

§§ 1.401–12 and 1.408–2 [Amended]

Par. 2. Paragraph (n) of § 1.401–12 is redesignated as paragraph (e) of § 1.408–2 and the authority citation immediately following § 1.401–12 is removed.

§ 1.401–12T [Removed]

Par. 3. Section 1.401–12T is removed.

§ 1.401(f)–1 [Amended]

Par. 4. Section 1.401(f)–1 is amended by:

1. Removing the language “section 401(d)(1) and the regulations thereunder” and adding “§ 1.408–2(e)” in its place in the last sentence of paragraph (b)(1)(ii).

2. Removing the language “401(d)(1) and adding “408(n)” in its place in paragraph (d)(1).

Par. 5. Section 1.408–2 is amended by:

1. Removing the language “401(d)(1)” and adding “408(n)” in its place in paragraph (b)(2)(i).

2. Removing the language “(b)(2)(ii)” and adding “(e)” in its place in paragraph (b)(2)(i).

3. Removing paragraph (b)(2)(ii).

4. Redesignating (b)(2)(iii) as (b)(2)(ii).

5. Removing newly designated paragraphs (e)(1) and (e)(9).

6. Further redesignating paragraphs (e)(2) through (e)(8) as paragraphs (e)(1) through (e)(7), respectively.

7. Removing the language “For the plan years to which this paragraph applies, the” and adding “The” in its place, and removing the language “(c)(1)(i)” and adding “(b)” in its place, in the first sentence of newly designated paragraph (e)(1).

8. Removing the language “401” and adding “408” in its place, and removing the language “(n)(3) to (n)(7)” and adding “(e)(2) to (e)(6)” in its place, in the second sentence of newly designated paragraph (e)(1).

9. Removing the language “Commissioner of Internal Revenue, Attention: E:EP, Internal Revenue Service, Washington, D.C. 20224” and adding “the address prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter)” in its place in the third sentence of newly designated paragraph (e)(1), in the last sentence of newly designated (e)(6)(9)(iv), and in the first sentence of newly designated (e)(6)(v)(B).

10. Removing the language “(n)(8)” and adding “(e)(7)” in its place in the last sentence of newly designated paragraph (e)(1).

11. Removing the language “(n)(6)” and adding “(e)(5)” in its place in newly designated paragraph (e)(2)(iv).

12. Redesignating newly designated paragraph (e)(5)(ii)(A) as paragraph (e)(5)(ii)(E).

13. Removing the language “(n)(7)(i)(A)” and adding “(e)(6)(i)(A)” in its place in newly designated paragraph (e)(5)(ii)(B)(2) and in newly designated paragraph (e)(5)(ii)(C)(2).

14. Removing the language “(n)(6)(iii)(A)” and adding “(e)(5)(iii)(A)” in its place in newly designated paragraph (e)(5)(iii)(B).

15. Removing the language “(n)(6)(vi)” and adding “(e)(5)(vi)” in its place in newly designated paragraph (e)(5)(v)(A).

16. Removing the language “(n)(6)(viii)(C)” and adding “(e)(5)(viii)(C)” in its place in newly designated paragraph (e)(5)(vi).

17. Removing the language “(n)(3)(v)” and adding “(e)(2)(v)” in its place, and removing the language “(n)(8)” and adding “(e)(7)” in its place, in newly designated paragraph (e)(5)(viii).

18. Removing the language “(n)(6)(i)(A)(3)” and adding “(e)(5)(i)(A)(3)” in its place, and removing the language “(n)(5)(ii)(E)” and adding “(e)(4)(ii)(E)” in its place, in the third sentence of newly designated paragraph (e)(6)(i)(A).

19. Removing the language “(n)(7)(iii)(A)(3)” and adding “(e)(6)(iii)(A)(3)” in its place in newly designated paragraph (e)(6)(iii)(C).

20. Revising newly designated paragraph (e)(5)(ii)(A) and adding paragraph (e)(5)(ii)(D).

21. The revision and addition read as follows:

§ 1.408–2 Individual retirement accounts.

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(e) * * *

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(5) * * *

(ii) *Adequacy of net worth*—(A) *Initial net worth requirement.* In the case of applications received after January 5, 1995, no initial application will be accepted by the Commissioner unless the applicant has a net worth of not less than \$250,000 (determined as of the end of the most recent taxable year). Thereafter, the applicant must satisfy the adequacy of net worth requirements of paragraph (e)(6)(ii) (B) and (C) of this section.

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(D) *Assets held by members of SIPC*—

(1) For purposes of satisfying the adequacy-of-net-worth requirement of this paragraph, a special rule is provided for nonbank trustees that are members of the Securities Investor Protection Corporation (SIPC) created under the Securities Investor Protection

Act of 1970 (SIPA) (15 U.S.C. 78aaa et seq., as amended). The amount that the net worth of a nonbank trustee that is a member of SIPC must exceed is reduced by two percent for purposes of paragraph (e)(5)(ii)(B)(2), and one percent for purposes of paragraph (e)(5)(ii)(C)(2), of the value of assets (determined on an account-by-account basis) held for the benefit of customers (as defined in 15 U.S.C. 78fff–2(e)(4)) in fiduciary accounts by the nonbank trustee to the extent of the portion of each account that does not exceed the dollar limit on advances described in 15 U.S.C. 78fff–3(a), as amended, that would apply to the assets in that account in the event of a liquidation proceeding under the SIPA.

(2) The provisions of this special rule for assets held in fiduciary accounts by members of SIPC are illustrated in the following example.

Example—(a) Trustee X is a broker-dealer and is a member of the Securities Investor Protection Corporation. Trustee X also has been approved as a nonbank trustee for individual retirement accounts (IRAs) by the Commissioner but not as a passive nonbank trustee. Trustee X is the trustee for four IRAs. The total assets of each IRA (for which Trustee X is the trustee) as of the most recent valuation date before the last day of Trustee X's taxable year ending in 1995 are as follows: the total assets for IRA–1 is \$3,000,000 (all of which is invested in securities); the value of the total assets for IRA–2 is \$500,000 (\$200,000 of which is cash and \$300,000 of which is invested in securities), the value of the total assets for IRA–3 is \$400,000 (all of which is invested in securities); and the value of the total assets of IRA–4 is \$200,000 (all of which is cash). The value of all assets held in fiduciary accounts, as defined in § 1.408–2(e)(6)(viii)(A), is \$4,100,000.

(b) The dollar limit on advances described in 15 U.S.C. § 78fff–3(a) that would apply to the assets in each account in the event of a liquidation proceeding under the Securities Investor Protection Act of 1970 in effect as of the last day of Trustee X's taxable year ending in 1995 is \$500,000 per account (no more than \$100,000 of which is permitted to be cash). Thus, the dollar limit that would apply to IRA–1 is \$500,000; the dollar limit for IRA–2 is \$400,000 (\$100,000 of the cash and the \$300,000 of the value of the securities); the dollar limit for IRA–3 is \$400,000 (the full value of the account because the value of the account is less than \$500,000 and no portion of the account is cash); and the dollar limit for IRA–4 is \$100,000 (the entire account is cash and the dollar limit per account for cash is \$100,000). The aggregate dollar limits of the four IRAs is \$1,400,000.

(c) For 1996, the amount determined under § 1.408–2(e)(6)(ii)(B) is determined as follows for Trustee X: (1) four percent of \$4,100,000 equals \$164,000; (2) two percent of \$1,400,000 equals \$28,000; and (3) \$164,000 minus \$28,000 equals \$136,000. Thus,