savings account, or
 - (II) automatically enroll an eligible participant in such account pursuant to an automatic contribution arrangement described in paragraph (4) , and
- (B) shall-
 - (i) separately account for contributions to such account and any earnings properly allocable to the contributions,
 - (ii) maintain separate recordkeeping with respect to each such account, and
 - (iii) allow withdrawals from such account in accordance with paragraph (7) .

(2) Eligible participant.

- (A) In general. For purposes of this subsection, the term "eligible participant", with regard to a defined contribution plan, means an individual, without regard to whether the individual is otherwise a participant in such plan, who-
 - (i) meets any age, service, and other eligibility requirements of the plan, and
 - (ii) is not a highly compensated employee (as defined in section 414(q)).

(B) Eligible participant who becomes a highly compensated employee. Notwithstanding subparagraph (A)(ii), an individual on whose behalf a pension-linked emergency savings account is established who thereafter becomes a highly compensated employee (as so defined) may not make further contributions to such account, but retains the right to withdraw any account balance of such account in accordance with paragraphs (7) and (8).

(3) Contribution limitation.

(A) In general. Subject to subparagraph (B), no contribution shall be accepted to a pension-linked emergency savings account to the extent such contribution would cause the portion of the account balance attributable to participant contributions to exceed the lesser of-

(i) \$2,500; or

(ii) an amount determined by the plan sponsor of the pension-linked emergency savings account.

In the case of contributions made in taxable years beginning after December 31, 2024, the Secretary shall adjust the amount under clause (i) at the same time and in the same manner as the adjustment made under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2023. Any increase under the preceding sentence which is not a multiple of \$100 shall be rounded to the next lowest multiple of \$100.

(B) Excess contributions. To the extent any contribution to the pension-linked emergency savings account of a participant for a taxable year would exceed the limitation of subparagraph (A) -

(i) in the case of an eligible participant with another designated Roth account under the defined contribution plan, the plan may provide that-

(I) the participant may elect to increase the participant's contribution to such other account, and

(II) in the absence of such a participant election, the participant is deemed to have elected to increase the participant's contributions to such account at the rate at which contributions were being made to the pension-linked emergency savings account, and

(ii) in any other case, such plan shall provide that such excess contributions will not be accepted.

(4) Automatic contribution arrangement.

For purposes of this section-

(A) In general. An automatic contribution arrangement described in this paragraph is an arrangement under which an eligible participant is treated as having elected to have the plan sponsor make elective contributions to a pension-linked emergency savings account at a participant contribution rate that is not more than 3 percent of the compensation of the eligible participant, unless the eligible participant, at any time (subject to such reasonable advance notice as is required by the plan administrator), affirmatively elects to-

- (i) make contributions at a different rate, or

- (ii) opt out of such contributions.

(B) Participant contribution rate. For purposes of an automatic contribution arrangement described in subparagraph (A) , the plan sponsor-

- (i) shall select a participant contribution rate under such automatic contribution arrangement which meets the requirements of subparagraph (A) , and

- (ii) may amend such rate (prior to the plan year for which such amendment would take effect) not more than once annually.

(5) Disclosure by plan sponsor.

(A) In general. With respect to a defined contribution plan which includes a pension-linked emergency savings account, the administrator of the plan shall, not less than 30 days and not more than 90 days prior to the date of the first contribution to the pension-linked emergency savings account, including any contribution under an automatic contribution arrangement described in section 801(d)(2) of the Employee Retirement Income Security Act of 1974, or the date of any adjustment to the participant contribution rate under section 801(d)(2)(B)(ii) of such Act, and not less than annually thereafter, shall furnish to the participant a notice describing-

- (i) the purpose of the account, which is for short-term, emergency savings;

- (ii) the limits on, and tax treatment of, contributions to the pension-linked emergency savings account of the participant;

- (iii) any fees, expenses, restrictions, or charges associated with such pension-linked emergency savings account;

- (iv) procedures for electing to make contributions or opting out of the pension-linked emergency savings account, changing participant contribution rates for such account, and making participant withdrawals from such pension-linked emergency savings account, including any limits on frequency;

- (v) the amount of the intended contribution or the change in the percentage of the compensation of the participant of such contribution, if applicable;

- (vi) the amount in the pension-linked emergency savings account and the amount or percentage of compensation that a participant has contributed to such account;

- (vii) the designated investment option under section 801(c)(1)(A)(iii) of the Employee Retirement Income Security Act of 1974 for amounts contributed to the pension-linked emergency savings account;

(viii) the options under section 801(e) of such Act for the account balance of the pension-linked emergency savings account after termination of the employment of the participant; and

(ix) the ability of a participant who becomes a highly compensated employee (as such term is defined in section 414(q)) to, as described in section 801(b)(2) of the Employee Retirement Income Security Act of 1974, withdraw any account balance from a pension-linked emergency savings account and the restriction on the ability of such a participant to make further contributions to the pension-linked emergency savings account.

(B) Notice requirements. A notice furnished to a participant under subparagraph (A) shall be-

(i) sufficiently accurate and comprehensive to apprise the participant of the rights and obligations of the participant with regard to the pension-linked emergency savings account of the participant; and

(ii) written in a manner calculated to be understood by the average participant.

