

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Parts 1 and 54****[REG–105954–20]****RIN 1545–BP82****Required Minimum Distributions****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; section 403(b) annuity contracts, custodial accounts, and retirement income accounts; individual retirement accounts and annuities; and eligible deferred compensation plans under section 457. These regulations will affect administrators of, and participants in, those plans; owners of individual retirement accounts and annuities; employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts; and beneficiaries of those plans, contracts, accounts, and annuities.

**DATES:** Written or electronic comments must be received by May 25, 2022. Outlines of topics to be discussed at the public hearing scheduled for June 15, 2022, at 10:00 a.m. must be received by May 25, 2022.

As of February 24, 2022, § 1.408–8 of the notice of proposed rulemaking that was published in the **Federal Register** on July 14, 1981 (46 FR 36198) is withdrawn.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG–105954–20) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG–105954–20),

Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Brandon M. Ford or Laura B. Warshawsky, (202) 317–6700; concerning submissions of comments and outlines of topics for the public hearing, Regina Johnson, (202) 317–5177 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:****Background**

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 401(a)(9) of the Internal Revenue Code of 1986 (Code). These proposed regulations address the required minimum distribution requirements for plans qualified under section 401(a) and are being proposed to update the regulations to reflect the amendments made to section 401(a)(9) by sections 114 and 401 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), enacted on December 20, 2019, as Division O of the Further Consolidated Appropriations Act of 2019, Public Law 116–94, 133 Stat. 2534 (2019).

The rules of section 401(a)(9) are adopted by reference in section 408(a)(6) and (b)(3) for individual retirement accounts and individual retirement annuities (collectively, IRAs), section 408A(c)(5) for Roth IRAs, section 403(b)(10) for annuity contracts, custodial accounts, and retirement income accounts described in section 403(b) (section 403(b) plans), and section 457(d) for eligible deferred compensation plans. The determination of the required minimum distribution is also relevant for purposes of the related excise tax under section 4974 and the definition of eligible rollover distribution in section 402(c). Accordingly, this document also contains proposed conforming amendments to the Income Tax Regulations (26 CFR part 1) under sections 402(c), 403(b), 408, and 457, and to the Pension Excise Tax Regulations (26 CFR part 54) under section 4974.

**Section 401(a)(9)—Required Minimum Distributions**

Section 401(a)(9) provides rules for distributions from a qualified plan during the life of the employee in section 401(a)(9)(A) and after the death of the employee in section 401(a)(9)(B). The rules set forth a required beginning date for distributions and identify the period over which the employee's entire interest must be distributed.

Specifically, 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)(B)(i) provides that, if the employee dies after distributions have begun, the employee's remaining interest must be distributed at least as rapidly as under the distribution method used by the employee as of the date of the employee's death.

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 either be: (1) Distributed (in accordance with regulations) over the life or life expectancy of the designated beneficiary with the distributions generally beginning no later than 1 year after the date of the employee's death; or (2) 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 72 to begin taking required minimum distributions.

Section 401(a)(9)(C) (as amended by section 114 of the SECURE Act) defines the required beginning date for an employee (other than a 5-percent owner or IRA owner) as April 1 of the calendar year following the later of the calendar year in which the employee attains age 72 or the calendar year in which the employee retires. For a 5-percent owner or an IRA owner, the required beginning date is April 1 of the calendar year following the calendar year in which the individual attains age 72, even if the individual has not retired. Section 401(a)(9)(C)(iii) provides that certain employees who commence benefits under a defined benefit plan after the year in which they attain age 70½ must receive an actuarial increase.

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)(i) defines the term *designated beneficiary* as any individual designated as a beneficiary by the employee. Section 401(a)(9)(E)(ii) (which was added as part of section 401 of the SECURE Act) defines the term

*eligible designated beneficiary* with respect to any employee, as any designated beneficiary who, as of the date of the employee's death, is: (1) The surviving spouse of the employee; (2) a child of the employee who has not reached the age of majority (within the meaning of section 401(a)(9)(F)); (3) disabled (within the meaning of section 72(m)(7)); (4) a chronically ill individual (within the meaning of section 7702B(c)(2), subject to certain exceptions); or (5) an individual not described elsewhere in section 401(a)(9)(E)(ii) who is not more than 10 years younger than the employee.

Section 401(a)(9)(E)(iii) provides that, subject to the rule in section 401(a)(9)(F), the treatment of an employee's child as an eligible designated beneficiary ends when the child attains the age of majority and that any remaining interest must be distributed within 10 years of that date. Section 401(a)(9)(F) provides that, under regulations, any amount paid to a child is treated as if it had been paid to the surviving spouse if it will be paid to the surviving spouse upon that child reaching the age of majority (or other designated event permitted under regulations).

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

Section 401(a)(9)(H) (which was added as part of section 401 of the SECURE Act) provides special rules that generally apply to the distribution of an employee's remaining interest in a defined contribution plan after the death of that employee. Specifically, section 401(a)(9)(H)(i) provides that, except in the case of a beneficiary who is not a designated beneficiary, section 401(a)(9)(B)(ii): (1) Is applied by substituting 10 years for 5 years; and (2) applies whether or not distributions of the employee's interest have begun in accordance with section 401(a)(9)(A). Section 401(a)(9)(H)(ii) provides that section 401(a)(9)(B)(iii) (permitting payments over the life or life expectancy of the designated beneficiary as an alternative to the 10-year rule) applies only in the case of an eligible designated beneficiary. Section 401(a)(9)(H)(iii) provides that if an eligible designated beneficiary dies before the employee's interest is entirely distributed, then section 401(a)(9)(H)(ii) does not apply to the beneficiary of the eligible designated beneficiary, and the remainder of the employee's interest must be distributed within 10 years after the death of the eligible designated beneficiary.

Section 401(a)(9)(H)(iv) provides that in the case of an applicable multi-beneficiary trust, if, under the terms of the trust, it is to be divided immediately upon the death of the employee into separate trusts for each beneficiary, then section 401(a)(9)(H)(ii) is applied separately with respect to the portion of the employee's interest that is payable to any disabled or chronically ill eligible designated beneficiary. Section 401(a)(9)(H)(iv) also provides that in the case of an applicable multi-beneficiary trust, if, under the terms of the trust, no individual (other than an eligible designated beneficiary who is disabled or chronically ill) has any right to the employee's interest in the plan until the death of all of those disabled or chronically ill eligible designated beneficiaries with respect to the trust, then: (1) Section 401(a)(9)(B)(iii) (permitting payments over the life expectancy of a beneficiary) will apply to the distribution of the employee's interest; and (2) any beneficiary who is not disabled or chronically ill will be treated as a beneficiary of the eligible designated beneficiary who is disabled or chronically ill upon the death of that eligible designated beneficiary.

Section 401(a)(9)(H)(v) defines the term *applicable multi-beneficiary trust* as a trust: (1) Which has more than one beneficiary; (2) all of the beneficiaries of which are treated as designated beneficiaries for purposes of determining the distribution period pursuant to section 401(a)(9); and (3) at least one of the beneficiaries of which is an eligible designated beneficiary who is either disabled or chronically ill. Section 401(a)(9)(H)(vi) provides that, for purposes of applying section 401(a)(9)(H), an eligible retirement plan defined in section 402(c)(8)(B) (other than a defined benefit plan described in section 402(c)(8)(B)(iv) or (v) or a qualified trust that is a part of a defined benefit plan) is treated as a defined contribution plan.<sup>1</sup>

Prior to amendment by section 114 of the SECURE Act, section 401(a)(9)(C) of the Code defined the required beginning date by reference to the calendar year in which the employee attains age 70½. Section 114(d) of the SECURE Act provides that the amendments made by section 114 of the SECURE Act apply to distributions required to be made after December 31, 2019, with respect to individuals who attain age 70½ after that date.

<sup>1</sup> The eligible retirement plans described in section 402(c)(8)(B)(iv) and (v) are an annuity plan described in section 403(a) and an eligible deferred compensation plan described in section 457(b) that is maintained by an eligible employer described in section 457(e)(1)(A), respectively.

Section 401(b)(1) of the SECURE Act provides that, generally, the amendments made to section 401(a)(9)(E) and (H) of the Code apply to distributions with respect to employees who die after December 31, 2019.

Section 401(b)(2) of the SECURE Act provides that in the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers that were ratified before December 20, 2019, the amendments to sections 401(a)(9)(E) and (H) of the Code apply to distributions with respect to employees who die in calendar years beginning after December 31, 2021, or if earlier, the later of: (1) The date on which the last of the collective bargaining agreements terminated (without regard to any extension of the agreement to which the parties agree on or after December 20, 2019), or (2) December 31, 2019.

Section 401(b)(3) of the SECURE Act provides that in the case of a governmental plan (as defined in section 414(d) of the Code), the amendments to sections 401(a)(9)(E) and (H) will apply to distributions with respect to employees who die after December 31, 2021.

Section 401(b)(4) of the SECURE Act provides that the amendments made to sections 401(a)(9)(E) and (H) of the Code do not apply to a qualified annuity that is a binding annuity contract in effect on December 20, 2019, and at all times thereafter.<sup>2</sup>

Section 401(b)(5) of the SECURE Act provides that if an employee dies before the effective date of section 401(a)(9)(H)

<sup>2</sup> Section 401(b)(4)(B) of the SECURE Act provides that the term *qualified annuity* means, with respect to an employee, an annuity—

(i) which is a commercial annuity (as defined in section 3405(e)(6) of the Internal Revenue Code of 1986);

(ii) under which the annuity payments are made over the life of the employee or over the joint lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the joint life expectancy of such employee and a designated beneficiary) in accordance with the regulations described in section 401(a)(9)(A)(ii) of such Code (as in effect before such amendments) and which meets the other requirements of section 401(a)(9) of such Code (as so in effect) with respect to such payments; and

(iii) with respect to which—

(I) annuity payments to the employee have begun before the date of enactment of the SECURE Act, and the employee has made an irrevocable election before such date as to the method and amount of the annuity payments to the employee or any designated beneficiaries; or

(II) if subclause (I) does not apply, the employee has made an irrevocable election before the date of enactment of the SECURE Act as to the method and amount of the annuity payments to the employee or any designated beneficiaries.

of the Code for a plan, then, in applying the amendments made to sections 401(a)(9)(E) and (H) to the employee's designated beneficiary who dies on or after the effective date, (1) the amendments apply to any beneficiary of the designated beneficiary, and (2) the designated beneficiary is treated as an eligible designated beneficiary for purposes of section 401(a)(9)(H)(ii).

#### *Section 402(c)—Rollovers*

Section 402(c) provides rules related to the rollover of a distribution from a qualified plan to another eligible retirement plan. Prior to being amended by section 641 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16, 115 Stat. 38 (2001) (EGTRRA), section 402(c)(2) of the Code limited the portion of a distribution that could be rolled over to the amount that would have been includible in income in the absence of the rollover. Section 641 of EGTRRA and section 411(q) of the Job Creation and Worker Assistance Act of 2002, Public Law 107–147, 116 Stat. 21 (2002), expanded the rollover rules to permit a rollover to an IRA of the portion of the distribution that would have been excluded from gross income in the absence of the rollover (that is, the portion of the amount distributed that consists of the employee's investment in the contract). In addition, that portion may be transferred in a direct trustee-to-trustee transfer to a qualified trust or to an annuity contract described in section 403(b) of the Code, but only if the trust or annuity contract separately accounts for the amount that consists of the employee's investment in the contract. If only a portion of an eligible rollover distribution is rolled over or transferred, then the amount rolled over or transferred is treated as consisting first of the portion of the distribution that is not allocable to the employee's investment in the contract.

Under section 402(c), any amount distributed from a qualified plan generally will be excluded from income if it is transferred to an eligible retirement plan no later than the 60th day following the day the distribution is received. Section 402(c)(3)(B) was added by section 644 of EGTRRA to provide that the Secretary may waive the 60-day rollover requirement in certain circumstances. Section 402(c)(3)(C) was added to the Code by section 13613 of the Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054 (2017) (TCJA) to provide an extended rollover deadline for qualified plan loan

offset (QPLO) amounts.<sup>3</sup> Specifically, the deadline for rollover of any portion of a QPLO amount is extended so that it ends no earlier than the distributee's tax filing due date (including extensions) for the taxable year in which the offset occurs.

Subject to certain exclusions, section 402(c)(4) provides that an eligible rollover distribution means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified plan. Section 402(c)(4)(A) excludes from the definition of an eligible rollover distribution any distribution that is one of a series of substantially equal periodic payments payable for the life (or life expectancy) of the employee (or the employee and the employee's designated beneficiary), or for a specified period of 10 years or more. Section 402(c)(4)(B) provides that any distribution that is required under section 401(a)(9) is excluded from the definition of an eligible rollover distribution. Section 402(c)(4)(C), which was added by section 636(b)(1) of EGTRRA, excludes hardship distributions from the definition of an eligible rollover distribution.

Prior to being amended by section 641 of EGTRRA, section 402(c)(8)(B) of the Code provided that the only type of eligible retirement plan permitted to receive a rollover from a qualified plan was another qualified plan or an IRA. Section 641 of EGTRRA amended section 402(c)(8)(B) to expand the list of retirement plans eligible to receive rollovers to include an annuity contract described in section 403(b) of the Code, and an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A). Section 617(c) of EGTRRA amended section 402(c)(8)(B) of the Code to provide that if any portion of an eligible rollover distribution is attributable to distributions from a designated Roth account (as defined in section 402A), that portion may be rolled over only to another designated Roth account or a Roth IRA (as described in section 408A). Section 641 of EGTRRA also added section 402(c)(10) to the Code to provide that an eligible deferred compensation plan described in section 457(b) maintained by an eligible employer described in section 457(e)(1)(A) may

accept rollovers from a different type of eligible retirement plan only if it separately accounts for the amounts rolled into the plan.

Section 402(c)(9) provides that, if any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, then section 402(c) applies to that distribution in the same manner as if the spouse were the employee. At the time section 402(c)(9) was enacted, a surviving spouse was permitted to roll over an eligible rollover distribution only to an IRA. However, section 641 of EGTRRA amended section 402(c)(9) of the Code to expand the type of eligible retirement plan permitted to receive a spousal rollover to include not just an IRA, but also any other eligible retirement plan.

Section 402(c)(11) of the Code was added by section 829 of the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780 (2006) (PPA), to provide that an individual who is not the surviving spouse of the employee and who is a designated beneficiary (as defined by section 401(a)(9)(E) of the Code) may elect to have any portion of a distribution made in the form of a direct trustee-to-trustee transfer to an individual retirement plan established for the purpose of receiving that distribution. If a direct trustee-to-trustee transfer is made pursuant to section 402(c)(11), then the required minimum distribution rules applicable to distributions after the employee's death in section 401(a)(9)(B) (other than section 401(a)(9)(B)(iv)) will apply to the individual retirement plan.

The rollover rules of section 402(c) also apply to a distribution from a section 403(a) qualified annuity plan, a section 403(b) plan, and an eligible deferred compensation plan described in section 457(b) maintained by an eligible employer described in section 457(e)(1)(A). See sections 403(a)(4)(B), 403(b)(8)(B), and 457(e)(16)(B), respectively.

#### *Sections 403(a), 403(b), 408, and 457—Other Arrangements Subject to Section 401(a)(9)*

Under section 403(a)(1), a qualified annuity plan under section 403(a) must meet the requirements of section 404(a)(2) (which provides that an annuity plan must satisfy the required minimum distribution rules under section 401(a)(9)). Sections 403(b)(10), 408(a)(6), and 408(b)(3) provide that a section 403(b) plan, an individual retirement account, and an individual retirement annuity, respectively, must satisfy rules similar to the requirements of section 401(a)(9) and the incidental death benefit requirements of section

<sup>3</sup> A QPLO amount is defined in section 402(c)(3)(C)(ii) as a plan loan offset amount that is distributed from a qualified employer plan to a participant or beneficiary solely by reason of: (1) The termination of the qualified employer plan, or (2) the failure to meet the repayment terms of the loan from the plan because of the severance from employment of the participant.

401(a). Under section 457(b)(5) and (d)(2), a plan is an eligible deferred compensation plan described in section 457(b) only if it satisfies the minimum distribution requirements of section 401(a)(9).

*Section 4974—Excise Tax on Failure To Satisfy Section 401(a)(9)*

Section 4974(a) provides that if the amount distributed during the taxable year of a payee under any qualified retirement plan (as defined in section 4974(c)) or any eligible deferred compensation plan (as defined in section 457(b)) is less than that taxable year's minimum required distribution (as defined in section 4974(b)), then an excise tax is imposed on the payee equal to 50 percent of the amount by which the minimum required distribution for the taxable year exceeds the amount actually distributed in that taxable year.

Section 4974(d) provides that if the taxpayer establishes to the satisfaction of the Secretary that the failure to distribute the entire amount required in a taxable year was due to reasonable error and reasonable steps are being taken to remedy that shortfall, then the Secretary may waive the excise tax imposed in section 4974(a) for that taxable year.

*Good Faith Compliance Standard for Governmental Plans*

Section 823 of PPA provides that a governmental plan (as defined in section 414(d) of the Code) is treated as having complied with section 401(a)(9) if the plan complies with a reasonable, good faith interpretation of section 401(a)(9).

*Existing Regulations*

Final regulations relating to required minimum distributions from a qualified plan, an IRA, and a section 403(b) plan, have been subject to a series of amendments and additions since they were published in the **Federal Register** on April 17, 2002 (67 FR 18988).<sup>4</sup> Final regulations relating to required minimum distributions from defined benefit plans and annuity contracts were published in the **Federal Register** on June 15, 2004 (69 FR 68077). Final regulations published in the **Federal Register** on September 8, 2009 (74 FR 45993) updated the rules to permit a governmental plan to comply with the required minimum distribution rules using a reasonable, good faith interpretation of section 401(a)(9). Final regulations relating to qualified

longevity annuity contracts were published in the **Federal Register** on July 2, 2014 (79 FR 37633). Final regulations published in the **Federal Register** on November 12, 2020 (85 FR 72477) updated the life expectancy and distribution period tables for distribution calendar years that begin on or after January 1, 2022.

Final regulations relating to section 402(c) and eligible rollover distributions were published in the **Federal Register** on September 22, 1995 (60 FR 49199). Since those regulations were issued, section 402(c) has been amended several times, and guidance related to those amendments has generally been issued in the Internal Revenue Bulletin rather than through the issuance of new regulations. For example, Notice 2007–7, 2007–1 C.B. 395, provided guidance related to the amendments to section 402(c) made by PPA. However, final regulations related to the extended period of time to roll over a QPLO amount under section 402(c)(3)(C) were published in the **Federal Register** on January 6, 2021 (86 FR 464). See § 1.402(c)–3.

**Explanation of Provisions**

These proposed regulations would update several existing regulations under sections 401(a)(9), 402(c), 403(b), 457, and 4974 to reflect statutory amendments that have been made since those regulations were last issued. These proposed regulations also clarify certain issues that have been raised in public comments and private letter ruling requests. These proposed regulations also replace the question-and-answer format of the existing regulations under sections 401(a)(9), 402(c), 408, and 4974 with a standard format. Rules under the existing regulations that are retained in these proposed regulations are generally not discussed in this Explanation of Provisions.

**I. Section 401(a)(9) Regulations**

*A. Section 1.401(a)(9)–1—Minimum Distribution Requirement in General*

**1. Statutory Effective Date of the Limitation on Beneficiary Life Expectancy Distributions**

Proposed § 1.401(a)(9)–1 provides general rules that apply for all of the regulations under section 401(a)(9), including rules addressing application of the effective date of new section 401(a)(9)(H), which was added by section 401 of the SECURE Act to limit life expectancy distributions for beneficiaries. Generally, the amendments made by section 401 of the SECURE Act apply to distributions with

respect to an employee who dies on or after January 1, 2020 (with a later effective date for certain collectively bargained plans or governmental plans). In addition, if an employee in a plan died before the section 401(a)(9)(H) effective date for that plan, the employee had only one designated beneficiary, and the employee's designated beneficiary dies on or after that effective date, then the amendments made by section 401 of the SECURE Act apply to any beneficiary of the designated beneficiary. In this situation, the designated beneficiary is treated as an eligible designated beneficiary for purposes of the 10-year payout required by section 401(a)(9)(H)(iii). Accordingly, the death of the designated beneficiary triggers a requirement to complete payment within 10 years of the death of that designated beneficiary. In contrast, if that designated beneficiary died before that effective date, then the amendments made by section 401 of the SECURE Act do not apply with respect to the employee's interest under the plan.

These proposed regulations provide that if an employee in a plan who dies before the section 401(a)(9)(H) effective date for that plan has more than one designated beneficiary, whether the amendments made by section 401 of the SECURE Act apply depends on when the oldest of those beneficiaries dies. Thus, for example, if an employee who died before January 1, 2020, named a see-through trust as the sole beneficiary of the employee's interest in the plan, and the trust has three beneficiaries who are all individuals, then the amendments made by section 401 of the SECURE Act will apply with respect to distributions to the trust upon the death of the oldest trust beneficiary, but only if that beneficiary dies on or after the section 401(a)(9)(H) effective date for that plan. However, if the oldest of the trust beneficiaries died before that effective date, then the amendments made by section 401 of the SECURE Act do not apply with respect to distributions to the trust.

For purposes of applying the statutory effective date, these proposed regulations provide that if, pursuant to section 401(a)(9)(B)(iv), a surviving spouse is waiting to begin distributions until the year for which the employee would have been first required to take distributions, then the spouse is treated as the employee. Thus, in that case, if the spouse died before January 1, 2020, but the spouse's designated beneficiary dies after the section 401(a)(9)(H) effective date for the plan, section 401(a)(9)(H) applies to any beneficiary of the spouse's designated beneficiary

<sup>4</sup> Final regulations under section 4974 (relating to excise taxes for excess accumulations in qualified plans) were published at the same time but have not been amended.

upon the death of that designated beneficiary.

These proposed regulations reflect the statutory delay of the effective date for governmental plans and collectively bargained plans. For this purpose, the determination of whether a plan is a collectively bargained plan is made in accordance with § 1.436-1(a)(5)(ii)(B) (relating to plans under which some participants are not members of collective bargaining units). The proposed regulations also reflect the exception for existing annuity contracts for which an irrevocable election as to the method and the amount of the annuity payments was made before December 20, 2019, as described in section 401(b)(4) of the SECURE Act.

## 2. Participants in Multiple Plans

These proposed regulations provide that 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. This rule is currently in § 1.401(a)(9)-8, Q&A-1, but is moved to § 1.401(a)(9)-1(a)(2) in these proposed regulations.

### *B. Section 1.401(a)(9)-2—Distributions Commencing During an Employee's Lifetime*

Proposed § 1.401(a)(9)-2 provides rules for determining the required beginning date for distributions and whether distributions are treated as having begun during an employee's lifetime. These rules are based on the rules in the existing regulations, except that the rules have been updated to reflect the amendments to the required beginning date made by section 114 of the SECURE Act.

In accordance with section 114(a) of the SECURE Act, these proposed regulations generally provide that the required beginning date is April 1 of the calendar year following the later of (1) the calendar year in which the employee attains age 72, and (2) the calendar year in which the employee retires from employment with the employer maintaining the plan. These proposed regulations also provide that for an employee who was born before July 1, 1949, the required beginning date remains April 1 of the calendar year following the later of (1) the calendar year in which the employee attains age 70½, and (2) the calendar year in which the employee retires from employment with the employer maintaining the plan. However, if an employee is a 5-percent owner, then the required beginning date is April 1 of the calendar year following

the calendar year in which the employee attains age 70½ or 72 (whichever required beginning date applies to the employee as determined using the employee's date of birth), and that required beginning date applies regardless of whether the employee has retired from employment with the employer maintaining the plan.

Section 114(d) of the SECURE Act provides that the amended definition of the required beginning date applies with respect to employees who attain age 70½ on or after January 1, 2020. This effective date provision could be interpreted to require the employee to survive until age 70½ in order to have the amended definition apply (that is, if the employee died before attaining age 70½, then the amended definition would not apply with respect to distributions to that employee's beneficiary, even if the employee would have attained age 70½ on or after January 1, 2020, had the employee survived). Instead, for ease of administration, these proposed regulations interpret the effective date language to apply the amendments made by section 114 of the SECURE Act to an employee who died before attaining age 70½ if the employee would have attained age 70½ on or after January 1, 2020 (that is, the employee's date of birth is on or after July 1, 1949). This interpretation also extends to a surviving spouse who is waiting to begin distributions pursuant to section 401(a)(9)(B)(iv). Thus, for example, if an employee who was born on June 1, 1952, died in 2018, and the employee's sole beneficiary is the employee's surviving spouse, then the surviving spouse may wait until 2024 (the calendar year in which the employee would have attained age 72) to begin receiving distributions.

### *C. Section 1.401(a)(9)-3—Death Before Required Beginning Date*

Proposed § 1.401(a)(9)-3 provides rules for distributions if an employee dies before the employee's required beginning date. These rules are based on the rules in the existing regulations but are updated to reflect new section 401(a)(9)(H). Because section 401(a)(9)(H) applies only to defined contribution plans, the rules for distributions from defined benefit plans and defined contribution plans have been separated, with the rules for distributions from defined benefit plans set forth in proposed § 1.401(a)(9)-3(b) and the rules for distributions from defined contribution plans set forth in proposed § 1.401(a)(9)-3(c).

Section 401(a)(9)(H)(i) provides for a new 10-year distribution period in

certain cases (10-year rule). Specifically, in the case of a defined contribution plan, if an employee who has a designated beneficiary dies before the employee's required beginning date, then section 401(a)(9)(B)(ii) is satisfied if the employee's entire interest is distributed by the end of the calendar year that includes the tenth anniversary of the employee's death. This 10-year rule is similar to the 5-year rule in the existing regulations (under which distributions may be delayed until the end of the fifth calendar year following the calendar year of the employee's death if the employee dies before the required beginning date) and permits distributions to be delayed until the end of the tenth calendar year following the calendar year of the employee's death if the employee dies before the required beginning date.

The 5-year rule is retained in these proposed regulations and continues to apply to a defined benefit plan. It also applies to a defined contribution plan if section 401(a)(9)(H) does not apply to the employee (which could occur if the employee does not have a designated beneficiary or if the employee died before the effective date of section 401(a)(9)(H) and the employee's designated beneficiary elected the 5-year rule).

These proposed regulations retain the rule that permits an employee's interest to be distributed over the designated beneficiary's life or life expectancy in accordance with section 401(a)(9)(B)(iii) (life expectancy payments rule). However, pursuant to section 401(a)(9)(H)(ii), in the case of a defined contribution plan, that rule is available only if the designated beneficiary is an eligible designated beneficiary as defined in section 401(a)(9)(E)(ii). Thus, in the case of a defined contribution plan, if the employee dies before the required beginning date and the employee's designated beneficiary is not an eligible designated beneficiary, the 10-year rule applies.

These proposed regulations also provide that in the case of a defined contribution plan, if the employee has a designated beneficiary who is an eligible designated beneficiary, the plan may provide either that the 10-year rule applies or that the life expectancy payments rule applies. Alternatively, the plan may provide the employee or the eligible designated beneficiary an election between the 10-year rule or the life expectancy payments rule. However, if a defined contribution plan does not include either of those optional provisions and the employee has an eligible designated beneficiary, the plan

must provide for the life expectancy payments rule.

*D. Section 1.401(a)(9)–4—Determination of the Designated Beneficiary*

Proposed § 1.401(a)(9)–4 provides rules addressing the determination of the employee's beneficiary for purposes of section 401(a)(9) and these proposed regulations are substantially similar to the rules in the existing regulations. In addition to providing rules addressing the new definition of eligible designated beneficiary, these proposed regulations include rules that clarify and simplify the determination of a beneficiary for purposes of section 401(a)(9) in certain situations involving the use of a trust.

A designated beneficiary within the meaning of section 401(a)(9)(E)(i) generally is an individual designated under the plan as a beneficiary who is entitled to a portion of an employee's benefit, contingent on the employee's death or another specified event. If a beneficiary designated under the plan is a person other than an individual, then the employee is treated as not having a designated beneficiary (even if there is an individual who is designated as a beneficiary under the plan). However, if a beneficiary designated under the plan is a see-through trust as described in Section I.D.2 of this Explanation of Provisions, then certain beneficiaries of that trust are treated as the employee's beneficiaries under the plan rather than the trust. In addition, designating a person that is not an individual as a beneficiary under the plan does not cause the employee to be treated as not having a designated beneficiary to the extent separate account treatment applies with respect to that person as described in Section I.H of this Explanation of Provisions.

**1. Eligible Designated Beneficiaries**

These proposed regulations incorporate the new definition of eligible designated beneficiary in section 401(a)(9)(E)(ii). Specifically, an eligible designated beneficiary is a designated beneficiary who, as of the date of the employee's death, is (1) the surviving spouse of the employee, (2) a child of the employee who has not yet reached the age of majority, (3) disabled, (4) chronically ill, or (5) not more than 10 years younger than the employee.

**a. Definition of Age of Majority**

Section 401(a)(9)(E)(ii)(II) provides that if the employee's designated beneficiary, as of the date of the employee's death, is a child of the employee who has not yet reached the age of majority (as defined in section 401(a)(9)(F)), then that child is an

eligible designated beneficiary. Section 1.401(a)(9)–6, A–15, of the existing regulations provides guidance regarding the application of section 401(a)(9)(F). That regulatory provision does not specify a particular age as a generally applicable age of majority, but provides that a child may be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26.

The Treasury Department and the IRS have determined that it is necessary to revise the definition of age of majority from the definition used under the existing regulations (the pre-SECURE Act application of which is limited to defined benefit plans and rarely applied). As more plans are expected to apply an age of majority definition, plans may find it difficult to implement the existing standard under which the plan administrator obtains information about the education of an employee's child for purposes of applying section 401(a)(9)(H). Furthermore, because the definition of age of majority is intended to apply to all of an individual's accounts in defined contribution plans, which may be in multiple qualified plans and IRAs, the Treasury Department and the IRS have concluded that the definition, which will determine whether a designated beneficiary is an eligible designated beneficiary across plans and accounts, should not be a plan design choice. The potential for different plans to have different definitions would lead to confusion and complexity for individuals in planning and for their beneficiaries, as well as plan administrators and custodians, in determining payment streams. Accordingly, for purposes of section 401(a)(9)(E)(ii)(II) and (F), these proposed regulations provide that a child of the employee reaches the age of majority on that child's 21st birthday (which accommodates the age of majority definition in all of the States). However, as described in Section I.F of this Explanation of Provisions, the proposed regulations permit defined benefit plans that have used the prior definition of age of majority to retain that plan provision.

**b. Definition of Disability**

These proposed regulations provide rules for the determination of whether an individual is disabled for purposes of section 401(a)(9). Section 401(a)(9)(E)(ii)(III) applies the definition of disability under section 72(m)(7) for purposes of section 401(a)(9). Section 72(m)(7) provides a standard of disability based on whether an individual is unable to engage in

substantial gainful activity. However, for individuals under age 18, that standard may be difficult to apply. Accordingly, if, as of the date of the employee's death, a beneficiary is younger than age 18, the proposed regulations apply a comparable standard that requires the beneficiary to have a medically determinable physical or mental impairment that results in marked and severe functional limitations, and that can be expected to result in death or to be of long-continued and indefinite duration.

These proposed regulations also provide a safe harbor for the determination of whether a beneficiary is disabled. Specifically, if, as of the date of the employee's death, the Commissioner of Social Security has determined that the individual is disabled within the meaning of 42 U.S.C. 1382c(a)(3), then that individual will be deemed to be disabled for purposes of section 401(a)(9).

Pursuant to section 401(a)(9)(E)(ii), the determination of whether a beneficiary is disabled is made as of the date of the employee's death. For example, if, as of the employee's death, the employee's designated beneficiary is the employee's 10-year-old child who is not disabled but who becomes disabled 5 years after the employee's death, then pursuant to section 401(a)(9)(E)(iii) and these proposed regulations, that child's later disability will not be taken into account, and that child will cease to be an eligible designated beneficiary on the child's 21st birthday.

**c. Documentation Requirements for Disabled or Chronically Ill Status**

These proposed regulations provide that, with respect to a beneficiary who is disabled or chronically ill as of the date of the employee's death, documentation of the disability or chronic illness must be provided to the plan administrator no later than October 31 of the calendar year following the calendar year of the employee's death. If the designated beneficiary is chronically ill under any of the definitions in section 7702B(c)(2)(A) as of the date of the employee's death, the documentation must include a certification by a licensed health care practitioner (as defined in section 7702B(c)(4)) that the designated beneficiary is chronically ill. Additionally, in accordance with section 401(a)(9)(E)(ii)(IV), if the beneficiary is chronically ill under the definition in section 7702B(c)(2)(A)(i), then the documentation also must include a certification from a licensed health care practitioner that, as of the date of the certification, the individual

is unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for an indefinite period that is reasonably expected to be lengthy in nature.

For a designated beneficiary who is an eligible designated beneficiary because, at the time of the employee's death, the designated beneficiary is the employee's minor child and that child also is disabled or chronically ill within the meaning of these proposed regulations, the designated beneficiary will continue to be treated as an eligible designated beneficiary after reaching the age of majority (on account of being disabled or chronically ill) only if these documentation requirements are timely met with respect to that designated beneficiary. Similarly, if the employee's designated beneficiary is the employee's surviving spouse and that spouse also is disabled or chronically ill at the time of the employee's death, then the surviving spouse will be treated as disabled or chronically ill for purposes of the applicable multi-beneficiary trust rules only if the documentation requirements are timely met with respect to the surviving spouse.

#### d. Other Rules Related to Eligible Designated Beneficiaries

These proposed regulations provide that, if an employee has more than one designated beneficiary and one of them is not an eligible designated beneficiary, then for purposes of section 401(a)(9), the employee generally is treated as not having an eligible designated beneficiary. In addition, these proposed regulations provide that if the surviving spouse is waiting to begin distributions until the year in which the employee would have attained age 72 and the surviving spouse dies before the beginning of that year, then the determination of whether the surviving spouse's designated beneficiary is an eligible designated beneficiary is made by substituting the surviving spouse for the employee (including for purposes of establishing the date as of which that determination is made). For example, a child of the surviving spouse is an eligible designated beneficiary if the child has not yet reached the age of majority as of the date of the surviving spouse's death.

#### 2. Trust as Beneficiary

These proposed regulations retain the see-through trust concept in the existing regulations under which certain beneficiaries of a trust are treated as beneficiaries of the employee if the trust meets the requirements to be a see-through trust. Specifically, to be a see-

through trust, the trust must meet the following requirements: (1) The trust is valid under state law or would be valid 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; and (4) the specified documentation requirements are satisfied.

In response to issues raised in private letter ruling requests and comments submitted to the Treasury Department and the IRS, these proposed regulations provide additional guidance in determining which beneficiaries of the see-through trust are treated as beneficiaries of the employee.<sup>5</sup> These proposed rules are consistent with the examples that are in § 1.401(a)(9)-5, Q&A-7(c), of the existing regulations, but address many more fact patterns. The Treasury Department and the IRS intend for these more detailed rules to address many of the issues raised in comment letters and private letter ruling requests and expect that this more comprehensive and definitive guidance will minimize the need for taxpayers to request private letter rulings.

#### a. Determining Which See-Through Trust Beneficiaries Are Treated as Beneficiaries of the Employee

##### 1. See-Through Trust Beneficiaries Taken Into Account

Generally, the proposed regulations provide that a beneficiary of a see-through trust is treated as a beneficiary of the employee if the beneficiary could receive amounts in the trust representing the employee's interest in the plan that are neither contingent upon nor delayed until the death of another trust beneficiary who does not predecease (and is not treated as having predeceased)<sup>6</sup> the employee.

Whether any other see-through trust beneficiary also is treated as a beneficiary of the employee depends upon whether the see-through trust is a conduit trust or accumulation trust. A conduit trust is defined in the proposed regulations as a see-through trust, the terms of which provide that all plan distributions will, upon receipt by the

trustee, be paid directly to, or for the benefit of, specified beneficiaries. A see-through trust will not fail to be a conduit trust merely because the trust terms do not require an immediate distribution after the death of all of the specified beneficiaries described in the preceding sentence.

For example, if an employee names a conduit trust as the beneficiary of the employee's interest in a plan and the trust terms require all distributions from the plan to the trust during the surviving spouse's life to be distributed immediately to that surviving spouse, then the surviving spouse is treated as a beneficiary of the employee because the surviving spouse could receive amounts in the trust that are neither contingent upon nor delayed until the death of another trust beneficiary. In this case, if distributions have begun from the plan and the surviving spouse dies before the employee's entire interest is distributed, any beneficiary who could receive distributions from the conduit trust at the time of the surviving spouse's death is not treated as a beneficiary of the employee because that beneficiary's ability to receive amounts from the trust is contingent upon the death of the surviving spouse.

An accumulation trust is any see-through trust that is not a conduit trust, and under an accumulation trust, there are potentially more beneficiaries. A beneficiary of an accumulation trust is treated as a beneficiary of the employee if that beneficiary has a residual interest in the portion of the trust representing the employee's interest in the plan (that is, the beneficiary could receive amounts in the trust, representing the employee's interest in the plan, that were not distributed to individuals described in the first paragraph of this Section I.D.2.a.1). For example, assume an employee names a see-through trust as the sole beneficiary of the employee's interest in the plan. The terms of the see-through trust require the trustee to pay specified amounts from the trust to the employee's surviving spouse, and those specified amounts do not include the immediate payment of plan distributions made to the trust. Upon the spouse's death, the see-through trust is to terminate and the amounts remaining in the trust are to be paid to the employee's brother. The surviving spouse is treated as a beneficiary of the employee (because the surviving spouse could receive amounts in the see-through trust that are neither contingent upon nor delayed until the death of another trust beneficiary). Moreover, because not all distributions from the plan to the see-through trust are immediately distributed to a trust

<sup>5</sup> These proposed regulations provide for the determination of the trust beneficiaries that are treated as beneficiaries of the employee in § 1.401(a)(9)-4(f). In the existing regulations, these provisions were in § 1.401(a)(9)-5.

<sup>6</sup> For purposes of this rule, a beneficiary is treated as having predeceased the employee if the beneficiary is treated as predeceasing the employee pursuant to a simultaneous death provision or a qualified disclaimer.

beneficiary, the trust is an accumulation trust. As a result, the employee's brother is treated as a beneficiary of the employee because he has a residual interest in the see-through trust (that is, he could receive amounts in the trust representing the employee's interest in the plan that were not distributed to the surviving spouse).

## 2. Disregarded Beneficiaries of See-Through Trusts

These proposed regulations also provide for certain beneficiaries of a see-through trust to be disregarded as beneficiaries of the employee for purposes of section 401(a)(9), because they have only minimal or remote interests. Specifically, a see-through trust beneficiary is not treated as a beneficiary of the employee if that beneficiary could receive payments from the trust that represent the employee's interest in the plan only after the death of another trust beneficiary whose sole interest is a residual interest in the trust (as described in the preceding paragraph) and who did not predecease (and is not treated as having predeceased) the employee. Thus, using the example in the preceding paragraph, assume the see-through trust terms provide that if the employee's brother survives the employee but predeceases the surviving spouse, then the amounts remaining in the trust after the death of the surviving spouse are to be paid to a charity. In that case, the charity is disregarded as a beneficiary of the employee because the charity could receive only amounts in the trust that are contingent upon the death of the employee's brother, whose only interest was a residual interest (that is, an interest in the amounts remaining in the trust after the death of the surviving spouse). In contrast, the charity would be treated as a beneficiary of the employee if the brother could receive amounts in the trust not subject to any contingencies or contingent upon an event other than the death of the surviving spouse (such as the surviving spouse's remarriage).

These proposed regulations provide another exception under which a see-through trust beneficiary with a residual interest is disregarded as a beneficiary of the employee because the beneficiary would have only a minimal or remote interest in the trust. These proposed regulations provide that if the see-through trust terms require a full distribution of amounts in the trust representing the employee's interest in the plan to a specified individual described in the first paragraph of Section I.D.2.a.1 of this Explanation of Provisions by the later of: (1) The

calendar year following the calendar year of the employee's death; and (2) the end of the tenth calendar year following the calendar year in which that specified individual attains the age of majority, then any other beneficiary whose sole entitlement to distributions is conditioned on the unlikely event that specified individual dies before the full distribution is required is disregarded as a beneficiary of the employee.

To illustrate this exception, assume an employee names a see-through trust as the sole beneficiary, the trust permits specified amounts to be paid to the employee's niece until the niece reaches age 31 (age of majority plus 10 years), and those specified amounts are not required to include the immediate payment of plan distributions made to the trust. The trust is scheduled to terminate with a full distribution of all trust assets to the niece when the niece reaches age 31, but if the niece dies before this scheduled termination, then the amounts remaining in the trust will be paid to the employee's sibling. In that case, the only beneficiary designated under the plan for purposes of section 401(a)(9) and these regulations is the employee's niece because the employee's sibling is disregarded under the exception described in the preceding paragraph. However, if the see-through trust terms do not require a full distribution of amounts in the trust representing the employee's interest in the plan until the niece reaches age 35, then this exception does not apply, and both the employee's niece and sibling are treated as beneficiaries designated under the plan for purposes of section 401(a)(9) and these regulations.

## b. Identifiability of Trust Beneficiaries

These proposed regulations retain the requirement from the existing regulations that the employee's beneficiaries (including beneficiaries of a see-through trust) be identifiable, but modify the definition of identifiability in light of the enactment of section 401(a)(9)(H). Generally, trust beneficiaries are identifiable if it is possible to identify each person designated by the employee as eligible to receive a portion of the employee's interest in the plan through the trust. Under the proposed regulations, if an employee names a class of individuals as the beneficiary (such as the employee's grandchildren), the addition of another member of that class (for example, the birth of another grandchild) will not cause the trust to fail to meet the identifiability requirements.

These proposed regulations provide another exception to the general identifiability rule under which a trust will not fail to satisfy the identifiability requirements merely because an individual has a power of appointment with respect to a portion of the employee's interest in the plan. Specifically, these proposed regulations provide that if, by September 30 of the calendar year following the calendar year of the employee's death, the power is exercised in favor of one or more beneficiaries that are identifiable or is restricted so that any appointment made at a later time may only be made in favor of one or more identifiable beneficiaries, then all of those identifiable beneficiaries are taken into account as beneficiaries of the employee. If the power is not exercised by that September 30 in favor of one or more beneficiaries that are identifiable (and is not so restricted) then each taker in default (that is, each person who would be entitled to the portion subject to the power if that power is not exercised) is treated as a beneficiary of the employee.

