

DELAWARE STATE BAR ASSOCIATION
PRESENTS

RETIREMENT PLANNING SEMINAR 2021

**LIVE SEMINAR AT DELAWARE TECHNICAL AND
COMMUNITY COLLEGE WITH ZOOM OPTION**

SPONSORED BY THE ELDER LAW SECTION OF THE
DELAWARE STATE BAR ASSOCIATION AND THE
SOUTHERN DELAWARE ESTATE PLANNING COUNCIL

THURSDAY, OCTOBER 21, 2021 | 8:30 A.M. TO 12:30 P.M.

3.0 Hours CLE credit for Delaware and Pennsylvania Attorneys



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RETIREMENT PLANNING SEMINAR 2021

MODERATOR

Deirdre A. McCartney, Esquire
Sergovic Carmean Weidman McCartney & Owens P.A.

PROGRAM

8:30 a.m. – 9:00 a.m. | Registration

9:00 a.m. – 9:15 a.m.

Welcome

9:15 a.m. – 10:15 a.m.

The SECURE Act and the Qualified Disability Trust

William W. Erhart, Esquire
Estate & Elder Law Services

10:15 a.m. – 11:15 a.m.

Social Security Retirement and Other SSA Benefits That You Have Never Heard Of

John Whitelaw, Esquire
Community Legal Aid Society, Inc.

11:15 a.m. – 11:30 a.m. | Break

11:30 a.m. – 12:30 p.m.

Planning for Retirement Success

Robert Jeter
In Focus Financial

12:30 p.m.

Adjournment

12:30 p.m.

Informal Networking Lunch

JD Shuckers Georgetown

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Moderator

Deirdre A. McCartney, Esquire
*Sergovic Carmean Weidman McCartney
& Owens P.A.*

The SECURE Act and the Qualified Disability Trust

William W. Erhart, Esquire
Estate & Elder Law Services



SECURE Act and Qualified Disability Trusts

Estate Planning and
Disability Planning

William W. Erhart

Certified Elder Law Attorney

- ☐ Certified Elder Law Attorney: National Elder Law Foundation, accredited by the American Bar Association
- ☐ Rated in Elder Law in Super Lawyer Magazine
- ☐ United States Marine Corps
- ☐ University of Delaware
- ☐ Reformed Episcopal Seminary
- ☐ Rutgers University School of Law
- ☐ Past Chair Elder Law Section – Delaware Bar Association
- ☐ Top Lawyer in Elder Law Delaware Today 2012-2020
- ☐ Deputy Attorney General Delaware Department of Justice
- ☐ Private practice since 1988
- ☐ Rated AV by Martindale Hubble
- ☐ Rated Superb by AVVO 10 out of 10
- ☐ Numerous seminars and articles



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The information is solely for informational and educational purposes. None of the information should be construed for legal, tax or other professional advice. Nothing should be used as legal, tax, investment or other professional advice.

The discussions are general in nature and not person specific. Laws vary and are subject to change.

Preliminaries

IRA = Individual Retirement Account(IRC 408)

Preliminaries

IRAs must meet distribution requirements of 401(a)(9)(408(a)(6))

Preliminaries

401 Qualified pension, profit-sharing, and stock bonus plans

(a) Requirements for qualification

(9) Required distributions.

Preliminaries

Post-death distribution requirements apply to Roth accounts
(408A(a))

Preliminaries

401(a)(9) also applies to 401(k), 403(b), and 457 plans
(401(k)(2), 403(b)(10), 457(d)(2))

Preliminaries

- Section 401(a)(9)(H)(iv)(II)
 - section 401
 - subsection (a)
 - paragraph (9)
 - subparagraph (H)
 - clause (iv)—references “subclause (I)” and “clause (ii)”
 - subclause (II)—references “subparagraph (E)(ii)”

Important Terminology

- Applicable distribution period (ADP) = the time period in which distributions must be withdrawn from the account
 - The optimal situation would be to use the beneficiary's life expectancy as the ADP
- Required minimum distributions (RMDs)= the amount that must be withdrawn on an annual basis from the retirement account
 - More can be withdrawn, the RMD is the floor for withdrawals
 - Stretch = the ability to withdraw RMDs over the life expectancy of an individual
 - The ADP is the life expectancy of the individual
 - Allows funds to continue to grow in the account, tax-deferred

BEFORE the SECURE Act

- Most beneficiaries could stretch RMDs over their life expectancy
 - Must be a *designated beneficiary* (have a heart beat)
 - If not a designated beneficiary, then the ADP is 5 years
- For trusts, the beneficiaries of the trust will be treated as been designated as beneficiaries
 - If *all* beneficiaries under the trust entitled to receive distributions from the retirement account are individuals, the beneficiary with the shortest life expectancy is the designated beneficiary for purposes of determining the ADP

AFTER the SECURE Act

- "Stretch IRAs" abolished for most beneficiaries
- 10-year distribution requirement
- 50% penalty on undistributed amount



AFTER the SECURE Act

- Disabled or chronically ill beneficiaries
 - Planning opportunities for these beneficiaries
 - They are entitled to the stretch
 - Special trust rules: Higher tax bracket
 - Qualified Disability Trust: Gets own exemption \$4,300
 - Beneficiary gets own exemption
 - Irrevocable, beneficiary must be disabled (SSI or SSDI),
 - Not Grantor trust, own EIN,
 - Established before beneficiary turns 65
 - Trust can be left to someone not disabled after disabled beneficiary dies.

Types of Beneficiaries

- Designated Beneficiaries (DB)
- Eligible Designated Beneficiaries (EDB)
- Non-Designated Beneficiaries



Designated Beneficiaries

- Individuals not "persons" 401(a)(9)(E)(i)
 - Words not used interchangeably 7701(a)(1)
- Multiple beneficiaries
 - Beneficiary with the shortest life expectancy determines distribution period
 - If a person other than an individual named amongst multiple DBs (trust, charity, corporation, etc.)
 - There will be no designated beneficiary even if an individual is also listed for purposes of determining distribution period
- Beneficiaries of inherited IRA prior to Jan. 1, 2020
 - Continue to stretch IRA distributions based on beneficiary's life expectancy

Eligible Designated Beneficiaries 401(a)(9)(E)(ii)

- I. Surviving spouse of the employee
- II. Minor child of the employee
- III. Disabled within the meaning of I.R.C. § 72(m)(7)**
- IV. Chronically ill within the meaning of I.R.C. § 7702B(c)(2)**
- V. Any other individual not mentioned that is not more than 10 years younger than the employee

Ex. Employee/owner 70 and beneficiary is 61

EDB: Surviving Spouse and Minor Child

- Surviving Spouse
 - Option 1: Roll-over IRA into name of surviving spouse
 - Option 2: Leave IRA as is
- Minor Child
 - RMDs based on life expectancy of the child
 - Once child reaches age of majority (18 or 26) 10-year distribution starts
 - Grandchildren beneficiaries do not count as children for EDB status

EDB: Disabled I.R.C. § 72(m)(7)

- Disabled = “[A]n individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered disabled unless he furnishes proof of the existence thereof in such form and manner as the Secretary may require”

EDB: Chronically Ill I.R.C. § 7702B(c)(2)(A)-(B)

- “chronically ill individual” means any individual who has been certified by a licensed health care practitioner as—
 - (i)being unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for a period of at least 90 days due to a loss of functional capacity,
 - (ii)having a level of disability similar (as determined under regulations prescribed by the Secretary in consultation with the Secretary of Health and Human Services) to the level of disability described in clause (i), or
 - (iii)requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.

Non-Designated Beneficiaries

- Non-Designated Beneficiaries
 1. Trusts or estates
 2. Charities
 3. Corporations
 4. Any other entity
- RMD determined by death of employee: before or after RBD?
 - Before RBD – IRA distributed within 5 years
 - After RBD – IRA distributed based on employee's remaining life expectancy

Beneficiary Designations

What if there's more than one beneficiary?

Beneficiary Designations

Look to Treasury Regulations

26 CFR 1.401(a)(9)-0 through -9

Beneficiary Designations

1.401(a)(9)-5, A-7(a)(1)

[I]f more than one individual is designated as a beneficiary . . . the designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the applicable distribution period.

Beneficiary Designations

1.401(a)(9)-5, A-7(a)(2)

See A-3 of §1.401(a)(9)-4 for rules that apply if a person other than an individual is designated as a beneficiary

Beneficiary Designations

1.401(a)(9)-4, A-3

[t]he employee will be treated as having no designated beneficiary for purposes of section 401(a)(9), even if there are also individuals designated as beneficiaries. . . .

Who is the Beneficiary?	Death Before RBD	Death After RBD
Non-Designated Beneficiary	5-year Rule (ex. Died at 65)	Ghost life Rule (ex. Life Expectancy of 73 = 14 years)
DB (Human) or See-through Trust	10-Year Rule	10-Year Rule
EDB (Spouse)	Life Expectancy or Roll Over	His or Her Life Expectancy No 10-Year Rule
EDB (minor)	Life Expectancy until 18, then 10-Year Rule	Life Expectancy until 18, then 10-Year Rule
EDB (Disabled or Chronically Ill)	Life Expectancy	Life Expectancy
Not more than 10 years younger than employee	Life Expectancy or 10-Year Rule	Life Expectancy or 10-Year Rule

Beneficiary Designations

Sample Beneficiary Designation

25% to my healthy adult daughter

25% to my disabled adult son

25% to my spouse

25% to my favorite charity

Beneficiary Designations

(B)RMDs after death **if no designated beneficiary**

- **(i) Death after 72 (Ghost life-expectancy rule)**
 - (72-year-old has a 17.2-year life expectancy)
 - (81-year-old has a 10.5-year life expectancy)
- (ii) Death before 72 (5-year rule)

Beneficiary Designations

Separate-account rule to the rescue!

Beneficiary Designations

1.401(a)(9)-8, A-2(a)(2)

(2) If the employee's benefit in a defined contribution plan is divided into separate accounts . . . the rules in section 401(a)(9) separately apply to such separate account under the plan. . . .

Beneficiary Designations

With separate accounts:

25% to my healthy adult daughter (10-year rule)

25% to my disabled adult son (life-expectancy rule)

25% to my spouse (special rule for spouses)

25% to my favorite charity (ghost life expectancy)

Trust as Beneficiary

- 1.401(a)(9)-4
- Q. May a person other than an individual be considered to be a designated beneficiary for purposes of section 401(a)(9)?
- A. No, only individuals may be designated beneficiaries for purposes of section 401(a)(9). If a person other than an individual is designated as a beneficiary of an employee's benefit, the employee will be treated as having no designated beneficiary for purposes of section 401(a)(9) . . . However, see A-5 of this section for special rules that apply to trusts

Trust as Beneficiary

1.401(a)(9)-4, A-5(a)

(a) If the requirements of paragraph (b) of this A-5 are met . . . the beneficiaries of the trust (and not the trust itself) will be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9).

Trust as Beneficiary

1.401(a)(9)-4, A-5(b)

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

Trust as Beneficiary

1.401(a)(9)-4, A-6(b)

The trustee of the trust must either—

- (1) Provide the plan administrator with a final list of all beneficiaries of the trust (including contingent and remaindermen beneficiaries with a description of the conditions on their entitlement) . . . ; or
- (2) Provide the plan administrator with a copy of the actual trust document

Trust as Beneficiary

A trust can never be a designated beneficiary

(1.401(a)(9)-4, A-3)

Trust as Beneficiary

The beneficiaries of the trust can be treated as beneficiaries designated on the account for purposes of determining the distribution period if the trust qualifies

(1.401(a)(9)-4, A-5)

Trust as Beneficiary

Contingent and successor beneficiaries count as
beneficiaries for purpose of determining the beneficiary
with the shortest life expectancy

(1.401(a)(9)-5, A-7)

Trust as Beneficiary

The separate-account rule is not available
to the beneficiaries of a trust

(1.401(a)(9)-4, A-5(c))

Trust as Beneficiary

The designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the distribution period

(1.401(a)(9)-5, A-7(a))

Trust as Beneficiary

Life expectancy treatment under (B)(iii) only applies “in the case of an eligible designated beneficiary”

(401(a)(9)(H)(ii))

Trust as a Beneficiary

Beneficiaries of trust (not trust itself) will be treated as designated beneficiaries if four requirements are met:

1. Trust must be valid under state law
2. Trust must be irrevocable upon employee's death
3. Beneficiaries with respect to trust's interest in the employee's benefits are identifiable
4. Either a list of all the beneficiaries or a copy of the trust is provided to plan administrator

Trust as a Beneficiary

Conduit trust

All withdrawals from the retirement account must be paid directly to the beneficiary for life

The beneficiary is the DB for RMD purposes, regardless of the remainder beneficiaries
(1.401(a)(9)-5, A-7(c)(3), Example 2)

Conduit trust is easy:

all withdrawals from the retirement account must be paid directly to the trust beneficiary
(1.401(a)(9)-5, A-7(c)(3), Example 2)

Unfortunately, conduit trusts are incompatible with SNT planning

Trust as a Beneficiary

Accumulation trust

Count all beneficiaries who are eligible to receive retirement-account proceeds, including contingent and successor beneficiaries other than mere potential successors

(stop looking when you get to an outright beneficiary)

(1.401(a)(9)-5, A-7(b) and (c))

Trust as a Beneficiary

Accumulation trust requires careful drafting:

Prohibit distribution of retirement-account proceeds

- (i) to any beneficiary that is not a DB; and
- (ii) to any beneficiary older than a specified individual
(1.401(a)(9)-5, A-7(c), Example 1.(iii))

Trust as a Beneficiary

Accumulation trust requires careful drafting

Predicate these prohibitions on 401(a)(9)(B)(iii) applying—
in other words, only apply the prohibitions
“in the case of an eligible designated beneficiary”
under (H)(ii) or if (B)(iii) applies, under (H)(iv)(II)

Trust as a Beneficiary

Accumulation trust solution

Prohibit beneficiaries older than a specific individual from
receiving retirement-account proceeds

The specific individual's life expectancy can be used
(1.401(a)(9)-4, A-1)

Trust as a Beneficiary

(B) RMDs after death if designated beneficiary
(ii) 10-year rule

Trust as a Beneficiary

- (B) RMDs after death if no designated beneficiary
 - (i) Death after 72 (Ghost life-expectancy rule)
(72-year-old has a 17.2-year life expectancy)

Trust as a Beneficiary

Introducing the Applicable Multi-Beneficiary Trust...

