

Part III - Administrative, Procedural, and Miscellaneous

Minimum Distribution Requirements

Notice 97-75

I. PURPOSE

This notice provides guidance relating to the amendments to the minimum distribution requirements of § 401(a)(9) of the Internal Revenue Code ("Code") made by § 1404 of the Small Business Job Protection Act of 1996, Pub. L. 104-188 ("SBJPA"). Specifically, this notice:

- Answers questions regarding the actuarial increase that must be provided under a defined benefit plan for an employee who retires after age 70 1/2, and the interaction of this actuarial increase with § 411.
- Coordinates the § 401(a)(4) nondiscrimination requirements with the § 401(a)(9) requirement that certain preretirement distribution options be available to an employee at age 70 1/2.
- Permits plans to allow participants who commenced distributions under pre-SBJPA § 401(a)(9) to stop receiving those distributions, and provides guidance on the applicable notice and spousal consent requirements.
- Clarifies the extent to which distributions made after 1996 to an employee who has attained age 70 1/2 will be considered eligible rollover distributions under § 402(c)(4)(B).
- Gives relief from the direct rollover requirements of § 401(a)(31), the written explanation requirement under § 402(f) and the mandatory 20-percent withholding requirement under § 3405(c) for certain distributions made in 1997.
- Provides an optional rule under which an employee's required beginning date under pre-SBJPA § 401(a)(9) may be retained.

II. BACKGROUND

Section 401(a)(9) provides that, in order for a plan to be qualified under § 401(a), distributions of each employee's interest in the plan must commence no later than the "required beginning date" for the employee. Prior to the amendments made by the SBJPA, § 401(a)(9)(C) generally defined the required beginning date for an employee as the April 1 of the calendar year following the calendar year in which the employee attained age 70 1/2. This meant that an employee who attained age 70 1/2 was required to commence receiving distributions from the plan

during the following year, even if the employee had not retired from employment with the employer maintaining the plan.

Section 1404(a) of the SBJPA amended § 401(a)(9) of the Code to provide that, in the case of an employee who is not a 5-percent owner, the required beginning date for minimum distributions from a qualified plan is April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 1/2 or the calendar year in which the employee retires. In the case of an employee who is a 5-percent owner, the required beginning date continues to be the April 1 of the calendar year following the calendar year in which the employee attains age 70 1/2. An employee is treated as a 5-percent owner for purposes of § 401(a)(9) as amended by the SBJPA if such employee is a 5-percent owner (as defined in § 416) with respect to the plan year ending with or within the calendar year in which such owner attains age 70 1/2. Once an employee is a 5-percent owner described in the preceding sentence, distributions must continue to such employee even if such employee ceases to own more than 5 percent of the employer in a subsequent year.

Section 1404(a) of the SBJPA also amended § 401(a)(9) of the Code to provide that an employee's accrued benefit shall be actuarially increased to take into account the period after age 70 1/2 in which the employee was not receiving any benefits under the plan. The amendments to § 401(a)(9) of the Code apply to years beginning after December 31, 1996.

The amendments retain the existing rules relating to the determination of the required beginning date for distributions from an individual retirement account or individual retirement annuity under § 408, and the determination of the required beginning date for church plans and government plans.

Notice 96-67, 1996-2 C.B. 235, provides guidance on the application of the amendments to § 401(a)(9)(C) made by the SBJPA to employees who attained age 70 1/2 in 1996 but did not retire by the end of 1996.

Announcement 97-24, 1997-11 I.R.B. 24, provides that an employer may offer employees (other than 5-percent owners) who attain age 70 1/2 after 1995 and have not retired, an option to defer commencement of benefit distributions under a qualified plan rather than to begin receiving benefits from the plan by April 1, 1997, even if the plan has not yet been amended to provide for the option.

Announcement 97-70, 1997-29 I.R.B. 14, provides transition relief for a plan under which certain distributions required under the terms of the plan were not made to an employee (other than a 5-percent owner) who attained age 70 1/2 in 1996 and who did not retire from employment with the employer maintaining the

plan by the end of 1996.

