

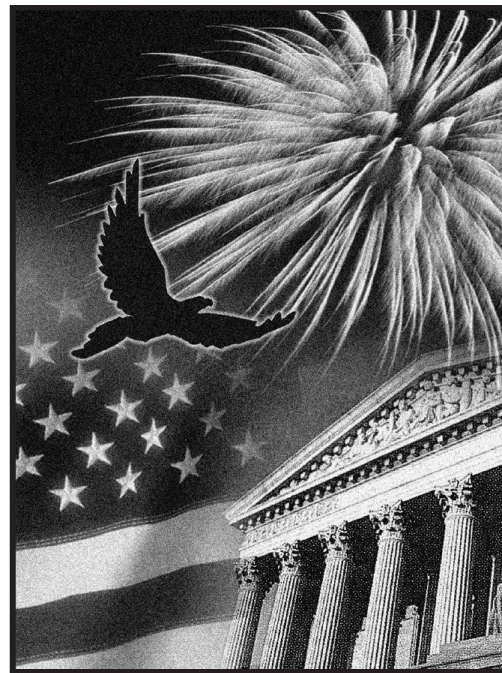
Publication 560

Retirement Plans for Small Business

(SEP, SIMPLE, and Qualified Plans)

For use in preparing **2023** Returns

Volume 2 of 3



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If you or an employee participates in any other qualified plan during the year and you or your employee has salary reduction contributions (elective deferrals) under those plans, the salary reduction contributions under a SIMPLE IRA plan also count toward the overall annual limit (\$22,500 for 2023; \$23,000 for 2024) on exclusion of salary reduction contributions and other elective deferrals.

Catch-up contributions. A SIMPLE IRA plan can permit participants who are age 50 or over at the end of the calendar year to also make catch-up contributions. The catch-up contribution limit for SIMPLE IRA plans is \$3,500 for 2023 and 2024. Salary reduction contributions aren't treated as catch-up contributions until they exceed \$15,500 for 2023 (\$16,000 for 2024). However, the catch-up contribution a participant can make for a year can't exceed the lesser of the following amounts.

- The catch-up contribution limit.
- The excess of the participant's compensation over the salary reduction contributions that aren't catch-up contributions.

Employer matching contributions. You are generally required to match each employee's salary reduction contribution(s) on a dollar-for-dollar basis up to 3% of the employee's compensation, where only employees who have elected to make contributions will receive an employer matching contribution. This requirement doesn't apply if you make nonelective contributions, as discussed later.

Example. In 2023, your employee earned \$25,000 and chose to defer 5% of their salary. The net earnings from self-employment are \$40,000, and you choose to contribute 10% of your earnings to your SIMPLE IRA. You make 3% matching contributions. The total contribution made for the employee is \$2,000, figured as follows.

Salary reduction contributions	
(\$25,000 × 5% (0.05))	\$1,250
Employer matching contribution	
(\$25,000 × 3% (0.03))	750
Total contributions	<u>\$2,000</u>

The total contribution you make for yourself is \$5,200, figured as follows.

Salary reduction contributions	
(\$40,000 × 10% (0.10))	\$4,000
Employer matching contribution	
(\$40,000 × 3% (0.03))	1,200
Total contributions	<u>\$5,200</u>

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Lower percentage. If you choose a matching contribution less than 3%, the percentage must be at least 1%. You must notify the employees of the lower match within a reasonable period of time before the 60-day election period (discussed earlier) for the calendar year. You can't choose a percentage less than 3% for more than 2 years during the 5-year period that ends with (and includes) the year for which the choice is effective.

Nonelective contributions. Instead of matching contributions, you can choose to make nonelective contributions of 2% of compensation on behalf of each eligible employee who has at least \$5,000 (or some lower amount you select) of compensation from you for the year. If you make this choice, you must make nonelective contributions whether or not the employee chooses to make salary reduction contributions. Only \$330,000 of the

employee's compensation can be taken into account to figure the contribution limit in 2023 (\$345,000 in 2024).

If you choose this 2% contribution formula, you must notify the employees within a reasonable period of time before the 60-day election period (discussed earlier) for the calendar year.

Example 1. In 2023, your employee, Jane Wood, earned \$36,000 and chose to have you contribute 10% of her salary. Your net earnings from self-employment are \$50,000, and you choose to contribute 10% of your earnings to your SIMPLE IRA. You make a 2% nonelective contribution. Both of you are under age 50. The total contribution you make for Jane is \$4,320, figured as follows.

Salary reduction contributions	
(\$36,000 × 10% (0.10))	\$3,600
2% nonelective contributions	
(\$36,000 × 2% (0.02))	720
Total contributions	\$4,320

The total contribution you make for yourself is \$6,000, figured as follows.

Salary reduction contributions	
(\$50,000 × 10% (0.10))	\$5,000
2% nonelective contributions	
(\$50,000 × 2% (0.02))	1,000
Total contributions	\$6,000

Example 2. Using the same facts as in *Example 1* above, the maximum contribution you make for Jane or for yourself if you each earned \$75,000 is \$14,000, figured as follows.

Salary reduction contributions	
(maximum amount allowed)	\$12,500
2% nonelective contributions	
(\$75,000 × 2% (0.02))	1,500
Total contributions	\$14,000

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Time limits for contributing funds. You must make the salary reduction contributions to the SIMPLE IRA within 30 days after the end of the month in which the amounts would have otherwise have been payable to the employee in cash. You must make matching contributions or nonelective contributions by the due date (including extensions) for filing your federal income tax return for the year. Certain plans subject to Department of Labor rules may have an earlier due date for salary reduction contributions.

When To Deduct Contributions

You can deduct SIMPLE IRA contributions in the tax year within which the calendar year for which contributions were made ends. You can deduct contributions for a particular tax year if they are made for that tax year and are made by the due date (including extensions) of your federal income tax return for that year.

The due date for making contributions for 2023 for most plans is Monday, April 15, 2024.

Example 1. Your tax year is the fiscal year ending June 30. Contributions under a SIMPLE IRA plan for calendar year 2023 (including contributions made by the due date for the return for the tax year that ends on June 30, 2024) are deductible in the tax year ending June 30, 2024.

Example 2. You are a sole proprietor whose tax year is the calendar year. Contributions under a SIMPLE IRA plan for calendar year 2023 (including contributions made by the due date for the return for the 2023 tax year) are deductible in the 2023 tax year.

Where To Deduct Contributions

Deduct the contributions you make for your common-law employees on your tax return. For example, sole proprietors deduct them on Schedule C (Form 1040) or Schedule F (Form

1040), partnerships deduct them on Form 1065, and corporations deduct them on Form 1120 or 1120-S.