Applicable Multi-Beneficiary Trust ("AMBT") 401(a)(9)(H)(v)

- Characteristics:
 1. More than one beneficiary
 2. All beneficiaries are treated as DB for the purposes of determining distribution period, and
 3. At least one of the beneficiaries is an EDB
- Upon death of the employee
 1. Trust be immediately divided into separate trusts for each beneficiary (Master Trust) OR
 2. No individual other than EDB has any rights to the employee's interest in the plan until death of all such EDBs
- Master Trust – EDB can stretch RMDs over his or her life expectancy; other beneficiaries subject to 10-year distribution requirement

Applicable Multi-Beneficiary Trust ("AMBT") 401(a)(9)(H)(v)

Who counts as a beneficiary?

Beneficiaries presently eligible to receive distributions?

or

All countable beneficiaries per 1.401(a)(9)-5, A-7?

Qualified Disability Trust

Limited but Important
26 U.S.C. § 642(b)(2)(C)(ii)

What is a Qualified Disability Trust?

- Created under the Patriot Act of 2001
- “A disability trust described in subsection (c)(2)(B)(iv) of section 1917 of the Social Security Act (42 U.S.C. § 1396p)(stating that the assets were transferred to a trust established solely for the benefit of an individual under 65 years of age who is disabled (as defined in section 1382c(a)(3) of this title)), and all of whose beneficiaries are determined by the Commissioner of Social Security to have been disabled (within the meaning of §1614(a)(3) of the Social Security Act, 42 U.S.C. § 1382c(a)(3)) for some portion of the year.” 26 U.S.C. § 642(b)(2)(C)(ii).

Requirements

1. Trust must be irrevocable at time of employee's death
2. All beneficiaries must be disabled AND receiving SSI or SSDI
3. Trust cannot be a grantor trust; trust must be a taxpaying entity
4. Trust must be established for benefit of individuals 65 or younger
5. Trust must be a third-party trust

Benefits of a Qualified Disability Trust

- \$4,300 exemption
- Child beneficiary not subject to "Kiddie Tax"
- Keep both federal and state benefits

Example of Qualified Disability Trust

- \$1,000,000.00 IRA
- 25-year-old life expectancy factor of 58.2 and the RMD is \$17,182.13
- \$4,300.00 exemption for trust
- Standard deduction is \$12,400.00

Tax Filing Requirements

- QDisT is responsible for filing taxes
- Trust needs its own Employee Identification Number ("EIN")
- Trustee files Form 1041
- Any distributions to beneficiary will be claimed on the beneficiary's personal tax return

The image shows the top portion of Form 1041, U.S. Income Tax Return for Estates and Trusts, for the year 2020. The form is issued by the Department of the Treasury - Internal Revenue Service. It includes sections for identifying the filer (A), providing contact information (C, D, E), and reporting income (B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z). The form is designed to be filled out by the trustee of the estate or trust.

Estate Planning Considerations

- Cross-match trust provisions with other estate planning documents
 - ensure one document does not override another
- Trustee selection process
- Provisions must be carefully drafted
- Tax considerations

SECURE Act 2.0

- Draft Regulations as of 05/05/2021 (could be a stand-alone bill or included in a broader budget)
- Key provisions
 - Mandatory automatic enrollment for new 401k plans established after 2021
 - Age increase for RMDs
 - 73 – attains 72 after Dec. 31, 2021 and age 73 before Jan. 1, 2029
 - 74 – attains 73 after Dec. 31, 2028 and age 74 before Jan. 1, 2032
 - 75 – attains 74 after Dec. 31, 2031
 - Increased allowable contributions
 - Currently 401k participants 50 or older can make additional pre-tax contributions up to \$6,500 annually
 - 2023 - \$10k for participants 62-64
 - 2022 – all catch up contributions must be made as Roth after tax contributions
 - Reduced requirements for part-time employees
 - Must work at least 500 hours in a 2-year consecutive period (reduced from 3 years)
 - Matching contributions for 401k plans tied to student loan payments
 - Creates national database for tracking retirement plan accounts of missing participants

SECURE Act 2.0

- Allowing employers to provide *de minimis* financial incentives to employees to encourage plan participation
- Permitting plans to treat student loan payments as elective deferrals for purposes of matching contributions
- Allowing Roth contributions to SIMPLE IRAs
- Permitting employers to rely on participant's self-certification that they have experienced hardship event for purposes of hardship distributions from a plan
- Expansion of the IRA charitable distribution provision to allow for a one-time, \$50,000 distribution to charities through charitable gift annuities, charitable remainder unitrusts, and charitable remainder annuity trusts
- The creation of a national online "lost and found" for retirement plans to help connect former employees and plans in which they may have a benefit

Estate & Elder Law Services

William W. Erhart, Certified Elder
Law Attorney

2961 Centerville Road, Suite 350
Wilmington, DE 19808

(302) 651-0113

Info@EAELS.com



Who is the Beneficiary?	Death Before RBD	Death After RBD
Non-Designated Beneficiary	5-year Rule (ex. Died at 65)	Ghost life Rule (ex. Life Expectancy of 73 = 14 years)
DB (Human) or See-through Trust	10-Year Rule	10-Year Rule
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EDB (minor)	Life Expectancy until 18, then 10-Year Rule	Life Expectancy until 18, then 10-Year Rule
EDB (Disabled or Chronically Ill)	Life Expectancy	Life Expectancy
Not more than 10 years younger than employee	Life Expectancy or 10-Year Rule	Life Expectancy or 10-Year Rule

SECURE Act and Qualified Disability Trust

I. SECURE ACT

a. Prior to SECURE Act

Prior to the SECURE Act (“the Act”), someone who inherited an Investment Retirement Account (“IRA”) had the ability to leverage the IRA’s tax liability by taking only the required minimum distributions (“RMD”) over a number of years. This process became known as the “Stretch IRA”. Leveraging the tax deferral allowed the IRA to grow in value over time while increasing the after-tax wealth.

b. After SECURE Act

The Act abolished the so-called “Stretch IRA” for most beneficiaries. Under the Act, the IRA must be fully distributed by the beneficiary within 10 years after the original owner dies. There is no set schedule for the distributions; the beneficiary can take out the full amount of the IRA all at once, or he or she can space out the distributions over the 10 years. The issue with the 10-year requirement is the amount of taxes the beneficiary would have to pay on the contents of the IRA. An IRA with over \$500,000 in it at the time of the owner’s death will inevitably produce a high tax bill for the beneficiary over the 10-year required distribution. However, if the beneficiary failed to distribute the full contents of the IRA within those 10 years, a 50% penalty of the amount that was supposed to be distributed is assessed to the beneficiary.

Beneficiaries of Inherited IRAs Prior to January 1, 2020

It is important to note that beneficiaries who inherited IRAs before 2020 are not affected by the Act. The beneficiary can continue to stretch out the RMDs based on the beneficiary's life expectancy.

c. Types of Beneficiaries

There are three types of beneficiaries that are worth mentioning for the purposes of this discussion: (1) Designated Beneficiaries, (2) Eligible Designated Beneficiaries, and (3) Non-Designated Beneficiaries.

Designated Beneficiaries

A designated beneficiary is any individual designated as a beneficiary by the employee under 401(a)(9)(E)(i). The word, *individual*, is not to be used interchangeably with "person". For the purposes of this discussion, all persons are not individuals, and only an individual is considered to be a designated beneficiary.

Multiple beneficiaries

When there is more than one individual designated as a beneficiary, the beneficiary with the *shortest life expectancy* will be the designated beneficiary for the purposes of determining the applicable distribution period under 26 CFR 1.401(a)(9) -0 through – 9. This is why choosing beneficiaries is very important; choosing a beneficiary who is very old or one who has no life expectancy at all (such as a trust or charity) can significantly affect the distribution period.

Person other than an individual named

If a person other than an individual is designated as a beneficiary, the employee's plan will be treated as having no designated beneficiary for the purposes of determining the distribution period under 1.401(a)(9)-4, A-3. However, under the Separate Account Rule, if an employee has a plan that is divided into separate accounts, the rules in 1.401(a)(9)-8, A-2(a)(2) separately apply to each separate account under the plan. With that being said, it is important to note that the Separate Account Rule is not available to beneficiaries of a trust under 1.401(a)(9)-4, A-5(c).

Eligible Designated Beneficiaries

Under I.R.C. § 401(a)(9)(E), an Eligible Designated Beneficiary ("EDB") is defined as any designated beneficiary who is: (1) the surviving spouse of the employee; (2) a minor child of the employee; (3) disabled (within the meaning of I.R.C. § 72(m)(7)); (4) chronically ill (within the meaning of I.R.C. § 7702B(c)(2)); or (5) not more than 10 years younger than the employee. The determination of whether a designated beneficiary is an EDB is determined as of the date of the death of the employee under 26 U.S.C. § 401(a)(9)(E)(ii).

Surviving Spouse

A surviving spouse who is listed as a DB has two options in regards to the employee's IRA. The first option is the surviving spouse can roll over the IRA into the surviving spouse's name. This is commonly referred to as the "roll over" option. Under this option, everything is calculated and determined by surviving spouse without

mention of deceased spouse. The second option would be to leave the IRA as is and it will not be subject to 10-year distribution rule.

Minor Child of the Employee

The minor child of the employee will not be subject to the 10-year distribution rule, and as a result, the RMDs will be based on the minor's life expectancy, as long as the child remains a minor. Once the child reaches the age of majority (age 26), the 10-year distribution rule will commence under 26 U.S.C. § 401(a)(9)(E)(iii). A grandchild of the employee who is listed as a beneficiary does not count as a child for the purposes of obtaining EDB status.

Disabled

An individual is considered disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered disabled unless he furnishes proof of the existence thereof in such form and manner as the Secretary may require under I.R.C. § 72(m)(7).

Chronically Ill

An individual is considered to be chronically ill when he or she has been certified by a licensed health care practitioner as, (1) being unable to perform (without substantial assistance from another individual) at least two activities of daily living for a period of at least 90 days due to loss of functional capacity, (2) having a level of

disability similar to the level of disability described in (1), or (3) requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment under I.R.C. § 7702B(c)(2)(A). The activities of daily living are the following: (i) eating, (ii) toileting, (iii) transferring, (iv) bathing, (v) dressing, and (vi) continence under I.R.C. § 7702B(c)(2)(B).

Non-Designated Beneficiaries

If any of the following beneficiaries are listed as a beneficiary, it will be treated as having no designated beneficiary: (1) Trusts or Estates; (2) Charities; (3) Corporations; and (4) Any other entity. For these non-designated beneficiaries, the RMD schedule is determined by when the employee died and if his death was before or after the required beginning date (“RBD”) under 401(a)(9)(B)(iii). The RBD is defined 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 employees who turned 70.5 in 2020 or after, his RBD is age 72. For all other employees, their RBD is age 70.5 under 401(a)(9)(C). If the employee died before his RBD, the IRA must be distributed within 5 years of the employee’s death under 401(a)(9)(B)(ii). However, if the employee died after his RBD, the IRA will be distributed as though the employee were still alive using the employee’s remaining life expectancy under 401(a)(9)(B)(iii). For example, a 72-year-old employee would have a 15.5-year life expectancy, while an 81-year-old male employee would have a 9.7-year life expectancy. (Life expectancy Table https://www.irs.gov/publications/p590b#en_US_2020_publink1000231236)

d. Trust as a Beneficiary

As previously mentioned, a trust is not a DB. However, the beneficiaries of the trust (and not the trust itself) will be treated as having been designated as beneficiaries of the employee under the plan for the purposes of determining the distribution period under section 401(a)(9) if four requirements are met. First, the trust must be valid under state law. Second, the trust is irrevocable or by will, the trust will become irrevocable upon the death of the employee. Third, the beneficiaries with respect to the trust's interest in the employee's benefits are identifiable. Finally, either a final list of all the beneficiaries or a copy of the trust is provided to the plan administrator under 1.401(a)(9)-4, A-5(a). If all of the foregoing requirements are met, a see-through trust is created.

There are two types of see-through trusts: (1) conduit see-through trust, and (2) accumulation see-through trust. A conduit see-through trust requires all withdrawals from the retirement account be paid directly to the beneficiary of the trust for life. The beneficiary is the DB for the purposes of determining the RMDs notwithstanding the remainder beneficiaries under 1.401(a)(9)-5, A-7(c)(3). However, conduit see-through trusts are not compatible with special needs trusts because any distributions during the life of the beneficiary of the special needs trust is considered income; additional income can jeopardize any public assistance received by the beneficiary. An accumulation see-through trust counts all beneficiaries (including contingent and successor beneficiaries) who are eligible to receive retirement account proceeds under 1.401(a)(9)-5, A-7(b) and (c). Because this trust looks to all beneficiaries, it is important to draft provisions in the

trust that prohibit distributions to anyone other than the DB or anyone who is older than a specific age under 1.401(a)(9)-4, A-1.

II. QUALIFIED DISABILITY TRUST

A Qualified Disability Trust ("QDisT") is defined as a trust that is "a disability trust described in subsection (c)(2)(B)(iv) of section 1917 of the Social Security Act (42 U.S.C. § 1396p)(stating that the assets were transferred to a trust established solely for the benefit of an individual under 65 years of age who is disabled (as defined in section 1382c(a)(3) of this title)), and all of whose beneficiaries are determined by the Commissioner of Social Security to have been disabled (within the meaning of §1614(a)(3) of the Social Security Act, 42 U.S.C. § 1382c(a)(3)) for some portion of the year." 26 U.S.C. § 642(b)(2)(C)(ii). An individual shall be considered to be disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months under 42 U.S.C. §1382c(a)(3)(A). Furthermore, an individual is be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the

region where such individual lives or in several regions of the country under 42 U.S.C. §1382c(a)(3)(B).

a. Requirements

The following requirements must be present to establish a Qualified Disability Trust:

1. Trust Must be Irrevocable

For a trust to qualify as a QDisT, the trust must be irrevocable at the time of death of the employee.

2. All beneficiaries must be disabled **and receiving Supplemental Security Income **or** Social Security Disability Insurance**

Disabled

Whether a beneficiary is disabled is determined by the Social Security Administration (“SSA”). The SSA uses a step-by-step process involving five important questions to determine disability status.

Question #1: Are you working?