Section 1.411(d)-4, Q&A 10, of the proposed Income Tax Regulations, 62 F.R. 35752 (July 2, 1997), would provide relief from § 411(d)(6) for certain plan amendments that eliminate preretirement distributions commencing at age 70 1/2.

Rev. Proc. 97-41, 1997-33 I.R.B. 51, provides guidance to sponsors of plans that are qualified under § 401(a) with respect to the date by which they must adopt amendments to comply with changes in the law, including a remedial amendment period for amendments to reflect changes to the qualification requirements made by the SBJPA.

This notice provides guidance on additional issues relating to the amendments to § 401(a)(9)(C) made by the SBJPA.

III. QUESTIONS AND ANSWERS

(1) ACTUARIAL INCREASE FOR DEFINED BENEFIT PLANS

Q-1: If an employee retires in a calendar year after the calendar year in which the employee attains age 70 1/2, for what period must the employee's accrued benefit under a defined benefit plan be actuarially increased?

A-1: (a) Actuarial increase starting date. Under § 401(a)(9)(C)(iii), in the case of an employee (other than a 5-percent owner) who retires in a calendar year after the calendar year in which the employee attains age 70 1/2, the employee's accrued benefit under a defined benefit plan must be actuarially increased in order to take into account the period after age 70 1/2 in which the employee is not receiving benefits under the plan. If an employee retires at age 70 1/2, then, in order to satisfy § 401(a)(9), the distribution of the employee's benefits is required to begin no later than the April 1 following the calendar year in which the employee attains age 70 1/2. Thus, if an employee retires after the calendar year in which the employee attains age 70 1/2, the actuarial increase required to satisfy § 401(a)(9) to reflect the delay in payment must be provided for the period starting on the April 1 following the calendar year in which the employee attains age 70 1/2. In the case of an employee who attained age 70 1/2 prior to 1996, the starting date for the period of actuarial increase is January 1, 1997.

(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 § 401(a)(9).

(c) Nonapplication to defined benefit plans using optional

rule. If, pursuant to the optional rule of Q&A-10, minimum distributions under a plan to an employee commence no later than April 1 of the calendar year following the calendar year in which the employee attains age 70 1/2, in an amount sufficient to satisfy § 401(a)(9) as in effect prior to amendment by the SBJPA, no actuarial increase is required under § 401(a)(9)(C)(iii).

(d) Nonapplication to defined contribution plans. The actuarial increase required under this Q&A-1 does not apply to defined contribution plans.

Q-2: What amount of actuarial increase is required under § 401(a)(9)(C)(iii)?

A-2: In order to satisfy § 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 Q&A-1) 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 Q&A-1 (i.e., the later of the April 1 following the calendar year in which the employee attained 70 1/2 or January 1, 1997) 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 § 411.

Q-3: How does the actuarial increase required under § 401(a)(9)(C)(iii) relate to the actuarial increase required under § 411?

A-3: As reflected in § 1.411(c)-1(f)(2) of the proposed Income Tax Regulations, in order for an employee's accrued benefit to be nonforfeitable as required by § 411, a defined benefit plan must make an actuarial adjustment to an accrued benefit the payment of which is deferred past normal retirement age. The only exception to this rule is that generally no actuarial adjustment is required to reflect the period during which a benefit is suspended as permitted under section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA). The actuarial increase required under § 401(a)(9) of the Code for the period described in Q&A-1 is generally the same as, and not in addition to, the actuarial increase required for that same period under § 411 to reflect any delay in the payment of retirement benefits after normal retirement age. However, unlike the actuarial increase required under § 411, the actuarial increase required under § 401(a)(9)(C) must be provided even during the period during which an employee is in section 203(a)(3)(B) service.

Q-4: To what extent may additional accruals required under § 411(b)(1)(H) be reduced by actuarial increases required under § 401(a)(9)(C)(iii)?