These proposed regulations include a rule that applies when a beneficiary is added who was not initially taken into account in determining the employee's beneficiaries. Under this rule, if a beneficiary is added after September 30 of the calendar year following the calendar year of the employee's death (for example, if an individual exercises a power of appointment after that September 30), then the determination of whether there is no designated beneficiary because one of the employee's beneficiaries is not an individual, and the rules relating to multiple designated beneficiaries described in Sections I.D.1.d and I.E.3.d of this Explanation of Provisions must be applied taking into account the new beneficiary along with all of the beneficiaries that were taken into account before the addition of the new beneficiary. However, if the addition of the beneficiary would cause a full distribution of the employee's interest in the plan to be required pursuant to section 401(a)(9)(H) during the calendar year in which the beneficiary is added or in an earlier calendar year (and a full distribution would not have been required in the absence of the new beneficiary), then the proposed regulations provide that the full distribution is not required until the end of the calendar year following the calendar year in which the beneficiary was added.

To illustrate this rule, assume an employee named a see-through trust as the beneficiary of the employee's

interest in the plan, the terms of the trust require the trustee to pay specified amounts from the trust to the employee's surviving spouse, and those specified amounts do not require the immediate payment of plan distributions made to the trust. In this case, the trust is an accumulation trust. The trust terms also provide the spouse with a testamentary power of appointment to name the beneficiary of any portion of the employee's interest in the plan that has not been distributed before the surviving spouse dies, but in the absence of an appointment, the employee's only child is entitled to that residual interest in the trust. If the power of appointment is not exercised by September 30 of the calendar year following the calendar year of the employee's death, then the trust does not fail to satisfy the identifiability requirements, and both the employee's surviving spouse and child are treated as beneficiaries of the employee. If, after that September 30, the surviving spouse exercises the power by naming the spouse's sibling as the beneficiary of the residual interest in the trust, then the employee's surviving spouse, the employee's child, and the spouse's sibling are all taken into account when applying the rules for multiple designated beneficiaries for each calendar year after the year during which the sibling is added as a beneficiary.

These proposed regulations also provide that a see-through trust will not fail to satisfy the identifiability requirements merely because the trust is subject to state law that permits the trust terms to be modified after the death of the employee (such as by a court reformation, through a decanting, or otherwise), thus permitting a change in the beneficiaries of the trust. If a beneficiary of a see-through trust is removed through a modification of the trust terms by September 30 of the calendar year following the calendar year of the employee's death, the proposed regulations provide that the beneficiary that was removed is disregarded as a beneficiary of the employee for purposes of section 401(a)(9) and these regulations. Similarly, if a beneficiary is added pursuant to such a modification, that beneficiary is taken into account as a beneficiary of the employee for purposes of section 401(a)(9) and these regulations. However, if a beneficiary is added pursuant to such a modification after that September 30, then the rules that apply to a beneficiary that is added pursuant to a power of appointment will

apply also to a beneficiary that is added pursuant to the modification.

#### c. Applicable Multi-Beneficiary Trusts

These proposed regulations also provide guidance on a particular type of see-through trust defined in section 401(a)(9)(H)(v) as an applicable multi-beneficiary trust. Specifically, these proposed regulations define two types of applicable multi-beneficiary trusts. A type I applicable multi-beneficiary trust is an applicable multi-beneficiary trust, the terms of which provide that the trust is to be divided immediately upon the death of the employee into separate trusts for each beneficiary (as described in section 401(a)(9)(H)(iv)(I)). A type II applicable multi-beneficiary trust is an applicable multi-beneficiary trust, the terms of which provide that no individual other than a disabled or chronically ill eligible designated beneficiary has any right to the employee's interest in the plan until the death of all such eligible designated beneficiaries with respect to the trust (as described in section 401(a)(9)(H)(iv)(II)).

When dividing a type I applicable multi-beneficiary trust, one of the separate trusts could be a type II applicable multi-beneficiary trust. Thus, if a type I applicable multi-beneficiary trust is divided into separate trusts and one of the separate trusts satisfies the requirements to be a type II applicable multi-beneficiary trust, then the beneficiaries of that separate trust who are not disabled or chronically ill are disregarded as beneficiaries of the employee for purposes of section 401(a)(9) and these regulations. However, for any separate trust that does not satisfy the requirements to be a type II applicable multi-beneficiary trust, the beneficiaries of that separate trust are treated as beneficiaries of the employee for purposes of section 401(a)(9) and these regulations.

The Treasury Department and the IRS are aware of concerns related to the application of the amendments made by section 401 of the SECURE Act to section 401(a)(9) of the Code in the case of a trust with terms intended to ensure that a disabled individual who is a beneficiary of the trust remains eligible for means-tested government benefits. The Treasury Department and the IRS request comments on whether under applicable law a trust for a disabled individual (for example, a supplemental needs trust) could include terms providing that the disabled individual would lose the individual's interest in the trust in the event the interest would disqualify the individual for means-tested government benefits and still satisfy the requirements under the Code

to be a type II applicable multi-beneficiary trust. Specifically, comments are requested on whether this type of provision may be included in a trust (thereby allowing a disabled individual to continue to qualify for means-tested government benefits), while not providing for trust payments to any other beneficiary until the death of the disabled individual.

#### 3. Other Rules Related to Designated Beneficiaries.

##### a. Special Rules for Multiple Designated Beneficiaries

As described in the first paragraph of Section I.D.1.d of this Explanation of Provisions, these proposed regulations provide a general rule under which, if an employee has more than one designated beneficiary, and at least one of them is not an eligible designated beneficiary, then for purposes of section 401(a)(9), the employee is treated as not having an eligible designated beneficiary. As a result, the employee's interest must be distributed no later than the end of the tenth calendar year following the calendar year of the employee's death.

These proposed regulations include two exceptions to this general rule that allow an eligible designated beneficiary to use the life expectancy rule even if there is another designated beneficiary who is not an eligible designated beneficiary. The first exception is that if any of the employee's designated beneficiaries is a child of the employee who, as of the date of the employee's death, has not yet reached the age of majority, then the employee is still treated as having an eligible designated beneficiary (which allows payments to continue until 10 years after the child reaches the age of majority even if there are other designated beneficiaries who are not eligible designated beneficiaries). The second exception is if the see-through trust is a type II applicable multi-beneficiary trust, then the beneficiaries who either are disabled or chronically ill are treated as eligible designated beneficiaries without regard to whether any of the other trust beneficiaries are not eligible designated beneficiaries.

To illustrate these rules, if an employee who is a participant in a defined contribution plan names a see-through trust as the sole beneficiary of the employee's interest in the plan, and the trust beneficiaries are the employee's surviving spouse and the employee's adult child who is not disabled or chronically ill, then the employee is treated as not having an eligible designated beneficiary. As a

result, the employee's entire interest must be distributed no later than 10 years after the employee's death. However, if there is another designated beneficiary who is the employee's child and who, as of the date of the employee's death, has not yet reached the age of majority, then, under the exception described in the preceding paragraph, the employee is treated as having an eligible designated beneficiary. In that second situation, if the trust is receiving annual distributions using the life expectancy rule, then a full distribution from the plan would not be required until ten years after the minor child reaches the age of majority.

#### b. Determining the Beneficiary for Purposes of Calculating the Required Minimum Distribution

These proposed regulations largely retain the rules of the existing regulations related to determining who is a beneficiary for purposes of section 401(a)(9), so that a person is a beneficiary if that person is a beneficiary designated under the plan as of the date of the employee's death and remains a beneficiary as of September 30 of the calendar year following the calendar year in which the employee died. For this purpose, a beneficiary need not be specified by name in order to be designated under the plan, provided the beneficiary is identifiable pursuant to the designation.

The existing regulations provide that a beneficiary is disregarded if certain events occur before September 30 of the calendar year following the calendar year in which the employee dies. In response to issues raised in private letter ruling requests and comments submitted to the Treasury Department and the IRS, these proposed regulations provide an exclusive list of events that permit a beneficiary to be disregarded. Specifically, the proposed regulations provide that if any of the following events occurs by September 30 of the calendar year following the calendar year in which the employee dies with respect to a person who was a beneficiary as of the employee's date of death, then that person will be disregarded in identifying the beneficiaries of the employee for purposes of section 401(a)(9): (1) The individual predeceases the employee; (2) the individual is treated as having predeceased the employee pursuant to a simultaneous death provision or pursuant to a qualified disclaimer that satisfies section 2518 and applies to the entire interest to which the beneficiary is entitled; or (3) the person receives the

entire benefit to which the person is entitled.

To illustrate the rule in the preceding paragraph, if an individual makes a disclaimer satisfying section 2518 that applies to the individual's entire interest (including the requirement that the disclaimer be made within 9 months of the employee's death), that individual is not treated as a beneficiary for purposes of section 401(a)(9). However, if the disclaimer is executed more than 9 months after the employee's death, then that individual will not be disregarded for purposes of identifying the beneficiaries. As another example, assume a see-through trust is designated as a beneficiary of the employee's interest in the plan and that trust could be liable for expenses of administering and distributing the deceased employee's estate at death. In this case, the decedent's estate is treated as a beneficiary of the employee designated under the plan because some portion of the employee's interest in the plan may be used for the payment of those administration expenses, thus satisfying an obligation of the estate. However, if all of those expenses that could be paid from the employee's interest in the plan are paid by September 30 of the calendar year following the calendar year in which the employee died (so that by that date, the deceased employee's estate received the entire interest to which it was entitled), then the deceased employee's estate is disregarded, and the other beneficiaries of the see-through trust are considered beneficiaries of the employee.

#### E. Section 1.401(a)(9)–5—Required Minimum Distributions From Defined Contribution Plans

##### 1. In General

Proposed § 1.401(a)(9)–5 retains the general method in the existing regulations by which a required minimum distribution from a defined contribution plan is calculated in any calendar year when an employee dies on or after the required beginning date or when an employee's eligible designated beneficiary is taking life expectancy payments after an employee dies before the required beginning date. Specifically, the required minimum distribution for a calendar year is determined by dividing the employee's account balance as of the end of the prior year by an applicable divisor. The existing regulations refer to the divisor as the applicable distribution period. However, in light of the amendments made by section 401 of the SECURE Act that may result in different distribution periods, these proposed regulations

refer to the divisor as the applicable denominator. In addition to the requirement to take annual required minimum distributions, the proposed regulations implement those amendments by requiring that a full distribution of the remaining interest be taken in certain circumstances.

These proposed regulations also update the list of amounts of distributions and deemed distributions that are not taken into account in determining whether the required minimum distribution has been made for a calendar year. Under the proposed regulations, that list is implemented by a cross-reference to a list of amounts in § 1.402(c)–2(c)(3) (relating to amounts that are not treated as eligible rollover distributions). The effect of the new cross-reference is to add the following items to the list of amounts that are disregarded for purposes of determining the required minimum distribution from a defined contribution plan: Prohibited allocations that are treated as deemed distributions pursuant to section 409(p), distributions of premiums for health and accident insurance, deemed distributions with respect to a collectible pursuant to section 408(m), and distributions that are permissible withdrawals from an eligible automatic contribution arrangement within the meaning of section 414(w).

##### 2. Distributions While the Employee Is Alive

These proposed regulations provide that, in determining the required minimum distribution for a distribution calendar year beginning while the employee is alive, the employee divides the account balance as of December 31 of the preceding calendar year by the employee's applicable denominator. Generally, the applicable denominator is determined using the Uniform Lifetime Table in § 1.401(a)(9)–9(c). However, if the employee's sole beneficiary is the employee's spouse who is more than 10 years younger than the employee, then the applicable denominator is determined using the Joint and Last Survivor Table in § 1.401(a)(9)–9(d) (providing for a longer payout period).

##### 3. Distributions After the Employee's Death

##### a. Requirement To Satisfy Both Section 401(a)(9)(B)(i) and (ii) in the Case of an Employee Who Dies on or After the Required Beginning Date

Section 401(a)(9)(B)(i) provides rules that apply if an employee dies after benefits have commenced. While the 5-year rule under section 401(a)(9)(B)(ii)

(expanded to a 10-year rule in certain cases by section 401(a)(9)(H)(i)(I)) generally applies if an employee dies before the employee's required beginning date, section 401(a)(9)(H)(i)(II) provides that section 401(a)(9)(B)(ii) applies whether or not distributions have commenced. Accordingly, if an employee dies after the required beginning date, distributions to the employee's beneficiary for calendar years after the calendar year in which the employee died must satisfy section 401(a)(9)(B)(i) as well as section 401(a)(9)(B)(ii). In order to satisfy both of these requirements, these proposed regulations provide for the same calculation of the annual required minimum distribution that was adopted in the existing regulations but with an additional requirement that a full distribution of the employee's entire interest in the plan be made upon the occurrence of certain designated events (discussed in section I.E.3.c. of this Explanation of Provisions).

#### b. Determination of Applicable Denominator

If an employee died on or after the required beginning date (or the employee died before the required beginning date and the employee's eligible designated beneficiary is taking life expectancy distributions in accordance with section 401(a)(9)(B)(iii) and these proposed regulations), then for calendar years after the calendar year in which the employee died, the applicable denominator generally is the remaining life expectancy of the designated beneficiary. The beneficiary's remaining life expectancy generally is calculated using the age of the beneficiary in the year following the calendar year of the employee's death, reduced by one for each subsequent calendar year.

However, as an exception to these general rules, if the employee's spouse is the employee's sole beneficiary, then the applicable denominator during the spouse's lifetime is the spouse's life expectancy (which reflects a recalculation in accordance with section 401(a)(9)(D)). In this case, for calendar years after the calendar year in which the spouse died, in determining the required minimum distribution to the spouse's beneficiary, the applicable denominator is the spouse's life expectancy calculated in the calendar year in which the spouse died, reduced by one for each subsequent calendar year.

If the employee has no designated beneficiary, then the applicable denominator is the employee's life

expectancy calculated in the calendar year in which the employee died, reduced by one for each subsequent calendar year. This applicable denominator is also used in the case of an employee who died after the required beginning date and who was younger than the designated beneficiary.

#### c. Full Distribution Required in Certain Circumstances

In order to satisfy the 5-year rule of section 401(a)(9)(B)(ii) (or, if applicable, the exception to that rule in section 401(a)(9)(B)(iii), taking into account section 401(a)(9)(H), and (E)(iii)), these proposed regulations provide that, if an employee's interest is in a defined contribution plan to which section 401(a)(9)(H) applies, then the employee's entire interest in the plan must be distributed by the earliest of the following dates:

(1) The end of the tenth calendar year following the calendar year in which the employee died if the employee's designated beneficiary is not an eligible designated beneficiary;

(2) The end of the tenth calendar year following the calendar year in which the designated beneficiary died if the employee's designated beneficiary was an eligible designated beneficiary;

(3) The end of the tenth calendar year following the calendar year in which the beneficiary reaches the age of majority if the employee's designated beneficiary is the child of the employee who has not yet reached the age of majority as of the date of the employee's death; and

(4) The end of the calendar year in which the applicable denominator would have been less than or equal to one if it were determined using the beneficiary's remaining life expectancy, if the employee's designated beneficiary is an eligible designated beneficiary, and if the applicable denominator is determined using the employee's remaining life expectancy.

For example, if an employee died after the required beginning date with a designated beneficiary who is not an eligible designated beneficiary, then the designated beneficiary would continue to have required minimum distributions calculated using the beneficiary's life expectancy as under the existing regulations for up to nine calendar years after the employee's death. In the tenth year following the calendar year of the employee's death, a full distribution of the employee's remaining interest would be required.

Similarly, if an employee died after the required beginning date with an eligible designated beneficiary, then the eligible designated beneficiary would continue to have required minimum

distributions calculated during the beneficiary's lifetime using the rules under the existing regulations. However, if the eligible designated beneficiary dies before the entire interest of the employee is distributed, then the beneficiary of that eligible designated beneficiary would continue taking annual distributions using the rules under the existing regulations for up to nine years after the death of the eligible designated beneficiary. In the tenth year following the calendar year of the eligible designated beneficiary's death, a full distribution of the employee's remaining interest would be required.

If the employee's designated beneficiary is a child of the employee who, as of the employee's death, has not yet reached the age of majority, then the child would have annual required minimum distributions calculated during the child's lifetime using the rules of the existing regulations.

However, those distributions would be permitted to be paid for up to only nine years after the child reaches the age of majority with a full distribution of the employee's remaining interest required in the tenth year following the calendar year in which the child reaches the age of majority.

As another example, if an employee died at age 75 after the required beginning date and the employee's non-spouse eligible designated beneficiary was age 80 at the time of the employee's death, the applicable denominator would be determined using the employee's remaining life expectancy. However, these proposed regulations require a full distribution of the employee's remaining interest in the plan in the calendar year in which the applicable denominator would have been less than or equal to one if it were determined using the beneficiary's remaining life expectancy (even though the applicable denominator for determining the required minimum distribution is based on the remaining life expectancy of the employee). In this case, based on the beneficiary's life expectancy of 11.2 in the year of the employee's death, a full distribution would be required in the year the beneficiary reaches age 91 (because in the 11th calendar year after the employee's death the beneficiary's life expectancy would be less than or equal to one).

#### d. Multiple Designated Beneficiaries

These proposed regulations include a modified version of the general rule adopted in the existing regulations that applies if an employee has more than one designated beneficiary. Specifically, instead of determining the applicable

denominator using the beneficiary with the shortest life expectancy, these proposed regulations provide that the applicable denominator is determined using the life expectancy of the oldest designated beneficiary. The proposed regulations provide that whether a full distribution is required also generally is determined using the oldest of the designated beneficiaries. For example, if an employee has multiple eligible designated beneficiaries who are born in the same calendar year, then full distribution of the employee's remaining interest generally is required by the tenth calendar year following the death of the oldest designated beneficiary.

These general rules for multiple designated beneficiaries are subject to certain exceptions. Under one exception, if the employee's beneficiary is a type II applicable multi-beneficiary trust, then only the disabled and chronically ill beneficiaries of the trust are taken into account in determining the oldest designated beneficiary. Thus, the ages of the other beneficiaries are disregarded in determining the applicable denominator, and the death of the last of the disabled or chronically ill trust beneficiaries triggers the 10-year payout requirement under section 401(a)(9)(H)(iii).

Under a second exception to the general rule, if any of the employee's designated beneficiaries is a child of the employee who has not yet reached the age of majority as of the date of the employee's death, then, in applying the requirement to make a full distribution by the tenth year following the death of the oldest eligible designated beneficiary, only the employee's children who are designated beneficiaries and who are under the age of majority at the employee's date of death are taken into account. Thus, in a situation involving one or more designated beneficiary children under the age of majority and one or more older designated beneficiaries, the death of an older designated beneficiary will not result in a requirement to pay a full distribution before the oldest child attains the age of majority plus ten years. In this case, a full distribution of the employee's remaining interest is not required until the tenth calendar year following the calendar year in which the oldest child of the employee who is a designated beneficiary and who had not attained the age of majority as of the employee's death reaches the age of majority (or, if earlier, the tenth calendar year following the calendar year of that child's death).

To illustrate these rules, assume an employee died at the age of 75 after the

employee's required beginning date, and the employee named a see-through trust that is an accumulation trust as the employee's beneficiary under the plan. The terms of the trust require specified amounts to be paid to the employee's surviving spouse (who was age 74 at the time of the employee's death). Upon the spouse's death, the trust will terminate and the amounts remaining in the trust that have not been paid to the spouse will be paid to the employee's sibling (who was age 67 at the time of the employee's death). If the employee's sibling predeceases the surviving spouse, the amounts remaining in the trust that have not been paid to the surviving spouse will be paid to a charity. In this case, the charity is disregarded as a beneficiary of the employee (as described in Section I.D.2.a.2 of this Explanation of Provisions), and all of the other trust beneficiaries are eligible designated beneficiaries (a surviving spouse and a beneficiary who is not more than 10 years younger than the employee). Under these proposed regulations, required minimum distributions are made to the trust beginning in the calendar year after the calendar year of the employee's death using the surviving spouse's remaining life expectancy, because the surviving spouse is the oldest beneficiary of the employee. Upon the surviving spouse's death, annual distributions must continue to the trust using the surviving spouse's remaining life expectancy in the calendar year of the spouse's death, reduced by one in each subsequent calendar year. In addition, the entire interest of the employee must be distributed no later than the tenth calendar year following the calendar year of the spouse's death.

#### *F. Section 1.401(a)(9)–6—Required Minimum Distributions From Defined Benefit Plans*

Proposed § 1.401(a)(9)–6 provides rules for required minimum distributions from defined benefit plans and from annuity contracts that are annuitized to pay benefits under defined contribution plans. These rules are based on the existing regulations and are updated to reflect the amendments to section 401(a)(9) of the Code made by section 114 of the SECURE Act regarding the required beginning date and actuarial increases.

#### **1. Rules Applicable to Defined Benefit Plans**

##### **a. Actuarial Increase for Employees Retiring After Age 70½**

These proposed regulations address the actuarial increase required under section 401(a)(9)(C)(iii). Section 401(a)(9)(C)(iii) provides that, if section 401(a)(9)(C)(i)(II) applies to an employee and the employee retires in a calendar year after the calendar year in which the employee attains age 70½, then the employee's accrued benefit must be actuarially increased to take into account the period after age 70½ during which the employee was not receiving any benefits under the plan. Section 401(a)(9)(C)(ii)(I) provides that section 401(a)(9)(C)(i)(II) (providing a required beginning date based on the calendar year in which the employee retires) does not apply to an employee who is a 5-percent owner (as defined in section 416) for the plan year ending in the calendar year in which the employee attains age 72.

The proposed regulations reflect that the required actuarial increase under section 401(a)(9)(C)(iii) does not apply to a 5-percent owner. This is because the actuarial increase is limited to employees to whom section 401(a)(9)(C)(i)(II) applies (and section 401(a)(9)(C)(ii)(I) provides that section 401(a)(9)(C)(i)(II) generally does not apply in the case of an employee who is a 5-percent owner). Thus, the required actuarial increase applies to an employee other than a 5-percent owner who retires in a calendar year after the calendar year in which the employee attains age 70½.

These proposed regulations, like the existing regulations, reflect the exception from the requirements of section 401(a)(9)(C)(iii) provided under section 401(a)(9)(C)(iv) for governmental plans and church plans. Section 401(a)(9)(C)(iv) specifies that for purposes of section 401(a)(9), a church plan is a plan maintained by a church for church employees, and a church is any church within the meaning of section 3121(w)(3)(A) or any qualified church-controlled organization within the meaning of section 3121(w)(3)(B). These proposed regulations clarify that the determination of whether an employee is a church employee is made without regard to whether the employee would be considered an employee of a church under section 414(e)(3)(B). Therefore, a plan for the employees of a tax-exempt organization that is not a church or a qualified church-controlled organization must provide an actuarial increase for an employee who retires in a calendar year after the calendar year

in which the employee reaches age 70½.

**b. Interaction of Benefit Restrictions Under Section 436(d) and Minimum Distribution Requirements Under Section 401(a)(9)**

Under section 436(d), a plan is required to provide certain limitations on accelerated benefit distributions. Under section 436(d)(1), if the plan's annual funding target attainment percentage (AFTAP) for a plan year is less than 60 percent, the plan must not make any prohibited payment (that is, a payment in excess of the monthly amount paid under a single life annuity or a payment for the purchase of an irrevocable commitment from an insurer to pay benefits) after the valuation date for the plan year. Under section 436(d)(2), if the plan sponsor is in bankruptcy proceedings, the plan may not pay any prohibited payment unless the plan's enrolled actuary certifies that the AFTAP of the plan is at least 100 percent. Under section 436(d)(3), if the plan's AFTAP for a plan year is at least 60 percent but is less than 80 percent, the plan must not pay any prohibited payment to the extent the payment exceeds the lesser of (1) 50 percent of the amount otherwise payable under the plan, and (2) the present value of the maximum Pension Benefit Guaranty Corporation guarantee with respect to a participant.

If an employee dies before the required beginning date and distributions are being made in accordance with section 401(a)(9)(B)(ii), then the entire interest of the employee generally must be distributed within 5 years of the employee's death (the 5-year rule). Because compliance with this requirement under section 401(a)(9)(B)(ii) may conflict with the requirements of section 436(d), these proposed regulations provide an exception to the 5-year rule so that a plan will not fail to comply with those requirements merely because payments by the plan are restricted by section 436(d). Under this provision, benefits that are required to be paid under the 5-year rule may extend past the section 401(a)(9)(B)(ii) deadline for full payment provided that the payments (1) start by the fifth year after the employee's death, and (2) are paid in a form that is as accelerated as permitted under section 436(d).

**2. Rules Applicable to Annuity Contracts**

**a. Annuity Providers Must Be Licensed**

Like the existing regulations, these proposed regulations provide that, for

either a defined benefit plan or a defined contribution plan, the required minimum distribution rules may be satisfied through the purchase, with the employee's entire interest in the plan, of an annuity contract that provides periodic annuity payments for the employee's life (or the joint lives of the employee and beneficiary) or over a period certain. These proposed regulations add a rule that, for this purpose, the annuity contract must be issued by an insurance company licensed in the jurisdiction where the annuity is sold. However, pursuant to § 1.403(b)–6(e)(5), this rule does not apply to an annuity paid under a retirement income account that is described in section 403(b)(9).

**b. Qualified Longevity Annuity Contracts**

In 2014, the Treasury Department and the IRS amended the regulations under section 401(a)(9) in order to facilitate the purchase, under a defined contribution plan, of a deferred annuity that commences annuity payments at an advanced age. See 79 FR 37633. Those modifications apply to an annuity contract that satisfies certain requirements, including a requirement that distributions commence not later than age 85. Prior to annuitization, the value of this type of contract, referred to as a Qualified Longevity Annuity Contract (QLAC), is excluded from the account balance used to determine required minimum distributions.

Section 1.401(a)(9)–6, A–17(a)(4), of the existing regulations provides that a QLAC may not make available any commutation benefit, cash surrender value, or other similar feature. These proposed regulations would change this rule so that this prohibition applies only after the required beginning date. This change is proposed so that if a plan's investment options include a series of target date funds to which the relief under Notice 2014–66, 2014–46 I.R.B. 820 applies,<sup>7</sup> those target date funds would be permitted to include QLACs among their assets.

**3. Other Rules**

**a. Increasing Payments**

Like the existing regulations, these proposed regulations generally provide that all payments under a defined benefit plan or annuity contract must be nonincreasing, subject to a number of

<sup>7</sup> Notice 2014–66 provides relief under section 401(a)(4) to enable plans to provide lifetime income by offering, as investment options, a series of target date funds that include deferred annuities among their assets, even if some of the target date funds within the series are available only to older participants.

exceptions. These proposed regulations retain the exceptions in the existing final regulations and add to the list of circumstances under which annuity payments under a defined benefit plan may increase. Under the proposed regulations, annuity payments may increase as a result of the resumption of benefits that were suspended pursuant to section 411(a)(3)(B) (for a retiree whose benefits were suspended on account of employment after commencement of benefits and then resume after the suspension of benefits ends). In addition, annuity payments may increase as a result of the resumption of benefits that were suspended pursuant to section 418E (for an insolvent plan) or section 432(e)(9) (for a participant or beneficiary of a plan in critical and declining status whose benefits have been suspended under section 432(e)(9), if the suspension of benefits consists of a temporary reduction of benefits or if suspended benefits resume because of a failure to meet the conditions of section 432(e)(9)(C)).

The existing regulations provide a number of exceptions under which payments from annuity contracts purchased from insurance companies may increase, and certain of these exceptions apply only if the total future expected payments under the contract exceed the total value being annuitized. These proposed regulations make a minor modification to the rules to clarify the calculation of the total future expected payments and the total value being annuitized. Specifically, these proposed regulations modify the determination of the total value being annuitized by providing that the total value is calculated as of the date on which the contract is annuitized. This modification (under which this determination is made as of the date on which the contract is annuitized, rather than the date on which payments on the annuitized contract begin as specified in § 1.401(a)(9)–6, A–14(e)(1)(i) of the existing regulations), will have an effect only in situations in which the contract is annuitized on a date earlier than the date on which payments begin. In addition, these proposed regulations update the examples illustrating these rules to reflect the mortality rates in § 1.401(a)(9)–9.

These proposed regulations also provide three additional exceptions to the nonincreasing payments requirement for annuities issued by insurance companies that apply without regard to a comparison of the total future expected payments and the total value being annuitized. Two of these exceptions have been added because

commentors have identified that certain policy features are popular with policyholders and these features do not have a material impact on the amount of expected payments. First, these proposed regulations allow an annuity contract to provide a final payment upon the death of the employee that does not exceed the excess of total value being annuitized over the total of payments before the death of the employee. Second, these proposed regulations allow an annuity contract to offer a short-term acceleration of payments, under which up to one year of annuity payments are paid in advance of when those payments were scheduled to be made. In addition, to facilitate compliance, these proposed regulations provide a third exception that allows an annuity contract to provide an acceleration of payments that is required to comply with section 401(a)(9)(H).

#### b. Payments to Children

These proposed regulations amend the existing rules governing when, pursuant to section 401(a)(9)(F), payment of an employee's accrued benefit to a child may be treated as if the payments were made to a surviving spouse. These rules are the same as under the existing regulations except, as discussed in Section I.D.1.a of this Explanation of Provisions, these proposed regulations specify that an individual reaches the age of majority for purposes of sections 401(a)(9)(E)(ii)(II) and (F) on that individual's 21st birthday.

Under these proposed regulations, a plan's terms that define the age of majority that were adopted on or before February 24, 2022 and met the requirements of § 1.401(a)(9)–6, A–15 of the existing regulations are not required to be amended to reflect this change, and the plan may continue to use that plan definition of the age of majority for purposes of section 401(a)(9)(F). Moreover, because a governmental plan is subject only to a reasonable, good faith standard in complying with the rules of section 401(a)(9), the plan terms of a governmental plan may use a definition of the age of majority for purposes of section 401(a)(9)(F) that meets the requirements of § 1.401(a)(9)–6, A–15 of the existing regulations, even if the plan terms that define age of majority are adopted after that date.

#### G. Section 1.401(a)(9)–7—Rollovers and Transfers

Proposed § 1.401(a)(9)–7 retains the rollover and transfer rules that are in the existing regulations.

#### H. Section 1.401(a)(9)–8—Special Rules

Proposed § 1.401(a)(9)–8 provides special rules applicable to satisfying the minimum distribution requirement. These include separate account treatment for beneficiaries, the definition of spouse (updated to include the post-*Obergefell* regulations under § 301.7701–18), application of the qualified domestic relations order (QDRO) rules, and the applicability of elections under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248, 96 Stat. 324 (1982) (TEFRA).

The proposed regulation generally retains the separate account rules applicable to beneficiaries after the death of the employee that were adopted in the existing regulations, including the rule that prohibits separate application of section 401(a)(9) to separate interests in a trust. However, in light of the new applicable multi-beneficiary trust rules provided in section 401(a)(9)(H)(iv), these proposed regulations provide an exception to that prohibition that would permit separate application of section 401(a)(9) to the separate subtrusts of a type I applicable multi-beneficiary trust.

These proposed regulations also clarify the rules under which section 401(a)(9) is applied separately with respect to the separate interests of each of the employee's beneficiaries under a plan, provided that the separate accounting requirements are satisfied. Those separate accounting requirements include:

(1) Any post-death distribution with respect to a beneficiary's interest must be allocated to the separate account of that beneficiary;

(2) All post-death investment gains and losses, contributions, and forfeitures, for the period prior to the establishment of the separate accounts must be allocated on a pro rata basis in a reasonable and consistent manner among the separate accounts; and

(3) The investment return with respect to the investments held in the separate accounts that were established for the separate interests of the beneficiaries must be allocated to those separate accounts.

However, if the separate accounting requirements are not satisfied until after the end of the calendar year following the calendar year of the employee's death, then, for calendar years after the separate accounting requirements are satisfied: (1) The required minimum distribution is determined without regard to the separate accounts; (2) the aggregate distribution is allocated among the beneficiaries based on each

beneficiary's share of the total remaining balance of the employee's interest; and (3) the allocated share for each beneficiary must be distributed to each respective beneficiary.

#### I. Section 1.401(a)(9)–9—Life Expectancy and Distribution Period Tables

These proposed regulations include minor changes to existing provisions of § 1.401(a)(9)–9 to conform the terminology in that section to the new terminology used in proposed § 1.401(a)(9)–5. For example, references to the “applicable distribution period” have been changed to refer to the “applicable denominator.”

#### II. Section 402(c) Regulations

These proposed regulations provide updates to existing rules of § 1.402(c)–2 that reflect statutory amendments made to section 402(c) since the regulations were issued in 1995. Those amendments are described in the Background section of this Preamble under the heading “Section 402(c)—Rollovers.”

##### A. Exclusion From Income of Amount Rolled Over

These proposed regulations provide that, if an employee receives an eligible rollover distribution and rolls it over to any eligible retirement plan within 60 days of the distribution (including any amount withheld under section 3405(c)), then the distribution generally is not includible in gross income. However, if any portion of the eligible rollover distribution is rolled over to a Roth IRA and the distribution is not from a designated Roth account, that portion is includible in the taxpayer's gross income but generally is not subject to the 10-percent additional tax under section 72(t).

##### B. Definition of Eligible Rollover Distribution and Eligible Retirement Plan

These proposed regulations update the definition of *eligible rollover distribution* to include the portion of the distribution that constitutes the employee's investment in the contract and provide that, pursuant to section 402(c)(4)(C), an eligible rollover distribution does not include any distribution made on account of hardship. These proposed regulations also provide that a rollover distribution may be a 60-day rollover, a direct rollover described in section 401(a)(31), or the repayment of a distribution that is treated as a rollover pursuant to another statutory provision (such as the repayment of a qualified birth or

adoption distribution that is treated as a rollover pursuant to section 72(t)(2)(H)(v)(III)).

These proposed regulations also update the list of amounts of distributions and deemed distributions that are not eligible rollover distributions. Specifically, the proposed regulation adds that a deemed distribution with respect to a collectible pursuant to section 408(m) is not treated as an eligible rollover distribution.

These proposed regulations provide that, pursuant to section 402(c)(8)(B), an eligible retirement plan is: (1) An IRA; (2) a qualified plan (including an employee's trust described in section 401(a) that is exempt from taxation under section 501(a), an annuity plan under section 403(a) or an annuity contract under 403(b)); or (3) an eligible deferred compensation plan under section 457(b) maintained by an employer described in section 457(e)(1)(A) (such as a State or local government). Pursuant to section 402(c)(10), an eligible deferred compensation plan under section 457(b) is an eligible retirement plan only if it separately accounts for amounts rolled into the plan. Furthermore, an eligible rollover distribution from a designated Roth account under section 402A may be rolled over only to another designated Roth account or to a Roth IRA.

### *C. Special Rules Related to Eligible Rollover Distributions*

#### 1. Distributions That Include Basis

In accordance with section 402(c)(2), these proposed regulations provide that if an eligible rollover distribution includes an amount that is allocable to the employee's basis (that is, the employee's investment in the contract), then additional rules will apply if it is not rolled over to an IRA. Specifically, if the rollover is to a qualified plan or annuity contract described in section 403(b), then the rollover must be made through a direct trustee-to-trustee transfer. In addition, the portion of a distribution that is allocable to an employee's basis may not be rolled over to an eligible deferred compensation plan described in section 457(b).

These proposed regulations also provide that if an eligible rollover distribution includes an amount that is allocable to an employee's basis, and only a portion of that distribution is rolled over, then the portion that is rolled over is treated as first consisting of the portion of the distribution that is not allocable to the employee's basis.

#### 2. Distributions That Include Property

These proposed regulations reflect the rules in section 402(c)(1)(C) and provide that, generally, if an eligible rollover distribution is made in the form of property, then that property may be rolled over. In accordance with section 402(c)(6)(A), if that property is sold after being distributed, then the proceeds of the sale may be rolled over (up to the fair market value of the property at the time of the sale), but only if the distribution otherwise satisfies the requirements to be an eligible rollover distribution. The Treasury Department and the IRS request comments on whether there are additional issues under section 402(c)(6) concerning the treatment of the proceeds of the sale of the property (including in situations in which the proceeds of the sale exceed the fair market value of the property at the time of the distribution) that should be addressed in future guidance.

#### 3. Extensions of and Exceptions to the 60-Day Rollover Deadline

These proposed regulations provide for certain extensions of and exceptions to the 60-day deadline by which an eligible rollover distribution must be rolled over to an eligible retirement plan. Specifically, the regulations adopt the requirements of section 402(c)(3)(B), which provides that the Commissioner may waive the 60-day deadline if the failure to waive that requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual with respect to that requirement. In addition, the proposed regulations provide that the 60-day period does not include any period during which the amount transferred to the employee is a frozen deposit described in section 402(c)(7)(B), and does not end earlier than 10 days after that amount ceases to be a frozen deposit. The proposed regulations also clarify that in the case of a repayment of a distribution treated as a rollover (such as a qualified disaster distribution), the repayment timing requirements in the statutory provision giving rise to that treatment take precedence over the otherwise applicable 60-day period. Finally, these proposed regulations also move the rules for the section 402(c)(3)(C) exception to the 60-day deadline for a rollover of a QPLO amount from § 1.402(c)-3 to § 1.402(c)-2(g).

#### *D. Distributions to Beneficiaries*

##### 1. General Rules

These proposed regulations provide that, generally, a distributee other than

the employee or the employee's surviving spouse is not permitted to roll over a distribution from a qualified plan. Pursuant to section 402(c)(9), these proposed regulations provide that a surviving spouse may roll over an employee's interest in the plan to an IRA or a qualified plan. In the case of a spousal rollover to a qualified plan, the amount rolled over is treated as the spouse's own interest in the receiving plan and not as the decedent's interest in the distributing plan. Accordingly, with respect to the amount rolled over to a qualified plan, section 401(a)(9) is satisfied under the rules of section 401(a)(9)(A) (applicable to distributions to employees) and not section 401(a)(9)(B) (applicable to distributions to beneficiaries following the employee's death).

These proposed regulations provide that a designated beneficiary who is not a spouse may elect, under section 402(c)(11), to have any portion of a distribution that fits within the definition of an eligible rollover distribution transferred via a direct trustee-to-trustee transfer to an IRA established for the purpose of receiving that distribution. If that transfer is made pursuant to section 402(c)(11), the distribution is treated as an eligible rollover distribution; the IRA is treated as an inherited account or annuity (as defined in section 408(d)(3)(C), so that distributions from the inherited IRA are not eligible to be rolled over); and the IRA is subject to section 401(a)(9)(B) (other than section 401(a)(9)(B)(iv)).

In determining whether a distribution to a beneficiary is an eligible rollover distribution, the portion of the distribution that constitutes a required minimum distribution under section 401(a)(9) must be determined. The proposed regulations set forth rules for making this determination that are similar to the rules adopted in Notice 2007-7, Q&A-17 and Q&A-19, but are expanded to apply to both spouse and non-spouse beneficiaries.

These proposed regulations provide that, generally, if an employee dies before the required beginning date, then the amount of a distribution to a beneficiary that is treated as a required minimum distribution under section 401(a)(9) (and thus is not an eligible rollover distribution) is determined based on whether the 5-year rule, 10-year rule, or life expectancy rule (or, in the case of a defined benefit plan, the annuity payment rule) applies. Regardless of which rule applies, no portion of a distribution made in the year of the employee's death is treated as a required minimum distribution under section 401(a)(9).

If the 5-year rule applies, then no amount distributed before the fifth calendar year after the calendar year of the employee's death is treated as a required minimum distribution. In the fifth calendar year after the calendar year of the employee's death, the entire amount distributed in that year is treated as a required minimum distribution (and thus is not an eligible rollover distribution). Similarly, if the 10-year rule applies, then, generally, no amount distributed before the tenth calendar year after the calendar year of the employee's death is treated as a required minimum distribution. In the tenth calendar year after the calendar year of the employee's death, the entire amount distributed in that year is treated as a required minimum distribution (and thus is not an eligible rollover distribution).

If the employee dies on or after the required beginning date or if the life expectancy rule applies (or, in the case of a defined benefit plan, the annuity payment rule applies), then, in the first distribution calendar year for the beneficiary and for each subsequent year, the amount treated as a required minimum distribution (and thus is not an eligible rollover distribution) is determined in accordance with the rules described in Sections I.F and I.G of this Explanation of Provisions. In this situation, if the employee dies before receiving the distribution, the amount that would have otherwise been a required minimum distribution for the employee in the calendar year of the employee's death is treated as a required minimum distribution with respect to any distribution to a beneficiary of the employee. A similar rule applies if the employee's beneficiary dies before receiving the distribution for the calendar year of the beneficiary's death, so that the amount that would have otherwise been a required minimum distribution for the employee's beneficiary in the calendar year of that beneficiary's death is treated as a required minimum distribution with respect to any distribution to a beneficiary of the employee's beneficiary.

These proposed regulations provide an exception for a beneficiary to whom the 5-year rule or 10-year rule applies if that beneficiary makes the election described in Section IV of this Explanation of Provisions to have the life expectancy rule (or annuity payment rule) apply to amounts in the IRA that receives the distribution (rather than the 5-year rule or 10-year rule that applied under the distributing plan). This exception ensures that if a beneficiary makes that election, then the

portion of a distribution from the plan that is a required minimum distribution is determined in a consistent manner with respect to all amounts to which the life expectancy rule or annuity payment rule apply.

## 2. Special Rule for Certain Distributions to Surviving Spouses

These proposed regulations also provide for a special rule that limits the ability of a surviving spouse to use the 5-year rule or the 10-year rule to defer distributions beyond the otherwise required beginning date and then, after that date, commence annual distributions. This rule, which applies in limited circumstances, is used to determine, with respect to a distribution to the employee's surviving spouse to whom the 5-year rule or 10-year rule applies, the portion of that distribution that is treated as a required minimum distribution under section 401(a)(9) (and thus is not an eligible rollover distribution). This special rule, which treats a portion of a distribution made before the last year of the 5-year or 10-year period (whichever applies to the spouse) as a required minimum distribution, applies if: (1) The distribution is made in or after the calendar year the surviving spouse attains age 72; and (2) the surviving spouse rolls over some or all of the distribution to an eligible retirement plan under which the surviving spouse is not treated as the beneficiary of the employee. For example, this special rule applies when an employee dies at age 67, the spouse (who is age 68) elects the 10-year rule, the spouse takes a distribution in the 6th calendar year following the employee's death (the calendar year in which the spouse is age 74 and the employee would have been age 73) and the surviving spouse is rolling over a part of that distribution to the spouse's own IRA (but the rule would not apply if the distribution occurred in the calendar year that the surviving spouse attained age 71 or an earlier year).

Under this special rule, the portion of the distribution that is treated as a required minimum distribution is the cumulative total, over a span of years, of the hypothetical required minimum distribution for each year had the life expectancy rule applied (or, in the case of a defined benefit plan, had the annuity payment rule applied), reduced by any amounts actually distributed to the surviving spouse during that span of years. The span of years begins with the first applicable year (defined as the later of the calendar year in which the surviving spouse reaches age 72 and the calendar year in which the employee

would have reached age 72) and ends in the year of distribution.

