Q–8. If a portion of an employee's individual account is not vested as of the employee's required beginning date, how is the determination of the required minimum distribution affected?

A–8. If the employee's benefit is in the form of an individual account, the benefit used to determine the required minimum distribution for any distribution calendar year will be determined in accordance with A–1 of this section without regard to whether or not all of the employee's benefit is vested. If any portion of the employee's benefit is not vested, distributions will be treated as being paid from the vested portion of the benefit first. If, as of the end of a distribution calendar year (or as of the employee's required beginning date, in the case of the employee's first distribution calendar year), the total amount of the employee's vested benefit is less than the required minimum distribution for the calendar year, only the vested portion, if any, of the employee's benefit is required to be distributed by the end of the calendar year (or, if applicable, by the employee's required beginning date). However, the required minimum distribution for the subsequent distribution calendar year must be increased by the sum of amounts not distributed in prior calendar years because the employee's vested benefit was less than the required minimum distribution.

Q–9. Which amounts distributed from an individual account are taken into account in determining whether section 401(a)(9) is satisfied and which amounts are not taken into account in determining whether section 401(a)(9) is satisfied?

A–9. (a) *General rule.* Except as provided in paragraph (b), all amounts distributed from an individual account are distributions that are taken into account in determining whether section 401(a)(9) is satisfied, regardless of whether the amount is includible in income. Thus, for example, amounts that are excluded from income as recovery of investment in the contract under section 72 are taken into account for purposes of determining whether section 401(a)(9) is satisfied for a distribution calendar year. Similarly, amounts excluded from income as net unrealized appreciation on employer securities also are amounts distributed for purposes of determining if section 401(a)(9) is satisfied.

(b) *Exceptions.* The following amounts are not taken into account in determining whether the required minimum amount has been distributed for a calendar year:

(1) Elective deferrals (as defined in section 402(g)(3)) and employee contributions that, pursuant to rules prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter), are returned to the employee (together with the income allocable thereto) in order to comply with the section 415 limitations.

(2) Corrective distributions of excess deferrals as described in §1.402(g)-1(e)(3), together with the income allocable to these distributions.

(3) Corrective distributions of excess contributions under a qualified cash or deferred arrangement under section 401(k)(8) and excess aggregate contributions under section 401(m)(6), together with the income allocable to these distributions.

(4) Loans that are treated as deemed distributions pursuant to section 72(p).

(5) Dividends described in section 404(k) that are paid on employer securities. (Amounts paid to the plan that, pursuant to section 404(k)(2)(A)(iii)(II), are included in the account balance and subsequently distributed from the account lose their character as dividends.)

(6) The costs of life insurance coverage (P.S. 58 costs).

(7) Similar items designated 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.

[T.D. 8987, 67 FR 18994, Apr. 17, 2002, as amended by T.D. 9130, 69 FR 33293, June 15, 2004; T.D. 9319, 72 FR 16894, Apr. 5, 2007;T.D. 9673, 79 FR 37639, July 2, 2014]

§ 1.401(a)(9)–6 Required minimum distributions for defined benefit plans and annuity contracts.

Q–1. How must distributions under a defined benefit plan be paid in order to satisfy section 401(a)(9)?

A–1. (a) *General rules.* In order to satisfy section 401(a)(9), except as otherwise provided in this section, distributions of the employee's entire interest under a defined benefit plan must be paid in the form of periodic annuity payments for the employee's life (or the joint lives of the employee and beneficiary) or over a period certain that does not exceed the maximum length of the period certain determined in accordance with A–3 of this section. The interval between payments for the annuity must be uniform over the entire distribution period and must not exceed one year. Once payments have commenced over a period, the period may only be changed in accordance with A–13 of this section. Life (or joint and survivor) annuity payments must satisfy the minimum distribution incidental benefit requirements of A–2 of this section. Except as otherwise provided in this section (such as permitted increases described in A–14 of this section), all payments (whether paid over an employee's life, joint lives, or a period certain) also must be nonincreasing.

(b) *Life annuity with period certain.* The annuity may be a life annuity (or joint and survivor annuity) with a period certain if the life (or lives, if applicable) and period certain each meet the requirements of paragraph (a) of this A–1. For purposes of this section, if distributions are permitted to be made over the lives of the employee and the designated beneficiary, references to a life annuity include a joint and survivor annuity.

(c) *Annuity commencement.* (1) Annuity payments must commence on or before the employee's required beginning date (within the meaning of A–2 of §1.401(a)(9)–2). The first payment, which must be made on or before the employee's required beginning date, must be the payment which is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Similarly, in the case of distributions commencing after death in accordance with section 401(a)(9)(B)(iii) and (iv), the first payment, which must be made on or before the date determined under A–3(a) or (b) (whichever is applicable) of §1.401(a)(9)–3, must be the payment which is required for one payment interval. Payment intervals are the periods for which payments are received, *e.g.*, bimonthly, monthly, semi-annually, or annually. All benefit accruals as of the last day of the first distribution calendar year must be included in the calculation of the amount of annuity payments for payment intervals ending on or after the employee's required beginning date.

(2) This paragraph (c) is illustrated by the following example:

Example. A defined benefit plan (Plan X) provides monthly annuity payments of $500 for the life of unmarried participants with a 10-year period certain. An unmarried, retired participant (A) in Plan X attains age 70½ in 2005. In order to meet the requirements of this paragraph, the first monthly payment of $500 must be made on behalf of A on or before April 1, 2006, and the payments must continue to be made in monthly payments of $500 thereafter for the life and 10-year period certain.

(d) *Single sum distributions.* In the case of a single sum distribution of an employee's entire accrued benefit during a distribution calendar year, the amount that is the required minimum distribution for the distribution calendar year (and thus not eligible for rollover under section 402(c)) is determined using either the rule in paragraph (d)(1) or the rule in paragraph (d)(2) of this A–1.

(1) The portion of the single sum distribution that is a required minimum distribution is determined by treating the single sum distribution as a distribution from an individual account plan and treating the amount of the single sum distribution as the employee's account balance as of the end of the relevant valuation calendar year. If the single sum distribution is being made in the calendar year containing the required beginning date and the required minimum distribution for the employee's first distribution calendar year has not been distributed, the portion of the single sum distribution that represents the required minimum distribution for the employee's first and second distribution calendar years is not eligible for rollover.

(2) The portion of the single sum distribution that is a required minimum

distribution is permitted to be determined by expressing the employee's benefit as an annuity that would satisfy this section with an annuity starting date as of the first day of the distribution calendar year for which the required minimum distribution is being determined, and treating one year of annuity payments as the required minimum distribution for that year, and not eligible for rollover. If the single sum distribution is being made in the calendar year containing the required beginning date and the required minimum distribution for the employee's first distribution calendar year has not been made, the benefit must be expressed as an annuity with an annuity starting date as of the first day of the first distribution calendar year and the payments for the first two distribution calendar years would be treated as required minimum distributions, and not eligible for rollover.

(e) *Death benefits.* The rule in paragraph (a) of this A–1, prohibiting increasing payments under an annuity applies to payments made upon the death of an employee. However, for purposes of this section, an ancillary death benefit described in this paragraph (e) may be disregarded in applying that rule. Such an ancillary death benefit is excluded in determining an employee's entire interest and the rules prohibiting increasing payments do not apply to such an ancillary death benefit. A death benefit with respect to an employee's benefit is an ancillary death benefit for purposes of this A–1 if—

(1) It is not paid as part of the employee's accrued benefit or under any optional form of the employee's benefit; and

(2) The death benefit, together with any other potential payments with respect to the employee's benefit that may be provided to a survivor, satisfy the incidental benefit requirement of §1.401–1(b)(1)(i).

(f) *Additional guidance.* Additional guidance regarding how distributions under a defined benefit plan must be paid in order to satisfy section 401(a)(9) may be issued by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin. See §601.601(d)(2)(ii)(b) of this chapter.

Q–2. How must distributions in the form of a life (or joint and survivor) annuity be made in order to satisfy the minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the distribution component of the incidental benefit requirement of §1.401–1(b)(1)(i)?

A–2. (a) *Life annuity for employee.* If the employee's benefit is paid in the form of a life annuity for the life of the employee satisfying section 401(a)(9) without regard to the MDIB requirement, the MDIB requirement of section 401(a)(9)(G) will be satisfied.

(b) *Joint and survivor annuity, spouse beneficiary.* If the employee's sole beneficiary, as of the annuity starting date for annuity payments, is the employee's spouse and the distributions satisfy section 401(a)(9) without regard to the MDIB requirement, the distributions to the employee will be deemed to satisfy the MDIB requirement of section 401(a)(9)(G). For example, if an employee's benefit is being distributed in the form of a joint and survivor annuity for the lives of the employee and the employee's spouse and the spouse is the sole beneficiary of the employee, the amount of the periodic payment payable to the spouse would not violate the MDIB requirement if it was 100 percent of the annuity payment payable to the employee, regardless of the difference in the ages between the employee and the employee's spouse.