Sole proprietors and partners deduct contributions for themselves on line 15 of Schedule 1 (Form 1040). (If you are a partner, contributions for yourself are shown on the Schedule K-1 (Form 1065) you receive from the partnership.)

Tax Treatment of Contributions

You can deduct your contributions and your employees can exclude these contributions from their gross income. SIMPLE IRA plan contributions aren't subject to federal income tax withholding. However, salary reduction contributions are subject to social security, Medicare, and FUTA taxes. Matching and nonelective contributions aren't subject to these taxes.

Reporting on Form W-2. Don't include SIMPLE IRA plan contributions in the "Wages,

tips, other compensation” box of Form W-2. You must, however, include them in the “Social security wages” and “Medicare wages and tips” boxes. You must also include them in box 12. Check the “Retirement plan” checkbox in box 13. For more information, see the Form W-2 instructions.

Distributions (Withdrawals)

Distributions from a SIMPLE IRA are subject to IRA rules and are generally includible in income for the year received. Tax-free rollovers can be made from one SIMPLE IRA into another SIMPLE IRA. However, a rollover from a SIMPLE IRA to a non-SIMPLE IRA can be made tax free only after a 2-year participation in the SIMPLE IRA plan.

Generally, you or your employee must begin to receive distributions from a SIMPLE IRA by April 1 of the first year after the calendar year in which you or your employee reaches age

72 (if age 70¹/₂ was reached after December 31, 2019).

Note. Individuals who reach age 72 after December 31, 2022, may delay receiving their RMDs until April 1 of the year following the year in which they reach age 73.

Early withdrawals are generally subject to a 10% additional tax. However, the additional tax is increased to 25% if funds are withdrawn within 2 years of beginning participation.

More information. See Pubs. 590-A and 590-B for information about IRA rules, including those on the tax treatment of distributions, rollovers, required distributions, and income tax withholding.

More Information on SIMPLE IRA Plans

If you need help to set up or maintain a SIMPLE IRA plan, go to the IRS website and search [*SIMPLE IRA Plan*](#).

SIMPLE 401(k) Plan

You can adopt a SIMPLE plan as part of a 401(k) plan if you meet the 100-employee limit, as discussed earlier under *SIMPLE IRA Plan*. A SIMPLE 401(k) plan is a qualified retirement plan and must generally satisfy the rules discussed under *Qualification Rules* in chapter 4, including the required distribution rules. However, a SIMPLE 401(k) plan isn't subject to the nondiscrimination and top-heavy rules discussed in chapter 4 if the plan meets the conditions listed below.

1. Under the plan, an employee can choose to have you make salary reduction contributions for the year to a trust in an amount expressed as a percentage of the employee's compensation, but not more than \$15,500 for 2023 (\$16,000 for 2024). If permitted under the plan, an employee who is age 50 or over can also make a catch-up contribution of

up to \$3,500 for 2023 and 2024. See *Catch-up contributions*, earlier, under *Contribution Limits*.

2. You must make either:
 - a. Matching contributions up to 3% of compensation for the year, or
 - b. Nonelective contributions of 2% of compensation on behalf of each eligible employee who has at least \$5,000 of compensation from you for the year.
3. No other contributions can be made to the trust.
4. No contributions are made, and no benefits accrue, for services during the year under any other qualified retirement plan sponsored by you on behalf of any employee eligible to participate in the SIMPLE 401(k) plan.

5. The employee's rights to any contributions are nonforfeitable.

No more than \$330,000 of the employee's compensation can be taken into account in figuring matching contributions and nonelective contributions in 2023 (\$345,000 in 2024). Compensation is defined earlier in this chapter.

Employee notification. The notification requirement that applies to SIMPLE IRA plans also applies to SIMPLE 401(k) plans. See *Notification Requirement*, earlier in this chapter.

Note on forms. Please note that Forms 5304-SIMPLE and 5305-SIMPLE can't be used to establish a SIMPLE 401(k) plan. To set up a SIMPLE 401(k) plan, see *Adopting a Written Plan* in chapter 4.

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Qualified Plans

Topics

This chapter discusses:

- Kinds of plans
- Qualification rules
- Setting up a qualified plan
- Minimum funding requirement
- Contributions
- Employer deduction
- Elective deferrals (401(k) plans)
- Qualified Roth contribution program
- Distributions
- Prohibited transactions
- Reporting requirements

Useful Items

You may want to see:

Publications

- **575** 575 Pension and Annuity Income
- **590-A** Contributions to Individual Retirement Arrangements (IRAs)
- **590-B** Distributions from Individual Retirement Arrangements (IRAs)
- **3066** Have you had your check-up this year? for Retirement Plans
- **3998** Choosing a Retirement Solution for Your Small Business
- **4222** 401(k) Plans for Small Businesses
- **4530** Designated Roth Accounts under a 401(k), 403(b) or governmental 457(b) plan
- **4531** 401(k) Plan Checklist
- **4674** Automatic Enrollment 401(k) Plans for Small Businesses

□ **4806** Profit Sharing Plans for Small Businesses

Forms (and Instructions)

□ **W-2** Wage and Tax Statement

□ **Schedule K-1 (Form 1065)** Partner's Share of Income, Deductions, Credits, etc.

□ **1099-R** Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

□ **1040** U.S. Individual Income Tax Return

□ **1040-SR** U.S. Tax Return for Seniors

□ **Schedule C (Form 1040)** Profit or Loss From Business

□ **Schedule F (Form 1040)** Profit or Loss From Farming

□ **5300** Application for Determination for Employee Benefit Plan

□ **5310** Application for Determination for Terminating Plan

- **5329** Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts
- **5330** Return of Excise Taxes Related to Employee Benefit Plans
- **5500** Annual Return/Report of Employee Benefit Plan
- **5500-EZ** Annual Return of A One-Participant (Owners/Partners and Their Spouses) Retirement Plan or A Foreign Plan
- **5500-SF** 5500-SF Short Form Annual Return/Report of Small Employee Benefit Plan
- **8717** 8717 User Fee for Employee Plan Determination Letter Request
- **8880** Credit for Qualified Retirement Savings Contributions
- **8881** Credit for Small Employer Pension Plan Startup Costs

□ **8955-SSA** Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits

These qualified retirement plans set up by self-employed individuals are sometimes called Keogh or H.R. 10 plans.

A sole proprietor or a partnership can set up one of these plans. A common-law employee or a partner can't set up one of these plans. The plans described here can also be set up and maintained by employers that are corporations. All of the rules discussed here apply to corporations except where specifically limited to the self-employed.

The plan must be for the exclusive benefit of employees or their beneficiaries. These qualified plans can include coverage for a self-employed individual.