In calculating the hypothetical required minimum distributions from a defined contribution plan for a calendar year under this special rule, the proposed regulations provide that an adjusted account balance is used. The adjusted account balance for a calendar year is determined by reducing the account balance that normally would be used to determine the required minimum distribution for that year by the excess (if any) of: (1) The sum of the hypothetical required minimum distributions beginning with the first applicable year and ending with the calendar year preceding the calendar year of the determination, over (2) the distributions actually made to the surviving spouse during those calendar years.

## III. Section 403(b) Regulations

### A. Section 1.403(b)–6(e)—Minimum Required Distributions for Eligible Plans

These proposed regulations amend § 1.403(b)–6(e) to conform that paragraph (which sets forth the required minimum distribution rules for a section 403(b) contract) to the changes made to section 401(a)(9) under the SECURE Act. For example, pursuant to the change in the required beginning date under section 114 of the SECURE Act, these proposed regulations change the reference to age 70½ in the current regulations to the required beginning date as determined under § 1.401(a)(9)–2(b).

These proposed regulations also amend § 1.403(b)–6(e) to provide that the exception from the applicability of section 401(a)(9)(H) for qualified annuities provided in section 401(b)(4) of the SECURE Act applies in the case of a section 403(b)(9) retirement income account even if a commercial annuity (as defined in section 3405(e)(6) of the Code) is not used, provided that all of the other requirements for the qualified annuity exception are satisfied.

### B. Request for Comments Regarding Required Minimum Distributions From Section 403(B) Plans

Under § 1.403(b)–6(e), the required minimum distribution rules applicable to IRAs apply to section 403(b) contracts, and, in general, the required minimum distribution rules for section 403(b) plans are applied in accordance with § 1.408–8. Thus, for example, under § 1.403(b)–6(e)(7), a required minimum distribution owed with respect to one section 403(b) contract of an individual is permitted to be distributed from another section 403(b)

contract of the same individual. Although IRA trustees are required, on Form 5498, *IRA Contribution Information*, to report to the IRS and provide to IRA owners certain information regarding required minimum distributions (such as whether a required minimum distribution is due for a year and the account balance on which the required minimum distribution will be based), Notice 2002–27, 2002–18 I.R.B. 814, provides that no reporting is required with respect to required minimum distributions from section 403(b) contracts. Accordingly, a section 403(b) plan is neither required to automatically make a required minimum distribution for a participant nor required to inform the IRS or the participant that a required minimum distribution is due or the account balance on which the distribution is based.

The required minimum distribution rules applicable to section 403(b) contracts were developed before 2007 when the section 403(b) regulations were issued and made section 403(b) plans more like employer-sponsored qualified plans rather than IRAs, including requiring employers to adopt a written plan document that describes employer responsibilities under the plan. The existing regulations also provide that section 403(b) plans determine the required beginning date in accordance with the rules applicable to qualified plans rather than the rules applicable to IRAs, and that the qualified plan rules related to the purchase of a QLAC apply to section 403(b) plans rather than the corresponding IRA rules. These proposed regulations further treat a section 403(b) plan like a qualified plan in that the distributions or deemed distributions not taken into account in determining the required minimum distribution for a calendar year are the distributions or deemed distributions described in the qualified plan rules rather than the IRA rules.

The Treasury Department and the IRS are considering additional changes to the required minimum distribution rules for section 403(b) plans so that they more closely follow the required minimum distribution rules for qualified plans. For example, under this approach, each section 403(b) plan (like each qualified plan) would be required to make required minimum distributions calculated with respect to that plan (rather than rely on the employee to request distributions from another plan in an amount that satisfies the requirement). These changes would treat similar employer-sponsored plans consistently and may facilitate

compliance with the required minimum distribution rules.

The Treasury Department and the IRS request comments on these possible changes to the required minimum distribution rules for section 403(b) plans, including: (1) Any administrative concerns; (2) any differences between the structure or administration of section 403(b) plans and of qualified plans that should be taken into account in applying the required minimum distribution rules for qualified plans to section 403(b) plans; and (3) any transition rules that would ease the implementation of these possible changes.

#### **IV. Section 1.408–8—Distribution Requirements for IRAs**

These proposed regulations amend § 1.408–8 (which sets forth the required minimum distribution rules for IRAs) to implement the changes made to section 401(a)(9) under the SECURE Act. For example, pursuant to the change in the required beginning date under section 114 of the SECURE Act, these proposed regulations change the references to age 70½ in the current regulations to the required beginning date as determined under § 1.401(a)(9)–2(b)(3). This change reflects that the IRA owner's required beginning date is April 1 of the calendar year after the calendar year in which the individual attains age 72 (or 70½ in the case of an IRA owner born before July 1, 1949). These proposed regulations also provide that the owner of a Roth IRA is not required to begin distributions during the owner's lifetime (consistent with existing § 1.408A–6, Q&A–14 and 15).

These proposed regulations incorporate the rules in Notice 2007–7, Q&A–17 and 19 (relating to the carryover of the method of determining required minimum distributions from a distributing plan to a receiving IRA when a beneficiary is making a transfer described in section 402(c)(11)). In addition, these proposed regulations extend those rules to provide comparable treatment to a surviving spouse in light of the extension of the 5-year period to a 10-year period pursuant to section 401(a)(9)(H). Specifically, these proposed regulations provide that, if an employee dies before the employee's required beginning date after designating the employee's spouse as a beneficiary, and the surviving spouse rolls over a distribution from the qualified plan to an IRA in the name of the decedent, then any distribution method that was elected under the qualified plan also will apply to the IRA that receives the rollover. The same rule applies in the case of an IRA owner who

dies before the required beginning date (so that, if the surviving spouse rolls over a distribution to an IRA in the name of the decedent, then the distribution method that was elected under the distributing IRA will also apply to the IRA that receives the rollover).

These proposed regulations also provide an exception to the rules in the preceding paragraph providing for comparable treatment between surviving spouse beneficiaries and other designated beneficiaries. Under this exception, a surviving spouse, to whom the 5-year rule or 10-year rule applies and who rolls over a distribution from a plan (or an IRA) to an IRA in the decedent's name, may elect to have distributions from the IRA that receives the rollover be subject to the life expectancy rule (rather than the 5-year rule or 10-year rule). The deadline for making this election is the deadline that would have applied for an election between the 5-year rule (or 10-year rule) and the life expectancy rule (or annuity payment rule) had the distributing plan provided for an election between those rules by the beneficiary. As described in Section II.D. of this Explanation of Provisions, if this election is made, then the portion of a distribution that is treated as the required minimum distribution also will be calculated using the life expectancy rule (or annuity payment rule).

The proposed rules described in the preceding two paragraphs also are proposed to apply to a non-spouse beneficiary who is making a transfer described in section 402(c)(11) (incorporating the rules of Notice 2007–7, Q&A–17 and 19). Thus, for example, if an eligible designated beneficiary elects the 10-year rule and, in the seventh calendar year after the calendar year of the employee's death, that beneficiary elects for a distribution to be made in the form of a direct transfer of the employee's interest under the plan to an IRA in the name of the decedent, then the amount transferred nevertheless must be distributed by the end of the tenth calendar year following the calendar year of the employee's death. However, if the distribution is made by the end of the calendar year following the year the employee dies, then the beneficiary would be permitted to make an election to have the life expectancy rule apply under the IRA.

These new rules relating to the distribution method of the receiving IRA do not apply to a surviving spouse when that spouse is rolling over a distribution to the spouse's own account in a qualified plan or to the spouse's own IRA (because distributions would then

be made in accordance with section 401(a)(9)(A) instead of section 401(a)(9)(B)). In that case, these proposed regulations provide that the amount of the distribution treated as a required minimum distribution, and thus not eligible to be rolled over, is determined in accordance with § 1.402(c)-2(j) (including the new rule under which in certain circumstances a spouse who elects the 10-year rule is required to treat a portion of any distribution as a required minimum distribution under the life expectancy rule).

To coordinate with these rules, the proposed regulations provide a deadline for the election under which a surviving spouse may elect to treat a decedent's IRA as the spouse's own. Specifically, a surviving spouse must make that election by the later of (1) the end of the calendar year in which the surviving spouse reaches age 72, and (2) the end of the calendar year following the calendar year of the IRA owner's death. This new deadline should not disrupt the normal application of the election, because the primary purpose for not making an immediate election is for a surviving spouse who has not yet reached age 59½ to take advantage of the section 72(t)(2)(A)(ii) exception to the 10% additional income tax on early withdrawals made by a beneficiary. If the surviving spouse were to miss the deadline provided for in these proposed regulations, that surviving spouse still would be permitted to roll over distributions to the spouse's own IRA but would be subject to the special rule on the catch-up of hypothetical required minimum distributions described in Section II.D of this Explanation of Provisions.

These proposed regulations also provide that any beneficiary (including a non-individual beneficiary) may aggregate IRAs that are inherited from the same decedent when determining the amount that is a required minimum distribution. Thus, for example, if a trust is the beneficiary of two IRAs that are inherited from the same decedent, the trustee may aggregate those IRAs when determining the amount that is a required minimum distribution and take that aggregate amount from either one of the IRAs.

#### **V. Section 1.457-6(d)—Minimum Required Distributions for Eligible Plans**

These proposed regulations delete a sentence in § 1.457-6(d) that describes section 401(a)(9), because the sentence refers to age 70½, and is no longer accurate following the amendment to

the definition of required beginning date under section 114 of the SECURE Act.

#### **VI. Section 54.4974-1—Excise Tax on Accumulations in Qualified Retirement Plans**

These proposed regulations provide amendments to § 54.4974-2 (which is renumbered as § 54.4974-1) to conform the rules to the changes made to section 401(a)(9) under the SECURE Act. For example, the rules for determining the required minimum distribution when the 5-year rule applies are expanded to include rules for determining the required minimum distribution when the 10-year rule applies.

These proposed regulations also provide two situations in which an automatic waiver of the excise tax applies, one of which is based on the automatic waiver in the existing regulation. The first situation in which the automatic waiver applies is when: (1) The employee (or in the case of an IRA, the IRA owner) died before the required beginning date; (2) the payee is an eligible designated beneficiary who did not make an affirmative election to use the life expectancy rule but otherwise is subject to the life expectancy rule pursuant to a plan provision or the regulatory default provision that applies in the absence of a plan provision; (3) the payee did not satisfy the required minimum distribution requirements; and (4) the payee elects for the employee's or IRA owner's entire interest to be distributed under the 10-year rule. In that case, once the payee elects the 10-year rule, the payee's required minimum distribution in the tenth calendar year following the calendar year of the employee's or IRA owner's death is the entire account balance.

The second situation in which an automatic waiver applies is in the case of an individual who had a minimum distribution requirement in a calendar year and died in that calendar year before satisfying that minimum distribution requirement. In this situation, the individual's beneficiary must satisfy the minimum distribution requirement by the end of that calendar year. However, if that beneficiary fails to satisfy the minimum distribution requirement in that calendar year, then the excise tax for the failure to take the distribution is automatically waived provided that the beneficiary satisfies that requirement no later than that beneficiary's tax filing deadline (including extensions thereof).

#### **Applicability Dates**

Amended §§ 1.401(a)(9)-1 through 1.401(a)(9)-9, 1.403(b)-6(e), and 1.408-

8 are proposed to apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2022. Amended § 1.402(c)-2 is proposed to apply for distributions on or after January 1, 2022. Amended § 54.4974-1 is proposed to apply for taxable years beginning on or after January 1, 2022. For the 2021 distribution calendar year, taxpayers must apply the existing regulations, but taking into account a reasonable, good faith interpretation of the amendments made by sections 114 and 401 of the SECURE Act. Compliance with these proposed regulations will satisfy that requirement.

#### **Special Analyses**

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. These proposed regulations do not impose new compliance burdens and are not expected to result in economically meaningful changes in behavior relative to the existing regulations. The election described in § 1.401(a)(9)-3(b)(4)(iii) and (c)(5)(iii) is expected to be an unusual occurrence for small entities because few individuals with benefits in retirement plans maintained by small entities are likely to make these elections. In the case of § 1.401(a)(9)-4(e)(7), when determining whether a designated beneficiary is disabled or chronically ill, the reporting burden is primarily on the designated beneficiary rather than the plan sponsor. In the case of § 1.401(a)(9)-4(h), when determining required minimum distributions in cases in which a plan participant wishes to designate a trust as beneficiary of the participant's benefit, the reporting burden is primarily on the plan participant, or the trustee of the trust named as beneficiary, to supply information rather than on the entity maintaining the retirement plan. In addition, the number of participants per plan to whom the burden applies is likely to be small. In § 1.403(b)-3(e)(6)(ii), the recordkeeping burden with respect to section 403(b) contracts under which the pre-1987 account balance must be maintained only applies to issuers and custodians of those contracts, which generally are not

small entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. Treasury and IRS invite comments on the impact of these regulations on small entities. 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.

### Paperwork Reduction Act

The collection of information related to these proposed regulations under sections 401(a)(9) and 403(b) has been reviewed in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) and approved by the Office of Management and Budget under control number 1545-0047.

Comments concerning the collection of information and the accuracy of estimated average annual burden and suggestions for reducing this burden should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the burden associated with this collection of information must be received by April 25, 2022.

### Comments

Before the proposed amendments are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at [www.regulations.gov](http://www.regulations.gov) or upon request

### Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

### Drafting Information

The principal authors of these proposed regulations are Brandon M. Ford and Laura B. Warshawsky, of the

Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of the proposed regulations.

### List of Subjects

#### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### 26 CFR Part 54

Excise taxes, Pensions, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 54 are proposed to be amended as follows:

#### PART 1—INCOME TAX

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805, unless otherwise noted.

■ **Par. 2.** Revise sections 1.401(a)(9)–0 through 1.401(a)(9)–8 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)–1 Minimum distribution requirement in general.

(a) Plans subject to minimum distribution requirement.

- (1) In general.
- (2) Participant in multiple plans.
- (3) Governmental plans.
- (b) Statutory effective date.

(1) In general.

(2) Applicability date for section 401(a)(9)(H).

(3) Examples.

(c) Required and optional plan provisions.

(1) Required provisions.

(2) Optional provisions.

(d) Regulatory effective date.

##### § 1.401(a)(9)–2 Distributions commencing during an employee's lifetime.

(a) Distributions commencing during an employee's lifetime.

(1) In general.

(2) Amount required to be distributed for a calendar year.

(3) Distributions commencing before required beginning date.

(4) Distributions after death.

(b) Determination of required beginning date.

(1) General rule.

(2) Employees born before July 1, 1949.

(3) Required beginning date for 5-percent owner.

(4) Uniform required beginning date.

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

(a) In general.

(b) Distribution requirements in the case of a defined benefit plan.

(1) In general.

(2) 5-year rule.

(3) Annuity payments.

(4) Determination of which rule applies.

(c) Distributions in the case of a defined contribution plan.

(1) In general.

(2) 5-year rule.

(3) 10-year rule.

(4) Life expectancy payments.

(5) Determination of which rule applies.

(d) Permitted delay for surviving spouse beneficiaries.

(e) Distributions that commence after surviving spouse's death.

(1) In general.

(2) Remarriage of surviving spouse.

(3) When distributions are treated as having begun to surviving spouse.

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

(a) Beneficiary designated under the plan.

(1) In general.

(2) Entitlement to employee's interest in the plan.

(3) Specificity of beneficiary designation.

(4) Affirmative and default elections of designated beneficiary.

(b) Designated beneficiary must be an individual.

(c) Rules for determining beneficiaries.

(1) Time period for determining the beneficiary.

(2) Circumstances under which a beneficiary is disregarded as a beneficiary of the employee.

(3) Examples.

(d) Application of beneficiary designation rules to surviving spouse.

(e) Eligible designated beneficiaries.

(1) In general.

(2) Multiple designated beneficiaries.

(3) Determination of age of majority.

(4) Disabled individual.

(5) Chronically ill individual.

(6) Individual not more than 10 years younger than the employee.

(7) Documentation requirements for disabled or chronically ill individuals.

(8) Applicability of definition of eligible designated beneficiary to beneficiary of surviving spouse.

(9) Examples.

(f) Special rules for trusts.

(1) Look-through of trust to determine designated beneficiaries.

(2) Trust requirements.

(3) Trust beneficiaries treated as beneficiaries of the employee.

(4) Multiple trust arrangements.

(5) Identifiability of trust beneficiaries.

(6) Examples.

(g) Applicable multi-beneficiary trusts.

(1) General definition of an applicable multi-beneficiary trust.

(2) Type I applicable multi-beneficiary trust.

(3) Type II applicable multi-beneficiary trust.

(h) Documentation requirements for trusts.  
 (1) General rule.  
 (2) Required minimum distributions while employee is still alive.  
 (3) Required minimum distributions after death.

(4) Relief for discrepancy between trust instrument and employee certifications or earlier trust instruments.

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

(a) General rules.  
 (1) In general.  
 (2) Distribution calendar year.  
 (3) Time for distributions.  
 (4) Minimum distribution incidental benefit requirement.  
 (5) Annuity contracts.  
 (6) Impact of additional distributions in prior years.  
 (b) Determination of account balance.  
 (1) General rule.  
 (2) Adjustment for subsequent allocations.  
 (3) Adjustment for subsequent distributions.  
 (4) Exclusion for QLAC contract.  
 (5) Treatment of rollovers.  
 (c) Determination of applicable denominator during employee's lifetime.  
 (1) General rule.  
 (2) Spouse is sole beneficiary.  
 (d) Applicable denominator after employee's death.  
 (1) Death on or after the employee's required beginning date.  
 (2) Death before an employee's required beginning date.  
 (3) Remaining life expectancy.  
 (e) Distribution of employee's entire interest required.  
 (1) In general.  
 (2) 10-year limit for designated beneficiary who is not an eligible designated beneficiary.  
 (3) 10-year limit following death of eligible designated beneficiary.  
 (4) 10-year limit after minor child of the employee reaches age of majority.  
 (5) Life expectancy limit for older eligible designated beneficiaries.  
 (f) Rules for multiple designated beneficiaries.  
 (1) Determination of applicable denominator.  
 (2) Determination of when entire interest is required to be distributed.  
 (g) Treatment of nonvested amounts.  
 (h) Distributions taken into account.

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

(a) Defined benefit plans.  
 (1) In general.  
 (2) Definition of life annuity.  
 (3) Annuity commencement.  
 (4) Single-sum distributions.  
 (5) Death benefits.  
 (6) Separate treatment of separate identifiable components.  
 (7) Additional guidance.  
 (b) Application of incidental benefit requirement.  
 (1) Life annuity for employee.  
 (2) Joint and survivor annuity.  
 (3) Period certain and annuity features.

(4) Deemed satisfaction of incidental benefit rule.  
 (c) Period certain annuity.  
 (1) Distributions commencing during the employee's life.  
 (2) Distributions commencing after the employee's death.  
 (d) Use of annuity contract.  
 (e) Treatment of additional accruals.  
 (1) General rule.  
 (2) Administrative delay.  
 (f) Treatment of nonvested benefits.  
 (g) Requirement for actuarial increase.  
 (1) General rule.  
 (2) Nonapplication to 5-percent owners.  
 (3) Nonapplication to governmental and church plans.  
 (h) Amount of actuarial increase.  
 (1) In general.  
 (2) Actuarial equivalence basis.  
 (3) Coordination with section 411 actuarial increase.  
 (i) [Reserved].  
 (j) Distributions restricted pursuant to section 436.  
 (1) General rule.  
 (2) Payments restricted under section 436(d)(3).  
 (3) Payments restricted under section 436(d)(1) or (2).  
 (k) Treatment of early commencement.  
 (1) General rule.  
 (2) Joint and survivor annuity, nonspouse beneficiary.  
 (3) Limitation on period certain.  
 (l) Early commencement for surviving spouse.  
 (m) Determination of entire interest under annuity contract.  
 (1) General rule.  
 (2) Entire interest.  
 (3) Exclusions.  
 (4) Examples.  
 (n) Change in annuity payment period.  
 (1) In general.  
 (2) Reannuitization.  
 (3) Conditions.  
 (4) Examples.  
 (o) Increase in annuity payments.  
 (1) General rules.  
 (2) Eligible cost of living index.  
 (3) Additional permitted increases for certain annuity contracts purchased from insurance companies.  
 (4) Additional permitted increases for all annuity contracts purchased from insurance companies.  
 (5) Additional permitted increases for annuity payments from a qualified trust.  
 (6) Definitions.  
 (7) Examples.  
 (p) Payments to children.  
 (1) In general.  
 (2) Age of majority.  
 (q) Qualifying longevity annuity contract.  
 (1) Definition of qualifying longevity annuity contract.  
 (2) Limitations on premiums.  
 (3) Payments after death of the employee.  
 (4) Rules of application.

**§ 1.401(a)(9)-7 Rollovers and transfers.**

(a) Treatment of rollover from distributing plan.  
 (b) Treatment of rollover by receiving plan.  
 (c) Treatment of transfer under transferor plan.

(1) Generally not treated as distribution.  
 (2) Account balance decreased after transfer.  
 (d) Treatment of transfer under transferee plan.  
 (e) Treatment of spinoff or merger.  
**§ 1.401(a)(9)-8 Special rules.**  
 (a) Use of separate accounts  
 (1) Separate application of section 401(a)(9) for beneficiaries.  
 (2) Separate accounting requirements.  
 (b) Application of consent requirements.  
 (c) Definition of spouse.  
 (d) Treatment of QDROs.  
 (1) Continued treatment of spouse.  
 (2) Separate accounts.  
 (3) Other situations.  
 (e) Application of section 401(a)(9) pending determination of whether a domestic relations order is a QDRO is being made.  
 (f) Application of section 401(a)(9) when insurer is in state delinquency proceedings.  
 (g) In-service distributions required to satisfy section 401(a)(9).  
 (h) TEFRA section 242(b) elections.  
 (1) In general.  
 (2) Application of section 242(b) election after transfer.  
 (3) Application of section 242(b) election after rollover.  
 (4) Revocation of section 242(b) election.  
**§ 1.401(a)(9)-9 Life expectancy and distribution period tables.**  
 (a) In general.  
 (b) Single Life Table.  
 (c) Uniform Life Table.  
 (d) Joint and Last Survivor Table.  
 (e) Mortality rates.  
 (f) Applicability dates.  
 (1) In general.  
 (2) Application to life expectancies that may not be recalculated.

**§ 1.401(a)(9)-1 Minimum distribution requirement in general.**

(a) *Plans subject to minimum distribution requirement—*(1) *In general.* Under section 401(a)(9), all stock bonus, pension, and profit-sharing plans qualified under section 401(a) and annuity contracts described in section 403(a) are subject to required minimum distribution rules. See this section and §§ 1.401(a)(9)-2 through 1.401(a)(9)-9 for the distribution rules applicable to these plans. Under section 403(b)(10), annuity contracts and custodial accounts described in section 403(b) are subject to required minimum distribution rules. See § 1.403(b)-6(e) for the distribution rules applicable to these annuity contracts and custodial accounts. Under section 408(a)(6) and 408(b)(3), individual retirement accounts and individual retirements annuities (collectively, IRAs) are subject to required minimum distribution rules. See § 1.408-8 for the minimum distribution rules applicable to IRAs and § 1.408A-6 for the minimum distribution rules applicable to Roth IRAs under section 408A. Under section

457(d)(2), eligible deferred compensation plans described in section 457(b) for employees of tax-exempt organizations or employees of State and local governments are subject to required minimum distribution rules. See § 1.457–6(d) for the minimum distribution rules applicable to those eligible deferred compensation plans.

(2) *Participant in multiple plans.* 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. Thus, 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.

(3) *Governmental plans.* A governmental plan (within the meaning of section 414(d)), or an eligible governmental plan described in § 1.457–2(f), is treated as having complied with section 401(a)(9) if the plan complies with a reasonable, good faith interpretation of section 401(a)(9). Thus, the terms of a governmental plan that reflect a reasonable, good faith interpretation of section 401(a)(9) do not have to provide that distributions will be made in accordance with this section and §§ 1.401(a)(9)–2 through 1.401(a)(9)–9. Similarly, a governmental plan may apply the rules of section 401(a)(9)(F) using the rules of 26 CFR 1.401(a)(9)–6, Q&A–15 (revised as of April 1, 2021).

(b) *Statutory effective date*—(1) *In general.* The distribution rules of section 401(a)(9) generally apply to all account balances and benefits in existence on or after January 1, 1985.

(2) *Applicability date for section 401(a)(9)(H)*—(i) *General effective date.* Except as provided in this paragraph (b), section 401(a)(9)(H) applies with respect to employees who die on or after January 1, 2020. However, in the case of a governmental plan (as defined in section 414(d)), section 401(a)(9)(H) applies with respect to employees who die on or after January 1, 2022.

(ii) *Delayed applicability date for collectively bargained plans*—(A) *General rule.* In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before December 20, 2019 (the date of enactment of the Further Consolidated

Appropriations Act, Pub. L. 116–94, 133 Stat. 2534 (2019)), section 401(a)(9)(H) generally applies with respect to employees who die on or after January 1, 2022.

(B) *Earlier application if agreements terminate.* Notwithstanding paragraph (b)(2)(ii)(A) of this section, section 401(a)(9)(H) applies to a plan maintained pursuant to one or more collective bargaining agreements with respect to employees who die in 2020 or 2021 if—

(1) The year in which the employee dies begins after the date on which the last of the collective bargaining agreements described in paragraph (b)(2)(ii)(A) of this section terminates (determined without regard to any extension thereof to which the parties agreed on or after December 20, 2019), and

(2) Section 401(a)(9)(H) would apply with respect to the employee under the rules of paragraph (b)(2)(i) of this section.

(C) *Rules of application.* For purposes of this paragraph (b)(2)(ii)—

(1) A plan is treated as maintained pursuant to one or more collective bargaining agreements only if the plan constitutes a collectively bargained plan under the rules of § 1.436–1(a)(5)(ii)(B), and

(2) Any plan amendment made pursuant to a collective bargaining agreement that amends the plan solely to conform to the requirements of section 401(a)(9)(H) is not treated as a termination of the collective bargaining agreement.

(iii) *Applicability upon death of designated beneficiary*—(A) *In general.* Except as otherwise provided in this paragraph (b)(2)(iii), if an employee who died before the effective date described in paragraph (b)(2)(i) or (ii) of this section (whichever applies to the plan) has only one designated beneficiary and that beneficiary dies on or after that effective date, then, upon the death of the designated beneficiary, section 401(a)(9)(H) applies with respect to any beneficiary of the employee's designated beneficiary. Section 401(b)(5) of Division O of the Further Consolidated Appropriations Act (known as the SECURE Act), provides that, if an employee dies before the effective date, then a designated beneficiary of an employee is treated as an eligible designated beneficiary. Accordingly, once the rules of section 401(a)(9)(H) apply with respect to the employee's designated beneficiary, the rules of section 401(a)(9)(H)(iii) (requiring full distribution of the employee's interest within 10 years after the death of an

eligible designated beneficiary) apply upon the designated beneficiary's death.

(B) *Employee with multiple designated beneficiaries.* If an employee described in paragraph (b)(2)(iii)(A) of this section has more than one designated beneficiary, then whether section 401(a)(9)(H) applies is determined based on the date of death of the oldest of the employee's designated beneficiaries. Thus, section 401(a)(9)(H) will apply upon the death of the oldest of the employee's designated beneficiaries if that designated beneficiary is still alive on or after the effective date of section 401(a)(9)(H) for the plan as determined under the rules of paragraph (b)(2)(i) or (ii) of this section.

(C) *Surviving spouse of the employee dies before employee's required beginning date.* If an employee described in paragraph (b)(2)(iii)(A) of this section dies before the employee's required beginning date and the employee's surviving spouse is waiting to begin distributions until the year for which the employee would have been required to begin distributions pursuant to section 401(a)(9)(B)(iv), then, in applying the rules of this paragraph (b)(2)(iii), the surviving spouse is treated as the employee. Thus, for example, if an employee with a required beginning date of April 1, 2025, names the employee's surviving spouse as the sole beneficiary of the employee's interest in the plan, both the employee and the employee's surviving spouse die before the effective date of section 401(a)(9)(H) for the plan, and that spouse's designated beneficiary dies on or after that effective date, then section 401(a)(9)(H) applies with respect to the surviving spouse's designated beneficiary upon the death of that designated beneficiary.

(iv) *Qualified annuity exception*—(A) *In general.* Section 401(a)(9)(H) does not apply to a commercial annuity (as defined in section 3405(e)(6))—

(1) That is a binding annuity contract in effect as of December 20, 2019;

(2) Under which payments satisfy the requirements of 26 CFR 1.401(a)(9)–1 through 1.401(a)(9)–9 (revised as of April 1, 2020); and

(3) That satisfies the irrevocability requirements of paragraph (b)(2)(iv)(B) of this section.

(B) *Irrevocability requirements applicable to annuity contract.* A contract satisfies the requirements of this paragraph (b)(2)(iv)(B) if the employee has made an irrevocable election before December 20, 2019, as to the method and amount of annuity payments to the employee and any designated beneficiary.

(3) *Examples.* The following examples illustrate the effective date requirements of this paragraph (b).

(i) *Example 1.* Employer M maintains a defined contribution plan, Plan X. Employee A died in 2017, at the age of 68, and designated A's 40-year-old non-disabled, non-chronically ill son, B, as the sole beneficiary of A's interest in Plan X. Pursuant to a plan provision in Plan X, B elected to take distributions over B's life expectancy under section 401(a)(9)(B)(iii). B dies in 2024, after the effective date of section 401(a)(9)(H). Because section 401(b)(5) of the SECURE Act treats B as an eligible designated beneficiary, the rules of section 401(a)(9)(H)(iii) apply to B's beneficiaries. Therefore, A's remaining interest in Plan X must be distributed by the end of 2034 (within 10 years of B's death).

(ii) *Example 2.* The facts are the same as in *Example 1* in paragraph (b)(3)(i) of this section except that B died in 2019. Because A's designated beneficiary died before the effective date of section 401 of the SECURE Act, the rules of section 401(a)(9)(H) do not apply to B's beneficiaries.

(iii) *Example 3.* The facts are the same as in *Example 1* in paragraph (b)(3)(i) of this section except that, pursuant to a provision in Plan X, B elected the 5-year rule under section 401(a)(9)(B)(ii). Accordingly, A's entire interest is required to be distributed by the end of 2022. Because A died before January 1, 2020, section 401(a)(9)(H) does not apply with respect to B. Therefore, section 401(a)(9)(H)(i)(I) does not extend B's election to a 10-year period. Although B's election requires A's entire interest to be distributed by the end of 2022, the enactment of section 401(a)(9)(I)(iii)(II) (permitting disregard of 2020 when the 5-year period applies) permits distribution of A's entire interest in the plan to be delayed until the end of 2023.

(iv) *Example 4.* The facts are the same as in *Example 1* in paragraph (b)(3)(i) of this section except that A designates a see-through trust that satisfies the requirements of § 1.401(a)(9)–4(f)(2) as the sole beneficiary of A's interest in Plan X. All of the trust beneficiaries are alive as of January 1, 2020. The oldest of the trust beneficiaries, C, dies in 2022. Because section 401(b)(5) of the SECURE Act treats C as an eligible designated beneficiary, the rules of section 401(a)(9)(H)(iii) apply to the other trust beneficiaries. Thus, if the death of the oldest beneficiary is not disregarded under the rules of § 1.401(a)(9)–5(f)(2)(ii), A's remaining interest in Plan X must be distributed by

the end of 2032 (within 10 years of C's death).

(v) *Example 5.* The facts are the same as in *Example 4* in paragraph (b)(3)(iv) of this section except that C dies in 2019. Because the oldest designated beneficiary died before January 1, 2020, the rules of section 401(a)(9)(H) do not apply to any of the other trust beneficiaries.

(vi) *Example 6.* The facts are the same as in *Example 1* in paragraph (b)(3)(i) of this section except that B elected to purchase an annuity that pays over B's lifetime with a 15-year certain period starting in the calendar year following the calendar year of A's death. Because B died after the effective date of section 401(a)(9)(H), the rules of section 401(a)(9)(H)(iii) apply, and accordingly, the annuity may not provide distributions any later than the end of 2034.

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

(2) *Optional provisions.* A plan may also include optional provisions governing plan distributions that do not conflict with section 401(a)(9). For example, a defined benefit plan may include a provision described in § 1.401(a)(9)–3(b)(4)(ii) (requiring that the 5-year rule apply to an employee who has a designated beneficiary). Similarly, a defined contribution plan may provide for an election by an eligible designated beneficiary as described in § 1.401(a)(9)–3(c)(5)(iii).

(d) *Regulatory effective date—*This section and §§ 1.401(a)(9)–2 through 1.401(a)(9)–9 apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2022. For earlier calendar years, the rules of 26 CFR 1.401(a)(9)–1 through

1.401(a)(9)–9 (revised as of April 1, 2021) apply.

#### **§ 1.401(a)(9)–2 Distributions commencing during an employee's lifetime.**

(a) *Distributions commencing during an employee's lifetime—*(1) *In general.* In order to satisfy section 401(a)(9)(A), the entire interest of each employee must be distributed to the 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 the 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. Under section 401(a)(9)(G), lifetime distributions must satisfy the incidental death benefit requirements of § 1.401–1(b)(1).

(2) *Amount required to be distributed for a calendar year.* 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 the amount to be distributed is from an individual account under a defined contribution plan or is an annuity payment from a defined benefit plan or under an annuity contract. 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 under an annuity contract, see § 1.401(a)(9)–6.

(3) *Distributions commencing before required beginning date—*(i) *In general.* Lifetime distributions made before the employee's required beginning date for calendar years before the employee's first distribution calendar year, as defined in § 1.401(a)(9)–5(a)(2)(ii), 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) and, under the terms of that distribution option, distributions to be made for the employee's first distribution calendar year (or any subsequent calendar year) will fail to satisfy section 401(a)(9), then the distribution option fails to satisfy section 401(a)(9) at the time distributions commence.

(ii) *Date distributions are treated as having begun.* Except as otherwise provided in paragraph (a)(3)(iii) of this

section and § 1.401(a)(9)–6(j), distributions to the employee are not treated as having begun in accordance with section 401(a)(9)(A)(ii) until the employee's required beginning date, as determined in accordance with paragraph (b)(1), (2), or (3) of this section, whichever applies to the employee. The preceding sentence applies even if the employee has received distributions before the employee's required beginning date (either pursuant to plan terms that require distributions to begin by an earlier date or pursuant to the employee's election). Thus, even if payments have been made before the employee's required beginning date, the rules of § 1.401(a)(9)–3 will apply if the employee dies before that date. For example, if A is an employee who retires in 2023, the calendar year A attains age 71, and 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 spouse, benefits are not treated as having begun in accordance with section 401(a)(9)(A)(ii) until April 1, 2025 (the April 1 following the calendar year in which A attains age 72). Consequently, if A dies before April 1, 2025 (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)–3 (addressing payments to beneficiaries in cases in which required distributions have not begun), and not section 401(a)(9)(B)(i) (addressing payments to beneficiaries in cases in which required distributions have begun). This is the case without regard to whether, before A's death, the plan distributed the minimum distribution for the first distribution calendar year (as defined in § 1.401(a)(9)–5(a)(2)(ii)).

(iii) *Exception for uniform required beginning date.* If a plan provides, in accordance with paragraph (b)(4) 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 described in paragraph (b)(1)(i) or (b)(2)(i)(A) of this section (whichever applies to the employee), without regard to whether the employee is a 5-percent owner, then an employee who dies on or after the required beginning date determined under the plan terms is treated as dying after distributions have begun in accordance with section 401(a)(9)(A)(ii) (even if the employee dies before the April 1 following the calendar year in which the employee retires).

(4) *Distributions after death.* 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 the employee's entire interest has been distributed to the employee, the remaining portion of the employee's 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 the employee's death. For the method of determining the required minimum distribution in accordance with section 401(a)(9)(B)(i) from an individual account under a defined contribution plan, see § 1.401(a)(9)–5. In the case of annuity payments from a defined benefit plan or under an annuity contract, see § 1.401(a)(9)–6.

(b) *Determination of required beginning date—(1) General rule.* Except as otherwise provided in this paragraph (b), the employee's required beginning date (within the meaning of section 401(a)(9)(C)) is April 1 of the calendar year following the later of—

- (i) The calendar year in which the employee attains age 72; and
- (ii) The calendar year in which the employee retires from employment with the employer maintaining the plan.

(2) *Employees born before July 1, 1949—(i) Prior law general rule.* With respect to an employee who was born before July 1, 1949, except as otherwise provided in this paragraph (b), the employee's required beginning date is April 1 of the calendar year following the later of—

- (A) The calendar year in which the employee attains age 70½; and
- (B) The calendar year in which the employee retires from employment with the employer maintaining the plan.

(ii) *Attainment of age 70½.* An employee attains age 70½ as of the date six calendar months after the 70th anniversary of the employee's birth. For example, if the date of birth of an employee who retired in 2013 was June 30, 1943, the 70th anniversary of the employee's birth was June 30, 2013 and the employee attained age 70½ on December 30, 2013. Consequently, the employee's required beginning date was April 1, 2014. However, if the employee's date of birth was July 1, 1943, the 70th anniversary of the employee's birth was July 1, 2013. The employee attained age 70½ on January 1, 2014, and the employee's required beginning date was April 1, 2015.

(3) *Required beginning date for 5-percent owner—(i) In general.* In the case of an employee who was born on or after July 1, 1949, and who is a 5-percent owner, the employee's required

beginning date is April 1 of the calendar year following the calendar year described in paragraph (b)(1)(i) of this section. In the case of an employee who was born before July 1, 1949, and who is a 5-percent owner, the employee's required beginning date is April 1 of the calendar year following the calendar year described in paragraph (b)(2)(i)(A) of this section.

(ii) *Definition of 5-percent owner.* 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 described in paragraphs (b)(1)(i) or (b)(2)(i)(A) of this section, whichever applies to the employee.

(iii) *No applicability to governmental plan or church plan.* This paragraph (b)(3) does not apply in the case of a governmental plan (within the meaning of section 414(d)) or a church plan (as described in § 1.401(a)(9)–6(g)(3)).

(4) *Uniform required beginning date.* 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 described in paragraphs (b)(1)(i) or (b)(2)(i)(A) of this section (whichever applies to the employee), without regard to whether the employee is a 5-percent owner.

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

(a) *In general.* Except as otherwise provided in §§ 1.401(a)(9)–2(a)(3) and 1.401(a)(9)–6(j), if an employee dies before the employee's required beginning date (and thus before distributions are treated as having begun in accordance with section 401(a)(9)(A)(ii)), then—

(1) In the case of a defined benefit plan, distributions are required to be made in accordance with paragraph (b) of this section, and

(2) In the case of a defined contribution plan, distributions are required to be made in accordance with paragraph (c) of this section.

(b) *Distribution requirements in the case of a defined benefit plan—(1) In general.* Distributions from a defined benefit plan are made in accordance with this paragraph (b) if the distributions satisfy either paragraph (b)(2) or (3) of this section, whichever applies with respect to the employee. The determination of whether paragraph (b)(2) or (3) of this section applies is made in accordance with paragraph (b)(4) of this section.

(2) *5-year rule.* Except as otherwise provided in § 1.401(a)(9)–6(j) (relating to defined benefit plans subject to

limitations under section 436), distributions satisfy this paragraph (b)(2) if the employee's entire interest is distributed by the end of the calendar year that includes the fifth anniversary of the date of the employee's death. For example, if an employee dies on any day in 2022, then in order to satisfy the 5-year rule in section 401(a)(9)(B)(ii), the entire interest generally must be distributed by the end of 2027.

(3) *Annuity payments.* Distributions satisfy this paragraph (b)(3) if annuity payments that satisfy the requirements of § 1.401(a)(9)–6 commence no later than the end of the calendar year following the calendar year in which the employee died, except as provided in paragraph (d) of this section (permitting a surviving spouse to delay the commencement of distributions).

(4) *Determination of which rule applies—(i) No plan provision.* If a defined benefit plan does not provide for an optional provision described in paragraph (b)(4)(ii) or (b)(4)(iii) of this section specifying the method of distribution after the death of an employee, then distributions must be made as follows—

(A) If the employee has no designated beneficiary, as determined under § 1.401(a)(9)–4, distributions must satisfy paragraph (b)(2) of this section; and

(B) If the employee has a designated beneficiary, distributions must satisfy paragraph (b)(3) of this section.

(ii) *Optional plan provisions.* A defined benefit plan will not fail to satisfy section 401(a)(9) merely because it includes a provision specifying that the 5-year rule in paragraph (b)(2) of this section (rather than the annuity payment rule in paragraph (b)(3) of this section) will apply with respect to some or all of the employees who have a designated beneficiary. Further, a plan need not have the same method of distribution for the benefits of all employees in order to satisfy section 401(a)(9).

(iii) *Elections.* A defined benefit plan may include a provision, applicable to an employee who dies before the employee's required beginning date and who has a designated beneficiary, that permits the employee (or designated beneficiary) to elect whether the 5-year rule in paragraph (b)(2) of this section or the annuity payment rule in paragraph (b)(3) of this section applies. If a plan provides for this type of an election, then—

(A) The plan must specify the method of distribution that applies if neither the employee nor the designated beneficiary makes the election;

(B) The election must be made no later than the end of the earlier of the calendar year by which distributions must be made in order to satisfy paragraph (b)(2) of this section and the calendar year in which distributions would be required to begin in order to satisfy the requirements of paragraph (b)(3) of this section or, if applicable, paragraph (d) of this section; and

(C) As of the last date the election may be made, the election must be irrevocable with respect to the beneficiary (and all subsequent beneficiaries) and must apply to all subsequent calendar years.

(c) *Distributions in the case of a defined contribution plan—(1) In general.* The requirements of this paragraph are satisfied if distributions are made in accordance with paragraph (c)(2), (3), or (4) of this section, whichever applies with respect to the employee. The determination of whether paragraph (c)(2), (3), or (4) of this section applies is made in accordance with paragraph (c)(5) of this section.

(2) *5-year rule.* Distributions satisfy this paragraph (c)(2) if the employee's entire interest is distributed by the end of the calendar year that includes the fifth anniversary of the date of the employee's death. For example, if an employee dies on any day in 2022, the entire interest must be distributed by the end of 2027 in order to satisfy the 5-year rule in section 401(a)(9)(B)(ii). For purposes of this paragraph (c)(2), if an employee died before January 1, 2020, then the 2020 calendar year is disregarded when determining the calendar year that includes the fifth anniversary of the date of the employee's death.

(3) *10-year rule.* Distributions satisfy this paragraph (c)(3) if the employee's entire interest is distributed by the end of the calendar year that includes the tenth anniversary of the date of the employee's death. For example, if an employee dies on any day in 2021, the entire interest must be distributed by the end of 2031 in order to satisfy the 5-year rule in section 401(a)(9)(B)(ii), as extended to 10 years by section 401(a)(9)(H)(i).