An individual is not considered disabled if he or she is working and has earnings more than \$1,310 a month. For those who are not working, the SSA will send the application to the Disability Determination Services (“DDS”) to make a decision about an individual’s disability status. DDS uses the same questions listed below.

Question #2: Is your condition severe?

An individual is not considered disabled if his or her ability to do basic work-related activities is not significantly limited for at least 12 months. Basic work-related activities include lifting, standing, walking, sitting, or remembering.

Question #3: Is your condition found in the list of disabling conditions?

The SSA has a list of medical conditions it considers disabling. If an individual has a medical condition listed on the SSA's list, the inquiry stops here and the individual is considered disabled. If the medical condition is not listed, the SSA will make an independent determination to see if the condition is as severe as the conditions listed. If the condition is as severe, then the individual will be considered disabled. If the condition is not as severe, the SSA will proceed to the next questions. The list of medical conditions can be found here:

<https://www.ssa.gov/disability/professionals/bluebook/listing-impairments.htm>

Question #4: Can you do the work you did previously?

If an individual's medical impairment does not prevent him or her from performing any work he or she has performed in the past, it will be determined that the individual is

not disabled. If the medical condition prevents the individual from performing past work, the SSA will proceed to the final question.

Question #5: Can you do any other type of work?

The SSA will look to see if the individual has the ability to do other work despite the medical impairments. The individual's medical condition, age, education, past work experience, and any transferable skill will be considered. If the individual cannot do any other work, the SSA will decide that the individual is disabled. However, if the individual has the ability to perform other work, it will be determined that the individual does not have a qualifying disability, and the claim will be denied.

Supplemental Security Income

SSI benefits are based on financial need. The individual applying for benefits must meet each requirement. He or she must: (1) be at least 65 or blind or disabled; (2) have limited income; (3) have limited resources; (4) be a US citizen, national of the US or some noncitizen; and (4) reside in the US (with exception for children of military parents assigned to permanent duty outside US).

<https://www.ssa.gov/benefits/ssi/#anchor2>

Social Security Disability Insurance

SSDI is paid to the individual and certain members of the family if the individual has worked long enough and paid social security taxes. The medical requirements are the same as applying for SSI, meaning the individual must qualify as disabled, blind, or be at least 65.

<https://www.ssa.gov/benefits/disability/>

3. The Trust Cannot be a Grantor Trust; the Trust Must be a Taxpaying Entity

A grantor trust is a trust created by the grantor and are not taxed separately from the creator of the trust. To qualify as a QDisT, the trust must be a tax-paying entity with its own Employee Identification Number (“EIN”) from its creator. Self-settled special needs trust can never qualify for QDisT status for this same reason (trust funded with assets owned by a beneficiary with disabilities).

4. The Trust Must be Established for the Benefit of Disabled Individuals 65 or younger

Not only must the trust be established for disabled beneficiaries under 65, the trust must be funded before the beneficiary turns 65. However, the trust does not cease after the beneficiary reaches 65 years of age, nor will the trust lose its QDisT status if

the corpus of the trust transfers to someone who is not disabled after all disabled beneficiaries are deceased. 26 U.S.C. § 642(b)(2)(C)(ii)(II).

5. The Trust Must be a Third-Party Trust

All of the trust's funding must come from someone other than the disabled beneficiary. This means that the trust cannot be funded by the disabled beneficiary or with his or her own assets.

a. **Applicable Multi-Beneficiary Trust**

A trust is considered an Applicable Multi-Beneficiary Trust ("AMBT") if: (1) there is more than one beneficiary, (2) all beneficiaries are treated as designated beneficiaries for the purposes of determining the distribution period, and (3) at least one of the beneficiaries is an EDB under 401(a)(9)(H)(iv) and (v). Upon the death of the employee, the AMBT must be divided in one of two ways. The first way would be for the trust to be immediately divided into separate trusts for each beneficiary ("Master Trust"). With a Master Trust, the sub trust created for the EDB (who will most likely be disabled or chronically ill) will be able to "stretch" the distributions over the EDB's life expectancy. All other sub trusts created for beneficiaries who are not considered EDBs will be subject to the 10-year distribution rule. The second way would be that no individual other than the EDB has any right to the employee's interest in the plan until the death of all such EDBs under 401(a)(9)(H)(iv). The age of the oldest EDB will be used to determine the RMDs, and if the trust is drafted in this manner, the EDBs will not be

subject to the 10-year distribution rule. <https://www.kitces.com/blog/discretionary-see-through-trusts-accumulation-secure-act-designated-beneficiary-mbt-guidelines/>

b. Benefits of a Qualified Disability Trust

One of the most important benefits of a QDisT is the fact that the trust is entitled to an exemption amount greater than a complex trust. In 2021, the exemption amount is \$4,300. Further, if the beneficiary has to file an individual tax return, he or she is also allowed to claim the exemption for the trust and his or her own standard deduction. Before the Tax Cuts and Job Act of 2017, each individual was able to claim a personal exemption amount of \$4,050. This meant that the beneficiary would have been able to claim his or her own personal exemption in addition to the trust exemption. However, as of the beginning of 2018, the personal exemption has been eliminated.

<https://www.irs.gov/pub/irs-prior/f1041es--2021.pdf>

The second benefit of a QDisT is the fact that a child beneficiary will not be subject to the “Kiddie Tax”. Generally, tax on unearned income of a child would usually be taxed a parents’ bracket or higher. However, under IRC §1(g)(4)(C), in the case of any child who is a beneficiary of a QDisT, any amount included in the income of such child during a taxable year will be considered earned income for such taxable year as opposed to unearned income. As a result, any income earned over the standard deduction for a child (dependent greater of \$500 or \$250 + earned income under IRC §63(c)(5)) up to \$2,550 in a taxable year will be taxed at 10%. IRC §1(j)(2)(E).

The final benefit of a QDisT is the fact that the beneficiary will be able to keep both federal and state benefits. Federal and state benefits are determined by the

amount of income an applicant generates. The more income generated, the less likely an individual will qualify for federal and state benefits. With a QDisT, the trust owns the assets and the appointed trustee makes purchases for the benefit of the beneficiary. The purchases made for the benefit of the beneficiary is not considered income. Thus, the state and federal benefits are unaffected.

c. Tax Filing Requirements

As previously stated, the QDisT is responsible for filing taxes on behalf of the trust. To file a tax return, the trust needs its own EIN. The trustee will file form 1041 using the EIN created for the QDisT, and any distributions given to the beneficiary will be claimed on the beneficiary's personal tax return.

IRC 401(a)(9) as Amended by the Secure Act and Cares Act

(9) Required distributions.—

(A) In general.—A trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee—

- (i) will be distributed to such employee not later than the required beginning date, or
- (ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

(B) Required distribution where employee dies before entire interest is distributed.—

(i) Where distributions have begun under subparagraph (A)(ii).—A trust shall not constitute a qualified trust under this section unless the plan provides that if—

- (I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and
- (II) the employee dies before his entire interest has been distributed to him,

the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death.

(ii) 5-year rule for other cases.—A trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

(iii) Exception to 5-year rule for certain amounts payable over life of beneficiary.—If—

- (I) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary,
- (II) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and
- (III) such distributions begin not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe,

for purposes of clause (ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

(iv) Special rule for surviving spouse of employee.—If the designated beneficiary referred to in clause (iii)(I) is the surviving spouse of the employee—

(I) the date on which the distributions are required to begin under clause (iii)(III) shall not be earlier than the date on which the employee would have attained ~~age 70½~~ age 72, and

(II) if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the employee.

(C) Required beginning date.—For purposes of this paragraph—

(i) **In general.**—The term "required beginning date" means April 1 of the calendar year following the later of—

(I) the calendar year in which the employee attains ~~age 70½~~ age 72, or

(II) the calendar year in which the employee retires.

(ii) **Exception.**—Subclause (II) of clause (i) shall not apply—

(I) except as provided in section 409(d), in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains ~~age 70½~~ age 72, or

(II) for purposes of section 408(a)(6) or (b)(3).

(iii) **Actuarial adjustment.**—In the case of an employee to whom clause (i)(II) applies who retires in a calendar year after the calendar year in which the employee attains age 70½, the employee's accrued benefit shall be actuarially increased to take into account the period after age 70½ in which the employee was not receiving any benefits under the plan.

(iv) **Exception for governmental and church plans.**—Clauses (ii) and (iii) shall not apply in the case of a governmental plan or church plan. For purposes of this clause, the term "church plan" means a plan maintained by a church for church employees, and the term "church" means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(D) Life expectancy.—For purposes of this paragraph, the life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

~~**(E) Designated beneficiary.**—For purposes of this paragraph, the term "designated beneficiary" means any individual designated as a beneficiary by the employee.~~

(E) Definitions and rules relating to designated beneficiaries.—For purposes of this paragraph—

(i) **Designated beneficiary.**—The term "designated beneficiary" means any individual designated as a beneficiary by the employee.

(ii) **Eligible designated beneficiary.**—The term "eligible designated beneficiary" means, with respect to any employee, any designated beneficiary who is—

(I) the surviving spouse of the employee,

(II) subject to clause (iii), a child of the employee who has not reached majority (within the meaning of subparagraph (F)),

(III) disabled (within the meaning of section 72(m)(7)),

(IV) a chronically ill individual (within the meaning of section 7702B(c)(2), except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature), or

(V) an individual not described in any of the preceding subclauses who is not more than 10 years younger than the employee.

The determination of whether a designated beneficiary is an eligible designated beneficiary shall be made as of the date of death of the employee.

(iii) **Special rule for children.**—Subject to subparagraph (F), an individual described in clause (ii)(II) shall cease to be an eligible designated beneficiary as of the date the individual reaches majority and any remainder of the portion of the individual's interest to which subparagraph (H)(ii) applies shall be distributed within 10 years after such date.

(F) Treatment of payments to children.—Under regulations prescribed by the Secretary, for purposes of this paragraph, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under regulations).

(G) Treatment of incidental death benefit distributions.—For purposes of this title, any distribution required under the incidental death benefit requirements of this subsection shall be treated as a distribution required under this paragraph.

(H) Special rules for certain defined contribution plans.—In the case of a defined contribution plan, if an employee dies before the distribution of the employee's entire interest—

(i) **In general.**—Except in the case of a beneficiary who is not a designated beneficiary, subparagraph (B)(ii)—

(I) shall be applied by substituting "10 years" for "5 years", and

(II) shall apply whether or not distributions of the employee's interests have begun in accordance with subparagraph (A).

(ii) **Exception for eligible designated beneficiaries.**—Subparagraph (B)(iii) shall apply only in the case of an eligible designated beneficiary.

(iii) **Rules upon death of eligible designated beneficiary.**—If an eligible designated beneficiary dies before the portion of the employee's interest to which this subparagraph applies is entirely distributed, the exception under clause (ii) shall not apply to any beneficiary of such eligible designated beneficiary and the remainder of such portion shall be distributed within 10 years after the death of such eligible designated beneficiary.

(iv) Special rule in case of certain trusts for disabled or chronically ill beneficiaries.—In the case of an applicable multi-beneficiary trust, if under the terms of the trust—

(I) it is to be divided immediately upon the death of the employee into separate trusts for each beneficiary, or

(II) no individual (other than a eligible designated beneficiary described in subclause (III) or (IV) of subparagraph (E)(ii)) 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,

for purposes of a trust described in subclause (I), clause (ii) shall be applied separately with respect to the portion of the employee's interest that is payable to any eligible designated beneficiary described in subclause (III) or (IV) of subparagraph (E)(ii); and, for purposes of a trust described in subclause (II), subparagraph (B)(iii) shall apply to the distribution of the employee's interest and any beneficiary who is not such an eligible designated beneficiary shall be treated as a beneficiary of the eligible designated beneficiary upon the death of such eligible designated beneficiary.

(v) Applicable multi-beneficiary trust.—For purposes of this subparagraph, the term "applicable multi-beneficiary trust" means a trust—

(I) which has more than one beneficiary,

(II) all of the beneficiaries of which are treated as designated beneficiaries for purposes of determining the distribution period pursuant to this paragraph, and

(III) at least one of the beneficiaries of which is an eligible designated beneficiary described in subclause (III) or (IV) of subparagraph (E)(ii).

(vi) Application to certain eligible retirement plans.—For purposes of applying the provisions of this subparagraph in determining amounts required to be distributed pursuant to this paragraph, all eligible retirement plans (as defined in section 402(c)(8)(B), other than a defined benefit plan described in clause (iv) or (v) thereof or a qualified trust which is a part of a defined benefit plan) shall be treated as a defined contribution plan.

(I) Temporary waiver of minimum required distribution.—

(i) In general.—The requirements of this paragraph shall not apply for calendar year 2020 to—

(I) a defined contribution plan which is described in this subsection or in section 403(a) or 403(b),

(II) a defined contribution plan which is an eligible deferred compensation plan described in section 457(b) but only if such plan is maintained by an employer described in section 457(e)(1)(A), or

(III) an individual retirement plan.

(ii) Special rule for required beginning dates in 2020.—Clause (i) shall apply to any distribution which is required to be made in calendar year 2020 by reason of—

(I) a required beginning date occurring in such calendar year, and

(II) such distribution not having been made before January 1, 2020.

(iii) Special rules regarding waiver period.—For purposes of this paragraph—

(I) the required beginning date with respect to any individual shall be determined without regard to this subparagraph for purposes of applying this paragraph for calendar years after 2020, and

(II) if clause (ii) of subparagraph (B) applies, the 5-year period described in such clause shall be determined without regard to calendar year 2020.

Treasury Regulations § 1.401(a)(9)-0 through 9

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

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

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

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

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

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

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

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

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

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

§ 1.401(a)(9)-8 Special rules.

§ 1.401(a)(9)-9 Life expectancy and distribution period tables.

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

Q-1. What plans are subject to the minimum distribution requirement under section 401(a)(9), this section, and [§§ 1.401\(a\)\(9\)-2 through 1.401\(a\)\(9\)-9](#)?

A-1. 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 or custodial accounts described in section 403(b) are subject to required minimum distribution rules. See [§ 1.403\(b\)-6e](#) for the distribution rules applicable to these annuity contracts or custodial accounts. Under section 408(a)(6) and 408(b)(3), individual retirement plans (including, for some purposes, Roth IRAs under section 408A) are subject to required minimum distribution rules. See [§ 1.408-8](#) for the distribution rules applicable to individual retirement plans and see [§ 1.408A-6](#) for the distribution rules applicable to Roth IRAs under section 408A. Under section 457(d)(2), certain deferred compensation plans for employees of tax exempt organizations or state and local government employees are subject to required minimum distribution rules.