(c) *Joint and survivor annuity, nonspouse beneficiary*—(1) *Explanation of rule.* If distributions commence under a distribution option that is in the form of a joint and survivor annuity for the joint lives of the employee and a beneficiary other than the employee's spouse, the minimum distribution incidental benefit requirement will not be satisfied as of the date distributions commence unless under the distribution option, the annuity payments to be made on and after the employee's required beginning date will satisfy the conditions of this paragraph (c). The periodic annuity payment payable to the survivor must not at any time on and after the employee's required beginning date exceed the applicable percentage of the annuity payment payable to the employee using the table in paragraph (c)(2) of this A–2. The applicable percentage is based on the adjusted employee/beneficiary age difference. The adjusted employee/beneficiary age difference is determined by first calculating the excess of the age of the employee over the age of the beneficiary based on their ages on their birthdays in a calendar year. Then, if the employee is younger than age 70, the age difference determined in the previous sentence is reduced by the number of years that the employee is younger than age 70 on the employee's birthday in the calendar year that contains the annuity starting date. In the case of an annuity that provides for increasing payments, the requirement of this paragraph (c) will not be violated merely because benefit payments to the beneficiary increase, provided the increase is determined in the same manner for the employee and the beneficiary.

(2) *Table.*

Adjusted employee/beneficiary age difference	Applicable percentage
10 years or less	100
11	96
12	93
13	90
14	87
15	84
16	82
17	79
18	77
19	75
20	73
21	72
22	70
23	68
24	67
25	66
26	64
27	63
28	62
29	61
30	60
31	59
32	59
33	58
34	57
35	56
36	56
37	55
38	55
39	54
40	54
41	53
42	53
43	53
44 and greater	52

(3) *Example.* This paragraph (c) is illustrated by the following example:

Example. Distributions commence on January 1, 2003 to an employee (Z), born March 1, 1937, after retirement at age 65. Z's daughter (Y), born February 5, 1967, is Z's beneficiary. The distributions are in the form of a joint and survivor annuity for the lives of Z and Y with payments of $500 a month to Z and upon Z's death of $500 a month to Y, *i.e.*, the projected monthly payment to Y is 100 percent of the monthly amount payable to Z. Accordingly, under A–10 of this section, compliance with the rules of this section is determined as of the annuity starting date. The adjusted employee/beneficiary age difference is calculated by taking the excess of the employee's age over the beneficiary's age and subtracting the number of years the employee is younger than age 70. In this case, Z is 30 years older than Y and is commencing benefit 4 years before attaining age 70 so the adjusted employee-beneficiary age difference is 26 years. Under the table in the paragraph (c)(2) of this A–2, the applicable percentage for a 26-year adjusted employee/beneficiary age difference is 64 percent. As of January 1, 2003 (the annuity starting date) the plan does not satisfy the MDIB requirement because, as of such date, the distribution option provides that, as of Z's required beginning date, the monthly payment to Y upon Z's death will exceed 66 percent of Z's monthly payment.

(d) *Period certain and annuity features.* If a distribution form includes a period certain, the amount of the annuity payments payable to the beneficiary need not be reduced during the period certain, but in the case of a joint and survivor annuity with a period certain, the amount of the annuity payments payable to the beneficiary must satisfy paragraph (c) of this A–2 after the expiration of the period certain.

(e) *Deemed satisfaction of incidental benefit rule.* Except in the case of distributions with respect to an employee's benefit that include an ancillary death benefit described in paragraph A–1(e) of this section, to the extent the incidental benefit requirement of §1.401–1(b)(1)(i) requires a distribution, that requirement is deemed to be satisfied if distributions satisfy the minimum distribution incidental benefit requirement of this A–2. If the employee's benefits include an ancillary death benefit described in paragraph A–1(e) of this section, the benefits (including the ancillary death benefit) must be distributed in accordance with the incidental benefit requirement described in §1.401–1(b)(1)(i) and the benefits (excluding the ancillary death benefit) must also satisfy the minimum distribution incidental benefit requirement of this A–2.

Q–3. How long is a period certain under a defined benefit plan permitted to extend?

A–3. (a) *Distributions commencing during the employee's life.* The period certain for any annuity distributions commencing during the life of the employee with an annuity starting date on or after the employee's required beginning date generally is not permitted to exceed the applicable distribution period for the employee (determined in accordance with the Uniform Lifetime Table in A–2 of §1.401(a)(9)–9) for the calendar year that contains the annuity starting date. See A–10 of this section for the rule for annuity payments with an annuity starting date before the required beginning date. However, if the employee's sole beneficiary is the employee's spouse, the period certain is permitted to be as long as the joint life and last survivor expectancy of the employee and the employee's spouse, if longer than the applicable distribution period for the employee, provided the period certain is not provided in conjunction with a life annuity under A–1(b) of this section.

(b) *Distributions commencing after the employee's death.* (1) If annuity distributions commence after the death of the employee under the life expectancy rule (under section 401(a)(9)(B)(iii) or (iv)), the period certain for any distributions commencing after death cannot exceed the applicable distribution period determined under A–5(b) of §1.401(a)(9)–5 for the distribution calendar year that contains the annuity starting date.

(2) If the annuity starting date is in a calendar year before the first distribution calendar year, the period certain may not exceed the life expectancy of the designated beneficiary using the beneficiary's age in the year that contains the annuity starting date.

Q–4. Will a plan fail to satisfy section 401(a)(9) merely because distributions are made from an annuity contract which is purchased from an insurance company?

A–4. A plan will not fail to satisfy section 401(a)(9) merely because distributions are made from an annuity contract which is purchased with the employee's benefit by the plan from an insurance company, as long as the payments satisfy the requirements of this section. If the annuity contract is purchased after the required beginning date, the first payment interval must begin on or before the purchase date and the payment required for one payment interval must be made no later than the end of such payment interval. If the payments actually made under the annuity contract do not meet the requirements of section 401(a)(9), the plan fails to satisfy section 401(a)(9). See also A–14 of this section permitting certain increases under annuity contracts.

Q–5. In the case of annuity distributions under a defined benefit plan, how must additional benefits that accrue after the employee's first distribution calendar year be distributed in order to satisfy section 401(a)(9)?

A–5. (a) In the case of annuity distributions under a defined benefit plan, if any additional benefits accrue in a calendar year after the employee's first distribution calendar year, distribution of the amount that accrues in the calendar year must commence in accordance with A–1 of this section beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(b) A plan will not fail to satisfy section 401(a)(9) merely because there is an administrative delay in the commencement of the distribution of the additional benefits accrued in a calendar year, provided that the actual payment of such amount commences as soon as practicable. However, payment must commence no later than the end of the first calendar year following the calendar year in which the additional benefit accrues, and the total amount paid during such first calendar year must be no less than the total amount that was required to be paid during that year under A–5(a) of this section.

Q–6. If a portion of an employee's benefit is not vested as of December 31 of a distribution calendar year, how is the determination of the required minimum distribution affected?

A–6. In the case of annuity distributions from a defined benefit plan, if any portion of the employee's benefit is not vested as of December 31 of a distribution calendar year, the portion that is not vested as of such date will be treated as not having accrued for purposes of determining the required minimum distribution for that distribution calendar year. When an additional portion of the employee's benefit becomes vested, such portion will be treated as an additional accrual. See A–5 of this section for the rules for distributing benefits which accrue under a defined benefit plan after the employee's first distribution calendar year.

Q–7. If an employee (other than a 5-percent owner) retires after the calendar year in which the employee attains age 70½, for what period must the employee's accrued benefit under a defined benefit plan be actuarially increased?

A–7. (a) *Actuarial increase starting date.* If an employee (other than a 5-percent owner) retires after the calendar year in which the employee attains age 70½, in order to satisfy section 401(a)(9)(C)(iii), the employee's accrued benefit under a defined benefit plan must be actuarially increased to take into account any period after age 70½ in which the employee was not receiving any benefits under the plan. The actuarial increase required to satisfy section 401(a)(9)(C)(iii) must be provided for the period starting on the April 1 following the calendar year in which the employee attains age 70½, or January 1, 1997, if later.

(b) *Actuarial increase ending date.* The period for which the actuarial increase must be provided ends on the date on which benefits commence after retirement in an amount sufficient to satisfy section 401(a)(9).

(c) *Nonapplication to plan providing same required beginning date for all employees.* If, as permitted under A–2(e) of §1.401(a)(9)–2, a plan provides that the required beginning date for purposes of section 401(a)(9) for all employees is April 1 of the calendar year following the calendar year in which the employee attains age 70½ (regardless of whether the employee is a 5-percent owner) and the plan makes distributions in an amount sufficient to satisfy section 401(a)(9) using that required beginning date, no actuarial increase is required under section 401(a)(9)(C)(iii).

(d) *Nonapplication to governmental and church plans.* The actuarial increase required under this A–7 does not apply to a governmental plan (within the meaning of section 414(d)) or a church plan. For purposes of this paragraph, the term *church plan* means a plan maintained by a church for church employees, and the term *church* means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

Q–8. What amount of actuarial increase is required under section 401(a)(9)(C)(iii)?

A–8. In order to satisfy section 401(a)(9)(C)(iii), the retirement benefits payable with respect to an employee as of the end of the period for actuarial increases (described in A–7 of this section) must be no less than: the actuarial equivalent of the employee's retirement benefits that would have been payable as of the date the actuarial increase must commence under paragraph (a) of A–7 of this section if benefits had commenced on that date; plus the actuarial equivalent of any additional benefits accrued after that date; reduced by the actuarial equivalent of any distributions made with respect to the employee's retirement benefits after that date. Actuarial equivalence is determined using the plan's assumptions for determining actuarial equivalence for purposes of satisfying section 411.

Q–9. How does the actuarial increase required under section 401(a)(9)(C)(iii) relate to the actuarial increase required under section 411?