(4) *Life expectancy payments.* Distributions satisfy this paragraph (c)(4) if distributions that satisfy the requirements of § 1.401(a)(9)–5 commence on or before the end of the calendar year following the calendar year in which the employee died, except as provided in paragraph (d) of this section (permitting a surviving spouse to delay the commencement of distributions).

(5) *Determination of which rule applies—(i) No plan provision.* If a defined contribution plan does not include an optional provision described in paragraph (c)(5)(ii) or (c)(5)(iii) of this section specifying the method of distribution after the death of an employee, distributions must be made as follows—

(A) If the employee does not have a designated beneficiary, as determined under § 1.401(a)(9)–4, distributions must satisfy the 5-year rule described in paragraph (c)(2) of this section;

(B) If the employee dies on or after the effective date of section 401(a)(9)(H) (as determined in § 1.401(a)(9)–1(b)(2)(i) or (ii), whichever applies to the plan) and has a designated beneficiary who is not an eligible designated beneficiary, as determined under § 1.401(a)(9)–4(e), distributions must satisfy the 10-year rule described in paragraph (c)(3) of this section; and

(C) If the employee has an eligible designated beneficiary, distributions must satisfy the life expectancy rule described in paragraph (c)(4) of this section.

(ii) *Optional plan provisions.* A defined contribution plan will not fail to satisfy section 401(a)(9) merely because it includes a provision specifying that the 10-year rule described in paragraph (c)(3) of this section (rather than the life expectancy rule described in paragraph (c)(4) of this section) will apply with respect to some or all of the employees who have an eligible designated beneficiary. Further, a plan need not have the same method of distribution for the benefits of all employees in order to satisfy section 401(a)(9).

(iii) *Elections.* A defined contribution plan may include a provision, applicable to an employee who dies before the employee's required beginning date and who has an eligible designated beneficiary, that permits the employee (or eligible designated beneficiary) to elect whether the 10-year rule in paragraph (c)(3) of this section or the life expectancy rule in paragraph (c)(4) of this section applies. If a plan provides for this type of election, then—

(A) The plan must specify the method of distribution that applies if neither the employee nor the designated beneficiary makes the election;

(B) The election must be made no later than end of the earlier of the calendar year by which distributions must be made in order to satisfy paragraph (c)(3) of this section and the calendar year in which distributions would be required to begin in order to satisfy the requirements of paragraph (c)(4) of this section or, if applicable, paragraph (d) of this section; and

(C) As of the last date the election may be made, the election must be irrevocable with respect to the beneficiary (and all subsequent beneficiaries) and must apply to all subsequent calendar years.

(d) *Permitted delay for surviving spouse beneficiaries.* If the employee's surviving spouse is the employee's sole beneficiary, then the commencement of distributions under paragraph (b)(3) or (c)(4) of this section may be delayed until the end of the calendar year in which the employee would have attained age 72 (or the calendar year in which the employee would have attained age 70½ in the case of an employee born before July 1, 1949).

(e) *Distributions that commence after surviving spouse's death—(1) In general.* If the employee's surviving spouse is the employee's sole beneficiary and dies after the employee, but before distributions have commenced under paragraph (d) of this section, then the 5-year rule in paragraph (b)(2) or (c)(2) of this section, the 10-year rule in paragraph (c)(3) of this section, and the annuity payment rules in paragraph (b)(3) of this section or the life expectancy rules in paragraph (c)(4) of this section are to be applied as if the surviving spouse were the employee. For this purpose, the date of death of the surviving spouse is substituted for the date of death of the employee.

(2) *Remarriage of surviving spouse.* If the delayed commencement in paragraph (d) of this section applies to the surviving spouse of the employee and the surviving spouse remarries but dies before distributions have begun, then the rules in paragraph (d) of this section are not available to the surviving spouse of the deceased employee's surviving spouse.

(3) *When distributions are treated as having begun to surviving spouse.* For purposes of section 401(a)(9)(B)(iv)(II), distributions are considered to have begun to the surviving spouse of an employee on the date, determined in accordance with paragraph (d) of this section, on which distributions are required to commence to the surviving spouse without regard to whether payments have actually been made before that date. However, see § 1.401(a)(9)–6(l) for an exception to this rule in the case of an annuity that commences early.

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

(a) *Beneficiary designated under the plan—(1) In general.* This section provides rules for purposes of determining the designated beneficiary under section 401(a)(9). For this

purpose, a designated beneficiary is an individual who is a beneficiary designated under the plan.

(2) *Entitlement to employee's interest in the plan.* A beneficiary designated under the plan is a person who is entitled to a portion of an employee's benefit, contingent on the employee's death or another specified event. The determination of whether a beneficiary designated under the plan is taken into account for purposes of section 401(a)(9) is made in accordance with paragraph (c) of this section or, if applicable, paragraph (d) of this section.

(3) *Specificity of beneficiary designation.* A beneficiary need not be specified by name in the plan or by the employee to the plan in order for the beneficiary to be designated under the plan, provided that the person who is to be the beneficiary is identifiable pursuant to the designation. For example, a designation of the employee's children as beneficiaries of equal shares of the employee's interest in the plan is treated as a designation of beneficiaries under the plan even if the children are not specified by name. The fact that an employee's interest under the plan passes to a certain person under a will or otherwise under applicable state law does not make that person a beneficiary designated under the plan absent a designation under the plan.

(4) *Affirmative and default elections of designated beneficiary.* A beneficiary designated under the plan may be designated by a default election under the terms of the plan or, if the plan so provides, by an affirmative election of the employee (or the employee's surviving spouse). The choice of beneficiary is subject to the requirements of sections 401(a)(11), 414(p), and 417. See §§ 1.401(a)(9)–8(d) and (e) for rules that apply to qualified domestic relations orders.

(b) *Designated beneficiary must be an individual.* A person that is not an individual, such as the employee's estate, is not a designated beneficiary. If a person other than an individual is a beneficiary designated under the plan, the employee will be treated as having no designated beneficiary, even if individuals are also designated as beneficiaries. However, see paragraph (f)(1) and (3) of this section for a rule under which certain beneficiaries of a see-through trust that is designated as the employee's beneficiary under the plan are treated as the employee's beneficiaries under the plan rather than the trust. In addition, the rules of this paragraph (b) do not apply to the extent separate account treatment applies in accordance with § 1.401(a)(9)–8(a).

(c) *Rules for determining beneficiaries—(1) Time period for determining the beneficiary.* Except as provided in paragraphs (d) and (f) of this section and § 1.401(a)(9)–6(b)(2)(i), a person is a beneficiary taken into account for purposes of section 401(a)(9) if that person is a beneficiary designated under the plan as of the date of the employee's death and none of the events described in paragraph (c)(2) of this section has occurred with respect to that person by September 30 of the calendar year following the calendar year of the employee's death.

(2) *Circumstances under which a beneficiary is disregarded as a beneficiary of the employee.* With respect to a beneficiary who was designated as a beneficiary under the plan as of the date of the employee's death (including an individual who is treated as having been designated as a beneficiary pursuant to paragraph (f) of this section), if any of the following events occurs by September 30 of the calendar year following the calendar year of the employee's death, then that beneficiary is not treated as a beneficiary—

(i) The beneficiary predeceases the employee;

(ii) The beneficiary is treated as having predeceased the employee pursuant to a simultaneous death provision under applicable State law or pursuant to a qualified disclaimer satisfying section 2518 that applies to the entire interest to which the beneficiary is entitled; or

(iii) The beneficiary receives the entire benefit to which the beneficiary is entitled.

(3) *Examples.* The following examples illustrate the rules of this paragraph (c).

(i) *Example 1.* Employer M maintains a defined contribution plan, Plan X. Employee A dies in 2022 having designated A's three children—B, C, and D—as beneficiaries, each with a one-third share of A's interest in Plan X. B executes a disclaimer within 9 months of A's death and the disclaimer satisfies the other requirements of a qualified disclaimer under section 2518. Pursuant to the qualified disclaimer, B is disregarded as a beneficiary.

(ii) *Example 2.* The facts are the same as in *Example 1* in paragraph (c)(3)(i) of this section except that B does not execute a disclaimer until 10 months after A's death. Even if the disclaimer is executed by September 30 of the calendar year following the calendar year of A's death, the disclaimer is not a qualified disclaimer (because B does not meet the 9-month requirement of section 2518) and B remains a designated beneficiary of A.

(iii) *Example 3.* The facts are the same as in *Example 1* in paragraph (c)(3)(i) of this section except that, in exchange for B's disclaimer of the one-third share of A's interest in Plan X, C transfers C's interest in real property to B. Because B has received consideration for B's disclaimer of the one-third share, it is not a qualified disclaimer under section 2518 and B remains a designated beneficiary.

(iv) *Example 4.* The facts are the same as in *Example 1* in paragraph (c)(3)(i) of this section except that Charity E (an organization exempt from taxation under section 501(c)(3)) also is a beneficiary designated under the plan as of the date of A's death, with B, C, D, and Charity E each having a one-fourth share of A's interest in Plan X. Plan X distributes Charity E's one-fourth share of A's interest in the plan by September 30 of the calendar year following the calendar year of A's death. Accordingly, Charity E is disregarded as A's beneficiary, and B, C, and D are treated as A's designated beneficiaries.

(v) *Example 5.* The facts are the same as in *Example 1* in paragraph (c)(3)(i) of this section except that A's spouse, F, also is a beneficiary designated under the plan. A and F were residents of State Z so that State Z law applies. The laws of State Z include a simultaneous death provision under which two individuals who die within a 120-hour period of one another are treated as predeceasing each other. F dies four hours after A and under the laws of State Z, F is treated as predeceasing A. Because, under applicable State law, F is treated as predeceasing A, F is disregarded as a beneficiary of A.

(vi) *Example 6.* The facts are the same as in *Example 1* in paragraph (c)(3)(i) of this section except that B, who was alive as of the date of A's death, dies before September 30 of the calendar year following the calendar year of A's death. Prior to B's death, none of the events described in paragraph (c)(2) of this section occurred with respect to B. Accordingly, B is still a beneficiary taken into account for purposes of section 401(a)(9) regardless of the identity of B's successor beneficiaries.

(d) *Application of beneficiary designation rules to surviving spouse.* This paragraph (d) applies in the case of distributions to which § 1.401(a)(9)–3(e) applies (because the employee's spouse is the employee's sole beneficiary as of September 30 of the calendar year following the calendar year of the employee's death, and the surviving spouse dies before distributions to the spouse have begun). If this paragraph (d) applies, then the determination of whether a person is a beneficiary of the

surviving spouse is made using the rules of paragraph (c) of this section, except that the date of the surviving spouse's death is substituted for the date of the employee's death. Thus, a person is a beneficiary if that person is a beneficiary designated under the plan as of the date of the surviving spouse's death and remains a beneficiary as of September 30 of the calendar year following the calendar year of the surviving spouse's death.

(e) *Eligible designated beneficiaries—*(1) *In general.* A designated beneficiary of the employee is an eligible designated beneficiary if, at the time of the employee's death, the designated beneficiary is—

(i) The surviving spouse of the employee;

(ii) A child of the employee who has not reached the age of majority within the meaning of paragraph (e)(3) of this section;

(iii) Disabled within the meaning of paragraph (e)(4) of this section;

(iv) Chronically ill within the meaning of paragraph (e)(5) of this section;

(v) Not more than 10 years younger than the employee as determined under paragraph (e)(6) of this section; or

(vi) A designated beneficiary of an employee if the employee died before the effective date of section 401(a)(9)(H) described in § 1.401(a)(9)–1(b)(2)(i) and (ii), whichever applies to the plan.

(2) *Multiple designated beneficiaries—*(i) *In general.* Except as provided in paragraphs (e)(2)(ii) of this section (providing a special rule for children), (g)(3)(ii) of this section (relating to applicable multi-beneficiary trusts), and § 1.401(a)(9)–8(a) (relating to separate account treatment), if the employee has more than one designated beneficiary, and at least one of those beneficiaries is not an eligible designated beneficiary as determined in accordance with paragraph (e)(1) of this section, then the employee is treated as not having an eligible designated beneficiary.

(ii) *Special rule for children.* If any of the employee's designated beneficiaries is an eligible designated beneficiary because the beneficiary is the child of the employee who had not reached the age of majority at the time of the employee's death, then the employee is treated as having an eligible designated beneficiary even if the employee has other designated beneficiaries who are not eligible designated beneficiaries.

(3) *Determination of age of majority.* An individual reaches the age of majority on the individual's 21st birthday.

(4) *Disabled individual—*(i) *In general.* Subject to the documentation requirements of paragraph (e)(7) of this section, an individual is disabled if, as of the date of the employee's death, the individual is described in paragraph (e)(4)(ii) or (iii) of this section, or paragraph (e)(4)(iv) of this section applies.

(ii) *Disability defined for individual who is age 18 or older.* An individual who, as of the date of the employee's death, is age 18 or older is disabled if, as of that date, the individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration.

(iii) *Disability defined for individual who is not age 18 or older.* An individual who, as of the date of the employee's death, is not age 18 or older is disabled if, as of that date, that individual has a medically determinable physical or mental impairment that results in marked and severe functional limitations and that can be expected to result in death or to be of long-continued and indefinite duration.

(iv) *Use of social security disability determination.* If the Commissioner of Social Security has determined that, as of the date of the employee's death, an individual is disabled within the meaning of 42 U.S.C. 1382c(a)(3), then that individual will be deemed to be disabled within the meaning of this paragraph (e)(4).

(5) *Chronically ill individual.* An individual is chronically ill if the individual is chronically ill within the definition of section 7702B(c)(2) and satisfies the documentation requirements of paragraph (e)(7) of this paragraph. However, for purposes of the preceding sentence, an individual will be treated as chronically ill under section 7702B(c)(2)(A)(i) only if there is a certification from a licensed health care practitioner (as that term is defined in section 7702B(c)(4)) that, as of the date of the certification, the individual is unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for an indefinite period which is reasonably expected to be lengthy in nature (and not merely for 90 days).

(6) *Individual not more than 10 years younger than the employee.* Whether a designated beneficiary is not more than 10 years younger than the employee is determined based on the dates of birth of the employee and the beneficiary. Thus, for example, if an employee's date of birth is October 1, 1953, then the employee's beneficiary is not more than

10 years younger than the employee if the beneficiary was born on or before October 1, 1963.

(7) *Documentation requirements for disabled or chronically ill individuals.* This paragraph (e)(7) is satisfied with respect to an individual described in paragraph (e)(1)(iii) or (iv) of this section if documentation of the disability or chronic illness described in paragraph (e)(4) or (5) of this section, respectively, is provided to the plan administrator no later than October 31 of the calendar year following the calendar year of the employee's death. For individuals described in paragraph (e)(1)(iv) of this section, the documentation must include a certification from a licensed health care practitioner (as that term is defined in section 7702B(c)(4)).

(8) *Applicability of definition of eligible designated beneficiary to beneficiary of surviving spouse.* In a case to which § 1.401(a)(9)–3(d) applies (generally involving distributions after a surviving spouse's death), a designated beneficiary of the employee's surviving spouse is an eligible designated beneficiary provided that designated beneficiary would be an eligible designated beneficiary described in paragraph (e)(1) of this section if that paragraph were to be applied by substituting the surviving spouse for the employee.

(9) *Examples.* The following examples illustrate the rules of this paragraph (e).

(i) *Example 1.* Employer M maintains a defined contribution plan, Plan X. Employee A designates A's child, B, as the sole beneficiary of A's interest in Plan X. B will not reach the age of majority until 2024. A dies in 2022, after A's required beginning date. As of the date of A's death, B is disabled within the meaning of paragraph (e)(4) of this section, and the documentation requirements of paragraph (e)(7) of this section are timely satisfied with respect to B. Due to B's disability, B remains an eligible designated beneficiary even after reaching the age of majority in 2024, and Plan X is not required to distribute A's remaining interest in the plan by the end of 2034 pursuant to the rules of § 1.401(a)(9)–5(e)(4), but instead may continue life expectancy payments to B during B's lifetime.

(ii) *Example 2.* The facts are the same as in *Example 1* in paragraph (e)(9)(i) of this section except that the documentation requirements of paragraph (e)(7) of this section are not timely satisfied with respect to B. B ceases to be an eligible designated beneficiary upon reaching the age of majority in 2024, and Plan X is required to distribute A's remaining interest in

the plan by the end of 2034 pursuant to the rules of § 1.401(a)(9)–5(e)(4).

(iii) *Example 3.* The facts are the same as in *Example 1* in paragraph (e)(9)(i) of this section except that B becomes disabled in 2023 (after A's death in 2022). Because B was not disabled as of the date of A's death, B ceases to be an eligible designated beneficiary upon reaching the age of majority in 2024, and Plan X is required to distribute A's remaining interest in the plan by the end of 2034 pursuant to the rules of § 1.401(a)(9)–5(e)(4).

(f) *Special rules for trusts—(1) Look-through of trust to determine designated beneficiaries—(i) In general.* If the requirements of paragraph (f)(2) of this section are met with respect to a trust that is designated as the beneficiary of an employee under a plan, then certain beneficiaries of the trust that are described in paragraph (f)(3) of this section (and not the trust itself) are treated as having been designated as beneficiaries of the employee under the plan, provided that those beneficiaries are not disregarded under paragraph (c)(2) of this section. A trust described in the preceding sentence is referred to as a see-through trust.

(ii) *Types of trusts.* The determination of which beneficiaries of a see-through trust are treated as having been designated as beneficiaries of the employee under the plan depends on whether the see-through trust is a conduit trust or an accumulation trust. For this purpose—

(A) The term *conduit trust* means a see-through trust, the terms of which provide that, with respect to the deceased employee's interest in the plan, all distributions will, upon receipt by the trustee, be paid directly to, or for the benefit of, specified beneficiaries; and

(B) The term *accumulation trust* means any see-through trust that is not a conduit trust.

(2) *Trust requirements.* The requirements of this paragraph (f)(2) are met if, during any period for which required minimum distributions are being determined by treating the beneficiaries of the trust as having been designated as beneficiaries of the employee under the plan, the following requirements are met—

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

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

(iii) The beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's interest in the plan are identifiable (within the

meaning of paragraph (f)(5) of this section) from the trust instrument.

(iv) The documentation requirements in paragraph (h) of this section have been satisfied.

(3) *Trust beneficiaries treated as beneficiaries of the employee—(i) In general.* Subject to the rules of paragraphs (f)(3)(ii) and (iii) of this section, the following beneficiaries of a see-through trust are treated as having been designated as beneficiaries of the employee under the plan—

(A) Any beneficiary who could receive amounts in the trust representing the employee's interest in the plan that are neither contingent upon, nor delayed until, the death of another trust beneficiary who did not predecease (and is not treated as having predeceased) the employee; and

(B) Any beneficiary of an accumulation trust that could receive amounts in the trust representing the employee's interest in the plan that were not distributed to beneficiaries described in paragraph (f)(3)(i)(A) of this section.

(ii) *Certain trust beneficiaries disregarded—(A) Entitlement conditioned on death of secondary beneficiary.* Any beneficiary of an accumulation trust who could receive amounts from the trust that represent the employee's interest in the plan solely because of the death of another beneficiary described in paragraph (f)(3)(i)(B) of this section is not treated as having been designated as a beneficiary of the employee under the plan. The preceding sentence does not apply if the other beneficiary described in paragraph (f)(3)(i)(B) of this section—

(1) Predeceased (or is treated as having predeceased) the employee; or

(2) Also is described in paragraph (f)(3)(i)(A) of this section.

(B) *Entitlement conditioned on death of young individual.* If any beneficiary of a see-through trust is an individual who is treated as a beneficiary of the employee under paragraph (f)(3)(i)(A) of this section, and the terms of the trust require full distribution of amounts in the trust representing the employee's interest in the plan to that individual by the later of the end of the calendar year following the calendar year of the employee's death and the end of the tenth calendar year following the calendar year in which that individual attains the age of majority (within the meaning of paragraph (e)(3) of this section), then any other beneficiary of the trust who could receive amounts in the trust representing the employee's interest in the plan if that individual dies before full distribution to that individual is made is not treated as

having been designated as a beneficiary of the employee under the plan. The preceding sentence does not apply if the beneficiary who could receive amounts in the trust conditioned on the death of that individual also is described in paragraph (f)(3)(i)(A) of this section.

(iii) *Certain accumulations disregarded.* For purposes of this paragraph (f)(3), a trust will not fail to be treated as a conduit trust merely because the trust terms requiring the direct payment of amounts received from the plan do not apply after the death of all of the beneficiaries described in paragraph (f)(3)(i)(A) of this section.

(4) *Multiple trust arrangements.* If a beneficiary of a see-through trust is another trust, the beneficiaries of the second trust will be treated as beneficiaries of the first trust, provided that the requirements of paragraph (f)(2) of this section are satisfied with respect to the second trust. In that case, the beneficiaries of the second trust are treated as having been designated as beneficiaries of the employee under the plan.

(5) *Identifiability of trust beneficiaries—(i) In general.* Except as otherwise provided in this paragraph (f)(5), trust beneficiaries described in paragraph (f)(3) of this section are identifiable if it is possible to identify each person eligible to receive a portion of the employee's interest in the plan through the trust. For this purpose, the specificity requirements of paragraph (a)(3) of this section apply.

(ii) *Power of appointment—(A) Exercise or release of power of appointment by September 30.* A trust does not fail to satisfy the identifiability requirements of this paragraph (f)(5) merely because an individual (powerholder) has the power to appoint a portion of the employee's interest to one or more beneficiaries that are not identifiable within the meaning of paragraph (f)(5)(i) of this section. If the power of appointment is exercised in favor of one or more identifiable beneficiaries by September 30 of the calendar year following the calendar year of the employee's death, then those identifiable beneficiaries are treated as beneficiaries designated under the plan. The preceding sentence also applies if, by that September 30, in lieu of exercising the power of appointment, the powerholder restricts it so that the power can be exercised at a later time in favor of only two or more identifiable beneficiaries (in which case, those identified beneficiaries are treated as beneficiaries designated under the plan). However, if, by that September 30, the power of appointment is not

exercised (or restricted) in favor of one or more beneficiaries that are identifiable within the meaning of paragraph (f)(5)(i) of this section, then each taker in default (that is, any person that is entitled to the portion that represents the employee's interest in the plan subject to the power of appointment in the absence of the powerholder exercising the power) is treated as a beneficiary designated under the plan.

(B) *Exercise of power of appointment after September 30 of the calendar year following the calendar year of the employee's death.* If an individual has a power of appointment to appoint a portion of the employee's interest to one or more beneficiaries and the individual exercises the power of appointment after September 30 of the calendar year following the calendar year of the employee's death, then the rules of paragraph (f)(5)(iv) of this section apply with respect to any trust beneficiary that is added pursuant to the exercise of the power of appointment.

(iii) *Modification of trust terms—(A) State law will not cause trust to fail to satisfy identifiability requirement.* A trust will not fail to satisfy the identifiability requirements of this paragraph (f)(5) merely because the trust is subject to state law that permits the trust terms to be modified after the death of the employee (such as through a court reformation or a permitted decanting) and thus, permits changing the beneficiaries of the trust.

(B) *Modification of trust to remove trust beneficiaries.* A trust beneficiary described in paragraph (f)(3) of this section may be removed pursuant to a modification of trust terms (such as through a court reformation or a permitted decanting) by September 30 of the calendar year following the calendar year of the employee's death, in which case that person is disregarded in determining the employee's designated beneficiary.

(C) *Modification of trust to add trust beneficiaries.* A trust beneficiary described in paragraph (f)(3) of this section may be added through a modification of trust terms (such as through a court reformation or a permitted decanting). If the beneficiary is added on or before September 30 of the calendar year following the calendar year of the employee's death, paragraph (c) of this section will apply taking into account the beneficiary that was added. If the beneficiary is added after that September 30, then the rules of paragraph (f)(5)(iv) of this section will apply with respect to the beneficiary that is added.

(iv) *Addition of beneficiary after September 30.* If, after September 30 of the calendar year following the calendar year of the employee's death, a trust beneficiary described in paragraph (f)(3) of this section is added as a trust beneficiary (whether through the exercise of a power of appointment, the modification of trust terms, or otherwise), then—

(A) The addition of the beneficiary will not cause the trust to fail to satisfy the identifiability requirements of this paragraph (f)(5);

(B) Beginning in the calendar year after the calendar year in which the new trust beneficiary was added, the rules of § 1.401(a)(9)–5(f)(1) will apply taking into account the new beneficiary and all of the beneficiaries of the trust that were treated as beneficiaries of the employee before the addition of the new beneficiary; and

(C) Subject to paragraph (f)(5)(v) of this section, the rules of paragraphs (b) and (e)(2) of this section and § 1.401(a)(9)–5(f)(2) will apply taking into account the new beneficiary and all of the beneficiaries of the trust that were treated as beneficiaries of the employee before the addition of the new beneficiary.

(v) *Delay in full distribution requirement.* This paragraph (f)(5)(v) provides a special rule that applies if a full distribution of the employee's entire interest in the plan is not required in a calendar year pursuant to § 1.401(a)(9)–5(e), but a beneficiary is added in that calendar year. In that case, if, taking into account the added beneficiary pursuant to paragraph (f)(5)(iv)(C) of this section, a full distribution of the employee's entire interest in the plan would have been required in that calendar year or an earlier calendar year, then a full distribution of the employee's entire interest in the plan will not be required until the end of the calendar year after the calendar year in which the beneficiary is added. For example, if life expectancy payments are being made to an eligible designated beneficiary and, more than 10 years after the employee's death, a beneficiary is added who is not an eligible designated beneficiary as described in paragraph (e) of this section, then the employee is treated as not having an eligible designated beneficiary for purposes of § 1.401(a)(9)–5(e)(2) (so that a full distribution of the employee's entire interest in the plan would have been required within 10 years of the employee's death). However, pursuant to this paragraph (f)(5)(v), the full distribution of the employee's entire interest in the plan is not required until the end of the calendar year following

the calendar year in which the new trust beneficiary was added.

(6) *Examples.* The following examples illustrate the see-through trust rules of this paragraph (f).

(i) *Example 1—(A) Facts.* Employer L maintains a defined contribution plan, Plan W. Unmarried Employee C died in 2022 at age 30. Prior to C's death, C named a testamentary trust (Trust T) that satisfies the requirements of paragraph (f)(2) of this section, as the beneficiary of C's interest in Plan W. The terms of Trust T require that all distributions received from Plan W, upon receipt by the trustee, be paid directly to D, C's sibling, who is 5 years older than C. The terms of Trust T also provide that, if D dies before C's entire account balance has been distributed to D, E, will be the beneficiary of C's remaining account balance.

(B) *Analysis.* Pursuant to paragraph (f)(1)(ii)(A) of this section, Trust T is a conduit trust. Because Trust T is a conduit trust (meaning the residual beneficiary rule in paragraph (f)(3)(i)(B) of this section does not apply) and because E is only entitled 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. Because D is an eligible designated beneficiary, D may use the life expectancy rule of § 1.401(a)(9)–3(c)(4). Accordingly, even if D dies before C's entire interest in Plan W is distributed to Trust T, D's life expectancy continues to be used to determine the applicable denominator. Note, however, that because § 1.401(a)(9)–5(e) applies in this situation, a distribution of C's entire interest in Plan W will be required no later than 10 years after the calendar year in which D dies.

(ii) *Example 2—(A) Facts related to plan and beneficiary.* Employer M maintains a defined contribution plan, Plan X. Employee A, an employee of M, died in 2022 at the age of 55, survived by Spouse B, who was 50 years old. A's account balance in Plan X is invested only in productive assets and was includible in A's gross estate under section 2039. A named a testamentary trust (Trust P) as the beneficiary of all amounts payable from A's account in Plan X after A's death. Trust P satisfies the see-through trust requirements of paragraph (f)(2) of this section.

(B) *Facts related to trust.* 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 sibling, who is less than 10 years younger than A (and thus is an eligible designated beneficiary) and is younger than B, is

the sole residual beneficiary of Trust P. Also, under the terms of Trust P, if A's sibling predeceases B, then, upon B's death, all Trust P principal is distributed to Charity Z (an organization exempt from tax under section 501(c)(3)). No other person has a beneficial interest in Trust P. Under the terms of 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 during the calendar year on the assets held in A's account in Plan X and to distribute that amount through Trust P to B. Plan X includes 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 to take annual life expectancy payments pursuant to section 401(a)(9)(B)(iii). 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).

(C) *Analysis.* Because some amounts distributed from A's account in Plan X to Trust P may be accumulated in Trust P during B's lifetime, Trust P is an accumulation trust. Pursuant to paragraph (f)(3)(i)(B) of this section, A's sibling, as the residual beneficiary of Trust P, is treated as a beneficiary designated under Plan X (even though access to those amounts is delayed until after B's death). Pursuant to paragraph (f)(2)(iii)(A) of this section, because Charity Z's entitlement to amounts in the trust is based on the death of a beneficiary described in paragraph (f)(3)(i)(B) of this section, Charity Z is disregarded as a beneficiary of A. Under § 1.401(a)(9)–5(f)(1), the designated beneficiary used to determine the applicable denominator is the oldest of the designated beneficiaries of Trust P's interest in Plan X. B is the oldest of the beneficiaries of Trust P's interest in Plan X (including residual beneficiaries). Thus, the applicable denominator for purposes of section 401(a)(9)(B)(iii) is B's life expectancy. Because A's sibling is a beneficiary of A's account in Plan X in addition to B, B is not the sole beneficiary of A's account and the special rule in section 401(a)(9)(B)(iv)

and § 1.401(a)(9)–3(d) is not available. Accordingly, the annual required minimum distributions from the account to Trust P must begin no later than the end of the calendar year immediately following the calendar year of A's death.

(iii) *Example 3—(A) Facts.* The facts are the same as in *Example 2* in paragraph (f)(6)(ii) of this section except that A's sibling is more than 10 years younger than A, meaning that at least one of the beneficiaries of Trust P's interest in Plan X is not an eligible designated beneficiary.

(B) *Analysis.* Pursuant to paragraph (e)(2)(i) of this section, A is treated as not having an eligible designated beneficiary. Pursuant to § 1.401(a)(9)–3(c)(5), the trustee of Trust P is not permitted to make an election to take annual life expectancy distributions and the 10-year rule of § 1.401(a)(9)–3(c)(3) applies.

(iv) *Example 4—(A) Facts related to plan and beneficiary.* Employer N maintains a defined contribution plan, Plan Y. Employee F, an employee of N, died in 2022 at the age of 60. F named a testamentary trust (Trust Q), which was established under F's will, as the beneficiary of all amounts payable from F's account in Plan Y after F's death. Trust Q satisfies the see-through trust requirements of paragraph (f)(2) of this section.

(B) *Facts related to trust.* Under the terms of Trust Q, all trust income is payable to F's surviving spouse, G, and G has a power of appointment to name the beneficiaries of the residual in Trust Q. The power of appointment provides that, if G does not exercise the power, then upon G's death, F's descendants are entitled to the remainder interest in Trust Q, per stirpes. As of the date of F's death, F has two children, K and L, who are not disabled or chronically ill and who are both older than age 21. Before September 30 of the calendar year following the calendar year in which F died, G irrevocably restricts G's power of appointment so that G may exercise the power to appoint the remainder beneficiaries of Trust Q only in favor of G's siblings (who all are less than 10 years younger than F and thus, are eligible designated beneficiaries).

(C) *Analysis.* Pursuant to paragraph (f)(5)(ii)(A) of this section, because G timely restricted the power of appointment so that G may exercise the power to appoint the residual interest in Trust Q only in favor of G's siblings, the designated beneficiaries are G and G's siblings. Because all of the designated beneficiaries are eligible designated beneficiaries, annual life expectancy payments are permitted under section

401(a)(9)(B)(iii). Note, however, that because § 1.401(a)(9)–5(e) applies, a distribution of the remaining interest is required by no later than 10 years after the calendar year in which the oldest of G and G's siblings dies.

(v) *Example 5—(A) Facts.* The facts are the same as in *Example 4* in paragraph (f)(6)(iv) of this section except that G does not restrict the power by September 30 of the calendar year following the calendar year of F's death.

(B) *Analysis.* Pursuant to paragraph (f)(5)(ii)(A) of this section, G, K, and L are treated as F's beneficiaries. Pursuant to § 1.401(a)(9)–3(c)(5), because K and L are not eligible designated beneficiaries, the trustee of Trust Q is not permitted to make an election to take annual life expectancy distributions, and the 10-year rule of § 1.401(a)(9)–3(c)(3) applies.

(g) *Applicable multi-beneficiary trusts—(1) General definition of an applicable multi-beneficiary trust.* An applicable multi-beneficiary trust is a see-through trust with more than one beneficiary and with respect to which—

(i) All of the trust beneficiaries are designated beneficiaries; and

(ii) At least one of the trust beneficiaries is an eligible designated beneficiary who is disabled (as defined in paragraph (e)(1)(iii) of this section) or chronically ill (as defined in paragraph (e)(1)(iv) of this section).

(2) *Type I applicable multi-beneficiary trust.* An applicable multi-beneficiary trust is a type I applicable multi-beneficiary trust if the terms of the trust provide that it is to be divided immediately upon the death of the employee into separate trusts for each beneficiary.

(3) *Type II applicable multi-beneficiary trust—(i) General definition.* An applicable multi-beneficiary trust is a type II applicable multi-beneficiary trust if—

(A) The trust terms identify one or more individuals, each of whom is disabled (as defined in paragraph (e)(1)(iii) of this section) or chronically ill (as defined in paragraph (e)(1)(iv) of this section), who are entitled to benefits during their lifetime; and

(B) The terms of the trust provide that no individual (other than an individual described in paragraph (g)(3)(i)(A) of this section) has any right to the employee's interest in the plan until the death of all of the eligible designated beneficiaries described in paragraph (g)(3)(i)(A) with respect to the trust.

(ii) *Special rule for type II applicable multi-beneficiary trusts.* If an employee's beneficiary is a type II applicable multi-beneficiary trust described in paragraph (g)(3)(i) of this section, then the beneficiaries of the

trust described in paragraph (g)(3)(i)(A) of this section are treated as eligible designated beneficiaries without regard to whether any of the other trust beneficiaries are not eligible designated beneficiaries.

(h) *Documentation requirements for trusts—(1) General rule.* The documentation requirements of this paragraph (h) are satisfied if—

(i) In the case of required minimum distributions while the employee is still alive, paragraph (h)(2) of this section is satisfied; or

(ii) In the case of required minimum distributions after the employee has died, or after the employee's surviving spouse has died in a case to which § 1.401(a)(9)–3(d) applies, paragraph (h)(3) of this section is satisfied.

(2) *Required minimum distributions while employee is still alive—(i) In general.* If an employee designates a trust as the beneficiary of the employee's entire benefit and the employee's spouse is the only beneficiary of the trust treated as a beneficiary of the employee pursuant to the rules of paragraph (f) of this section, then, in order to satisfy the documentation requirements of this paragraph (h)(2) (so that the applicable denominator for a distribution calendar year may be determined under the rules of § 1.401(a)(9)–35(c)(2), assuming the other requirements of paragraph (f)(2) of this section are satisfied), before the first day of the distribution calendar year the employee must either satisfy the requirements of paragraph (h)(2)(ii) of this section (requiring the employee to provide a copy of the trust instrument) or the requirements of paragraph (h)(2)(iii) of this section (requiring the employee to provide a list of beneficiaries).

(ii) *Employee to provide copy of trust instrument.* An employee satisfies the requirements of this paragraph (h)(2)(ii) if the employee—

(A) Provides to the plan administrator a copy of the trust instrument; and

(B) 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 amendment.

(iii) *Employee to provide list of beneficiaries.* An employee satisfies the requirements of this paragraph (h)(2)(iii) if the employee—

(A) Provides to the plan administrator a list of all of the beneficiaries of the trust (including contingent beneficiaries) with a description of the conditions on their entitlement sufficient to establish whether the spouse is the sole beneficiary;

(B) Certifies that, to the best of the employee's knowledge, the list described in paragraph (h)(2)(iii)(A) of this section is correct and complete and that the requirements of paragraph (f)(2)(i), (ii), and (iii) of this section are satisfied; and

(C) 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

(D) Agrees to provide a copy of the trust instrument to the plan administrator upon request.

(3) *Required minimum distributions after death—(i) In general.* In order to satisfy the documentation requirement of this paragraph (h)(3) for required minimum distributions after the death of the employee (or after the death of the employee's surviving spouse in a case to which § 1.401(a)(9)–3(d) applies), by October 31 of the calendar year immediately following the calendar year in which the employee died or, in a case to which § 1.401(a)(9)–3(d) applies, the employee's surviving spouse died, the trustee of the trust must satisfy the requirements of either paragraph (h)(3)(ii) (requiring the trustee to provide a list of beneficiaries) or paragraph (h)(3)(iii) of this section (requiring the trustee to provide a copy of the trust instrument).

(ii) *Trustee to provide list of beneficiaries.* A trustee satisfies the requirements of this paragraph (h)(3)(ii) if the trustee—

(A) Provides the plan administrator with a final list of all beneficiaries of the trust as of September 30 of the calendar year following the calendar year of the death (including contingent beneficiaries) with a description of the conditions on their entitlement sufficient to establish who are the beneficiaries;

(B) Certifies that, to the best of the trustee's knowledge, this list is correct and complete and that the requirements of paragraph (f)(2)(i), (ii), and (iii) of this section are satisfied; and

(C) Agrees to provide a copy of the trust instrument to the plan administrator upon request.

(iii) *Trustee to provide copy of trust instrument.* A trustee satisfies the requirements of this paragraph (h)(3)(iii) if the trustee provides 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.

(4) *Relief for discrepancy between trust instrument and employee*

*certifications or earlier trust*

*instruments*—(i) *In general.* If required minimum distributions are determined based on the information provided to the plan administrator in certifications or trust instruments described in paragraph (h)(2) or (3) of this section, 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—

(A) The plan administrator reasonably relied on the information provided; and

(B) 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.

(ii) *Excise tax.* 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.**

(a) *General rules*—(1) *In general.* Subject to the rules of paragraph (e) of this section (requiring distribution of an employee's entire interest by a specified deadline in certain situations), 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 (a)(2) of this section) is equal to the quotient obtained by dividing the account balance (determined under paragraph (b) of this section) by the applicable denominator (determined under paragraph (c) or (d) of this section, whichever is applicable). However, the required minimum distribution amount will never exceed the entire account balance on the date of the distribution. See paragraph (g) of this section for rules that apply if a portion of the employee's account is not vested.

(2) *Distribution calendar year*—(i) *In general.* A calendar year for which a minimum distribution is required is a distribution calendar year.

(ii) *First distribution calendar year for employee.* If an employee's required beginning date is April 1 of the calendar year following the calendar year in which the employee attains age 72, then the employee's first distribution calendar year is the year the employee attains age 72. If an employee's required beginning date is April 1 of the calendar year following the calendar year in

which the employee retires, the employee's first distribution calendar year is the calendar year in which the employee retires.

(iii) *First distribution calendar year for beneficiary.* In the case of an employee who dies before the required beginning date, if the life expectancy rule in § 1.401(a)(9)–3(c)(4) applies, then the first distribution calendar year for the designated beneficiary is the calendar year after the calendar year in which the employee died (or, if applicable, the calendar year described in § 1.401(a)(9)–3(d)). See § 1.401(a)(9)–3(c)(5) to determine whether the life expectancy rule in § 1.401(a)(9)–3(c)(4) applies.

(3) *Time for distributions.* The distribution required for the employee's first distribution calendar year (as described in paragraph (a)(2)(ii) of this section) may be made on or before April 1 of the following calendar year. The required minimum distribution for any other distribution calendar year (including the required minimum distribution for the distribution calendar year in which the employee's required beginning date occurs or the first distribution calendar year for the designated beneficiary) must be made on or before the end of that distribution calendar year.

(4) *Minimum distribution incidental benefit requirement.* If distributions of an employee's account balance under a defined contribution plan are made in accordance with this section—

(i) With respect to the retirement benefits provided by that account balance, to the extent the incidental benefit requirement of § 1.401–1(b)(1)(i) requires distributions, that requirement is deemed satisfied; and

(ii) No additional distributions are required to satisfy section 401(a)(9)(G).

(5) *Annuity contracts*—(i) *Purchase of annuity contract permitted.* A plan may satisfy section 401(a)(9) by the purchase of an annuity contract from an insurance company in accordance with § 1.401(a)(9)–6(d) with the employee's entire individual account provided that the terms of the annuity satisfy § 1.401(a)(9)–6 and paragraph (e) of this section. However, a distribution of an annuity contract is not a distribution for purposes of this section.

(ii) *Transition from defined contribution rules to defined benefit rules.* If an annuity is purchased in accordance with paragraph (a)(5)(i) of this section after distributions are required to commence (the required beginning date, in the case of distributions commencing before death, or the calendar year determined under § 1.401(a)(9)–3(c)(4) or, if applicable,

§ 1.401(a)(9)–3(d), in the case of distributions commencing after death), then the plan will satisfy section 401(a)(9) only if, in the year of purchase, distributions from the individual account satisfy this section, and for calendar years following the year of purchase, payments under the annuity contract are made in accordance with § 1.401(a)(9)–6 and satisfy paragraph (e) of this section. Payments under the annuity contract during the year in which the annuity contract is purchased are treated as distributions from the individual account for purposes of determining whether the distributions from the individual account satisfy this section in the calendar year of purchase.

(iii) *Purchase of annuity contract with portion of employee's account.* A portion of an employee's account balance under a defined contribution plan is permitted to be used to purchase an annuity contract while another portion remains in the account, provided that the requirements of paragraphs (a)(5)(i) and (ii) of this section are satisfied (other than the requirement that the contract be purchased with the employee's entire individual account). In that case, in order to satisfy section 401(a)(9) for calendar years after the calendar year of purchase, the remaining account balance under the plan must be distributed in accordance with this section.

(6) *Impact of additional distributions in prior years.* If, for any distribution calendar year, the amount distributed exceeds the required minimum distribution for that calendar year, no credit towards a required minimum distribution will be given in subsequent calendar years for the excess distribution.

(b) *Determination of account balance*—(1) *General rule.* In the case of an individual account under a defined contribution plan, 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 preceding that distribution calendar year (valuation calendar year) adjusted in accordance with this paragraph (b). For this purpose, except as provided in § 1.401(a)(9)–8(a), all of an employee's accounts under the plan are aggregated. Thus, all separate accounts, including a separate account for employee contributions under section 72(d)(2), are aggregated for purposes of this section.

(2) *Adjustment for subsequent allocations.* 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. For this purpose, contributions that are allocated to the account balance as of dates in the valuation calendar year after the valuation date, but that are not actually made during the valuation calendar year, may be excluded.