Q-2. Which employee account balances and benefits held under qualified trusts and plans are subject to the distribution rules of section 401(a)(9), this section, and [§§ 1.401\(a\)\(9\)-2](#) through [1.401\(a\)\(9\)-9](#)?

A-2. (a) *In general.* The distribution rules of section 401(a)(9) apply to all account balances and benefits in existence on or after January 1, 1985. 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, 2003.

(b) ***Beneficiaries.***

(1) The distribution rules of this section and [§§ 1.401\(a\)\(9\)-2](#) through [1.401\(a\)\(9\)-9](#) apply to account balances and benefits held for the benefit of a beneficiary for calendar years beginning on or after January 1, 2003, even if the employee died prior to January 1, 2003. Thus, in the case of an employee who died prior to January 1, 2003, the designated beneficiary must be redetermined in accordance with the provisions of

[§ 1.401\(a\)\(9\)-4](#) and the applicable distribution period (determined under [§ 1.401\(a\)\(9\)-5](#) or [1.401\(a\)\(9\)-6](#), whichever is applicable) must be reconstructed for purposes of determining the amount required to be distributed for calendar years beginning on or after January 1, 2003.

(2) A designated beneficiary that is receiving payments under the 5-year rule of section 401(a)(9)(B)(ii), either by affirmative election or default provisions, may, if the plan so provides, switch to using the life expectancy rule of section 401(a)(9)(B)(iii) provided any amounts that would have been required to be distributed under the life expectancy rule of section 401(a)(9)(B)(iii) for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period determined under A-2 of [§ 1.401\(a\)\(9\)-3](#).

(c) **Trust documentation.** If a trust fails to meet the rule of A-5 of [§ 1.401\(a\)\(9\)-4](#) (permitting the beneficiaries of the trust, and not the trust itself, to be treated as the employee's designated beneficiaries) solely because the trust documentation was not provided to the plan administrator by October 31 of the calendar year following the calendar year in which the employee died, and such documentation is provided to the plan administrator by October 31, 2003, the beneficiaries of the trust will be treated as designated beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9).

(d) **Special rule for governmental plans.** Notwithstanding anything to the contrary in this A-2, 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) for all years to which section 401(a)(9) applies to the plan if the plan complies with a reasonable and good faith interpretation of section 401(a)(9).

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

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

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

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

beneficiary) in accordance with A-4(c) of [§ 1.401\(a\)\(9\)-3](#) and such elections are made by the employee or beneficiary.

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

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

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

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

(c) The amount required to be distributed for each calendar year in order to satisfy section 401(a)(9)(A) and (G) generally depends on whether a distribution is in the form of distributions under a defined contribution plan or annuity payments under a defined benefit plan 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 an annuity contract, see [§ 1.401\(a\)\(9\)-6](#).

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

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

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

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

(d) Paragraph (b) of this A-2 does not apply in the case of a governmental plan (within the meaning of section 414(d)) or a church plan. For purposes of this paragraph, the term *church plan* means a plan maintained by a church for church employees, and the term *church* means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(e) A plan is permitted to provide that the required beginning date for purposes of section 401(a)(9) for all employees is April 1 of the calendar year following the calendar year in which an employee attains age 70½ regardless of whether the employee is a 5-percent owner.

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

A-3. An employee attains age 70½ as of the date six calendar months after the 70th anniversary of the employee's birth. For example, if an employee's date of birth was June 30, 1933, the 70th anniversary of such employee's birth is June 30, 2003. Such employee attains age 70½ on December 30, 2003. Consequently, if the employee is a 5-percent owner or retired, such employee's required beginning date is April 1, 2004. However, if the employee's date of birth was July 1, 1933, the 70th anniversary of such employee's birth would be July 1, 2003. Such employee would then attain age 70½ on January 1, 2004 and such employee's required beginning date would be April 1, 2005.

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

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

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

A-5. Section 401(a)(9)(B)(i) provides that if the distribution of the employee's interest has begun in accordance with section 401(a)(9)(A)(ii) and the employee dies before his entire interest has

been distributed to him, the remaining portion of such interest must be distributed at least as rapidly as under the distribution method being used under section 401(a)(9)(A)(ii) as of the date of his death. The amount required to be distributed for each distribution calendar year following the calendar year of death generally depends on whether a distribution is in the form of distributions from an individual account under a defined contribution plan or annuity payments under a defined benefit plan. For the method of determining the required minimum distribution in accordance with section 401(a)(9)(B)(i) from an individual account, see [§ 1.401\(a\)\(9\)-5](#). In the case of annuity payments from a defined benefit plan or an annuity contract, see [§ 1.401\(a\)\(9\)-6](#).

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

A-6. (a) *General rule.* Except as otherwise provided in A-10 of [§ 1.401\(a\)\(9\)-6](#), distributions are not treated as having begun to the employee in accordance with section 401(a)(9)(A)(ii) until the employee's required beginning date, without regard to whether payments have been made before that date. Thus, section 401(a)(9)(B)(i) only applies if an employee dies on or after the employee's required beginning date. For example, if employee A retires in 2003, the calendar year A attains age 65½, 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, 2009 (the April 1 following the calendar year in which A attains age 70½). Consequently, if A dies before April 1, 2009 (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](#), and not section 401(a)(9)(B)(i). This is

the case without regard to whether the plan has distributed the minimum distribution for the first distribution calendar year (as defined in A-1(b) of [§ 1.401\(a\)\(9\)-5](#)) before A's death.

(b) If a plan provides, in accordance with A-2(e) of this section, that the required beginning date for purposes of section 401(a)(9) for all employees is April 1 of the calendar year following the calendar year in which an employee attains age 70½, an employee who dies on or after the required beginning date determined under the plan terms is treated as dying after the employee's distributions have begun for purposes of this A-6 even though the employee dies before the April 1 following the calendar year in which the employee retires.

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

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

A-1. (a) Except as otherwise provided in A-10 of [§ 1.401\(a\)\(9\)-6](#), if an employee dies before the employee's required beginning date (and, thus, before distributions are treated as having begun in accordance with section 401(a)(9)(A)(ii)), distribution of the employee's entire interest must be made in accordance with one of the methods described in section 401(a)(9)(B)(ii) or (iii) and (iv). One method (the 5-year rule in section 401(a)(9)(B)(ii)) requires that the entire interest of the employee be distributed within 5 years of the employee's death regardless of who or what entity receives the distribution. Another method (the life expectancy rule in section 401(a)(9)(B)(iii) and (iv)) requires that any portion of an employee's interest payable to (or for the benefit of) a designated beneficiary be distributed, commencing within one year of the employee's death, over the life of such beneficiary (or over a period not extending beyond the life expectancy

of such beneficiary). Section 401(a)(9)(B)(iv) provides special rules where the designated beneficiary is the surviving spouse of the employee, including a special commencement date for distributions under section 401(a)(9)(B)(iii) to the surviving spouse.

(b) See A-4 of this section for the rules for determining which of the methods described in paragraph (a) of this A-1 applies. See A-3 of this section to determine when distributions under the exception to the 5-year rule in section 401(a)(9)(B)(iii) and (iv) must commence. See A-2 of this section to determine when the 5-year period in section 401(a)(9)(B)(ii) ends. For distributions using the life expectancy rule in section 401(a)(9)(B)(iii) and (iv), see [§ 1.401\(a\)\(9\)-4](#) in order to determine the designated beneficiary under section 401(a)(9)(B)(iii) and (iv), see [§ 1.401\(a\)\(9\)-5](#) for the rules for determining the required minimum distribution under a defined contribution plan, and see [§ 1.401\(a\)\(9\)-6](#) for required minimum distributions under defined benefit plans.

Q-2. By when must the employee's entire interest be distributed in order to satisfy the 5-year rule in section 401(a)(9)(B)(ii)?

A-2. In order to satisfy the 5-year rule in section 401(a)(9)(B)(ii), the employee's entire interest must be distributed by the end of the calendar year which contains the fifth anniversary of the date of the employee's death. For example, if an employee dies on January 1, 2003, the entire interest must be distributed by the end of 2008, in order to satisfy the 5-year rule in section 401(a)(9)(B)(ii).

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

A-3. (a) *Nonspouse beneficiary*. In order to satisfy the life expectancy rule in section 401(a)(9)(B)(iii), if the designated beneficiary is not the

employee's surviving spouse, distributions must commence on or before the end of the calendar year immediately following the calendar year in which the employee died. This rule also applies to the distribution of the entire remaining benefit if another individual is a designated beneficiary in addition to the employee's surviving spouse. See A-2 and A-3 of [§ 1.401\(a\)\(9\)-8](#), however, if the employee's benefit is divided into separate accounts.

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

- (1) The end of the calendar year immediately following the calendar year in which the employee died; and
- (2) The end of the calendar year in which the employee would have attained age 70½.

Q-4. How is it determined whether the 5-year rule in section 401(a)(9)(B)(ii) or the life expectancy rule in section 401(a)(9)(B)(iii) and (iv) applies to a distribution?

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

- (1) If the employee has a designated beneficiary, as determined under [§ 1.401\(a\)\(9\)-4](#), distributions are to be made in accordance with the life expectancy rule in section 401(a)(9)(B)(iii) and (iv).
- (2) If the employee has no designated beneficiary, distributions are to be made in accordance with the 5-year rule in section 401(a)(9)(B)(ii).

(b) **Optional plan provisions.** A plan may adopt a provision specifying either that the 5-year rule in section 401(a)(9)(B)(ii) will apply to certain distributions after the death of an employee even if the employee has a designated beneficiary or that distribution in every case will be made in accordance with the 5-year rule in section 401(a)(9)(B)(ii). Further, a plan need not have the same method of distribution for the benefits of all employees in order to satisfy section 401(a)(9).

(c) **Elections.** A plan may adopt a provision that permits employees (or beneficiaries) to elect on an individual basis whether the 5-year rule in section 401(a)(9)(B)(ii) or the life expectancy rule in section 401(a)(9)(B)(iii) and (iv) applies to distributions after the death of an employee who has a designated beneficiary. Such an election must be made no later than the earlier of the end of the calendar year in which distribution would be required to commence in order to satisfy the requirements for the life expectancy rule in section 401(a)(9)(B)(iii) and (iv) (see A-3 of this section for the determination of such calendar year) or the end of the calendar year which contains the fifth anniversary of the date of death of the employee. As of the 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. If a plan provides for the election, the plan may also specify the method of distribution that applies if neither the employee nor the beneficiary makes the election. If neither the employee nor the beneficiary elects a method and the plan does not specify which method applies, distribution must be made in accordance with paragraph (a) of this A-4.

Q-5. If the employee's surviving spouse is the employee's sole designated beneficiary and such spouse dies after the employee, but before distributions have begun to the surviving spouse under section

401(a)(9)(B)(iii) and (iv), how is the employee's interest to be distributed?

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

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

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

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

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

A-1. A designated beneficiary is an individual who is designated as a beneficiary under the plan. An individual may be designated as a beneficiary under the plan either by the terms of the plan or, if the plan so provides, by an affirmative election by the employee (or the employee's surviving spouse) specifying the beneficiary. A beneficiary designated as such under the plan is an individual who is entitled to a

portion of an employee's benefit, contingent on the employee's death or another specified event. For example, if a distribution is in the form of a joint and survivor annuity over the life of the employee and another individual, the plan does not satisfy section 401(a)(9) unless such other individual is a designated beneficiary under the plan. A designated beneficiary need not be specified by name in the plan or by the employee to the plan in order to be a designated beneficiary so long as the individual who is to be the beneficiary is identifiable under the plan. The members of a class of beneficiaries capable of expansion or contraction will be treated as being identifiable if it is possible, to identify the class member with the shortest life expectancy. The fact that an employee's interest under the plan passes to a certain individual under a will or otherwise under applicable state law does not make that individual a designated beneficiary unless the individual is designated as a beneficiary under the plan. See A-6 of [§ 1.401\(a\)\(9\)-8](#) for rules which apply to qualified domestic relation orders.

Q-2. Must an employee (or the employee's spouse) make an affirmative election specifying a beneficiary for a person to be a designated beneficiary under section 401(a)(9)(E)?

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

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

A-3. No, only individuals may be designated beneficiaries for purposes of section 401(a)(9). A person that is not an individual, such as the employee's estate, may not be a designated beneficiary. If a person other than an individual is designated as a beneficiary of an employee's

benefit, the employee will be treated as having no designated beneficiary for purposes of section 401(a)(9), even if there are also individuals designated as beneficiaries. However, see A-5 of this section for special rules that apply to trusts and A-2 and A-3 of [§ 1.401\(a\)\(9\)-8](#) for rules that apply to separate accounts.

Q-4. When is the designated beneficiary determined?

A-4. (a) *General rule.* In order to be a designated beneficiary, an individual must be a beneficiary as of the date of death. Except as provided in paragraph (b) and [§ 1.401\(a\)\(9\)-6](#), the employee's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of the employee's death. Consequently, except as provided in [§ 1.401\(a\)\(9\)-6](#), any person who was a beneficiary as of the date of the employee's death, but is not a beneficiary as of that September 30 (e.g., because the person receives the entire benefit to which the person is entitled before that September 30), is not taken into account in determining the employee's designated beneficiary for purposes of determining the distribution period for required minimum distributions after the employee's death. Accordingly, if a person disclaims entitlement to the employee's benefit, pursuant to a disclaimer that satisfies section 2518 by that September 30 thereby allowing other beneficiaries to receive the benefit in lieu of that person, the disclaiming person is not taken into account in determining the employee's designated beneficiary.

(b) ***Surviving spouse.*** As provided in A-5 of [§ 1.401\(a\)\(9\)-3](#), if the employee's spouse is the sole designated beneficiary as of September 30 of the calendar year following the calendar year of the employee's death, and the surviving spouse dies after the employee and before the date on which distributions have begun to the surviving spouse under

section 401(a)(9)(B)(iii) and (iv), the rule in section 401(a)(9)(B)(iv)(II) will apply. Thus, for example, the relevant designated beneficiary for determining the distribution period after the death of the surviving spouse is the designated beneficiary of the surviving spouse. Similarly, such designated beneficiary will be determined based on the beneficiaries designated as of the date of the surviving spouse's death and who remain beneficiaries as of September 30 of the calendar year following the calendar year of the surviving spouse's death. Further, if, as of that September 30, there is no designated beneficiary under the plan with respect to that surviving spouse, distribution must be made in accordance with the 5-year rule in section 401(a)(9)(B)(ii) and A-2 of [§ 1.401\(a\)\(9\)-3](#).