A-4: For purposes of § 411(b)(1)(H)(iii)(II), the actuarial increase required under § 401(a)(9)(C)(iii) will be treated as an adjustment attributable to the delay in distribution of benefits after the attainment of normal retirement age. Accordingly, to the extent permitted under § 411(b)(1)(H), the actuarial increase required under § 401(a)(9)(C)(iii) may reduce the benefit accrual otherwise required under § 411(b)(1)(H)(i). However, the rule in the last sentence of § 1.411(b)-2(b)(4)(iii)(B) of the proposed Income Tax Regulations regarding the actuarial adjustment in the case of a plan that suspends benefits in accordance with § 203(a)(3)(B) of ERISA and the regulations thereunder is not applicable to the calculation of additional accruals for the period of time for which actuarial increases are required under § 401(a)(9)(C)(iii).

(2) COORDINATION OF SECTION 401(a)(4) AND SECTION 401(a)(9) FOR CERTAIN PRERETIREMENT AGE 70 1/2 DISTRIBUTION OPTIONS

Q-5: Are there special rules that coordinate the implementation of the SBJPA changes to § 401(a)(9) with the nondiscriminatory current and effective availability requirements of § 1.401(a)(4)-4 of the Income Tax Regulations?

A-5: (a) Aggregation of optional forms of benefit. Solely for purposes of determining whether a plan satisfies the nondiscriminatory current and effective availability requirements of § 1.401(a)(4)-4, a preretirement age 70 1/2 distribution option that is only available to required group members is permitted to be aggregated with another optional form of benefit that provides for commencement in the retirement period and the two optional forms of benefit may be treated as a single optional form of benefit. This aggregation treatment is permitted only if the other optional form of benefit is the same optional form of benefit as the preretirement age 70 1/2 distribution option except for the difference in the timing of the commencement of payments.

(b) Interim minimum distributions. In the case of a defined contribution plan, if a preretirement age 70 1/2 distribution option is available only to required group members and provides for payment of installment payments equal to the minimum amount (calculated in accordance with a method specified in the plan) necessary to satisfy § 401(a)(9) (before or after amendment by the SBJPA) with payment commencing during the 70 1/2 period and ending by the end of the retirement period, and this form of payment does not apply to benefit payments after the end of the retirement period, this preretirement distribution option is

treated as satisfying the requirements of § 1.401(a)(4)-4.

(c) Definitions. The following definitions apply only for purposes of this Q&A-5:

(i) 70 1/2 period. The 70 1/2 period is the period beginning on January 1 of the year in which the employee attains age 70 1/2 and ending on the April 1 of the following year.

(ii) Retirement period. The retirement period is the period beginning on January 1 of the year in which the employee retires from employment with the employer maintaining the plan and ending on April 1 of the following year.

(iii) Preretirement age 70 1/2 distribution option. A preretirement age 70 1/2 distribution option is an optional form of benefit under which benefits payable in a particular distribution form (including any modifications that may be elected after benefit commencement) commence during the 70 1/2 period prior to the employee's retirement from employment with the employer maintaining the plan.

(iv) Required group member. An employee who is a 5-percent owner for purposes of section 401(a)(9) is a required group member. If a plan is amended to eliminate a preretirement age 70 1/2 distribution option with respect to all employees (other than 5-percent owners) who attain age 70 1/2 after a specified calendar year, and the plan satisfied § 1.401(a)(4)-4 with respect to availability of the preretirement age 70 1/2 distribution option immediately before the amendment, then employees who attained age 70 1/2 in or before the specified calendar year are also required group members with respect to the preretirement age 70 1/2 distribution option under the plan even if the employees are not 5-percent owners for purposes of section 401(a)(9).

(3) ISSUES RELATING TO EMPLOYEES WHO ATTAINED AGE 70 1/2 BEFORE JANUARY 1, 1997

Q-6: For purposes of § 401(a)(9)(C) after amendment by the SBJPA, what is the required beginning date for an employee (other than a 5-percent owner) who attained age 70 1/2 before 1997, but did not retire from employment with the employer maintaining the plan before January 1, 1997?

