foreign persons, then the payor or middleman must report the payment to the nonresident alien individual that is a resident of a country with which the United States has an income tax treaty or a tax information exchange agreement. If more than one of the joint account holders is a foreign person and is a resident of a country with which the United States has an income tax treaty or a tax information exchange agreement, then the payor or middleman may report the interest as paid to any such account holder that is treated as the primary account holder under § 31.3406(h)–2(a) of this chapter. If, however, any account holder requests its own Form 1042–S, the payor or middleman must furnish a Form 1042–S to the account holder who requests it.

(5) *Effective date.* Paragraph (e)(4) is effective for payee statements due after December 31 of the year in which the final regulations are published in the **Federal Register**, without regard to extensions. * * * (For interest paid to a Canadian nonresident alien individual on or before December 31 of the year in which final regulations are published in the **Federal Register**, see § 1.6049–6(e)(4) as in effect and contained in 26 CFR part 1 revised April 1, 2000.)

* * * * *

Par. 4. In section 1.6049–8, the section heading and paragraph (a) are revised to read as follows:

§ 1.6049–8 Interest and original issue discount paid to nonresident alien individuals.

(a) *Interest subject to reporting requirement.* For purposes of §§ 1.6049–4, 1.6049–6, and this section and except as provided in paragraph (b) of this section, the term *interest* means interest paid to a nonresident alien individual after December 31 of the year in which the final regulations are published in the **Federal Register**, where the interest is described in section 871(i)(2)(A) with respect to a deposit maintained at an office within the United States. For purposes of the regulations under section 6049, a nonresident alien individual is a person described in section 7701(b)(1)(B). The payor or middleman may rely upon a valid Form W–8 to determine whether the payment is made to a nonresident alien individual. Generally, amounts described in this paragraph (a) are not subject to backup withholding under section 3406. See § 31.3406(g)–1(d) of this chapter. However, if the payor or middleman does not have either a valid Form W–8 or valid Form W–9, the payor or middleman must report the payment as made to a U.S. non-exempt recipient if it must so treat the payee under the presumption rules of §§ 1.6049–5(d)(2) and 1.1441–1(b)(3)(iii) and must also backup withhold under section 3406. (For interest paid to a Canadian nonresident alien individual on or before December 31 of the year in which final regulations are published in the **Federal Register**, see § 1.6049–8(a) as in effect and contained in 26 CFR part 1 revised April 1, 2000.)

* * * * *

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 5. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 6. In § 31.3406(g)–1, paragraph (d) is revised to read as follows:

§ 31.3406(g)–1 Exceptions for payments to certain payees and certain other payment.

* * * * *

(d) *Reportable payments made to nonresident alien individuals.* A payment of interest that is reported on Form 1042–S as paid to a nonresident alien individual under § 1.6049–8(a) of this chapter is not subject to withholding under section 3406. (For interest paid to a Canadian nonresident alien individual on or before December 31 of the year in which final regulations are published in the **Federal Register**, see § 31.3406(g)–1(d) as in effect and contained in 26 CFR part 1 revised April 1, 2000.)

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 01–250 Filed 1–16–01; 8:45 am]

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DEPARTMENT OF TREASURY

Internal Revenue Service (IRS)

26 CFR Parts 1 and 54

[REG–130477–00; REG–130481–00]

RIN 1545–AY69, 1545–AY70

Required Distributions from Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to required minimum distributions from qualified plans, individual retirement plans, deferred compensation plans under section 457, and section 403(b) annuity contracts, custodial accounts, and retirement income accounts. These regulations will provide the public with guidance necessary to comply with the law and will affect administrators of, participants in, and beneficiaries of qualified plans; institutions that sponsor and individuals who administer individual retirement plans, individuals who use individual retirement plans for retirement income, and beneficiaries of individual retirement plans; and employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts and beneficiaries of such contracts and accounts.

DATES: Written and electronic comments must be received by April 17, 2001. Outlines of topics to be discussed at the public hearing scheduled for June 1, 2001, at 10 a.m. must be received by May 11, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–130477–00/REG130481–00) room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–130477–00/REG–130481–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: *http://www.irs.gov/tax__regs/reglist.html.* The public hearing on June 1, 2001, will be held in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Cathy A. Vohs, 202–622–6090; concerning submissions and the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, 202–622–7180 (not toll-free numbers).

Paperwork Reduction Act

The collections of information contained in these proposed regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–0996, in conjunction with the notice of proposed rulemaking published on July 27, 1987, 52 FR 28070, REG–EE–113–82, Required Distributions From Qualified Plans and Individual Retirement Plans, and control number 1545–1573, in

conjunction with the notice of proposed rulemaking published on December 30, 1997, 62 FR 67780, REG–209463–82, Required Distributions from Qualified Plans and Individual Retirement Plans.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books and records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) and to the Pension Excise Tax Regulations (26 CFR Part 54) under sections 401, 403, 408, and 4974 of the Internal Revenue Code of 1986. It is contemplated that proposed rules similar to those in these proposed regulations applicable to section 401 will be published in the near future for purposes of applying the distribution requirements of section 457(d). These amendments are proposed to conform the regulations to section 1404 of the Small Business Job Protection Act of 1996 (SBJPA) (110 Stat. 1791), sections 1121 and 1852 of the Tax Reform Act of 1986 (TRA of 1986) (100 Stat. 2464 and 2864), sections 521 and 713 of the Tax Reform Act of 1984 (TRA of 1984) (98 Stat. 865 and 955), and sections 242 and 243 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (96 Stat. 521). The regulations provide guidance on the required minimum distribution requirements under section 401(a)(9) for plans qualified under section 401(a). The rules are incorporated by reference in section 408(a)(6) and (b)(3) for individual retirement accounts and annuities (IRAs), section 408A(c)(5) for Roth IRAs, section 403(b)(10) for section 403(b) annuity contracts, and section 457(d) for eligible deferred compensation plans.

For purposes of this discussion of the background of the regulations in this preamble, as well as the explanation of provisions below, whenever the term *employee* is used, it is intended to include not only an employee but also an IRA owner.

Section 401(a)(9) provides rules for distributions during the life of the employee in section 401(a)(9)(A) and rules for distributions after the death of the employee in section 401(a)(9)(B). Section 401(a)(9)(A)(ii) provides that the entire interest of an employee in a qualified plan must be distributed, beginning not later than the employee's required beginning date, in accordance with regulations, over the life of the employee or over the lives of the employee and a designated beneficiary (or over a period not extending beyond the life expectancy of the employee and a designated beneficiary).

Section 401(a)(9)(C) defines required beginning date for employees (other than 5-percent owners and IRA owners) as April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 ½ or the calendar year in which the employee retires. For 5-percent owners and IRA owners, the required beginning date is April 1 of the calendar year following the calendar year in which the employee attains age 70 ½, even if the employee has not retired.

Section 401(a)(9)(D) provides that (except in the case of a life annuity) the life expectancy of an employee and the employee's spouse that is used to determine the period over which payments must be made may be redetermined, but not more frequently than annually.

Section 401(a)(9)(E) provides that the term *designated beneficiary* means any individual designated as a beneficiary by the employee.

Section 401(a)(9)(G) provides that any distribution required to satisfy the incidental death benefit requirement of section 401(a) is a required minimum distribution.

Section 401(a)(9)(B)(i) provides that, if the employee dies after distributions have begun, the employee's interest must be distributed at least as rapidly as under the method used by the employee.

Section 401(a)(9)(B)(ii) and (iii) provides that, if the employee dies before required minimum distributions have begun, the employee's interest must be either: distributed (in accordance with regulations) over the life or life expectancy of the designated beneficiary with the distributions beginning no later than 1 year after the date of the employee's death, or distributed within 5 years after the death of the employee. However, under section 401(a)(9)(B)(iv), a surviving spouse may wait until the date the employee would have attained age 70 ½ to begin taking required minimum distributions.

Comprehensive proposed regulations under section 401(a)(9) were previously published in the **Federal Register** on July 27, 1987, 52 FR 28070. Many of the comments on the 1987 proposed regulations expressed concerns that the required minimum distribution must be satisfied separately for each IRA owned by an individual by taking distributions from each IRA. In response, Notice 88–38 (1988–1 C.B. 524) provided that the amount of the required minimum distribution must be calculated for each IRA, but permitted that amount to be taken from any IRA. Amendments to the 1987 proposed regulations published in the **Federal Register** on December 30, 1997, 62 FR 67780, responded to comments on the use of trusts as beneficiaries. Notice 96–67 (1996–2 C.B. 235) and Notice 97–75 (1997–2 C.B. 337) provided guidance on the changes made to section 401(a)(9) by the SBJPA. The guidance in Notice 88–38, Notice 96–67, and Notice 97–75 is incorporated in these proposed regulations with some modifications.

Even though the distribution requirements added by TEFRA were retroactively repealed by TRA of 1984, the transition election rule in section 242(b) of TEFRA was preserved. Notice 83–23 (1983–2 C.B. 418) continues to provide guidance for distributions permitted by this transition election rule. These proposed regulations retain the additional guidance on the transition rule provided in the 1987 proposed regulations.

As discussed below, in response to extensive comments, the rules for calculating required minimum distributions from individual accounts under the 1987 proposed regulations have been substantially simplified. Certain other 1987 rules have also been simplified and modified, although many of the 1987 rules remain unchanged. In particular, due to the relatively small number of comments on practices with respect to annuity contracts, and the effect of the 1987 proposed regulations on these practices, the basic structure of the 1987 proposed regulation provisions with respect to annuity payments is retained in these proposed regulations. The IRS and Treasury are continuing to study these rules and specifically request updated comments on current practices and issues relating to required minimum distributions from annuity contracts.

Explanation of Provisions

Overview

Many of the comments on the 1987 proposed regulations addressed the rules for required minimum distributions during an employee's life, including calculation of life expectancy and determination of designated beneficiary. In particular, comments raised concerns about the default

provisions, election requirements, and plan language requirements. In general, the need to make decisions at age 70½, which under the 1987 proposed regulations would bind the employee in future years during which financial circumstances could change significantly, was perceived as unreasonably restrictive. In addition, the determination of life expectancy and designated beneficiary and the resulting required minimum distribution calculation for individual accounts were viewed as too complex.

To respond to these concerns, these proposed regulations would make it much easier for individuals—both plan participants and IRA owners—and plan administrators to understand and apply the minimum distribution rules. The new proposed regulations would make major simplifications to the rules, including the calculation of the required minimum distribution during the individual's lifetime and the determination of a designated beneficiary for distributions after death. The new proposed regulations simplify the rules by

- Providing a simple, uniform table that all employees can use to determine the minimum distribution required during their lifetime. This makes it far easier to calculate the required minimum distribution because employees would

—no longer need to determine their beneficiary by their required beginning date, sbull no longer need to decide whether or not to recalculate their life expectancy each year in determining required minimum distributions, and

—no longer need to satisfy a separate incidental death benefit rule.

- Permitting the required minimum distribution during the employee's lifetime to be calculated without regard to the beneficiary's age (except when required distributions can be reduced by taking into account the age of a beneficiary who is a spouse more than 10 years younger than the employee).

- Permitting the beneficiary to be determined as late as the end of the year following the year of the employee's death. This allows

—the employee to change designated beneficiaries after the required beginning date without increasing the required minimum distribution and

—the beneficiary to be changed after the employee's death, such as by one or more beneficiaries disclaiming or being cashed out.

- Permitting the calculation of post-death minimum distributions to take into account an employee's remaining life expectancy at the time of death, thus allowing distributions in all cases to be spread over a number of years after death.

These simplifications would also have the effect of reducing the required minimum distributions for the vast majority of employees.

The Uniform Distribution Period

Under these proposed regulations and the 1987 proposed regulations, for distributions from an individual account, the required minimum distribution is determined by dividing the account balance by the distribution period. For lifetime required minimum distributions, these proposed regulations provide a uniform distribution period for all employees of the same age. The uniform distribution period table is the required minimum distribution incidental benefit (MDIB) divisor table originally prescribed in § 1.401(a)(9)-2 of the 1987 proposed regulations and now included in A–4 of § 1.401(a)-5 of the new proposed regulations. An exception applies if the employee's sole beneficiary is the employee's spouse and the spouse is more than 10 years younger than the employee. In that case, the employee is permitted to use the longer distribution period measured by the joint life and last survivor life expectancy of the employee and spouse.

These changes provide a simple administrable rule for plans and individuals. Using the MDIB table, most employees will be able to determine their required minimum distribution for each year based on nothing more than their current age and their account balance as of the end of the prior year (which IRA trustees report annually to IRA owners). Under the 1987 proposed regulations, some employees already use the MDIB table to determine required minimum distributions. Under the new proposed regulations, they would continue to do so. For the majority of other employees, required minimum distributions would be reduced as a result of the changes.

For years after the year of the employee's death, the distribution period is generally the remaining life expectancy of the designated beneficiary. The beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the employee's death, reduced by one for each subsequent year. If the employee's spouse is the employee's sole beneficiary at the end of the year following the year of death, the distribution period during the spouse's life is the spouse's single life expectancy. For years after the year of the spouse's death, the distribution period is the spouse's life expectancy calculated in the year of death, reduced by one for each subsequent year. If there is no designated beneficiary as of the end of the year after the employee's death, the distribution period is the employee's life expectancy calculated in the year of death, reduced by one for each subsequent year.

The MDIB table is based on the joint life expectancies of an individual and a survivor 10 years younger at each age beginning at age 70. Allowing the use of this table reflects the fact that an employee's beneficiary is subject to change until the death of the employee and ultimately may be a beneficiary more than 10 years younger than the employee. The proposed regulations would allow lifetime distributions at a rate consistent with this possibility. Consistent with the requirements of section 401(a)(9)(A)(ii), the distribution period after death is measured by the life expectancy of the employee's designated beneficiary in the year following death, or the employee's remaining life expectancy if there is no designated beneficiary. This ensures that the employee's entire benefit is distributed over a period described in section 401(a)(9)(A)(ii), i.e., the life expectancy of the employee or the joint life expectancy of the employee and a designated beneficiary.

The approach in these proposed regulations allowing the use of a uniform lifetime distribution period addresses concerns raised in comments on the 1987 proposed regulations that the rules are too complex. It eliminates the use of two tables and the interaction of the multiple beneficiary and change in beneficiary rules. Finally, it generally eliminates the need to fix the amount of the distribution during the employee's lifetime based on the beneficiary designated on the required beginning date and eliminates the need to elect recalculation or no recalculation of life expectancies at the required beginning date.

Suggestions have been received that the life expectancy table used to calculate required minimum distributions should be revised to reflect recent increases in longevity. These proposed regulations instead provide authority for the Commissioner to issue guidance of general applicability revising the life expectancy tables and the uniform distribution table in the future if it becomes appropriate. While life expectancy has increased in the 14 years since the issuance of the section 72 life expectancy tables, those tables may already overstate the average life expectancy of the class of individuals who are subject to these required

minimum distribution rules (qualified plan participants, IRA owners, et al.). That is because those existing section 72 tables were derived from the particular mortality experience of the select population of individuals who purchase individual annuities, as opposed to the population who are subject to the required minimum distribution rules. In any event, as noted earlier, the new proposed uniform distribution period—equal to the joint life expectancy of an individual and a survivor 10 years younger at each age—would lengthen the lifetime distribution period for most employees and beneficiaries. In fact, the new proposed regulations would lengthen that period more for many individuals than would an update to reflect recent increases in longevity. The IRS and Treasury believe that this lengthening of the distribution period for most employees provides further justification for retaining the existing life expectancy tables at this time.

Some commentators suggested that the calculation of required minimum distributions include credit for any distribution in a prior year that exceeded that year's required minimum distribution. However, such a ''credit'' carryforward would require significant additional data retention and would add substantial complexity to the calculation of required minimum distributions. By using the prior year's ending account balance for calculating required minimum distributions, distribution of amounts in excess of the required minimum distribution has the effect of reducing future required minimum distributions over the remaining distribution period to some extent. Accordingly, these proposed regulations do not provide for a credit carryforward.

Determination of the Designated Beneficiary

These proposed regulations provide that, generally, the designated beneficiary is determined as of the end of the year following the year of the employee's death rather than as of the employee's required beginning date or date of death, as under the 1987 proposed regulations. Thus, any beneficiary eliminated by distribution of the benefit or through disclaimer (or otherwise) during the period between the employee's death and the end of the year following the year of death is disregarded in determining the employee's designated beneficiary for purposes of calculating required minimum distributions. If, as of the end of the year following the year of the employee's death, the employee has more than one designated beneficiary and the account or benefit has not been divided into separate accounts or shares for each beneficiary, the beneficiary with the shortest life expectancy is the designated beneficiary, consistent with the approach in the 1987 proposed regulations.