As an employer, you can usually deduct, subject to limits, contributions you make to a

qualified plan, including those made for your own retirement. The contributions (and earnings and gains on them) are generally tax free until distributed by the plan.

Kinds of Plans

There are two basic kinds of qualified plans—defined contribution plans and defined benefit plans—and different rules apply to each. You can have more than one qualified plan, but your contributions to all the plans must not total more than the overall limits discussed under *Contributions* and *Employer Deduction*, later.

Defined Contribution Plan

A defined contribution plan provides an individual account for each participant in the plan. It provides benefits to a participant largely based on the amount contributed to that participant's account. Benefits are also affected by any income, expenses, gains, losses, and forfeitures of other accounts that may be allocated to an account. A defined contribution plan can be either a profit-sharing plan or a money purchase pension plan.

Profit-sharing plan. Although it is called a profit-sharing plan, you don't actually have to make a business profit for the year in order to make a contribution (except for yourself if you are self-employed, as discussed under *Self-employed individual*, later). A profit-sharing plan can be set up to allow for discretionary employer contributions, meaning the amount contributed each year to the plan isn't fixed. An employer may even make no contribution to the plan for a given year.

The plan must provide a definite formula for allocating the contribution among the participants and for distributing the accumulated funds to the employees after they reach a certain age, after a fixed number of years, or upon certain other occurrences.

In general, you can be more flexible in making contributions to a profit-sharing plan than to a money purchase pension plan

(discussed next) or a defined benefit plan (discussed later).

Money purchase pension plan.

Contributions to a money purchase pension plan are fixed and aren't based on your business profits. For example, a money purchase pension plan may require that contributions be 10% of the participants' compensation without regard to whether you have profits (or the self-employed person has earned income).

Defined Benefit Plan

A defined benefit plan is any plan that isn't a defined contribution plan. Contributions to a defined benefit plan are based on what is needed to provide definitely determinable benefits to plan participants. Actuarial assumptions and computations are required to figure these contributions. Generally, you will need continuing professional help to have a defined benefit plan.

Qualification Rules

To qualify for the tax benefits available to qualified plans, a plan must meet certain requirements (qualification rules) of the tax law. Generally, unless you write your own plan, the financial institution that provided your plan will take the continuing responsibility for meeting qualification rules that are later changed. The following is a brief overview of important qualification rules that generally haven't yet been discussed. It isn't intended to be all-inclusive. See Setting Up a Qualified Plan, later.



Generally, the following qualification rules also apply to a SIMPLE 401(k) retirement plan. A SIMPLE 401(k) plan is, however, not subject to the top-heavy plan rules and nondiscrimination rules if the plan satisfies the provisions discussed in chapter 3 under SIMPLE 401(k) Plan.

Plan assets must not be diverted. Your plan must make it impossible for its assets to be used for, or diverted to, purposes other than the exclusive benefit of employees and their beneficiaries. As a general rule, the assets can't be diverted to the employer.

Minimum coverage requirement must be met. To be a qualified plan, a defined benefit plan must benefit at least the lesser of the following.

1. 50 employees.
2. The greater of:
 - a. 40% of all employees, or
 - b. Two employees.

If there is only one employee, the plan must benefit that employee.

Contributions or benefits must not discriminate. Under the plan, contributions or benefits to be provided must not

discriminate in favor of highly compensated employees.

Contributions and benefits must not be more than certain limits. Your plan must not provide for contributions or benefits that are more than certain limits. The limits apply to the annual contributions and other additions to the account of a participant in a defined contribution plan and to the annual benefit payable to a participant in a defined benefit plan. These limits are discussed later in this chapter under *Contributions*.

Minimum vesting standard must be met. Your plan must satisfy certain requirements regarding when benefits vest. A benefit is vested (you have a fixed right to it) when it becomes nonforfeitable. A benefit is nonforfeitable if it can't be lost upon the happening, or failure to happen, of any event. Special rules apply to forfeited benefit amounts. In defined contribution plans, forfeitures can be allocated to the accounts of

remaining participants in a nondiscriminatory way, or they can be used to reduce your contributions.

Forfeitures under a defined benefit plan can't be used to increase the benefits any employee would otherwise receive under the plan. Forfeitures must be used instead to reduce employer contributions.

Participation. In general, an employee must be allowed to participate in your plan if they meet both the following requirements.

- Has reached age 21.
- Has at least 1 year of service (2 years if the plan isn't a 401(k) plan and provides that after not more than 2 years of service the employee has a nonforfeitable right to all their accrued benefit).

See *Elective Deferrals*)401(k) Plans, later, for additional information regarding conditions of participation in a 401(k) plan.



A plan can't exclude an employee because the employee has reached a specified age.

Leased employee. A leased employee, defined in chapter 1, who performs services for you (recipient of the services) is treated as your employee for certain plan qualification rules. These rules include those in all the following areas.

- Nondiscrimination in coverage, contributions, and benefits.
- Minimum age and service requirements.
- Vesting.
- Limits on contributions and benefits.
- Top-heavy plan requirements.

Contributions or benefits provided by the leasing organization for services performed for you are treated as provided by you.

Benefit payment must begin when required. Your plan must provide that, unless the participant chooses otherwise, the payment of benefits to the participant must begin within 60 days after the close of the latest of the following periods.

- The plan year in which the participant reaches the earlier of age 65 or the normal retirement age specified in the plan.
- The plan year in which the 10th anniversary of the year in which the participant began participating in the plan occurs.
- The plan year in which the participant separates from service.

Early retirement. Your plan can provide for payment of retirement benefits before the normal retirement age. If your plan offers an early retirement benefit, a participant who separates from service before satisfying the

early retirement age requirement is entitled to that benefit if the participant meets both the following requirements.

- Satisfies the service requirement for the early retirement benefit.
- Separates from service with a nonforfeitable right to an accrued benefit. The benefit, which may be actuarially reduced, is payable when the early retirement age requirement is met.

Required minimum distributions (RMDs).

Special rules require minimum annual distributions from qualified plans, generally beginning after age 72 (if age 70^{1/2} was reached after December 31, 2019). See *Required Distributions* under *Distributions*, later.

Note. Individuals who reach age 72 after December 31, 2022, may delay receiving

their RMDs until April 1 of the year following the year in which they reach age 73.

Survivor benefits. Defined benefit and money purchase pension plans must provide automatic survivor benefits in both the following forms.

- A qualified joint and survivor annuity for a vested participant who doesn't die before the annuity starting date.
- A qualified pre-retirement survivor annuity for a vested participant who dies before the annuity starting date and who has a surviving spouse.