(C) Consolidated notices. The required notices under subparagraph (A) may be included with any other notice under the Employee Retirement Income Security Act of 1974, including under section 404(c)(5)(B) or 514(e)(3) of such Act, or under section 401(k)(13)(E) or 414(w)(4) , if such other notice is provided to the participant at the time required for such notice.

(6) Employer matching contributions to a defined contribution plan for employee contributions to a pension-linked emergency savings account.

(A) In general. If an employer makes any matching contributions to a defined contribution plan of which a pension-linked emergency savings account is part, subject to the limitations of paragraph (3) , the employer shall make matching contributions on behalf of an eligible participant on account of the participant's contributions to the pension-linked emergency savings account at the same rate as any other matching contribution on account of an elective contribution by such participant. The matching contributions shall be made to the participant's account under the defined contribution plan which is not the pension-linked emergency savings account. Such matching contributions on account of contributions to the pension-linked emergency savings account shall not exceed the maximum account balance under paragraph (3)(A) for such plan year.

(B) Coordination rule. For purposes of any applicable limitation on matching contributions, any matching contributions made under the plan shall be treated first as attributable to the elective deferrals of the participant other than contributions to a pension-linked emergency savings account.

(C) Matching contributions. For purposes of subparagraph (A), the term "matching contribution" has the meaning given such term in section 401(m)(4) .

(7) Distributions.

(A) In general. A pension-linked emergency savings account shall allow for withdrawal by the participant on whose behalf the account is established of the account balance, in whole or in part at the discretion of the participant, at least once per calendar month and for distribution of such withdrawal to the participant as soon as practicable after the date on which the participant elects to make such withdrawal.

(B) Treatment of distributions. Any distribution from a pension-linked emergency savings account in accordance with subparagraph (A) -

(i) shall be treated as a qualified distribution for purposes of subsection (d) , and

(ii) shall be treated as meeting the requirements of sections 401(k)(2)(B)(i) , 403(b)(7)(A)(i) , 403(b)(11) , and 457(d)(1)(A) .

(8) Account balance after termination.

(A) In general. Upon termination of employment of the participant, or termination by the plan sponsor of the pension-linked emergency savings account, the pension-linked emergency savings account of such participant in a defined contribution plan shall-

(i) allow, at the election of the participant, for transfer by the participant of the account balance of such account, in whole or in part, into another designated Roth account of the participant under the defined contribution plan; and

(ii) for any amounts in such account not transferred under paragraph (1) , make such amounts available within a reasonable time to the participant.

(B) Prohibition of certain transfers. No amounts shall be transferred by the participant from another account of the participant under any plan of the employer into the pension-linked emergency savings account of the participant.

(C) Coordination with Section 72 . Subparagraph (F) of section 408A(d)(3) shall not apply (including by reason of subsection (c)(4)(D) of this section) to any rollover contribution of amounts in a pension-linked emergency savings account under subparagraph (A) .

(9) Coordination with distribution of excess deferrals.

If any excess deferrals are distributed under section 402(g)(2)(A) to a participant, such amounts shall be distributed first from any pension-linked emergency savings account of the participant to the extent contributions were made to such account for the taxable year.

(10) Treatment of account balances.

(A) In general. Except as provided in subparagraph (B) , a distribution from a pension-linked emergency savings account shall not be treated as an eligible rollover distribution for purposes of sections 401(a)(31) , 402(f) , and 3405 .

(B) Termination. In the case of termination of employment of the participant, or termination by the plan sponsor of the pension-linked emergency savings account, except for purposes of 401(a)(31)(B) , a distribution from a pension-linked emergency savings account which is contributed as provided in paragraph (8)(A)(i) shall be treated as an eligible rollover distribution.

(11) Exception to plan amendment rules.

Notwithstanding section 411(d)(6) , a plan which includes a pension-linked emergency savings account may cease to offer such accounts at any time.

(12) Anti-abuse rules.

A plan of which a pension-linked emergency savings account is part-

(A) may employ reasonable procedures to limit the frequency or amount of matching contributions with respect to contributions to such account, solely to the extent necessary to prevent manipulation of the rules of the plan to cause matching contributions to exceed the intended amounts or frequency, and

(B) shall not be required to suspend matching contributions following any participant withdrawal of contributions, including elective deferrals and employee contributions, whether or not matched and whether or not made pursuant to an automatic contribution arrangement described in paragraph (4) .

The Secretary, in consultation with the Secretary of Labor, shall issue regulations or other guidance not later than 12 months after the date of the enactment of the SECURE 2.0 Act of 2022 with respect to the anti-abuse rules described in the preceding sentence.

(f) Other definitions.

For purposes of this section -

(1) Applicable retirement plan.

The term "applicable retirement plan" means-

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

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

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

(2) Elective deferral.

The term "elective deferral" means-

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

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

(3) Matching contribution.

The term "matching contribution" means-

(A) any matching contribution described in section 401(m)(4)(A), and

(B) any contribution to an eligible deferred compensation plan (as defined in section 457(b)) by an eligible employer described in section 457(e)(1)(A) on behalf of an employee and on account of such employee's elective deferral under such plan, but only if such contribution is nonforfeitable at the time received.