This approach for determining the designated beneficiary following the death of an employee after the employee's required beginning date is simpler in several respects than the approach in the 1987 proposed regulations and responds to concerns raised with respect to the effects of beneficiary designation at the required beginning date. Under this approach, the determination of the designated beneficiary and the calculation of the beneficiary's life expectancy generally are contemporaneous with commencement of required distributions to the beneficiary. Any prior beneficiary designation is irrelevant for distributions from individual accounts, unless the employee takes advantage of a lifetime distribution period measured by the joint life expectancy of the employee and a spouse more than 10 years younger than the employee. Further, for an employee with a designated beneficiary, this approach provides the same rules for distributions after the employee's death, regardless of whether death occurs before or after an employee's required beginning date. Finally, in the case of an employee who elects or defaults into recalculation of life expectancy and who dies without a designated beneficiary, the requirement that the employee's entire remaining account balance be distributed in the year after an employee's death has been eliminated and replaced with a distribution period equal to the employee's remaining life expectancy recalculated immediately before death.

Default Rule for Post-Death Distributions

As requested by some commentators, these proposed regulations would change the default rule in the case of death before the employee's required beginning date for a nonspouse designated beneficiary from the 5-year rule in section 401(a)(9)(B)(ii) to the life expectancy rule in section 401(a)(9)(B)(iii). Thus, absent a plan provision or election of the 5-year rule, the life expectancy rule would apply in all cases in which the employee has a designated beneficiary. As in the case of death on or after the employee's required beginning date, the designated beneficiary whose life expectancy is used to determine the distribution period would be determined as of the end of the year following the year of the employee's death, rather than as of the employee's date of death (as would have been required under the 1987 proposed regulations). The 5-year rule would apply automatically only if the employee did not have a designated beneficiary as of the end of the year following the year of the employee's death. Finally, in the case of death before the employee's required beginning date, these proposed regulations allow a waiver, unless the Commissioner determines otherwise, of any excise tax resulting from the life expectancy rule during the first five years after the year of the employee's death if the employee's entire benefit is distributed by the end of the fifth year following the year of the employee's death.

Annuity Payments

These proposed regulations make several changes to the rules for determining whether annuity payments satisfy section 401(a)(9). The changes are designed to make these rules more administrable without adverse effects on the basic structure and application of the rules. The IRS and Treasury are continuing to study and evaluate whether additional changes would be appropriate for determining whether annuity payments satisfy section 401(a)(9). Some comments were received on the annuity rules in 1987, but updated comments that include a discussion of current industry practices, products, and concerns would be helpful.

These proposed regulations provide that the designated beneficiary for determining the distribution period for annuity payments generally is the beneficiary as of the annuity starting date, even if that date is after the required beginning date. Thus, if annuity payments commence after the required beginning date, the determination of the designated beneficiary is contemporaneous with the annuity starting date and any intervening changes in the beneficiary designation since the required beginning date are ignored. Second, as requested in comments, these regulations extend to all annuity payment streams the rule in the 1987 proposed regulations that allows a life annuity with a period certain not exceeding 20 years to commence on the required beginning date with no makeup for the first distribution calendar year. For this purpose, the regulations clarify that only accruals as of the end of the prior calendar year must be taken into account in calculating the amount of an annuity

commencing on the required beginning date. Subsequent accruals are treated as additional accruals that must be taken into account in the next calendar year. Also as requested in comments, the regulations provide that, although additional accruals need to be taken into account in the first payment in the calendar year following the year of the accrual, actual payment in the form of a make-up payment need only be completed by the end of that calendar year.

The permitted increase in annuity payments to an employee upon the death of the survivor annuitant has been expanded to cover the elimination of the survivor portion of a joint and survivor annuity due to a qualified domestic relations order. Further, in response to comments, in the case of an annuity contract purchased from an insurance company, an exception to the nonincreasing-payment requirement in these proposed regulations has been added to accommodate a cash refund upon the employee's death of the amount of the premiums paid for the contract.

One of the rules in the 1987 proposed regulations that the IRS and Treasury are continuing to study and evaluate is the rule providing that if the distributions from a defined benefit plan are not in the form of an annuity, the employee's benefit will be treated as an individual account for purposes of determining required minimum distributions. The IRS and Treasury are continuing to consider whether retention of this rule is appropriate for defined benefit plans. Similarly, the IRS and Treasury are continuing to consider whether the rule permitting the benefit under a defined benefit plan to be divided into segregated shares for purposes of section 401(a)(9) is useful and appropriate for defined benefit plans.

Trust as Beneficiary

These proposed regulations retain the provision in the proposed regulations, as amended in 1997, allowing an underlying beneficiary of a trust to be an employee's designated beneficiary for purposes of determining required minimum distributions when the trust is named as the beneficiary of a retirement plan or IRA, provided that certain requirements are met. One of these requirements is that documentation of the underlying beneficiaries of the trust be provided timely to the plan administrator. In the case of individual accounts, unless the lifetime distribution period for an employee is measured by the joint life expectancy of the employee and the employee's spouse, the deadline under these proposed regulations for providing the beneficiary documentation would be the end of the year following year of the employee's death. This is consistent with the deadline for determining the employee's designated beneficiary. Because the designated beneficiary during an employee's lifetime is not relevant for determining lifetime required minimum distributions in most cases under these proposed regulations, the burden of lifetime documentation requirements contained in the previous proposed regulations is significantly reduced.

A significant number of commentators on the 1997 amendment to the proposed regulations requested clarification that a testamentary trust named as an employee's beneficiary is a trust that qualifies for the look-through rule to the underlying beneficiaries, as permitted in the 1997 proposed regulations. These proposed regulations provide examples in which a testamentary trust is named as an employee's beneficiary and the look-through trust rules apply. As previously illustrated in the facts of Rev. Rul. 2000–2, 2000–3 I.R.B. 305, the examples also clarify that remaindermen of a ''QTIP'' trust must be taken into account as beneficiaries in determining the distribution period for required minimum distributions if amounts are accumulated for their benefit during the life of the income beneficiary under the trust.

Rules for Qualified Domestic Relations Orders

These proposed regulations retain the basic rules in the 1987 proposed regulation for a qualified domestic relations order (QDRO). Thus, for example, the proposed regulations continue to provide that a former spouse to whom all or a portion of the employee's benefit is payable pursuant to a QDRO will be treated as a spouse (including a surviving spouse) of the employee for purposes of section 401(a)(9), including the minimum distribution incidental benefit requirement, regardless of whether the QDRO specifically provides that the former spouse is treated as the spouse for purposes of sections 401(a)(11) and 417. This rule applies regardless of the number of former spouses an employee has who are alternate payees with respect to the employee's retirement benefits. Further, for example, if a QDRO divides the individual account of an employee in a defined contribution plan into a separate account for the employee and a separate account for the alternate payee, the required minimum distribution to the alternate payee during the lifetime of the employee must nevertheless be determined using the same rules that apply to distribution to the employee. Thus, required minimum distributions to the alternate payee must commence by the employee's required beginning date. However, the required minimum distribution for the alternate payee will be separately determined. The required minimum distributions for the alternate payee during the lifetime of the employee may be determined either using the uniform distribution period discussed above based on the age of the employee in the distribution calendar year, or, if the alternate payee is the employee's former spouse and is more than 10 years younger than the employee, using the joint life expectancy of the employee and the alternate payee.

Election of Surviving Spouse To Treat an Inherited IRA as Spouse's Own IRA

These proposed regulations clarify the rule in the 1987 proposed regulations that allows the surviving spouse of a decedent IRA owner to elect to treat an IRA inherited by the surviving spouse from that owner as the spouse's own IRA. The 1987 proposed regulations provide that this election is deemed to have been made if the surviving spouse contributes to the IRA or does not take the required minimum distribution for a year under section 401(a)(9)(B) as a beneficiary of the IRA. These new proposed regulations clarify that this deemed election is permitted to be made only after the distribution of the required minimum amount for the account, if any, for the year of the individual's death. Further these new proposed regulations clarify that this deemed election is permitted only if the spouse is the sole beneficiary of the account and has an unlimited right to withdrawal from the account. This requirement is not satisfied if a trust is named as beneficiary of the IRA, even if the spouse is the sole beneficiary of the trust. These clarifications make the election consistent with the underlying premise that the surviving spouse could have received a distribution of the entire decedent IRA owner's account and rolled it over to an IRA established in the surviving spouse's own name as IRA owner.

These new proposed regulations also clarify that, except for the required minimum distribution for the year of the individual's death, the spouse is permitted to roll over the post-death required minimum distribution under section 401(a)(9)(B) for a year if the spouse is establishing the IRA rollover account in the name of the spouse as

IRA owner. However, if the surviving spouse is age 70½ or older, the minimum lifetime distribution required under section 401(a)(9)(A) must be made for the year and, because it is a required minimum distribution, that amount may not be rolled over. These proposed regulations provide that this election by a surviving spouse eligible to treat an IRA as the spouse's own may also be accomplished by redesignating the IRA with the name of the surviving spouse as owner rather than beneficiary.

IRA Reporting of Required Minimum Distributions

Because these regulations substantially simplify the calculation of required minimum distributions from IRAs, IRA trustees determining the account balance as of the end of the year can also calculate the following year's required minimum distribution for each IRA. To improve compliance and further reduce the burden imposed on IRA owners and beneficiaries, under the authority provided in section 408(i), these proposed regulations would require the trustee of each IRA to report the amount of the required minimum distribution from the IRA to the IRA owner or beneficiary and to the IRS at the time and in the manner provided under IRS forms and instructions. This reporting would be required regardless of whether the IRA owner is planning to take the required minimum distribution from that IRA or from another IRA, and would indicate that the IRA owner is permitted to take the required minimum distribution from any other IRA of the owner. During year 2001, the IRS will be receiving public comments and consulting with interested parties to assist the IRS in evaluating what form best accommodates this reporting requirement, what timing is appropriate (e.g., the beginning of the calendar year for which the required amount is being calculated), and what effective date would be most appropriate for the reporting requirement. In this context, after thorough consideration of comments and consultation with interested parties, the IRS intends to develop procedures and a schedule for reporting that provides adequate lead time, and minimizes the reporting burden, for IRA trustees, issuers, and custodians in complying with this new reporting requirement while providing the most useful information to the IRA owners and beneficiaries.

The IRS and Treasury are also considering whether similar reporting would be appropriate for section 403(b) contracts.

Permitted Delays Relative to QDROs and State Insurer Delinquency Proceedings

The regulations permit the required minimum distribution for a year to be delayed to a later year in certain circumstances. Specifically, commentators requested a delay during a period of up to 18 months during which an amount is segregated in connection with the review of a domestic relations order pursuant to section 414(p)(7). Commentators also requested that a delay be permitted while annuity payments under an annuity contract issued by a life insurance company in state insurer delinquency proceedings have been reduced or suspended by reason of state proceedings. These proposed regulations allow delay in these circumstances.

Correction of Failures Under Section 401(a)(9)

The proposed regulations do not set forth the special rule relieving a plan from disqualification for isolated instances of failure to satisfy section 401(a)(9) because all failures for qualified plans and section 403(b) accounts under section 401(a)(9) are now permitted to be corrected through the Employee Plans Compliance Resolution System (EPCRS). See Rev. Proc. 2000–16 (2000–6 I.R.B. 518).

Amendment of Qualified Plans

These regulations are proposed to be effective for distributions for calendar years beginning on or after January 1, 2002. For distributions for calendar years beginning before the effective date of final regulations, plan sponsors can continue to rely on the 1987 proposed regulations, to the extent those proposed regulations are not inconsistent with the changes to section 401(a)(9) made by the Small Business Job Protection Act of 1996 (SBJPA) and guidance related to those changes. Alternatively, for distributions for the 2001 and subsequent calendar years beginning before the effective date of final regulations, plan sponsors are permitted, but not required, to follow these proposed regulations in the operation of their plans by adopting the model amendment set forth below.

The Treasury Department and the IRS are making the model amendment set forth below available to plan sponsors to permit them to apply these proposed regulations in the operation of their plans without violating the requirement that a plan be operated in accordance with its terms. Plan sponsors who adopt the model amendment will have reliance that, during the term of the amendment, operation of their plans in a manner that satisfies the minimum distribution requirements in these proposed regulations will not cause their plans to fail to be qualified. In addition, distributees will have reliance that distributions that are made during the term of the amendment that satisfy the minimum distribution requirements in these proposed regulations. The model amendment may be adopted by plan sponsors, practitioners who sponsor volume submitter specimen plans and sponsors of master and prototype (M&P) plans.

These proposed regulations permit plans to make distributions under either default provisions or under permissible optional provisions. A plan that has been amended by adoption of the model amendment will be treated as operating in conformance with a requirement of the proposed regulations that permits the use of either default or optional provisions if the plan is operated consistently in accordance with either the default rule or a specific permitted alternative, notwithstanding the plan's terms.

The Service will not issue determination, opinion or advisory letters on the basis of the changes in these proposed regulations until the publication of final regulations. Until such time, the IRS will continue to issue such letters on the basis of the 1987 proposed regulations and SBJPA. Although the IRS will not issue determination, opinion or advisory letters with respect to the model amendment, the adoption of the model amendment will not affect a determination letter issued for a plan whose terms otherwise satisfy the 1987 proposed regulations and SBJPA. Plan sponsors should not adopt other amendments to attempt to conform their plans to the changes in these proposed regulations before the publication of final regulations. The IRS intends to publish procedures at a later date that will allow qualified plans to be amended to reflect the regulations under section 401(a)(9) when they are finalized.

Qualified plans are required to be amended for changes in the plan qualification requirements made by GUST by the end of the GUST remedial amendment period under section 401(b), which is generally the end of the first plan year beginning on or after January 1, 2001, or, if applicable, a later date determined under the provisions of section 19 of Rev. Proc. 2000–20 (2000–6 I.R.B. 553). Many plans have been operated in a manner that reflects the changes to section 401(a)(9) made by SBJPA and will have to be amended for

these changes by the end of the GUST remedial amendment period. The IRS intends that its procedures for amending qualified plans for the final regulations under section 401(a)(9) will generally avoid the need for plan sponsors, volume submitter practitioners and M&P plan sponsors to request another determination, opinion or advisory letter subsequent to their application for a GUST letter. In addition, to the extent such a subsequent letter is needed or desired, the IRS intends that its procedures will provide that the application for the letter will not have to be submitted prior to the next time the plan is otherwise amended or required to be amended.

The model amendment described above is set forth below:

With respect to distributions under the Plan made in calendar years beginning on or after January 1, 2000 (ALTERNATIVELY, SPECIFY A LATER CALENDAR YEAR FOR WHICH THE AMENDMENT IS TO BE INITIALLY EFFECTIVE), the Plan will apply the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code in accordance with the regulations under section 401(a)(9) that were proposed in January 2001, notwithstanding any provision of the Plan to the contrary. This amendment shall continue in effect until the end of the last calendar year beginning before the effective date of final regulations under section 401(a)(9) or such other date specified in guidance published by the Internal Revenue Service.

Amendment of IRAs and Effective Date

These regulations are proposed to be effective for distributions for calendar years beginning on or after January 1, 2002. For distributions for the 2001 calendar year, IRA owners are permitted, but not required, to follow these proposed regulations in operation, notwithstanding the terms of the IRA documents. IRA owners may therefore rely on these proposed regulations for distributions for the 2001 calendar year. However, IRA sponsors should not amend their IRA documents to conform their IRAs to the changes in these proposed regulations before the publication of final regulations. The IRS will not issue model IRAs on the basis of the changes in these proposed regulations until the publication of final regulations. Until such time, IRA owners can continue to use the current model IRAs which are based on the 1987 proposed regulations under section 401(a)(9). The IRS will publish procedures at a later date that will allow IRAs to be amended to reflect final regulations under section 401(a)(9).

Proposed Effective Date

The regulations are proposed to be applicable for determining required minimum distributions for calendar years beginning on or after January 1, 2002. For determining required minimum distributions for calendar year 2001, taxpayers may rely on these proposed regulations or on the 1987 proposed regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be issued without retroactive effect.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. In addition to the other requests for comments set forth in this document, the IRS and Treasury also request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 1, 2001, at 10 a.m. in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by May 11, 2001.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Marjorie Hoffman and Cathy A. Vohs of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

Adoption of Amendments of the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.401(a)(9)–1 is also issued under 26 U.S.C. 401(a)(9).

§ 1.401(a)(9)–2 is also issued under 26 U.S.C. 401(a)(9).

§ 1.401(a)(9)–3 is also issued under 26 U.S.C. 401(a)(9).

§ 1.401(a)(9)–4 is also issued under 26 U.S.C. 401(a)(9).

§ 1.401(a)(9)–5 is also issued under 26 U.S.C. 401(a)(9).

§ 1.401(a)(9)–6 is also issued under 26 U.S.C. 401(a)(9).

§ 1.401(a)(9)–7 is also issued under 26 U.S.C. 401(a)(9).