The automatic survivor benefit also applies to any participant under a profit-sharing plan unless all the following conditions are met.

- The participant doesn't choose benefits in the form of a life annuity.
- The plan pays the full vested account balance to the participant's surviving

spouse (or other beneficiary if the surviving spouse consents or if there is no surviving spouse) if the participant dies.

- The plan isn't a direct or indirect transferee of a plan that must provide automatic survivor benefits.

Loan secured by benefits. If automatic survivor benefits are required for a spouse under a plan, they must consent to a loan that uses as security the accrued benefits in the plan.

Waiver of survivor benefits. Each plan participant may be permitted to waive the joint and survivor annuity or the pre-retirement survivor annuity (or both), but only if the participant has the written consent of the spouse. The plan must also allow the participant to withdraw the waiver. The spouse's consent must be witnessed by a plan representative or notary public.

Involuntary cash-out of benefits not more than dollar limit. A plan may provide for the immediate distribution of the participant's benefit under the plan if the present value of the benefit isn't greater than \$5,000 (\$7,000 in 2024).

However, the distribution can't be made after the annuity starting date unless the participant and the spouse or surviving spouse of a participant who died (if automatic survivor benefits are required for a spouse under the plan) consents in writing to the distribution. If the present value is greater than \$5,000 (\$7,000 in 2024), the plan must have the written consent of the participant and the spouse or surviving spouse (if automatic survivor benefits are required for a spouse under the plan) for any immediate distribution of the benefit.

Benefits attributable to rollover contributions and earnings on them can be ignored in

determining the present value of these benefits.

A plan must provide for the automatic rollover of any cash-out distribution of more than \$1,000 to an individual retirement account or annuity, unless the participant chooses otherwise. A section 402(f) notice must be sent prior to an involuntary cash-out of an eligible rollover distribution. See Section 402(f) notice under *Distributions*, later, for more details.

Consolidation, merger, or transfer of assets or liabilities. Your plan must provide that, in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan, each participant would (if the plan then terminated) receive a benefit equal to or more than the benefit they would have been entitled to just before the merger, etc. (if the plan had then terminated).

Benefits must not be assigned or alienated. Your plan

must provide that a participant's or beneficiary's benefits under the plan can't be taken away by any legal or equitable proceeding except as provided below or pursuant to certain judgments or settlements against the participant for violations of plan rules.

Exception for certain loans. A loan from the plan (not from a third party) to a participant or beneficiary isn't treated as an assignment or alienation if the loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax on prohibited transactions under section 4975(d)(1) or would be exempt if the participant were a disqualified person. A disqualified person is defined later in this chapter under *Prohibited Transactions*.

Exception for a qualified domestic relations order (QDRO). Compliance with a

QDRO doesn't result in a prohibited assignment or alienation of benefits.

Payments to an alternate payee under a QDRO before the participant reaches age 59^{1/2} aren't subject to the 10% additional tax that would otherwise apply under certain circumstances. Benefits distributed to an alternate payee under a QDRO can be rolled over tax free to an individual retirement account or to an individual retirement annuity.

No benefit reduction for social security increases. Your plan must not permit a benefit reduction for a post-separation increase in the social security benefit level or wage base for any participant or beneficiary who is receiving benefits under your plan, or who is separated from service and has nonforfeitable rights to benefits. This rule also applies to plans supplementing the benefits provided by other federal or state laws.

Elective deferrals must be limited. If your plan provides for elective deferrals, it must limit those deferrals to the amount in effect for that particular year. See Limit on Elective Deferrals, later in this chapter.

Top-heavy plan requirements. A top-heavy plan is one that mainly favors partners, sole proprietors, and other key employees.

A plan is top-heavy for a plan year if, for the preceding plan year, the total value of accrued benefits or account balances of key employees is more than 60% of the total value of accrued benefits or account balances of all employees. Additional requirements apply to a top-heavy plan primarily to provide minimum benefits or contributions for non-key employees covered by the plan.

Most qualified plans, whether or not top-heavy, must contain provisions that meet the top-heavy requirements and will take effect in plan years in which the plans are top-heavy. These qualification requirements for top-

heavy plans are explained in section 416 and its regulations.

SIMPLE and safe harbor 401(k) plan exception.

The top-heavy plan requirements don't apply to SIMPLE 401(k) plans, discussed earlier in chapter 3, or to safe harbor 401(k) plans that consist solely of safe harbor contributions, discussed later in this chapter. QACAs (discussed later) also aren't subject to top-heavy requirements.

Setting up a Qualified Plan

There are two basic steps in setting up a qualified plan. First, you adopt a written plan. Then, you invest the plan assets.

You, the employer, are responsible for setting up and maintaining the plan.



If you are self-employed, it isn't necessary to have employees besides yourself to sponsor and set up a qualified plan. If you have employees, see Participation under Qualification Rules, earlier.

Set-up deadline. To take a deduction for contributions for a tax year, your plan must be set up (adopted) by the last day of that year. If you are a sole proprietor with a new section 401(k) plan that you adopted after the end of the taxable year that ends after or with the first plan year, and you are the only participant, your elective deferrals must be paid to the plan before the time for filing your

return for that taxable year (determined without regard to any extensions) in order for the elective deferrals to be treated as having been made by the end of the first plan year.

Adopting a Written Plan

You must adopt a written plan. The plan can be an IRS pre-approved plan offered by a sponsoring organization. Or it can be an individually designed plan.

Written plan requirement. To qualify, the plan you set up must be in writing and must be communicated to your employees. The plan's provisions must be stated in the plan. It isn't sufficient for the plan to merely refer to a requirement of the Internal Revenue Code.

IRS pre-approved plans. Most qualified plans follow a standard form of plan approved by the IRS. An IRS pre-approved plan is a plan, including a plan covering self-employed individuals, that is made available by a

provider for adoption by employers. Under the prior IRS pre-approved plan program, a plan could be a master plan, a prototype plan, or a volume submitter plan. Under the restructured program, the three plan types were combined into one type called a pre-approved plan. IRS pre-approved plans include both standardized plans and nonstandardized plans. An IRS pre-approved plan may use a single funding medium, for example, a trust or custodial account document, for the joint use of all adopting employers or separate funding mediums established for each adopting employer. An IRS pre-approved plan may consist of an adoption agreement plan or a single document plan. For more information about IRS pre-approved plans, see Revenue Procedure 2017-41, 2017-29 I.R.B. 92, available at [IRS.gov/irb/2017-29_IRB#RP-2017-41](https://www.irs.gov/irb/2017-29_IRB#RP-2017-41).

Plan providers. The following organizations can generally provide IRS pre-approved plans.