A–9. In order for any of an employee's accrued benefit to be nonforfeitable as required under section 411, a defined benefit plan must make an actuarial adjustment to an accrued benefit, the payment of which is deferred past normal retirement age. The only exception to this rule is that generally no actuarial adjustment is required to reflect the period during which a benefit is suspended as permitted under section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 829). The actuarial increase required under section 401(a)(9)(C)(iii) for the period described in A–7 of this section is generally the same as, and not in addition to, the actuarial increase required for the same period under section 411 to reflect any delay in the payment of retirement benefits after normal retirement age. However, unlike the actuarial increase required under section 411, the actuarial increase required under section 401(a)(9)(C)(iii) must be provided even during any period during which an employee's benefit has been suspended in accordance with ERISA section 203(a)(3)(B).

Q–10. What rule applies if distributions commence to an employee on a date before the employee's required beginning date over a period permitted under section 401(a)(9)(A)(ii) and the distribution form is an annuity under which distributions are made in accordance with the provisions of A–1 of this section?

A–10. (a) *General rule.* If distributions commence to an employee on a date before the employee's required beginning date over a period permitted under section 401(a)(9)(A)(ii) and the distribution form is an annuity under which distributions are made in accordance with the provisions of A–1 of this section, the annuity starting date will be treated as the required beginning date for purposes of applying the rules of this section and §1.401(a)(9)–2. Thus, for example, the designated beneficiary distributions will be determined as of the annuity starting date. Similarly, if the employee dies after the annuity starting date but before the required beginning date determined under A–2 of §1.401(a)(9)–2, after the employee's death, the remaining portion of the employee's interest must continue to be distributed in accordance with this section over the remaining period over which distributions commenced. The rules in §1.401(a)(9)–3 and section 401(a)(9)(B)(ii) or (iii) and (iv) do not apply.

(b) *Period certain.* If, as of the employee's birthday in the year that contains the annuity starting date, the age of the employee is under 70, the following rule applies in applying the rule in paragraph (a) of A–3 of this section. The applicable distribution period for the employee is the distribution period for age 70, determined in accordance with the Uniform Lifetime Table in A–2 of §1.401(a)(9)–9, plus the excess of 70 over the age of the employee as of the employee's birthday in the year that contains the annuity starting date.

(c) *Adjustment to employee/beneficiary age difference.* See A–2(c)(1) of this section for the determination of the adjusted employee/beneficiary age difference in the case of an employee whose age on the annuity starting date is less than 70.

Q–11. What rule applies if distributions commence to the surviving spouse of an employee over a period permitted under section 401(a)(9)(B)(iii)(II) before the date on which distributions are required to commence and the distribution form is an annuity under which distributions are made as of the date distributions commence in accordance with the provisions of A–1 of this section.

A–11. If distributions commence to the surviving spouse of an employee over a period permitted under section 401(a)(9)(B)(iii)(II) before the date on which distributions are required to commence and the distribution form is an annuity under which distributions are made as of the date distributions commence in accordance with the provisions of A–1 of this section, distributions will be considered to have begun on the actual commencement date for purposes of section 401(a)(9)(B)(iv)(II). Consequently, in such case, A–5 of §1.401(a)(9)–3 and section 401(a)(9)(B)(ii) and (iii) will not apply upon the death of the surviving spouse as though the surviving spouse were the employee. Instead, the annuity distributions must continue to be made, in accordance with the provisions of A–1 of this section, over the remaining period over which distributions commenced.

Q–12. In the case of an annuity contract under an individual account plan that has not yet been annuitized, how is section 401(a)(9) satisfied with respect to the employee's or beneficiary's entire interest under the annuity contract for the period prior to the date annuity payments so commence?

A–12. (a) *General rule.* Prior to the date that an annuity contract under an individual account plan is annuitized, the interest of an employee or beneficiary under that contract is treated as an individual account for purposes of section 401(a)(9). Thus, the required minimum distribution for any year with respect to that interest is determined under §1.401(a)(9)–5 rather than this section. See A–1(e) of §1.401(a)(9)–5 for rules relating to the satisfaction of section 401(a)(9) in the year that annuity payments commence, A–3(d) of §1.401(a)(9)–5 for rules relating to qualifying longevity annuity contracts (QLACs), defined in A–17 of this section, and A–2(a)(3) of §1.401(a)(9)–8 for rules relating to the purchase of an annuity contract with a portion of an employee's account balance.

(b) *Entire interest.* For purposes of applying the rules in §1.401(a)(9)–5, the entire interest under the annuity contract as of December 31 of the relevant valuation calendar year is treated as the account balance for the valuation calendar year described in A–3 of §1.401(a)(9)–5. The entire interest under an annuity contract is the dollar amount credited to the employee or beneficiary under the contract plus the actuarial present value of any additional benefits (such as survivor benefits in excess of the dollar amount credited to the employee or beneficiary) that will be provided under the contract. However, paragraph (c) of this A–12 describes certain additional benefits that may be disregarded in determining the employee's entire interest under the annuity contract. The actuarial present value of any additional benefits described under this A–12 is to be determined using reasonable actuarial assumptions, including reasonable assumptions as to future distributions, and without regard to an individual's health.

(c) *Exclusions.* (1) The actuarial present value of any additional benefits provided under an annuity contract described in paragraph (b) of this A–12 may be disregarded if the sum of the dollar amount credited to the employee or beneficiary under the contract and the actuarial present value of the additional benefits is no more than 120 percent of the dollar amount credited to the employee or beneficiary under the contract and the contract provides only for the following additional benefits:

(i) Additional benefits that, in the case of a distribution, are reduced by an amount sufficient to ensure that the ratio of such sum to the dollar amount credited does not increase as a result of the distribution, and

(ii) An additional benefit that is the right to receive a final payment upon death that does not exceed the excess of the premiums paid less the amount of prior distributions.

(2) If the only additional benefit provided under the contract is the additional benefit described in paragraph (c)(1)(ii) of this A–12, the additional benefit may be disregarded regardless of its value in relation to the dollar amount credited to the employee or beneficiary under the contract.

(3) The Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter) may provide additional guidance on additional benefits that may be disregarded.

(d) *Examples.* The following examples, which use a 5 percent interest rate and the Mortality Table provided in Rev. Rul. 2001–62 (2001–2 C.B. 632), illustrate the application of the rules in this A–12:

Example 1. (i) G is the owner of a variable annuity contract (Contract S) under an individual account plan which has not been annuitized. Contract S provides a death benefit until the end of the calendar year in which the owner attains the age of 84 equal to the greater of the current Contract S notional account value (dollar amount credited to G under the contract) and the largest notional account value at any previous policy anniversary reduced proportionally for subsequent partial distributions (High Water Mark). Contract S provides a death benefit in calendar years after the calendar year in which the owner attains age 84 equal to the current notional account value. Contract S provides that assets within the contract may be invested in a Fixed Account at a guaranteed rate of 2 percent. Contract S provides no other additional benefits.

(ii) At the end of 2008, when G has an attained age of 78 and 9 months the notional account value of Contract S (after the distribution for 2008 of 4.93% of the notional account value as of December 31, 2007) is $550,000, and the High Water Mark, before adjustment for any withdrawals from Contract S in 2008 is $1,000,000. Thus, Contract S will provide additional benefits (*i.e.* the death benefits in excess of the notional account value) through 2014, the year S turns 84. The actuarial present value of these additional benefits at the end of 2008 is determined to be $84,300 (15 percent of the notional account value). In making this determination, the following assumptions are made: on the average, deaths occur mid-year; the investment return on his notional account value is 2 percent per annum; and minimum required distributions (determined without regard to additional benefits under the Contract S) are made at the end of each year. The following table summarizes the actuarial methodology used in determining the actuarial present value of the additional benefit.

Year	Death benefit during year	End-of-year notional account before withdrawal	Average notional account	Withdrawal at end of year	End-of-year notional account after withdrawal
2008	$1,000,000				$550,000
2009	[1] 950,739	[2] $561,000	[3] $555,500	[4] $28,205	532,795
2010	901,983	543,451	538,123	28,492	514,959
2011	853,749	525,258	520,109	28,769	496,490
2012	806,053	506,419	501,454	29,034	477,385
2013	758,916	486,933	482,159	29,287	457,645
2014	712,356	466,798	462,222	29,525	437,273

[1] $1,000,000 death benefit reduced 4.93 percent for withdrawal during 2008.
[2] Notional account value at end of prior year (after distribution) increased by 2 percent return for year.
[3] Average of $550,000 notional account value at end of prior year (after distribution) and $561,000 notional account value at end of current year (before distribution).
[4] December 31, 2008 notional account (before distribution) divided by uniform lifetime table age 79 factor of 19.5.

Year	Survivorship to start of year	Interest discount to end of 2008	Mortality rate during year	Discounted additional benefits within year
2008.				
2009	1.00000	.97590	[5] .04426	17,070
2010	.95574	[6] .92943	.04946	[7] 15,987
2011	[8] .90847	.88517	.05519	14,807
2012	.85833	.84302	.06146	13,546
2013	.80558	.80288	.06788	12,150
2014	.75090	.76464	.07477	10,739
				$84,300

[5] One-quarter age 78 rate plus three-quarters age 79 rate.
[6] Five percent discounted 18 months (1.05 + (− 1.5)).
[7] Blended age 79/age 80 mortality rate (.04946) multiplied by the $363,860 excess of death benefit over the average notional account value (901,983 less 538,123) multiplied by .95574 probability of survivorship to the start of 2010 multiplied by 18 month interest discount of .92943.
[8] Survivorship to start of preceding year (.95574) multiplied by probability of survivorship during prior year (1–.04946).