A-6: For purposes of determining the amount of minimum distributions required after December 31, 1996, the required beginning date for an employee who did not retire from employment with the employer maintaining the plan before January 1, 1997 is determined under § 401(a)(9)(C), as amended by the SBJPA. Accordingly, as described in Q&A-2 of Notice 96-67, in the case of an employee (other than a 5-percent owner) who attained age 70

1/2 in 1996 and retired from employment with the employer maintaining the plan on or after January 1, 1997, the required beginning date is April 1 of the calendar year following the year in which the employee retires from employment with the employer maintaining the plan. Furthermore, an employee (other than a 5-percent owner) who attained age 70 1/2 prior to 1996, and retires from employment with the employer maintaining the plan on or after January 1, 1997, has a required beginning date for purposes of determining minimum distributions that are required on or after January 1, 1997 that is different from the required beginning date for the employee for purposes of determining minimum distributions that were required prior to January 1, 1997. Thus, for example, an employee (other than a 5-percent owner) who attained age 70 1/2 in 1995, and retired from employment with the employer maintaining the plan in 1997, has a required beginning date of April 1, 1998. See Q&A-10 of this notice for a special rule permitting an employee's required beginning date determined without regard to the SBJPA amendments to be treated as the required beginning date for purposes of determining the minimum distributions required after January 1, 1997.

Q-7: May a plan permit an employee who attained age 70 1/2 before 1997 but did not retire from employment with the employer maintaining the plan before January 1, 1997 to elect to stop current distributions?

A-7: (a) Election to stop permitted. An employee who attained age 70 1/2 before 1997, but did not retire from employment with the employer maintaining the plan before January 1, 1997 has a new required beginning date as described in Q&A-6. Accordingly, distributions are not required to be made to that employee after December 31, 1996 and prior to the employee's new required beginning date in order to satisfy § 401(a)(9). A plan may provide that such an employee may affirmatively elect to stop distributions at any time until the employee retires, subject to the terms of an applicable qualified domestic relations order (QDRO), within the meaning of § 414(p).

(b) Compliance with sections 401(a)(11) and 417. An employee's election to stop and recommence distributions under paragraph (a) of this Q&A-7 is subject to the requirements of §§ 401(a)(11) and 417, if the plan is otherwise subject to those rules. However, a plan that permits an employee to stop distributions in accordance with paragraph (a) of this Q&A-7 and that complies with either of the alternatives set forth in Q&A-8, will not violate § 401(a)(11) and § 417 on account of the employee's cessation and commencement of those distributions.

Q-8: What special alternatives are available for a plan that is subject to § 401(a)(11) and § 417 in order to satisfy those sections with respect to an employee who, pursuant to

Q&A-7, elects to stop and recommence distributions?

A-8 (a): In general. A plan will not violate § 401(a)(11) and § 417 on account of an employee's cessation and recommencement of distributions in accordance with Q&A-7(a) if the plan operationally complies with either paragraph (b) or (c) of this Q&A-8, the plan is amended within the remedial amendment period for the plan for SBJPA changes to reflect that operational compliance, and the distributions stop prior to the end of that remedial amendment period.

(b) No new annuity starting date upon recommencement.

(i) Under this alternative, the plan provides that there is no new annuity starting date under § 417 upon recommencement of benefits. In such case, no spousal consent is required for an employee to elect to stop distributions pursuant to Q&A-7(a). Moreover, no spousal consent is required when payments recommence to the employee if:

(A) payments recommence to the employee with the same beneficiary and in a form of benefit that is the same but for the cessation of distributions,

(B) the individual who was the employee's spouse on the annuity starting date executed a general consent within the meaning of § 1.401(a)-20, A-31 of the Income Tax Regulations, or

(C) the individual who was the employee's spouse on the annuity starting date executed a specific consent to waive a QJSA within the meaning of § 1.401(a)-20, A-31, and the employee is not married to that individual when benefits recommence.