§ 1.401(a)(9)–8 is also issued under 26 U.S.C. 401(a)(9).* * *

§ 1.403(b)–2 is also issued under 26 U.S.C. 403(b)(10).* * *

§ 1.408–8 is also issued under 26 U.S.C. 408(a)(6) and (b)(3).* * *

Par. 2. Sections 1.401(a)(9)–0 through 1.401(a)(9)–8 are added to read as follows:

§ 1.401(a)(9)–0 Required minimum distributions; table of contents.

This table of contents lists the regulations relating to required minimum distributions under section 401(a)(9) of the Internal Revenue Code as follows:

§ 1.401(a)(9)–0 Required minimum distributions; table of contents.
§ 1.401(a)(9)–1 Required minimum distribution requirement in general.
§ 1.401(a)(9)–2 Distributions commencing before an employee's death.
§ 1.401(a)(9)–3 Death before required beginning date.
§ 1.401(a)(9)–4 Determination of the designated beneficiary.
§ 1.401(a)(9)–5 Required minimum distributions from defined contribution plans.
§ 1.401(a)(9)–6 Required minimum distributions from defined benefit plans.
§ 1.401(a)(9)–7 Rollovers and transfers.
§ 1.401(a)(9)–8 Special rules.

§ 1.401(a)(9)–1 Required minimum distribution requirement in general.

Q–1. What plans are subject to the required minimum distribution requirement under section 401(a)(9) and §§ 1.401(a)(9)–1 through 1.401(a)(9)–8?

A–1. All stock bonus, pension, and profit-sharing plans qualified under section 401(a) and annuity contracts described in section 403(a) are subject to the required minimum distribution rules in section 401(a)(9) and §§ 1.401(a)(9)–1 through 1.401(a)(9)–8. See § 1.403(b)–2 for the distribution rules applicable to annuity contracts or custodial accounts described in section 403(b), see § 1.408–8 for the distribution rules applicable to individual retirement plans, see § 1.408A–6 described for the distribution rules applicable to Roth IRAs under section 408A, and see section 457(d)(2)(A) for distribution rules applicable to certain deferred compensation plans for employees of tax exempt organizations or state and local government employees.

Q–2. Which employee account balances and benefits held under qualified trusts and plans are subject to the distribution rules of section 401(a)(9) and §§ 1.401(a)(9)–1 through 1.401(a)(9)–8?

A–2. The distribution rules of section 401(a)(9) apply to all account balances and benefits in existence on or after January 1, 1985. Sections 1.401(a)(9)–1 through 1.401(a)(9)–8 apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2002.

Q–3. What specific provisions must a plan contain in order to satisfy section 401(a)(9)?

A–3. (a) *Required provisions.* In order to satisfy section 401(a)(9), the plan must include several written provisions reflecting section 401(a)(9). First, the plan must generally set forth the statutory rules of section 401(a)(9), including the incidental death benefit requirement in section 401(a)(9)(G). Second, the plan must provide that distributions will be made in accordance with §§ 1.401(a)(9)–1 through 1.401(a)(9)–8. The plan document must also provide that the provisions reflecting section 401(a)(9) override any distribution options in the plan inconsistent with section 401(a)(9). The plan also must include any other provisions reflecting section 401(a)(9) as are prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

(b) *Optional provisions.* The plan may also include written provisions regarding any optional provisions governing plan distributions that do not conflict with section 401(a)(9) and the regulations thereunder.

(c) *Absence of optional provisions.* Plan distributions commencing after an employee's death will be required to be made under the default provision set forth in § 1.401(a)(9)–3 for distributions unless the plan document contains optional provisions that override such default provisions. Thus, if distributions have not commenced to the employee at the time of the employee's death, distributions after the death of an employee are to be made automatically in accordance with the default provisions in A–4(a) of § 1.401(a)(9)–3 unless the plan either specifies in accordance with A–4(b) of § 1.401(a)(9)–3 the method under which distributions will be made or provides for elections by the employee (or beneficiary) in accordance with A–4(c) of § 1.401(a)(9)–3 and such elections are made by the employee or beneficiary.

§ 1.401(a)(9)–2 Distributions commencing before an employee's death.

Q–1. In the case of distributions commencing before an employee's death, how must the employee's entire interest be distributed in order to satisfy section 401(a)(9)(A)?

A–1. (a) In order to satisfy section 401(a)(9)(A), the entire interest of each employee must be distributed to such employee not later than the required beginning date, or must be distributed, beginning not later than the required beginning date, over the life of the employee or joint lives of the employee and a designated beneficiary or over a period not extending beyond the life expectancy of the employee or the joint life and last survivor expectancy of the employee and the designated beneficiary.

(b) Section 401(a)(9)(G) provides that lifetime distributions must satisfy the incidental death benefit requirements.

(c) The amount required to be distributed for each calendar year in order to satisfy section 401(a)(9)(A) and (G) generally depends on whether a distribution is in the form of distributions under a defined contribution plan or annuity payments under a defined benefit plan. For the method of determining the required minimum distribution in accordance with section 401(a)(9)(A) and (G) from an individual account under a defined contribution plan, see § 1.401(a)(9)–5. For the method of determining the required minimum distribution in accordance with section 401(a)(9)(A) and (G) in the case of annuity payments from a defined benefit plan or an annuity contract, see § 1.401(a)(9)–6.

Q–2. For purposes of section 401(a)(9)(C), what does the term *required beginning date* mean?

A–2. (a) Except as provided in paragraph (b) of this A–2 with respect to a 5-percent owner, as defined in paragraph (c), the term *required beginning date* means April 1 of the calendar year following the later of the calendar year in which the employee attains age 70½, or the calendar year in which the employee retires from employment with the employer maintaining the plan.

(b) In the case of an employee who is a 5-percent owner, the term *required beginning date* means April 1 of the calendar year following the calendar year in which the employee attains age 70½.

(c) For purposes of section 401(a)(9), a 5-percent owner is an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 70½.

(d) Paragraph (b) of this A–2 does not apply in the case of 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)).

(e) A plan is permitted to provide 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 attained age 70½ regardless of whether the employee is a 5-percent owner.

Q–3. When does an employee attain age 70½?

A–3. An employee attains age 70½ as of the date six calendar months after the 70th anniversary of the employee's birth. For example, if an employee's date of birth was June 30, 1932, the 70th anniversary of such employee's birth is June 30, 2002. Such employee attains age 70½ on December 30, 2002. Consequently, if the employee is a 5-percent owner or retired, such employee's required beginning date is April 1, 2003. However, if the employee's date of birth was July 1, 1932, the 70th anniversary of such employee's birth would be July 1, 2002. Such employee would then attain age 70½ on January 1, 2003 and such employee's required beginning date would be April 1, 2004.

Q–4. Must distributions made before the employee's required beginning date satisfy section 401(a)(9)?

A–4. Lifetime distributions made before the employee's required beginning date for calendar years before the employee's first distribution calendar year, as defined in A–1(b) of § 1.401(a)(9)–5, need not be made in accordance with section 401(a)(9). However, if distributions commence before the employee's required beginning date under a particular distribution option, such as in the form of an annuity, the distribution option fails to satisfy section 401(a)(9) at the time distributions commence if, under terms of the particular distribution option, distributions to be made for the employee's first distribution calendar year or any subsequent distribution calendar year will fail to satisfy section 401(a)(9).

Q–5. If distributions have begun to an employee before the employee's death (in accordance with section 401(a)(9)(A)(ii)), how must distributions be made after an employee's death?

A–5. Section 401(a)(9)(B)(i) provides that if the distribution of the employee's interest has begun in accordance with section 401(a)(9)(A)(ii) and the employee dies before his entire interest has been distributed to him, the remaining portion of such interest must be distributed at least as rapidly as under the distribution method being used under section 401(a)(9)(A)(ii) as of the date of his death. The amount required to be distributed for each distribution calendar year following the calendar year of death generally depends on whether a distribution is in the form of distributions from an individual account under a defined contribution plan or annuity payments under a defined benefit plan. For the method of determining the required minimum distribution in accordance with section 401(a)(9)(B)(i) from an individual account, see A–5(a) of § 1.401(a)(9)–5 for the calculation of the distribution period that applies when an employee dies after the employee's required beginning date. In the case of annuity payments from a defined benefit plan or an annuity contract, see § 1.401(a)(9)–6.

Q–6. For purposes of section 401(a)(9)(B), when are distributions considered to have begun to the employee in accordance with section 401(a)(9)(A)(ii)?

A–6. (a) *General rule.* Except as otherwise provided in A–10 of § 1.401(a)(9)–6, distributions are not treated as having begun to the employee in accordance with section 401(a)(9)(A)(ii) until the employee's required beginning date, without regard to whether payments have been made before that date. For example, if employee A upon retirement in 2002, the calendar year A attains age 65½, begins receiving installment distributions from a profit-sharing plan over a period not exceeding the joint life and last survivor expectancy of A and A's beneficiary, benefits are not treated as having begun in accordance with section 401(a)(9)(A)(ii) until April 1, 2008 (the April 1 following the calendar year in which A attains age 70½). Consequently, if such employee dies before April 1, 2008 (A's required beginning date), distributions after A's death must be made in accordance with section 401(a)(9)(B)(ii) or (iii) and (iv) and § 1.401(a)(9)–4, and not section 401(a)(9)(B)(i). This is the case without regard to whether the plan has distributed the minimum distribution for the first distribution calendar year (as defined in A–1(b) of § 1.401(a)(9)–5) before A's death.

(b) If a plan provides, in accordance with A–2(e) of this section, 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, an employee who dies after the required beginning date determined under the plan terms is treated as dying after the employee's required beginning date for purposes of A–5(a) of this section even though the employee dies before the April 1 following the calendar year in which the employee retires.

§ 1.401(a)(9)–3 Death before required beginning date.

Q–1. If an employee dies before the employee's required beginning date, how must the employee's entire interest be distributed in order to satisfy section 401(a)(9)?

A–1. (a) Except as otherwise provided in A–10 of § 1.401(a)(9)–6, if an employee dies before the employee's required beginning date (and, thus, generally before distributions are treated as having begun in accordance with section 401(a)(9)(A)(ii)), distribution of the employee's entire interest must be made in accordance with one of the methods described in section 401(a)(9)(B)(ii) or (iii). One method (the five-year rule in section 401(a)(9)(B)(ii)) requires that the entire interest of the employee be distributed within five years of the employee's death regardless of who or what entity receives the distribution. Another method (the life expectancy rule in section 401(a)(9)(B)(iii)) requires that any portion of an employee's interest payable to (or for the benefit of) a designated beneficiary be distributed, commencing within one year of the employee's death, over the life of such beneficiary (or over a period not extending beyond the life expectancy of such beneficiary). Section 401(a)(9)(B)(iv) provides special rules where the designated beneficiary is the surviving spouse of the employee, including a special commencement date for distributions under section 401(a)(9)(B)(iii) to the surviving spouse.

(b) See A–4 of this section for the rules for determining which of the methods described in paragraph (a) applies. See A–3 of this section to determine when distributions under the exception to the five-year rule in section 401(a)(9)(B)(iii) and (iv) must commence. See A–2 of this section to determine when the five-year period in section 401(a)(9)(B)(ii) ends. For distributions using the life expectancy rule in section 401(a)(9)(B)(iii) and (iv), see § 1.401(a)(9)–4 in order to determine the designated beneficiary under section 401(a)(9)(B)(iii) and (iv), see § 1.401(a)(9)–5 for the rules for determining the required minimum distribution under a defined contribution plan, and see § 1.401(a)(9)–6 for required minimum distributions under defined benefit plans.

Q–2. By when must the employee's entire interest be distributed in order to satisfy the five-year rule in section 401(a)(9)(B)(ii)?

A–2. In order to satisfy the five-year rule in section 401(a)(9)(B)(ii), the employee's entire interest must be distributed by the end of the calendar year which contains the fifth anniversary of the date of the employee's death. For example, if an employee dies on January 1, 2002, the entire interest must be distributed by the end of 2007, in order to satisfy the five-year rule in section 401(a)(9)(B)(ii).

Q–3. When are distributions required to commence in order to satisfy the life expectancy rule in section 401(a)(9)(B)(iii) and (iv)?

A–3. (a) *Nonspouse beneficiary.* In order to satisfy the life expectancy rule in section 401(a)(9)(B)(iii), if the designated beneficiary is not the employee's surviving spouse, distributions must commence on or before the end of the calendar year immediately following the calendar year in which the employee died. This rule also applies to the distribution of the entire remaining benefit if another individual is a designated beneficiary in addition to the employee's surviving spouse. See A–2 and A–3 of § 1.401(a)(9)–8, however, if the employee's benefit is divided into separate accounts (or segregated shares, in the case of a defined benefit plan).

(b) *Spousal beneficiary.* In order to satisfy the rule in section 401(a)(9)(B)(iii) and (iv), if the sole designated beneficiary is the employee's surviving spouse, distributions must commence on or before the later of—

(1) The end of the calendar year immediately following the calendar year in which the employee died; and

(2) The end of the calendar year in which the employee would have attained age 70½.

Q–4. How is it determined whether the five-year rule in section 401(a)(9)(B)(ii) or the life expectancy rule in section 401(a)(9)(B)(iii) and (iv) applies to a distribution?

A–4. (a) *No plan provision.* If a plan does not adopt an optional provision described in paragraph (b) or (c) of this A–4 specifying the method of distribution after the death of an employee, distribution must be made as follows:

(1) If the employee has a designated beneficiary, as determined under § 1.401(a)(9)–4, distributions are to be made in accordance with the life expectancy rule in section 401(a)(9)(B)(iii) and (iv).

(2) If the employee has no designated beneficiary, distributions are to be made in accordance with the five-year rule in section 401(a)(9)(B)(ii).

(b) *Optional plan provisions.* The plan may adopt a provision specifying either that the five-year rule in section 401(a)(9)(B)(ii) will apply to certain distributions after the death of an employee even if the employee has a designated beneficiary or that distribution in every case will be made in accordance with the five-year rule in section 401(a)(9)(B)(ii). Further, a plan need not have the same method of distribution for the benefits of all employees.

(c) *Elections.* A plan may adopt a provision that permits employees (or beneficiaries) to elect on an individual basis whether the five-year rule in section 401(a)(9)(B)(ii) or the life expectancy rule in section 401(a)(9)(B)(iii) and (iv) applies to distributions after the death of an employee who has a designated beneficiary. Such an election must be made no later than the earlier of, the end of the calendar year in which distribution would be required to commence in order to satisfy the requirements for the life expectancy rule in section 401(a)(9)(B)(iii) and (iv) (see A–3 of this section for the determination of such calendar year), or the end of the calendar year which contains the fifth anniversary of the date of death of the employee. As of the date determined under the life expectancy rule, the election must be irrevocable with respect to the beneficiary (and all subsequent beneficiaries) and must apply to all subsequent calendar years. If a plan provides for the election, the plan may also specify the method of distribution that applies if neither the employee nor the beneficiary makes the election. If neither the employee nor the beneficiary elects a method and the plan does not specify which method applies, distribution must be made in accordance with paragraph (a).

Q–5. If the employee's surviving spouse is the employee's designated beneficiary and such spouse dies after the employee, but before distributions have begun to the surviving spouse under section 401(a)(9)(B)(iii) and (iv), how is the employee's interest to be distributed?

A–5. Pursuant to section 401(a)(9)(B)(iv)(II), if the surviving spouse dies after the employee, but before distributions to such spouse have begun under section 401(a)(9)(B)(iii) and (iv), the five-year rule in section 401(a)(9)(B)(ii) and the life expectancy rule in section 401(a)(9)(B)(iii) are to be applied as if the surviving spouse were the employee. In applying this rule, the date of death of the surviving spouse shall be substituted for the date of death of the employee. However, in such case, the rules in section 401(a)(9)(B)(iv) are not available to the surviving spouse of the deceased employee's surviving spouse.

Q–6. For purposes of section 401(a)(9)(B)(iv)(II), when are distributions considered to have begun to the surviving spouse?

A–6. Distributions are considered to have begun to the surviving spouse of an employee, for purposes of section 401(a)(9)(B)(iv)(II), on the date, determined in accordance with A–3 of this section, on which distributions are required to commence to the surviving spouse, even though payments have actually been made before that date. See A–11 of § 1.401(a)(9)–6 for a special rule for annuities.

§ 1.401(a)(9)–4 Determination of the designated beneficiary.

Q–1. Who is a designated beneficiary under section 401(a)(9)(E)?