(iii) Because Contract S provides that, in the case of a distribution, the value of the additional death benefit (which is the only additional benefit available under the contract) is reduced by an amount that is at least proportional to the reduction in the notional account value and, at age 78 and 9 months, the sum of the notional account value (dollar amount credited to the employee under the contract) and the actuarial present value of the additional death benefit is no more than 120 percent of the notional account value, the exclusion under paragraph (c)(2) of this A–12 is applicable for 2009. Therefore, for purposes of applying the rules in § 1.401(a)(9)–5, the entire interest under Contract S may be determined as the notional account value (*i.e.* without regard to the additional death benefit).

Example 2. (i) The facts are the same as in (*Example 1* except that the notional account value is $450,000 at the end of 2008. In this instance, the actuarial present value of the death benefit in excess of the notional account value in 2008 is determined to be $108,669 (24 percent of the notional account value). The following table summarizes the actuarial methodology used in determining the actuarial present value of the additional benefit.

Year	Death benefit during year	End-of-year notional account before withdrawal	Average notional account	Withdrawal at end of year	End-of-year notional account after withdrawal
2008	$1,000,000				$450,000
2009	950,739	$459,000	$454,500	$23,077	435,923
2010	901,983	444,642	440,282	23,311	421,330
2011	853,749	429,757	425,543	23,538	406,219
2012	806,053	414,343	410,281	23,755	390,588
2013	758,916	398,399	394,494	23,962	374,437
2014	712,356	381,926	378,181	24,157	357,768

Year	Survivorship to start of year	Interest discount to end of 2008	Mortality rate during year	Discounted additional benefits within year
2008.				
2009	1.00000	.97590	.04426	$21,432
2010	.95574	.92943	.04946	20,286
2011	.90847	.88517	.05519	19,004
2012	.85833	.84302	.06146	17,601
2013	.80558	.80288	.06788	15,999
2014	.75090	.76464	.07477	14,347
				$108,669

(ii) Because the sum of the notional account balance and the actuarial present value of the additional death benefit is more than 120 percent of the notional account value, the exclusion under paragraph (b)(1) of this A–12 does not apply for 2009. Therefore, for purposes of applying the rules in §1.401(a)(9)–5, the entire interest under Contract S must include the actuarial present value of the additional death benefit.

Q–13: When can an annuity payment period be changed?

A–13. (a) *In general.* An annuity payment period may be changed in accordance with the provisions set forth in paragraph (b) of this A–13 or in association with an annuity payment increase described in A–14 of this section.

(b) *Reannuitization.* If, in a stream of annuity payments that otherwise satisfies section 401(a)(9), the annuity payment period is changed and the annuity payments are modified in association with that change, this modification will not cause the distributions to fail to satisfy section 401(a)(9) provided the conditions set forth in paragraph (c) of this A–13 are satisfied, and either—

(1) The modification occurs at the time that the employee retires or in connection with a plan termination;

(2) The annuity payments prior to modification are annuity payments paid over a period certain without life contingencies; or

(3) The annuity payments after modification are paid under a qualified joint and survivor annuity over the joint lives of the employee and a designated beneficiary, the employee's spouse is the sole designated beneficiary, and the modification occurs in connection with the employee becoming married to such spouse.

(c) *Conditions.* In order to modify a stream of annuity payments in accordance with paragraph (b) of this A–13, the following conditions must be satisfied—

(1) The future payments under the modified stream satisfy section 401(a)(9) and this section (determined by treating the date of the change as a new annuity starting date and the actuarial present value of the remaining payments prior to modification as the entire interest of the participant);

(2) For purposes of sections 415 and 417, the modification is treated as a new annuity starting date;

(3) After taking into account the modification, the annuity stream satisfies section 415 (determined at the original annuity starting date, using the interest rates and mortality tables applicable to such date); and

(4) The end point of the period certain, if any, for any modified payment period is not later than the end point available under section 401(a)(9) to the employee at the original annuity starting date.

(d) *Examples.* For the following examples in this A–13, assume that the Applicable Interest Rate throughout the period from 2005 through 2008 is 5 percent and throughout 2009 is 4 percent, the Applicable Mortality Table throughout the period from 2005 to 2009 is the table provided in Rev. Rul. 2001–62 (2001–C.B. 632) and the section 415 limit in 2005 at age 70 for a straight life annuity is $255,344:

Example 1. (i) A participant (D), who has 10 years of participation in a frozen defined benefit plan (Plan W), attains age 70½ in 2005. D is not retired and elects to receive distributions from Plan W in the form of a straight life (*i.e.* level payment) annuity with annual payments of $240,000 per year beginning in 2005 at a date when D has an attained age of 70. Plan W offers non-retired employees in pay status the opportunity to modify their annuity payments due to an associated change in the payment period at retirement. Plan W treats the date of the change in payment period as a new annuity starting date for the purposes of sections 415 and 417. Thus, for example, the plan provides a new qualified and joint survivor annuity election and obtains spousal consent.

(ii) Plan W determines modifications of annuity payment amounts at retirement such that the present value of future new annuity payment amounts (taking into account the new associated payment period) is actuarially equivalent to the present value of future pre-modification annuity payments (taking into account the pre-modification annuity payment period). Actuarial equivalency for this purpose is determined using the Applicable Interest Rate and the Applicable Mortality Table as of the date of modification.

(iii) D retires in 2009 at the age of 74 and, after receiving four annual payments of $240,000, elects to receive his remaining distributions from Plan W in the form of an immediate final lump sum payment (calculated at 4 percent interest) of $2,399,809.

(iv) Because payment of retirement benefits in the form of an immediate final lump sum payment satisfies (in terms of form) section 401(a)(9), the condition under paragraph (c)(1) of this A–13 is met.

(v) Because Plan W treats a modification of an annuity payment stream at retirement as a new annuity starting date for purposes of sections 415 and 417, the condition under paragraph (c)(2) of this A–13 is met.

(vi) After taking into account the modification, the annuity stream determined as of the original annuity starting date consists of annual payments beginning at age 70 of $240,000, $240,000, $240,000, $240,000, and $2,399,809. This benefit stream is actuarially equivalent to a straight life annuity at age 70 of $250,182, an amount less than the section 415 limit determined at the original annuity starting date, using the interest and mortality rates applicable to such date. Thus, the condition under paragraph (c)(3) of this A–13 is met.

(vii) Thus, because a stream of annuity payments in the form of a straight life annuity satisfies section 401(a)(9), and because each of the conditions under paragraph (c) of this A–13 are satisfied, the modification of annuity payments to D described in this example meets the requirements of this A–13.

Example 2. The facts are the same as in *Example 1* except that the straight life annuity payments are paid at a rate of $250,000 per year and after D retires the lump sum payment at age 75 is $2,499,801. Thus, after taking into account the modification, the annuity stream determined as of the original annuity starting date consists of annual payments beginning at age 70 of $250,000, $250,000, $250,000, $250,000, and $2,499,801. This benefit stream is actuarially equivalent to a straight life annuity at age 70 of $260,606, an amount greater than the section 415 limit determined at the original annuity starting date, using the interest and mortality rates applicable to such date. Thus, the lump sum payment to D fails to satisfy the condition under paragraph (c)(3) of this A–13. Therefore, the lump sum payment to D fails to meet the requirements of this A–13 and thus fails to satisfy the requirements of section 401(a)(9).

Example 3. (i) A participant (E), who has 10 years of participation in a frozen defined benefit plan (Plan X), attains age 70½ and retires in 2005 at a date when his attained age is 70. E was born in 1935. E elects to receive annual distributions from Plan X in the form of a 27 year period certain annuity (*i.e.*, a 27 year annuity payment period without a life contingency) paid at a rate of $37,000 per year beginning in 2005 with future payments increasing at a rate of 4 percent per year (*i.e.*, the 2006 payment will be $38,480, the 2007 payment will be $40,019 and so on). Plan X offers participants in pay status whose annuity payments are in the form of a term-certain annuity the opportunity to modify their payment period at any time and treats such modifications as a new annuity starting date for the purposes of sections 415 and 417. Thus, for example, the plan provides a new qualified and joint survivor annuity election and obtains spousal consent.

(ii) Plan X determines modifications of annuity payment amounts such that the present value of future new annuity payment amounts (taking into account the new associated payment period) is actuarially equivalent to the present value of future pre-modification annuity payments (taking into account the pre-modification annuity payment period). Actuarial equivalency for this purpose is determined using 5 percent and the Applicable Mortality Table as of the date of modification.

(iii) In 2008, E, after receiving annual payments of $37,000, $38,480, and $40,019, elects to receive his remaining distributions from Plan W in the form of a straight life annuity paid with annual payments of $92,133 per year.

(iv) Because payment of retirement benefits in the form of a straight life annuity satisfies (in terms of form) section 401(a)(9), the condition under paragraph (c)(1) of this A–13 is met.

(v) Because Plan X treats a modification of an annuity payment stream at retirement as a new annuity starting date for purposes of sections 415 and 417, the condition under paragraph (c)(2) of this A–13 is met.

(vi) After taking into account the modification, the annuity stream determined as of the original annuity starting date consists of annual payments beginning at age 70 of $37,000, $38,480, $40,019, and a straight life annuity beginning at age 73 of $92,133. This benefit stream is equivalent to a straight life annuity at age 70 of $82,539, an amount less than the section 415 limit determined at the original annuity starting date, using the interest and mortality rates applicable to such date. Thus, the condition under paragraph (c)(3) of this A–13 is met.