(ii) However, in order to comply with this paragraph (b), consent of the individual who was the employee's spouse on the annuity starting date is required prior to recommencement if the employee chooses to recommence benefits either in a different form than the form in which they were being distributed prior to the cessation of distributions or with a different beneficiary and if:

(A) the original form was a qualified joint and survivor annuity (QJSA) within the meaning of § 417(b), or

(B) the individual who was the employee's spouse on the annuity starting date originally executed a specific consent to waive a QJSA within the meaning of § 1.401(a)-20, A-31, of the Income Tax Regulations, and the employee is still married to that individual when benefits recommence.

(c) New annuity starting date upon recommencement. Under this alternative, the plan provides that there is a new annuity

starting date under § 417 upon recommencement of benefits. In such case, no spousal consent is required for an employee to elect to stop distributions pursuant to Q&A-7(a), except where such distributions are being paid in the form of a qualified joint and survivor annuity (QJSA) within the meaning of § 417(b). Where such distributions are being paid in the form of a QJSA, in order to comply with this paragraph (c), the person who was the employee's spouse on the original annuity starting date must consent to the election to stop distributions under Q&A-7(a) and the spouse's consent must acknowledge the effect of the election. Because there is a new annuity starting date upon recommencement of benefits, the plan, in order to satisfy this paragraph (c), must comply with all of the requirements of § 417 upon such recommencement, including payment of a qualified preretirement survivor annuity (QPSA) if the employee dies before the new annuity starting date.

(4) ISSUES RELATING TO ELIGIBILITY FOR ROLLOVERS

Q-9: If distributions are made under a plan to an employee (other than a 5-percent owner) who did not retire before January 1, 1997 from employment with the employer maintaining the plan, is any portion of a distribution made after attainment of age 70 1/2 a required distribution under § 401(a)(9) for purposes of § 402(c)(4)(B)?

A-9: (a) General rule. Section 402(c)(4)(B) provides that a distribution is not an eligible rollover distribution to the extent that it is required under § 401(a)(9). As noted in Q&A-6, for purposes of determining the amount of minimum distributions that are required after December 31, 1996, the required beginning date for an employee who did not retire before January 1, 1997 from employment with the employer maintaining the plan is redetermined under § 401(a)(9)(C), as amended by the SBJPA. Therefore, whether or not a plan allows an employee who attained age 70 1/2 before January 1, 1997, but did not retire from employment with the employer maintaining the plan before that date, to stop receiving distributions in accordance with Q&A-7, a distribution to such an employee prior to the year the employee retires is not a required distribution under § 401(a)(9). Such a distribution is an eligible rollover distribution unless it is excepted for some other reason. An exception is provided under § 402(c)(4)(A) for a series of substantially equal periodic payments made for the life (or life expectancy) of the employee or the joint lives (or joint life expectancy) of the employee and the employee's designated beneficiary, or for a specified period of 10 years or more. If an employee's benefit is being distributed in a series of annual payments that would equal the required minimum distribution determined in accordance with Q&A F-1 of § 1.401(a)(9)-1 of the proposed Income Tax Regulations, then the series of payments will be considered a series of substantially equal payments over the life (or life expectancy)

of the employee or the joint lives (or joint life expectancy) of the employee and the employee's designated beneficiary, or for a specified period of 10 years or more, in accordance with Q&A-5 of § 1.402(c)-2 of the Income Tax Regulations. Therefore, payments under such a series of payments are not eligible rollover distributions.

(b) Treatment of 1996 distributions for employees who attained age 70 1/2 in 1996. As provided in Q&A-3 of Notice 96-67, if a distribution is made during 1996 to an employee who attained age 70 1/2 in 1996, whether that distribution is a required distribution under § 401(a)(9) is determined by applying § 401(a)(9) as in effect prior to amendment by the SBJPA.