(c) **Deceased beneficiary.** For purposes of this A-4, an individual who is a beneficiary as of the date of the employee's death and dies prior to September 30 of the calendar year following the calendar year of the employee's death without disclaiming continues to be treated as a beneficiary as of the September 30 of the calendar year following the calendar year of the employee's death in determining the employee's designated beneficiary for purposes of determining the distribution period for required minimum distributions after the employee's death, without regard to the identity of the successor beneficiary who is entitled to distributions as the beneficiary of the deceased beneficiary. The same rule applies in the case of distributions to which A-5 of [§ 1.401\(a\)\(9\)-3](#) applies so that, if an individual is designated as a beneficiary of an employee's surviving spouse as of the spouse's date of death and dies prior to September 30 of the year following the year of the surviving spouse's death, that individual will continue to be treated as a designated beneficiary.

Q-5. If a trust is named as a beneficiary of an employee, will the beneficiaries of the trust with respect to the trust's interest in the

employee's benefit be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)?

A-5. (a) If the requirements of paragraph (b) of this A-5 are met with respect to a trust that is named as the beneficiary of an employee under the plan, the beneficiaries of the trust (and not the trust itself) will be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9).

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

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

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

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

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

(c) In the case of payments to a trust having more than one beneficiary, see A-7 of [§ 1.401\(a\)\(9\)-5](#) for the rules for determining the designated beneficiary whose life expectancy will be used to determine the distribution period and A-3 of this section for the rules that apply if a person other than an individual is designated as a beneficiary of an employee's benefit. However, the separate account rules under A-2 of

[§ 1.401\(a\)\(9\)-8](#) are not available to beneficiaries of a trust with respect to the trust's interest in the employee's benefit.

(d) If the beneficiary of the trust named as beneficiary of the employee's interest is another trust, the beneficiaries of the other trust will be treated as being designated as beneficiaries of the first trust, and thus, having been designated by the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(A)(ii), provided that the requirements of paragraph (b) of this A-5 are satisfied with respect to such other trust in addition to the trust named as beneficiary.

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

A-6. (a) *Required minimum distributions before death.* If an employee designates a trust as the beneficiary of his or her entire benefit and the employee's spouse is the sole beneficiary of the trust, in order to satisfy the documentation requirements of this A-6 so that the spouse can be treated as the sole designated beneficiary of the employee's benefits (if the other requirements of paragraph (b) of A-5 of this section are satisfied), the employee must either -

(1) Provide to the plan administrator a copy of the trust instrument and agree that if the trust instrument is amended at any time in the future, the employee will, within a reasonable time, provide to the plan administrator a copy of each such amendment; or

(2) Provide to the plan administrator a list of all of the beneficiaries of the trust (including contingent and remaindermen beneficiaries with a description of the conditions on their entitlement sufficient to establish that the spouse is the sole beneficiary) for purposes of section 401(a)(9); certify that, to the best of the employee's knowledge, this list

is correct and complete and that the requirements of paragraph (b)(1), (2), and

(3) of A-5 of this section are satisfied; agree 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 agree to provide a copy of the trust instrument to the plan administrator upon demand.

(b) Required minimum distributions after death. In order to satisfy the documentation requirement of this A-6 for required minimum distributions after the death of the employee (or spouse in a case to which A-5 of [§ 1.401\(a\)\(9\)-3](#) applies), by October 31 of the calendar year immediately following the calendar year in which the employee died, the trustee of the trust must either -

(1) Provide the plan administrator with a final list of all beneficiaries of the trust (including contingent and remaindermen beneficiaries with a description of the conditions on their entitlement) as of September 30 of the calendar year following the calendar year of the employee's death; certify that, to the best of the trustee's knowledge, this list is correct and complete and that the requirements of paragraph (b)(1), (2), and (3) of A-5 of this section are satisfied; and agree to provide a copy of the trust instrument to the plan administrator upon demand; or

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

(c) Relief for discrepancy between trust instrument and employee certifications or earlier trust instruments. (1) If required minimum distributions are determined based on the information provided to the

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

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

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

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

A-1. (a) *General rule.* If an employee's accrued benefit is in the form of an individual account under a defined contribution plan, the minimum amount required to be distributed for each distribution calendar year, as defined in paragraph (b) of this A-1, is equal to the quotient obtained by dividing the account (determined under A-3 of this section) by the applicable distribution period (determined under A-4 or A-5 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 A-8 of this section for rules that apply if a portion of the employee's account is not vested. Further, the minimum distribution required to be distributed on or before an

employee's required beginning date is always determined under section 401(a)(9)(A)(ii) and this A-1 and not section 401(a)(9)(A)(i).

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

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

(d) ***Minimum distribution incidental benefit requirement.*** If distributions of an employee's account balance under a defined contribution plan are made in accordance with this section, the minimum distribution incidental benefit requirement of section 401(a)(9)(G) is satisfied. Further, 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 a distribution, that requirement is deemed to be satisfied if distributions satisfy the minimum distribution incidental benefit requirement of section 401(a)(9)(G) and this section.

(e) **Annuity contracts.** Instead of satisfying this A-1, the minimum distribution requirement may be satisfied by the purchase of an annuity contract from an insurance company in accordance with A-4 of [§ 1.401\(a\)\(9\)-6](#) with the employee's entire individual account. If such an annuity is purchased after distributions are required to commence (the required beginning date, in the case of distributions commencing before death, or the date determined under A-3 of [§ 1.401\(a\)\(9\)-3](#), in the case of distributions commencing after death), payments under the annuity contract purchased will satisfy section 401(a)(9) for distribution calendar years after the calendar year of the purchase if payments under the annuity contract are made in accordance with [§ 1.401\(a\)\(9\)-6T](#). In such a case, payments under the annuity contract will be treated as distributions from the individual account for purposes of determining if the individual account satisfies section 401(a)(9) for the calendar year of the purchase. An employee may also purchase an annuity contract with a portion of the employee's account under the rules of A-2(a)(3) of [§ 1.401\(a\)\(9\)-8](#).

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

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

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

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

(b) The account balance is increased by the amount of any contributions or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date. 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, are permitted to be excluded.

(c) The account balance is decreased by distributions made in the valuation calendar year after the valuation date.

(d) The account balance does not include the value of any qualifying longevity annuity contract (QLAC), defined in A-17 of [§ 1.401\(a\)\(9\)-6](#), that is held under the plan. This [paragraph \(d\)](#) applies only to contracts purchased on or after July 2, 2014.

(e) If an amount is distributed from a plan and rolled over to another plan (receiving plan), A-2 of [§ 1.401\(a\)\(9\)-7](#) provides additional rules for determining the benefit and required minimum distribution under the receiving plan. If an amount is transferred from one plan (transferor plan) to another plan (transferee plan) in a transfer to which section 414(l) applies, A-3 and A-4 of [§ 1.401\(a\)\(9\)-7](#) provide additional rules

for determining the amount of the required minimum distribution and the benefit under both the transferor and transferee plans.

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

A-4. (a) *General rule.* Except as provided in paragraph (b) of this A-4, the applicable distribution period for required minimum distributions for distribution calendar years up to and including the distribution calendar year that includes the employee's date of death is determined using the Uniform Lifetime Table in [§ 1.401\(a\)\(9\)-9\(c\)](#) for the employee's age as of the employee's birthday in the relevant distribution calendar year. If an employee dies on or after the required beginning date, the distribution period applicable for calculating the amount that must be distributed during the distribution calendar year that includes the employee's death is determined as if the employee had lived throughout that year. Thus, a minimum required distribution, determined as if the employee had lived throughout that year, is required for the year of the employee's death and that amount must be distributed to a beneficiary to the extent it has not already been distributed to the employee.

(b) *Spouse is sole beneficiary - (1) General rule.* Except as otherwise provided in paragraph (b)(2) of this A-4, if the sole designated beneficiary of an employee is the employee's surviving spouse, for required minimum distributions during the employee's lifetime, the applicable distribution period is the longer of the distribution period determined in accordance with paragraph (a) of this A-4 or the joint life expectancy of the employee and spouse using the employee's and spouse's attained ages as of the employee's and the spouse's birthdays in the distribution calendar year. The spouse is sole designated beneficiary for purposes of determining the applicable distribution

period for a distribution calendar year during the employee's lifetime only if the spouse is the sole beneficiary of the employee's entire interest at all times during the distribution calendar year.

(2) ***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 (i.e., the employee or the employee's spouse die 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. If an employee's spouse predeceases the employee, the spouse will not fail to be the employee's sole beneficiary for the distribution calendar year that includes the date of the spouse's death solely because, for the period remaining in that year after the spouse's death, someone other than the spouse is named as beneficiary. However, the change in beneficiary due to the death or divorce of the spouse will be effective for purposes of determining the applicable distribution period under section 401(a)(9) in the distribution calendar year following the distribution calendar year that includes the date of the spouse's death or divorce.

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

A-5. (a) *Death on or after the employee's required beginning date.* If an employee dies after distribution has begun as determined under A-6 of [§ 1.401\(a\)\(9\)-2](#) (generally on or after the employee's required beginning date), in order to satisfy section 401(a)(9)(B)(i), the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is either -

(1) If the employee has a designated beneficiary as of the date determined under A-4 of [§ 1.401\(a\)\(9\)-4](#), the longer of -

(i) The remaining life expectancy of the employee's designated beneficiary determined in accordance with paragraph (c)(1) or (2) of this A-5; and

(ii) The remaining life expectancy of the employee determined in accordance with paragraph (c)(3) of this A-5; or

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

(b) *Death before an employee's required beginning date.* If an employee dies before distribution has begun, as determined under A-5 of [§ 1.401\(a\)\(9\)-2](#) (generally before the employee's required beginning date), in order to satisfy section 401(a)(9)(B)(iii) or (iv) and the life expectancy rule described in A-1 of [§ 1.401\(a\)\(9\)-3](#), the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is determined in accordance with paragraph (c) of this A-5. See A-4 of [§ 1.401\(a\)\(9\)-3](#) to determine when the 5-year rule in section 401(a)(9)(B)(ii) applies (e.g., there is no designated beneficiary or the 5-year rule is elected or specified by plan provision).

(c) *Life expectancy - (1) Nonspouse designated beneficiary.* Except as otherwise provided in paragraph (c)(2), the applicable distribution period measured by the beneficiary's remaining life expectancy is determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the employee's death. In subsequent calendar years, the applicable distribution period is reduced by one for each calendar year that has elapsed after the calendar year immediately following the calendar year of the employee's death.

(2) ***Spouse designated beneficiary.*** If the surviving spouse of the employee is the employee's sole beneficiary, the applicable distribution period is measured by the surviving spouse's life expectancy using the surviving spouse's birthday for each distribution calendar year after the calendar year of the employee's death up through the calendar year of the spouse's death. For calendar years after the calendar year of the spouse's death, the applicable distribution period is the life expectancy of the spouse using the age of the spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each calendar year that has elapsed after the calendar year of the spouse's death.

(3) ***No designated beneficiary.*** If the employee does not have a designated beneficiary, the applicable distribution period measured by the employee's remaining life expectancy is the life expectancy of the employee using the age of the employee as of the employee's birthday in the calendar year of the employee's death. In subsequent calendar years the applicable distribution period is reduced by one for each calendar year that has elapsed after the calendar year of the employee's death.

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

A-6. Life expectancies for purposes of determining required minimum distributions under section 401(a)(9) must be computed using the Single Life Table in [§ 1.401\(a\)\(9\)-9\(b\)](#) and the Joint and Last Survivor Table in [§ 1.401\(a\)\(9\)-9\(d\)](#).

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

A-7. (a) *General rule* - (1) Except as otherwise provided in paragraph (c) of this A-7, if more than one individual is designated as a beneficiary with respect to an employee as of the applicable date for determining the designated beneficiary under A-4 of [§ 1.401\(a\)\(9\)-4](#), the designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the applicable distribution period.

(2) See A-3 of [§ 1.401\(a\)\(9\)-4](#) for rules that apply if a person other than an individual is designated as a beneficiary and see A-2 and A-3 of [§ 1.401\(a\)\(9\)-8](#) for special rules that apply if an employee's benefit under a plan is divided into separate accounts and the beneficiaries with respect to a separate account differ from the beneficiaries of another separate account.

(b) *Contingent beneficiary*. Except as provided in paragraph (c)(1) of this A-7, if a beneficiary's entitlement to an employee's benefit after the employee's death is a contingent right, such contingent beneficiary is nevertheless considered to be a beneficiary for purposes of determining whether a person other than an individual is designated as a beneficiary (resulting in the employee being treated as having no designated beneficiary under the rules of A-3 of [§ 1.401\(a\)\(9\)-4](#)) and which designated beneficiary has the shortest life expectancy under paragraph (a) of this A-7.

(c) *Successor beneficiary* - (1) A person will not be considered a beneficiary for purposes of determining who is the beneficiary with the shortest life expectancy under paragraph (a) of this A-7, or whether a person who is not an individual is a beneficiary, merely because the person could become the successor to the interest of one of the employee's beneficiaries after that beneficiary's death. However, the preceding sentence does not apply to a person who has any right

(including a contingent right) to an employee's benefit beyond being a mere potential successor to the interest of one of the employee's beneficiaries upon that beneficiary's death. Thus, for example, if the first beneficiary has a right to all income with respect to an employee's individual account during that beneficiary's life and a second beneficiary has a right to the principal but only after the death of the first income beneficiary (any portion of the principal distributed during the life of the first income beneficiary to be held in trust until that first beneficiary's death), both beneficiaries must be taken into account in determining the beneficiary with the shortest life expectancy and whether only individuals are beneficiaries.

(2) If the individual beneficiary whose life expectancy is being used to calculate the distribution period dies after September 30 of the calendar year following the calendar year of the employee's death, such beneficiary's remaining life expectancy will be used to determine the distribution period without regard to the life expectancy of the subsequent beneficiary.

(3) This [paragraph \(c\)](#) is illustrated by the following examples:

Example 1.