A–1. A designated beneficiary is an individual who is designated as a beneficiary under the plan. An individual may be designated as a beneficiary under the plan either by the terms of the plan or, if the plan so provides, by an affirmative election by the employee (or the employee's surviving spouse) specifying the beneficiary. A beneficiary designated as such under the plan is an individual who is entitled to a portion of an employee's benefit, contingent on the employee's death or another specified event. For example, if a distribution is in the form of a joint and survivor annuity over the life of the employee and another individual, the plan does not satisfy section 401(a)(9) unless such other individual is a designated beneficiary under the plan. A designated beneficiary need not be specified by name in the plan or by the employee to the plan in order to be a designated beneficiary so long as the individual who is to be the beneficiary is identifiable under the plan as of the date the beneficiary is determined under A–4 of this section. The members of a class of beneficiaries capable of expansion or contraction will be treated as being identifiable if it is possible, as of the date the beneficiary is determined, to identify the class member with the shortest life expectancy. The fact that an employee's interest under the plan passes to a certain individual under applicable state law does not make that individual a designated beneficiary unless the individual is designated as a beneficiary under the plan.

Q–2. Must an employee (or the employee's spouse) make an affirmative election specifying a beneficiary for a person to be a designated beneficiary under section 40l(a)(9)(E)?

A–2. No. A designated beneficiary is an individual who is designated as a beneficiary under the plan whether or not the designation under the plan was made by the employee. The choice of beneficiary is subject to the requirements of sections 401(a)(11), 414(p), and 417.

Q–3. May a person other than an individual be considered to be a designated beneficiary for purposes of section 401(a)(9)?

A–3. (a) No. Only individuals may be designated beneficiaries for purposes of section 401(a)(9). A person that is not an individual, such as the employee's estate, may not be a designated beneficiary, and, if a person other than an individual is designated as a beneficiary of an employee's benefit, the employee will be treated as having no designated beneficiary for purposes of section 401(a)(9). However, see A–5 of this section for special rules which apply to trusts.

(b) If an employee is treated as having no designated beneficiary, for distributions under a defined contribution plan, the distribution period under section 401(a)(9)(A)(ii) after the death of the employee is limited to the period described in A–5(a)(2) of § 1.401(a)(9)–5 (the remaining life expectancy of the employee determined in accordance with A–5(c)(3) of § 1.401(a)(9)–5). Further, in such case, except as provided in A–10 of § 1.401(a)(9)–6, if the employee dies before the employee's required beginning date, distribution must be made in accordance with the 5-year rule in section 401(a)(9)(B)(ii).

Q–4. When is the designated beneficiary determined?

A–4. (a) *General rule.* Except as provided in paragraph (b) and § 1.401(a)(9)–6, the employee's designated beneficiary will be determined based on the beneficiaries designated as of the last day of the calendar year following the calendar year of the employee's death. Consequently, except as provided in § 1.401(a)(9)–6, any person who was a beneficiary as of the date of the employee's death, but is not a beneficiary as of that later date (*e.g.,* because the person disclaims entitlement to the benefit in favor of another beneficiary or because the person receives the entire benefit to which the person is entitled before that date), is not taken into account in determining the employee's designated beneficiary for purposes of determining the distribution period for required minimum distributions after the employee's death.

(b) *Surviving spouse.* As provided in A–5 of § 1.401(a)(9)–3, in the case in which the employee's spouse is the designated beneficiary as of the date described in paragraph (a) of this A–5, and the surviving spouse dies after the employee and before the date on which distributions have begun to the spouse under section 401(a)(9)(B)(iii) and (iv), the rule in section 40l(a)(9)(B)(iv)(II) will apply. Thus, the relevant designated beneficiary for determining the distribution period is the designated beneficiary of the surviving spouse. Such designated beneficiary will be determined as of the last day of the calendar year following the calendar year of surviving spouse's death. If, as of such last day, there is no designated beneficiary under the plan with respect to that surviving spouse, distribution must be made in accordance with the 5-year rule in section 401(a)(9)(B)(ii) and A–2 of § 1.401(a)(9)–3.

(c) *Multiple beneficiaries.* Notwithstanding anything in this A–4 to the contrary, the rules in A–7 of § 1.401(a)(9)–5 apply if more than one beneficiary is designated with respect to an employee as of the date on which the designated beneficiary is to be determined in accordance with paragraphs (a) and (b) of this A–4.

Q–5. If a trust is named as a beneficiary of an employee, will the beneficiaries of the trust with respect to the trust's interest in the employee's benefit be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)?

A–5. (a) Only an individual may be a designated beneficiary for purposes of determining the distribution period under section 401(a)(9). Consequently, a trust is not a designated beneficiary even though the trust is named as a beneficiary. However, if the requirements of Paragraph (b) of this A–5 are met, the beneficiaries of the trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9).

(b) The requirements of this paragraph (b) are met if, during any period during which required minimum distributions are being determined by treating the beneficiaries of the trust as designated beneficiaries of the employee, the following requirements are met:

(1) The trust is a valid trust under state law, or would be but for the fact that there is no corpus.

(2) The trust is irrevocable or will, by its terms, become irrevocable upon the death of the employee.

(3) The beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable from the trust instrument within the meaning of A–1 of this section.

(4) The documentation described in A–6 of this section has been provided to the plan administrator.

(c) In the case of payments to a trust having more than one beneficiary, see A–7 of § 1.401(a)(9)–5 for the rules for determining the designated beneficiary whose life expectancy will be used to determine the distribution period. If the beneficiary of the trust named as beneficiary is another trust, the beneficiaries of the other trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(A)(ii), provided that the requirements of paragraph (b) of this A–5 are satisfied with respect to such other trust in addition to the trust named as beneficiary.

Q–6. If a trust is named as a beneficiary of an employee, what documentation must be provided to the plan administrator?

A–6. (a) *Required minimum distributions before death.* In order to satisfy the documentation requirement of this A–6 for required minimum distributions under section 401(a)(9) to commence before the death of an employee, the employee must comply with either paragraph (a)(1) or (2) of this A–6:

(1) The employee provides to the plan administrator a copy of the trust instrument and agrees that if the trust instrument is amended at any time in the future, the employee will, within a reasonable time, provide to the plan administrator a copy of each such amendment.

(2) The employee—

(i) Provides to the plan administrator a list of all of the beneficiaries of the trust (including contingent and remaindermen beneficiaries with a description of the conditions on their entitlement);

(ii) Certifies that, to the best of the employee's knowledge, this list is correct and complete and that the requirements of paragraphs (b)(1), (2), and (3) of A–5 of this section are satisfied;

(iii) Agrees that, if the trust instrument is amended at any time in the future, the employee will, within a reasonable time, provide to the plan administrator corrected certifications to the extent that the amendment changes any information previously certified; and

(iv) Agrees to provide a copy of the trust instrument to the plan administrator upon demand.

(b) *Required minimum distributions after death.* In order to satisfy the documentation requirement of this A–6 for required minimum distributions after the death of the employee, by the last day of the calendar year immediately following the calendar year in which the employee died, the trustee of the trust must either—

(1) Provide the plan administrator with a final list of all beneficiaries of the trust (including contingent and remaindermen beneficiaries with a description of the conditions on their entitlement) as of the end of the calendar year following the calendar year of the employee's death; certify that, to the best of the trustee's knowledge, this list is correct and complete and that the requirements of paragraph (b)(1), (2), and (3) of A–5 of this section are satisfied; and agree to provide a copy of the trust instrument to the plan administrator upon demand; or

(2) Provide the plan administrator with a copy of the actual trust document for the trust that is named as a beneficiary of the employee under the plan as of the employee's date of death.

(c) *Relief for discrepancy between trust instrument and employee certifications or earlier trust instruments.* (1) If required minimum distributions are determined based on the information provided to the plan administrator in certifications or trust instruments described in paragraph (a)(1), (a)(2) or (b) of this A–6, a plan will not fail to satisfy section 401(a)(9) merely because the actual terms of the trust instrument are inconsistent with the information in those certifications or trust instruments previously provided to the plan administrator, but only if the plan administrator reasonably relied on the information provided and the required minimum distributions for calendar years after the calendar year in which the discrepancy is discovered are determined based on the actual terms of the trust instrument.

(2) For purposes of determining the amount of the excise tax under section 4974, the required minimum distribution is determined for any year based on the actual terms of the trust in effect during the year.

§ 1.401(a)(9)–5 Required minimum distributions from defined contribution plans.

Q–1. If an employee's benefit is in the form of an individual account under a defined contribution plan, what is the amount required to be distributed for each calendar year?

A–1. (a) *General rule.* If an employee's accrued benefit is in the form of an individual account under a defined contribution plan, the minimum amount required to be distributed for each distribution calendar year, as defined in paragraph (b) of this A–1, is equal to the quotient obtained by dividing the account (determined under A–3 of this section) by the applicable distribution period (determined under A–4 of this section). However, the required minimum distribution amount will never exceed the entire vested account balance on the date of the distribution. Further, the minimum distribution required to be distributed on or before an employee's required beginning date is always determined under section 401(a)(9)(A)(ii) and this A–1 and not section 401(a)(9)(A)(i).

(b) *Distribution calendar year.* A calendar year for which a minimum distribution is required is a distribution calendar year. If an employee's required beginning date is April 1 of the calendar year following the calendar year in which the employee attains age 70½, the employee's first distribution calendar year is the year the employee attains age 70½. If an employee's required beginning date is April 1 of the calendar year following the calendar year in which the employee retires, the calendar year in which the employee retires is the employee's first distribution calendar year. In the case of distributions to be made in accordance with the life expectancy rule in § 1.401(a)(9)–3 and in section 401(a)(9)(B)(iii) and (iv), the first distribution calendar year is the calendar year containing the date described in A–3(a) or A–3(b) of § 1.401(a)(9)–3, whichever is applicable.

(c) *Time for distributions.* The distribution required to be made on or before the employee's required beginning date shall be treated as the distribution required for the employee's first distribution calendar year (as defined in paragraph (b) of this A–1). The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the employee's required beginning date occurs, must be made on or before the end of that distribution calendar year.

(d) *Minimum distribution incidental benefit requirement.* If distributions are made in accordance with this section, the minimum distribution incidental benefit requirement of section 401(a)(9)(G) will be satisfied.

(e) *Annuity contracts.* Instead of satisfying this A–1, the required minimum distribution requirement may be satisfied by the purchase of an annuity contract from an insurance company in accordance with A–4 of § 1.401(a)(9)–6 with the employee's entire individual account. If such an annuity is purchased after distributions are required to commence (the required beginning date, in the case of distributions commencing before death, or the date determined under A–3 of § 1.401(a)(9)–3, in the case of distributions commencing after death), payments under the annuity contract purchased will satisfy section 401(a)(9) for distribution calendar years after the calendar year of the purchase if payments under the annuity contract are made in accordance with § 1.401(a)(9)–6. In such a case, payments under the annuity contract will be treated as distributions from the individual account for purposes of determining if the individual account satisfies section 401(a)(9) for the calendar year of the purchase. An employee may also purchase an annuity contract for a portion of the employee's account under the rules of A–2(c) of § 1.401(a)(9)–8

Q–2. If an employee's benefit is in the form of an individual account and, in any calendar year, the amount distributed exceeds the minimum required, will credit be given in subsequent calendar years for such excess distribution?

A–2. If, for any distribution calendar year, the amount distributed exceeds the minimum required, no credit will be given in subsequent calendar years for such excess distribution.

Q–3. What is the amount of the account of an employee used for determining the employee's required minimum distribution in the case of an individual account?

A–3. (a) In the case of an individual account, the benefit used in determining the required minimum distribution for a distribution calendar year is the account balance as of the last valuation date in the calendar year immediately preceding that distribution calendar year (valuation calendar year) adjusted in accordance with paragraphs (b) and (c) of this A–3.

(b) The account balance is increased by the amount of any contributions or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date. Contributions include contributions made after the close of the valuation calendar year which are allocated as of dates in the valuation calendar year.

(c)(1) The account balance is decreased by distributions made in the

valuation calendar year after the valuation date.

(2)(i) The following rule applies if any portion of the required minimum distribution for the first distribution calendar year is made in the second distribution calendar year (*i.e.*, generally, the distribution calendar year in which the required beginning date occurs). In such case, for purposes of determining the account balance to be used for determining the required minimum distribution for the second distribution calendar year, distributions described in paragraph (c)(1) shall include an additional amount. This additional amount is equal to the amount of any distribution made in the second distribution calendar year on or before the required beginning date that is not in excess (when added to the amounts distributed in the first calendar year) of the amount required to meet the required minimum distribution for the first distribution calendar year.

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

Example. (i) Employee X, born October 1, 1931, is an unmarried participant in a qualified defined contribution plan (Plan Z). After retirement, X attains age 70½ in calendar year 2002. X's required beginning date is April 1, 2003. As of the last valuation date under Plan Z in calendar year 2001, which was on December 31, 2001, the value of X's account balance was $25,300. No contributions are made or amounts forfeited after such date which are allocated in calendar year 2001. No rollover amounts are received after such date by Plan Z on X's behalf which were distributed by a qualified plan or IRA in calendar years 2001, 2002, or 2003. The applicable distribution period from the table in A–4(a)(2) for an individual age 71 is 25.3 years. The required minimum distribution for calendar year 2002 is $1,000 ($25,300 divided by 25.3). That amount is distributed to X on April 1, 2003.

(ii) The value of X's account balance as of December 31, 2002 (the last valuation date under Plan Z in calendar year 2002) is $26,400. No contributions are made or amounts forfeited after such date which are allocated in calendar year 2002. In order to determine the benefit to be used in calculating the required minimum distribution for calendar year 2003, the account balance of $26,400 will be reduced by $1,000, the amount of the required minimum distribution for calendar year 2002 made on April 1, 2003. Consequently, the benefit for purposes of determining the required minimum distribution for calendar year 2003 is $25,400.

(iii) If, instead of $1,000 being distributed to X, $20,000 is distributed on April 1 2003, the account balance of $26,400 would still be reduced by $1,000 in order to determine the benefit to be used in calculating the required minimum distribution for calendar year 2003. The amount of the distribution made on April 1, 2003, in order to meet the required minimum distribution for 2002 would still be $1,000. The remaining $19,000 ($20,000—$1,000) of the distribution is not the required minimum distribution for 2002. Instead, the remaining $19,000 of the distribution is sufficient to satisfy the required minimum distribution requirement with respect to X for calendar year 2003. The amount which is required to be distributed for calendar year 2003 is $1,040.10 ($25,400 divided by 24.4, the applicable distribution period for an individual age 72). Consequently, no additional amount is required to be distributed to X in 2003 because $19,000 exceeds $1,040.10. However, pursuant to A–2 of this section, the remaining $17,959.90 ($19,000 − $1,040.10) may not be used to satisfy the required minimum distribution requirements for calendar year 2004 or any subsequent calendar years.

(d) If an amount is distributed by one plan and rolled over to another plan (receiving plan), A–2 of § 1.401(a)(9)–7 provides additional rules for determining the benefit and required minimum distribution under the receiving plan. If an amount is transferred from one plan (transferor plan) to another plan (transferee plan), A–3 and A–4 of § 1.401(a)(9)–7 provide additional rules for determining the amount of the required minimum distribution and the benefit under both the transferor and transferee plans.

Q–4. For required minimum distributions during an employee's lifetime, what is the applicable distribution period?

A–4. (a) *General rule*—(1) *Applicable distribution period.* Except as provided in paragraph (b) of this A–4, the applicable distribution period for required minimum distributions for distribution calendar years up to and including the distribution calendar year that includes the employee's date of death is determined using the table in paragraph (a)(2) for the employee's age as of the employee's birthday in the relevant distribution calendar year.

(2) *Table for determining distribution period*—(i) *General rule.* The following table is used for determining the distribution period for lifetime distributions to an employee.

Age of the employee	Distribution period
70	26.2
71	25.3
72	24.4
73	23.5
74	22.7
75	21.8
76	20.9
77	20.1
78	19.2
79	18.4
80	17.6
81	16.8
82	16.0
83	15.3
84	14.5
85	13.8
86	13.1
87	12.4
88	11.8
89	11.1
90	10.5
91	9.9
92	9.4
93	8.8
94	8.3
95	7.8
96	7.3
97	6.9
98	6.5
99	6.1
100	5.7
101	5.3
102	5.0
103	4.7
104	4.4
105	4.1
106	3.8
107	3.6
108	3.3
109	3.1
110	2.8
111	2.6
112	2.4
113	2.2
114	2.0
115 and older	1.8

(ii) *Authority for revised table.* The table in A–4(a)(2)(i) of this section may be replaced by any revised table prescribed 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.

(b) *Spouse is sole beneficiary.* If the sole designated beneficiary of an employee is the employee's surviving spouse, for required minimum distributions during the employee's lifetime, the applicable distribution period is the longer of the distribution period determined in accordance with paragraph (a) of this A–4 or the joint life expectancy of the employee and spouse using the employee's and spouse's attained ages as of the employee's and the spouse's birthdays in the distribution calendar year. The spouse is sole designated beneficiary for purposes of determining the applicable distribution period for a distribution calendar year during the employee's lifetime if the spouse is the sole beneficiary of the employee's entire interest at all times during the distribution calendar year.