- Banks (including some savings and loan associations and federally insured credit unions).
- Trade or professional organizations.
- Insurance companies.
- Mutual funds.
- Law firms.
- Third-party administrators.

Individually designed plan. If you prefer, you can set up an individually designed plan to meet specific needs. Although advance IRS approval is not required, you can apply for approval by paying a fee and requesting a determination letter. You may need professional help for this. See Revenue Procedure 2024-4, 2024-1 I.R.B. 160, available at [IRS.gov/irb/2024-4 IRB](https://www.irs.gov/irb/2024-4_IRB), as

annually updated, that may help you decide whether to apply for approval.

User fee. The fee mentioned earlier for requesting a determination letter doesn't apply to employers who have 100 or fewer employees who received at least \$5,000 of compensation from the employer for the preceding year. At least one of them must be a non-highly compensated employee participating in the plan. The fee doesn't apply to requests made by the later of the following dates.

- The end of the fifth plan year the plan is in effect.
- The end of any remedial amendment period for the plan that begins within the first 5 plan years.

The request can't be made by the provider of an IRS pre-approved plan that intends to market to participating employers.

For more information about whether the user fee applies, see Revenue Procedure 2020-4, 2020-1 I.R.B. 148, available at [IRS.gov/irb/2020-01_IRB](https://www.irs.gov/irb/2020-01_IRB), as may be annually updated; Notice 2017-1, 2017-2 I.R.B. 367, available at [IRS.gov/irb/2017-02_IRB](https://www.irs.gov/irb/2017-02_IRB); and Form 8717.

Investing Plan Assets

In setting up a qualified plan, you arrange how the plan's funds will be used to build its assets.

- You can establish a trust or custodial account to invest the funds.
- You, the trust, or the custodial account can buy an annuity contract from an insurance company. Life insurance can be included only if it is incidental to the retirement benefits.

You set up a trust by a legal instrument (written document). You may need professional help to do this.

You can set up a custodial account with a bank, savings and loan association, credit union, or other person who can act as the plan trustee.

You don't need a trust or custodial account, although you can have one, to invest the plan's funds in annuity contracts or face-amount certificates. If anyone other than a trustee holds them, however, the contracts or certificates must state they aren't transferable.

Other plan requirements. For information on other important plan requirements, see *Qualification Rules*, earlier in this chapter.

Minimum Funding Requirement

In general, if your plan is a money purchase pension plan or a defined benefit plan, you must actually pay enough into the plan to satisfy the minimum funding standard for each year. Determining the amount needed to satisfy the minimum funding standard for a defined benefit plan is complicated, and you should seek professional help in order to meet these contribution requirements. For information on this funding requirement, see section 430 and its regulations.

Quarterly installments of required contributions. If your plan is a defined benefit plan subject to the minimum funding requirements, you must generally make quarterly installment payments of the required contributions. If you don't pay the full installments timely, you may have to pay

interest on any underpayment for the period of the underpayment.

Due dates. The due dates for the installments are 15 days after the end of each quarter. For a calendar-year plan, the installments are due April 15, July 15, October 15, and January 15 (of the following year).

Installment percentage. Each quarterly installment must be 25% of the required annual payment.

Extended period for making contributions. Additional contributions required to satisfy the minimum funding requirement for a plan year will be considered timely if made by 8¹/₂ months after the end of that year.

Contributions

A qualified plan is generally funded by your contributions. However, employees participating in the plan may be permitted to make contributions, and you may be permitted to make contributions on your own behalf. See *Employee Contributions* and *Elective Deferrals*, later.

Contributions deadline. You can make deductible contributions for a tax year up to the due date of your return (plus extensions) for that year.

Self-employed individual. You can make contributions on behalf of yourself only if you have net earnings (compensation) from self-employment in the trade or business for which the plan was set up. Your net earnings must be from your personal services, not from your investments. If you have a net loss from self-employment, you can't make

contributions for yourself for the year, even if you can contribute for common-law employees based on their compensation.

Employer Contributions

There are certain limits on the contributions and other annual additions you can make each year for plan participants. There are also limits on the amount you can deduct. See *Deduction Limits*, later.

Limits on Contributions and Benefits

Your plan must provide that contributions or benefits can't exceed certain limits. The limits differ depending on whether your plan is a defined contribution plan or a defined benefit plan.

Defined benefit plan. For 2023, the annual benefit for a participant under a defined benefit plan can't exceed the lesser of the following amounts.

1. 100% of the participant's average compensation for their highest 3 consecutive calendar years.
2. \$265,000 for 2023 (\$275,000 for 2024).

Defined contribution plan. For 2023, a defined contribution plan's annual contributions and other additions (excluding earnings) to the account of a participant can't exceed the lesser of the following amounts.

1. 100% of the participant's compensation.
2. \$66,000 for 2023 (\$69,000 for 2024).

Catch-up contributions (discussed later under *Limit on Elective Deferrals*) aren't subject to the above limit.

Employee Contributions

Participants may be permitted to make nondeductible contributions to a plan in addition to your contributions. Even though

these employee contributions aren't deductible, the earnings on them are tax free until distributed in later years. Also, these contributions must satisfy the actual contribution percentage (ACP) test of section 401(m)(2), a nondiscrimination test that applies to employee contributions and matching contributions. See Regulations sections 1.401(k)-2 and 1.401(m)-2 for further guidance relating to the nondiscrimination rules under sections 401(k) and 401(m).

When Contributions Are Considered Made

You generally apply your plan contributions to the year in which you make them. But you can apply them to the previous year if all the following requirements are met.

1. You make them by the due date of your tax return for the previous year (plus extensions).

2. The plan was established by the end of the previous year.
3. The plan treats the contributions as though it had received them on the last day of the previous year.
4. You do either of the following.
 - a. You specify in writing to the plan administrator or trustee that the contributions apply to the previous year.
 - b. You deduct the contributions on your tax return for the previous year. A partnership shows contributions for partners on Form 1065.

Employer's promissory note. Your promissory note made out to the plan isn't a payment that qualifies for the deduction. Also, issuing this note is a prohibited transaction subject to tax. See *Prohibited Transactions*, later.

Employer Deduction

You can usually deduct, subject to limits, contributions you make to a qualified plan, including those made for your own retirement. The contributions (and earnings and gains on them) are generally tax free until distributed by the plan.

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Table 4-1. Carryover of Excess Contributions Illustrated—Profit-Sharing Plan (000's omitted)

Year	Participants' compensation	Employer contribution	Deductible limit for current year (25% of compensation)	Excess contribution carryover used ¹	Total deduction including carryovers	Excess contribution carryover available at end of year
2020	\$1,000	\$100	\$250	\$ 0	\$100	\$ 0
2021	400	165	100	0	100	65
2022	500	100	125	25	125	40
2023	600	100	150	40	140	0
¹ There were no carryovers from years before 2016.						