(vii) Thus, because a stream of annuity payments in the form of a straight life annuity satisfies section 401(a)(9), and because each of the conditions under paragraph (c) of this A–13 are satisfied, the modification of annuity payments to E described in this example meets the requirements of this A–13.

Q–14. Are annuity payments permitted to increase?

A–14. (a) *General rules.* Except as otherwise provided in this section, all annuity payments (whether paid over an employee's life, joint lives, or a period certain) must be nonincreasing or increase only in accordance with one or more of the following—

(1) With an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index as defined in paragraph (b) of this A–14 for a 12-month period ending in the year during which the increase occurs or the prior year;

(2) With a percentage increase that occurs at specified times (*e.g.*, at specified ages) and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index as defined in paragraph (b) of this A–14 since the annuity starting date, or if later, the date of the most recent percentage increase. However, in cases providing such a cumulative increase, an actuarial increase may not be provided to reflect the fact that increases were not provided in the interim years;

(3) To the extent of the reduction in the amount of the employee's payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the beneficiary whose life was being used to determine the period described in section 401(a)(9)(A)(ii) over which payments were being made dies or is no longer the employee's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p);

(4) To pay increased benefits that result from a plan amendment;

(5) To allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single sum distribution upon the employee's death; or

(6) To the extent increases are permitted in accordance with paragraph (c) or (d) of this A–14.

(b) (1) For purposes of this A–14, an eligible cost-of-living index means an index described in paragraphs (b)(2), (b)(3), or (b)(4) of this A–14.

(2) A consumer price index that is based on prices of all items (or all items excluding food and energy) and issued by the Bureau of Labor Statistics, including an index for a specific population (such as urban consumers or urban wage earners and clerical workers) and an index for a geographic area or areas (such as a given metropolitan area or state).

(3) A percentage adjustment based on a cost-of-living index described in paragraph (b)(2) of this A–14, or a fixed percentage if less. In any year when the cost-of-living index is lower than the fixed percentage, the fixed percentage may be treated as an increase in an eligible cost-of-living index, provided it does not exceed the sum of:

(i) The cost-of-living index for that year, and

(ii) The accumulated excess of the annual cost-of-living index from each prior year over the fixed annual percentage used in that year (reduced by any amount previously utilized under this paragraph (b)(3)(ii)).

(4) A percentage adjustment based on the increase in compensation for the position held by the employee at the time of retirement, and provided under either the terms of a governmental plan within the meaning of section 414(d) or under the terms of a nongovernmental plan as in effect on April 17, 2002.

(c) *Additional permitted increases for annuity payments under annuity contracts purchased from insurance companies.* In the case of annuity payments paid from an annuity contract purchased from an insurance company, if the total future expected payments (determined in accordance with paragraph (e)(3) of this A–14) exceed the total value being annuitized (within the meaning of paragraph (e)(1) of this A–14) , the payments under the annuity will not fail to satisfy the nonincreasing payment requirement in A–1(a) of this section merely because the payments are increased in accordance with one or more of the following—

(1) By a constant percentage, applied not less frequently than annually;

(2) To provide a final payment upon the death of the employee that does not exceed the excess of the total value being annuitized (within the meaning of paragraph (e)(1) of this A–14) over the total of payments before the death of the employee;

(3) As a result of dividend payments or other payments that result from actuarial gains (within the meaning of paragraph (e)(2) of this A–14), but only if actuarial gain is measured no less frequently than annually and the resulting dividend payments or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured); and

(4) An acceleration of payments under the annuity (within the meaning of paragraph (e)(4) of this A–14).

(d) *Additional permitted increases for annuity payments from a qualified trust.* In the case of annuity payments paid under a defined benefit plan qualified under section 401(a) (other than annuity payments under an annuity contract purchased from an insurance company that satisfy paragraph (c) of this section), the payments under the annuity will not fail to satisfy the nonincreasing payment requirement in A–1(a) of this section merely because the payments are increased in accordance with one of the following—

(1) By a constant percentage, applied not less frequently than annually, at a rate that is less than 5 percent per year;

(2) To provide a final payment upon the death of the employee that does not exceed the excess of the actuarial present value of the employee's accrued benefit (within the meaning of section 411(a)(7)) calculated as the annuity starting date using the applicable interest rate and the applicable mortality table under section 417(e) (or, if greater, the total amount of employee contributions) over the total of payments before the death of the employee; or

(3) As a result of dividend payments or other payments that result from actuarial gains (within the meaning of paragraph (e)(2) of this A–14), but only if—

(i) Actuarial gain is measured no less frequently than annually;

(ii) The resulting dividend payments or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured);

(iii) The actuarial gain taken into account is limited to actuarial gain from investment experience;

(iv) The assumed interest used to calculate such actuarial gains is not less than 3 percent; and

(v) The payments are not increasing by a constant percentage as described in paragraph (d)(1) of this A–14.

(e) *Definitions.* For purposes of this A–14, the following definitions apply—

(1) Total value being annuitized means—

(i) In the case of annuity payments under a section 403(a) annuity plan or under a deferred annuity purchased by a section 401(a) trust, the value of the employee's entire interest (within the meaning of A–12 of this section) being annuitized (valued as of the date annuity payments commence);

(ii) In the case of annuity payments under an immediate annuity contract purchased by a trust for a defined benefit plan qualified under section 401(a), the amount of the premium used to purchase the contract; and

(iii) In the case of a defined contribution plan, the value of the employee's account balance used to purchase an immediate annuity under the contract.

(2) Actuarial gain means the difference between an amount determined using the actuarial assumptions (*i.e.*, investment return, mortality, expense, and other similar assumptions) used to calculate the initial payments before adjustment for any increases and the amount determined under the actual experience with respect to those factors. Actuarial gain also includes differences between the amount determined using actuarial assumptions when an annuity was purchased or commenced and such amount determined using actuarial assumptions used in calculating payments at the time the actuarial gain is determined.

(3) Total future expected payments means the total future payments expected to be made under the annuity contract as of the date of the determination, calculated using the Single Life Table in A–1 of §1.401(a)(9)–9 (or, if applicable, the Joint and Last Survivor Table in A–3 of in §1.401(a)(9)–9) for annuitants who are still alive, without regard to any increases in annuity payments after the date of determination, and taking into account any remaining period certain.

(4) Acceleration of payments means a shortening of the payment period with respect to an annuity or a full or partial commutation of the future annuity payments. An increase in the payment amount will be treated as an acceleration of payments in the annuity only if the total future expected payments under the annuity (including the amount of any payment made as a result of the acceleration) is decreased as a result of the change in payment period.

(f) *Examples.* Paragraph (c) of this A–14 is illustrated by the following examples:

Example 1. Variable annuity. A retired participant (Z1) in defined contribution plan X attains age 70 on March 5, 2005, and thus, attains age 70½ in 2005. Z1 elects to purchase annuity Contract Y1 from Insurance Company W in 2005. Contract Y1 is a single life annuity contract with a 10-year period certain. Contract Y1 provides for an initial annual payment calculated with an assumed interest rate (AIR) of 3 percent. Subsequent payments are determined by multiplying the prior year's payment by a fraction the numerator of which is 1 plus the actual return on the separate account assets underlying Contract Y1 since the preceding payment and the denominator of which is 1 plus the AIR during that period. The value of Z1's account balance in Plan X at the time of purchase is $105,000, and the purchase price of Contract Y1 is $105,000. Contract Y1 provides Z1 with an initial payment of $7,200 at the time of purchase in 2005. The total future expected payments to Z1 under Contract Y1 are $122,400, calculated as the initial payment of $7,200 multiplied by the age 70 life expectancy of 17 provided in the Single Life Table in A–1 of §1.401(a)(9)–9. Because the total future expected payments on the purchase date exceed the total value used to purchase Contract Y1 and payments may only increase as a result of actuarial gain, with such increases, beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity, distributions received by Z1 from Contract Y1 meet the requirements under paragraph (c)(3) of this A–14.

Example 2. Participating annuity. A retired participant (Z2) in defined contribution plan X attains age 70 on May 1, 2005, and thus, attains age 70½ in 2005. Z2 elects to purchase annuity Contract Y2 from Insurance Company W in 2005. Contract Y2 is a participating single life annuity contract with a 10-year period certain. Contract Y2 provides for level annual payments with dividends paid in a lump sum in the year after the year for which the actuarial experience is measured or paid out levelly beginning in the year after the year for which the actuarial gain is measured over the remaining lifetime and period certain, *i.e.*, the period certain ends at the same time as the original period certain. Dividends are determined annually by the Board of Directors of Company W based upon a comparison of actual actuarial experience to expected actuarial experience in the past year. The value of Z2's account balance in

Plan X at the time of purchase is $265,000, and the purchase price of Contract Y2 is $265,000. Contract Y2 provides Z2 with an initial payment of $16,000 in 2005. The total future expected payments to Z2 under Contract Y2 are calculated as the annual initial payment of $16,000 multiplied by the age 70 life expectancy of 17 provided in the Single Life Table in A–1 of §1.401(a)(9)–9 for a total of $272,000. Because the total future expected payments on the purchase date exceeds the total value used to purchase Contract Y2 and payments may only increase as a result of actuarial gain, with such increases, beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity, distributions received by Z2 from Contract Y2 meet the requirements under paragraph (c)(3) of this A–14.