Q–5. For required minimum distributions after an employee's death, what is the applicable distribution period?

A–5. (a) *Death on or after the employee's required beginning date.* If an employee dies on or after

distribution has begun as determined under A–6 of § 1.401(a)(9)–2 (generally after the employee's required beginning date), in order to satisfy section 401(a)(9)(B)(i), the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is either—

(1) If the employee has a designated beneficiary as of the date determined under A–4 of § 1.401(a)(9)–4, the remaining life expectancy of the employee's designated beneficiary determined in accordance with paragraph(c)(1) or (2) of A–5; or

(2) If the employee does not have a designated beneficiary as of the date determined under A–4(a) of § 1.401(a)(9)–4, the remaining life expectancy of the employee determined in accordance with paragraph (c)(3) of this A–5.

(b) *Death before an employee's required beginning date.* If an employee dies before distribution has begun as determined under A–5 of § 1.401(a)(9)–2 (generally before the employee's required beginning date), in order to satisfy section 401(a)(9)(B)(iii) or (iv) and the life expectancy rule described in A–1 of § 1.401(a)(9)–3, the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is the remaining life expectancy of the employee's designated beneficiary, determined in accordance with paragraph(c)(1) or (2) of this A–5.

(c) *Life expectancy*—(1) *Nonspouse designated beneficiary.* The applicable distribution period measured by the beneficiary's remaining life expectancy is determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the employee's death. In subsequent calendar years the applicable distribution period is reduced by one for each calendar year that has elapsed since the calendar year immediately following the calendar year of the employee's death.

(2) *Spouse designated beneficiary.* If the surviving spouse of the employee is the employee's sole beneficiary, the applicable period is measured by the surviving spouse's life expectancy using the surviving spouse's birthday for each distribution calendar year for which a required minimum distribution is required after the calendar year of the employee's death. For calendar years after the calendar year of the spouse's death, the spouse's remaining life expectancy is the life expectancy of the spouse using the age of the spouse as of the spouse's birthday in the calendar year of the spouse's death. In subsequent calendar years, the applicable distribution period is reduced by one for each calendar year that has elapsed since the calendar year immediately following the calendar year of the spouse's death.

(3) *No designated beneficiary.* The applicable distribution period measured by the employee's remaining life expectancy is the life expectancy of the employee using the age of the employee as of the employee's birthday in the calendar year of the employee's death. In subsequent calendar years the applicable distribution period is reduced by one for each calendar year that has elapsed since the calendar year of death.

Q–6. What life expectancies must be used for purposes of determining required minimum distributions under section 401(a)(9)?

A–6. (a) *General rule.* Unless otherwise prescribed in accordance with paragraph (b) of this A–6, life expectancies for purposes of determining required minimum distributions under section 401(a)(9) must be computed using of the expected return multiples in Tables V and VI of § 1.72–9.

(b) *Revised expected return table.* The expected return multiples described in paragraph (a) of this A–6 may be replaced by revised expected return multiples prescribed for use for purposes of determining required minimum distributions under section 401(a)(9) 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.

Q–7. If an employee has more than one designated beneficiary, which designated beneficiary's life expectancy will be used to determine the applicable distribution period?

A–7. (a) *General rule.* (1) Except as otherwise provided in paragraph (c) of this A–7, if more than one individual is designated as a beneficiary with respect to an employee as of any applicable date for determining the designated beneficiary, the designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the distribution period. However, except as otherwise provided in A–5 of § 1.401(a)(9)–4 and paragraph (c)(1) of this A–7, if a person other than an individual is designated as a beneficiary, the employee will be treated as not having any designated beneficiaries for purposes of section 401(a)(9) even if there are also individuals designated as beneficiaries.

(2) See A–2 of § 1.401(a)(9)-8 for special rules which apply if an employee's benefit under a plan is divided into separate accounts (or segregated shares in the case of a defined benefit plan) and the beneficiaries with respect to a separate account differ from the beneficiaries of another separate account.

(b) *Contingent beneficiary.* Except as provided in paragraph (c)(1) of this A–7, if a beneficiary's entitlement to an employee's benefit is contingent on an event other than the employee's death or the death of another beneficiary, such contingent beneficiary is considered to be a designated beneficiary for purposes of determining which designated beneficiary has the shortest life expectancy under paragraph (a) of this A–7.

(c) *Death contingency.* (1) If a beneficiary (subsequent beneficiary) is entitled to any portion of an employee's benefit only if another beneficiary dies before the entire benefit to which that other beneficiary is entitled has been distributed by the plan, the subsequent beneficiary will not be considered a beneficiary for purposes of determining who is the designated beneficiary with the shortest life expectancy under paragraph (a) of this A–7 or whether a beneficiary who is not an individual is a beneficiary. This rule does not apply if the other beneficiary dies prior to the applicable date for determining the designated beneficiary.

(2) If the designated beneficiary whose life expectancy is being used to calculate the distribution period dies on or after the applicable date, such beneficiary's remaining life expectancy will be used to determine the distribution period whether or not a beneficiary with a shorter life expectancy receives the benefits.

(3) This paragraph (c) is illustrated by the following examples:

Example 1. Employer L maintains a defined contribution plan, Plan W. Unmarried Employee C dies in calendar year 2001 at age 30. As of December 31, 2002, D, the sister of C, is the beneficiary of C's account balance under Plan W. Prior to death C has designated that, if D dies before C's entire account balance has been distributed to D, E, mother of C and D, will be the beneficiary of the account balance. Because E is only entitled, as a beneficiary, to any portion of C's account if D dies before the entire account has been distributed, E is disregarded in determining C's designated beneficiary. Accordingly, even after D's death, D's life expectancy continues to be used to determined the distribution period.

Example 2. (i) Employer M maintains a defined contribution plan, Plan X. Employee A, an employee of M, died in 2001 at the age of 55, survived by spouse, B, who was 50 years old. Prior to A's death, M had

established an account balance for A in Plan X. A's account balance is invested only in productive assets. A named the trustee of a testamentary trust (Trust P) established under A's will as the beneficiary of all amounts payable from the A's account in Plan X after A's death. A copy of the Trust P and a list of the trust beneficiaries were provided to the plan administrator of Plan X by the end of the calendar year following the calendar year of A's death. As of the date of A's death, the Trust P was irrevocable and was a valid trust under the laws of the state of A's domicile. A's account balance in Plan X was includible in A's gross estate under § 2039.

(ii) Under the terms of Trust P, all trust income is payable annually to B, and no one has the power to appoint Trust P principal to any person other than B. A's children, who are all younger than B, are the sole remainder beneficiaries of the Trust P. No other person has a beneficial interest in Trust P. Under the terms of the Trust P, B has the power, exercisable annually, to compel the trustee to withdraw from A's account balance in Plan X an amount equal to the income earned on the assets held in A's account in Plan X during the calendar year and to distribute that amount through Trust P to B. Plan X contains no prohibition on withdrawal from A's account of amounts in excess of the annual required minimum distributions under section 401(a)(9). In accordance with the terms of Plan X, the trustee of Trust P elects, in order to satisfy section 401(a)(9), to receive annual required minimum distributions using the life expectancy rule in section 401(a)(9)(B)(iii) for distributions over a distribution period equal to B's life expectancy. If B exercises the withdrawal power, the trustee must withdraw from A's account under Plan X the greater of the amount of income earned in the account during the calendar year or the required minimum distribution. However, under the terms of Trust P, and applicable state law, only the portion of the Plan X distribution received by the trustee equal to the income earned by A's account in Plan X is required to be distributed to B (along with any other trust income.)

(iii) Because some amounts distributed from A's account in Plan X to Trust P may be accumulated in Trust P during B's lifetime for the benefit of A's children, as remaindermen beneficiaries of Trust P, even though access to those amounts are delayed until after B's death, A's children are beneficiaries of A's account in Plan X in addition to B and B is not the sole beneficiary of A's account. Thus the designated beneficiary used to determine the distribution period from A's account in Plan X is the beneficiary with the shortest life expectancy. B's life expectancy is the shortest of all the potential beneficiaries of the testamentary trust's interest in A's account in Plan X (including remainder beneficiaries). Thus, the distribution period for purposes of section 401(a)(9)(B)(iii) is B's life expectancy. Because B is not the sole beneficiary of the testamentary trust's interest in A's account in Plan X, the special rule in 401(a)(9)(B)(iv) is not available and the annual required minimum distributions from the account to Trust M must begin no later than the end of the calendar year immediately following the calendar year of A's death.

Example 3. (i) The facts are the same as Example 2 except that the testamentary trust instrument provides that all amounts distributed from A's account in Plan X to the trustee while B is alive will be paid directly to B upon receipt by the trustee of Trust P.

(ii) In this case, B is the sole beneficiary of A's account in Plan X for purposes of determining the designated beneficiary under section 401(a)(9)(B)(iii) and (iv). No amounts distributed from A's account in Plan X to Trust P are accumulated in Trust P during B's lifetime for the benefit of any other beneficiary. Because B is the sole beneficiary of the testamentary trust's interest in A's account in Plan X, the annual required minimum distributions from A's account to Trust P must begin no later than the end of the calendar year in which A would have attained age 70½. rather than the calendar year immediately following the calendar year of A's death.

(d) *Designations by beneficiaries.* (1) If the plan provides (or allows the employee to specify) that, after the end of the calendar year following the calendar year in which the employee died, any person or persons have the discretion to change the beneficiaries of the employee, then, for purposes of determining the distribution period after the employee's death, the employee will be treated as not having designated a beneficiary. However, such discretion will not be found to exist merely because a beneficiary may designate a subsequent beneficiary for distributions of any portion of the employee's benefit after the beneficiary dies.

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

Example. The facts are the same as in *Example 1* in paragraph (c)(3) of this A–7, except that, as permitted under the plan, D designates E as the beneficiary of any amount remaining after the death of D rather than C making this designation. E is still disregarded in determining C's designated beneficiary for purposes of section 401(a)(9).

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 (subject to the limitation that the required minimum distribution for that subsequent distribution calendar year will not exceed the vested portion of the employee's benefit). In such case, an adjustment for the additional amount distributed which corresponds to the adjustment described in A–3(c)(2) of this section will be made to the account used to determine the required minimum distribution for that calendar year.

§ 1.401(a)(9)–6 Required minimum distributions as annuity payments.

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

A–1. (a) In order to satisfy section 401(a)(9), annuity distributions under a defined benefit plan must be paid in periodic payments made at intervals not longer than one year (payment intervals) for a life (or lives), or over a period certain not longer than a life expectancy (or joint life and last survivor expectancy) described in section 401(a)(9)(A)(ii) or section 401(a)(9)(B)(iii), whichever is applicable. The life expectancy (or joint life and last survivor expectancy) for purposes of determining the length of the period certain will be determined in accordance with A–3 of this section. Once payments have commenced over a period certain, the period certain may not be lengthened even if the period certain is shorter than the maximum permitted. Life annuity payments must satisfy the minimum distribution incidental benefit requirements of A–2 of this section. All annuity payments (life and period certain) also must either be nonincreasing or increase only as follows:

(1) With any percentage increase in a specified and generally recognized cost-of-living index;

(2) To the extent of the reduction in the amount of the employee's payments to provide for a survivor benefit upon death, but only if 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);

(3) To provide cash refunds of employee contributions upon the employee's death; or

(4) Because of an increase in benefits under the plan.

(b) 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 distribution is permitted to be made over the lives of the employee and the designated beneficiary, references to life annuity include a joint and survivor annuity.

(c) Distributions under a variable annuity will not be found to be increasing merely because the amount of the payments varies with the investment performance of the underlying assets. However, the Commissioner may prescribe additional requirements applicable to such variable life annuities in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

(d)(1) Except as provided in (d)(2) of this A–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 that 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 the life annuity payments for payment intervals ending on or after the employee's required beginning date.

(2) In the case of an annuity contract 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.

(3) This paragraph (d) 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 participant (A) in Plan X attains age 70 ½ in 2001. In order to meet the requirements of this paragraph, the first payment which must be made on behalf of A on or before April 1, 2002, will be $500 and the payments must continue to be made in monthly payments of $500 thereafter for the life and 10-year certain period.

(e) If distributions from a defined benefit plan are not in the form of an annuity, the employee's benefit will be treated as an individual account for purposes of determining the required minimum distribution. See § 1.401(a)(9)–5.

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)?

A–2. (a) *Life annuity for employee.* If the employee's benefit is payable in the form of a life annuity for the life of the employee satisfying section 401(a)(9), 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 may always be 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. However, the amount of the payments under the annuity must be nonincreasing unless specifically permitted under A–1 of this section.

(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 MDIB requirement will not be satisfied as of the date distributions commence unless the distribution option provides that annuity payments to be made to the employee on and after the employee's required beginning date will satisfy the conditions of this paragraph. 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 below. Thus, this requirement must be satisfied with respect to any benefit increase after such date, including increases to reflect increases in the cost of living. The applicable percentage is based on the excess of the age of the employee over the age of the beneficiary as of their attained ages as of their birthdays in a calendar year. If the employee has more than one beneficiary, the applicable percentage will be the percentage using the age of the youngest beneficiary. Additionally, the amount of the annuity payments must satisfy A–1 of this section.

(2) *Table.*

Excess of age of employee over age of beneficiary	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, 2001 to an employee (Z), born March 1, 1935, after retirement at age 65. Z's daughter (Y), born February 5, 1965, 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. There is no provision under the option for a change in the projected payments to Y as of April 1, 2006, Z's required beginning date. Consequently, as of January 1, 2001, the date annuity distributions commence, the plan does not satisfy the MDIB requirement in operation 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 60 percent of Z's monthly payment (the maximum percentage for a difference of ages of 30 years).

(d) *Period certain and annuity features.* If a distribution form includes a life annuity and a period certain, the amount of the annuity payments payable to the employee must satisfy paragraph (c) of this A–2, and the period certain may not exceed the period determined under A–3 of this section.

Q–3. How long is a period certain under an annuity contract permitted to extend?

A–3. (a) *Distributions commencing during the employee's life*—(1) *Spouse beneficiary.* If an employee's spouse is the employee's sole beneficiary as of the annuity starting date, the period certain for annuity distributions commencing during the life of an employee with an annuity starting date on or after the employee's required beginning date is not permitted to exceed the joint life and last survivor expectancy of the employee and the spouse using the age of the employee and spouse as of their birthdays in the calendar year that contains the annuity starting date.

(2) *Nonspouse beneficiary.* If an employee's surviving spouse is not the employee's sole beneficiary as of the annuity starting date, the period certain for any annuity distributions during the life of the employee with an annuity starting date on or after the employee's required beginning date is not permitted to exceed the shorter of the applicable distribution period for the employee (determined in accordance with the table in A–4(a)(2) of § 1.401(a)(9)–5) for the calendar year that contains on the annuity starting date or the joint life and last survivor expectancy of the employee and the employee's designated beneficiary, determined using the designated beneficiary as of the annuity starting date and using their ages as of their birthdays in the calendar year that contains the annuity starting date. See A–10 for the rule for annuity payments with an annuity starting date before the required beginning date.

(b) *Life expectancy rule.* (1) If annuity distributions commence after the death of the employee under the life expectancy rule (under section 401(a)(9)(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. May distributions be made from an annuity contract which is purchased from an insurance company?

A–4. Yes. Distributions may be made from an annuity contract which is purchased with the employee's benefit by the plan from an insurance company and which makes payments that satisfy the provisions of this section. In the case of an annuity contract purchased from an insurance company, there is also an exception to the nonincreasing requirement in A–1(a) of this section for an increase to provide a cash refund upon the employee's death equal to the excess of the amount of the premiums paid for the contract over the prior distributions under the contract. 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).

Q–5. In the case of annuity distributions under a defined benefit plan, how must additional benefits which accrue after the employee's required beginning date 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 after the employee's required beginning date, distribution of such amount as a separate identifiable component 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 separate identifiable component, provided that the actual payment of such amount commences as soon as practicable but not later than by the end of the first calendar year following the calendar year in which the additional benefit accrues, and that the total amount paid during such first calendar year is not 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 the employee's required beginning date, 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 (or as of the employee's required beginning date in the case of the employee's first distribution calendar year), the portion which 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 required beginning date.

Q–7. If an employee 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 April 1 following the calendar year in which the employee attains age 70½.

(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 attained 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 defined contribution plans.* The actuarial increase required under this A–7 does not apply to defined contribution plans.

(e) *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 A–7(a) 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). The actuarial increase required under section 401(a)(9) 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) must be provided even during the 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 (and if applicable A–4) of this section?