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Deduction Limits

The deduction limit for your contributions to a qualified plan depends on the kind of plan you have.

Defined contribution plans. The deduction for contributions to a defined contribution plan (profit-sharing plan or money purchase pension plan) can't be more than 25% of the compensation paid (or accrued) during the year to your eligible employees participating in the plan. If you are self-employed, you must reduce this limit in figuring the deduction for contributions you make for your own account. See *Deduction Limit for Self-Employed Individuals*, later.

When figuring the deduction limit, the following rules apply.

- Elective deferrals (discussed later) aren't subject to the limit.

- Compensation includes elective deferrals.
- The maximum compensation that can be taken into account for each employee in 2023 is \$330,000 (\$345,000 in 2024).

Defined benefit plans. The deduction for contributions to a defined benefit plan is based on actuarial assumptions and computations. Consequently, an actuary must figure your deduction limit.



In figuring the deduction for contributions, you can't take into account any contributions or benefits that are more than the limits discussed earlier under Limits on Contributions and Benefits.

Deduction Limit for Self-Employed Individuals

If you make contributions for yourself, you need to make a special computation to figure your maximum deduction for these

contributions. Compensation is your net earnings from self-employment, defined in chapter 1. This definition takes into account both the following items.

- The deduction for the deductible part of your self-employment tax.
- The deduction for contributions on your behalf to the plan.

The deductions for your own contributions and your net earnings depend on each other. For this reason, you determine the deduction for your own contributions indirectly by reducing the contribution rate called for in your plan. To do this, use either the Rate Table for Self-Employed or the Rate Worksheet for Self-Employed in chapter 5. Then, figure your maximum deduction by using the Deduction Worksheet for Self-Employed in chapter 5.

Where To Deduct Contributions

Deduct the contributions you make for your common-law employees on your tax return. For example, sole proprietors deduct them on Schedule C (Form 1040) or Schedule F (Form 1040), partnerships deduct them on Form 1065, and corporations deduct them on Form 1120 or 1120-S.

Sole proprietors and partners deduct contributions for themselves on line 15 of Schedule 1 (Form 1040). (If you are a partner, contributions for yourself are shown on the Schedule K-1 (Form 1065) you get from the partnership.)

Carryover of Excess Contributions

If you contribute more to a plan than you can deduct for the year, you can carry over and deduct the difference in later years, combined with your contributions for those years. Your combined deduction in a later year is limited to 25% of the participating employees'

compensation for that year. For purposes of this limit, a SEP is treated as a profit-sharing (defined contribution) plan. However, this percentage limit must be reduced to figure your maximum deduction for contributions you make for yourself. See *Deduction Limit for Self-Employed Individuals*, earlier. The amount you carry over and deduct may be subject to the excise tax discussed next.

Table 4-1. Carryover of Excess Contributions Illustrated Profit-Sharing Plan illustrates the carryover of excess contributions to a profit-sharing plan.

Excise Tax for Nondeductible (Excess) Contributions

If you contribute more than your deduction limit to a retirement plan, you have made nondeductible contributions and you may be liable for an excise tax. In general, a 10% excise tax applies to nondeductible

contributions made to qualified pension and profit-sharing plans and to SEPs.

Special rule for self-employed

individuals. The 10% excise tax doesn't apply to any contribution made to meet the minimum funding requirements in a money purchase pension plan or a defined benefit plan. Even if that contribution is more than your earned income from the trade or business for which the plan is set up, the difference isn't subject to this excise tax. See Minimum Funding Requirement, earlier.

Reporting the tax. You must report the tax on your nondeductible contributions on Form 5330. Form 5330 includes a computation of the tax. See the separate instructions for completing the form.

Elective Deferrals (401(k) Plans)

Your qualified plan can include a cash or deferred arrangement under which participants can choose to have you contribute part of their before-tax compensation to the plan rather than receive the compensation in cash. A plan with this type of arrangement is popularly known as a 401(k) plan. (As a self-employed individual participating in the plan, you can contribute part of your before-tax net earnings from the business.) This contribution is called an elective deferral because participants choose (elect) to defer receipt of the money.

In general, a qualified plan can include a cash or deferred arrangement only if the qualified plan is one of the following plans.

- A profit-sharing plan.

- A money purchase pension plan in existence on June 27, 1974, that included a salary reduction arrangement on that date.

Partnership. A partnership can have a 401(k) plan.

Restriction on conditions of participation.

Effective for plan years beginning after December 31, 2020, a 401(k) plan can't require, as a condition of participation, that an employee complete a period of service that extends beyond the close of the earlier of (1) 1 year of service, or (2) the first period of 3 consecutive 12-month periods (excluding 12-month periods beginning before January 1, 2021) during each of which the employee has completed at least 500 hours of service.

Effective for plan years beginning after December 31, 2024, 3 consecutive 12-month periods are reduced to 2 consecutive 12-month periods.

Matching contributions. If your plan permits, you can make matching contributions for an employee who makes an elective deferral to your 401(k) plan. For example, the plan might provide that you will contribute 50 cents for each dollar your participating employees choose to defer under your 401(k) plan. Matching contributions are generally subject to the ACP test discussed earlier under *Employee Contributions*.

Nonelective contributions. You can also make contributions (other than matching contributions) for your participating employees without giving them the choice to take cash instead. These are called nonelective contributions.

Employee compensation limit. No more than \$330,000 of the employee's compensation can be taken into account when figuring contributions other than elective deferrals in 2023. This limit is \$345,000 for 2024.

SIMPLE 401(k) plan. If you had 100 or fewer employees who earned \$5,000 or more in compensation during the preceding year, you may be able to set up a SIMPLE 401(k) plan. A SIMPLE 401(k) plan isn't subject to the nondiscrimination and top-heavy plan requirements discussed earlier under *Qualification Rules*. For details about SIMPLE 401(k) plans, see *SIMPLE 401(k) Plan* in chapter 3.

Distributions. Certain rules apply to distributions from 401(k) plans. See *Distributions From 401(k) Plans*, later.

Limit on Elective Deferrals

There is a limit on the amount an employee can defer each year under these plans. This limit applies without regard to community property laws. Your plan must provide that your employees can't defer more than the limit that applies for a particular year. The basic limit on elective deferrals is \$22,500 for

2023 and increases to \$23,000 for 2024. This limit applies to all salary reduction contributions and elective deferrals. If, in conjunction with other plans, the deferral limit is exceeded, the difference is included in the employee's gross income.