(i) Employer M maintains a defined contribution plan, Plan X. Employee A, an employee of M, died in 2005 at the age of 55, survived by spouse, B, who was 50 years old. Prior to A's death, M had established an account balance for A in Plan X. A's account balance is invested only in productive assets. A named a testamentary trust (Trust P) established under A's will as the beneficiary of all amounts payable from A's account in Plan X after A's death. A copy of the Trust P and a list of the trust beneficiaries were provided to the plan administrator of Plan X by October 31 of the calendar year following the calendar year of A's death. As of the date of A's death, the Trust P was irrevocable and was

a valid trust under the laws of the state of A's domicile. A's account balance in Plan X was includible in A's gross estate under § 2039.

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

(iii) Because some amounts distributed from A's account in Plan X to Trust P may be accumulated in Trust P during B's lifetime for the benefit of A's children, as remaindermen beneficiaries of Trust P, even though access to those amounts are delayed until after B's death, A's children are beneficiaries of A's account in Plan X in addition to B and B is not the sole designated beneficiary of A's account. Thus the

designated beneficiary used to determine the distribution period from A's account in Plan X is the beneficiary with the shortest life expectancy. B's life expectancy is the shortest of all the potential beneficiaries of the testamentary trust's interest in A's account in Plan X (including remainder beneficiaries). Thus, the distribution period for purposes of section 401(a)(9)(B)(iii) is B's life expectancy. Because B is not the sole designated beneficiary of the testamentary trust's interest in A's account in Plan X, the special rule in 401(a)(9)(B)(iv) is not available and the annual required minimum distributions from the account to Trust M must begin no later than the end of the calendar year immediately following the calendar year of A's death.

Example 2.

(i) The facts are the same as *Example 1* except that the testamentary trust instrument provides that all amounts distributed from A's account in Plan X to the trustee while B is alive will be paid directly to B upon receipt by the trustee of Trust P.

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

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

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

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

A-9. (a) *General rule.* Except as provided in paragraph (b), all amounts distributed from an individual account are distributions that are taken into account in determining whether section 401(a)(9) is satisfied, regardless of whether the amount is includible in income. Thus, for example, amounts that are excluded from income as recovery of

investment in the contract under section 72 are taken into account for purposes of determining whether section 401(a)(9) is satisfied for a distribution calendar year. Similarly, amounts excluded from income as net unrealized appreciation on employer securities also are amounts distributed for purposes of determining if section 401(a)(9) is satisfied.

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

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

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

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

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

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

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

(7) Similar items designated by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See [§ 601.601\(d\)\(2\)\(ii\)\(b\) of this chapter](#).

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

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

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

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

designated beneficiary, references to a life annuity include a joint and survivor annuity.

(c) *Annuity commencement.*

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

(2) This [paragraph \(c\)](#) is illustrated by the following example:

Example.

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

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

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

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

payments for the first two distribution calendar years would be treated as required minimum distributions, and not eligible for rollover.

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

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

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

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

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

A-2. (a) *Life annuity for employee.* If the employee's benefit is paid in the form of a life annuity for the life of the employee satisfying section

401(a)(9) without regard to the MDIB requirement, the MDIB requirement of section 401(a)(9)(G) will be satisfied.

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

(c) *Joint and survivor annuity, nonspouse beneficiary - (1) Explanation of rule.* If distributions commence under a distribution option that is in the form of a joint and survivor annuity for the joint lives of the employee and a beneficiary other than the employee's spouse, the minimum distribution incidental benefit requirement will not be satisfied as of the date distributions commence unless under the distribution option, the annuity payments to be made on and after the employee's required beginning date will satisfy the conditions of this [paragraph \(c\)](#). The periodic annuity payment payable to the survivor must not at any time on and after the employee's required beginning date exceed the applicable percentage of the annuity payment payable to the employee using the table in paragraph (c)(2) of this A-2. The applicable percentage is based on the adjusted employee/beneficiary age difference. The adjusted employee/beneficiary age difference is determined by first calculating the excess of the age of the employee over the age of the beneficiary based on their ages on their birthdays in

a calendar year. Then, if the employee is younger than age 70, the age difference determined in the previous sentence is reduced by the number of years that the employee is younger than age 70 on the employee's birthday in the calendar year that contains the annuity starting date. In the case of an annuity that provides for increasing payments, the requirement of this [paragraph \(c\)](#) will not be violated merely because benefit payments to the beneficiary increase, provided the increase is determined in the same manner for the employee and the beneficiary.

(2) **Table.**

Adjusted employee/beneficiary age difference	Applicable percentage
10 years or less	100
11	96
12	93
13	90
14	87
15	84
16	82
17	79
18	77
19	75
20	73
21	72
22	70
23	68
24	67
25	66
26	64
27	63
28	62

29	61
30	60
31	59
32	59
33	58
34	57
35	56
36	56
37	55
38	55
39	54
40	54
41	53
42	53
43	53
44 and greater	52

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

Example.

Distributions commence on January 1, 2003 to an employee (Z), born March 1, 1937, after retirement at age 65. Z's daughter (Y), born February 5, 1967, is Z's beneficiary. The distributions are in the form of a joint and survivor annuity for the lives of Z and Y with payments of \$500 a month to Z and upon Z's death of \$500 a month to Y, *i.e.*, the projected monthly payment to Y is 100 percent of the monthly amount payable to Z. Accordingly, under A-10 of this section, compliance with the rules of this section is determined as of the annuity starting date. The adjusted employee/beneficiary age difference is calculated by taking the excess of the employee's age over the beneficiary's age and subtracting the number of years the employee is younger than age 70. In this case, Z is 30 years older than Y and is commencing benefit 4 years before attaining age 70 so the adjusted employee-beneficiary age

difference is 26 years. Under the table in the paragraph (c)(2) of this A-2, the applicable percentage for a 26-year adjusted employee/beneficiary age difference is 64 percent. As of January 1, 2003 (the annuity starting date) the plan does not satisfy the MDIB requirement because, as of such date, the distribution option provides that, as of Z's required beginning date, the monthly payment to Y upon Z's death will exceed 66 percent of Z's monthly payment.

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

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

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

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

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

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

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

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

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

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

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

year must be no less than the total amount that was required to be paid during that year under A-5(a) of this section.

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

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

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

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

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

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

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

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

A-8. In order to satisfy section 401(a)(9)(C)(iii), the retirement benefits payable with respect to an employee as of the end of the period for actuarial increases (described in A-7 of this section) must be no less than: the actuarial equivalent of the employee's retirement benefits that would have been payable as of the date the actuarial increase must commence under paragraph (a) of A-7 of this section if benefits had commenced on that date; plus the actuarial equivalent of any

additional benefits accrued after that date; reduced by the actuarial equivalent of any distributions made with respect to the employee's retirement benefits after that date. Actuarial equivalence is determined using the plan's assumptions for determining actuarial equivalence for purposes of satisfying section 411.

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

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

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

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

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

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

Q-11. What rule applies if distributions commence to the surviving spouse of an employee over a period permitted under section

401(a)(9)(B)(iii)(II) before the date on which distributions are required to commence and the distribution form is an annuity under which distributions are made as of the date distributions commence in accordance with the provisions of A-1 of this section.

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

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

A-12. (a) *General rule.* Prior to the date that an annuity contract under an individual account plan is annuitized, the interest of an employee or beneficiary under that contract is treated as an individual account for purposes of section 401(a)(9). Thus, the required minimum distribution for any year with respect to that interest is determined under [§ 1.401\(a\)\(9\)-5](#) rather than this section. See A-1(e) of [§ 1.401\(a\)\(9\)-5](#) for rules relating to the satisfaction of section 401(a)(9) in the year that

annuity payments commence, A-3(d) of [§ 1.401\(a\)\(9\)-5](#) for rules relating to qualifying longevity annuity contracts (QLACs), defined in A-17 of this section, and A-2(a)(3) of [§ 1.401\(a\)\(9\)-8](#) for rules relating to the purchase of an annuity contract with a portion of an employee's account balance.

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

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

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

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

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

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

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

Example 1.

(i) G is the owner of a variable annuity contract (Contract S) under an individual account plan which has not been annuitized. Contract S provides a death benefit until the end of the calendar year in which the owner attains the age of 84 equal to the greater of the current Contract S notional account value (dollar amount credited to G under the contract) and the largest notional account value at any previous policy anniversary reduced proportionally for subsequent partial distributions (High Water Mark). Contract S provides a death benefit in calendar years after the calendar year in which the owner attains age 84 equal to

the current notional account value. Contract S provides that assets within the contract may be invested in a Fixed Account at a guaranteed rate of 2 percent. Contract S provides no other additional benefits.

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

Year	Death benefit during year	End-of-year notional account before withdrawal	Average notional account	Withdrawal at end of year	End-of-year notional account after withdrawal
2008	\$1,000,000				\$550,000
2009	¹ 950,739	² \$561,000	³ \$555,500	⁴ \$28,205	532,795

2010	901,983	543,451	538,123	28,492	514,959
2011	853,749	525,258	520,109	28,769	496,490
2012	806,053	506,419	501,454	29,034	477,385
2013	758,916	486,933	482,159	29,287	457,645
2014	712,356	466,798	462,222	29,525	437,273

¹ \$1,000,000 death benefit reduced 4.93 percent for withdrawal during 2008.

² Notional account value at end of prior year (after distribution) increased by 2 percent return for year.

³ Average of \$550,000 notional account value at end of prior year (after distribution) and \$561,000 notional account value at end of current year (before distribution).

⁴ December 31, 2008 notional account (before distribution) divided by uniform lifetime table age 79 factor of 19.5.

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

⁵ One-quarter age 78 rate plus three-quarters age 79 rate.

⁶ Five percent discounted 18 months (1.05 + (-1.5)).

⁷ Blended age 79/age 80 mortality rate (.04946) multiplied by the \$363,860 excess of death benefit over the average notional account value (901,983 less 538,123) multiplied by .95574 probability of survivorship to the start of 2010 multiplied by 18 month interest discount of .92943.

⁸ Survivorship to start of preceding year (.95574) multiplied by probability of survivorship during prior year (1-.04946).

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

Example 2.

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

Year	Death benefit during year	End-of-year notional account before withdrawal	Average notional account	Withdrawal at end of year	End-of-year notional account after withdrawal
2008	\$1,000,000				\$450,000
2009	950,739	\$459,000	\$454,500	\$23,077	435,923
2010	901,983	444,642	440,282	23,311	421,330
2011	853,749	429,757	425,543	23,538	406,219
2012	806,053	414,343	410,281	23,755	390,588
2013	758,916	398,399	394,494	23,962	374,437
2014	712,356	381,926	378,181	24,157	357,768
Year	Survivorship to start of year	Interest discount to end of 2008	Mortality rate during year	Discounted additional benefits within year	
2008					
2009	1.00000	.97590	.04426	\$21,432	
2010	.95574	.92943	.04946	20,286	
2011	.90847	.88517	.05519	19,004	
2012	.85833	.84302	.06146	17,601	
2013	.80558	.80288	.06788	15,999	
2014	.75090	.76464	.07477	14,347	
				\$108,669	

(ii) Because the sum of the notional account balance and the actuarial present value of the additional death benefit is more than 120 percent of the notional account value, the exclusion under paragraph (b)(1) of this A-12 does not apply for 2009. Therefore, for purposes of applying

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

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

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

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

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

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

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

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

(1) The future payments under the modified stream satisfy section 401(a)(9) and this section (determined by treating the date of the

change as a new annuity starting date and the actuarial present value of the remaining payments prior to modification as the entire interest of the participant);

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

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

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

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

Example 1.

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

and 417. Thus, for example, the plan provides a new qualified and joint survivor annuity election and obtains spousal consent.

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

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

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

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

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

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

Example 2.

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

Example 3.

(i) A participant (E), who has 10 years of participation in a frozen defined benefit plan (Plan X), attains age 70½ and retires in 2005 at a date when his attained age is 70. E was born in 1935. E elects to receive annual distributions from Plan X in the form of a 27 year period certain annuity (*i.e.*, a 27 year annuity payment period without a life contingency) paid at a rate of \$37,000 per year beginning in 2005 with future payments increasing at a rate of 4 percent per year (*i.e.*, the 2006 payment will be \$38,480, the 2007 payment will be \$40,019 and

so on). Plan X offers participants in pay status whose annuity payments are in the form of a term-certain annuity the opportunity to modify their payment period at any time and treats such modifications as a new annuity starting date for the purposes of sections 415 and 417. Thus, for example, the plan provides a new qualified and joint survivor annuity election and obtains spousal consent.

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

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

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

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

(vi) After taking into account the modification, the annuity stream determined as of the original annuity starting date consists of annual payments beginning at age 70 of \$37,000, \$38,480, \$40,019, and a straight life annuity beginning at age 73 of \$92,133. This benefit stream

is equivalent to a straight life annuity at age 70 of \$82,539, an amount less than the section 415 limit determined at the original annuity starting date, using the interest and mortality rates applicable to such date. Thus, the condition under paragraph (c)(3) of this A-13 is met.

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

Q-14. Are annuity payments permitted to increase?

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

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

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

(3) To the extent of the reduction in the amount of the employee's payments to provide for a survivor benefit, but only if there is no longer

a survivor benefit because the beneficiary whose life was being used to determine the period described in section 401(a)(9)(A)(ii) over which payments were being made dies or is no longer the employee's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p);

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

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

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

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

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

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

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

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

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

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

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

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

(3) As a result of dividend payments or other payments that result from actuarial gains (within the meaning of paragraph (e)(2) of this A-14), but only if actuarial gain is measured no less frequently than annually and the resulting dividend payments or other payments are either paid no later than the year following the year for which the actuarial experience

is measured or paid in the same form as the payment of the annuity over the remaining period of the annuity (beginning no later than the year following the year for which the actuarial experience is measured); and

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

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

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

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

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

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

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

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

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

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

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

-

(1) Total value being annuitized means -

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

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

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

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

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

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

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

Example 1. Variable annuity.

A retired participant (Z1) in defined contribution plan X attains age 70 on March 5, 2005, and thus, attains age 70½ in 2005. Z1 elects to

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

Example 2. Participating annuity.