A–10. (a) *General rule.* If distributions irrevocably (except for acceleration) 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 (and, if applicable, A–4) 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)–3. 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 annuity starting 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 (single or joint lives and, if applicable, period certain). 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)(2) of A–3 of this section. The applicable distribution period for the employee (determined in accordance with the table in A–4(a)(2) of § 1.401(a)(9)–5) is 26.2 plus the difference between 70 and the age of the employee as of the employee's birthday in the year that contains the annuity starting date.

Q–11. What rule applies if distributions commence irrevocably (except for acceleration) 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 (and if applicable A–4) of this section,

A–11. If distributions commence irrevocably (except for acceleration) 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 (and if applicable A–4) 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 (and if applicable A–4) of this section over the remaining period over which distributions commenced (single life and, if applicable, period certain).

§ 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 benefit or 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.

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. However, the distribution has no impact on the required minimum distribution to be made by the receiving plan for the calendar year in which the rollover is received. But, if a required minimum distribution is required to be made by the receiving plan for the following calendar year, the rollover amount must be considered to be part of the

employee's benefit under the receiving plan. Consequently, for purposes of determining any required minimum distribution for the calendar year immediately following the calendar year in which the amount rolled over is received by the receiving plan, in the case in which 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. For purposes of calculating the benefit under the receiving plan pursuant to the preceding sentence, if the amount rolled over is received by the receiving plan in a different calendar year from the calendar year in which it is distributed by the distributing plan, the amount rolled over is deemed to have been received by the receiving plan in the calendar year in which it was distributed by the distributing plan.

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 the required minimum distribution requirement 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 to another, 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 required 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 required minimum distribution requirement for the calendar year of the transfer (and the prior year if applicable) by segregating the amount which must be distributed from the employee's benefit and not transferring that amount. Such amount may be retained by the transferor plan and distributed on or before the date required.

(b) For purposes of determining any required minimum distribution for the calendar year immediately following the calendar year in which the transfer occurs, in the case of a transfer after the last valuation date for the calendar year of the transfer under the transferor 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 decreased by the amount transferred, valued as of the date of the transfer.

Q–4. If an amount of an employee's benefit is transferred from one plan (transferor plan) to another plan (transferee plan), how are the benefit and the required minimum distribution under the transferee plan affected?

A–4. In the case of a transfer from one plan (transferor plan) to another (transferee plan), the general rule is that the benefit of the employee under the transferee plan is increased by the amount transferred. The transfer has no impact on the required minimum distribution to be made by the transferee plan in the calendar year in which the transfer is received. However, if a required minimum distribution is required from the transferee plan for the following calendar year, the transferred amount must be considered to be part of the employee's benefit under the transferee plan. Consequently, for purposes of determining any required minimum distribution for the calendar year immediately following the calendar year in which the transfer occurs, in the case of a transfer after the last valuation date of the transferee plan in the transfer calendar year, the benefit of the employee under the receiving plan valued as of such valuation date, adjusted in accordance with A–3 of § 1.401(a)(9)–5, will be increased by the amount transferred valued as of the date of the transfer.

Q–5. How are a spinoff, merger or consolidation (as defined in § 1.414(l)–1) treated for purposes of determining an employee's benefit and required minimum distribution under section 401(a)(9)?

A–5. For purposes of determining an employee's benefit and required minimum distribution under section 401(a)(9), a spinoff, a merger, or a consolidation (as defined in § 1.414(l)–1) will be treated as a transfer of the benefits of the employees involved. Consequently, the benefit and required minimum distribution of each employee involved under the transferor and transferee plans will be determined in accordance with A–3 and A–4 of this section.

§ 1.401(a)(9)–8 Special rules.

Q–1. What distribution rules apply if an employee is a participant in more than one plan?

A–1. If an employee is a participant in more than one plan, the plans in which the employee participates are not permitted to be aggregated for purposes of testing whether the distribution requirements of section 401(a)(9) are met. The distribution of the benefit of the employee under each plan must separately meet the requirements of section 401(a)(9). For this purpose, a plan described in section 414(k) is treated as two separate plans, a defined contribution plan to the extent benefits are based on an individual account and a defined benefit plan with respect to the remaining benefits.

Q–2. If an employee's benefit under a plan is divided into separate accounts (or segregated shares in the case of a defined benefit plan), do the distribution rules in section 401(a)(9) and these regulations apply separately to each separate account (or segregated share)?

A–2. (a) Except as otherwise provided in paragraphs (b) and (c) of this A–2, if an employee's account under a defined contribution plan plan is divided into separate accounts (or if an employee's benefit under a defined benefit plan is divided into segregated shares in the case of a defined benefit plan) under the plan, the separate accounts (or segregated shares) will be aggregated for purposes of satisfying the rules in section 401(a)(9). Thus, except as otherwise provided in paragraphs (b) and (c) of this A–2, all separate accounts, including a separate account for nondeductible employee contributions (under section 72(d)(2)) or for qualified voluntary employee contributions (as defined in section 219(e)), will be aggregated for purposes of section 401(a)(9).

(b) If, for lifetime distributions, as of an employee's required beginning date (or the beginning of any distribution calendar year beginning after the employee's required beginning date), or in the case of distributions under section 401(a)(9)(B)(ii) or (iii) and (iv), as of the end of the year following the year containing the employee's (or spouse's, where applicable) date of death, the beneficiaries with respect to a separate account (or segregated share in the case of a defined benefit plan) under the plan differ from the beneficiaries with respect to the other separate accounts (or segregate shares)

of the employee under the plan, such separate account (or segregated share) under the plan need not be aggregated with other separate accounts (or segregated shares) under the plan in order to determine whether the distributions from such separate account (or segregated share) under the plan satisfy section 401(a)(9). Instead, the rules in section 401(a)(9) may separately apply to such separate account (or segregated share) under the plan. For example, if, in the case of a distribution described in section 401(a)(9)(B)(iii) and (iv), the only beneficiary of a separate account (or segregated share) under the plan is the employee's surviving spouse, and beneficiaries other than the surviving spouse are designated with respect to the other separate accounts of the employee, distribution of the spouse's separate account (or segregated share) under the plan need not commence until the date determined under the first sentence in A–3(b) of § 1.401(a)(9)–3, even if distribution of the other separate accounts (or segregated shares) under the plan must commence at an earlier date. In the case of a distribution after the death of an employee to which section 401(a)(9)(B)(i) does not apply, distribution from a separate account (or segregated share) of an employee may be made over a beneficiary's life expectancy in accordance with section 401(a)(9)(B)(iii) and (iv) even through distributions from other separate accounts (or segregated shares) under the plan with different beneficiaries are being made in accordance with the five-year rule in section 401(a)(9)(B)(ii).

(c) A portion of an employee's account balance under a defined contribution plan is permitted to be used to purchase an annuity contract with a remaining amount maintained in the separate account. In that case, the separate account under the plan must be distributed in accordance with § 1.401(a)(9)–5 in order to satisfy section 401(a)(9) and the annuity payments under the annuity contract must satisfy § 1.401(a)(9)–6 in order to satisfy section 401(a)(9).

Q–3. What is a separate account or segregated share for purposes of section 401(a)(9)?

A–3. (a) For purposes of section 401(a)(9), a separate account in an individual account is a portion of an employee's benefit determined by an acceptable separate accounting including allocating investment gains and losses, and contributions and forfeitures, on a pro rata basis in a reasonable and consistent matter between such portion and any other benefits. Further, the amounts of each such portion of the benefit will be separately determined for purposes of determining the amount of the required minimum distribution in accordance with § 1.401(a)(9)–5.

(b) A benefit in a defined benefit plan is separated into segregated shares if it consists of separate identifiable components which may be separately distributed.

Q–4. Must a distribution that is required by section 401(a)(9) to be made by the required beginning date to an employee or that is required by section 401(a)(9)(B)(iii) and (iv) to be made by the required time to a designated beneficiary who is a surviving spouse be made notwithstanding the failure of the employee, or spouse where applicable, to consent to a distribution while a benefit is immediately distributable?

A–4. Yes. Section 411(a)(11) and section 417(e) (see §§ 1.411(a)(11)–1(c)(2) and 1.417(e)–1(c)) require employee and spousal consent to certain distributions of plan benefits while such benefits are immediately distributable. If an employee's normal retirement age is later than the required beginning date for the commencement of distributions under section 401(a)(9) and, therefore, benefits are still immediately distributable, the plan must, nevertheless, distribute plan benefits to the participant (or where applicable, to the spouse) in a manner that satisfies the requirements of section 401(a)(9). Section 401(a)(9) must be satisfied even though the participant (or spouse, where applicable) fails to consent to the distribution. In such a case, the plan may distribute in the form of a qualified joint and survivor annuity (QJSA) or in the form of a qualified preretirement survivor annuity (QPSA) and the consent requirements of sections 411(a)(11) and 417(e) are deemed to be satisfied if the plan has made reasonable efforts to obtain consent from the participant (or spouse if applicable) and if the distribution otherwise meets the requirements of section 417. If, because of section 401(a)(11)(B), the plan is not required to distribute in the form of a QJSA to a participant or a QPSA to a surviving spouse, the plan may distribute the required minimum distribution amount required at the time required to satisfy section 401(a)(9) and the consent requirements of sections 411(a)(11) and 417(e) are deemed to be satisfied if the plan has made reasonable efforts to obtain consent from the participant (or spouse if applicable) and if the distribution otherwise meets the requirements of section 417.

Q–5. Who is an employee's spouse or surviving spouse for purposes of section 401(a)(9)?

A–5. Except as otherwise provided in A–6(a) (in the case of distributions of a portion of an employee's benefit payable to a former spouse of an employee pursuant to a qualified domestic relations order), for purposes of section 401(a)(9), an individual is a spouse or surviving spouse of an employee if such individual is treated as the employee's spouse under applicable state law. In the case of distributions after the death of an employee, for purposes of determining whether, under the life expectancy rule in section 401(a)(9)(B)(iii) and (iv), the provisions of section 401(a)(9)(B)(iv) apply, the spouse of the employee is determined as of the date of death of the employee.

Q–6. In order to satisfy section 401(a)(9), are there any special rules which apply to the distribution of all or a portion of an employee's benefit payable to an alternate payee pursuant to a qualified domestic relations order as defined in section 414(p) (QDRO)?

A–6. (a) A former spouse to whom all or a portion of the employee's benefit is payable pursuant to a QDRO will be treated as a spouse (including a surviving spouse) of the employee for purposes of section 401(a)(9), including the minimum distribution incidental benefit requirement, regardless of whether the QDRO specifically provides that the former spouse is treated as the spouse for purposes of sections 401(a)(11) and 417.

(b)(1) If a QDRO provides that an employee's benefit is to be divided and a portion is to be allocated to an alternate payee, such portion will be treated as a separate account (or segregated share) which separately must satisfy the requirements of section 401(a)(9) and may not be aggregated with other separate accounts (or segregated shares) of the employee for purposes of satisfying section 401(a)(9). Except as otherwise provided in paragraph

(b)(2) of this A–6, distribution of such separate account allocated to an alternate payee pursuant to a QDRO must be made in accordance with section 401(a)(9). For example, in general, distribution of such account will satisfy section 401(a)(9)(A) if required minimum distributions from such account during the employee's lifetime begin not later than the employee's required beginning date and the required minimum distribution is determined in accordance with § 1.401(a)(9)–5 for each distribution calendar year using an applicable distribution period determined under A–4 of § 1.401(a)(9)–5 using the age of the employee in the distribution calendar year for purposes of using the

table in A–4(a)(2) of § 1.401(a)(9)–5 if applicable or ages of the employee and spousal alternate payee if their joint life expectancy is longer than the distribution period using that table. The determination of whether distribution from such account after the death of the employee to the alternate payee will be made in accordance with section 401(a)(9)(B)(i) or section 401(a)(9)(B)(ii) or (iii) and (iv) will depend on whether distributions have begun as determined under A–5 or § 1.401(a)(9)–2 (which provides, in general, that distributions are not treated as having begun until the employee's required beginning date even though payments may actually have begun before that date). For example, if the alternate payee dies before the employee and distribution of the separate account allocated to the alternate payee pursuant to the QDRO is to be made to the alternate payee's beneficiary, such beneficiary may be treated as a designated beneficiary for purposes of determining the required minimum distribution required from such account after the death of the employee if the beneficiary of the alternate payee is an individual and if such beneficiary is a beneficiary under the plan or specified to or in the plan. Specification in or pursuant to the QDRO will also be treated as specification to the plan.

(2) Distribution of the separate account allocated to an alternate payee pursuant to a QDRO satisfy the requirements of section 401(a)(9)(A)(ii) if such account is to be distributed, beginning not later than the employee's required beginning date, over the life of the alternate payee (or over a period not extending beyond the life expectancy of the alternative payee). Also, if the plan permits the employee to elect whether distribution upon the death of the employee will be made in accordance with the five-year rule in section 401(a)(9)(B)(ii) or the life expectancy rule in section 401(a)(9)(B)(iii) and (iv) pursuant to A–4(c) of § 1.401(a)(9)–3, such election is to be made only by the alternate payee for purposes of distributing the separate account allocated to the alternate payee pursuant to the QDRO. If the alternate payee dies after distribution of the separate account allocated to the alternate payee pursuant to a QDRO has begun (determined under A–5 of § 1.401(a)(9)–2) but before the employee dies, distribution of the remaining portion of that portion of the benefit allocated to the alternate payee must be made in accordance with the rules in § 1.401(a)(9)–5 or § 1.401(a)(9)–6 for distributions during the life of the employee. Only after the death of the employee is the amount of the required minimum distribution determined in accordance with the rules that apply after the death of the employee.

(c) If a QDRO does not provide that an employee's benefit is to be divided but provides that a portion of an employee's benefit (otherwise payable to the employee) is to be paid to an alternate payee, such portion will not be treated as a separate account (or segregated share) of the employee. Instead, such portion will be aggregated with any amount distributed to the employee and will be treated as having been distributed to the employee for purposes of determining whether the required minimum distribution requirement has been satisfied with respect to that employee.

Q–7. Will a plan fail to satisfy section 401(a)(9) where it is not legally permitted to distribute to an alternate payee all or a portion of an employee's benefit payable to an alternate payee pursuant to a QDRO within the period specified in section 414(p)(7)?

A–7. A plan will not fail to satisfy section 401(a)(9) merely because it fails to distribute a required amount during the period in which the issue of whether a domestic relations order is a QDRO is being determined pursuant to section 414(p)(7), provided that the period does not extend beyond the 18-month period described in section 414(p)(7)(E). To the extent that a distribution otherwise required under section 401(a)(9) is not made during this period, this amount and any additional amount accrued during this period will be treated as though it is not vested during the period and any distributions with respect to such amounts must be made under the relevant rules for nonvested benefits described in either A–8 of § 1.401(a)(9)–5 or A–6 of § 1.401(a)(9)–6.

Q–8. Will a plan fail to satisfy section 401(a)(9) where an individual's distribution from the plan is less than the amount otherwise required to satisfy section 401(a)(9) under § 1.401(a)(9)–5 or § 1.401(a)(9)–6 because distributions were being paid under an annuity contract issued by a life insurance company in state insurer delinquency proceedings and have been reduced or suspended by reasons of such state proceedings?

A–8. A plan will not fail to satisfy section 401(a)(9) merely because an individual's distribution from the plan is less than the amount otherwise required to satisfy section 401(a)(9) under § 1.401(a)(9)–5 or § 1.401(a)(9)–6 because distributions were being paid under an annuity contract issued by a life insurance company in state insurer delinquency proceedings and have been reduced or suspended by reasons of such state proceedings. To the extent that a distribution otherwise required under section 401(a)(9) is not made during the state insurer delinquency proceedings, this amount and any additional amount accrued during this period will be treated as though it is not vested during the period and any distributions with respect to such amounts must be made under the relevant rules for nonvested benefits described in either A–8 of § 1.401(a)(9)–5 or A–6 of § 1.401(a)(9)–6.

Q–9. Will a plan fail to qualify as a pension plan within the meaning of section 401(a) solely because the plan permits distributions to commence to an employee on or after April 1 of the calendar year following the calendar year in which the employee attains age 70½ even though the employee has not retired or attained the normal retirement age under the plan as of the date on which such distributions commence?

A–9. No. A plan will not fail to qualify as a pension plan within the meaning of section 401(a) solely because the plan permits distributions to commence to an employee on or after April 1 of the calendar year following the calendar year in which the employee attains age 70½ even though the employee has not retired or attained the normal retirement age under the plan as of the date on which such distributions commence. This rule applies without regard to whether or not the employee is a 5-percent owner with respect to the plan year ending in the calendar year in which distributions commence.

Q–10. Is the distribution of an annuity contract a distribution for purposes of section 401(a)(9)?

A–10. No. The distribution of an annuity contract is not a distribution for purposes of section 401(a)(9).

Q–11. Will a payment by a plan after the death of an employee fail to be treated as a distribution for purposes of section 401(a)(9) solely because it is made to an estate or a trust?