(c) Transition rule for 1997 distributions. A plan will not fail to satisfy § 401(a)(31) merely because the plan administrator or payor did not offer an employee (other than a 5-percent owner), who has attained age 70 1/2 but has not retired from employment with the employer maintaining the plan, a direct rollover option with respect to the eligible rollover distributions described in this paragraph (c). A distribution is described in this paragraph (c) if it is paid in calendar year 1997 and, under pre-SBJPA § 401(a)(9), the distribution would not have been an eligible rollover distribution because it would have been a required minimum distribution. In addition, with respect to such a distribution, a plan will not be required to satisfy the written explanation requirement under § 402(f) or the mandatory 20-percent withholding requirement under § 3405(c).

(5) PLANS MAINTAINING PRE-SBJPA REQUIRED BEGINNING DATE

Q-10: Will a plan satisfy § 401(a)(9) as amended by SBJPA if it provides for minimum required distributions for an employee commencing no later than an employee's required beginning date of April 1 of the calendar year following the calendar year the employee attained age 70 1/2, regardless of whether the employee is a 5-percent owner?

A-10: (a) A plan will not fail to satisfy § 401(a)(9) as amended by SBJPA merely because it provides for minimum distributions commencing no later than an employee's pre-SBJPA required beginning date of April 1 of the calendar year following the calendar year the employee attained age 70 1/2, regardless of whether the employee is a 5-percent owner. For example, a plan may provide, in the case of all employees who attained age 70 1/2 before 1999, that minimum required distributions will commence by the pre-SBJPA required beginning date of April 1 of the calendar year following the calendar year the employee attained age 70 1/2.

(b) If, pursuant to this Q&A-10, the plan provides for

minimum distributions commencing no later than an employee's required beginning date of April 1 of the calendar year following the calendar year in which the employee attained age 70 1/2, both the employee's designated beneficiary and whether recalculation of life expectancy applies will be determined based on any elections in effect as of that date. Furthermore, an employee who dies after the required beginning date determined under the plan terms is treated as dying after the required beginning date within the meaning of § 401(a)(9)(C). Thus, to determine the distributions after such a death, § 401(a)(9)(B)(i) (and not § 401(a)(9)(B)(ii)) applies, requiring the remaining portion of the employee's interest to be distributed at least as rapidly as under the method being used under § 401(a)(9)(A)(ii) as of the employee's date of death. See Q&As B-4 and F-3A of § 1.401(a)(9)-1 of the proposed Income Tax Regulations for guidance on satisfying the requirements of § 401(a)(9)(B)(i).

(c) Regardless of whether, pursuant to this Q&A-10, the plan provides for minimum distributions commencing no later than an employee's required beginning date of April 1 of the calendar year following the calendar year the employee attained age 70 1/2, the employee's required beginning date for purposes of § 4974 (excise tax on excess accumulations) and § 402(c) (definition of eligible rollover distribution) is determined in accordance with § 401(a)(9) as amended by the SBJPA. Thus, in the case of an employee who is not a 5-percent owner, no excise tax under § 4974 will apply prior to the calendar year in which the employee retires. However, beginning with that year, the amount that is required to be distributed each year to satisfy § 401(a)(9), as amended by the SBJPA, for purposes of § 4974 and § 402(c), will be determined using the required beginning date under the plan.

IV. COMMENTS

The Treasury and the Service invite comments and suggestions regarding the matters discussed in this notice. Comments can be addressed to CC:DOM:CORP:R (Notice 97-75), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, comments may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (Notice 97-75), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may transmit comments electronically via the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

V. DRAFTING INFORMATION

The principal authors of this notice are Ingrid Grinde of the Employee Plans Division and Cheryl Press of the Office of the

Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the Service and Treasury contributed to its development. For further information regarding this notice, please contact the Employee Plans Division's taxpayer assistance telephone service at (202) 622-6074/6075 between the hours of 1:30 p.m. and 3:30 p.m. Eastern Time, Monday through Thursday. Alternatively, please call Thomas Foley at (202) 622-6050 or Ingrid Grinde at (202) 622-6214. These telephone numbers are not toll-free.