A retired participant (Z2) in defined contribution plan X attains age 70 on May 1, 2005, and thus, attains age 70½ in 2005. Z2 elects to purchase annuity Contract Y2 from Insurance Company W in 2005. Contract Y2 is a participating single life annuity contract with a 10-year period certain. Contract Y2 provides for level annual payments with dividends paid in a lump sum in the year after the year for which the actuarial experience is measured or paid out levelly beginning in the year after the year for which the actuarial gain is measured over the

remaining lifetime and period certain, *i.e.*, the period certain ends at the same time as the original period certain. Dividends are determined annually by the Board of Directors of Company W based upon a comparison of actual actuarial experience to expected actuarial experience in the past year. The value of Z2's account balance in Plan X at the time of purchase is \$265,000, and the purchase price of Contract Y2 is \$265,000. Contract Y2 provides Z2 with an initial payment of \$16,000 in 2005. The total future expected payments to Z2 under Contract Y2 are calculated as the annual initial payment of \$16,000 multiplied by the age 70 life expectancy of 17 provided in the Single Life Table in [§ 1.401\(a\)\(9\)-9\(b\)](#) for a total of \$272,000. Because the total future expected payments on the purchase date exceeds the total value used to purchase Contract Y2 and payments may only increase as a result of actuarial gain, with such increases, beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity, distributions received by Z2 from Contract Y2 meet the requirements under paragraph (c)(3) of this A-14.

Example 3. Participating annuity with dividend accumulation.

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

14. Accordingly, the dividend accumulation option causes the contract, and consequently any distributions from the contract, to fail to meet the requirements of this A-14 and thus fail to satisfy the requirements of section 401(a)(9).

Example 4. Participating annuity with dividends used to purchase additional death benefits.

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

Example 5. Annuity with a fixed percentage increase.

A retired participant (Z3) in defined contribution plan X attains age 70½ in 2005. Z3 elects to purchase annuity contract Y3 from Insurance Company W. Contract Y3 is a single life annuity contract with a 20-year period certain (which does not exceed the maximum period certain permitted under A-3(a) of this section) with fixed annual payments increasing 3 percent each year. The value of Z3's account balance in Plan X at the time of purchase is \$110,000, and the purchase price of

Contract Y3 is \$110,000. Contract Y3 provides Z3 with an initial payment of \$6,000 at the time of purchase in 2005. The total future expected payments to Z3 under Contract Y3 are \$120,000, calculated as the initial annual payment of \$6,000 multiplied by the period certain of 20 years. Because the total future expected payments on the purchase date exceed the total value used to purchase Contract Y3 and payments only increase as a constant percentage applied not less frequently than annually, distributions received by Z3 from Contract Y3 meet the requirements under paragraph (c)(1) of this A-14.

Example 6. Annuity with excessive increases.

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

Example 7. Annuity with full commutation feature.

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

Z4's account balance in Plan X at the time of purchase is \$450,000, and the purchase price of Contract Y4 is \$450,000. Contract Y4 provides Z4 with an initial payment in 2005 of \$40,000. The factors in Table M are as follows:

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

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

(iii) As an illustration of the above, if Participant Z4 were to elect to cancel Contract Y4 on the day before he was to attain age 84, his contractual final payment would be \$320,000. This amount is determined as \$40,000 (the annual payment amount due under Contract Y4) multiplied by 8.0 (the factor in Table M for the next payment due date, age 84). The total future expected payments under Contract Y4 at age 84 before the final payment is \$324,000, calculated

as the initial payment amount multiplied by 8.1, the age 84 life expectancy provided in the Single Life Table in [§ 1.401\(a\)\(9\)-9\(b\)](#). Because \$320,000 (the total future expected payments under the annuity contract, including the amount of the final payment) is less than \$324,000 (the total future expected payments under the annuity contract, determined before the election), the final payment is an acceleration of payments within the meaning of paragraph (c)(4) of this A-14.

Example 8. Annuity with partial commutation feature.

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

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

value of 8.1). Note that this \$322,750 amount is less than the amount of Z4's total future expected payments before the ad hoc payment (\$324,000, determined as \$40,000 multiplied by 8.1), and the requirements under paragraph (c)(4) of this A-4 are satisfied.

Example 9. Annuity with excessive increases.

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

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

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

A-15: Yes, pursuant to section 401(a)(9)(F), payments under a defined benefit plan or annuity contract that are made to an employee's child until such child reaches the age of majority (or dies, if earlier) may be treated, for purposes of section 401(a)(9), as if such payments were made to the surviving spouse to the extent they become payable to the surviving spouse upon cessation of the payments to the child. For purposes of the preceding sentence, a child may be treated as having not reached the age of majority if the child has not completed a

specified course of education and is under the age of 26. In addition, a child who is disabled within the meaning of section 72(m)(7) when the child reaches the age of majority may be treated as having not reached the age of majority so long as the child continues to be disabled. Thus, when payments described in this paragraph A-15 become payable to the surviving spouse because the child attains the age of majority, recovers from a disabling illness, dies, or completes a specified course of education, there is not an increase in benefits under A-1 of this section. Likewise, the age of child receiving such payments is not taken into consideration for purposes of the minimum incidental benefit requirement of A-2 of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The sum of -

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

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

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

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

(ii) The sum of -

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

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

(c) *Payments after death of the employee* - (1) *Surviving spouse is sole beneficiary* - (i) *Death on or after annuity starting date.* If the employee dies on or after the annuity starting date for the contract and the employee's surviving spouse is the sole beneficiary under the contract

then, except as provided in paragraph (c)(4) of this A-17, the only benefit permitted to be paid after the employee's death is a life annuity payable to the surviving spouse where the periodic annuity payment is not in excess of 100 percent of the periodic annuity payment that is payable to the employee.

(ii) ***Death before annuity starting date -***

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

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

(2) ***Surviving spouse is not sole beneficiary -*** (i) ***Death on or after annuity starting date.*** If the employee dies on or after the annuity starting date for the contract and the employee's surviving spouse is not the sole beneficiary under the contract then, except as provided in paragraph (c)(4) of this A-17, the only benefit permitted to be paid after the

employee's death is a life annuity payable to the designated beneficiary where the periodic annuity payment is not in excess of the applicable percentage (determined under paragraph (c)(2)(iii) of this A-17) of the periodic annuity payment that is payable to the employee.

(ii) ***Death before annuity starting date*** -

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

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

(iii) ***Applicable percentage*** -

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

(B) ***Contracts with set beneficiary designation.*** If the contract provides for a set non-spousal beneficiary designation as described in paragraph

(c)(2)(v) (and is not a contract described in paragraph (c)(2)(iv)) of this A-17, the applicable percentage is the percentage described in the table set forth in paragraph (c)(2)(iii)(D) of this A-17. A contract is still considered to provide for a set beneficiary designation even if the surviving spouse becomes the sole beneficiary before the annuity starting date. In such a case, the requirements of paragraph (c)(1) of this A-17 apply and not the requirements of this [paragraph \(c\)\(2\)](#).

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

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

Adjusted employee/beneficiary age difference	Applicable percentage
2 years or less	100
3	88
4	78
5	70
6	63
7	57
8	52
9	48
10	44
11	41
12	38
13	36
14	34
15	32
16	30

17	28
18	27
19	26
20	25
21	24
22	23
23	22
24	21
25 and greater	20

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

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

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

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

(3) ***Calculation of early annuity payments.*** For purposes of paragraphs (c)(1)(ii) and (c)(2)(ii) of this A-17, to the extent the contract does not provide an option for the employee to select an annuity starting date that is earlier than the date on which the annuity payable to the

employee would have commenced under the contract if the employee had not died, the contract must provide a way to determine the periodic annuity payment that would have been payable if the employee were to have an option to accelerate the payments and the payments had commenced to the employee immediately prior to the date that benefit payments to the surviving spouse or designated beneficiary commence.

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

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

(B) The payments already made under the QLAC.

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

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

(B) The payments already made under the QLAC.

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

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

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

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

(ii) Consequences of excess premiums - (A) General Rule. If an annuity contract fails to be a QLAC solely because a premium for the contract exceeds the limits under paragraph (b) of this A-17, then the contract is not a QLAC beginning on the date that premium payment is made

unless the excess premium is returned to the non-QLAC portion of the employee's account in accordance with paragraph (d)(1)(ii)(B) of this A-17. If the contract fails to be a QLAC, then the value of the contract may not be disregarded under A-3(d) of § 1.401(a)(9)-5 as of the date on which the contract ceases to be a QLAC.

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

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

(iii) *Application of 25-percent limit.* For purposes of the 25-percent limit under paragraph (b)(3) of this A-17, an employee's account balance on the date on which premiums for a contract are paid is the account

balance as of the last valuation date preceding the date of the premium payment, adjusted as follows. The account balance is increased for contributions allocated to the account during the period that begins after the valuation date and ends before the date the premium is paid and decreased for distributions made from the account during that period.

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

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

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

(3) Determination of whether contract is intended to be a QLAC - (i) Structural deficiency. If a contract fails to be a QLAC at any time for a

reason other than an excess premium described in paragraph (d)(1)(ii) of this A-17, then as of the date of purchase the contract will not be treated as a QLAC (for purposes of A-3(d) of § 1.401(a)(9)-5) or as a contract that is intended to be a QLAC (for purposes of paragraph (b) of this A-17) as of the date of purchase.

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

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

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

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

employee's interest under the group annuity contract is intended to be a QLAC.

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

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

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

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

[§ 1.401\(a\)\(9\)-7 Rollovers and transfers.](#)

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

A-1. No, if an amount is distributed by one plan and is rolled over to another plan, the amount distributed is still treated as a distribution by the distributing plan for purposes of section 401(a)(9), notwithstanding the rollover. See A-1 of [§ 1.402\(c\)-2](#) for the definition of a rollover and A-7 of [§ 1.402\(c\)-2](#) for rules for determining the portion of any

distribution that is not eligible for rollover because it is a required minimum distribution.

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

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

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

A-3. (a) In the case of a transfer of an amount of an employee's benefit from one plan (transferor plan) to another (transferee plan), the transfer is not treated as a distribution by the transferor plan for purposes of section 401(a)(9). Instead, the benefit of the employee under the transferor plan is decreased by the amount transferred. However, if any portion of an employee's benefit is transferred in a

distribution calendar year with respect to that employee, in order to satisfy section 401(a)(9), the transferor plan must determine the amount of the required minimum distribution with respect to that employee for the calendar year of the transfer using the employee's benefit under the transferor plan before the transfer. Additionally, if any portion of an employee's benefit is transferred in the employee's second distribution calendar year but on or before the employee's required beginning date, in order to satisfy section 401(a)(9), the transferor plan must determine the amount of the minimum distribution requirement for the employee's first distribution calendar year based on the employee's benefit under the transferor plan before the transfer. The transferor plan may satisfy the minimum distribution requirement for the calendar year of the transfer (and the prior year if applicable) by segregating the amount which must be distributed from the employee's benefit and not transferring that amount. Such amount may be retained by the transferor plan and must be distributed on or before the date required under section 401(a)(9).

(b) For purposes of determining any required minimum distribution for the calendar year immediately following the calendar year in which the transfer occurs, in the case of a transfer after the last valuation date for the calendar year of the transfer under the transferor plan, the benefit of the employee as of such valuation date, adjusted in accordance with A-3 of [§ 1.401\(a\)\(9\)-5](#), will be decreased by the amount transferred, valued as of the date of the transfer.

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

A-4. In the case of a transfer from one plan (transferor plan) to another (transferee plan), the 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 A-2 of this section.

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

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

[§ 1.401\(a\)\(9\)-8](#) Special rules.

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

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

Q-2. If an employee's benefit under a defined contribution plan is divided into separate accounts (or under a defined benefit plan is

divided into segregated shares), do the distribution rules in section 401(a)(9) and these regulations apply separately to each separate account?

A-2. (a) *Defined contribution plan.* (1) Except as otherwise provided in this A-2, if an employee's benefit under a defined contribution plan is divided into separate accounts under the plan, the separate accounts will be aggregated for purposes of satisfying the rules in section 401(a)(9). Thus, except as otherwise provided in this A-2, all separate accounts, including a separate account for employee contributions under section 72(d)(2), will be aggregated for purposes of section 401(a)(9).

(2) If the employee's benefit in a defined contribution plan is divided into separate accounts and the beneficiaries with respect to one separate account differ from the beneficiaries with respect to the other separate accounts of the employee under the plan, for years subsequent to the calendar year containing the date as of which the separate accounts were established, or date of death if later, such separate account under the plan is not aggregated with the other separate accounts under the plan in order to determine whether the distributions from such separate account under the plan satisfy section 401(a)(9). Instead, the rules in section 401(a)(9) separately apply to such separate account under the plan. However, the applicable distribution period for each such separate account is determined disregarding the other beneficiaries of the employee's benefit only if the separate account is established on a date no later than the last day of the year following the calendar year of the employee's death. For example, if, in the case of a distribution described in section 401(a)(9)(B)(iii) and (iv), the only beneficiary of a separate account under the plan established on a date no later than the end of the year following the calendar year of the employee's death is the employee's

surviving spouse, and beneficiaries other than the surviving spouse are designated with respect to the other separate accounts with respect to the employee, distribution of the spouse's separate account under the plan need not commence until the date determined under the first sentence in A-3(b) of [§ 1.401\(a\)\(9\)-3](#), even if distribution of the other separate accounts under the plan must commence at an earlier date. Similarly, in the case of a distribution after the death of an employee to which section 401(a)(9)(B)(i) does not apply, distribution from a separate account of an employee established on a date no later than the end of the year following the year of the employee's death may be made over a beneficiary's life expectancy in accordance with section 401(a)(9)(B)(iii) and (iv) even though distributions from other separate accounts under the plan with different beneficiaries are being made in accordance with the 5-year rule in section 401(a)(9)(B)(ii).

(3) 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 stays in the account. In that case, the remaining account under the plan must be distributed in accordance with [§ 1.401\(a\)\(9\)-5](#) in order to satisfy section 401(a)(9) and the annuity payments under the annuity contract must satisfy [§ 1.401\(a\)\(9\)-6](#) in order to satisfy section 401(a)(9).

(b) **Defined benefit plan.** The rules of paragraph (a)(2) and (3) of this A-2 also apply to benefits under a defined benefit plan where the benefits under the plan are separated into separate identifiable components which are separately distributed.

Q-3. What are separate accounts for purposes of section 401(a)(9)?