Example 3. Participating annuity with dividend accumulation. The facts are the same as in *Example 2* except that the annuity provides a dividend accumulation option under which Z2 may defer receipt of the dividends to a time selected by Z2. Because the dividend accumulation option permits dividends to be paid later than the end of the year following the year for which the actuarial experience is measured or as a stream of payments that only increase as a result of actuarial gain, with such increases beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity in *Example 2*, the dividend accumulation option does not meet the requirements of paragraph (c)(3) of this A–14. Neither does the dividend accumulation option fit within any of the other increases described in paragraph (c) of this A–14. Accordingly, the dividend accumulation option causes the contract, and consequently any distributions from the contract, to fail to meet the requirements of this A–14 and thus fail to satisfy the requirements of section 401(a)(9).

Example 4. Participating annuity with dividends used to purchase additional death benefits. The facts are the same as in *Example 2* except that the annuity provides an option under which actuarial gain under the contract is used to provide additional death benefit protection for Z2. Because this option permits payments as a result of actuarial gain to be paid later than the end of the year following the year for which the actuarial experience is measured or as a stream of payments that only increase as a result of actuarial gain, with such increases beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity in *Example 2*, the option does not meet the requirements of paragraph (c)(3) of this A–14. Neither does the option fit within any of the other increases described in paragraph (c) of this A–14. Accordingly, the addition of the option causes the contract, and consequently any distributions from the contract, to fail to meet the requirements of this A–14 and thus fail to satisfy the requirements of section 401(a)(9).

Example 5. Annuity with a fixed percentage increase. A retired participant (Z3) in defined contribution plan X attains age 70½ in 2005. Z3 elects to purchase annuity contract Y3 from Insurance Company W. Contract Y3 is a single life annuity contract with a 20-year period certain (which does not exceed the maximum period certain permitted under A–3(a) of this section) with fixed annual payments increasing 3 percent each year. The value of Z3's account balance in Plan X at the time of purchase is $110,000, and the purchase price of Contract Y3 is $110,000. Contract Y3 provides Z3 with an initial payment of $6,000 at the time of purchase in 2005. The total future expected payments to Z3 under Contract Y3 are $120,000, calculated as the initial annual payment of $6,000 multiplied by the period certain of 20 years. Because the total future expected payments on the purchase date exceed the total value used to purchase Contract Y3 and payments only increase as a constant percentage applied not less frequently than annually, distributions received by Z3 from Contract Y3 meet the requirements under paragraph (c)(1) of this A–14.

Example 6. Annuity with excessive increases. The facts are the same as in *Example 5* except that the initial payment is $5,400 and the annual rate of increase is 4 percent. In this example, the total future expected payments are $108,000, calculated as the initial payment of $5,400 multiplied by the period certain of 20 years. Because the total future expected payments are less than the total value of $110,000 used to purchase Contract Y3, distributions received by Z3 do not meet the requirements under paragraph (c) of this A–14 and thus fail to meet the requirements of section 401(a)(9).

Example 7. Annuity with full commutation feature. (i) A retired participant (Z4) in defined contribution Plan X attains age 78 in 2005. Z4 elects to purchase Contract Y4 from Insurance Company W. Contract Y4 provides for a single life annuity with a 10 year period certain (which does not exceed the maximum period certain permitted under A–3(a) of this section) with annual payments. Contract Y4 provides that Z4 may cancel Contract Y4 at any time before Z4 attains age 84, and receive, on his next payment due date, a final payment in an amount determined by multiplying the initial payment amount by a factor obtained from Table M of Contract Y4 using the Y4's age as of Y4's birthday in the calendar year of the final payment. The value of Z4's account balance in Plan X at the time of purchase is $450,000, and the purchase price of Contract Y4 is $450,000. Contract Y4 provides Z4 with an initial payment in 2005 of $40,000. The factors in Table M are as follows:

Age at final payment	Factor
79	10.5
80	10.0
81	9.5
82	9.0
83	8.5
84	8.0

(ii) The total future expected payments to Z4 under ContractY4 are $456,000, calculated as the initial payment of 40,000 multiplied by the age 78 life expectancy of 11.4 provided in the Single Life Table in A–1 of §1.401(a)(9)–9. Because the total future expected payments on the purchase date exceed the total value being annuitized (*i.e.*, the $450,000 used to purchase Contract Y4), the permitted increases set forth in paragraph (c) of this A–14 are available. Furthermore, because the factors in Table M are less than the life expectancy of each of the ages in the Single Life Table provided in A–1 of §1.401(a)(9)–9, the final payment is always less than the total future expected payments. Thus, the final payment is an acceleration of payments within the meaning of paragraph (c)(4) of this A–14.

(iii) As an illustration of the above, if Participant Z4 were to elect to cancel Contract Y4 on the day before he was to attain age 84, his contractual final payment would be $320,000. This amount is determined as $40,000 (the annual payment amount due under Contract Y4) multiplied by 8.0 (the factor in Table M for the next payment due date, age 84). The total future expected payments under Contract Y4 at age 84 before the final payment is $324,000, calculated as the initial payment amount multiplied by 8.1, the age 84 life expectancy provided in the Single Life Table in A–1 of §1.401(a)(9)–9. Because $320,000 (the total future expected payments under the annuity contract, including the amount of the final payment) is less than $324,000 (the total future expected payments under the annuity contract, determined before the election), the final payment is an acceleration of payments within the meaning of paragraph (c)(4) of this A–14.

Example 8. Annuity with partial commutation feature. (i) The facts are the same as in *Example 7* except that the annuity provides Z4 may request, at any time before Z4 attains age 84, an ad hoc payment on his next payment due date with future payments reduced by an amount equal to the ad hoc payment divided by the factor obtained from Table M (from *Example* 7) corresponding to Z4's age at the time of the ad hoc payment. Because, at each age, the factors in Table M are less than the corresponding life expectancies in the Single Life Table in A–1 of §1.401(a)(9)–9, total future expected payments under Contract Y4 will decrease after an ad hoc payment. Thus, ad hoc distributions received by Z4 from Contract Y4 will satisfy the requirements under paragraph (c)(4) of this A–4.

(ii) As an illustration of paragraph (i) of this *Example 8*, if Z4 were to request, on the day before he was to attain age 84, an ad hoc payment of $100,000 on his next payment due date, his recalculated annual payment amount would be reduced to $27,500. This amount is determined as $40,000 (the amount of Z4's next annual payment) reduced by $12,500 (his $100,000 ad hoc payment divided by the Table M factor at age 84 of 8.0). Thus, Z4's total future expected payments after the ad hoc payment (and including the ad hoc payment) are equal to $322,750 ($100,000 plus $27,500 multiplied by the Single Life Table value of 8.1). Note that this $322,750 amount is less than the amount of Z4's total future expected payments before the ad hoc payment ($324,000, determined as $40,000 multiplied by 8.1), and the requirements under paragraph (c)(4) of this A–4 are satisfied.

Example 9. Annuity with excessive increases. (i) A retired participant (Z5) in defined contribution plan X attains age 70½ in 2005. Z5 elects to purchase annuity Contract Y5 from Insurance Company W in 2005 with a premium of $1,000,000. Contract Y5 is a single life annuity contract with a 20-year period certain. Contract Y5 provides for an initial payment of $200,000, a second payment one year from the time of purchase of $40,000, and 18 succeeding annual payments each increasing at a constant percentage rate of 4.5 percent from the preceding payment.

(ii) Contract Y5 fails to meet the requirements of section 401(a)(9) because the total future expected payments without regard to any increases in the annuity payment, calculated as $200,000 in year one and $40,000 in each of years two through twenty, is only $960,000 (*i.e.*, an amount that does not exceed the total value used to purchase the annuity).

Q–15: Are there special rules applicable to payments made under a defined benefit plan or annuity contract to a surviving child?

A–15: Yes, pursuant to section 401(a)(9)(F), payments under a defined benefit plan or annuity contract that are made to an employee's child until such child reaches the age of majority (or dies, if earlier) may be treated, for purposes of section 401(a)(9), as if such payments were made to the surviving spouse to the extent they become payable to the surviving spouse upon cessation of the payments to the child. For purposes of the preceding sentence, a child may be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26. In addition, a child who is disabled within the meaning of section 72(m)(7) when the child reaches the age of majority may be treated as having not reached the age of majority so long as the child continues to be disabled. Thus, when payments described in this paragraph A–15 become payable to the surviving spouse because the child attains the age of majority, recovers from a disabling illness, dies, or completes a specified course of education, there is not an increase in benefits under A–1 of this section. Likewise, the age of child receiving such payments is not taken into consideration for purposes of the minimum incidental benefit requirement of A–2 of this section.

Q–16: What are the rules for determining required minimum distributions for defined benefit plans and annuity contracts for calendar years 2003, 2004, and 2005?

A–16: A distribution from a defined benefit plan or annuity contract for calendar years 2003, 2004, and 2005 will not fail to satisfy section 401(a)(9) merely because the payments do not satisfy A–1 through A–15 of this section, provided the payments satisfy section 401(a)(9) based on a reasonable and good faith interpretation of the provisions of section 401(a)(9).

Q–17. What is a qualifying longevity annuity contract?