(3) *Adjustment for subsequent distributions.* The account balance is decreased by distributions made in the valuation calendar year after the valuation date.

(4) *Exclusion for QLAC contract.* The account balance does not include the value of any qualifying longevity annuity contract (QLAC), defined in § 1.401(a)(9)–6(q), that is held under the plan.

(5) *Treatment of rollovers.* If an amount is distributed from a plan and rolled over to another plan (receiving plan), § 1.401(a)(9)–7(b) 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) in a transfer to which section 414(l) applies, § 1.401(a)(9)–7(c) and (d) provide additional rules for determining the amount of the benefit and required minimum distribution under both the transferor and transferee plans.

(c) *Determination of applicable denominator during employee's lifetime*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section (relating to a spouse beneficiary who is more than 10 years younger than the employee), the applicable denominator for required minimum distributions for each distribution calendar year beginning with the first distribution calendar year (as described in paragraph (a)(2)(ii) of this section) is determined using the Uniform Lifetime Table in § 1.401(a)(9)–9(c)(2) for the employee's age as of the employee's birthday in the relevant distribution calendar year. The requirement to take an annual distribution calculated in accordance with the preceding sentence applies for distribution calendar years up to and including the calendar year that includes the employee's date of death. Thus, a required minimum distribution is due for the calendar year of the employee's death, and that amount must be distributed during that year to the beneficiary to the extent it has not already been distributed to the employee.

(2) *Spouse is sole beneficiary*—(i) *Determination of applicable denominator.* If the sole beneficiary of an employee is the employee's spouse who is more than 10 years younger than

the employee, then the applicable denominator is the joint and last survivor life expectancy for the employee and spouse determined using the Joint and Last Survivor Life Expectancy Table in § 1.401(a)(9)–9(d) for the employee's and spouse's ages as of their birthdays in the relevant distribution calendar year (rather than the applicable denominator determined under paragraph (c)(1) of this section).

(ii) *Spouse must be sole beneficiary at all times.* Except as otherwise provided in paragraph (c)(2)(iii) of this section (relating to a death or divorce in a calendar year), the spouse is the sole beneficiary for purposes of determining the applicable denominator for a distribution calendar year during the employee's lifetime only if the spouse is the sole beneficiary of the employee's entire interest at all times during the distribution calendar year.

(iii) *Change in marital status.* If the employee and the employee's spouse are married on January 1 of a distribution calendar year, but do not remain married throughout that year (that is, the employee or the employee's spouse dies or they become divorced during that year), the employee will not fail to have a spouse as the employee's sole beneficiary for that year merely because they are not married throughout that year. However, the change in beneficiary due to the death or divorce of the spouse in a distribution calendar year will be effective for purposes of determining the applicable denominator under section 401(a)(9) and this paragraph (c) for the following calendar years.

(d) *Applicable denominator after employee's death*—(1) *Death on or after the employee's required beginning date*—(i) *In general.* If an employee dies after distribution has begun as determined under § 1.401(a)(9)–2(a)(3) (generally, on or after the employee's required beginning date), distributions must satisfy section 401(a)(9)(B)(i). In order to satisfy this requirement, the applicable denominator after the employee's death is determined under the rules of this paragraph (d)(1). The requirement to take an annual distribution in accordance with the preceding sentence applies for distribution calendar years up to and including the calendar year that includes the beneficiary's date of death. Thus, a required minimum distribution is due for the calendar year of the beneficiary's death, and that amount must be distributed during that calendar year to a beneficiary of the deceased beneficiary to the extent it has not already been distributed to the deceased beneficiary. The distributions also must

satisfy section 401(a)(9)(B)(ii) (or, if applicable, section 401(a)(9)(B)(iii), taking into account sections 401(a)(9)(E)(iii), and 401(a)(9)(H)(ii) and (iii)). In order to satisfy those requirements, in addition to determining the applicable denominator under the rules of this paragraph (d)(1), the distributions also must satisfy any applicable requirements under paragraph (e) of this section.

(ii) *Employee with designated beneficiary.* If the employee has a designated beneficiary as of the date determined under § 1.401(a)(9)–4(c), the applicable denominator is the greater of—

(A) The designated beneficiary's remaining life expectancy; and

(B) The employee's remaining life expectancy.

(iii) *Employee with no designated beneficiary.* If the employee does not have a designated beneficiary as of the date determined under § 1.401(a)(9)–4(c), the applicable denominator is the employee's remaining life expectancy.

(2) *Death before an employee's required beginning date.* If an employee dies before distributions have begun (as determined under § 1.401(a)(9)–2(a)(3)) and the life expectancy rule described in § 1.401(a)(9)–3(c)(4) applies, then the applicable denominator for distribution calendar years beginning with the first distribution calendar year (as described in paragraph (a)(2)(iii) of this section) is the designated beneficiary's remaining life expectancy.

(3) *Remaining life expectancy*—(i) *Life expectancy table.* For purposes of this paragraph (d), all life expectancies are determined using the Single Life Table in § 1.401(a)(9)–9(c)(1).

(ii) *Employee's life expectancy.* The employee's remaining life expectancy is determined initially using the employee's age as of the employee's birthday in the calendar year of the employee's death. In subsequent calendar years, the remaining life expectancy is determined by reducing that initial life expectancy by one for each calendar year that has elapsed after that first calendar year.

(iii) *Nonspouse designated beneficiary.* If the designated beneficiary is not the employee's surviving spouse, then the designated beneficiary's remaining life expectancy is determined initially using the beneficiary's age as of the beneficiary's birthday in the calendar year following the calendar year of the employee's death. Except as otherwise provided in paragraph (d)(3)(iv) of this section, for subsequent calendar years, the designated beneficiary's remaining life expectancy is determined by reducing that initial

life expectancy by one for each calendar year that has elapsed after that first calendar year.

(iv) *Spouse as designated beneficiary.* If the surviving spouse of the employee is the employee's sole beneficiary, then the surviving spouse's remaining life expectancy is redetermined each distribution calendar year using the surviving spouse's age as of the surviving spouse's birthday in that calendar year.

(e) *Distribution of employee's entire interest required*—(1) *In general.* Except as provided in paragraph (f) of this section, if an employee's accrued benefit is in the form of an individual account under a defined contribution plan, then the entire interest of the employee must be distributed by the end of the earliest of the calendar years described in paragraph (e)(2), (3), (4), or (5) of this section. However, the preceding sentence does not apply if section 401(a)(9)(H) does not apply with respect to the employee (for example, if both the employee and the employee's designated beneficiary died before January 1, 2020). See § 1.401(a)(9)–1(b) for rules relating to the section 401(a)(9)(H) effective date.

(2) *10-year limit for designated beneficiary who is not an eligible designated beneficiary.* If the employee's designated beneficiary is not an eligible designated beneficiary (as determined in accordance with § 1.401(a)(9)–4(e)), then the calendar year described in this paragraph (e)(2) is the tenth calendar year following the calendar year of the employee's death.

(3) *10-year limit following death of eligible designated beneficiary.* If the employee's designated beneficiary is an eligible designated beneficiary (as determined in accordance with § 1.401(a)(9)–4(e)), then the calendar year described in this paragraph (e)(3) is the tenth calendar year following the calendar year of the designated beneficiary's death.

(4) *10-year limit after minor child of the employee reaches age of majority.* If the employee's designated beneficiary is an eligible designated beneficiary only because the beneficiary is the child of the employee who has not reached the age of majority at the time of the employee's death, then the calendar year described in this paragraph (e)(4) is the tenth calendar year following the calendar year in which the designated beneficiary reaches the age of majority.

(5) *Life expectancy limit for older eligible designated beneficiaries.* If the employee's designated beneficiary is an eligible designated beneficiary (as determined in accordance with § 1.401(a)(9)–4(e)) and the applicable

denominator is determined in accordance with paragraph (d)(1)(ii)(B) of this section (the employee's remaining life expectancy), then the calendar year described in this paragraph (e)(5) is the calendar year in which the applicable denominator would have been less than or equal to one if it were determined in accordance with paragraph (d)(1)(ii)(A) of this section (the designated beneficiary's remaining life expectancy).

(f) *Rules for multiple designated beneficiaries*—(1) *Determination of applicable denominator*—(i) *General rule.* Except as otherwise provided in paragraph (f)(1)(ii) of this section and § 1.401(a)(9)–8(a), if the employee has more than one designated beneficiary, then the determination of the applicable denominator under paragraph (d) of this section is made using the oldest designated beneficiary of the employee.

(ii) *Applicable multi-beneficiary trusts.* If an employee's beneficiary is a type II applicable multi-beneficiary trust described in § 1.401(a)(9)–4(g)(3)(i), then only the trust beneficiaries described in § 1.401(a)(9)–4(g)(3)(i)(A) are taken into account in determining the oldest designated beneficiary for purposes of paragraph (f)(1)(i) of this section.

(2) *Determination of when entire interest is required to be distributed*—(i) *General rule.* Except as otherwise provided in paragraphs (f)(2)(ii) and (iii) of this section and § 1.401(a)(9)–8(a), if an employee has more than one designated beneficiary, then paragraph (e)(1) of this section is applied with respect to the oldest of the employee's designated beneficiaries.

(ii) *Special rule for minor child.* If any of the employee's designated beneficiaries is an eligible designated beneficiary because that designated beneficiary is described in § 1.401(a)(9)–4(e)(1)(ii) (relating to the child of the employee who has not reached the age of majority at the time of the employee's death), then—

(A) Paragraphs (e)(3) and (4) of this section are applied using the oldest of the designated beneficiaries who are described in § 1.401(a)(9)–4(e)(1)(ii); and

(B) Paragraphs (e)(2) and (5) of this section do not apply.

(iii) *Applicable multi-beneficiary trusts.* If an employee's beneficiary is a type II applicable multi-beneficiary trust described in § 1.401(a)(9)–4(g)(3)(i), then—

(A) Paragraph (e)(3) of this section applies as if the death of the employee's eligible designated beneficiary does not occur until the death of the last trust beneficiary who is described in § 1.401(a)(9)–4(g)(3)(i)(A); and

(B) Paragraph (e)(5) of this section does not apply.

(g) *Treatment of nonvested amounts.* If the employee's benefit is in the form of an individual account under a defined contribution plan, the benefit used to determine the required minimum distribution for any distribution calendar year will be determined in accordance with paragraph (a) of this section without regard to whether or not all of the employee's benefit is vested. 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 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 determined in accordance with paragraph (a) of this section.

(h) *Distributions taken into account.* Except as provided in this paragraph (h), all amounts distributed from an individual account under a defined contribution plan are distributions that are taken into account in determining whether this section is satisfied, regardless of whether the amount is includible in income. Thus, for example, amounts that are excluded from income as recovery of investment in the contract under section 72 are taken into account for purposes of determining whether this section is satisfied for a calendar year. Similarly, amounts excluded from income as net unrealized appreciation on employer securities also are taken into account for purposes of satisfying this section. However, an amount is not taken into account in determining whether the required minimum distribution has been made for a distribution calendar year if that amount is described in § 1.402(c)–2(c)(3) (relating to amounts that are not treated as eligible rollover distributions).

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

(a) *Defined benefit plans*—(1) *In general.* In order to satisfy section 401(a)(9), except as otherwise provided in this section, distributions of the employee's entire interest under a

defined benefit plan must be paid in the form of periodic annuity payments for the employee's life (or the joint lives of the employee and beneficiary) or over a period certain that does not exceed the maximum length of the period certain determined in accordance with paragraph (c) of this section. The interval between payments for the annuity must not exceed one year and, except as provided in paragraph (o)(4)(ii) of this section, must be uniform over the entire distribution period. Once payments have commenced over a period, the period may only be changed in accordance with paragraph (n) of this section. Life (or joint and survivor) annuity payments must satisfy the minimum distribution incidental benefit requirements of paragraph (b) of this section. Except as otherwise provided in this section (for example, permitted increases described in paragraph (o) of this section), all payments (whether paid over an employee's life, joint lives, or a period certain) also must be nonincreasing.

(2) *Definition of life annuity.* An annuity described in this section may be a life annuity (or joint and survivor annuity) with a period certain, provided that the life annuity (or joint and survivor annuity, if applicable) and the period certain payments each meet the requirements of paragraph (a)(1) of this section. For purposes of this section, if distributions are permitted to be made over the lives of the employee and the designated beneficiary, references to a life annuity include a joint and survivor annuity.

(3) *Annuity commencement*—(i) *First payment and frequency.* Annuity payments must commence on or before the employee's required beginning date (within the meaning of § 1.401(a)(9)–2(b)). The first payment, which must be made on or before the employee's required beginning date, must be the payment that 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, if the employee dies before the required beginning date, and distributions are to be made in accordance with section 401(a)(9)(B)(iii) (or, if applicable, section 401(a)(9)(B)(iv)), then the first payment, which must be made on or before the date determined under § 1.401(a)(9)–3(b)(3) or (d) (whichever is applicable), must be the payment that is required for one payment interval. Payment intervals are the periods for which payments are received, for example, bimonthly, monthly, semi-annually, or annually. All benefit accruals as of the last day of

the first distribution calendar year must be included in the calculation of the amount of annuity payments for payment intervals ending on or after the employee's required beginning date.

(ii) *Example.* A defined benefit plan (Plan X) provides monthly annuity payments of \$500 for the life of unmarried participants with a 10-year period certain. An unmarried, retired participant (A) in Plan X attains age 72 in 2025. In order to meet the requirements of this paragraph (a)(3), the first monthly payment of \$500 must be made on behalf of A on or before April 1, 2026, and the payments must continue to be made in monthly payments of \$500 thereafter for the life of A (or over the 10-year period certain, if longer).

(4) *Single-sum distributions*—(i) *In general.* In the case of a single-sum distribution of an employee's entire accrued benefit during a distribution calendar year, the portion of the distribution that is the required minimum distribution for the distribution calendar year (and thus not an eligible rollover distribution pursuant to section 402(c)(4)(B)) is determined using the rule in either paragraph (a)(4)(ii) or (iii) of this section.

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

(iii) *Treatment as first annuity payment.* The portion of the single-sum distribution that is a required minimum distribution is permitted to be determined by expressing the employee's benefit as an annuity that would satisfy this section with an annuity starting date that is the first day of the distribution calendar year for which the required minimum distribution is being determined, and treating one year of annuity payments as the required minimum distribution for that year (and therefore, not an eligible

rollover distribution). If the single-sum distribution is being made in the calendar year that includes the required beginning date, and the required minimum distribution for the employee's first distribution calendar year has not been made, then the benefit must be expressed as an annuity with an annuity starting date that is the first day of the first distribution calendar year, and the payments for the first two distribution calendar years are treated as required minimum distributions (and therefore not eligible rollover distributions).

(5) *Death benefits.* The rule in paragraph (a)(1) of this section prohibiting increasing payments under an annuity applies to payments made upon the death of an employee. However, the payment of an ancillary death benefit described in this paragraph (a)(5) may be disregarded in determining whether annuity payments are increasing, and it can be excluded in determining an employee's entire interest. A death benefit with respect to an employee's benefit is an ancillary death benefit for purposes of this paragraph (a) if—

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

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

(6) *Separate treatment of separate identifiable components.* If an employee's benefit under a defined benefit plan consists of separate identifiable components that are subject to different distribution elections, then the rules of this section may be applied separately to each of those components.

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

(b) *Application of incidental benefit requirement*—(1) *Life annuity for employee.* If the employee's benefit is paid in the form of a life annuity for the life of the employee satisfying section 401(a)(9) without regard to the minimum distribution incidental benefit requirement under section 401(a)(9)(G) (MDIB requirement), then the MDIB requirement will be satisfied.

(2) *Joint and survivor annuity*—(i) *Determination of designated*

*beneficiary*. If the employee's benefit is paid in the form of a life annuity for the lives of the employee and a designated beneficiary, then the designated beneficiary is determined as of the annuity starting date.

(ii) *Spouse beneficiary*. If the employee's sole beneficiary 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. For example, if an employee's benefit is being distributed in the form of a joint and survivor annuity for the lives of the employee and the employee's spouse and the spouse is the sole beneficiary of the employee, the amount of the periodic payment payable to the spouse would not violate the MDIB requirement if it were 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.

(iii) *Joint and survivor annuity, nonspouse beneficiary*—(A) *Explanation of rule*. If distributions commence in the form of a joint and survivor annuity for the lives of the employee and a beneficiary other than the employee's spouse, and the employee is age 72 or older on the employee's birthday in the calendar year that includes the annuity starting date, then the MDIB requirement will not be satisfied as of the date distributions commence unless, under the distribution option, the annuity payments satisfy the conditions of this paragraph (b)(2)(iii)(A). The periodic annuity payments to the survivor satisfy this paragraph (b)(2)(iii)(A) only if, at any time on or after the employee's required beginning date, those payments do not exceed the applicable percentage of the periodic annuity payment payable to the employee using the table in paragraph (b)(2)(iii)(B) of this section. The applicable percentage is based on the employee/beneficiary age difference, which is equal to the excess of the age of the employee over the age of the beneficiary based on their ages on their birthdays in the calendar year that includes the annuity starting date. In the case of an annuity that provides for increasing payments, the requirement of this paragraph (b)(2)(iii)(A) will not be violated merely because benefit payments to the beneficiary increase, provided the increase is determined in the same manner for the employee and the beneficiary. See paragraph (k) of this section for the rule for annuity payments with an annuity starting date

that is before the calendar year in which an employee attains age 72.

(B) *Table applicable to paragraph (b)(2)(iii)(B) of this section*.

TABLE 1—APPLICABLE TO PARAGRAPH (b)(2)(iii)(B) OF THIS SECTION

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

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

(4) *Deemed satisfaction of incidental benefit rule*. Except in the case of distributions with respect to an employee's benefit that include an ancillary death benefit described in paragraph (a)(5) of this section, to the extent the incidental benefit requirement of § 1.401–1(b)(1)(i) requires a distribution, that requirement is deemed to be satisfied if distributions satisfy the MDIB requirement of this paragraph (b). If the employee's benefits include an ancillary death benefit described in paragraph (a)(5) of this

section, the benefits (including the ancillary death benefit) must be distributed in accordance with the incidental benefit requirement described in § 1.401–1(b)(1)(i) and the benefits (excluding the ancillary death benefit) must also satisfy the MDIB requirement of this paragraph (b).

(c) *Period certain annuity*—(1) *Distributions commencing during the employee's life*. If the employee is age 72 or older on the employee's birthday in the calendar year that includes the annuity starting date, then the period certain is not permitted to exceed the applicable denominator for the calendar year that includes the annuity starting date that would apply pursuant to § 1.401(a)(9)–5(c) if the plan were a defined contribution plan. However, that applicable denominator is determined taking into account the rules of § 1.401(a)(9)–5(c)(2) (relating to a spouse who is more than 10 years younger than the employee) only if the period certain is not provided in conjunction with a life annuity under paragraph (a)(2) of this section. See paragraph (k) of this section for the rule for annuity payments with an annuity starting date that is before the calendar year in which the employee attains age 72.

(2) *Distributions commencing after the employee's death*. If the employee dies before the required beginning date and annuity distributions commence after the death of the employee under the life expectancy rule (under section 401(a)(9)(B)(iii) or (iv)), the period certain for any distributions commencing after death may not exceed the applicable denominator that would apply pursuant to § 1.401(a)(9)–5(d)(2) for the calendar year that includes the annuity starting date if the plan were a defined contribution plan.

(d) *Use of annuity contract*. A plan will not fail to satisfy section 401(a)(9) merely because distributions are made from an annuity contract purchased with the employee's benefit by the plan from an insurance company that is licensed to do business under the laws of the State in which the contract is sold, provided that the payments satisfy the requirements of this section. Except in the case of a qualified longevity annuity contract (QLAC) described in paragraph (q) of this section, if the annuity contract is purchased after the required beginning date, then the first payment interval must begin on or before the purchase date and the payment that is made at the end of that payment interval is the amount required for one payment interval. If the payments actually made under the annuity contract do not meet the

requirements of this section, the plan fails to satisfy section 401(a)(9). See also paragraph (o) of this section permitting certain increases under annuity contracts.

(e) *Treatment of additional accruals—*

(1) *General rule.* If additional benefits accrue in a calendar year after the employee's first distribution calendar year, distribution of the amount that accrues in that later calendar year must commence in accordance with paragraph (a) of this section beginning with the first payment interval ending in the calendar year immediately following the calendar year in which that amount accrues.

(2) *Administrative delay.* A plan will not fail to satisfy this section merely because there is an administrative delay in the commencement of the distribution of the additional benefits accrued in a calendar year, provided that—

(i) The payment commences no later than the end of the first calendar year following the calendar year in which the additional benefit accrues; and

(ii) The total amount paid during that first calendar year with respect to those additional benefits is no less than the total amount that was required to be paid during that year under paragraph (e)(1) of this section.

(f) *Treatment of nonvested benefits.* In the case of annuity distributions under a defined benefit plan, if any portion of the employee's benefit is not vested as of December 31 of a distribution calendar year, the portion that is not vested as of that date is 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, that portion will be treated as an additional accrual. See paragraph (e) of this section for the rules for distributing benefits that accrue under a defined benefit plan after the employee's first distribution calendar year.

(g) *Requirement for actuarial increase—*(1) *General rule—*(i) *Applicability of increase.* Except as otherwise provided in this paragraph (g), if an employee retires after the calendar year in which the employee attains age 70½, then, in order to satisfy section 401(a)(9)(C)(iii), the employee's accrued benefit under a defined benefit plan must be actuarially increased for the period (if any) from the start date described in paragraph (g)(1)(ii) of this section to the end date described in paragraph (g)(1)(iii) of this section.

(ii) *Start date for actuarial increase.* The start date for the required actuarial

increase is April 1 following the calendar year in which the employee attains age 70½ (or January 1, 1997, if the employee attained 70½ prior to January 1, 1997).

(iii) *End date for actuarial increase.* The end date for the required actuarial increase is the date on which benefits commence after retirement in a form that satisfies paragraphs (a) and (h) of this section.

(iv) *Determination of when employee attains age 70½.* See § 1.401(a)(9)–2(b)(2)(ii) for the determination of the calendar year in which an employee attains age 70½.

(2) *Nonapplication to 5-percent owners.* This paragraph (g) does not apply to an employee if that employee 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 72.

(3) *Nonapplication to governmental and church plans.* The actuarial increase required under this paragraph (g) does not apply to a governmental plan (within the meaning of section 414(d)) or a church plan. For purposes of this paragraph (g)(3)—

(i) The term *church plan* means a plan maintained by a church for church employees;

(ii) The term *church* means a church (as defined in section 3121(w)(3)(A)) or a qualified church-controlled organization (as defined in section 3121(w)(3)(B)); and

(iii) The determination of whether an employee is a church employee is made without regard to section 414(e)(3)(B).

(h) *Amount of actuarial increase—*(1) *In general.* 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 which actuarial increases must be provided as described in paragraph (g) of this section must be no less than—

(i) The actuarial equivalent of the employee's retirement benefits that would have been payable as of the start date described in paragraph (g)(1)(ii) of this section if benefits had commenced on that date; plus

(ii) The actuarial equivalent of any additional benefits accrued after that date; reduced by

(iii) The actuarial equivalent of any distributions made with respect to the employee's retirement benefits after that date.

(2) *Actuarial equivalence basis.* For purposes of this paragraph (h), actuarial equivalence is determined using the plan's assumptions for determining actuarial equivalence for purposes of satisfying section 411.

(3) *Coordination with section 411 actuarial increase.* 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 411(a)(3)(B). The actuarial increase required under section 401(a)(9)(C)(iii) for the period (if any) described in paragraph (g)(1)(i) of this section generally is the same as, and not in addition to, the actuarial increase required for the same period under section 411 to reflect any delay in the payment of retirement benefits after normal retirement age. However, unlike the actuarial increase required under section 411, the actuarial increase required under section 401(a)(9)(C)(iii) must be provided even during any period during which an employee's benefit has been suspended in accordance with section 411(a)(3)(B).

(i) [Reserved]

(j) *Distributions restricted pursuant to section 436—*(1) *General rule.* If an employee's entire interest is being distributed in accordance with the 5-year rule of section 401(a)(9)(B)(ii), a plan is not treated as failing to satisfy section 401(a)(9) merely because of the application of a payment restriction under section 436(d), provided that distributions of the employee's interest commence by the end of the calendar year that includes the fifth anniversary of the date of the employee's death and, after the annuity starting date, those distributions are paid in a form that is as accelerated as permitted under section 436(d), as described in paragraph (j)(2) or (j)(3) of this section.

(2) *Payments restricted under section 436(d)(3).* If the payment restriction of section 436(d)(3) applies at the time benefits commence under paragraph (j)(1) of this section, then distributions are made in a form that is as accelerated as permitted under section 436(d) if the benefits are paid in a single-sum payment equal to the maximum amount allowed under section 436(d)(3), with the remainder paid as a life annuity to the beneficiary (or over the course of 240 months pursuant to § 1.436–1(j)(6)(ii) in the case of a beneficiary that is not an individual), subject to a requirement that the benefit remaining is commuted to a single-sum payment when the section 436(d)(3) payment restriction ceases to apply (to the extent that a single-sum payment is permitted under section 436(d)(1) and 436(d)(2)).

(3) *Payments restricted under section 436(d)(1) or (2).* If a plan is subject to the payment restriction in section 436(d)(1) or (2) at the time benefits commence under paragraph (j)(1) of this section, then distributions are made in a form that is as accelerated as permitted under section 436(d) if the benefits are paid in the form of a life annuity to the beneficiary (or over the course of 240 months pursuant to § 1.436–1(j)(6)(ii), in the case of a beneficiary that is not an individual), subject to a requirement that the benefit remaining is commuted to a single-sum payment to the extent permitted under section 436(d) (for example, the maximum amount allowed under section 436(d)(3)) when the payment restriction under section 436(d)(1) or (2) ceases to apply.

(k) *Treatment of early commencement*—(1) *General rule.* Generally, the determination of whether a stream of payments satisfies the requirements of this section is made as of the required beginning date. However, if distributions start prior to the required beginning date in a distribution form that is an annuity under which distributions are made in accordance with the provisions of paragraph (a) of this section and are made over a period permitted under section 401(a)(9)(A)(ii), then, except as provided in this paragraph (k), the annuity starting date will be treated as the required beginning date for purposes of applying the rules of this section and § 1.401(a)(9)–2. Thus, for example, the determination of the designated beneficiary and the amount of distributions will be made as of the annuity starting date. Similarly, if the employee dies after the annuity starting date but before the required beginning date determined under § 1.401(a)(9)–2(b), then after the employee's death—

(i) 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; and

(ii) The rules in § 1.401(a)(9)–3 relating to death before the required beginning date do not apply.

(2) *Joint and survivor annuity, nonspouse beneficiary*—(i) *Application of MDIB requirement.* If distributions commence in the form of a joint and survivor annuity for the lives of the employee and a beneficiary other than the employee's spouse, and as of the employee's birthday in the calendar year that includes the annuity starting date, the employee is under age 72, then the MDIB requirement will not be satisfied as of the date distributions commence unless, under the distribution option, the annuity

payments to be made on and after the employee's required beginning date satisfy the conditions of this paragraph (k)(2). The periodic annuity payments payable to the survivor satisfy this paragraph (k)(2) if, at all times on and after the employee's annuity starting date, those payments do not exceed the applicable percentage of the periodic annuity payment payable to the employee using the table in paragraph (b)(3)(ii) of this section, but based on the adjusted employee/beneficiary age difference. The adjusted employee/beneficiary age difference is determined by first calculating the employee/beneficiary age difference under paragraph (b)(3)(i) of this section and then reducing that age difference by the number of years by which the employee is younger than age 72 on the employee's birthday in the calendar year that includes the annuity starting date. In the case of an annuity that provides for increasing payments, the requirement of this paragraph (k)(2) will not fail to be satisfied merely because benefit payments to the beneficiary increase, provided the increase is determined in the same manner for the employee and the beneficiary.

(ii) *Example*—(A) *Facts.* Distributions commence on January 1, 2023 to an employee (Z), born March 1, 1957, after retirement at age 65. Z's daughter (Y), born February 5, 1987, 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 (so that the monthly payment to Y is 100 percent of the monthly amount payable to Z).

(B) *Analysis and conclusion.* Under paragraph (k)(1) of this section, because distributions commence prior to Z's required beginning date and are in the form of a joint and survivor annuity for the lives of Z and Y, compliance with the rules of this section is determined as of the annuity starting date. Under this paragraph (k)(2), the adjusted employee/beneficiary age difference is calculated by taking the excess of the employee's age over the beneficiary's age and subtracting the number of years the employee is younger than age 72. In this case, Z is 30 years older than Y and is commencing benefits 6 years before attaining age 72, so the adjusted employee-beneficiary age difference is 24 years. Under the table in paragraph (b)(3)(ii) of this section, the applicable percentage for a 24-year adjusted employee/beneficiary age difference is 67 percent. The plan does not satisfy the MDIB requirement because, as of January 1, 2023 (the annuity starting date), the distribution option provides

that, as of Z's required beginning date, the monthly payment to Y upon Z's death will exceed 67 percent of Z's monthly payment.

(3) *Limitation on period certain.* If, as of the employee's birthday in the calendar year that includes the annuity starting date, the employee is under age 72, then the period certain may not exceed the limitation on the period certain for an individual who is age 72 as specified in paragraph (c)(1) of this section, increased by the excess of 72 over the age of the employee on that birthday.

(l) *Early commencement for surviving spouse.* Generally, the determination of whether a stream of payments satisfies the requirements of this section is made as of the date on which distributions are required to commence. However, if the employee dies prior to the required beginning date, distributions commence to the surviving spouse of an employee over a period permitted under section 401(a)(9)(B)(iii)(II) prior to the date on which distributions are required to commence, and the distribution form is an annuity under which distributions are made in accordance with the provisions of paragraph (a) of this section, then the annuity starting date will be considered the required beginning date for purposes of section 401(a)(9)(B)(iv)(II). Thus, if the surviving spouse dies after commencing benefits and before the date described in 401(a)(9)(B)(iv)(II), then after the surviving spouse's death—

(1) The annuity distributions must continue to be made in accordance with paragraph (a) of this section over the remaining period over which distributions commenced; and

(2) The rules in § 1.401(a)(9)–3(e)(1) relating to the death of the surviving spouse before the required beginning date under section 401(a)(9)(B)(iv)(II) will not apply upon the death of the surviving spouse.

(m) *Determination of entire interest under annuity contract*—(1) *General rule.* Prior to the date that an annuity contract under an individual account plan is annuitized, the interest of an employee or beneficiary under that contract is treated as an individual account for purposes of section 401(a)(9). Thus, the required minimum distribution for any year with respect to that interest is determined under § 1.401(a)(9)–5 rather than this section. See § 1.401(a)(9)–5(a)(5) for rules relating to the satisfaction of section 401(a)(9) in the year that annuity payments commence, § 1.401(a)(9)–5(c)(4) for rules relating to QLACs (as defined in paragraph (q) of this section), and § 1.401(a)(9)–5(a)(5)(iii) for rules

relating to the purchase of an annuity contract with a portion of an employee's account balance.

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

(3) *Exclusions—(i) Additional value does not exceed 20 percent.* The actuarial present value of any additional benefits provided under an annuity contract described in paragraph (m)(2) of this section may be disregarded if the sum of the dollar amount credited to the employee or beneficiary under the contract and the actuarial present value of the additional benefits is no more than 120 percent of the dollar amount credited to the employee or beneficiary under the contract and the additional

benefits are one or both of the following—

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

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

(ii) *Return of premium death benefit.* If the only additional benefit provided under the contract is the additional benefit described in paragraph (m)(3)(i)(B) of this section, the additional benefit may be disregarded regardless of its value in relation to the dollar amount credited to the employee or beneficiary under the contract.

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

(4) *Examples.* The examples in this paragraph (m)(4), which use a 5 percent interest rate and the mortality table used for distributions subject to section 417(e)(3) provided in Notice 2019–67, 2019–52 I.R.B. 1510, illustrate the application of the rules in this paragraph (m):

(i) *Example 1—(A) Facts.* G is the owner of a variable annuity contract (Contract S) under an individual account plan that has not been annuitized. Contract S provides a death benefit until the end of the calendar year in which the owner attains the age of 84 equal to the greater of the current

Contract S notional account value (dollar amount credited to G under the contract) and the largest notional account value at any previous policy anniversary reduced proportionally for subsequent partial distributions (High Water Mark). Contract S provides a death benefit in calendar years after the calendar year in which the owner attains age 84 equal to the current notional account value. Contract S provides that assets within the contract may be invested in a Fixed Account at a guaranteed rate of 2 percent. Contract S provides no other additional benefits.

(B) *Actuarial calculations.* At the end of 2028, when G has an attained age of 78 and 9 months, the notional account value of Contract S (after the distribution for 2028 of 4.55% of the notional account value as of December 31, 2027) is \$550,000, and the High Water Mark, before adjustment for any withdrawals from Contract S in 2028, is \$1,000,000. Thus, Contract S will provide additional benefits (that is, the death benefits in excess of the notional account value) through 2034, the year S turns 84. The actuarial present value of these additional benefits at the end of 2028 is determined to be \$67,978 (12 percent of the notional account value). In making this determination, the following assumptions are made: On average, deaths occur mid-year; the investment return on G's notional account value is 2 percent per annum; and minimum required distributions (determined without regard to additional benefits under the Contract S) are made at the end of each year. The following two tables summarize the actuarial methodology used in determining the actuarial present value of the additional benefit.

TABLE 2—APPLICABLE TO PARAGRAPH (m)(4)(i)(B)

Year	Death benefit during year	End-of-year notional account before withdrawal	Average notional account	Withdrawal at end of year	End-of-year notional account after withdrawal
2028 .....	\$1,000,000	.....	.....	.....	\$550,000
2029 .....	<sup>1</sup> 954,545	<sup>2</sup> \$561,000	<sup>3</sup> \$555,500	<sup>4</sup> \$26,606	534,934
2030 .....	909,306	545,633	540,283	26,482	519,151
2031 .....	864,291	529,534	524,342	26,760	502,774
2032 .....	819,740	512,829	507,801	27,177	485,652
2033 .....	775,430	495,365	490,509	27,438	467,927
2034 .....	731,620	477,286	472,606	27,853	449,433

<sup>1</sup> \$1,000,000 death benefit reduced 4.55 percent for withdrawal during 2028.

<sup>2</sup> Notional account value at end of preceding year (after distribution) increased by 2 percent return for year.

<sup>3</sup> Average of \$550,000 notional account value at end of preceding year (after distribution) and \$561,000 notional account value at end of current year (before distribution).

<sup>4</sup> December 31, 2028 notional account (before distribution) divided by uniform lifetime table age 79 factor of 21.1.

TABLE 3—APPLICABLE TO PARAGRAPH (m)(4)(i)(B)

Year	Survivorship to start of year	Interest discount to end of 2028	Mortality rate during year	Discounted additional benefits within year
2028 .....	.....	.....	.....	.....
2029 .....	1.00000	.97590	<sup>5</sup> .03321	12,933
2030 .....	.96679	<sup>6</sup> .92943	.03739	712,398
2031 .....	<sup>8</sup> .93064	.88517	.04198	11,756
2032 .....	.89157	.84302	.04715	11,055
2033 .....	.84953	.80288	.05305	10,310
2034 .....	.80446	.76464	.05979	9,526
	.....	.....	.....	67,978

<sup>5</sup> One-quarter age 78 rate plus three-quarters age 79 rate.

<sup>6</sup> Five percent discounted 18 months ( $1.05^{(-1.5)}$ ).

<sup>7</sup> Blended age 79/age 80 mortality rate (.03739) multiplied by the \$369,023 excess of death benefit over the average notional account value (\$909,306 less \$540,283) multiplied by .96679 probability of survivorship to the start of 2030 multiplied by 18-month interest discount of .92943.

<sup>8</sup> Survivorship to start of preceding year (.96679) multiplied by probability of survivorship during prior year (1-.03739).

(C) *Conclusion.* Because Contract S provides that, in the case of a distribution, the value of the additional death benefit (which is the only additional benefit available under the contract) is reduced by an amount that is at least proportional to the reduction in the notional account value and, at age 78 and 9 months, the sum of the notional account value (dollar amount credited to the employee under the contract) and the actuarial present value

of the additional death benefit is no more than 120 percent of the notional account value, the exclusion under paragraph (m)(2)(iii)(B) of this section is applicable for 2029. Therefore, for purposes of applying the rules in § 1.401(a)(9)–5, the entire interest under Contract S may be determined as the notional account value (that is, without regard to the additional death benefit).

(ii) *Example 2—(A) Facts.* The facts are the same as in *Example 1* in

paragraph (m)(4)(i) of this section except that the notional account value is \$550,000 at the end of 2028. In this instance, the actuarial present value of the death benefit in excess of the notional account value in 2028 is determined to be \$97,273 (24 percent of the notional account value). The following two tables summarize the actuarial methodology used in determining the actuarial present value of the additional benefit.

TABLE 4—APPLICABLE TO PARAGRAPH (m)(4)(ii)(A)

Year	Death benefit during year	End-of-year notional account before withdrawal	Average notional account	Withdrawal at end of year	End-of-year notional account after withdrawal
2028 .....	\$1,000,000	.....	.....	.....	\$400,000
2029 .....	954,545	\$408,000	\$404,000	\$18,957	389,043
2030 .....	909,306	396,824	392,933	19,260	377,564
2031 .....	864,291	385,115	381,339	19,462	365,653
2032 .....	819,740	372,966	369,310	19,765	353,201
2033 .....	775,430	360,265	356,733	19,955	340,310
2034 .....	731,620	347,116	343,713	20,257	326,859

TABLE 5—APPLICABLE TO PARAGRAPH (m)(4)(ii)(A)

Year	Survivorship to start of year	Interest discount to end of 2028	Mortality rate during year	Discounted additional benefits within year
2028 .....	.....	.....	.....	.....
2029 .....	1.00000	.97590	.03321	\$17,843
2030 .....	.96679	.92943	.03739	17,349
2031 .....	.93064	.88517	.04198	16,701
2032 .....	.89157	.84302	.04715	15,963
2033 .....	.84953	.80288	.05305	15,150
2034 .....	.80446	.76464	.05979	14,267
	.....	.....	.....	97,273

(B) *Conclusion.* Because the sum of the notional account balance and the actuarial present value of the additional death benefit is more than 120 percent

of the notional account value, the exclusion under paragraph (m)(3)(i) of this section does not apply for 2029. Therefore, for purposes of applying the

rules in § 1.401(a)(9)–5, the entire interest under Contract S must include the actuarial present value of the additional death benefit.

(n) *Change in annuity payment period*—(1) *In general.* An annuity payment period may be changed in accordance with the reannuitization provisions set forth in paragraph (n)(2) of this section or in association with an annuity payment increase described in paragraph (o) of this section.

(2) *Reannuitization.* If, in a stream of annuity payments that otherwise satisfies section 401(a)(9), the annuity payment period is changed and the annuity payments are modified in association with that change, this modification will not cause the distributions to fail to satisfy section 401(a)(9) provided the conditions set forth in paragraph (n)(3) of this section are satisfied, and—

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

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

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

(3) *Conditions.* In order to modify a stream of annuity payments in accordance with paragraph (n)(2) of this section, the following conditions must be satisfied—

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

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

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

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

(4) *Examples.* For the purposes of the examples in this paragraph (n)(4), assume that the applicable segment rates under section 417(e)(3) are 1.00%, 3.00%, and 4.00%, and the Applicable Mortality Table under section 417(e)(3)

is the mortality table provided in Notice 2020–85, 2020–51 I.R.B. 1645. In addition, assume that the section 415 limit at age 72 for a straight life annuity is \$280,000 (which is the lesser of the annual benefit under section 415(b)(1)(A), as adjusted pursuant to section 415(d) and further adjusted for age 72 in accordance with § 1.415(b)–1(e)(1)(i), and 100% of the participant's average compensation for the participant's high 3 years):

(i) *Example 1*—(A) *Facts*—(1)

*Background.* Participant D has 10 years of participation in a frozen defined benefit plan (Plan W). D is not retired and elects to receive distributions from Plan W in the form of a straight life (that is level payment) annuity with annual payments of \$215,000 per year beginning in 2025 at a date when D has an attained age of 72. Plan W offers non-retired employees in pay status the opportunity to modify their annuity payments due to an associated change in the payment period at retirement. Plan W treats the date of the change in payment period as a new annuity starting date for purposes of sections 415 and 417. Thus, for example, the plan provides a new qualified and joint survivor annuity election and obtains spousal consent. Plan W determines modifications of annuity payment amounts at retirement so that the present value of future new annuity payment amounts (taking into account the new associated payment period) is actuarially equivalent to the present value of future pre-modification annuity payments (taking into account the pre-modification annuity payment period). Actuarial equivalency for this purpose is determined using the applicable segment rates under section 417(e)(3)(C) and the Applicable Mortality Table as of the date of modification.

(2) *Payment of retirement benefits to Participant D.* D retires in 2029 at the age of 76 and, after receiving four annual payments of \$215,000, elects to receive the remaining distributions from Plan W in the form of an immediate final lump sum payment of \$2,316,180. Because payment of retirement benefits in the form of an immediate final lump sum payment satisfies (in terms of form) section 401(a)(9), the condition under paragraph (n)(3)(i) of this section is met.

(B) *Analysis.* Because Plan W treats a modification of an annuity payment stream at retirement as a new annuity starting date for purposes of sections 415 and 417, the condition under paragraph (n)(3)(ii) of this section is met. After taking into account the modification, the annuity stream determined as of the original annuity starting date consists of annual

payments beginning at age 72 of \$215,000, \$215,000, \$215,000, \$215,000, and \$2,316,180. This benefit stream is actuarially equivalent to a straight life annuity at age 72 of \$276,768, calculated in accordance with section 415(b)(2)(E)(ii), which is an amount less than the section 415 limit determined at the original annuity starting date. Thus, the condition under paragraph (n)(3)(iii) of this section is met.

(C) *Conclusion.* Because a stream of annuity payments in the form of a straight life annuity satisfies section 401(a)(9), and because each of the conditions under paragraph (n)(3) of this section are satisfied, the modification of annuity payments to D described in this example meets the requirements of this paragraph (n).

(ii) *Example 2*—(A) *Facts.* The facts are the same as in *Example 1* in paragraph (n)(4)(i) of this section except that the straight life annuity payments are paid at a rate of \$230,000 per year and after D retires the lump sum payment at age 76 is \$2,477,774. Thus, after taking into account the modification, the annuity stream determined as of the original annuity starting date consists of annual payments beginning at age 72 of \$230,000, \$230,000, \$230,000, \$230,000, and \$2,477,774.