Catch-up contributions. A 401(k) plan can permit participants who are age 50 or over at the end of the calendar year to also make catch-up contributions. The catch-up contribution limit is \$7,500 for 2023 and 2024. Elective deferrals aren't treated as catch-up contributions for 2023 until they exceed the \$22,500 limit (\$23,000 limit for 2024), the ADP test limit of section 401(k)(3), or the plan limit (if any). However, the catch-up contributions a participant can make for a year can't exceed the lesser of the following amounts.

- The catch-up contribution limit.
- The excess of the participant's compensation over the elective

deferrals that aren't catch-up contributions.

Treatment of contributions. Your contributions to your own 401(k) plan are generally deductible by you for the year they are contributed to the plan. Matching or nonelective contributions made to the plan are also deductible by you in the year of contribution.

Your employees' elective deferrals other than designated Roth contributions are tax free until distributed from the plan. Elective deferrals are included in wages for social security, Medicare, and FUTA taxes.

Forfeiture. Employees have a nonforfeitable right at all times to their accrued benefit attributable to elective deferrals.

Reporting on Form W-2. Don't include elective deferrals in the "Wages, tips, other compensation" box of Form W-2. You must, however, include them in the "Social security

wages” and “Medicare wages and tips” boxes. You must also include them in box 12. Check the “Retirement plan” checkbox in box 13. For more information, see the Form W-2 instructions.

Automatic Enrollment

Your 401(k) plan can have an automatic enrollment feature. Under this feature, you can automatically reduce an employee's pay by a fixed percentage and contribute that amount to the 401(k) plan on their behalf unless the employee affirmatively chooses not to have their pay reduced or chooses to have it reduced by a different percentage. These contributions are elective deferrals. An automatic enrollment feature will encourage employees' saving for retirement and will help your plan pass nondiscrimination testing (if applicable). For more information, see Pub. 4674.

Eligible automatic contribution arrangement (EACA). Under an EACA, a participant is treated as having elected to have the employer make contributions in an amount equal to a uniform percentage of compensation. This automatic election will remain in place until the participant specifically elects not to have such deferral percentage made (or elects a different percentage). There is no required deferral percentage.

Withdrawals. Under an EACA, you may allow participants to withdraw their automatic contributions to the plan if certain conditions are met.

- The participant must elect the withdrawal no later than 90 days after the date of the first elective contributions under the EACA.
- The participant must withdraw the entire amount of EACA default

contributions, including any earnings thereon.

If the plan allows withdrawals under the EACA, the amount of the withdrawal other than the amount of any designated Roth contributions must be included in the employee's gross income for the tax year in which the distribution is made. The additional 10% tax on early distributions won't apply to the distribution.

Notice requirement. Under an EACA, employees must be given written notice of the terms of the EACA within a reasonable period of time before each plan year. The notice must be written in a manner calculated to be understood by the average employee and be sufficiently accurate and comprehensive in order to apprise the employee of their rights and obligations under the EACA. The notice must include an explanation of the employee's right to elect not to have elective contributions made on

their behalf, or to elect a different percentage, and the employee must be given a reasonable period of time after receipt of the notice before the first elective contribution is made. The notice must also explain how contributions will be invested in the absence of an investment election by the employee.

Qualified automatic contribution

arrangement (QACA). A QACA is a type of safe harbor plan. It contains an automatic enrollment feature, and mandatory employer contributions are required. If your plan includes a QACA, it won't be subject to the ADP test (discussed later) or the top-heavy requirements (discussed earlier). Additionally, your plan won't be subject to the ACP test if certain additional requirements are met. Under a QACA, each employee who is eligible to participate in the plan will be treated as having elected to make elective deferral contributions equal to a certain default

percentage of compensation. In order to not have default elective deferrals made, an employee must make an affirmative election specifying a deferral percentage (including zero, if desired). If an employee doesn't make an affirmative election, the default deferral percentage must meet the following conditions.

1. It must be applied uniformly.
2. It must not exceed 10%. (After December 31, 2019, the maximum default deferral percentage increases to 15%.)
3. It must be at least 3% in the first plan year it applies to an employee and through the end of the following year.
4. It must increase to at least 4% in the following plan year.
5. It must increase to at least 5% in the following plan year.

6. It must increase to at least 6% in subsequent plan years.

Matching or nonelective contributions.

Under the terms of the QACA, you must make either matching or nonelective contributions according to the following terms.

1. **Matching contributions.** You must make matching contributions on behalf of each non-highly compensated employee in the following amounts.
 - a. An amount equal to 100% of elective deferrals, up to 1% of compensation.
 - b. An amount equal to 50% of elective deferrals, from 1% up to 6% of compensation.

Other formulas may be used as long as they are at least as favorable to non-highly compensated employees. The rate of matching contributions for highly compensated employees,

including yourself, must not exceed the rates for non-highly compensated employees.

2. **Nonelective contributions.** You must make nonelective contributions on behalf of every non-highly compensated employee eligible to participate in the plan, regardless of whether they elected to participate, in an amount equal to at least 3% of their compensation.

Vesting requirements. All accrued benefits attributed to matching or nonelective contributions under the QACA must be 100% vested for all employees who complete 2 years of service. These contributions are subject to special withdrawal restrictions, discussed later.

Notice requirements. Each employee eligible to participate in the QACA must receive written notice of their rights and obligations under the QACA within a

reasonable period before each plan year. The notice must be written in a manner calculated to be understood by the average employee, and it must be accurate and comprehensive. The notice must explain their right to elect not to have elective contributions made on their behalf, or to have contributions made at a different percentage than the default percentage. Additionally, the notice must explain how contributions will be invested in the absence of any investment election by the employee. The employee must have a reasonable period of time after receiving the notice to make such contribution and investment elections prior to the first contributions under the QACA.

If you make nonelective contributions under the QACA and you either don't make any matching contributions or you make matching contributions that are intended to satisfy the ACP test, then this QACA notice requirement doesn't apply. However, this exception

doesn't apply to the EACA notice requirement, earlier.

Treatment of Excess Deferrals

If the total of an employee's deferrals is more than the limit for 2023, the employee can have the difference (called an excess deferral) paid out of any of the plans that permit these distributions. The employee must notify the plan by April 15, 2024 (or an earlier date specified in the plan), of the amount to be paid from each plan. The plan must then pay the employee that amount, plus earnings on the amount through the end of 2023, by April 15, 2024.

Excess withdrawn by April 15. If the employee takes out the excess deferral by April 15, 2024, it isn't reported again by including it in the employee's gross income for 2024. However, any income earned in 2023 on the excess deferral taken out is taxable in the tax year in which it is taken

out. The distribution isn't subject to the additional 10% tax on early distributions.