A–17. (a) *Definition of qualifying longevity annuity contract.* A qualifying longevity annuity contract (QLAC) is an annuity contract that is purchased from an insurance company for an employee and that, in accordance with the rules of application of paragraph (d) of this A–17, satisfies each of the following requirements—

(1) Premiums for the contract satisfy the requirements of paragraph (b) of this A–17;

(2) The contract provides that distributions under the contract must commence not later than a specified annuity starting date that is no later than the first day of the month next following the 85th anniversary of the employee's birth;

(3) The contract provides that, after distributions under the contract commence, those distributions must satisfy the requirements of this section (other than the requirement in A–1(c) of this section that annuity payments commence on or before the required beginning date);

(4) The contract does not make available any commutation benefit, cash surrender right, or other similar feature;

(5) No benefits are provided under the contract after the death of the employee other than the benefits described in paragraph (c) of this A–17;

(6) When the contract is issued, the contract (or a rider or endorsement with respect to that contract) states that the contract is intended to be a QLAC; and

(7) The contract is not a variable contract under section 817, an indexed contract, or a similar contract, except to the extent provided by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin and made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and on the IRS Web site at *http://www.irs.gov.*

(b) *Limitations on premiums*—(1) *In general.* The premiums paid with respect to the contract on a date satisfy the requirements of this paragraph (b) if they do not exceed the lesser of the dollar limitation in paragraph (b)(2) of this A–17 or the percentage limitation in paragraph (b)(3) of this A–17.

(2) *Dollar limitation.* The dollar limitation is an amount equal to the excess of—

(i) $125,000 (as adjusted under paragraph (d)(2) of this A–17), over

(ii) The sum of—

(A) The premiums paid before that date with respect to the contract, and

(B) The premiums paid on or before that date with respect to any other contract that is intended to be a QLAC and that is purchased for the employee under the plan, or any other plan, annuity, or account described in section 401(a), 403(a), 403(b), or 408 or eligible governmental plan under section 457(b).

(3) *Percentage limitation.* The percentage limitation is an amount equal to the excess of—

(i) 25 percent of the employee's account balance under the plan (including the value of any QLAC held under the plan for the employee) as of that date, determined in accordance with paragraph (d)(1)(iii) of this A–17, over

(ii) The sum of—

(A) The premiums paid before that date with respect to the contract, and

(B) The premiums paid on or before that date with respect to any other contract that is intended to be a QLAC and that is held or was purchased for the employee under the plan.

(c) *Payments after death of the employee*—(1) *Surviving spouse is sole beneficiary*—(i) *Death on or after annuity starting date.* If the employee dies on or after the annuity starting date for the contract and the employee's surviving spouse is the sole beneficiary under the contract then, except as provided in paragraph (c)(4) of this A–17, the only benefit permitted to be paid after the employee's death is a life annuity payable to the surviving spouse where the periodic annuity payment is not in excess of 100 percent of the periodic annuity payment that is payable to the employee.

(ii) *Death before annuity starting date*—(A) *Amount of annuity.* If the employee dies before the annuity starting date and the employee's surviving spouse is the sole beneficiary under the contract then, except as provided in paragraph (c)(4) of this A–17, the only benefit permitted to be paid after the employee's death is a life annuity payable to the surviving spouse where the periodic annuity payment is not in excess of 100 percent of the periodic annuity payment that would have been payable to the employee as of the date that benefits to the surviving spouse commence. However, the annuity is permitted to exceed 100 percent of the periodic annuity payment that would have been payable to the employee to the extent necessary to satisfy the requirement to provide a qualified preretirement survivor annuity (as defined under section 417(c)(2) or ERISA section 205(e)(2)) pursuant to section 401(a)(11)(A)(ii) or ERISA section 205(a)(2).

(B) *Commencement date for annuity.* Any life annuity payable to the surviving spouse under paragraph (c)(1)(ii)(A) of this A–17 must commence no later than the date on which the annuity payable to the employee would have commenced under the contract if the employee had not died.

(2) *Surviving spouse is not sole beneficiary*—(i) *Death on or after annuity starting date.* If the employee dies on or after the annuity starting date for the contract and the employee's surviving spouse is not the sole beneficiary under the contract then, except as provided in paragraph (c)(4) of this A–17, the only benefit permitted to be paid after the employee's death is a life annuity payable to the designated beneficiary where the periodic annuity payment is not in excess of the applicable percentage (determined under paragraph (c)(2)(iii) of this A–17) of the periodic annuity payment that is payable to the employee.

(ii) *Death before annuity starting date*—(A) *Amount of annuity.* If the employee dies before the annuity starting date and the employee's surviving spouse is not the sole beneficiary under the contract then, except as provided in paragraph (c)(4) of this A–17, the only benefit permitted to be paid after the employee's death is a life annuity payable to the designated beneficiary where the periodic annuity payment is not in excess of the applicable percentage (determined under paragraph (c)(2)(iii) of this A–17) of the periodic annuity payment that would have been payable to the employee as of the date that benefits to the designated beneficiary commence under this paragraph (c)(2)(ii).

(B) *Commencement date for annuity.* In any case in which the employee dies before the annuity starting date, any life annuity payable to a designated beneficiary under this paragraph (c)(2)(ii) must commence by the last day of the calendar year immediately following the calendar year of the employee's death.

(iii) *Applicable percentage*—(A) *Contracts without pre-annuity starting date death benefits.* If, as described in paragraph (c)(2)(iv) of this A–17, the contract does not provide for a pre-annuity starting date non-spousal death benefit, the applicable percentage is the percentage described in the table in A–2(c) of this section.

(B) *Contracts with set beneficiary designation.* If the contract provides for a set non-spousal beneficiary designation as described in paragraph (c)(2)(v) (and is not a contract described in paragraph (c)(2)(iv)) of this A–17, the applicable percentage is the percentage described in the table set forth in paragraph (c)(2)(iii)(D) of this A–17. A contract is still considered to provide for a set beneficiary designation even if the surviving spouse becomes the sole beneficiary before the annuity starting date. In such a case, the requirements of paragraph (c)(1) of this A–17 apply and not the requirements of this paragraph (c)(2).

(C) *Contracts providing for return of premium.* If the contract provides for a return of premium as described in paragraph (c)(4) of this A–17, the applicable percentage is 0.

(D) *Applicable percentage table.* The applicable percentage is based on the adjusted employee/beneficiary age difference, determined in the same manner as in A–2(c) of this section.

Adjusted employee/beneficiary age difference	Applicable percentage
2 years or less	100
3	88
4	78
5	70
6	63
7	57
8	52
9	48
10	44
11	41
12	38
13	36
14	34
15	32
16	30
17	28
18	27
19	26
20	25
21	24
22	23
23	22
24	21
25 and greater	20

(iv) *No pre-annuity starting date non-spousal death benefit.* A contract is described in this paragraph (c)(2)(iv) if the contract provides that no benefit is permitted to be paid to a beneficiary other than the employee's surviving spouse after the employee's death—

(A) In any case in which the employee dies before the annuity starting date under the contract; and

(B) In any case in which the employee selects an annuity starting date that is earlier than the specified annuity starting date under the contract and the employee dies less than 90 days after making that election.

(v) *Contracts permitting set non-spousal beneficiary designation.* A contract is described in this paragraph (c)(2)(v) if the contract provides that if the beneficiary under the contract is not the employee's surviving spouse, benefits are payable to the beneficiary only if the beneficiary was irrevocably designated on or before the later of the date of purchase or the employee's required beginning date.

(3) *Calculation of early annuity payments.* For purposes of paragraphs (c)(1)(ii) and (c)(2)(ii) of this A–17, to the extent the contract does not provide an option for the employee to select an annuity starting date that is earlier than the date on which the annuity payable to the employee would have commenced under the contract if the employee had not died, the contract must provide a way to determine the periodic annuity payment that would have been payable if the employee were to have an option to accelerate the payments and the payments had commenced to the employee immediately prior to the date that benefit payments to the surviving spouse or designated beneficiary commence.

(4) *Return of premiums*—(i) *In general.* In lieu of a life annuity payable to a designated beneficiary under paragraph (c)(1) or (2) of this A–17, a QLAC is permitted to provide for a benefit to be paid to a beneficiary after the death of the employee in an amount equal to the excess of—

(A) The premium payments made with respect to the QLAC over

(B) The payments already made under the QLAC.

(ii) *Payments after death of surviving spouse.* If a QLAC is providing a life annuity to a surviving spouse (or will provide a life annuity to a surviving spouse) under paragraph (c)(1) of this A–17, it is also permitted to provide for a benefit paid to a beneficiary after the death of both the employee and the spouse in an amount equal to the excess of—

(A) The premium payments made with respect to the QLAC over

(B) The payments already made under the QLAC.

(iii) *Other rules*—(A) *Timing of return of premium payment following death of employee.* A return of premium payment under this paragraph (c)(4) must be paid no later than the end of the calendar year following the calendar year in which the employee dies. If the employee's death is after the required beginning date, the return of premium payment is treated as a required minimum distribution for the year in which it is paid and is not eligible for rollover.

(B) *Timing of return of premium payment following death of surviving spouse receiving life annuity.* If the return of premium payment is paid after the death of a surviving spouse who is receiving a life annuity (or after the death of a surviving spouse who has not yet commenced receiving a life annuity after the death of the employee), the return of premium payment under this paragraph (c)(4) must be made no later than the end of the calendar year following the calendar year in which the surviving spouse dies. If the surviving spouse's death is after the required beginning date for the surviving spouse, then the return of premium payment is treated as a required minimum distribution for the year in which it is paid and is not eligible for rollover.

(5) *Multiple beneficiaries.* If an employee has more than one designated beneficiary under a QLAC, the rules in A–2(a) of §1.401(a)(9)–8 apply for purposes of paragraphs (c)(1) and (c)(2) of this A–17.