(B) *Conclusion.* The benefit stream described in paragraph (n)(4)(ii)(A) of this section is actuarially equivalent to a straight life annuity at age 72 of \$296,078, calculated in accordance with section 415(b)(2)(E)(ii), which exceeds the section 415 limit determined at the original annuity starting date. Thus, the lump sum payment to D fails to satisfy the condition under paragraph (n)(3)(iii) of this section. Therefore, the lump sum payment to D fails to meet the requirements of this paragraph (n) and fails to satisfy the requirements of section 401(a)(9).

(iii) *Example 3*—(A) *Facts*—(1)

*Background.* Participant E has 10 years of participation in Plan X, a frozen defined benefit plan. E retires in 2025 at a date when E's attained age is 72. E elects to receive annual distributions from Plan X in the form of a 27-year period certain annuity (that is, a 27-year annuity payment period without a life contingency) paid at a rate of \$37,000 per year beginning in 2025 with future payments increasing at a rate of 4.00% per year (that is, the 2026 payment will be \$38,480, the 2027 payment will be \$40,019 and so on). Plan X offers participants in pay status whose annuity payments are in the form of a term-certain annuity the opportunity to modify their payment period at any time and treats the modifications as a new

annuity starting date for the purposes of sections 415 and 417. Thus, for example, the plan provides a new qualified and joint survivor annuity election and obtains spousal consent.

(2) *Plan provisions for determination of actuarial equivalence.* Plan X determines modifications of annuity payment amounts so that the present value of future new annuity payment amounts (taking into account the new associated payment period) is actuarially equivalent to the present value of future pre-modification annuity payments (taking into account the pre-modification annuity payment period). Actuarial equivalency for this purpose is determined using 5.00% and the Applicable Mortality Table as of the date of modification.

(3) *Modification of retirement benefits paid to Participant E.* In 2028, E, after receiving annual payments of \$37,000, \$38,480, and \$40,019, elects to receive the remaining distributions from Plan W in the form of a straight life annuity paid with annual payments of \$92,133 per year.

(B) *Analysis.* Because payment of retirement benefits in the form of a straight life annuity satisfies (in terms of form) section 401(a)(9), the condition under paragraph (n)(3)(i) of this section is met. Because Plan X treats a modification of an annuity payment stream at retirement as a new annuity starting date for purposes of sections 415 and 417, the condition under paragraph (n)(3)(ii) of this section is met. After taking into account the modification, the annuity stream determined as of the original annuity starting date consists of annual payments beginning at age 72 of \$37,000, \$38,480, and \$40,019, and a straight life annuity beginning at age 75 of \$92,133. This benefit stream is actuarially equivalent to a straight life annuity at age 72 of \$81,940, calculated in accordance with section 415(b)(2)(E)(i), which is an amount less than the section 415 limit determined at the original annuity starting date. Thus, the condition under paragraph (n)(3)(iii) of this section is met.

(C) *Conclusion.* Because a stream of annuity payments in the form of a straight life annuity satisfies section 401(a)(9), and each of the conditions under paragraph (n)(3) of this section are satisfied, the modification of annuity payments to E meets the requirements of this paragraph (n).

(o) *Increase in annuity payments—(1) General rules.* Notwithstanding the general rule under paragraph (a)(1) of this section prohibiting increases in annuity payments, the following

increases in annuity payments are permitted—

(i) An annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index (as defined in paragraph (o)(2) of this section) for a 12-month period ending in the year during which the increase occurs or the prior year;

(ii) A percentage increase that occurs at specified times (for example, at specified ages) and does not exceed the cumulative total of annual percentage increases in an eligible cost-of-living index (as defined in paragraph (o)(2) of this section) after the annuity starting date, or if later, the date of the most recent percentage increase;

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

(iv) An increase to pay increased benefits that result from a plan amendment;

(v) An increase to allow a beneficiary to convert the survivor portion of a joint and survivor annuity into a single-sum distribution upon the employee's death;

(vi) An increase to the extent permitted in accordance with paragraph (o)(3), (4), or (5) of this section; or

(vii) An increase resulting from the resumption of benefits that were suspended pursuant to section 411(a)(3)(B), section 418E, or section 432(e)(9).

(2) *Eligible cost of living index—(i) In general.* For purposes of this paragraph (o), an eligible cost-of-living index means an index described in paragraph (o)(2)(ii), (iii), or (iv) of this section.

(ii) *Consumer Price Index.* An index is described in this paragraph (o)(2)(ii) if it is a consumer price index that is based on prices of all items (or all items excluding food and energy) and issued by the Bureau of Labor Statistics, including an index for a specific population (for example, urban consumers or urban wage earners and clerical workers) and an index for a geographic area or areas (for example, a metropolitan area or State).

(iii) *Consumer price index with banking.* An index is described in this paragraph (o)(2)(iii) if it is a percentage adjustment based on a cost-of-living index described in paragraph (o)(2)(ii) of this section, or a fixed percentage if less.

In any year when the cost-of-living index is lower than the fixed percentage, the fixed percentage may be treated as an increase in an eligible cost-of-living index, provided it does not exceed the sum of—

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

(B) The accumulated excess of the annual cost-of-living index from each prior year over the fixed annual percentage used in that year (reduced by any amount previously utilized under this paragraph (o)(2)(iii)(B)).

(iv) *Adjustment based on compensation for position.* An index is described in this paragraph (o)(2)(iv) if it is a percentage adjustment based on the increase in compensation for the position held by the employee at the time of retirement, and provided under either—

(A) The terms of a governmental plan (within the meaning of section 414(d)), or

(B) The terms of a nongovernmental plan, as in effect on April 17, 2002.

(3) *Additional permitted increases for certain annuity contracts purchased from insurance companies.* In the case of payments paid from an annuity contract purchased from an insurance company, if the total future expected payments (determined in accordance with paragraph (o)(6)(iii) of this section) exceed the total value being annuitized (within the meaning of paragraph (o)(6)(i) of this section), the payments under the contract will not fail to satisfy the nonincreasing payment requirement in paragraph (a)(1) of this section merely because the payments are increased in accordance with one or more of the following—

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

(ii) As a result of dividend payments or other payments that result from actuarial gains (within the meaning of paragraph (o)(6)(ii) of this section), but only if actuarial gain is measured no less frequently than annually and the resulting dividend payments or other payments are either paid no later than the year following the year for which the actuarial experience is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured); and

(iii) An acceleration of payments under the annuity (within the meaning of paragraph (o)(6)(iv) of this section).

(4) *Additional permitted increases for all annuity contracts purchased from insurance companies.* Payments made from an annuity contract purchased

from an insurance company will not fail to satisfy the nonincreasing payment requirement in paragraph (a)(1) of this section merely because the payments are increased in accordance with one or more of the following—

(i) To provide a final payment upon the death of the employee that does not exceed the excess of total value being annuitized (within the meaning of paragraph (a)(5)(i) of this section) over the total of payments before the death of the employee;

(ii) To provide an acceleration of payments (within the meaning of paragraph (o)(6)(iv) of this section) that is required to comply with § 1.401(a)(9)–5(e); or

(iii) To provide a short-term acceleration of payments under the annuity, under which up to one year of annuity payments that would otherwise satisfy the requirements of this section are paid in advance of when the payments were scheduled to be made.

(5) *Additional permitted increases for annuity payments from a qualified trust.* Annuity payments made under a defined benefit plan qualified under section 401(a) (other than annuity payments under an annuity contract purchased from an insurance company that satisfy paragraph (a)(3) of this section) will not fail to satisfy the nonincreasing payment requirement in paragraph (a)(1) of this section merely because the payments are increased in accordance with one of the following—

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

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

(iii) As a result of dividend payments or other payments that result from actuarial gains (within the meaning of paragraph (o)(6)(ii) of this section), but only if—

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

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

following the year for which the actuarial experience is measured);

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

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

(E) The payments are not increasing by a constant percentage as described in paragraph (o)(5)(i) of this section.

(6) *Definitions.* For purposes of this paragraph (o), the following definitions apply—

(i) *Total value being annuitized.* Total value being annuitized means:

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

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

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

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

(iii) *Total future expected payments.* Total future expected payments means the total future payments expected to be made under the annuity contract as of the date the contract is annuitized, based on the mortality rates contained in § 1.401(a)(9)–9(e).

(iv) *Acceleration of payments.* Acceleration of payments means a shortening of the payment period with respect to an annuity or a full or partial commutation of the future annuity payments. An increase in the payment amount will be treated as an acceleration of payments in the annuity only if the total future expected

payments under the annuity (including the amount of any payment made as a result of the acceleration) is decreased as a result of the change in payment period.

(7) *Examples.* This paragraph (o) is illustrated by the following examples.

(i) *Example 1. Variable annuity—(A) Facts.* A retired participant (Z1) in Plan X, a defined contribution plan, attains age 72 in 2021. Z1 elects to purchase Contract Y1 from Insurance Company W in 2021. Contract Y1 is a single life annuity contract with a 10-year period certain. Contract Y1 provides for an initial annual payment calculated with an assumed interest rate (AIR) of 3 percent. Subsequent payments are determined by multiplying the prior year's payment by a fraction, the numerator of which is 1 plus the actual return on the separate account assets underlying Contract Y1 since the preceding payment and the denominator of which is 1 plus the AIR during that period. The value of Z1's account balance in Plan X at the time of purchase is \$105,000, and the purchase price of Contract Y1 is \$105,000. Contract Y1 provides Z1 with an initial payment of \$7,200 at the time of purchase in 2021.

(B) *Conclusion.* Based on the mortality rates in § 1.401(a)(9)–9(e), the total future expected payments to Z1 under Contract Y1 are \$128,880. Because the total future expected payments on the date the contract is annuitized exceed the total value being annuitized and payments increase only as a result of actuarial gain, with increases from actuarial gain, beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity, distributions received by Z1 from Contract Y1 meet the requirements of paragraph (o)(3)(ii) of this section.

(ii) *Example 2. Participating annuity—(A) Facts.* A retired participant (Z2) in Plan X, a defined contribution plan, attains age 72 in 2021. Z2 elects to purchase Contract Y2 from Insurance Company W in 2021. Contract Y2 is a participating single life annuity contract with a 10-year period certain. Contract Y2 provides for level annual payments with dividends paid in a lump sum in the year after the year for which the actuarial experience is measured or paid out levelly beginning in the year after the year for which the actuarial gain is measured over the remaining lifetime and period certain, that is, the period certain ends at the same time as the original period certain. Dividends are determined annually by the Board of Directors of Company W based upon a comparison of actual

actuarial experience to expected actuarial experience in the past year. The value of Z2's account balance in Plan X at the time of purchase is \$265,000, and the purchase price of Contract Y2 is \$265,000. Contract Y2 provides Z2 with an initial payment of \$16,000 in 2021. Based on the mortality rates in § 1.401(a)(9)–9(e), the total future expected payments to Z2 under Contract Y2 are \$286,400.

(B) *Conclusion.* Because the total future expected payments on the date the contract is annuitized exceed the total value being annuitized and payments increase only as a result of actuarial gain, with those increases, beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity, distributions received by Z2 from Contract Y2 meet the requirements of paragraph (o)(3)(ii) of this section.

(iii) *Example 3. Participating annuity with dividend accumulation—(A) Facts.* The facts are the same as in *Example 2* in paragraph (o)(7)(ii) of this section except that the annuity provides a dividend accumulation option under which Z2 may defer receipt of the dividends to a time selected by Z2.

(B) *Conclusion.* Because the dividend accumulation option permits dividends to be paid later than the end of the year following the year for which the actuarial experience is measured or as a stream of payments that increase only as a result of actuarial gain, with those increases beginning no later than the next year, paid in the same form as the payment of the annuity in *Example 2* in paragraph (o)(7)(ii) of this section over the remaining period of the annuity, the dividend accumulation option does not meet the requirements of paragraph (o)(3)(ii) of this section. Neither does the dividend accumulation option fit within any of the other permissible increases described in paragraph (o)(3) of this section. Accordingly, the dividend accumulation option causes the contract, and consequently any distributions from the contract, to fail to meet the requirements of this paragraph (o) and thus to fail to satisfy the requirements of section 401(a)(9).

(iv) *Example 4. Participating annuity with dividends used to purchase additional death benefits—(A) Facts.* The facts are the same as in *Example 2* in paragraph (o)(7)(ii) of this section, except that the annuity provides an option under which actuarial gain under the contract is used to provide additional death benefit protection for Z2.

(B) *Conclusion.* Because this option permits payments as a result of actuarial

gain to be paid later than the end of the year following the year for which the actuarial experience is measured or as a stream of payments that only increase as a result of actuarial gain, with increases as a result of actuarial gain beginning no later than the next year, paid in the same form as the payment of the annuity described in *Example 2* in paragraph (o)(7)(ii) of this section over the remaining period of the annuity, the option does not meet the requirements of paragraph (o)(3)(ii) of this section. Neither does the option fit within any of the other permissible increases described in paragraph (o)(3) of this section. Accordingly, the addition of the option causes the contract, and consequently any distributions from the contract, to fail to meet the requirements of this paragraph (o) and thus to fail to satisfy the requirements of section 401(a)(9).

(v) *Example 5. Annuity with a fixed percentage increase—(A) Facts.* A retired participant (Z3) in Plan X, a defined contribution plan, attains age 72 in 2021. Z3 elects to purchase Contract Y3 from Insurance Company W. Contract Y3 is a single life annuity contract with a 20-year period certain (which does not exceed the maximum period certain permitted under paragraph (c)(1) of this section) with fixed annual payments increasing 3 percent each year. The value of Z3's account balance in Plan X at the time of purchase is \$110,000, and the purchase price of Contract Y3 is \$110,000. Contract Y3 provides Z3 with an initial payment of \$6,000 at the time of purchase in 2021. Based on the mortality rates in § 1.401(a)(9)–9(e), the total future expected payments to Z3 under Contract Y3 are \$129,600.

(B) *Conclusion.* Because the total future expected payments on the date the contract is annuitized exceed the total value being annuitized and payments increase only as a constant percentage applied not less frequently than annually, distributions received by Z3 from Contract Y3 meet the requirements of paragraph (o)(3)(i) of this section.

(vi) *Example 6. Annuity with excessive percentage increase—(A) Facts.* The facts are the same as in *Example 5* in paragraph (o)(7)(v) of this section except that the initial payment is \$5,000 and the annual rate of increase is 4 percent. In this example, based on the mortality rates in § 1.401(a)(9)–9(e), the total future expected payments are \$108,000.

(B) *Conclusion.* Because the total future expected payments are less than the total value being annuitized (the \$110,000 used to purchase Contract Y3),

distributions received by Z3 do not meet the requirements of paragraph (o)(3) of this section, and thus fail to meet the requirements of section 401(a)(9).

(vii) *Example 7. Annuity with full commutation feature—(A) Facts.* A retired participant (Z4) in Plan X, a defined contribution plan, attains age 78 in 2021. Z4 elects to purchase Contract Y4 from Insurance Company W. Contract Y4 provides for a single life annuity with a 10-year period certain (which does not exceed the maximum period certain permitted under paragraph (c) of this section) with annual payments. Contract Y4 provides that Z4 may cancel Contract Y4 at any time before Z4 attains age 84, and receive, on the next payment due date, a final payment in an amount determined by multiplying the initial payment amount by a factor obtained from Table M of Contract Y4 using Z4's age as of Z4's birthday in the calendar year of the final payment. The value of Z4's account balance in Plan X at the time of purchase is \$450,000, and the purchase price of Contract Y4 is \$450,000. Contract Y4 provides Z4 with an initial payment in 2021 of \$40,000. The factors in Table M are as follows:

TABLE 6—APPLICABLE TO PARAGRAPH (o)(7)(vii)(A)

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

(B) *Determination of acceleration of payments.* Based on the mortality rates in § 1.401(a)(9)–9(e), the total future expected payments to Z4 under Contract Y4 are \$560,000. Because the total future expected payments on the purchase date exceed the total value being annuitized (that is, the \$450,000 used to purchase Contract Y4), the permitted increases set forth in paragraph (o)(3) of this section are available. Furthermore, because the factors in Table M are less than the present value factors at each of the ages based on the mortality rates in § 1.401(a)(9)–9(e), the final payment is always less than the total future expected payments. Thus, the final payment is an acceleration of payments within the meaning of paragraph (o)(3)(iii) of this section.

(C) *Application to cancellation immediately before attainment of age 84.* As an illustration of paragraph (o)(7)(vii)(B) of this section, if

Participant Z4 were to elect to cancel Contract Y4 on the day before Z4 was to attain age 84, the contractual final payment would be \$320,000. This amount is determined as \$40,000 (the annual payment amount due under Contract Y4) multiplied by 8.0 (the factor in Table M for the next payment due date, age 84). Based on the mortality rates in § 1.401(a)(9)–9(e), the total future expected payments under Contract Y4 at age 84 before the final payment is \$360,000. Because \$320,000 (the contractual final payment) is less than \$360,000 (the total future expected payments under the annuity contract, determined before the election), the final payment is an acceleration of payments within the meaning of paragraph (o)(3)(iii) of this section.

(viii) *Example 8. Annuity with partial commutation feature*—(A) *Facts*. The facts are the same as in *Example 7* in paragraph (o)(7)(vii) of this section except that the annuity provides that Z4 may request, at any time before Z4 attains age 84, an ad hoc payment on his next payment due date with future payments reduced by an amount equal to the ad hoc payment divided by the factor obtained from Table M (from paragraph (o)(7)(vii) of this section) corresponding to Z4's age at the time of the ad hoc payment.

(B) *Analysis and conclusion*. Because, at each age, the factors in Table M are less than the corresponding present value factors based on the mortality rates in § 1.401(a)(9)–9(e), total future expected payments under Contract Y4 will decrease after an ad hoc payment. Thus, ad hoc distributions received by Z4 from Contract Y4 will satisfy the requirements of paragraph (o)(3)(iii) of this section.

(C) *Application to ad hoc payment received immediately before attainment of age 84*. As an illustration of paragraph (o)(7)(viii)(A) of this section, if Z4 were to request, on the day before Z4 was to attain age 84, an ad hoc payment of \$100,000 on the next payment due date, the recalculated annual payment amount would be reduced to \$27,500. This amount is determined as \$40,000 (the amount of Z4's next annual payment) reduced by \$12,500 (the \$100,000 ad hoc payment divided by the Table M factor at age 84 of 8.0). Thus, Z4's total future expected payments after the ad hoc payment (and including the \$100,000 ad hoc payment), based on the mortality rates in § 1.401(a)(9)–9(e), are equal to \$347,500. Note that this \$347,500 amount is less than the amount of Z4's total future expected payments before the ad hoc payment, based on the mortality rates in § 1.401(a)(9)–9(e), of

\$360,000, and the requirements of paragraph (o)(3)(iii) of this section are satisfied.

(ix) *Example 9. Annuity with backloaded increases*—(A) *Facts*. A retired participant (Z5) in Plan X, a defined contribution plan, attains age 72 in 2021. Z5 elects to purchase annuity Contract Y5 from Insurance Company W in 2021 with a premium of \$1,000,000. Contract Y5 is a single life annuity contract with a 20-year period certain. Contract Y5 provides for an initial payment of \$200,000, a second payment one year from the time of purchase of \$38,000, and 18 succeeding annual payments, each increasing at a constant percentage rate of 4.5 percent from the preceding payment.

(B) *Conclusion*. Contract Y5 fails to meet the requirements of section 401(a)(9) because the total future expected payments without regard to any increases in the annuity payment, based on the mortality rates in § 1.401(a)(9)–9(e), are only \$982,800 (that is, an amount that does not exceed the total value used to purchase the annuity).

(p) *Payments to children*—(1) *In general*. Payments under a defined benefit plan or annuity contract that are made to an employee's child until the child reaches the age of majority as provided in paragraph (p)(2) of this section (or dies, if earlier) may be treated, for purposes of section 401(a)(9), as if the payments under the defined benefit plan or annuity contract were made to the surviving spouse to the extent they become payable to the surviving spouse upon cessation of the payments to the child. Thus, when payments described in this paragraph (p)(1) become payable to the surviving spouse because the child attains the age of majority, there is not an increase in benefits under paragraph (a) of this section. Likewise, the age of the child receiving the payments described in this paragraph (p)(1) is not taken into consideration for purposes of the MDIB requirement of paragraph (b) of this section.

(2) *Age of majority*—(i) *General rule*. Except as provided in paragraph (p)(2)(ii) of this section, the determination of when an employee's child attains the age of majority is made under the rules of § 1.401(a)(9)–4(e)(3).

(ii) *Exception for preexisting plan terms*. A defined benefit plan may apply a definition of the age of majority other than the definition in paragraph (p)(2)(i) of this section, but only if the plan terms regarding the age of majority—

(A) Were adopted on or before [DATE OF PUBLICATION IN THE **Federal Register**]; and

(B) Met the requirements of A–15 of 26 CFR 1.401(a)(9)–6, revised April 1, 2021.

(q) *Qualifying longevity annuity contract*—(1) *Definition of qualifying longevity annuity contract*. A qualifying longevity annuity contract (QLAC) is an annuity contract described in paragraph (d) of this section that is purchased from an insurance company for an employee and that, in accordance with the rules of application of paragraph (q)(4) of this section, satisfies each of the following requirements—

(i) Premiums for the contract satisfy the limitations of paragraph (q)(2) of this section;

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

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

(iv) After the required beginning date, the contract does not make available any commutation benefit, cash surrender right, or other similar feature;

(v) No benefits are provided under the contract after the death of the employee other than the benefits described in paragraph (q)(3) of this section;

(vi) When the contract is issued (or December 31, 2016, if later), the contract (or a rider or endorsement with respect to that contract) states that the contract is intended to be a QLAC; and

(vii) The contract is not a variable contract under section 817, an indexed contract, or a similar contract, except to the extent provided by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d) of this chapter).

(2) *Limitations on premiums*—(i) *In general*. The premiums paid with respect to the contract on a date (premium payment date) satisfy the limitations of this paragraph (q)(2) if they do not exceed the lesser of the dollar limitation in paragraph (q)(2)(ii) of this section or the percentage limitation in paragraph (q)(2)(iii) of this section. For purposes of this paragraph (q)(2)(i), if an insurance contract is exchanged for a contract intended to be a QLAC, the fair market value of the exchanged contract will be treated as a premium paid for the QLAC.

(ii) *Dollar limitation.* The dollar limitation as of a premium payment date is an amount by which \$125,000 (as adjusted under paragraph (q)(4)(ii)(A) of this section), exceeds the sum of—

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

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

(iii) *Percentage limitation.* The percentage limitation as of a premium payment date is an amount by which 25 percent of the employee's account balance under the plan (including the value of any QLAC held under the plan for the employee) as of that date, determined in accordance with paragraph (q)(4)(iii) of this section, exceeds the sum of—

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

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

(3) *Payments after death of the employee—(i) Surviving spouse is sole beneficiary—(A) Death on or after annuity starting date.* If the employee dies on or after the annuity starting date for the contract and the employee's surviving spouse is the sole beneficiary under the contract then, except as provided in paragraph (q)(3)(iv) of this section, the only benefit permitted to be paid after the employee's death is a life annuity payable to the surviving spouse under which the periodic annuity payment does not exceed 100 percent of the periodic annuity payment that is payable to the employee.

(B) *Death before annuity starting date.* If the employee dies before the annuity starting date and the employee's surviving spouse is the sole beneficiary under the contract then, except as provided in paragraph (q)(3)(iv) of this section, the only benefit permitted to be paid after the employee's death is a life annuity payable to the surviving spouse under which the periodic annuity payment does not exceed 100 percent of the periodic annuity payment that would have been payable to the employee as of the date that benefits to the surviving spouse commence. However, the annuity is permitted to exceed 100 percent of the periodic annuity payment that would have been payable to the employee to the extent necessary to satisfy the requirement to

provide a qualified preretirement survivor annuity (as defined under section 417(c)(2) of the Code or section 205(e)(2) of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (ERISA), pursuant to section 401(a)(11)(A)(ii) of the Code or section 205(a)(2) of ERISA). Any life annuity payable to the surviving spouse under this paragraph (q)(3)(i)(B) must commence no later than the date on which the annuity payable to the employee would have commenced under the contract if the employee had not died.

(ii) *Surviving spouse is not sole beneficiary—(A) Death on or after annuity starting date.* If the employee dies on or after the annuity starting date for the contract and the employee's surviving spouse is not the sole beneficiary under the contract then, except as provided in paragraph (q)(3)(iv) of this section, the only benefit permitted to be paid after the employee's death is a life annuity payable to the designated beneficiary under which the periodic annuity payment does not exceed the applicable percentage (determined under paragraph (q)(3)(iii) of this section) of the periodic annuity payment that is payable to the employee.

(B) *Death before annuity starting date.* If the employee dies before the annuity starting date and the employee's surviving spouse is not the sole beneficiary under the contract then, except as provided in paragraph (q)(3)(iv) of this section, the only benefit permitted to be paid after the employee's death is a life annuity payable to the designated beneficiary under which the periodic annuity payment is not in excess of the applicable percentage (determined under paragraph (q)(3)(iii) of this section) of the periodic annuity payment that would have been payable to the employee as of the date that benefits to the designated beneficiary commence under this paragraph (q)(3)(ii)(B). In any case in which the employee dies before the annuity starting date, any life annuity payable to a designated beneficiary under this paragraph (q)(3)(ii)(B) must commence by the last day of the calendar year following the calendar year of the employee's death.

(A) *Designated beneficiary who is not an eligible designated beneficiary.* Benefits paid to a designated beneficiary under this paragraph (q)(3)(ii) must satisfy the rules of section 401(a)(9)(H) and § 1.401(a)(9)-5(e).

(iii) *Applicable percentage—(A) Contracts without pre-annuity starting date death benefits.* If, as described in

paragraph (q)(3)(iii)(E) of this section, the contract does not provide for a pre-annuity starting date non-spousal death benefit, the applicable percentage is the percentage described in the table in paragraph (b)(3) of this section.

(B) *Contracts with set beneficiary designation.* If the contract provides for a set non-spousal beneficiary designation as described in paragraph (q)(3)(iii)(F) of this section (and is not a contract described in paragraph (q)(3)(iii)(E) of this section), the applicable percentage is the percentage described in the table set forth in paragraph (q)(3)(iii)(D) of this section.

(C) *Contracts providing for return of premium.* If the contract provides for a return of premium as described in paragraph (q)(3)(v) of this section, the applicable percentage is 0.

(D) *Applicable percentage table.* The applicable percentage is the percentage specified in following table for the adjusted employee/beneficiary age difference, determined in the same manner as in paragraph (b)(2)(iii)(A) of this section.

TABLE 7—APPLICABLE TO PARAGRAPH (q)(3)(iii)(D)

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

(E) *No pre-annuity starting date non-spousal death benefit.* A contract is described in this paragraph (q)(3)(iii)(E) if the contract provides that no benefit may be paid to a beneficiary other than the employee's surviving spouse after the employee's death—

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

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

(F) *Contracts permitting set non-spousal beneficiary designation.* A contract provides for a set non-spousal beneficiary designation as described in this paragraph (q)(3)(iii)(F) if the contract provides that, if the beneficiary under the contract is not the employee's surviving spouse, then benefits are payable to the beneficiary only if the beneficiary was irrevocably designated on or before the later of the date of purchase or the employee's required beginning date. A contract does not fail to be described in the preceding sentence merely because the surviving spouse becomes the sole beneficiary before the annuity starting date. In those circumstances, the requirements of paragraph (q)(3)(i) of this section apply and not the requirements of this paragraph (q)(3)(iii).

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

(v) *Return of premiums—(A) In general.* In lieu of a life annuity payable to a designated beneficiary under paragraph (q)(3)(i) or (ii) of this section, a QLAC may provide for a benefit to be paid to a beneficiary after the death of the employee up to the amount by which the premium payments made with respect to the QLAC exceed the payments already made under the QLAC.

(B) *Payments after death of surviving spouse.* If a QLAC is providing a life annuity to a surviving spouse (or will provide a life annuity to a surviving spouse) under paragraph (q)(3)(i) of this section, it may also provide for a benefit payable to a beneficiary after the death of both the employee and the spouse up to the amount by which the premium payments made with respect to the

QLAC exceed the payments already made under the QLAC.

(C) *Timing of return of premium payment and other rules.* A return of premium payment under this paragraph (q)(3)(v) must be paid no later than the end of the calendar year following the calendar year in which the employee dies. If the employee's death is after the required beginning date, the return of premium payment is treated as a required minimum distribution for the year in which it is paid and is not eligible for rollover. If the return of premium payment is paid after the death of a surviving spouse who is receiving a life annuity (or after the death of a surviving spouse who has not yet commenced receiving a life annuity after the death of the employee), the return of premium payment under this paragraph (q)(3)(v) must be made no later than the end of the calendar year following the calendar year in which the surviving spouse dies. If the surviving spouse's death is after the required beginning date for the surviving spouse, then the return of premium payment is treated as a required minimum distribution for the year in which it is paid and is not eligible for rollover.

(vi) *Multiple beneficiaries.* If an employee has more than one designated beneficiary under a QLAC, the rules in § 1.401(a)(9)–8(a) apply for purposes of paragraphs (q)(3)(i) and (ii) of this section.

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

(B) *Consequences of excess premiums and correction.* If an annuity contract fails to be a QLAC solely because a premium for the contract exceeds the limits under paragraph (q)(2) of this section, then the contract is not a QLAC beginning on the date on which the premium is paid and the value of the contract may not be disregarded under § 1.401(a)(9)–5(b)(4) as of the date on which the contract ceases to be a QLAC (unless the excess premium is returned

to the non-QLAC portion of the employee's account in accordance with the next sentence). However, if the excess premium is returned (either in cash or in the form of a contract that is not intended to be a QLAC) to the non-QLAC portion of the employee's account by the end of the calendar year following the calendar year in which the excess premium was originally paid, then the contract will not be treated as exceeding the limits under paragraph (q)(2) of this section at any time, and the value of the contract will not be included in the employee's account balance under § 1.401(a)(9)–5(b)(4). If the excess premium (including the fair market value of an annuity contract that is not intended to be a QLAC, if applicable) is returned to the non-QLAC portion of the employee's account after the last valuation date for the calendar year in which the excess premium was originally paid, then the employee's account balance for that calendar year must be increased to reflect that excess premium in the same manner as an employee's account balance is increased under § 1.401(a)(9)–7(b) to reflect a rollover received after the last valuation date. If the excess premium is returned to the non-QLAC portion of the employee's account as described in paragraph (q)(4)(ii)(B) of this section, it will not be treated as a violation of the requirement in paragraph (q)(1)(iv) of this section that the contract not provide a commutation benefit.

(C) *Application of 25-percent limit.* For purposes of the 25-percent limit under paragraph (q)(2)(iii) of this section, an employee's account balance on the date on which premiums for a contract are paid is the account balance as of the last valuation date preceding the date of the premium payment, adjusted by—

(1) Increasing the account balance for contributions allocated to the account during the period that begins after the valuation date and ends before the date the premium is paid; and

(2) Decreasing the account balance for distributions made from the account during that period.

(ii) *Dollar and age limitations subject to adjustments—(A) Dollar limitation.* The \$125,000 amount under paragraph (q)(2)(ii) of this section will be adjusted at the same time and in the same manner as the limits are adjusted under section 415(d), except that—

(1) The base period is the calendar quarter beginning July 1, 2013; and

(2) The amount of any increment to the limit that is not a multiple of \$10,000 will be rounded to the next lowest multiple of \$10,000.

(B) *Age limitation.* The maximum age set forth in paragraph (q)(1)(ii) of this section may be adjusted to reflect changes in mortality, with any adjusted age to be prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(C) *Prospective application of adjustments.* If a contract fails to be a QLAC because it does not satisfy the dollar limitation in paragraph (q)(2)(ii) of this section or the age limitation in paragraph (q)(1)(ii) of this section, any subsequent adjustment that is made pursuant to this paragraph (q)(4)(ii) will not cause the contract to become a QLAC.

(iii) *Determination of whether contract is intended to be a QLAC—(A) Structural deficiency.* If a contract fails to be a QLAC at any time for a reason other than an excess premium described in paragraph (q)(4)(i)(B) of this section, then, as of the date of purchase, the contract will not be treated as a QLAC (for purposes of § 1.401(a)(9)–5(c)(4)) or as a contract that is intended to be a QLAC (for purposes of paragraph (q)(2) of this section).

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

(iv) *Certain contract features permitted for QLACs—(A) Participating annuity contract.* An annuity contract does not fail to satisfy the requirement of paragraph (q)(1)(vii) of this section merely because it provides for the payment of dividends described in paragraph (n)(3)(iii) of this section.

(B) *Contracts with cost-of-living adjustments.* An annuity contract does not fail to satisfy the requirement of paragraph (q)(1)(vii) of this section merely because it provides for a cost-of-living adjustment as described in paragraph (o)(2) of this section.

(v) *Group annuity contract certificates.* The requirement under paragraph (q)(1)(vi) of this section that the contract state that it is intended to

be a QLAC when issued is satisfied if a certificate is issued under a group annuity contract and the certificate, when issued, states that the employee's interest under the group annuity contract is intended to be a QLAC.

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

(a) *Treatment of rollover from distributing plan.* If an amount is distributed by a plan, then the amount distributed is still taken into account by the distributing plan for purposes of satisfying the requirements of section 401(a)(9), even if part of the distribution is rolled over into another eligible retirement plan described in section 402(c)(8). However, an amount that is a required minimum distribution under section 401(a)(9) is not eligible to be rolled over (and is therefore includible in the taxpayer's gross income under section 402). For this purpose, the amount that constitutes a required minimum distribution for a calendar year is determined in accordance with § 1.402(c)–2(f) for a distribution to an employee and § 1.402(c)–2(j)(3) for a distribution to a beneficiary.

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

(c) *Treatment of transfer under transferor plan—(1) Generally not treated as distribution.* In the case of a transfer of an amount of an employee's benefit from one plan (transferor plan) to another plan (transferee plan), the transfer is not treated as a distribution by the transferor plan for purposes of section 401(a)(9). Instead, the benefit of the employee under the transferor plan is decreased by the amount transferred. However, if any portion of an employee's benefit is transferred in a distribution calendar year with respect

to that employee, in order to satisfy the requirements of 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 for the employee's first distribution calendar year based on the employee's benefit under the transferor plan before the transfer. The transferor plan may satisfy the minimum distribution requirement for the calendar year of the transfer (and the prior year if applicable) by segregating the amount that must be distributed from the employee's benefit and not transferring that amount. That amount may be retained by the transferor plan and must be distributed on or before the date required under section 401(a)(9).

(2) *Account balance decreased after transfer.* For purposes of determining any required minimum distribution for the calendar year 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 that valuation date, adjusted in accordance with § 1.401(a)(9)–5(b), is decreased by the amount transferred, valued as of the date of the transfer.

(d) *Treatment of transfer under transferee plan.* In the case of a transfer from one plan (transferor plan) to another plan (transferee plan), the benefit of the employee under the transferee plan is increased by the amount transferred in the same manner as if it were a plan receiving a rollover contribution under paragraph (b) of this section.

(e) *Treatment of spinoff or merger.* 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(b)) is treated as a transfer of the benefits of the employees involved. Consequently, the benefit and required minimum distribution with respect to each employee whose benefits are transferred will be determined in accordance with paragraphs (c) and (d) of this section.

**§ 1.401(a)(9)–8 Special rules.**

(a) *Use of separate accounts*—(1) *Separate application of section 401(a)(9) for beneficiaries*—(i) *In general.* Notwithstanding § 1.401(a)(9)–5(b) and except as otherwise provided in this paragraph (a)(1), after the death of the employee, section 401(a)(9) is applied separately with respect to the separate interests of each of the employee's beneficiaries under the plan provided that the separate accounting requirements of paragraph (a)(2) of this section are satisfied.

(ii) *Separate accounting requirements not timely satisfied.* If the separate accounting requirements of paragraph (a)(2) of this section are not satisfied until after the end of the calendar year following the calendar year of the employee's death, then for distribution calendar years after those requirements are satisfied—

(A) The aggregate required distribution for a distribution calendar year is determined without regard to the separate account rule in paragraph (a)(1)(i) of this section;

(B) The amount of the aggregate required distribution determined in accordance with paragraph (a)(1)(ii)(A) of this section is allocated among the beneficiaries based on each respective beneficiary's share of the total remaining balance of the employee's interest in the plan; and

(C) The allocated share for each beneficiary determined under paragraph (a)(2)(ii)(B) of this section is required to be distributed to that beneficiary.

(iii) *Separate application of section 401(a)(9) for trust beneficiaries*—(A) *General prohibition.* Except as provided in paragraph (a)(1)(iii)(B) of this section, section 401(a)(9) may not be applied separately to the separate interests of each of the beneficiaries of a trust that satisfies the requirements of § 1.401(a)(9)–4(f)(2). Thus, section 401(a)(9) may not be applied separately to each of the beneficiaries of the trust who are taken into account under § 1.401(a)(9)–4(f)(3). In this case, for purposes of the excise tax under section 4974, the trust is the payee with respect to the required distribution of the employee's interest in the plan.

(B) *Special rule for type I applicable multi-beneficiary trust.* Section 401(a)(9) may be applied separately with respect to the separate interests of the beneficiaries reflected in the separate trusts of each beneficiary of a type I applicable multi-beneficiary trust described in § 1.401(a)(9)–4(g)(2), provided that the separate accounting rules of paragraph (a)(2) of this section are satisfied.

(2) *Separate accounting requirements*—(i) *Allocation of post-death distributions required.* A separate accounting must allocate any post-death distribution with respect to a beneficiary's interest to the separate account of the beneficiary receiving that distribution.

(ii) *Allocation of other items.* A separate accounting must allocate all post-death investment gains and losses, contributions, and forfeitures, for the period prior to the establishment of the separate accounts on a pro rata basis in a reasonable and consistent manner among the separate accounts. In lieu of a pro rata allocation of investment gains and losses, a separate accounting may provide for the establishment of separate accounts that have separate investments under which the investment gains and losses attributable to assets held in a separate account are allocated only to that separate account.

(b) *Application of consent requirements.* Section 411(a)(11) and section 417(e) require employee and spousal consent to certain distributions of plan benefits while those benefits are immediately distributable. If an employee's normal retirement age is later than the employee's required beginning date and, therefore, benefits are still immediately distributable (within the meaning of § 1.411(a)–11(c)(4)), distributions must be made to the employee (or, if applicable, to the employee's spouse) in a manner that satisfies the requirements of section 401(a)(9) even though the employee (or, if applicable, the employee's spouse) fails to consent to the distribution. In that case, the benefit may be distributed in the form of a qualified joint and survivor annuity (QJSA) or in the form of a qualified preretirement survivor annuity (QPSA), as applicable, 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 employee (or, if applicable, the employee's spouse) and if the distribution otherwise meets the requirements of section 417. If the distribution is not required to be in the form of a QJSA to an employee or a QPSA to a surviving spouse, the required minimum distribution amount may be paid 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 employee (or, if applicable, the employee's spouse) and the distribution otherwise meets the requirements of section 417.

(c) *Definition of spouse.* Except as otherwise provided in paragraph (d)(1) of this section (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 satisfying the requirements of section 401(a)(9), an individual is the spouse or surviving spouse of an employee if the marriage of the employee and individual is recognized for federal tax purposes under the rules of § 301.7701–18. In the case of distributions after the death of an employee, for purposes of section 401(a)(9), the spouse of the employee is determined as of the date of death of the employee.

(d) *Treatment of QDROs*—(1) *Continued treatment of spouse.* A former spouse to whom all or a portion of the employee's benefit is payable pursuant to a qualified domestic relations order described in section 414(p) (QDRO) is treated as a spouse (including a surviving spouse) of the employee for purposes of satisfying the requirements of section 401(a)(9), including the minimum distribution incidental benefit requirement under section 401(a)(9)(G), 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.

(2) *Separate accounts*—(i) *In general*—(A) *Separate accounts while the employee is alive.* If a QDRO provides that an employee's benefit is to be divided and a portion is to be allocated to an alternate payee, that 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 (f)(2)(ii) of this section, distribution of a separate account allocated to an alternate payee pursuant to a QDRO must be made in accordance with section 401(a)(9). For example, distributions of the separate account will satisfy section 401(a)(9)(A) if required minimum distributions from the separate account during the employee's lifetime begin no 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 denominator determined under § 1.401(a)(9)–5(c) (determined by treating the spousal alternate payee as the employee's spouse).

(B) *Separate accounts after the death of the employee.* The determination of whether distributions from the separate account after the death of the employee to the alternate payee will be made in accordance with section 401(a)(9)(B)(i) or in accordance with section 401(a)(9)(B)(ii) or (iii) and (iv) will depend on whether distributions have begun as determined under § 1.401(a)(9)–2(a) (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 if distributions of the separate account allocated to the alternate payee pursuant to the QDRO are to be made to the alternate payee's beneficiary, then that beneficiary may be treated as a designated beneficiary for purposes of determining the required minimum distribution from the separate account after the death of the employee provided that the beneficiary of the alternate payee is an individual who is a beneficiary under the plan or specified to or in the plan. Specification in or pursuant to the QDRO is treated as specification to the plan.

(ii) *Satisfaction of section 401(a)(9) requirements.* Distribution of the separate account allocated to an alternate payee pursuant to a QDRO satisfies the requirements of section 401(a)(9)(A)(ii) if the separate account is distributed, beginning no 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 alternate payee). Also if, pursuant to § 1.401(a)(9)–3(b)(4)(iii) or (c)(5)(iii), the plan permits the employee to elect the distribution method that will apply upon the death of the employee, that election is to be made only by the alternate payee for purposes of distributing the alternate payee's separate account. If the alternate payee dies after distribution of the alternate payee's separate account has begun (determined under § 1.401(a)(9)–2(a)(3)) 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(c) or § 1.401(a)(9)–6(a) 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 in § 1.401(a)(9)–5(d) or § 1.401(a)(9)–6(b).

(3) *Other situations.* 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, that portion is not treated as a separate account (or segregated share) of the employee. Instead, that portion is aggregated with any amount distributed to the employee and treated as having been distributed to the employee for purposes of determining whether section 401(a)(9) has been satisfied with respect to that employee.

(e) *Application of section 401(a)(9) pending determination of whether a domestic relations order is a QDRO is being made.* A plan does not fail to satisfy the requirements of section 401(a)(9) merely because it fails to distribute an amount otherwise required to be distributed by section 401(a)(9) 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, any segregated amounts, as defined in section 414(p)(7)(A), are treated as though the amounts are not vested during the period and any distributions with respect to those amounts must be made under the relevant rules for nonvested benefits described in either § 1.401(a)(9)–5(g) or § 1.401(a)(9)–6(f), as applicable.

(f) *Application of section 401(a)(9) when insurer is in state delinquency proceedings.* A plan does not fail to satisfy the requirements of 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) 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 reason of those state proceedings. To the extent that a distribution otherwise required under section 401(a)(9) is not made during the state insurer delinquency proceedings, that amount and any additional amount accrued during that period are treated as though those amounts are not vested during that period and any distributions with respect to those amounts must be made under the relevant rules for nonvested benefits described in either § 1.401(a)(9)–5(g) or § 1.401(a)(9)–6(f), as applicable.