A–11. A payment by a plan after the death of an employee will not fail to be treated as a distribution for purposes of section 401(a)(9) solely because it is made to an estate or a trust. As a result, the estate or trust which receives a payment from a plan after the death of an employee need not distribute the amount of such payment to the beneficiaries of the estate or trust in accordance with section 401(a)(9)(B). However, pursuant to A–3 of § 1.401(a)(9)–4, distribution to the estate must satisfy the five-year rule in section 401(a)(9)(B)(iii) if the distribution to the employee had not begun (as defined in

A–6 of § 1.401(a)(9)–2) as of the employee's date of death, and pursuant to A–3 of § 1.401(a)(9)–4, an estate may not be a designated beneficiary. See A–5 and A–6 of § 1.401(a)(9)–4 for provisions under which beneficiaries of a trust with respect to the trust's interest in an employee's benefit are treated as having been designated as beneficiaries of the employee under the plan.

Q–12. Will a plan fail to satisfy section 411 if the plan is amended to eliminate benefit options that do not satisfy section 401(a)(9)?

A–12. Nothing in section 401(a)(9) permits a plan to eliminate for all participants a benefit option that could not otherwise be eliminated pursuant to section 411(d)(6). However, a plan must provide that, notwithstanding any other plan provisions, it will not distribute benefits under any option that does not satisfy section 401(a)(9). See A–3 of § 1.401(a)(9)–1. Thus, the plan, notwithstanding section 411(d)(6), must prevent participants from electing benefit options that do not satisfy section 401(a)(9).

Q–13. Is a plan disqualified merely because it pays benefits under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA)?

A–13. No. Even though the distribution requirements added by TEFRA were retroactively repealed by the Tax Reform Act of 1984 (TRA of 1984), the transitional election rule in section 242(b) was preserved. Satisfaction of the spousal consent requirements of section 417(a) and (e) (added by the Retirement Equity Act of 1984) will not be considered a revocation of the pre-1984 designation. However, sections 401(a)(11) and 417 must be satisfied with respect to any distribution subject to those sections. The election provided in section 242(b) of TEFRA is hereafter referred to as a section 242(b)(2) election.

Q–14. In the case in which an amount is transferred from one plan (transferor plan) to another plan (transferee plan), may the transferee plan distribute the amount transferred in accordance with a section 242(b)(2) election made under either the transferor plan or under the transferee plan?

A–14. (a) In the case in which an amount is transferred from one plan to another plan, the amount transferred may be distributed in accordance with a section 242(b)(2) election made under the transferor plan if the employee did not elect to have the amount transferred and if the amount transferred is separately accounted for by the transferee plan. However, only the benefit attributable to the amount transferred, plus earnings thereon, may be distributed in accordance with the section 242(b)(2) election made under the transferor plan. If the employee elected to have the amount transferred, the transfer will be treated as a distribution and rollover of the amount transferred for purposes of this section.

(b) In the case in which an amount is transferred from one plan to another plan, the amount transferred may not be distributed in accordance with a section 242(b)(2) election made under the transferee plan. If a section 242(b)(2) election was made under the transferee plan, the amount transferred must be separately accounted for. If the amount transferred is not separately accounted for under the transferee plan, the section 242(b)(2) election under the transferee plan is revoked and section 401(a)(9) will apply to subsequent distributions by the transferee plan.

(c) A merger, spinoff, or consolidation, as defined in § 1.414(l)–1(b), will be treated as a transfer for purposes of the section 242(b)(2) election.

Q–15. If an amount is distributed by one plan (distributing plan) and rolled over into another plan (receiving plan), may the receiving plan distribute the amount rolled over in accordance with a section 242(b)(2) election made under either the distributing plan or the receiving plan?

A–15. No. If an amount is distributed by one plan and rolled over into another plan, the receiving plan must distribute the amount rolled over in accordance with section 401(a)(9) whether or not the employee made a section 242(b)(2) election under the distributing plan. Further, if the amount rolled over was not distributed in accordance with the election, the election under the distributing plan is revoked and section 401(a)(9) will apply to all subsequent distributions by the distributing plan. Finally, if the employee made a section 242(b)(2) election under the receiving plan and such election is still in effect, the amount rolled over must be separately accounted for under the receiving plan and distributed in accordance with section 401(a)(9). If amounts rolled over are not separately accounted for, any section 242(b)(2) election under the receiving plan is revoked and section 401(a)(9) will apply to subsequent distributions by the receiving plan.

Q–16. May a section 242(b)(2) election be revoked after the date by which distributions are required to commence in order to satisfy section 401(a)(9) and this section of the regulations?

A–16. Yes. A section 242(b)(2) election may be revoked after the date by which distributions are required to commence in order to satisfy section 401(a)(9) and this section of the regulations. However, if the section 242(b)(2) election is revoked after the date by which distributions are required to commence in order to satisfy section 401(a)(9) and this section of the regulations and the total amount of the distributions which would have been required to be made prior to the date of the revocation in order to satisfy section 401(a)(9), but for the section 242(b)(2) election, have not been made, the trust must distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which was required to have been distributed to satisfy the requirements of section 401(a)(9) and continue distributions in accordance with such requirements.

Par. 3–4. Section 1.403(b)–2 is added to read as follows:

§ 1.403(b)–2 Required minimum distributions from annuity contracts purchased, or custodial accounts or retirement income accounts established, by a section 501(c)(3) organization or a public school.

Q–1. Are section 403(b) contracts subject to the distribution rules provided in section 401(a)(9)?

A–1. (a) Yes. Section 403(b) contracts are subject to the distribution rules provided in section 401(a)(9). For purposes of this section the term *section 403(b) contract* means an annuity contract described in section 403(b)(1), custodial account described in section 403(b)(7), or a retirement income account described in section 403(b)(9).

(b) For purposes of applying the distribution rules in section 401(a)(9), section 403(b) contracts will be treated as individual retirement annuities described in section 408(b) and individual retirement accounts described in section 408(a) (IRAs). Consequently, except as otherwise provided in paragraph (c), the distribution rules in section 401(a)(9) will be applied to section 403(b) contracts in accordance with the provisions in § 1.408–8.

(c)(1) The required beginning date for purposes of section 403(b)(9) is April 1, of the calendar year following the later of the calendar year in which the employee attains 70½ or the calendar year in which the employee retires from employment with the employer maintaining the plan. The concept of 5-percent owner has no application in the case of employees of employers described in section 403(b)(1)(A).

(2) The rule in A–5 of § 1.408–8 does not apply to section 403(b) contracts. Thus, the surviving spouse of an employee is not permitted to treat a section 403(b) contract of which the spouse is the sole beneficiary as the spouse's own section 403(b) contract.

Q–2. To what benefits under section 403(b) contracts, do the distribution rules provided in section 401(a)(9) apply?

A–2. (a) The distribution rules provided in section 401(a)(9) apply to all benefits under section 403(b) contracts accruing after December 31, 1986 (post-'86 account balance). The distribution rules provided in section 401(a)(9) do not apply to the balance of the account balance under the section 403(b) contract valued as of December 31, 1986, exclusive of subsequent earnings (pre-'87 account balance). Consequently, the post-'86 account balance includes earnings after December 31, 1986 on contributions made before January 1, 1987, in addition to the contributions made after December 31, 1986 and earnings thereon. The issuer or custodian of the section 403(b) contract must keep records that enable it to identify the pre-'87 account balance and subsequent changes as set forth in paragraph (b) of this A–2 and provide such information upon request to the relevant employee or beneficiaries with respect to the contract. If the issuer does not keep such records, the entire account balance will be treated as subject to section 401(a)(9).

(b) In applying the distribution rules in section 401(a)(9), only the post-'86 account balance is used to calculate the required minimum distribution required for a calendar year. The amount of any distribution required to satisfy the required minimum distribution requirement for a calendar year will be treated as being paid from the post-'86 account balance. Any amount distributed in a calendar year in excess of the required minimum distribution requirement for a calendar year will be treated as paid from the pre-'87 account balance. The pre-'87 account balance for the next calendar year will be permanently reduced by the deemed distributions from the account.

(c) The pre-'86 account balance and the post-'87 account balance have no relevance for purposes of determining the amount includible in income under section 72.

Q–3. Must the value of the account balance under a section 403(b) contract as of December 31, 1986 be distributed in accordance with the minimum distribution incidental benefit requirement?

A–3. Distributions of the entire account balance of a section 403(b) contract, including the value of the account balance under the contract or account as of December 31, 1986, must satisfy the minimum distribution incidental benefit requirement. However, distributions attributable to the value of the account balance under the contract or account as of December 31, 1986 is treated as satisfying the minimum distribution incidental benefit requirement if such distributions satisfy the rules in effect as of July 27, 1987, interpreting 1.401–1(b)(1)(i).

Q–4. Is the required minimum distribution from one section 403(b) contract of an employee permitted to be distributed from another section 403(b) contract in order to satisfy section 401(a)(9)?

A–4. Yes. The required minimum distribution must be separately determined for each section 403(b) contract of an employee. However, such amounts may then be totaled and the total distribution taken from any one or more of the individual section 403(b) contracts. However, under this rule, only amounts in section 403(b) contracts that an individual holds as an employee may be aggregated. Amounts in section 403(b) contracts that an individual holds as a beneficiary of the same decedent may be aggregated, but such amounts may not be aggregated with amounts held in section 403(b) contracts that the individual holds as the employee or as the beneficiary of another decedent. Distributions from section 403(b) contracts or accounts will not satisfy the distribution requirements from IRAs, nor will distributions from IRAs satisfy the distribution requirements from section 403(b) contracts or accounts.

Par. 5. Section § 1.408–8 is added to read as follows:

§ 1.408–8 Distribution requirements for individual retirement plans.

The following questions and answers relate to the distribution rules for IRAs provided in sections 408(a)(6) and 408(b)(3).

Q–1. Are individual retirement plans (IRAs) subject to the distribution rules provided in section 401(a)(9) and §§ 1.401(a)(9)–1 through 1.401(a)(9)–8 for qualified plans?

A–1. (a) Yes. Except as otherwise provided in this section, IRAs are subject to the required minimum distribution rules provided in section 401(a)(9) and §§ 1.401(a)(9)–1 through 1.401(a)(9)–8 for qualified plans. For example, whether the five year rule or the life expectancy rule applies to distribution after death occurring before the IRA owner's required beginning date will be determined in accordance with § 1.401(a)(9)–3, the rules of § 1.401(a)(9)–4 apply for purposes of determining an IRA owner's designated beneficiary, the amount of the required minimum distribution required for each calendar year from an individual account will be determined in accordance with § 1.401(a)(9)–5, and whether annuity payments from an individual retirement annuity satisfy section 401(a)(9) will be determined under § 1.401(a)(9)–6. For this purpose the term IRA means an individual retirement account or annuity described in section 408(a) or (b).

(b) For purposes of applying the required minimum distribution rules in §§ 1.401(a)(9)–1 through 1.401(a)(9)–8 for qualified plans, the IRA trustee, custodian, or issuer is treated as the plan administrator, and the IRA owner is substituted for the employee

Q–2. Are employer contributions under a simplified employee pension (defined in section 408(k)) or a SIMPLE IRA (defined in section 408(p)) treated as contributions to an IRA?

A–2. Yes. IRAs that receive employer contributions under a simplified employee pension (defined in section 408(k)) or a SIMPLE plan (defined in section 408(p)) are treated as IRAs for purposes of section 401(a) and are, therefore, subject to the distribution rules in this section.

Q–3. In the case of distributions from an IRA, what does the term *required beginning date* mean?

A–3. In the case of distributions from an IRA, the term *required beginning date* means April 1 of the calendar year following the calendar year in which the individual attains age 70½.

Q–4. When is the amount of a distribution from a IRA not eligible for rollover because the amount is a required minimum distribution?

A–4. The amount of a distribution that is a required minimum distribution from an IRA and thus not eligible for rollover is determined in the same manner as provided in Q&A–7 of § 1.402(c)–2 for distributions from qualified plans. For example, if a required minimum distribution is required for a calendar year, the amounts distributed during a calendar year from an IRA are treated as required minimum distributions under section 401(a)(9) to the extent that the total required minimum distribution for the year under section 401(a)(9) for that IRA has not been satisfied. This requirement may be satisfied by a distribution from the IRA or, as permitted under A–8 of this section, from another IRA.

Q–5. May an individual's surviving spouse elect to treat such spouse's entire interest as a beneficiary in an individual's IRA upon the death of the individual (or the remaining part of such interest if distribution to the spouse has commenced) as the spouse's own account?

A–5. (a) The surviving spouse of an individual may elect in the manner described in paragraph (b) of this A–5 to treat the spouse's entire interest as a beneficiary in an individual's IRA (or the remaining part of such interest if distribution thereof has commenced to the spouse) as the spouse's own IRA. This election is permitted to be made at any time after the distribution of the required minimum amount for the account for the calendar year containing the individual's date of death. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdrawal amounts from the IRA. This requirement is not satisfied if a trust is named as beneficiary of the IRA even if the spouse is the sole beneficiary of the trust. If the surviving spouse makes such an election, the surviving spouse's interest in the IRA would then be subject to the distribution requirements of section 401(a)(9)(A) applicable to the spouse as the IRA owner rather than those of section 401(a)(9)(B) applicable to the surviving spouse as the decedent IRA owner's beneficiary. Thus, the required minimum distribution for the year of the election and each subsequent year would be determined under section 401(a)(9)(A) with the spouse as IRA owner and not section 401(a)(9)(B).

(b) The election described in paragraph (a) of this A–5 is made by the surviving spouse redesignating the account as the account in the name of the surviving spouse as IRA owner rather than as beneficiary. Alternatively, a surviving spouse eligible to make the election is deemed to have made the election if, at any time, either of the following occurs:

(1) Any required amounts in the account (including any amounts that have been rolled over or transferred, in accordance with the requirements of section 408(d)(3)(A)(i), into an individual retirement account or individual retirement annuity for the benefit of such surviving spouse) have not been distributed within the appropriate time period applicable to the surviving spouse as beneficiary under section 401(a)(9)(B); or

(2) Any additional amounts are contributed to the account (or to the account or annuity to which the surviving spouse has rolled such amounts over, as described in (1) above) which are subject, or deemed to be subject, to the distribution requirements of section 401(a)(9)(A).

(c) The result of an election described in paragraph (b) of this A–5 is that the surviving spouse shall then be considered the IRA owner for whose benefit the trust is maintained for all purposes under the Code (*e.g.* section 72(t)).

Q–6. How is the benefit determined for purposes of calculating the required minimum distribution from an IRA?

A–6. For purposes of determining the required minimum distribution required to be made from an IRA in any calendar year, the account balance of the IRA as of the December 31 of the calendar year immediately preceding the calendar year for which distributions are being made will be substituted in A–3 of § 1.401(a)(9)–5 for the account of the employee. The account balance as of December 31 of such calendar year is the value of the IRA upon close of business on such December 31. However, for purposes of determining the required minimum distribution for the second distribution calendar year for an individual, the account balance as of December 31 of such calendar year must be reduced by any distribution (as described in A–3(c)(2) of § 1.401(a)(9)–5) made to satisfy the required minimum distribution requirements for the individual's first distribution calendar year after such date.

Q–7. What rules apply in the case of a rollover to an IRA of an amount distributed by a qualified plan or another IRA?

A–7. If the surviving spouse of an employee rolls over a distribution from a qualified plan, such surviving spouse may elect to treat the IRA as the spouse's own IRA in accordance with the provisions in A–5 of this section. In the event of any other rollover to an IRA of an amount distributed by a qualified plan or another IRA, the rules in § 1.401(a)(9)–3 will apply for purposes of determining the account balance for the receiving IRA and the required minimum distribution from the receiving IRA. However, because the value of the account balance is determined as of December 31 of the year preceding the year for which the required minimum distribution is being determined and not as of a valuation date in the preceding year, the account balance of the receiving IRA need not be adjusted for the amount received as provided in A–2 of § 1.401(a)(9)–7 in order to determine the required minimum distribution for the calendar year following the calendar year in which the amount rolled over is received, unless the amount received is deemed to have been received in the immediately preceding year, pursuant to A–2 of § 1.401(a)(9)–7. In that case, for purposes of determining the required minimum distribution for the calendar year in which such amount is actually received, the account balance of the receiving IRA as of December 31 of the preceding year must be adjusted by the amount received in accordance with A–2 of § 1.401(a)(9)–7.

Q–8. What rules apply in the case of a transfer from one IRA to another?