(d) *Rules of application*—(1) *Rules relating to premiums*—(i) *Reliance on representations.* For purposes of the limitation on premiums described in paragraphs (b)(2) and (3) of this A–17, unless the plan administrator has actual knowledge to the contrary, the plan administrator may rely on an employee's representation (made in writing or such other form as may be prescribed by the Commissioner) of the amount of the premiums described in paragraphs (b)(2)(ii)(B) and (b)(3)(ii)(B) of this A–17, but only with respect to premiums that are not paid under a plan, annuity, or contract that is maintained by the employer or an entity that is treated as a single employer with the employer under section 414(b), (c), (m), or (o).

(ii) *Consequences of excess premiums*—(A) *General Rule.* If an annuity contract fails to be a QLAC solely because a premium for the contract exceeds the limits under paragraph (b) of this A–17, then the contract is not a QLAC beginning on the date that premium payment is made unless the excess premium is returned to the non-QLAC portion of the employee's account in accordance with paragraph (d)(1)(ii)(B) of this A–17. If the contract fails to be a QLAC, then the value of the contract may not be disregarded under A–3(d) of §1.401(a)(9)–5 as of the date on which the contract ceases to be a QLAC.

(B) *Correction in year following year of excess.* If the excess premium is returned (either in cash or in the form of a contract that is not intended to be a QLAC) to the non-QLAC portion of the employee's account by the end of the calendar year following the calendar year in which the excess premium was originally paid, then the contract will not be treated as exceeding the limits under paragraph (b) of this A–17 at any time, and the value of the contract will not be included in the employee's account balance under A–3(d) of §1.401(a)(9)–5. If the excess premium (including the fair market value of an annuity contract that is not intended to be a QLAC, if applicable) is returned to the non-QLAC portion of the employee's account after the last valuation date for the calendar year in which the excess premium was originally paid, then the employee's account balance for that calendar year must be increased to reflect that excess premium in the same manner as an employee's account balance is increased under A–2 of §1.401(a)(9)–7 to reflect a rollover received after the last valuation date.

(C) *Return of excess premium not a commutation benefit.* If the excess premium is returned to the non-QLAC portion of the employee's account as described in paragraph (d)(1)(ii)(B) of this A–17, it will not be treated as a violation of the requirement in paragraph (a)(4) of this A–17 that the contract not provide a commutation benefit.

(iii) *Application of 25-percent limit.* For purposes of the 25-percent limit under paragraph (b)(3) of this A–17, an employee's account balance on the date on which premiums for a contract are paid is the account balance as of the last valuation date preceding the date of the premium payment, adjusted as follows. The account balance is increased for contributions allocated to the account during the period that begins after the valuation date and ends before the date the premium is paid and decreased for distributions made from the account during that period.

(2) *Dollar and age limitations subject to adjustments*—(i) *Dollar limitation.* In the case of calendar years beginning on or after January 1, 2015, the $125,000 amount under paragraph (b)(2)(i) of this A–17 will be adjusted at the same time and in the same manner as the limits are adjusted under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2013, and any increase under this paragraph (d)(2)(i) that is not a multiple of $10,000 will be rounded to the next lowest multiple of $10,000.

(ii) *Age limitation.* The maximum age set forth in paragraph (a)(2) of this A–17 may be adjusted to reflect changes in mortality, with any such adjusted age to be prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin and made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and on the IRS Web site at *http://www.irs.gov.*

(iii) *Prospective application of adjustments.* If a contract fails to be a QLAC because it does not satisfy the dollar limitation in paragraph (b)(2) of this A–17 or the age limitation in paragraph (a)(2) of this A–17, any subsequent adjustment that is made pursuant to paragraph (d)(2)(i) or paragraph (d)(2)(ii) of this A–17 will not cause the contract to become a QLAC.

(3) *Determination of whether contract is intended to be a QLAC*—(i) *Structural deficiency.* If a contract fails to be a QLAC at any time for a reason other than an excess premium described in paragraph (d)(1)(ii) of this A–17, then as of the date of purchase the contract will not be treated as a QLAC (for purposes of A–3(d) of §1.401(a)(9)–5) or as a contract that is intended to be a QLAC (for purposes of paragraph (b) of this A–17).

(ii) *Roth IRAs.* A contract that is purchased under a Roth IRA is not treated as a contract that is intended to be a QLAC for purposes of applying the dollar and percentage limitation rules in paragraphs (b)(2)(ii)(B) and (b)(3)(ii)(B) of this A–17. See A–14(d) of §1.408A–6. If a QLAC is purchased or held under a plan, annuity, account, or traditional IRA, and that contract is later rolled over or converted to a Roth IRA, the contract is not treated as a contract that is intended to be a QLAC after the date of the rollover or conversion. Thus, premiums paid with respect to the contract will not be taken into account under paragraph (b)(2)(ii)(B) or paragraph (b)(3)(ii)(B) of this A–17 after the date of the rollover or conversion.

(4) *Certain contracts not treated as similar contracts*—(i) *Participating annuity contract.* An annuity contract is not treated as a contract described in paragraph (a)(7) of this A–17 merely because it provides for the payment of dividends described in A–14(c)(3) of §1.401(a)(9)–6.

(ii) *Contracts with cost-of-living adjustments.* An annuity contract is not treated as a contract described in paragraph (a)(7) of this A–17 merely because it provides for a cost-of-living adjustment as described in A–14(b) of §1.401(a)(9)–6.

(5) *Group annuity contract certificates.* The requirement under paragraph (a)(6) of this A–17 that the contract state that it is intended to be a QLAC when issued is satisfied if a certificate is issued under a group annuity contract and the certificate, when issued, states that the employee's interest under the group annuity contract is intended to be a QLAC.

(e) *Effective/applicability date*—(1) *General applicability date.* This A–17 and §1.403(b)–6(e)(9) apply to contracts purchased on or after July 2, 2014 If on or after July 2, 2014 an existing contract is exchanged for a contract that satisfies the requirements of this A–17, the new contract will be treated as purchased on the date of the exchange and the fair market value of the contract that is exchanged for a QLAC will be treated as a premium paid with respect to the QLAC.

(2) *Delayed applicability date for requirement that contract state that it is intended to be QLAC*. An annuity contract purchased before January 1, 2016, will not fail to be a QLAC merely because the contract does not satisfy the requirement of paragraph (a)(6) of this A–17, provided that—

(i) When the contract (or a certificate under a group annuity contract) is issued, the employee is notified that the annuity contract is intended to be a QLAC; and

(ii) The contract is amended (or a rider, endorsement or amendment to the certificate is issued) no later than December 31, 2016, to state that the annuity contract is intended to be a QLAC.

[T.D. 9130, 69 FR 33293, June 15, 2004; 69 FR 68077, Nov. 23, 2004; T.D. 9459, 74 FR 45994, Sept. 8, 2009; T.D. 9673, 79 FR 37639, July 2, 2014; 79 FR 45683, Aug. 6, 2014]

§ 1.401(a)(9)–7 Rollovers and transfers.

Q–1. If an amount is distributed by one plan (distributing plan) and is rolled over to another plan, is the required minimum distribution under the distributing plan affected by the rollover?

A–1. No, if an amount is distributed by one plan and is rolled over to another plan, the amount distributed is still treated as a distribution by the distributing plan for purposes of section 401(a)(9), notwithstanding the rollover. See A–1 of §1.402(c)–2 for the definition of a rollover and A–7 of §1.402(c)–2 for rules for determining the portion of any distribution that is not eligible for rollover because it is a required minimum distribution.

Q–2. If an amount is distributed by one plan (distributing plan) and is rolled over to another plan (receiving plan), how are the benefit and the required minimum distribution under the receiving plan affected?

A–2. If an amount is distributed by one plan (distributing plan) and is rolled over to another plan (receiving plan), the benefit of the employee under the receiving plan is increased by the amount rolled over for purposes of determining the required minimum distribution for the calendar year immediately following the calendar year in which the amount rolled over is distributed. If the amount rolled over is received after the last valuation date in the calendar year under the receiving plan, the benefit of the employee as of such valuation date, adjusted in accordance with A–3 of §1.401(a)(9)–5, will be increased by the rollover amount valued as of the date of receipt. In addition, if the amount rolled over is received in a different calendar year from the calendar year in which it is distributed, the amount rolled over is deemed to have been received by the receiving plan in the calendar year in which it was distributed.

Q–3. In the case of a transfer of an amount of an employee's benefit from one plan (transferor plan) to another plan (transferee plan), are there any special rules for satisfying section 401(a)(9) or determining the employee's benefit under the transferor plan?

A–3. (a) In the case of a transfer of an amount of an employee's benefit from one plan (transferor plan) to another (transferee plan), the transfer is not treated as a distribution by the transferor plan for purposes of section 401(a)(9). Instead, the benefit of the employee under the transferor plan is decreased by the amount transferred. However, if any portion of an employee's benefit is transferred in a distribution calendar year with respect to that employee, in order to satisfy section 401(a)(9), the transferor plan must determine the amount of the required minimum distribution with respect to that employee for the calendar year of the transfer using the employee's benefit under the transferor plan before the transfer. Additionally, if any portion of an employee's benefit is transferred in the employee's second distribution calendar year but on or before the employee's required beginning date, in order to satisfy section 401(a)(9), the transferor plan must determine the amount of the minimum distribution requirement for the employee's first distribution calendar year based on the employee's benefit under the transferor plan before the transfer. The transferor plan may satisfy the minimum distribution requirement for the calendar year of the transfer (and the prior year if applicable) by segregating the amount which