(g) *In-service distributions required to satisfy section 401(a)(9).* A plan does 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 the employee's required beginning date (as determined in accordance with § 1.401(a)(9)–2(b)) even though the employee has not retired or attained the normal retirement age under the plan as of the date on which the distributions commence. This rule applies without regard to whether the employee is a 5-percent owner with respect to the plan year ending in the calendar year in which distributions commence.

(h) *TEFRA section 242(b) elections—*  
(1) *In general.* Even though the distribution requirements added by the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248, 96 Stat. 324 (1982) (TEFRA), were retroactively repealed in 1984, the transitional election rule in section 242(b) of TEFRA (referred to as a section 242(b)(2) election in this paragraph (h)) was preserved. While sections 401(a)(11) and 417 must be satisfied with respect to any distribution subject to those requirements, satisfaction of those requirements is not considered a revocation of the section 242(b) election.

(2) *Application of section 242(b) election after transfer—*(i) *Section 242(b)(2) election made under transferor plan.* If an amount is transferred from one plan (transferor plan) to another plan (transferee 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 transferee plan separately accounts for the amount transferred. 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 or the transferee plan does not separately account for the amount transferred, the transfer is treated as a distribution and rollover of the amount transferred for purposes of this section.

(ii) *Section 242(b)(2) election made under transferee plan.* If 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 transferee plan must separately account for the amount transferred. If the transferee plan does not separately account for the amount transferred, the section 242(b)(2) election under the transferee plan is revoked, and subsequent distributions by the

transferee plan must satisfy section 401(a)(9).

(iii) *Spinoff, merger, or consolidation treated as transfer.* A spinoff, merger, or consolidation, as defined in § 1.414(l)-1(b), is treated as a transfer for purposes of the section 242(b)(2) election.

(3) *Application of section 242(b) election after rollover.* If an amount is distributed from one plan (distributing plan) and rolled over into another plan (receiving plan), the amount rolled over must be distributed from the receiving plan 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 all subsequent distributions by the distributing plan must satisfy section 401(a)(9). Finally, if the employee made a section 242(b)(2) election under the receiving plan and the election is still in effect, the receiving plan must separately account for the amount rolled over and distribute that amount in accordance with section 401(a)(9). If the receiving plan does not separately account for the amounts rolled over, any section 242(b)(2) election under the receiving plan is revoked and subsequent distributions under the receiving plan must satisfy section 401(a)(9).

(4) *Revocation of section 242(b) election—(i) In general.* A section 242(b)(2) election may be revoked after the required beginning date under section 401(a)(9)(C). However, if the section 242(b)(2) election is revoked after the required beginning date, and the total amount of the distributions that would have been required 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, then—

(A) The catch-up distribution described in paragraph (h)(4)(ii) of this section must be made by the end of the calendar year following the calendar year in which the revocation occurs; and

(B) Distributions must continue in accordance with section 401(a)(9).

(ii) *Catch-up distribution.* The catch-up distribution must be equal to the total amount not yet distributed that would have been required to be distributed to satisfy the requirements of section 401(a)(9).

■ **Par. 3.** Section 1.401(a)(9)–9 is amended as follows:

■ **1.** In the title, remove the phrase “distribution period” and add in its place the phrase “uniform lifetime”.

■ **2.** In paragraph (a), remove the phrase “applicable distribution period” and add in its place the phrase “uniform lifetime”.

■ **3.** In paragraph (c), remove the phrase “distribution period” and add in its place the phrase “applicable denominator”.

■ **4.** In the heading of the second column of Table 2 to paragraph (c), remove the phrase “Distribution period” and add in its place the phrase “Applicable denominator”.

■ **5.** In paragraph (f)(2)(i), remove the phrase “distribution period that applies” and add in its place the phrase “applicable denominator”.

■ **6.** In paragraph (f)(2)(i), remove the phrase “applicable distribution period” and add in its place the phrase “applicable denominator”.

■ **7.** In the heading of paragraph (f)(2)(ii), remove the phrase “distribution period” and add in its place the word “denominator”.

■ **8.** In the heading of paragraph (f)(2)(ii)(A), remove the phrase “Distribution period” and add in its place the phrase “Applicable denominator”.

■ **9.** In paragraph (f)(2)(ii)(A), remove the phrase “distribution period that applies” and add in its place the phrase “applicable denominator”.

■ **10.** In paragraph (f)(2)(ii)(A), remove the phrase “resulting distribution period” and add in its place the phrase “resulting applicable denominator”.

■ **11.** In paragraph (f)(2)(ii)(A), remove the last sentence.

■ **12.** In paragraph (f)(2)(ii)(B), remove the phrase “distribution period that would have applied” and add in its place the phrase “denominator that would have applied”.

■ **13.** In paragraph (f)(2)(ii)(B), remove the phrase “period applicable” and add in its place the phrase “life expectancy”.

■ **14.** In paragraph (f)(2)(ii)(B), remove the phrase “(the original distribution period, reduced by 1 year)” and add in its place the phrase “(the original life expectancy, reduced by 1 year)”.

■ **15.** In paragraph (f)(2)(ii)(B), remove the phrase “applicable distribution period” and add in its place the phrase “applicable denominator”.

■ **16.** In paragraph (f)(2)(ii)(B), remove the last sentence.

■ **Par. 4.** Revise § 1.402(c)–2 to read as follows:

**§ 1.402(c)–2 Eligible rollover distributions.**

(a) *Overview of rollover and related statutory provisions—(1) General rule—*

(i) *Rollover of distribution paid to employee.* Under section 402(c), any portion of a distribution paid to an

employee from a qualified plan that is an eligible rollover distribution described in section 402(c)(4) may be rolled over to an eligible retirement plan described in section 402(c)(8)(B). See paragraph (j) of this section for rules relating to distributions paid to a surviving spouse or a non-spousal beneficiary.

(ii) *Exclusion from income.* Except as otherwise provided in this section, if an eligible rollover distribution is paid to an employee, then the amount distributed is not currently includible in gross income, provided that it is contributed to an eligible retirement plan no later than the 60th day following the day on which the employee received the distribution. However, if all or any portion of an amount equal to the amount withheld is not contributed as a rollover, it is included in the employee’s gross income to the extent required under section 402(a), and also may be subject to the 10-percent additional income tax under section 72(t).

(iii) *Definition of eligible retirement plan—(A) In general.* An eligible retirement plan means an IRA described in paragraph (a)(1)(iii)(B)(1) of this section or a qualified plan described in paragraph (a)(1)(iii)(B)(2) of this section. In addition, an eligible deferred compensation plan described in section 457(b) that is maintained by an employer described in section 457(e)(1)(A) is treated as an eligible retirement plan, but only if the plan separately accounts for the amount of the rollover.

(B) *Definitions of IRA and qualified plan.* For purposes of section 402(c) and this section—

(1) An IRA is an individual retirement account described in section 408(a) or an individual retirement annuity (other than an endowment contract) described in section 408(b); and

(2) A qualified plan is an employees’ trust described in section 401(a) that is exempt from tax under section 501(a), an annuity plan described in section 403(a), or an annuity contract described in section 403(b).

(iv) *Multiple distributions.* If more than one distribution is received by an employee from a qualified plan during a taxable year, the 60-day deadline applies separately to each distribution. Because the amount withheld as income tax under section 3405(c) is considered an amount distributed under section 402(c), an amount equal to all or any portion of the amount withheld may be contributed as a rollover to an eligible retirement plan within the 60-day period in addition to the net amount of

the eligible rollover distribution actually received by the employee.

(v) *Definition of rollover.* For purposes of section 402(c) and this section, a rollover is—

(A) A direct rollover as described in § 1.401(a)(31)–1, Q&A–3;

(B) A contribution of an eligible rollover distribution to an eligible retirement plan that, except as provided in paragraph (b)(2) of this section, satisfies the time period requirement in paragraph (a)(1)(ii) of this section and the designation requirement described in paragraph (k)(1) of this section; or

(C) A repayment of a distribution that is treated as a rollover, as described in paragraph (a)(1)(vi) of this section.

(vi) *Certain repayments treated as rollovers.* The repayment of a distribution is treated as a rollover if that treatment is prescribed under another statutory provision. For example, the repayment of a qualified disaster distribution under section 302 of Division EE of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182 (2020) is treated as a rollover for purposes of this section.

(2) *Related Internal Revenue Code provisions*—(i) *Direct rollover option.* Section 401(a)(31) requires qualified plans to provide a distributee of an eligible rollover distribution the option to elect to have the distribution paid directly to an eligible retirement plan in a direct rollover. See § 1.401(a)(31)–1 for further guidance concerning this direct rollover option.

(ii) *Notice requirement.* Section 402(f) requires the plan administrator of a qualified plan to provide, within a reasonable time before making an eligible rollover distribution, a written explanation to the distributee of the distributee's right to elect a direct rollover and the withholding consequences of not making that election. The explanation also is required to provide certain other relevant information relating to the taxation of distributions. See § 1.402(f)–1 for guidance concerning the written explanation required under section 402(f).

(iii) *Mandatory income tax withholding.* If a distributee of an eligible rollover distribution does not elect to have the eligible rollover distribution paid directly from the plan to an eligible retirement plan in a direct rollover under section 401(a)(31), the eligible rollover distribution is subject to mandatory income tax withholding under section 3405(c). See § 31.3405(c)–1 of this chapter for provisions relating to the withholding requirements applicable to eligible rollover distributions.

(iv) *Section 403(b) annuities.* See § 1.403(b)–7(b) for guidance concerning the direct rollover requirements for distributions from annuities described in section 403(b).

(3) *Applicability date*—(i) *In general.* The rules provided in this section apply to any distribution made on or after January 1, 2022.

(ii) *Distributions prior to January 1, 2022.* For any distribution made before January 1, 2022, the rules of 26 CFR 1.402(c)–2 and 26 CFR 1.402(c)–3 (as they appeared in the April 1, 2021 edition of 26 CFR part 1) apply. Alternatively, the rules provided in this section may be applied to those distributions.

(b) *Special rules*—(1) *Rules related to Roth accounts*—(i) *Treatment of Roth conversions.* If all or any portion of an eligible rollover distribution that is rolled over to a Roth IRA is not from a designated Roth account described in section 402A, then the amount rolled over to the Roth IRA is included in the employee's gross income to the extent required under section 402(a) (but generally is not subject to the 10-percent additional income tax under section 72(t)).

(ii) *Treatment of distributions from designated Roth accounts.* A distribution from a designated Roth account may be rolled over only to another designated Roth account or to a Roth IRA. See § 1.402A–1, Q&A–5 for rules that apply to such a rollover.

(2) *Extensions of and exceptions to 60-day deadline*—(i) *Waiver of 60-day deadline.* The Commissioner may waive the 60-day deadline described in paragraph (a)(1)(ii) of this section if the failure to waive that requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual with respect to such requirement. See section 402(c)(3)(B).

(ii) *Frozen deposits.* The 60-day period described in paragraph (a)(1)(ii) of this section does not include any period during which the amount transferred to the employee is a frozen deposit described in section 402(c)(7)(B). The 60-day period also does not end earlier than 10 days after that amount ceases to be a frozen deposit.

(iii) *Exception for qualified plan loan offsets.* See paragraph (g) of this section for the timing requirements related to the rollover of a qualified plan loan offset amount.

(iv) *Other distributions treated as rollovers.* In the case of a repayment of a distribution treated as a rollover as described in paragraph (a)(1)(vi) of this section, see the applicable statutory

provision and accompanying regulations, if any, for the timing requirements relating to the repayment.

(3) *Special rules for distribution that includes basis*—(i) *Rollover of basis to IRA.* If an eligible rollover distribution includes some or all of an employee's basis (that is, the employee's investment in the contract), then the portion of the distribution that is allocable to the employee's basis may be rolled over to an IRA.

(ii) *Rollover of basis to qualified trust must be done through direct trustee-to-trustee transfer.* If an eligible rollover distribution includes some or all of an employee's basis, then the portion of an eligible rollover distribution that is allocable to the employee's basis may be rolled over to a qualified plan only through a direct trustee-to-trustee transfer. In that case, the qualified trust or annuity contract must provide for separate accounting of the amount transferred (and earnings on that amount) including separately accounting for the portion of the distribution that includes an employee's basis and the portion of the distribution that does not include basis.

(iii) *Rollover of basis to section 457(b) plans not permitted.* The portion of an eligible rollover distribution that is allocable to an employee's basis may not be rolled over to an eligible deferred compensation plan described in section 457(b).

(iv) *Rollover of portion of distribution.* If an eligible rollover distribution includes some or all of an employee's basis and less than the entire distribution is being rolled over, then the amount rolled over is treated as consisting first of the portion of the distribution that is not allocable to the employee's basis.

(4) *Special rules for distributions that include property*—(i) *In general.* Except as provided in paragraph (b)(4)(ii) of this section, if an eligible rollover distribution consists of property other than money, then, only that property may be rolled over to an eligible retirement plan.

(ii) *Rollover of proceeds permitted.* In the case of an eligible rollover distribution that consists of property other than money, the proceeds of the sale of that property may be rolled over to an eligible retirement plan. However, to the extent those proceeds exceed the property's fair market value at the time of the sale, that excess may not be rolled over. See section 402(c)(6)(C) and (D) for other rules relating to the sale of distributed property.

(c) *Definition of eligible rollover distribution*—(1) *General rule.* Unless specifically excluded, an eligible

rollover distribution means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified plan. Thus, except as specifically provided in paragraph (c)(2) or (3) of this section, any amount distributed to an employee from a qualified plan is an eligible rollover distribution, regardless of whether it is a distribution of a benefit that is protected under section 411(d)(6).

(2) *Exceptions.* An eligible rollover distribution does not include the following:

(i) Any distribution that is one of a series of substantially equal periodic payments made (not less frequently than annually) over any one of the following periods—

(A) The life of the employee (or the joint lives of the employee and the employee's designated beneficiary);

(B) The life expectancy of the employee (or the joint life and last survivor expectancy of the employee and the employee's designated beneficiary); or

(C) A specified period of ten years or more;

(ii) Any distribution to the extent the distribution is a required minimum distribution under section 401(a)(9); or

(iii) Any distribution which is made on account of hardship.

(3) *Other amounts not treated as eligible rollover distributions.* The following amounts are not treated as eligible rollover distributions:

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

(ii) Corrective distributions of excess deferrals as described in § 1.402(g)–1(e)(3), together with the income allocable to these corrective distributions;

(iii) Corrective distributions of excess contributions under a qualified cash or deferred arrangement described in § 1.401(k)–2(b)(2) and excess aggregate contributions described in § 1.401(m)–2(b)(2), together with the income allocable to these distributions;

(iv) Loans that are treated as deemed distributions pursuant to section 72(p);

(v) Subject to the rules of paragraph (c)(4) of this section, dividends paid on employer securities as described in section 404(k);

(vi) The costs of life insurance coverage includible in the employee's income under section 72(m)(3)(B);

(vii) Prohibited allocations that are treated as deemed distributions pursuant to section 409(p);

(viii) Distributions that are permissible withdrawals from an eligible automatic contribution arrangement within the meaning of section 414(w);

(ix) Distributions of premiums for accident or health insurance under § 1.402(a)–1(e)(1)(i);

(x) Deemed distributions with respect to collectibles pursuant to section 408(m); and

(xi) Similar items designated by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(4) *Dividends reinvested in employer securities.* Dividends paid to an employee stock ownership plan (as defined in section 4975(e)(7)) that are reinvested in employer securities pursuant to a participant election under section 404(k)(2)(A)(iii)(II) are included in the participant's account balance and lose their character as dividends when subsequently distributed from the account. As a result, these amounts are eligible rollover distributions if they otherwise meet the requirements of this paragraph (c).

(d) *Determination of substantially equal periodic payments—*(1) *General rule.* For purposes of paragraph (c)(2)(i) of this section, and except as provided in this paragraph (d) or paragraph (e) of this section, whether a series of payments is a series of substantially equal periodic payments over a specified period is determined at the time payments begin, and by following the principles of section 72(t)(2)(A)(iv), without regard to contingencies or modifications that have not yet occurred. Thus, for example, a joint and 50-percent survivor annuity will be treated as a series of substantially equal payments at the time payments commence, as will a joint and survivor annuity that provides for increased payments to the employee if the employee's beneficiary dies before the employee. Similarly, for purposes of determining if a disability benefit payment is part of a series of substantially equal payments for a period described in section 402(c)(4)(A), any contingency under which payments cease upon recovery from the disability may be disregarded.

(2) *Certain supplements disregarded.* For purposes of determining whether a distribution is one of a series of payments that are substantially equal,

social security supplements described in section 411(a)(9) are disregarded. For example, if a distributee receives a life annuity of \$500 per month, plus a social security supplement consisting of payments of \$200 per month until the distributee reaches the age at which social security benefits of not less than \$200 a month begin, the \$200 supplemental payments are disregarded and, therefore, each monthly payment of \$700 made before the social security age and each monthly payment of \$500 made after the social security age is treated as one of a series of substantially equal periodic payments for life. A series of payments that are not substantially equal solely because the amount of each payment is reduced upon attainment of social security retirement age (or, alternatively, upon commencement of social security early retirement, survivor, or disability benefits) is also treated as substantially equal as long as the reduction in the actual payments is level and does not exceed the applicable social security benefit.

(3) *Changes in the amount of payments or the distributee.* If the amount (or, if applicable, the method of calculating the amount) of the payments changes so that subsequent payments are not substantially equal to prior payments, then a new determination must be made as to whether the remaining payments are a series of substantially equal periodic payments over a period specified in paragraph (c)(2)(i) of this section. This determination is made without taking into account payments made or the years of payment that elapsed prior to the change. However, a new determination is not made merely because, upon the death of the employee, the employee's beneficiary becomes the distributee. Thus, if distributions commence over a period that is at least as long as either the first annuitant's life or 10 years, then substantially equal payments to the survivor are not eligible rollover distributions even though the payment period remaining after the death of the employee is or may be less than the period described in section 402(c)(4)(A). For example, substantially equal periodic payments made under a life annuity with a five-year term certain would not be an eligible rollover distribution even when paid after the death of the employee with three years remaining under the term certain.

(4) *Defined contribution plans.* The following rules apply in determining whether a series of payments from a defined contribution plan constitutes a series of substantially equal periodic

payments for a period described in section 402(c)(4)(A)—

(i) *Declining balance of years.* A series of payments from an account balance under a defined contribution plan over a period is considered a series of substantially equal periodic payments over that period if, for each year, the amount of the distribution is calculated by dividing the account balance by the number of years remaining in the period. For example, a series of payments is considered substantially equal payments over 10 years if the series is determined as follows. In year 1, the annual payment is the account balance divided by 10; in year 2, the annual payment is the remaining account balance divided by 9; and so on until year 10 when the entire remaining balance is distributed.

(ii) *Reasonable actuarial assumptions.* If an employee's account balance under a defined contribution plan is to be distributed in annual installments of a specified amount until the account balance is exhausted, then, for purposes of determining if the period of distribution is a period described in section 402(c)(4)(A), the period of years over which the installments will be distributed must be determined using reasonable actuarial assumptions. For example, if an employee has an account balance of \$100,000, the employee elects distributions of \$12,000 per year until the account balance is exhausted, and the future rate of return is assumed to be 5% per year, the account balance will be exhausted in approximately 12 years. Similarly, if the same employee elects a fixed annual distribution amount and the fixed annual amount is less than or equal to \$10,000, it is reasonable to assume that the future rate of return will be greater than 0% and, thus, the account will not be exhausted in less than 10 years.

(e) *Determination of whether a payment is an independent payment—*

(1) *Definition of independent payments.* Except as provided in paragraph (e)(2) and (3) of this section, a payment is treated as independent of the payments in a series of substantially equal payments, and thus not part of the series described in paragraph (c)(2)(i) of this section, if the payment is substantially larger or smaller than the other payments in the series. An independent payment is an eligible rollover distribution if it is not otherwise excepted from the definition of eligible rollover distribution. This rule applies regardless of whether the payment is made before, with, or after payments in the series. For example, if an employee elects a single payment of half of the account balance with the remainder of

the account balance paid over the life expectancy of the distributee, the single payment is treated as independent of the payments in the series and is an eligible rollover distribution unless otherwise excepted. Similarly, if an employee's surviving spouse receives a survivor life annuity of \$1,000 per month plus a single payment on account of death of \$7,500, the single payment is treated as independent of the payments in the annuity and is an eligible rollover distribution unless otherwise excepted.

(2) *Special rules—*(i) *Administrative error or delay.* If, due solely to reasonable administrative error or delay in payment, there is an adjustment after the annuity starting date to the amount of any payment in a series of payments that otherwise would constitute a series of substantially equal payments described in section 402(c)(4)(A) and this section, the adjusted payment or payments are treated as part of the series of substantially equal periodic payments and are not treated as independent of the payments in the series. For example, if, due solely to reasonable administrative delay, the first payment of a life annuity is delayed by two months and reflects an additional two months' worth of benefits, that payment is treated as a substantially equal payment in the series rather than as an independent payment. The result does not change merely because the amount of the adjustment is paid in a separate supplemental payment.

(ii) *Supplemental payments for annuitants.* A supplemental payment from a defined benefit plan to an annuitant (that is, a retiree or beneficiary) is treated as part of a series of substantially equal payments, rather than as an independent payment, provided that the following conditions are met—

(A) The supplement is a benefit increase for annuitants;

(B) The amount of the supplement is determined in a consistent manner for all similarly situated annuitants;

(C) The supplement is paid to annuitants who are otherwise receiving payments that would constitute substantially equal periodic payments; and

(D) The aggregate supplement is less than or equal to the greater of 10% of the annual rate of payment for the annuity, or \$750.

(iii) *Final payment in a series.* If a payment in a series of payments from an account balance under a defined contribution plan represents the remaining balance in the account and is substantially less than the other payments in the series, the final

payment must nevertheless be treated as a payment in the series of substantially equal payments and may not be treated as an independent payment if the other payments in the series are substantially equal and the payments are for a period described in section 402(c)(4)(A) based on the rules provided in paragraph (d)(4)(ii) of this section. Thus, the final payment will not be an eligible rollover distribution.

(3) *Additional guidance.* The Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, may provide additional rules for determining what is an independent payment under paragraph (e)(1) of this section and may prescribe a higher amount than the \$750 amount in paragraph (e)(2)(ii)(D) of this section. See § 601.601(d) of this chapter.

(f) *Determination of whether a distribution is a required minimum distribution—*(1) *Determination for calendar year of distribution.* Except as provided in paragraphs (f)(2) and (3) of this section, if a minimum distribution is required for a calendar year, then the amounts distributed during that calendar year are treated as required minimum distributions under section 401(a)(9) to the extent that the total minimum distribution required under section 401(a)(9) for the calendar year has not been satisfied (and accordingly, those amounts are not eligible rollover distributions). For example, if an employee is required under section 401(a)(9) to receive a minimum distribution for a calendar year of \$5,000 and the employee receives a total of \$7,200 in that year, the first \$5,000 distributed will be treated as the required minimum distribution and will not be an eligible rollover distribution, and the remaining \$2,200 will be an eligible rollover distribution if it otherwise qualifies. If the total section 401(a)(9) required minimum distribution for a calendar year prior to the calendar year of the distribution is not distributed in that calendar year (for example, when the distribution for the calendar year in which the employee reaches age 72 is made on April 1 of the following calendar year), then, the amount that was required to be distributed, but not distributed, is added to the amount required to be distributed for the next calendar year in determining the portion of any distribution in the next calendar year that is a required minimum distribution.

(2) *Distribution before first distribution calendar year.* Any amount that is paid to an employee before January 1 of the first distribution calendar year (as described in § 1.401(a)(9)–5(a)(2)(ii)) is not treated as

required under section 401(a)(9) and, thus, is an eligible rollover distribution if it otherwise qualifies.

(3) *Special rule for annuities.* In the case of annuity payments from a defined benefit plan, or under an annuity contract purchased from an insurance company (including a qualified plan distributed annuity contract (as defined in paragraph (h) of this section)), the entire amount of any annuity payment made on or after January 1 of the first distribution calendar year (as described in § 1.401(a)(9)–5(a)(2)(ii)) is treated as an amount required under section 401(a)(9) and, thus, is not an eligible rollover distribution.

(g) *Treatment of plan loan offset amounts—(1) General rule.* A distribution of a plan loan offset amount, as defined in paragraph (g)(3)(i) of this section (including a qualified plan loan offset amount, a type of plan loan offset amount defined in paragraph (g)(3)(ii) of this section), is an eligible rollover distribution if it is described in paragraph (c) of this section. See § 1.401(a)(31)–1, Q&A–16, for guidance concerning the offering of a direct rollover of a plan loan offset amount. See also § 31.3405(c)–1, Q&A–11, of this chapter for guidance concerning special withholding rules with respect to plan loan offset amounts.

(2) *Rollover period for a plan loan offset amount—(i) Plan loan offset amount that is not a qualified plan loan offset amount.* A distribution of a plan loan offset amount that is an eligible rollover distribution and that is not a qualified plan loan offset amount may be rolled over by the employee to an eligible retirement plan within the 60-day period set forth in section 402(c)(3)(A).

(ii) *Plan loan offset amount that is a qualified plan loan offset amount.* A distribution of a plan loan offset amount that is an eligible rollover distribution and that is a qualified plan loan offset amount may be rolled over by the employee to an eligible retirement plan within the period set forth in section 402(c)(3)(C), which is the individual's tax filing due date (including extensions) for the taxable year in which the offset is treated as distributed from a qualified employer plan.

(3) *Definitions—(i) Plan loan offset amount.* For purposes of section 402(c), a plan loan offset amount is the amount by which, under the plan terms governing a plan loan, an employee's accrued benefit is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in an employee's accrued benefit). A distribution of a plan loan offset amount can occur in a variety of

circumstances, for example, when the terms governing a plan loan require that, in the event of the employee's termination of employment or request for a distribution, the loan be repaid immediately or treated as in default. A distribution of a plan loan offset amount also occurs when, under the terms governing the plan loan, the loan is cancelled, accelerated, or treated as if it were in default (for example, when the plan treats a loan as in default upon an employee's termination of employment or within a specified period thereafter). A distribution of a plan loan offset amount is an actual distribution, not a deemed distribution under section 72(p).

(ii) *Qualified plan loan offset amount.* For purposes of section 402(c), a qualified plan loan offset amount is a plan loan offset amount that satisfies the following requirements:

(A) The plan loan offset amount is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the termination of the qualified employer plan, or the failure to meet the repayment terms of the loan because of the severance from employment of the employee; and

(B) The plan loan offset amount relates to a plan loan that met the requirements of section 72(p)(2) immediately prior to the termination of the qualified employer plan or the severance from employment of the employee, as applicable.

(iii) *Qualified employer plan.* For purposes of section 402(c) and this section, a qualified employer plan is a qualified employer plan as defined in section 72(p)(4).

(4) *Special rules for qualified plan loan offset amounts—(i) Definition of severance from employment.* For purposes of paragraph (g)(3)(ii)(A) of this section, whether an employee has a severance from employment with the employer that maintains the qualified employer plan is determined in the same manner as under § 1.401(k)–1(d)(2). Thus, an employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan.

(ii) *Offset because of severance from employment.* A plan loan offset amount is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the failure to meet the repayment terms of a plan loan because of severance from employment of the employee if the plan loan offset:

(A) Relates to a failure to meet the repayment terms of the plan loan, and

(B) Occurs within the period beginning on the date of the employee's severance from employment and ending on the first anniversary of that date.

(5) *Examples.* The following examples illustrate the rules with respect to plan loan offset amounts, including qualified plan loan offset amounts, in this paragraph (g) and in §§ 1.401(a)(31)–1, Q&A–16, and 31.3405(c)–1, Q&A–11, of this chapter. For purposes of these examples, each reference to a plan refers to a qualified employer plan as described in section 72(p)(4).

(i) *Example 1—(A)* In 2020, Employee A has an account balance of \$10,000 in Plan Y, of which \$3,000 is invested in a plan loan to Employee A that is secured by Employee A's account balance in Plan Y. Employee A has made no after-tax employee contributions to Plan Y. The plan loan meets the requirements of section 72(p)(2). Plan Y does not provide any direct rollover option with respect to plan loans. Employee A severs from employment on June 15, 2020. After severance from employment, Plan Y accelerates the plan loan and provides Employee A 90 days to repay the remaining balance of the plan loan. Employee A, who is under the age set forth in section 401(a)(9)(C)(i)(I), does not repay the loan within the 90 days and instead elects a direct rollover of Employee A's entire account balance in Plan Y. On September 18, 2020 (within the 12-month period beginning on the date that Employee A severed from employment), Employee A's outstanding loan is offset against the account balance.

(B) In order to satisfy section 401(a)(31), Plan Y must make a direct rollover by paying \$7,000 directly to the eligible retirement plan chosen by Employee A. When Employee A's account balance was offset by the amount of the \$3,000 unpaid loan balance, Employee A received a plan loan offset amount (equivalent to \$3,000) that is an eligible rollover distribution. However, under § 1.401(a)(31)–1, Q&A–16, Plan Y satisfies section 401(a)(31), even though a direct rollover option was not provided with respect to the \$3,000 plan loan offset amount.

(C) No withholding is required under section 3405(c) on account of the distribution of the \$3,000 plan loan offset amount because no cash or other property (other than the plan loan offset amount) is received by Employee A from which to satisfy the withholding.

(D) The \$3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (g)(3)(ii) of this section.

Accordingly, Employee A may roll over up to the \$3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on the employee's tax filing due date (including extensions) for the taxable year in which the offset occurs.

(ii) *Example 2*—(A) The facts are the same as in *Example 1* in paragraph (g)(5)(i) of this section, except that, rather than accelerating the plan loan, Plan Y permits Employee A to continue making loan installment payments after severance from employment. Employee A continues making loan installment payments until January 1, 2021, at which time Employee A does not make the loan installment payment due on January 1, 2021. In accordance with § 1.72(p)–1, Q&A–10, Plan Y allows a cure period that continues until the last day of the calendar quarter following the quarter in which the required installment payment was due. Employee A does not make a plan loan installment payment during the cure period. Plan Y offsets the unpaid \$3,000 loan balance against Employee A's account balance on July 1, 2021 (which is after the 12-month period beginning on the date that Employee A severed from employment).

(B) The conclusion is the same as in paragraph (g)(5)(i) of this section (*Example 1*), except that the \$3,000 plan loan offset amount is not a qualified plan loan offset amount (because the offset did not occur within the 12-month period beginning on the date that Employee A severed from employment). Accordingly, Employee A may roll over up to the \$3,000 plan loan offset amount to an eligible retirement plan within the 60-day period provided in section 402(c)(3)(A) (rather than within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs).

(iii) *Example 3*—(A) The facts are the same as in *Example 1* in paragraph (g)(5)(i) of this section, except that the terms governing the plan loan to Employee A provide that, upon severance from employment, Employee A's account balance is automatically offset by the amount of any unpaid loan balance to repay the loan. Employee A severs from employment but does not request a distribution from Plan Y. Nevertheless, pursuant to the terms governing the plan loan, Employee A's account balance is automatically offset on June 15, 2020, by the amount of the \$3,000 unpaid loan balance.

(B) The \$3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (g)(3)(ii) of this section. Accordingly, Employee A may roll over

up to the \$3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs.

(iv) *Example 4*—(A) The facts are the same as in *Example 1* in paragraph (g)(5)(i) of this section, except that Employee A elects to receive a cash distribution of the account balance that remains after the \$3,000 plan loan offset amount, instead of electing a direct rollover of the remaining account balance.

(B) The amount of the distribution received by Employee A is \$10,000 (\$3,000 relating to the plan loan offset and \$7,000 relating to the cash distribution). Because the amount of the \$3,000 plan loan offset amount attributable to the loan is included in determining the amount of the eligible rollover distribution to which withholding applies, withholding in the amount of \$2,000 (20 percent of \$10,000) is required under section 3405(c). The \$2,000 is required to be withheld from the \$7,000 to be distributed to Employee A in cash, so that Employee A actually receives a cash amount of \$5,000.

(C) The \$3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (g)(3)(ii) of this section. Accordingly, Employee A may roll over up to the \$3,000 qualified plan loan offset to an eligible retirement plan within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs. In addition, Employee A may roll over up to \$7,000 (the portion of the distribution that is not related to the offset) within the 60-day period provided in section 402(c)(3).

(v) *Example 5*—(A) The facts are the same as in *Example 4* in paragraph (g)(5)(iv) of this section, except that the \$7,000 distribution to Employee A after the offset consists solely of employer securities within the meaning of section 402(e)(4)(E).

(B) No withholding is required under section 3405(c) because the distribution consists solely of the \$3,000 plan loan offset amount and the \$7,000 distribution of employer securities. This is the result because the total amount required to be withheld does not exceed the sum of the cash and the fair market value of other property distributed, excluding plan loan offset amounts and employer securities.

(C) Employee A may roll over up to the \$7,000 of employer securities to an eligible retirement plan within the 60-

day period provided in section 402(c)(3). The \$3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (g)(3)(ii) of this section. Accordingly, Employee A may roll over up to the \$3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs.

(vi) *Example 6*—(A) Employee B, who is age 40, has an account balance in Plan Z. Plan Z does not provide for after-tax employee contributions. In 2022, Employee B receives a loan from Plan Z, the terms of which satisfy section 72(p)(2). The loan is secured by elective contributions subject to the distribution restrictions in section 401(k)(2)(B).

(B) Employee B fails to make an installment payment due on April 1, 2023, or any other monthly payments thereafter. In accordance with § 1.72(p)–1, Q&A–10, Plan Z allows a cure period that continues until the last day of the calendar quarter following the quarter in which the required installment payment was due (September 30, 2023).

Employee B does not make a plan loan installment payment during the cure period. On September 30, 2023, pursuant to section 72(p)(1), Employee B is taxed on a deemed distribution equal to the amount of the unpaid loan balance. Pursuant to paragraph (c)(3)(iv) of this section, the deemed distribution is not an eligible rollover distribution.

(C) Because Employee B has not severed from employment or experienced any other event that permits the distribution under section 401(k)(2)(B) of the elective contributions that secure the loan, Plan Z is prohibited from executing on the loan. Accordingly, Employee B's account balance is not offset by the amount of the unpaid loan balance at the time of the deemed distribution. Thus, there is no distribution of an offset amount that is an eligible rollover distribution on September 30, 2023.

(vii) *Example 7*—(A) The facts are the same as in *Example 6* in paragraph (g)(5)(vi) of this section, except that Employee B has a severance from employment on November 1, 2023. On that date, Employee B's unpaid loan balance is offset against the account balance on distribution.

(B) The plan loan offset amount is not a qualified plan loan offset amount. Although the offset occurred within 12 months after Employee B severed from employment, the plan loan does not meet the requirement in paragraph (g)(3)(ii)(B) of this section (that the plan loan meet the requirements of section

72(p)(2) immediately prior to Employee B's severance from employment). Instead, the loan was taxable on September 30, 2023 (prior to Employee B's severance from employment on November 1, 2023), because of the failure to meet the level amortization requirement in section 72(p)(2)(C). Accordingly, Employee B may roll over the plan loan offset amount to an eligible retirement plan within the 60-day period provided in section 402(c)(3)(A) (rather than within the period that ends on Employee B's tax filing due date (including extensions) for the taxable year in which the offset occurs).

(h) *Qualified plan distributed annuity contract*—(1) *Definition of a qualified plan distributed annuity contract.* A qualified plan distributed annuity contract is an annuity contract purchased for a participant, and distributed to the participant, by a qualified plan.

(2) *Treatment of amounts paid as eligible rollover distributions.* Amounts paid under a qualified plan distributed annuity contract are payments of the balance to the credit of the employee for purposes of section 402(c) and are eligible rollover distributions if they otherwise qualify. Thus, for example, if the employee surrenders the contract for a single sum payment of its cash surrender value, the payment would be an eligible rollover distribution to the extent it is not a required minimum distribution under section 401(a)(9). This rule applies even if the annuity contract is distributed in connection with a plan termination. See § 1.401(a)(31)–1, Q&A–17 and § 31.3405(c)–1, Q&A–13 of this chapter concerning the direct rollover requirements and 20-percent withholding requirements, respectively, that apply to eligible rollover distributions from such an annuity contract.

(i) [Reserved]

(j) *Treatment of distributions to beneficiary*—(1) *Spousal distributee*—(i) *In general.* Pursuant to section 402(c)(9), if any distribution attributable to an employee is paid to the employee's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the employee. The same rule applies if any distribution attributable to an employee is paid in accordance with a qualified domestic relations order (as defined in section 414(p)) (QDRO) to the employee's spouse or former spouse who is an alternate payee. Therefore, a distribution to the surviving spouse of an employee (or to a spouse or former spouse who is an alternate payee under

a QDRO), including a distribution of ancillary death benefits attributable to the employee, is an eligible rollover distribution if it would be described in paragraph (c) of this section had it been paid to the employee.

(ii) *Rollovers to qualified plans must be in capacity of employee.* If a surviving spouse rolls over a distribution to a qualified plan described in paragraph (a)(1)(iii)(B)(2) of this section or to an eligible deferred compensation plan described in section 457(b) that is maintained by an employer described in section 457(e)(1)(A), then, with respect to the amount rolled over, that amount is treated as the spouse's own interest under the receiving plan and not the interest of the decedent under the distributing plan. Thus, for example, in determining the required minimum distribution from the receiving plan with respect to the amount rolled over, distributions must satisfy section 401(a)(9)(A) and not section 401(a)(9)(B).

(2) *Non-spousal distributee.* A distributee other than the employee or the employee's surviving spouse (or a spouse or former spouse who is an alternate payee under a QDRO) is not permitted to roll over a distribution from a qualified plan. Therefore, a distribution to a non-spousal distributee does not constitute an eligible rollover distribution under section 402(c)(4) and is not subject to the 20-percent income tax withholding under section 3405(c). However, under section 402(c)(11), if the distributee is a designated beneficiary (as determined under § 1.401(a)(9)–(4) who is not described in paragraph (j)(1) of this section and the distribution would be an eligible rollover distribution had it been paid to the employee, then the distributee may elect that the distribution be made in the form of a direct trustee-to-trustee transfer to an IRA established for the purpose of receiving that distribution. If a direct trustee-to-trustee transfer is made pursuant to section 402(c)(11) then—

(i) The transfer is treated as an eligible rollover distribution;

(ii) The IRA is an inherited IRA described in section 408(d)(3)(ii); and

(iii) Section 401(a)(9)(B) (other than section 401(a)(9)(B)(iv)) will apply to the IRA.

(3) *Determination of amounts that constitute required minimum distributions for distributions to beneficiaries*—(i) *In general*—(A) *First portion of a distribution is treated as a required minimum distribution.* If a minimum distribution is required to be made to a beneficiary in a calendar year,

then the amounts distributed during that calendar year are treated as required minimum distributions under section 401(a)(9), to the extent that the total required minimum distribution under section 401(a)(9) for the calendar year has not been satisfied. Accordingly, those amounts are not eligible rollover distributions. If the employee dies before the employee's required beginning date (within the meaning of § 1.401(a)(9)–2(b)), then no amount is a required minimum distribution for the year in which the employee dies.

(B) *Determination of required minimum distribution based on distribution method.* Except as otherwise provided in paragraphs (j)(3)(ii) and (iii) of this section, if an employee dies before the employee's required beginning date, then the amount that is not an eligible rollover distribution because it is a required minimum distribution for the calendar year is determined under paragraph (j)(3)(i)(C), (D), or (E) of this section, whichever applies to the beneficiary. See § 1.401(a)(9)–3(b)(4) and (c)(5) to determine which rule applies. If an employee dies on or after the employee's required beginning date, then the amount that is not an eligible rollover distribution because it is a required minimum distribution for a calendar year is determined under paragraph (j)(3)(i)(F) of this section.

(C) *Five-year rule.* If the 5-year rule described in § 1.401(a)(9)–3(b)(2) or (c)(2) applies to the beneficiary, then no amount is required to be distributed until the end of the fifth calendar year following the calendar year of the employee's death. In that year, the entire amount to which the beneficiary is entitled under the plan must be distributed, and because it is a required minimum distribution, it is not an eligible rollover distribution. Thus, if the 5-year rule applies with respect to a designated beneficiary, then any distribution made before the fifth calendar year following the calendar year of the employee's death is eligible for rollover if it otherwise meets the requirements of this section.

(D) *Ten-year rule.* If the 10-year rule described in § 1.401(a)(9)–3(c)(3) applies to the beneficiary, then no amount is required to be distributed until the end of the tenth calendar year following the calendar year of the employee's death. In that year, the entire amount to which the beneficiary is entitled under the plan must be distributed, and because it is treated as a required minimum distribution, it is not an eligible rollover distribution. Thus, if the 10-year rule applies with respect to a designated beneficiary, then any distribution made

before the tenth calendar year following the calendar year of the employee's death is eligible for rollover if it otherwise meets the requirements of this section.

(E) *Life expectancy rule.* If the life expectancy rule described in § 1.401(a)(9)–3(c)(4) (or, in the case of a defined benefit plan, the annuity payment rule described in § 1.401(a)(9)–3(b)(3)) applies to the designated beneficiary, then, in the first distribution calendar year for the beneficiary (as defined in § 1.401(a)(9)–5(a)(2)(ii)) and in each subsequent calendar year, the amount treated as a required minimum distribution and not eligible to be rolled over is determined in accordance with § 1.401(a)(9)–5(d) and (e) (or, in the case of a defined benefit plan, § 1.401(a)(9)–6).

(F) *Employee dies on or after required beginning date.* If the employee dies on or after the employee's required beginning date, then, in the calendar year of the employee's death, the amount treated as a required minimum distribution and not eligible to be rolled over is determined in accordance with § 1.401(a)(9)–5(c) (or, in the case of a defined benefit plan, § 1.401(a)(9)–6). For each subsequent calendar year, the amount treated as a required minimum distribution and not eligible to be rolled over is determined in accordance with § 1.401(a)(9)–5(d) and (e) (or, in the case of a defined benefit plan, § 1.401(a)(9)–6).

(ii) *Exception allowing beneficiary to change distribution method.* If the 5-year rule or 10-year rule described in § 1.401(a)(9)–3(b)(2), (c)(2) or (c)(3) applies to a designated beneficiary under the plan, and the eligible designated beneficiary is using the exception under § 1.408–8(d)(2)(ii) to switch to the use of the life expectancy rule under the IRA to which the distribution is rolled over or transferred, then the designated beneficiary must determine the portion of the distribution that is a required minimum distribution that is not eligible for rollover using the life expectancy rule described in § 1.401(a)(9)–3(c)(4) (or, in the case of a defined benefit plan, the annuity payment rule described in § 1.401(a)(9)–3(b)(3)).