A–8. In the case of a transfer from one IRA to another IRA, the rules in A–3 or A–4 of § 1.401(a)(9)–7 will apply for purposes of determining the account balance of, and the required minimum distribution from, the IRAs involved. Thus, the transferor IRA must distribute in the year of the transfer any amount required determined without regard to the transfer. For purposes of determining the account balance of the transferee IRA and the transferor IRA, the account balance need not be adjusted for the amount transferred as provided in A–4(a) of § 1.401(a)(9)–7 in order to calculate the required minimum distribution for the calendar year following the calendar year of the transfer, because the account balance is determined as of December 31 of the calendar year immediately preceding the calendar year for which the required minimum distribution is being determined.

Q–9. Is the required minimum distribution from one IRA of an owner permitted to distributed from another IRA in order to satisfy section 401(a)(9).

A–9. Yes. The required minimum distribution must be calculated separately for each IRA. However, such amounts may then be totaled and the total distribution taken from any one or more of the individual IRAs. However, under this rule, only amounts in IRAs that an individual holds as the IRA owner may be aggregated. Amounts in IRAs that an individual holds as a beneficiary of the same decedent may be aggregated, but such amounts may not be aggregated with amounts held in IRAs that the individual holds as the IRA owner or as the beneficiary of another decedent. Distributions from section 403(b) contracts or accounts will not satisfy the distribution requirements from IRAs, nor will distributions from IRAs satisfy the distribution requirements from section 403(b) contracts or accounts. Distributions from Roth IRAs (defined in section 408A) will not satisfy the distribution requirements applicable to IRAs or section 403(b) accounts or contracts and distributions from IRAs or section 403(b) contracts or accounts will not

satisfy the distribution requirements from Roth IRAs.

Q–10. Is the trustee of an IRA required to report the amount that is required to be distributed from that IRA?

A–10. Yes. The trustee of an IRA is required to report to the Internal Revenue Service and to the IRA owner the amount required to be distributed from the IRA for each calendar year at the time and in the manner prescribed in the instructions to the applicable Federal tax forms, as well as any additional information as required by such forms or such instructions.

PART 54—PENSION EXCISE TAXES

Par. 6. The authority citation for part 54 is amended by adding the following citation to read as follows:

Authority: 26 U.S.C. 7805 * * *.

§ 54.4974–2 is also issued under 26 U.S.C. 4974.

Par. 7. Section after § 54.4974–2 is added to read as follows:

§ 54.4974–2 Excise tax on accumulations in qualified retirement plans.

Q–1. Is any tax imposed on a payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in section 457(b)) to whom an amount is required to be distributed for a taxable year if the amount distributed during the taxable year is less than the required minimum distribution?

A–1. Yes. If the amount distributed to a payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in section 457(b)) for a calendar year is less than the required minimum distribution for such year, an excise tax is imposed on such payee under section 4974 for the taxable year beginning with or within the calendar year during which the amount is required to be distributed. The tax is equal to 50 percent of the amount by which such required minimum distribution exceeds the actual amount distributed during the calendar year. Section 4974 provides that this tax shall be paid by the payee. For purposes of section 4974, the term *required minimum distribution* means the required minimum distribution amount required to be distributed pursuant to section 401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3), or 457(d)(2), as the case may be, and the regulations thereunder. Except as otherwise provided in Q&A–6, the required minimum distribution for a calendar year is the required minimum distribution amount required to be distributed during the calendar year. Q&A–6 provides a special rule for amounts required to be distributed by an employee's (or individual's) required beginning date.

Q–2. For purposes of section 4974, what is a qualified retirement plan?

A–2. For purposes of section 4974, each of the following is a qualified retirement plan—

(a) A plan described in section 401(a) which includes a trust exempt from tax under section 501(a);

(b) An annuity plan described in section 403(a);

(c) An annuity contract, custodial account, or retirement income account described in section 403(b);

(d) An individual retirement account described in section 408(a);

(e) An individual retirement annuity described in section 408(b); or

(f) Any other plan, contract, account, or annuity that, at any time, has been treated as a plan, account, or annuity described in (a) through (e) of this A–2, whether or not such plan, contract, account, or annuity currently satisfies the applicable requirements for such treatment.

Q–3. If a payee's interest under a qualified retirement plan is in the form of an individual account, how is the required minimum distribution for a given calendar year determined for purposes of section 4974?

A–3. (a) *General rule.* If a payee's interest under a qualified retirement plan is in the form of an individual account and distribution of such account is not being made under an annuity contract purchased in accordance with A–4 of § 1.401(a)(9)–6, the amount of the required minimum distribution for any calendar year for purposes of section 4974 is the required minimum distribution amount required to be distributed for such calendar year in order to satisfy the required minimum distribution requirements in § 1.401(a)(9)–5 as provided in the following (whichever is applicable)—

(1) Section 401(a)(9) and §§ 1.401(a)(9)–1 through 1.401(a)(9)–8 in the case of a plan described in section 401(a) which includes a trust exempt under section 501(a) or an annuity plan described in section 403(a));

(2) Section 403(b)(10) and § 1.403(b)–2 (in the case of an annuity contract, custodial account, or retirement income account described in section 403(b)); or

(3) Section 408(a)(6) or (b)(3) and § 1.408–8 (in the case of an individual retirement account or annuity described in section 408(a) or (b)).

(b) *Default provisions.* Unless otherwise provided under the qualified retirement plan (or, if applicable, the governing instrument of the qualified retirement plan), the default provisions in A–4(a) of § 1.401(a)(9)–3 apply in determining the required minimum distribution for purposes of section 4974.

(c) *Five year rule.* If the five-year rule in section 401(a)(9)(B)(ii) applies to the distribution to a payee, no amount is required to be distributed for any calendar year to satisfy the applicable enumerated section in paragraph (a) of this A–3 until the calendar year which contains the date five years after the date of the employee's death. For the calendar year which contains the date five years after the employee's death, the required minimum distribution amount required to be distributed to satisfy the applicable enumerated section is the payee's entire remaining interest in the qualified retirement plan.

Q–4. If a payee's interest in a qualified retirement plan is being distributed in the form of an annuity, how is the amount of the required minimum distribution determined for purposes of section 4974?

A–4. If a payee's interest in a qualified retirement plan is being distributed in the form of an annuity (either directly from the plan, in the case of a defined benefit plan, or under an annuity contract purchased from an insurance company), the amount of the required minimum distribution for purposes of section 4974 will be determined as follows:

(a) *Permissible annuity distribution option.* A permissible annuity distribution option is an annuity contract (or, in the case of annuity distributions from a defined benefit plan, a distribution option) which specifically provides for distributions which, if made as provided, would for every calendar year equal or exceed the required minimum distribution amount required to be distributed to satisfy the applicable section enumerated in paragraph (a) of A–2 of this section for every calendar year. If the annuity contract (or, in the case of annuity distributions from a defined benefit plan, a distribution option) under which distributions to the payee are being made is a permissible annuity distribution option, the required minimum distribution for a given calendar year will equal the amount which the annuity contract (or distribution option) provides is to be distributed for that calendar year.

(b) *Impermissible annuity distribution option.* An impermissible annuity distribution option is an annuity contract (or, in the case of annuity distributions from a defined benefit plan, a distribution option) under which distributions to the payee are being made that specifically provides for

distributions which, if made as provided, would for any calendar year be less than the required minimum distribution amount required to be distributed to satisfy the applicable section enumerated in paragraph (a) of A–2 of this section. If the annuity contract (or, in the case of annuity distributions from a defined benefit plan, the distribution option) under which distributions to the payee are being made is an impermissible annuity distribution option, the required minimum distribution for each calendar year will be determined as follows:

(1) If the qualified retirement plan under which distributions are being made is a defined benefit plan, the required minimum distribution amount required to be distributed each year will be the amount which would have been distributed under the plan if the distribution option under which distributions to the payee were being made was the following permissible annuity distribution option:

(i) In the case of distributions commencing before the death of the employee, if there is a designated beneficiary under the impermissible annuity distribution option for purposes of section 401(a)(9), the permissible annuity distribution option is the joint and survivor annuity option under the plan for the lives of the employee and the designated beneficiary which provides for the greatest level amount payable to the employee determined on an annual basis. If the plan does not provide such an option or there is no designated beneficiary under the impermissible distribution option for purposes of section 401(a)(9), the permissible annuity distribution option is the life annuity option under the plan payable for the life of the employee in level amounts with no survivor benefit.

(ii) In the case of distributions commencing after the death of the employee, if there is a designated beneficiary under the impermissible annuity distribution option for purposes of section 401(a)(9), the permissible annuity distribution option is the life annuity option under the plan payable for the life of the designated beneficiary in level amounts. If there is no designated beneficiary, the five-year rule in section 401(a)(9)(B)(ii) applies. See paragraph (b)(3) of this A–4. The determination of whether or not there is a designated beneficiary and the determination of which designated beneficiary's life is to be used in the case of multiple beneficiaries will be made in accordance with § 1.401(a)(9)–4 and A–7 of § 1.401(a)(9)–5. If the defined benefit plan does not provide for distribution in the form of the applicable permissible distribution option, the required minimum distribution for each calendar year will be an amount as determined by the Commissioner.

(2) If the qualified retirement plan under which distributions are being made is a defined contribution plan and the impermissible annuity distribution option is an annuity contract purchased from an insurance company, the required minimum distribution amount required to be distributed each year will be the amount which would have been distributed in the form of an annuity contract under the permissible annuity distribution option under the plan determined in accordance with paragraph (b)(1) of this A–4 for defined benefit plans. If the defined contribution plan does not provide the applicable permissible annuity distribution option, the required minimum distribution for each calendar year will be the amount which would have been distributed under an annuity described below in paragraph (b)(2)(i) or (ii) of this A–4 purchased with the employee's or individual's account used to purchase the annuity contract which is the impermissible annuity distribution option.

(i) In the case of distributions commencing before the death of the employee, if there is a designated beneficiary under the impermissible annuity distribution option for purposes of section 401(a)(9), the annuity is a joint and survivor annuity for the lives of the employee and the designated beneficiary which provides level annual payments and which would have been a permissible annuity distribution option. However, the amount of the periodic payment which would have been payable to the survivor will be the applicable percentage under the table in A–2(b) of § 1.401(a)(9)–6 of the amount of the periodic payment which would have been payable to the employee or individual. If there is no designated beneficiary under the impermissible distribution option for purposes of section 401(a)(9), the annuity is a life annuity for the life of the employee with no survivor benefit which provides level annual payments and which would have been a permissible annuity distribution option.

(ii) In the case of a distribution commencing after the death of the employee, if there is a designated beneficiary under the impermissible annuity distribution option for purposes of section 401(a)(9), the annuity option is a life annuity for the life of the designated beneficiary which provides level annual payments and which would have been permissible annuity distribution option. If there is no designated beneficiary, the five year rule in section 401(a)(9)(B)(ii) applies. See paragraph (b)(3) of this A–4. The amount of the payments under the annuity contract will be determined using the interest rate and actuarial tables prescribed under section 7520 determined using the date determined under A–3 of 1.401(a)(9)–3 when distributions are required to commence and using the age of the beneficiary as of the beneficiary's birthday in the calendar year that contains that date. The determination of whether or not there is a designated beneficiary and the determination of which designated beneficiary's life is to be used in the case of multiple beneficiaries will be made in accordance with § 1.401(a)(9)–3 and A–7 of § 1.401(a)(9)–5.

(3) If the five-year rule in section 401(a)(9)(B)(ii) applies to the distribution to the payee under the contract (or distribution option), no amount is required to be distributed to satisfy the applicable enumerated section in paragraph (a) of this A–4 until the calendar year which contains the date five years after the date of the employee's death. For the calendar year which contains the date five years after the employee's death, the required minimum distribution amount required to be distributed to satisfy the applicable enumerated section is the payee's entire remaining interest in the annuity contract (or under the plan in the case of distributions from a defined benefit plan).

Q–5. If there is any remaining benefit with respect to an employee (or IRA owner) after any calendar year in which the entire remaining benefit is required to be distributed under section, what is the amount of the required minimum distribution for each calendar year subsequent to such calendar year?

A–5. If there is any remaining benefit with respect to an employee (or IRA owner) after the calendar year in which the entire remaining benefit is required to be distributed, the required minimum distribution for each calendar year subsequent to such calendar year is the entire remaining benefit.

Q–6. If a payee has an interest under an eligible deferred compensation plan (as defined in section 457(b)), how is the required minimum distribution for a given taxable year of the payee determined for purposes of section 4974?

A–6. If a payee has an interest under an eligible deferred compensation plan (as defined in section 457(b)), the required minimum distribution for a given taxable year of the payee

determined for purposes of section 4974 is determined under section 457(d).

Q–7. With respect to which calendar year is the excise tax under section 4974 imposed in the case in which the amount not distributed is an amount required to be distributed by April 1 of a calendar year (by the employee's or individual's required beginning date)?

A–7. In the case in which the amount not paid is an amount required to be paid by April 1 of a calendar year, such amount is a required minimum distribution for the previous calendar year, *i.e.,* for the employee's or the individual's first distribution calendar year. However, the excise tax under section 4974 is imposed for the calendar year containing the last day by which the amount is required to be distributed, *i.e.,* the calendar year containing the employee's or individual's required beginning date, even though the preceding calendar year is the calendar year for which the amount is required to be distributed. Pursuant to A–2 of § 1.401(a)(9)–5, amounts distributed in the employee's or individual's first distribution calendar year will reduce the amount required to be distributed in the next calendar year by the employee's or individual's required beginning date. There is also a required minimum distribution for the calendar year which contains the employee's required beginning date. Such distribution is also required to be made during the calendar year which contains the employee's required beginning date.

Q–8. Are there any circumstances when the excise tax under section 4974 for a taxable year may be waived?

A–8. (a) *Reasonable cause.* The tax under section 4974(a) may be waived if the payee described in section 4974(a) establishes to the satisfaction of the Commissioner the following—

(1) The shortfall described in section 4974(a) in the amount distributed in any taxable year was due to reasonable error; and

(2) Reasonable steps are being taken to remedy the shortfall.

(b) *Automatic Waiver.* The tax under section 4974 will be automatically waived, unless the Commissioner determines otherwise, if—

(1) The payee described in section 4974(a) is an individual who is the sole beneficiary and whose required minimum distribution amount for a calendar year is determined under the life expectancy rule described in § 1.401(a)(9)–3 A–3 in the case of an employee's death before the employee's required beginning date; and

(2) The employee's or individual's entire benefit to which that beneficiary is entitled is distributed by the end of the fifth calendar year following the calendar year that contains the employee's date of death.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 01–304 Filed 1–12–01; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 601

[REG–129608–00]

RIN 1545–AY68

Notice to Interested Parties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the notice to interested parties. Before the IRS can issue an advance determination regarding the qualification of a retirement plan, a plan sponsor must provide evidence that it has notified all persons who qualify as interested parties that an application for an advance determination will be filed. These proposed regulations set forth standards by which a plan sponsor may satisfy the notice to interested parties requirement. The proposed regulations affect retirement plan sponsors, plan participants and other interested parties with respect to an application for a determination letter, and certain representatives of interested parties.

DATES: Written or electronic comments and requests for a public hearing must be received by April 17, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–129608–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG–129608–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at *http://www.irs.gov/tax_regs/reglist.html.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, contact Pamela R. Kinard, (202) 622–6060; concerning the submission of comments, contact LaNita VanDyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR parts 1 and 601) under section 7476 of the Internal Revenue Code of 1986 (Code).

Section 7476(b)(2) provides that, with respect to a pleading filed by a petitioner for a request for a determination on the qualified status of a retirement plan under section 7476(a), the Tax Court may find the pleading to be premature unless the petitioner establishes to the satisfaction of the court that he has complied with the requirements prescribed by the regulations of the Secretary regarding the notice to interested parties.

On May 21, 1976, Final Income Tax Regulations (TD 7421) under section 7476 were published in the **Federal Register** (41 FR 20874). The final regulations provide guidance on the nature and method of giving notice to interested parties. Existing § 1.7476–1(a)(1) provides that in order to receive a determination on the qualified status of a retirement plan, the applicant must provide evidence that individuals who qualified as interested parties received notification of the determination letter application. In general, interested parties are defined in § 1.7476–1(b)(1) as all present employees of the employer eligible to participate in the plan, and all other present employees whose principal place of employment is the same as the principal place of employment of the employees eligible to participate. For plan terminations, § 1.7476–1(b)(5) defines interested parties as all present employees with accrued benefits, all former employees with vested benefits, and all beneficiaries of deceased former employees currently receiving benefits under the plan.

Existing § 1.7476–2(b) provides that the notice must be given in writing, must contain the information in § 601.201(o)(3) (Statement of Procedural Rules) and must be given in the manner prescribed in § 1.7476–2(c). For present employees, § 1.7476–2(c)(1) provides that the notice must be given in person, by mailing, by posting, or by printing it in a publication of the employer or an employee organization that is reasonably available to employees. For interested parties who are in a unit of employees covered by a collective-bargaining agreement, the notice must also be given in person or by mail to the collective-bargaining representative of the interested parties. For former