If the employee takes out part of the excess deferral and the income on it, the distribution is treated as made proportionately from the excess deferral and the income.

Even if the employee takes out the excess deferral by April 15, the amount will be considered for purposes of nondiscrimination testing requirements of the plan, unless the distributed amount is for a non-highly compensated employee who participates in only one employer's 401(k) plan or plans.

Excess not withdrawn by April 15. If the employee doesn't take out the excess deferral by April 15, 2024, the excess, though taxable in 2023, isn't included in the employee's cost basis in figuring the taxable amount of any eventual distributions under the plan. In effect, an excess deferral left in the plan is taxed twice, once when contributed and again when distributed. Also, if the employee's

excess deferral is allowed to stay in the plan and the employee participates in no other employer's plan, the plan can be disqualified.

Reporting corrective distributions on Form 1099-R. Report corrective distributions of excess deferrals (including any earnings) on Form 1099-R. For specific information about reporting corrective distributions, see the Instructions for Forms 1099-R and 5498.

Tax on excess contributions of highly compensated employees. The law provides tests to detect discrimination in a plan. If tests, such as the ADP test (see section 401(k)(3)) and the ACP test (see section 401(m)(2)), show that contributions for highly compensated employees are more than the test limits for these contributions, the employer may have to pay a 10% excise tax. Report the tax on Form 5330. The ADP test doesn't apply to a safe harbor 401(k) plan (discussed next) or to a QACA. Also, the ACP

test doesn't apply to these plans if certain additional requirements are met.

The tax for the year is 10% of the excess contributions for the plan year ending in your tax year. Excess contributions are elective deferrals, employee contributions, or employer matching or nonelective contributions that are more than the amount permitted under the ADP test or the ACP test.

See Regulations sections 1.401(k)-2 and 1.401(m)-2 for further guidance relating to the nondiscrimination rules under sections 401(k) and 401(m).



If the plan fails the ADP or ACP testing, and the failure isn't corrected by the end of the next plan year, the plan can be disqualified.

Safe Harbor 401(k) Plan

If you meet the requirements for a safe harbor 401(k) plan, you don't have to satisfy the ADP test or the ACP test if certain

additional requirements are met. For your plan to be a safe harbor plan, you must meet the following conditions.

1. **Matching or nonelective contributions.** You must make matching or nonelective contributions according to one of the following formulas.
 - a. **Matching contributions.** You must make matching contributions according to the following rules.
 - i. You must contribute an amount equal to 100% of each non-highly compensated employee's elective deferrals, up to 3% of compensation.
 - ii. You must contribute an amount equal to 50% of each non-highly compensated employee's elective deferrals, from 3% up to 5% of compensation.

- iii. The rate of matching contributions for highly compensated employees, including yourself, must not exceed the rates for non-highly compensated employees.
- b. **Nonelective contributions.** You must make nonelective contributions, without regard to whether the employee made elective deferrals, on behalf of all non-highly compensated employees eligible to participate in the plan, equal to at least 3% of the employee's compensation.

These mandatory matching and nonelective contributions must be immediately 100% vested and are subject to special withdrawal restrictions.

- 2. **Notice requirement.** You must give eligible employees written notice of

their rights and obligations with regard to contributions under the plan within a reasonable period before the plan year.

If you make nonelective contributions and you either don't make any matching contributions or you make matching contributions that are intended to satisfy the ACP test, then this notice requirement doesn't apply. However, this exception doesn't apply to the EACA notice requirement, earlier.

The other requirements for a 401(k) plan, including withdrawal and vesting rules, must also be met for your plan to qualify as a safe harbor 401(k) plan.

Qualified Roth Contribution Program

Under this program, an eligible employee can designate all or a portion of their elective deferrals as after-tax Roth contributions. These contributions, which are made in lieu of

elective deferrals, are designated Roth contributions. Unlike other elective deferrals, designated Roth contributions aren't excluded from an employee's gross income.

In addition, an eligible employee may be permitted to designate certain nonelective contributions or matching contributions as Roth contributions. These contributions are also includible in an employee's gross income.

Designated Roth contributions, designated Roth nonelective contributions, and designated Roth matching contributions must be maintained in a separate Roth account. However, qualified distributions from a Roth account are excluded from an employee's gross income.

Elective Deferrals

Under a qualified Roth contribution program, the amount of elective deferrals that an employee may designate as a Roth contribution is limited to the maximum

amount of elective deferrals excludable from gross income for the year (for 2023, \$22,500 if under age 50 and \$30,000 if age 50 or over; amounts increase in 2024 to \$23,000 and \$30,500, respectively) less the total amount of the employee's elective deferrals not designated as Roth contributions.

Designated Roth contributions are treated the same as pre-tax elective deferrals for most purposes, including:

- The annual individual elective deferral limit (total of all designated Roth contributions and traditional, pre-tax elective deferrals) of \$22,500 for 2023 (\$23,000 for

2024), with an additional \$7,500 if age 50 or over;

- Determining the maximum employee and employer annual contributions of the lesser of 100% of compensation or \$66,000 for 2023 (\$69,000 for 2024);

- Nondiscrimination testing;
- Required distributions; and

- Elective deferrals not taken into account for purposes of deduction limits.

Qualified Distributions

A qualified distribution is a distribution that is made after the employee's nonexclusion period and:

- On or after the employee reaches age 59^{1/2},
- On account of the employee's being disabled, or
- On or after the employee's death.

An employee's nonexclusion period for a plan is the 5-tax-year period beginning with the earlier of the following tax years.

- The first tax year in which a contribution was made to their Roth account in the plan.

- If a rollover contribution was made to the employee's designated Roth account from a designated Roth account previously established for the employee under another plan, then the first tax year the employee made a designated Roth contribution to the previously established account.

Rollover. A rollover from another account can be made to a designated Roth account in the same plan. For additional information on these in-plan Roth rollovers, see Notice 2010-84, 2010-51 I.R.B. 872, available at IRS.gov/irb/2010-51_IRB/ar11.html;

and Notice 2013-74, 2013-52 I.R.B. 819, available at IRS.gov/pub/irs-irbs/irb13-52_IRB. A distribution from a designated Roth account can only be rolled over to another designated Roth account or a Roth IRA. Rollover amounts don't apply toward the annual deferral limit.

Reporting Requirements

You must report a designated Roth contribution on Form W-2. See the Form W-2 instructions for detailed information.

You must report a designated Roth nonelective contribution or a designated Roth matching contribution on Form 1099-R for the year in which the contribution is allocated. You must also report a distribution from a Roth account on Form 1099-R. See the Form 1099-R instructions