A-3. For purposes of section 401(a)(9), separate accounts in an employee's account are separate portions of an employee's benefit reflecting the separate interests of the employee's beneficiaries under

the plan as of the date of the employee's death for which separate accounting is maintained. The 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. However, once the separate accounts are actually established, the separate accounting can provide for separate investments for each separate account under which gains and losses from the investment of the account are only allocated to that account, or investment gain or losses can continue to be allocated among the separate accounts on a pro rata basis. A separate accounting must allocate any post-death distribution to the separate account of the beneficiary receiving that distribution.

Q-4. If a distribution is required to be made to an employee by section 401(a)(9)(A) or is required to be made to a surviving spouse under section 401(a)(9)(B), must the distribution be made even if the employee, or spouse where applicable, fails to consent to a distribution while a benefit is immediately distributable?

A-4. Yes, section 411(a)(11) and section 417(e) (see [§§ 1.411\(a\)\(11\)-1\(c\)\(2\)](#) and [1.417\(e\)-1\(c\)](#)) require employee and spousal consent to certain distributions of plan benefits while such benefits are immediately distributable. If an employee's normal retirement age is later than the employee's required beginning date and, therefore, benefits are still immediately distributable, the plan must, nevertheless, distribute plan benefits to the employee (or where applicable, to the spouse) in a manner that satisfies the requirements of [section 401\(a\)\(9\)](#). [Section 401\(a\)\(9\)](#) must be satisfied even though the employee (or spouse, where applicable) fails to consent to the distribution. In such a case, the plan may distribute in the form of a qualified joint and survivor annuity (QJSA) or in the form of a qualified

preretirement survivor annuity (QPSA), 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 spouse if applicable) and if the distribution otherwise meets the requirements of [section 417](#). If, because of [section 401\(a\)\(11\)\(B\)](#), the plan is not required to distribute in the form of a QJSA to an employee or a QPSA to a surviving spouse, the plan may distribute the required minimum distribution amount 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 spouse if applicable) and if the distribution otherwise meets the requirements of [section 417](#).

Q-5. Who is an employee's spouse or surviving spouse for purposes of [section 401\(a\)\(9\)](#)?

A-5. Except as otherwise provided in A-6(a) 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 [section 401\(a\)\(9\)](#), an individual is a spouse or surviving spouse of an employee if such individual is treated as the employee's spouse under applicable state law. In the case of distributions after the death of an employee, for purposes of determining whether, under the life expectancy rule in [section 401\(a\)\(9\)\(B\)\(iii\)](#) and [\(iv\)](#), the provisions of [section 401\(a\)\(9\)\(B\)\(iv\)](#) apply, the spouse of the employee is determined as of the date of death of the employee.

Q-6. In order to satisfy [section 401\(a\)\(9\)](#), are there any special rules which apply to the distribution of all or a portion of an employee's

benefit payable to an alternate payee pursuant to a qualified domestic relations order as defined in [section 414\(p\)](#) (QDRO)?

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

(b)

(1) If a QDRO provides that an employee's benefit is to be divided and a portion is to be allocated to an alternate payee, such portion will be treated as a separate account (or segregated share) which separately must satisfy the requirements of [section 401\(a\)\(9\)](#) and may not be aggregated with other separate accounts (or segregated shares) of the employee for purposes of satisfying [section 401\(a\)\(9\)](#). Except as otherwise provided in paragraph (b)(2) of this A-6, distribution of such separate account allocated to an alternate payee pursuant to a QDRO must be made in accordance with [section 401\(a\)\(9\)](#). For example, in general, distribution of such account will satisfy [section 401\(a\)\(9\)\(A\)](#) if required minimum distributions from such account during the employee's lifetime begin not later than the employee's required beginning date and the required minimum distribution is determined in accordance with [§ 1.401\(a\)\(9\)-5](#) for each distribution calendar year (using an applicable distribution period determined under A-4 of [§ 1.401\(a\)\(9\)-5](#) for the employee in the distribution calendar year either using the Uniform Lifetime Table in [§ 1.401\(a\)\(9\)-9\(c\)](#) or using the joint life expectancy of the employee and a spousal alternate payee in the distribution calendar year if the spousal alternate payee is more than

10 years younger than the employee). The determination of whether distribution from such account after the death of the employee to the alternate payee will be made in accordance with [section 401\(a\)\(9\)\(B\)\(i\)](#) or [section 401\(a\)\(9\)\(B\)\(ii\)](#) or [\(iii\)](#) and [\(iv\)](#) will depend on whether distributions have begun as determined under A-6 of [§ 1.401\(a\)\(9\)-2](#) (which provides, in general, that distributions are not treated as having begun until the employee's required beginning date even though payments may actually have begun before that date). For example, if the alternate payee dies before the employee and distribution of the separate account allocated to the alternate payee pursuant to the QDRO is to be made to the alternate payee's beneficiary, such beneficiary may be treated as a designated beneficiary for purposes of determining the minimum distribution required from such account after the death of the employee if the beneficiary of the alternate payee is an individual and if such beneficiary is a beneficiary under the plan or specified to or in the plan. Specification in or pursuant to the QDRO is treated as specification to the plan.

(2) Distribution of the separate account allocated to an alternate payee pursuant to a QDRO will satisfy the requirements of [section 401\(a\)\(9\)\(A\)\(ii\)](#) if such account is to be distributed, beginning not later than the employee's required beginning date, over the life of the alternate payee (or over a period not extending beyond the life expectancy of the alternate payee). Also, if the plan permits the employee to elect whether distribution upon the death of the employee will be made in accordance with the 5-year rule in [section 401\(a\)\(9\)\(B\)\(ii\)](#) or the life expectancy rule in [section 401\(a\)\(9\)\(B\)\(iii\)](#) and [\(iv\)](#) pursuant to A-4(c) of [§ 1.401\(a\)\(9\)-3](#), such election is to be made only by the alternate payee for purposes of distributing the separate account allocated to the alternate payee pursuant to the QDRO. If the alternate payee dies after distribution of the separate account

allocated to the alternate payee pursuant to a QDRO has begun (determined under A-6 of [§ 1.401\(a\)\(9\)-2](#)) but before the employee dies, distribution of the remaining portion of that portion of the benefit allocated to the alternate payee must be made in accordance with the rules in [§ 1.401\(a\)\(9\)-5](#) or [1.401\(a\)\(9\)-6](#) for distributions during the life of the employee. Only after the death of the employee is the amount of the required minimum distribution determined in accordance with the rules of [section 401\(a\)\(9\)\(B\)](#).

(c) If a QDRO does not provide that an employee's benefit is to be divided but provides that a portion of an employee's benefit (otherwise payable to the employee) is to be paid to an alternate payee, such portion will not be treated as a separate account (or segregated share) of the employee. Instead, such portion will be aggregated with any amount distributed to the employee and will be treated as having been distributed to the employee for purposes of determining whether [section 401\(a\)\(9\)](#) has been satisfied with respect to that employee.

Q-7. Will a plan fail to satisfy [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?

A-7. A plan will not fail to satisfy [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\(p\)\(7\)\(A\)](#), will be treated as though the amounts are not vested

during the period and any distributions with respect to such amounts must be made under the relevant rules for nonvested benefits described in either A-8 of [§ 1.401\(a\)\(9\)-5](#) or A-6 of [§ 1.401\(a\)\(9\)-6](#), as applicable.

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

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

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

retirement age under the plan as of the date on which such distributions commence?

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

Q-10. Is the distribution of an annuity contract a distribution for purposes of [section 401\(a\)\(9\)](#)?

A-10. No, the distribution of an annuity contract is not a distribution for purposes of [section 401\(a\)\(9\)](#).

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

A-11. A payment by a plan after the death of an employee will not fail to be treated as a distribution for purposes of [section 401\(a\)\(9\)](#) solely because it is made to an estate or a trust. As a result, the estate or trust which receives a payment from a plan after the death of an employee need not distribute the amount of such payment to the beneficiaries of the estate or trust in accordance with [section 401\(a\)\(9\)\(B\)](#). Pursuant to A-3 of [§ 1.401\(a\)\(9\)-4](#), an estate may not be a designated beneficiary. Thus, pursuant to A-4 of [§ 1.401\(a\)\(9\)-3](#), distribution to the estate must satisfy the 5-year rule in [section 401\(a\)\(9\)\(B\)\(iii\)](#) if the distribution to the employee had not begun (as defined in A-6 of [§ 1.401\(a\)\(9\)-2](#)) as of

the employee's date of death. However, see A-5 and A-6 of [§ 1.401\(a\)\(9\)-4](#) for provisions under which beneficiaries of a trust with respect to the trust's interest in an employee's benefit are treated as having been designated as beneficiaries of the employee under the plan.

Q-12. Will a plan fail to satisfy [section 411\(d\)\(6\)](#) if the plan is amended to eliminate the availability of an optional form of benefit to the extent that the optional form does not satisfy [section 401\(a\)\(9\)](#)?

A-12. No, pursuant to [section 411\(d\)\(6\)\(B\)](#), a plan will not fail to satisfy [section 411\(d\)\(6\)](#) merely because the plan is amended to eliminate the availability of an optional form of benefit to the extent that the optional form does not satisfy [section 401\(a\)\(9\)](#). (See also A-3 of [§ 1.401\(a\)\(9\)-1](#), which requires a plan to provide that, notwithstanding any other plan provision, it will not distribute benefits under any option that does not satisfy [section 401\(a\)\(9\)](#).)

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

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

Q-14. If an amount is transferred from one plan (transferor plan) to another plan (transferee plan), may the transferee plan distribute the amount transferred in accordance with a [section 242\(b\)\(2\)](#) election made under either the transferor plan or under the transferee plan?

A-14. (a) 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 amount transferred is separately accounted for by the transferee plan. However, only the benefit attributable to the amount transferred, plus earnings thereon, may be distributed in accordance with the [section 242\(b\)\(2\)](#) election made under the transferor plan. If the employee elected to have the amount transferred, the transfer will be treated as a distribution and rollover of the amount transferred for purposes of this section.

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

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

Q-15. If an amount is distributed by one plan (distributing plan) and rolled over into another plan (receiving plan), may the receiving plan distribute the amount rolled over in accordance with a [section](#)

[242\(b\)\(2\)](#) election made under either the distributing plan or the receiving plan?

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

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

A-16. Yes, a [section 242\(b\)\(2\)](#) election may be revoked after the date by which distributions are required to commence in order to satisfy section 401(a)(9) and this section of the regulations. However, if the [section 242\(b\)\(2\)](#) election is revoked after the date by which distributions are required to commence in order to satisfy section 401(a)(9) and this section of the regulations and the total amount of the distributions which would have been required to be made prior to the date of the revocation in order to satisfy [section 401\(a\)\(9\)](#), but for the [section 242\(b\)\(2\)](#) election, have not been made, the plan must

distribute by the end of the calendar year following the calendar year in which the revocation occurs the total amount not yet distributed which was required to have been distributed to satisfy the requirements of [section 401\(a\)\(9\)](#) and continue distributions in accordance with such requirements.

§ 1.401(a)(9)-9 Life expectancy and distribution period tables.

(a) ***In general.*** This section specifies the life expectancy and applicable distribution period tables that apply for purposes of determining required minimum distributions under section 401(a)(9). [Paragraphs \(b\), \(c\), and \(d\)](#) of this section set forth these tables. [Paragraph \(e\)](#) of this section provides the mortality rates that are used to develop these tables. [Paragraph \(f\)](#) of this section provides applicability date rules.

(f) *Applicability dates* -

(1) ***In general.*** The life expectancy tables and Uniform Lifetime Table set forth in this section apply for distribution calendar years beginning on or after January 1, 2022. For life expectancy tables and the Uniform Lifetime Table applicable for earlier distribution calendar years, see [§ 1.401\(a\)\(9\)-9](#), as set forth in [26 CFR part 1](#) revised as of April 1, 2020 (formerly applicable [§ 1.401\(a\)\(9\)-9](#)).

(2) *Application to life expectancies that may not be recalculated* -

(i) ***Redetermination of initial life expectancy using current tables.*** If an employee died before January 1, 2022, and, under the rules of [§ 1.401\(a\)\(9\)-5](#), the distribution period that applies for a calendar year following the calendar year of the employee's death is equal to a single life expectancy calculated as of the calendar year of the employee's death (or, if applicable, the following calendar year), reduced by 1 for each subsequent year, then that life expectancy is reset as provided in [paragraph \(f\)\(2\)\(ii\)](#) of this section. Similarly, if an employee's sole

beneficiary is the employee's surviving spouse, and the spouse dies before January 1, 2022, then the spouse's life expectancy for the calendar year of the spouse's death (which is used to determine the applicable distribution period for later years) is reset as provided in [paragraph \(f\)\(2\)\(ii\)](#) of this section.

(ii) ***Determination of applicable distribution period -***

(A) ***Distribution period based on new life expectancy.*** With respect to a life expectancy described in [paragraph \(f\)\(2\)\(i\)](#) of this section, the distribution period that applies for a distribution calendar year beginning on or after January 1, 2022, is determined by using the Single Life Table in [paragraph \(b\)](#) of this section to determine the initial life expectancy for the age of the relevant individual in the relevant calendar year and then reducing the resulting distribution period by 1 for each subsequent year. However, see section 401(a)(9)(H)(ii) and (iii) for rules limiting the availability of a life expectancy distribution period.

(B) ***Example of redetermination.*** Assume that an employee died at age 80 in 2019 and the employee's designated beneficiary (who was not the employee's spouse) was age 75 in the year of the employee's death. For 2020, the distribution period that would have applied for the beneficiary was 12.7 years (the period applicable for a 76-year-old under the Single Life Table in formerly applicable [§ 1.401\(a\)\(9\)-9](#)), and for 2021, it would have been 11.7 years (the original distribution period, reduced by 1 year). For 2022, if the designated beneficiary is still alive, then the applicable distribution period would be 12.1 years (the 14.1-year life expectancy for a 76-year-old under the Single Life Table in [paragraph \(b\)](#) of this section, reduced by 2 years). However, see section 401(a)(9)(H)(iii) for rules regarding how to apply the required distribution rules to defined contribution plans if the eligible

designated beneficiary dies prior to distribution of the employee's entire interest.

Note: the rest of the section is full of tables:

[https://www.ecfr.gov/current/title-26/chapter-I/subchapter-A/part-1/subject-group-ECFR6f8c3724b50e44d/section-1.401\(a\)\(9\)-9](https://www.ecfr.gov/current/title-26/chapter-I/subchapter-A/part-1/subject-group-ECFR6f8c3724b50e44d/section-1.401(a)(9)-9)

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