(iii) *Special rule applicable to a spouse beneficiary—(A) In general.* This paragraph (j)(3)(iii) provides a special rule relating to the determination of amounts treated as a required minimum distribution for distributions to an employee's surviving spouse to whom the 5-year rule or 10-year rule described in § 1.401(a)(9)–3(b)(2), (c)(2), or (c)(3) applies. This rule, which treats a portion of the distribution made before

the last year of the 5-year or 10-year period (whichever applies to the spouse) as a required minimum distribution, applies if—

(1) The distribution is made in or after the calendar year the surviving spouse attains age 72; and

(2) The surviving spouse rolls over a portion of that distribution to an eligible retirement plan under which the surviving spouse is not treated as the beneficiary of the employee.

(B) *Catch-up of missed required minimum distributions.* If this paragraph (j)(3)(iii) applies to a distribution then, notwithstanding paragraph (j)(3)(i)(C) and (D) of this section, the portion of the distribution that is not an eligible rollover distribution because it is treated as a required minimum distribution is the excess (if any) of—

(1) The sum of the hypothetical required minimum distributions determined under paragraph (j)(3)(iii)(C) of this section for each year beginning with the first applicable calendar year (determined under paragraph (j)(3)(iii)(D) of this section) and ending with the calendar year in which the distribution is made, over

(2) The distributions made to the surviving spouse during those calendar years.

(C) *Calculation of required minimum distribution for calendar years prior to calendar year of distribution.* The hypothetical required minimum distribution for a calendar year described in this paragraph (j)(3)(iii)(C) is the amount that would have been the required minimum distribution for that year had the life expectancy rule applied to the surviving spouse. Thus, in the case of a defined contribution plan, the amount is calculated under § 1.401(a)(9)–5, using the applicable denominator under § 1.401(a)(9)–5(d) (or, in the case of a defined benefit plan, calculated under § 1.401(a)(9)–6). However, an adjusted account balance is used to determine the required minimum distribution for a year under this paragraph (j)(3)(iii)(C). The adjusted account balance is determined by reducing the account balance that would otherwise be used by the excess (if any) of—

(1) The sum of the hypothetical required minimum distributions determined under this paragraph (j)(3)(iii)(C) beginning with the first applicable year and ending with the calendar year preceding the calendar year of the determination, over

(2) The distributions made to the surviving spouse during those calendar years.

(D) *Definition of first applicable year.* The first applicable year is the later of—

(1) The calendar year in which the surviving spouse attains age 72, and

(2) The calendar year in which the employee would have attained age 72.

(E) *Example—(1) Facts.* Employee A is a participant in Plan X, sponsored by Employer M. A died before A's required beginning date having named A's surviving spouse, B, as the sole beneficiary. Pursuant to the terms of Plan X, B is subject to the 10-year rule. B does not take a distribution of A's entire interest in Plan X until the ninth calendar year following the year of A's death, at which time B takes a distribution of A's entire interest (valued at \$100,000 as of December 31 in the calendar year preceding the calendar year of distribution) when B is age 74 (and when A would have reached age 75). B would like to roll over the distribution to B's own IRA to the extent the distribution does not constitute a required minimum distribution.

(2) *Catch-up of required minimum distributions required.* Because the distribution is made in a calendar year after B attained age 72, this paragraph (j)(3)(iii) applies. The first applicable year (determined in accordance with paragraph (j)(3)(iii)(D) of this section) is the calendar year in which B reached age 72 (the seventh year after the year of A's death). Pursuant to paragraph (j)(3)(iii)(B) of this section, the amount that is not an eligible rollover distribution because it is treated as a required minimum distribution under section 401(a)(9), is the sum of the hypothetical required minimum distributions, determined in accordance with paragraph (j)(3)(iii)(C) of this section for each calendar year beginning with the first applicable year and ending in the year of distribution.

(3) *Calculation of hypothetical required minimum distribution.* Pursuant to paragraph (j)(3)(iii)(C) of this section, the amount treated as a required minimum distribution for the first applicable year is \$5,813.95 (\$100,000/17.2). For the next calendar year, the account balance as of the preceding calendar year is reduced by the required minimum distribution for that calendar year, in this case, \$5,813.95. This calculation will be made for each calendar year until the calendar year of the distribution and the cumulative amount of those hypothetical required minimum distributions will be treated as a required minimum distribution under section 401(a)(9) and thus, not an eligible rollover distribution.

(k) *Other rules—(1) Designation must be irrevocable—(i) Indirect rollover.* In

order for a contribution of an eligible rollover distribution to an individual retirement plan to constitute a rollover and, thus, to qualify for exclusion from gross income under section 402(c), a distributee must elect, at the time the contribution is made, to treat the contribution as a rollover contribution. An election is made by designating to the trustee, issuer, or custodian of the eligible retirement plan that the contribution is a rollover contribution. This election is irrevocable. Once any portion of an eligible rollover distribution has been contributed to an individual retirement plan and designated as a rollover distribution, taxation of the withdrawal of the contribution from the individual retirement plan is determined under section 408(d) rather than under section 402 or 403. Therefore, the eligible rollover distribution is not eligible for capital gains treatment, five-year or ten-year averaging, or the exclusion from gross income for net unrealized appreciation on employer stock.

(ii) *Direct rollover.* If an eligible rollover distribution is paid to an eligible retirement plan in a direct rollover at the election of the distributee, the distributee is deemed to have irrevocably designated that the direct rollover is a rollover contribution.

(2) *Use of actual minimum required distribution calculation.* The portion of any distribution that an employee (or spousal distributee) may roll over as an eligible rollover distribution under section 402(c) is determined based on the actual application of section 402 and other relevant provisions of the Internal Revenue Code. The actual application of these provisions may produce different results than any assumption described in § 1.401(a)(31)-1, Q&A-18 that is used by the plan administrator. Thus, for example, if the plan administrator assumes there is no designated beneficiary and calculates the portion of a distribution that is a required minimum distribution using the Uniform Life Table under § 1.401(a)(9)-9(c)(2), but the portion of the distribution that is actually a required minimum distribution and thus not an eligible rollover distribution is determined by taking into account a spousal designated beneficiary who is more than 10 years younger than the employee, then a greater portion of the distribution is actually an eligible rollover distribution and the distributee may roll over the additional amount.

(3) *Plan rollover not counted towards one rollover per year limitation.* A distribution from a qualified plan that is rolled over to an individual retirement account or individual retirement

annuity is not treated for purposes of section 408(d)(3)(B) as an amount received by an individual from an individual retirement account or individual retirement annuity that is not includible in gross income because of the application of section 408(d)(3).

#### § 1.402(c)-3. [Removed]

■ **Par. 5.** Remove Section 1.402(c)-3.

■ **Par. 6.** Amend § 1.403(b)-6 by revising paragraph (e) to read as follows:

\* \* \* \* \*

(e) *Minimum required distributions for eligible plans—(1) In general.* Under section 403(b)(10), a section 403(b) contract must meet the minimum distribution requirements of section 401(a)(9) (in both form and operation). See section 401(a)(9) for these requirements.

(2) *Generally treated as IRAs.* For purposes of applying the minimum distribution requirements of section 401(a)(9) to section 403(b) contracts, the minimum distribution requirements applicable to individual retirement annuities described in section 408(b) and individual retirement accounts described in section 408(a) apply to section 403(b) contracts. Consequently, except as otherwise provided in this paragraph (e), the minimum distribution requirements of section 401(a)(9) are applied to section 403(b) contracts in accordance with the provisions in § 1.408-8.

(3) *Exceptions under which qualified plan rules will apply—(i) Required beginning date.* The required beginning date for purposes of section 403(b)(10) is determined in accordance with § 1.401(a)(9)-2(b) (rather than § 1.408-8(b)(1)).

(ii) *Amounts not taken into account.* The amounts not taken into account in determining whether the minimum distribution requirement of section 401(a)(9) has been satisfied for a calendar year are the amounts described in § 1.402(c)-2(c)(3) (rather than the amounts described in § 1.408-8(g)(2)).

(iii) *Qualifying longevity annuity contracts.* The rules in § 1.401(a)(9)-6(q)(2)(i) (relating to limitations on premiums for a qualifying longevity annuity contract (QLAC), as defined in § 1.401(a)(9)-6(q)(1)) and § 1.401(a)(9)-6(q)(4)(i)(A) (relating to reliance on representations with respect to a QLAC) apply to the purchase of a QLAC under a section 403(b) plan (rather than the rules in § 1.408-8(h)(2) and (3)).

(4) *Surviving spouse rule does not apply.* The special rule in § 1.408-8(c) (relating to spousal beneficiaries permitting a surviving spouse to treat an IRA of the decedent as the spouse's own IRA) does not apply to a section 403(b)

contract. Thus, the surviving spouse of a participant is not permitted to treat a section 403(b) contract as the spouse's own section 403(b) contract, even if the spouse is the sole beneficiary.

(5) *Retirement income accounts.* For purposes of § 1.401(a)(9)-6(d) (relating to annuity contracts purchased under a defined contribution plan), annuity payments provided with respect to retirement income accounts do not fail to satisfy the requirements of section 401(a)(9) merely because the payments are not made under an annuity contract purchased from an insurance company which is licensed to do business under the laws of the State, provided that the relationship between the annuity payments and the retirement income accounts is not inconsistent with any rules prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d) of this chapter). See also § 1.403(b)-9(a)(5) for additional rules relating to annuities payable from a retirement income account.

(6) *Special rules for benefits accruing before December 31, 1986—(i) Non-applicability of section 401(a)(9) to pre-'87 account balance.* The minimum distribution requirements of section 401(a)(9) do not apply to the undistributed portion of the account balance under a section 403(b) contract valued as of December 31, 1986, exclusive of subsequent earnings (pre-'87 account balance). The minimum distribution requirements of section 401(a)(9) apply to all benefits under any section 403(b) contract accruing after December 31, 1986 (post-'86 account balance), including earnings after December 31, 1986. 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.

(ii) *Recordkeeping required.* 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 (d)(6)(iii) of this section and provide that information upon request to the relevant employee or beneficiaries with respect to the contract. If the issuer or custodian does not keep those records, the entire account balance is treated as subject to section 401(a)(9).

(iii) *Applicability of section 401(a)(9) to post-'86 account balance.* In applying the minimum distribution requirements of section 401(a)(9), only the post-'86 account balance is used to calculate the required minimum distribution for a

calendar year. The amount of any distribution from a contract is treated as being paid from the post-'86 account balance to the extent the distribution is required to satisfy the minimum distribution requirement with respect to that contract for a calendar year. Any amount distributed in a calendar year from a contract in excess of the required minimum distribution for a calendar year with respect to that contract is treated as paid from the pre-'87 account balance, if any, of that contract.

(iv) *Rollover of amounts from pre-'87 account balance.* If an amount is distributed from the pre-'87 account balance and rolled over to another section 403(b) contract, the amount is treated as part of the post-'86 account balance in that second contract. However, if the pre-'87 account balance under a section 403(b) contract is directly transferred to another section 403(b) contract (as permitted under § 1.403(b)-10(b)), the amount transferred retains its character as a pre-'87 account balance, provided the issuer of the transferee contract satisfies the recordkeeping requirements of paragraph (e)(6)(ii) of this section.

(v) *Relevance of distinction between pre-'87 and post-'86 account balance for purposes of section 72.* The distinction between the pre-'87 account balance and the post-'86 account balance provided for under this paragraph (e)(6) of this section has no relevance for purposes of determining the portion of a distribution that is includible in income under section 72.

(vi) *Pre-'87 account balance distributions must satisfy incidental benefit requirement.* The pre-'87 account balance must be distributed in accordance with the incidental benefit requirement of § 1.401-1(b)(1)(i). Distributions attributable to the pre-'87 account balance are treated as satisfying this requirement if all distributions from the section 403(b) contract (including distributions attributable to the post-'86 account balance) satisfy the requirements of § 1.401-1(b)(1)(i) without regard to this section, and distributions attributable to the post-'86 account balance satisfy the rules of this paragraph (e) (without regard to this paragraph (e)(6)). Distributions attributable to the pre-'87 account balance are treated as satisfying the incidental benefit requirement if all distributions from the section 403(b) contract (including distributions attributable to both the pre-'87 account balance and the post-'86 account balance) satisfy the rules of this paragraph (e) (without regard to this paragraph (e)(6)).

(7) *Application to multiple contracts for an employee.* The required minimum distribution must be determined separately for each section 403(b) contract of an employee. However, because, as provided in paragraph (e)(2) of this section, the minimum distribution requirements of section 401(a)(9) apply to section 403(b) contracts in accordance with the provisions in § 1.408-8, the required minimum distribution from one section 403(b) contract of an employee is permitted to be distributed from another section 403(b) contract in order to satisfy the minimum distribution requirements of section 401(a)(9). Thus, as provided in § 1.408-8(e), with respect to IRAs, the required minimum distribution amount from each contract is then totaled and the total minimum distribution taken from any one or more of the individual section 403(b) contracts. However, consistent with the rules in § 1.408-8(e), only amounts in section 403(b) contracts that an individual holds as an employee may be aggregated. In addition, amounts in section 403(b) contracts that a person holds as a beneficiary of a decedent may be aggregated, but those amounts may not be aggregated with amounts held in section 403(b) contracts that the person holds as the employee or as the beneficiary of another decedent. Distributions from section 403(b) contracts do not satisfy the minimum distribution requirements for IRAs, nor do distributions from IRAs satisfy the minimum distribution requirements for section 403(b) contracts.

(8) *Governmental plans.* A section 403(b) contract that is part of a governmental plan (within the meaning of section 414(d)) is treated as having complied with section 401(a)(9) for all years to which section 401(a)(9) applies to the contract, if the terms of the contract reflect a reasonable, good faith interpretation of section 401(a)(9).

(9) *Effective date.* This paragraph (e) applies for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2022. For earlier calendar years, the rules of 26 CFR 1.403(b)-6(e) (revised as of April 1, 2021) apply.

\* \* \* \* \*

■ **Par. 7.** Revise § 1.408-8 to read as follows:

**§ 1.408-8 Distribution requirements for individual retirement plans.**

(a) *Applicability of section 401(a)(9)—(1) In general.* An IRA is subject to the required minimum distribution requirements of section 401(a)(9). In order to satisfy section 401(a)(9), the rules of §§ 1.401(a)(9)-1 through

1.401(a)(9)-9 must be applied, except as otherwise provided in this section. For example, if the owner of an individual retirement account dies before the IRA owner's required beginning date, whether the 10-year rule or the life expectancy rule applies to distributions after the IRA owner's death is determined in accordance with § 1.401(a)(9)-3(c), and the rules of § 1.401(a)(9)-4 apply for purposes of determining an IRA owner's designated beneficiary. Similarly, the amount of the minimum distribution required for each calendar year from an individual account is determined in accordance with § 1.401(a)(9)-5.

(2) *Definition of IRA and IRA owner.* For purposes of this section, an IRA is an individual retirement account or annuity described in section 408(a) or (b), and the IRA owner is the individual for whom an IRA is originally established by contributions for the benefit of that individual and that individual's beneficiaries.

(3) *Substitution of specific terms.* For purposes of applying the required minimum distribution rules of §§ 1.401(a)(9)-1 through 1.401(a)(9)-9, the IRA trustee, custodian, or issuer is treated as the plan administrator, and the IRA owner is substituted for the employee.

(4) *Treatment of SEPs and SIMPLE IRA Plans.* IRAs that receive employer contributions under a SEP arrangement (within the meaning of section 408(k)) or a SIMPLE IRA plan (within the meaning of section 408(p)) are treated as IRAs, rather than employer plans, for purposes of section 401(a)(9) and are, therefore, subject to the distribution rules in this section.

(b) *Different rules for IRAs and qualified plans—(1) Determination of required beginning date—(i) In general.* An IRA owner's required beginning date is determined using the rules for employees who are 5% owners under § 1.401(a)(9)-2(b)(3). Thus, the IRA owner's required beginning date is April 1 of the calendar year following the calendar year in which the individual attains age 72 (or 70½ in the case of an IRA owner born before July 1, 1949).

(ii) *Special rules for Roth IRAs.* No minimum distributions are required to be made from a Roth IRA while the owner is alive. After the Roth IRA owner dies, the required minimum distribution rules apply to the Roth IRA as though the Roth IRA owner died before his or her required beginning date. If the sole beneficiary is the Roth IRA owner's surviving spouse, then the surviving spouse may delay distributions until the Roth IRA owner would have attained age 72 (or 70½ in

the case of a Roth IRA owner born before July 1, 1949).

(2) *Account balance determination.*

For purposes of determining the required minimum distribution from an IRA for any calendar year, the account balance of the IRA as of December 31 of the calendar year preceding the calendar year for which distributions are required to be made is substituted for the account balance of the employee under § 1.401(a)(9)–5(b). Except as provided in paragraph (d) of this section, no adjustments are made for contributions or distributions after that date.

(3) *Determination of portion of distribution that is a required minimum distribution.* The portion of a distribution from an IRA that is a required minimum distribution and thus not eligible for rollover is determined in the same manner as provided in §§ 1.402(c)–2(f) and (j)(3) for a distribution from a qualified plan. For example, if a minimum distribution to an IRA owner is required under section 401(a)(9)(A)(ii) for a calendar year, any amount distributed during a calendar year from an IRA of that IRA owner is treated as a required minimum distribution under section 401(a)(9) to the extent that the total required minimum distribution for the year under section 401(a)(9) from all of that IRA owner's IRAs has not been satisfied (either by a distribution from the IRA or, as permitted under paragraph (e) of this section, from another IRA).

(c) *Surviving spouse treating IRA as own—*(1) *Election generally permitted—*(i) *In general.* The surviving spouse of an individual may elect, in the manner described in paragraph (c)(2) of this section, to treat the surviving spouse's entire interest as a beneficiary in the individual's IRA (or the remaining part of that interest if distributions have begun) as the surviving spouse's own IRA.

(ii) *Timing of election.* The election described in this paragraph (c)(1) may not be made after the later of—

(A) The calendar year in which the surviving spouse reaches age 72; and  
(B) The calendar year following the calendar year of the individual's death.

(iii) *Eligibility to make election.* In order to make the election described in this paragraph (c)(1), the surviving spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the surviving spouse is the sole beneficiary of the trust.

(2) *Election procedures.* The election described in paragraph (c)(1) of this section is made by the surviving spouse

redesignating the account as an 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—

(i) Any amount in the IRA that would be required to be distributed to the surviving spouse as beneficiary under section 401(a)(9)(B) is not distributed within the time period required under section 401(a)(9)(B); or

(ii) A contribution (other than a rollover of a distribution from an eligible retirement plan of the decedent) is made to the IRA.

(3) *Effect of election.* Following an election described in paragraph (c)(1) of this section, the surviving spouse is considered the IRA owner for whose benefit the trust is maintained for all purposes under the Internal Revenue Code (including section 72(t)). Thus, for example, the required minimum distribution for the calendar year of the election and each subsequent calendar year is determined under section 401(a)(9)(A) with the spouse as IRA owner and not section 401(a)(9)(B) with the surviving spouse as the deceased IRA owner's beneficiary. However, if the election is made in the calendar year during which the IRA owner's death occurs, the spouse is not required to take a required minimum distribution as the IRA owner for that calendar year. Instead, the spouse is required to take a required minimum distribution for that year, determined with respect to the deceased IRA owner under the rules of § 1.401(a)(9)–5(c), to the extent the distribution was not made to the IRA owner before death.

(d) *Treatment of rollovers and transfers—*(1) *Treatment of rollovers—*

(i) *In general.* If a distribution is rolled over to an IRA, then the rules in § 1.401(a)(9)–7 apply for purposes of determining the account balance and the required minimum distribution for that 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 IRA is adjusted only if the amount rolled over is not received in the calendar year in which the amount was distributed. If the amount rolled over is received in the calendar year following the calendar year in which the amount was distributed, then, for purposes of determining the required minimum distribution for that following calendar year, the account balance of the IRA as of December 31 of the calendar year in

which the distribution was made must be adjusted by the amount received in accordance with § 1.401(a)(9)–7(b).

(ii) *Spousal rollovers.* A surviving spouse is permitted to roll over a distribution to an IRA as the beneficiary of the deceased employee or IRA owner, and the rules of paragraph (d)(1)(i) of this section apply to that IRA. A surviving spouse may also elect to treat that IRA as the spouse's own IRA in accordance with paragraph (c) of this section.

(2) *Special rules for death before required beginning date—*(i) *Carryover of election under qualified plan or IRA.* If an employee or IRA owner dies before the required beginning date and the surviving spouse rolls over a distribution of the employee's or IRA owner's interest to an IRA in the spouse's capacity as a beneficiary of the deceased employee or IRA owner, then, except as provided in paragraph (d)(2)(ii) of this section, the method for determining required minimum distributions that applied to that surviving spouse under the distributing plan or IRA (such as when a beneficiary makes an election described in § 1.401(a)(9)–3(c)(5)(iii)) also applies to the receiving IRA. Thus, for example, if an employee who died before the required beginning date designated the employee's surviving spouse as a beneficiary of the employee's interest in the plan and the plan provides that the surviving spouse is subject to the 10-year rule described in § 1.401(a)(9)–3(c)(4), then the 10-year rule also applies to any IRA in the name of the decedent that receives a rollover of the employee's interest.

(ii) *Change from 5-year rule or 10-year rule to life expectancy payments.* If the 5-year rule or 10-year rule described in § 1.401(a)(9)–3(b)(2), (c)(2), or (c)(3), respectively, applies to a distributing plan or IRA and a distribution is made to the employee's surviving spouse before the deadline described in § 1.401(a)(9)–3(b)(4)(iii) or (c)(5)(iii) that would have applied had the distributing plan or IRA permitted the surviving spouse to make an election between the 5-year rule or 10-year rule and the life expectancy rule (or, in the case of a defined benefit plan, the annuity payment rule), then the surviving spouse may elect to have the life expectancy rule described in § 1.401(a)(9)–3(c)(4) or the annuity payment rule described in § 1.401(a)(9)–3(b)(3) apply to any IRA to which any portion of that distribution is rolled over. However, see § 1.402(c)–2(j)(3)(ii) to determine the portion of that distribution that is treated as a required minimum distribution in the calendar

year of the distribution and thus is not eligible for rollover.

(iii) *Spousal rollover to spouse's own IRA.* If an employee or IRA owner dies before the required beginning date and the surviving spouse rolls over a distribution described in paragraph (d)(2)(i) of this section from the surviving spouse's IRA in the capacity as the beneficiary of the decedent to the surviving spouse's own IRA, then, in determining the amount that is treated as a required minimum distribution under section 401(a)(9) and thus is not eligible for rollover, the rules of § 1.402(c)-2(j)(3)(iii) are applied as if the distribution was made directly from the decedent's interest in the plan or IRA to the surviving spouse's own IRA.

(3) *Applicability of rollover rules to non-spouse beneficiary.* The rules of paragraphs (d)(1), (d)(2)(i) and (d)(2)(ii) of this section apply to a non-spouse beneficiary who makes an election to have a distribution made in the form of a direct trustee-to-trustee transfer as described in section 402(c)(11) in the same manner as a rollover of a distribution made by a surviving spouse.

(4) *Treatment of transfers.* In the case of a trustee-to-trustee transfer from one IRA to another IRA that is not a distribution and rollover, the transfer is not treated as a distribution by the transferor IRA for purposes of section 401(a)(9). Accordingly, the minimum distribution requirement with respect to the transferor IRA must still be satisfied. After the transfer, the employee's account balance and the required minimum distribution under the transferee IRA are determined in the same manner that an account balance and required minimum distribution are determined under an IRA receiving a rollover contribution under paragraph (d)(1) of this section.

(e) *Owners of multiple IRAs—(1) In general.* The required minimum distribution from one IRA is permitted to be distributed from another IRA in order to satisfy section 401(a)(9), subject to the limitations of paragraph (e)(2) and (3) of this section. The required minimum distribution must be calculated separately for each IRA and the separately calculated amounts may then be totaled and the total distribution taken from any one or more of the IRAs under the rules set forth in this paragraph (e).

(2) *IRAs must be of the same owner.* Generally, only amounts in IRAs that an individual holds as the IRA owner may be aggregated. Except in the case of a surviving spouse electing to treat a decedent's IRA as the spouse's own IRA, an IRA that a beneficiary acquires as a

result of the death of an individual is not treated as an IRA of the beneficiary but rather as an IRA of the decedent for purposes of this paragraph (e). Thus, for example, for purposes of satisfying the minimum distribution requirements with respect to one IRA by making distributions from another IRA, IRAs for which the individual is the IRA owner are not aggregated with IRAs for which the individual is a beneficiary. In addition, IRAs that a person holds as a beneficiary of a decedent may be aggregated, but those amounts may not be aggregated with IRAs that the person holds as the owner or as the beneficiary of another decedent.

(3) *Non-Roth IRAs are treated separately from section 403(b) contracts and Roth IRAs.* Distributions from an IRA that is not a Roth IRA may not be used to satisfy the required minimum distribution requirements with respect to a Roth IRA, or a section 403(b) contract (as defined in § 1.403(b)-2(b)(16)(i)). Similarly, distributions from a Roth IRA do not satisfy the required minimum distribution requirements with respect to a section 403(b) contract or an IRA that is not a Roth IRA. In addition, distributions from a section 403(b) contract do not satisfy the required minimum distribution requirements with respect to an IRA.

(f) *Reporting requirements.* The trustee, custodian, or issuer of an IRA is required to report information with respect to the minimum amount required to be distributed from the IRA for each calendar year to individuals or entities, at the time, and in the manner, prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin (see § 601.601(d) of this chapter), as well as the applicable Federal tax forms and accompanying instructions.

(g) *Distributions taken into account—(1) General rule.* Except as provided in paragraph (g)(2) of this section, all amounts distributed from an IRA are taken into account in determining whether section 401(a)(9) is satisfied, regardless of whether the amount is includible in income.

(2) *Amounts not taken into account.* The following amounts are not taken into account in determining whether the required minimum distribution with respect to an IRA for a calendar year has been made—

(i) Contributions returned pursuant to section 408(d)(4), together with the income allocable to these contributions;

(ii) Contributions returned pursuant to section 408(d)(5);

(iii) Corrective distributions of excess simplified employee pension

contributions under section 408(k)(6)(C), together with the income allocable to these distributions;

(iv) Amounts that are treated as distributed pursuant to section 408(e);

(v) Amounts that are deemed to be distributed with respect to collectibles pursuant to section 408(m);

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

(vii) Similar items designated by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(h) *Qualifying longevity annuity contracts—(1) General rule.* The special rule in § 1.401(a)(9)-5(b)(4) for a QLAC, defined in § 1.401(a)(9)-6(q), applies to an IRA, subject to the modifications set forth in this paragraph (h).

(2) *Limitations on premiums—(i) In general.* In lieu of the limitations on premiums described in § 1.401(a)(9)-6(q)(2)(i), the limitation on premiums paid with respect to the contract on a date is the lesser of—

(A) The dollar limitation in paragraph (h)(2)(ii) of this section; and

(B) The percentage limitation in paragraph (h)(2)(iii) of this section.

(ii) *Dollar limitation.* The dollar limitation is the amount by which \$125,000 (as adjusted under § 1.401(a)(9)-6(q)(4)(ii)(A)) exceeds the sum of—

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

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

(iii) *Percentage limitation.* The percentage limitation is the amount by which 25 percent of the total account balances of the IRAs (other than Roth IRAs) that an individual holds as the IRA owner (including the value of any QLAC held under those IRAs) as of December 31 of the calendar year preceding the calendar year in which a premium is paid, exceeds the sum of—

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

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

(3) *Reliance on representations.* For purposes of the limitations described in paragraphs (h)(2)(ii) and (iii) of this

section, unless the trustee, custodian, or issuer of an IRA has actual knowledge to the contrary, the trustee, custodian, or issuer may rely on the IRA owner's representation (made in writing or other form as may be prescribed by the Commissioner) of—

(i) The amount of the premiums described in paragraphs (h)(2)(ii) and (iii) of this section that are not paid under the IRA, and

(ii) The amount of the account balances described in paragraph (h)(2)(iii) of this section (other than the account balance under the IRA).

(4) *Permitted delay in setting beneficiary designation.* In the case of a contract that is rolled over from a plan to an IRA before the required beginning date under the plan, the contract will not violate the rule in § 1.401(a)(9)–6(q)(3)(iii)(F) that a non-spouse beneficiary must be irrevocably selected on or before the later of the date of purchase or the required beginning date under the IRA, provided that the contract requires a beneficiary to be irrevocably selected by the end of the year following the year of the rollover.

(5) *Roth IRAs.* The rule in § 1.401(a)(9)–5(b)(4) does not apply to a Roth IRA. Accordingly, a contract that is purchased under a Roth IRA is not treated as a contract that is intended to be a QLAC for purposes of applying the dollar and percentage limitation rules in paragraphs (h)(2)(ii) and (iii) of this section. If a QLAC is purchased or held under a plan, annuity, account, or traditional IRA, and that contract is later rolled over or converted to a Roth IRA, the contract is not treated as a contract that is intended to be a QLAC after the date of the rollover or conversion. Thus, premiums paid with respect to the contract will not be taken into account under paragraph (h)(2)(ii) and (iii) of this section after the date of the rollover or conversion.

(i) [Reserved].

(j) *Applicability date.* This section applies for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2022. For earlier calendar years, the rules of 26 CFR 1.408–8 (revised as of April 1, 2021) apply.

■ **Par. 8.** Amend § 1.457–6 by revising paragraph (d) to remove the last sentence.

## PART 54—PENSION EXCISE TAXES

■ **Par. 9.** The authority citation for part 54 continues to read in part as follows:

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

■ **Par. 10.** Revise § 54.4974–1 to read as follows:

### § 54.4974–1 Excise tax on accumulations in qualified retirement plans.

(a) *Imposition of excise tax.* 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 that year, section 4974 imposes an excise tax on the payee 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 the 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 minimum 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. Except as otherwise provided in paragraph (f) of this section (which provides a special rule for amounts required to be distributed by an employee's, or an individual's, required beginning date), the required minimum distribution for a calendar year is the required minimum distribution amount required to be distributed during the calendar year.

(b) *Definition of qualified retirement plan.* For purposes of section 4974, each of the following is a qualified retirement plan—

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

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

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

(4) An individual retirement account described in section 408(a) (including a Roth IRA described in section 408A);

(5) An individual retirement annuity described in section 408(b) (including a Roth IRA described in section 408A); or

(6) Any other plan, contract, account, or annuity that, at any time, has been treated as a plan, account, or annuity described in paragraphs (b)(1) through (5) of this section but that no longer satisfies the applicable requirements for that treatment.

(c) *Determination of required minimum distribution for individual accounts—*(1) *General rule.* Except as otherwise provided in this paragraph (c), if a payee's interest under a qualified retirement plan or any eligible deferred compensation plan is in the form of an individual account (and distribution of that account is not being

made under an annuity contract purchased in accordance with § 1.401(a)(9)–5(a)(5) and § 1.401(a)(9)–6(d)), the amount of the required minimum distribution for any calendar year for purposes of section 4974 is the amount required to be distributed to that payee for that calendar year determined in accordance with § 1.401(a)(9)–5 as provided in the following (whichever is applicable)—

(i) Section 401(a)(9), §§ 1.401(a)(9)–1 through 1.401(a)(9)–5, and 1.401(a)(9)–7 through 1.401(a)(9)–9, in the case of a plan described in section 401(a) that includes a trust exempt under section 501(a) or an annuity plan described in section 403(a);

(ii) Section 403(b)(10) and § 1.403(b)–6(e) in the case of an annuity contract, custodial account, or retirement income account described in section 403(b);

(iii) 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); or

(iv) Section 457(d) and § 1.457–6(d) in the case of an eligible deferred compensation plan.

(2) *Distributions under 5-year rule or 10-year rule.* If an employee dies before the required beginning date and either § 1.401(a)(9)–3(c)(2) or (3) applies to the employee's beneficiary, there is no required minimum distribution until the end of the calendar year described in whichever of those paragraphs applies to the beneficiary (that is, the fifth year or the tenth year after the calendar year of the employee's death, as applicable). The required minimum distribution due in that fifth or tenth calendar year is the employee's entire interest in the plan.

(3) *Default provisions.* Unless otherwise provided under the qualified retirement plan or eligible deferred compensation plan (or, if applicable, the governing instrument of the plan), the default provisions in § 1.401(a)(9)–3(c)(5)(i) apply in determining whether paragraph (c)(1) or (c)(2) of this section applies.

(d) *Determination of required minimum distribution under a defined benefit plan or annuity—*(1) *General rule.* If a payee's interest in a qualified retirement plan or eligible deferred compensation 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), then the amount of the required minimum distribution for purposes of section 4974 depends on whether the annuity is a permissible annuity distribution option or an impermissible annuity distribution option. For this purpose—

(i) A permissible annuity distribution option is an annuity contract (or, in the case of annuity distributions from a defined benefit plan, a distribution option) that specifically provides for distributions that, if made as provided, would for every calendar year equal or exceed the minimum distribution amount required to be distributed to satisfy the applicable section enumerated in paragraph (b) of this section for that calendar year; and

(ii) An impermissible annuity distribution option is any other annuity distribution option.

(2) *Permissible annuity distribution option.* 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, then the required minimum distribution for a given calendar year for purposes of section 4974 equals the amount that the annuity contract (or distribution option) provides is to be distributed for that calendar year.

(3) *Impermissible annuity distribution option*—(i) *General rule.* 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, then the required minimum distribution for each calendar year for purposes of section 4974 is the amount that would be distributed under the applicable permissible annuity distribution option described in this paragraph (d)(3) (or the amount determined by the Commissioner if there is no option of this type). The determination of which permissible annuity distribution applies depends on whether distributions commenced before the death of the employee, whether the plan is a defined benefit or defined contribution plan, whether there is a designated beneficiary for purposes of section 401(a)(9), and whether the designated beneficiary is an eligible designated beneficiary under section 401(a)(9)(E)(ii). For this purpose, the determination of whether there is a designated beneficiary and whether that designated beneficiary is an eligible designated beneficiary is made in accordance with § 1.401(a)(9)–4, and the determination of which designated beneficiary's life is to be used in the case of multiple designated beneficiaries is made in accordance with § 1.401(a)(9)–5(f).

(ii) *Defined benefit plan*—(A) *Benefits commence before employee dies.* If the plan under which distributions are being made is a defined benefit plan,

benefits commence before the employee dies, and there is a designated beneficiary, then the applicable permissible annuity distribution option is the joint and survivor annuity option under the plan for the lives of the employee and the designated beneficiary that is a permissible annuity distribution option and that provides for the greatest level amount payable to the employee determined on an annual basis. If the plan does not provide an option described in the preceding sentence (or there is no designated beneficiary under the impermissible annuity distribution option), then the applicable 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.

(B) *Employee dies before benefits commence.* If the plan under which distributions are being made is a defined benefit plan, the employee dies before benefits commence, there is a designated beneficiary, and the plan has a life annuity option payable for the life of the designated beneficiary in level amounts, then the applicable permissible annuity distribution option is that life annuity option. If there is no designated beneficiary, then the 5-year rule in section 401(a)(9)(B)(ii) applies in accordance with paragraph (d)(4)(i) of this section.

(iii) *Defined contribution plan*—(A) *In general.* If the 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, then the applicable permissible annuity distribution option is the applicable annuity described in paragraph (d)(3)(iii)(B) or (C) of this section that could have been purchased with the portion of the employee's or individual's account that was used to purchase the annuity contract that is the impermissible annuity distribution option. The amount of the payments under that annuity contract are determined using the interest rate prescribed under section 7520 determined as of the date the contract was purchased, the ages of the annuitants on that date, and the mortality rates in § 1.401(a)(9)–9(e).

(B) *Benefits commence before employee dies.* If the plan under which distributions are being made is a defined contribution plan, the benefits commence before the employee dies, and there is a designated beneficiary who is an eligible designated beneficiary within the meaning of section 401(a)(9)(E)(ii), then the

applicable annuity is the joint and survivor annuity option providing level annual payments for the lives of the employee and the designated beneficiary, under which the amount of the periodic payment that would have been payable to the survivor is the applicable percentage under the table in § 1.401(a)(9)–6(b)(2) (taking into account the rules of § 1.401(a)(9)–6(k)(2)) of the amount of the periodic payment that would have been payable to the employee or individual. If there is no designated beneficiary, or if the designated beneficiary is not an eligible designated beneficiary under the impermissible distribution option, then the annuity described in this paragraph (d)(3)(iii)(B) is a life annuity for the life of the employee with no survivor benefit that provides level annual payments.

(C) *Employee dies before benefits commence.* If the plan under which distributions are being made is a defined contribution plan, the employee dies before benefits commence, and there is an eligible designated beneficiary under the impermissible annuity distribution option, then the applicable annuity is a life annuity for the life of the designated beneficiary that provides level annual payments and that would have been a permissible annuity distribution option. If there is no designated beneficiary, then section 401(a)(9)(B)(ii) applies in accordance with paragraph (d)(4)(i) of this section. If the designated beneficiary is not an eligible designated beneficiary, then section 401(a)(9)(B)(ii) applies in accordance with paragraph (d)(4)(ii) of this section.

(4) *Application of section 401(a)(9)(B)(ii)*—(i) *Application of 5-year rule.* If the 5-year rule in section 401(a)(9)(B)(ii) applies to the distribution to the payee under the contract (or distribution option), then no amount is required to be distributed to satisfy the applicable enumerated section in paragraph (b) of this section until the end of the calendar year that includes the date 5 years after the date of the employee's death. For the calendar year that includes the date 5 years after the employee's death, the 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). However, see § 1.401(a)(9)–6(j) for rules regarding payments that are not permitted under section 436.

(ii) *Application of 10-year rule.* If the employee dies before distribution of the employee's entire interest, section

401(a)(9)(H) applies, and the designated beneficiary of the remaining interest is not an eligible designated beneficiary, then no amount is required to be distributed to satisfy the applicable enumerated section in paragraph (b) of this section until the end of the calendar year that includes the date 10 years after the date of the employee's death. For the calendar year that includes the date 10 years after the employee's death, the amount required to be distributed to satisfy the applicable enumerated section is the payee's entire remaining interest in the annuity contract.

(5) *Plans providing uniform required beginning date.* For purposes of this section, if the plan provides a uniform required beginning date for purposes of section 401(a)(9) for all employees in accordance with § 1.401(a)(9)–2(b)(4), then the required minimum distribution for each calendar year for an employee who is not a 5-percent owner is the lesser of the amount determined based on the required beginning date as set forth in § 1.401(a)(9)–2(b)(1)(i), or (b)(2)(i)(A) (whichever applies to the employee, and without regard to whether the employee is a 5-percent owner) or the required beginning date under the plan. Thus, for example, if an employee born after July 1, 1949, who was not a 5-percent owner, participated in a defined contribution plan with a uniform required beginning date (as described in the preceding sentence) and the employee died after attaining age 72 (but before April 1 of the calendar year following the calendar year in which the employee retired) without a designated beneficiary, then required minimum distributions for calendar years after the calendar year that includes the employee's date of death may be based on the lesser of—

(i) The required minimum distribution determined by treating the employee as dying before the required beginning date (that is, the 5-year rule of § 1.401(a)(9)–3(c)(2)); or

(ii) The required minimum distribution determined by treating the employee as dying on or after the required beginning date (annual distributions over the employee's remaining life expectancy, as set forth in § 1.401(a)(9)–5(d)).

(e) *Distribution of remaining benefit after deadline for required distribution.* 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 that calendar year is the entire remaining benefit. Thus, for example, if the designated beneficiary of the employee is not an eligible designated beneficiary, then, pursuant to § 1.401(a)(9)–5(e)(2), the entire interest of the employee must be distributed no later than the end of the tenth calendar year following the calendar year of the employee's death and the required minimum distribution for that calendar year and each subsequent calendar year is the remaining portion of the employee's interest in the plan.

(f) *Excise tax for first distribution calendar year.* If the amount not paid is an amount required to be paid by April 1 of a calendar year that includes the employee's required beginning date, the missed distribution is a required minimum distribution for the previous calendar year (that is, for the employee's or the individual's first distribution calendar year as determined in accordance with § 1.401(a)(9)–5(a)(2)(ii)). However, the excise tax under section 4974 is imposed for the calendar year that includes the last day by which the amount is required to be distributed (that is, the calendar year that includes 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. There is also a required minimum distribution for the calendar year that includes the employee's or individual's required beginning date, and that distribution is also required to be made during the calendar year that includes the employee's or individual's required beginning date.

(g) *Waiver of excise tax—(1) General rule.* The tax under paragraph (a) of this section may be waived if the payee establishes to the satisfaction of the Commissioner that—

(i) The failure to distribute the required minimum distribution described in this section was due to reasonable error; and

(ii) Reasonable steps are being taken to remedy the failure.

(2) *Automatic waiver after election to distribute within 10 years of employee's death.* Unless the Commissioner determines otherwise, the tax under paragraph (a) of this section is waived automatically if—

(i) The employee's or individual's death is before the employee's or individual's required beginning date;

(ii) The payee is an individual—

(A) Who is an eligible designated beneficiary (as defined in § 1.401(a)(9)–4(e));

(B) Whose required minimum distribution amount for a calendar year is determined under the life expectancy rule described in § 1.401(a)(9)–3(c)(4); and

(C) Who did not make an affirmative election to have the life expectancy rule apply as described in § 1.401(a)(9)–3(c)(5)(iii);

(iii) The payee fails to satisfy the minimum distribution requirement; and

(iv) The payee elects the 10-year rule described in § 1.401(a)(9)–3(c)(3) by the end of the ninth calendar year following the calendar year of the employee's death.

(3) *Automatic waiver for failure to take required minimum distribution for the year of death.* Unless the Commissioner determines otherwise, the tax under paragraph (a) of this section is waived automatically if—

(i) A distribution is required to be made to an individual under § 1.401(a)(9)–3 or § 1.401(a)(9)–5 in a calendar year;

(ii) The individual who was required to take the distribution described in paragraph (g)(3)(i) of this section died in that calendar year without satisfying that distribution requirement; and

(iii) The beneficiary of the individual described in paragraph (g)(3)(ii) of this section satisfies that distribution requirement no later than the tax filing deadline (including extensions thereof) for the taxable year of that beneficiary that begins with or within that calendar year.

(h) *Applicability date.* This section applies for taxable years beginning on or after January 1, 2022. For earlier taxable years, the rules of 26 CFR 54.4974–2 (revised as of April 1, 2021) apply.

#### **§ 54.4974–2 Excise Tax on Accumulations in Qualified Retirement Plans [Removed]**

■ **Par. 11.** Remove § 54.4974–2.

\* \* \* \* \*

**Douglas W. O'Donnell,**  
Deputy Commissioner for Services and Enforcement.

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