

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 2002-22, page 849.

Gross income; transfers of property incident to divorce.

A taxpayer who transfers interests in nonstatutory stock options and nonqualified deferred compensation to the taxpayer's former spouse incident to divorce is not required to include an amount in gross income upon the transfer. Rather, the former spouse is required to include an amount in gross income when the former spouse exercises the stock options or when the deferred compensation is paid or made available to the former spouse. Rev. Rul. 87-112 clarified.

Rev. Rul. 2002-24, page 848.

Low-income housing credit; satisfactory bond; "bond factor" amounts for the period April through June. This ruling announces the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period April through June 2002.

Rev. Rul. 2002-25, page 904.

Federal rates; adjusted federal rates; adjusted federal long-term rate and the long-term exempt rate. For purposes of sections 382, 1274, 1288, and other sections of the Code, tables set forth the rates for May 2002.

Rev. Rul. 2002-26, page 906.

Special use value; farms; interest rates. The 2002 interest rates to be used in computing the special use value of farm real property for which an election is made under section 2032A of the Code are listed for estates of decedents.

EMPLOYEE PLANS

T.D. 8987, page 852.

REG-108697-02, page 918.

Final, temporary, and proposed regulations under section 401 of the Code relate to required minimum distributions from qualified plans, section 457 plans, section 403(b) annuity plans, and retirement income accounts (IRAs).

Rev. Proc. 2002-21, page 911.

Professional employer organizations; employee leasing; plan qualification. This procedure describes different options that may be selected in order that certain defined contribution plans of professional employer organizations may avoid disqualification. Rev. Proc. 2002-6 modified.

Announcement 2002-49, page 919.

This announcement extends the June 1, 2002, date, cited in sections 4.01 and 4.05 of Rev. Proc. 2002-10 (2002-4 I.R.B. 401), to October 1, 2002, for which existing instead of revised model forms may be used to establish **new** IRAs, SEPs, and SIMPLE IRA plans.

EMPLOYMENT TAX

Notice 2002-31, page 908.

This document provides the contents of a proposed revenue ruling concerning the employment taxation and reporting of nonqualified stock options and nonqualified deferred compensation transferred to a former spouse incident to a divorce. The notice also requests comments from the public about the proposed ruling.

Finding Lists begin on page ii.

(Continued on the next page)

ADMINISTRATIVE

Rev. Proc. 2002-31, page 916.

For purposes of section 1.148-10(a)(4) of the regulations, this procedure sets forth a safe harbor under which an issue of tax or revenue anticipation bonds will not be treated as outstanding longer than is reasonably necessary to accomplish the governmental purposes of the bonds. This procedure applies to bonds sold after May 13, 2002.

Announcement 2002-52, page 919.

This announcement updates information concerning the filing of Form 8851, *Summary of Archer MSAs*. This information is general in nature and does not affect the current filing instructions for Form 8851 found in Rev. Proc. 2001-31 (2001-1 C.B. 1170).

The IRS Mission

Provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by

applying the tax law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered,

and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.

This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the first Bulletin of the succeeding semiannual period, respectively.

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For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 42.—Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2002. See Rev. Rul. 2002-25, page 904.

Low-income housing credit; satisfactory bond; “bond factor” amounts for the period April through June. This ruling announces the monthly bond factor amounts to be used by taxpayers who dispose of qualified low-income buildings or interests therein during the period of April through June 2002.

Rev. Rul. 2002-24

In Rev. Rul. 90-70 (1990-2 C.B. 3), the Internal Revenue Service provided guidance to taxpayers concerning the general methodology used by the Treasury Department in computing the bond factor amounts used in calculating the amount of bond considered satisfactory by the Secretary under § 42(j)(6) of the Internal Revenue Code. It further announced that the Secretary would publish in the Internal Revenue Bulletin a table of “bond factor” amounts for dispositions occurring during each calendar month.

Rev. Proc. 99-11 (1999-1 C.B. 275) established a collateral program as an alternative to providing a surety bond for

taxpayers to avoid or defer recapture of the low-income housing tax credits under § 42(j)(6). Under this program, taxpayers may establish a Treasury Direct Account and pledge certain United States Treasury securities to the Internal Revenue Service as security.

This revenue ruling provides in Table 1 the bond factor amounts for calculating the amount of bond considered satisfactory under § 42(j)(6) or the amount of United States Treasury securities to pledge in a Treasury Direct Account under Rev. Proc. 99-11 for dispositions of qualified low-income buildings or interests therein during the period April through June 2002.

Table 1 Rev. Rul. 2002-24 Monthly Bond Factor Amounts for Dispositions Expressed As a Percentage of Total Credits											
	Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year										
Month of Disposition	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
Apr '02	17.76	32.73	45.44	56.24	65.46	65.40	65.93	66.45	67.08	67.80	68.68
May '02	17.76	32.73	45.44	56.24	65.46	65.23	65.76	66.27	66.91	67.62	68.50
Jun '02	17.76	32.73	45.44	56.24	65.46	65.06	65.59	66.11	66.74	67.46	68.33

Table 1 (cont'd)
Rev. Rul. 2002-24
Monthly Bond Factor Amounts for Dispositions Expressed
As a Percentage of Total Credits

	Calendar Year Building Placed in Service or, if Section 42(f)(1) Election Was Made, the Succeeding Calendar Year			
Month of Disposition	1999	2000	2001	2002
Apr '02	69.55	70.40	71.67	72.55
May '02	69.38	70.24	71.51	72.55
Jun '02	69.21	70.09	71.37	72.55

For a list of bond factor amounts applicable to dispositions occurring during other calendar years, see: Rev. Rul. 98-3 (1998-1 C.B. 248); Rev. Rul. 2001-2 (2001-1 C.B. 255); and Rev. Rul. 2001-53 (2001-46 I.R.B. 489). For dispositions occurring during the period January through March 2002, see Rev. Rul. 2002-8 (2002-9 I.R.B. 564).

DRAFTING INFORMATION

The principal author of this revenue ruling is Gregory N. Doran of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Mr. Doran at (202) 622-3040 (not a toll-free call).

Section 61.—Gross Income Defined

26 CFR 1.61-1: Gross income.
(Also: § 83, 1041; 1.83-7, 1.1041-1T.)

Gross income; transfers of property incident to divorce. A taxpayer who transfers interests in nonstatutory stock options and nonqualified deferred compensation to the taxpayer's former spouse incident to divorce is not required to include an amount in gross income upon the transfer. Rather, the former spouse is required to include an amount in gross

income when the former spouse exercises the stock options or when the deferred compensation is paid or made available to the former spouse.

Rev. Rul. 2002-22

ISSUES

(1) Is a taxpayer who transfers interests in nonstatutory stock options and nonqualified deferred compensation to the taxpayer's former spouse incident to divorce required to include an amount in gross income upon the transfer?

(2) Is the taxpayer or the former spouse required to include an amount in gross income when the former spouse exercises the stock options or when the deferred compensation is paid or made available to the former spouse?

FACTS

Prior to their divorce in 2002, *A* and *B* were married individuals residing in State *X* who used the cash receipts and disbursements method of accounting.

A is employed by Corporation *Y*. Prior to the divorce, *Y* issued nonstatutory stock options to *A* as part of *A*'s compensation. The nonstatutory stock options did not have a readily ascertainable fair market value within the meaning of § 1.83-7(b) of the Income Tax Regulations at the time granted to *A*, and thus no

amount was included in *A*'s gross income with respect to those options at the time of grant.

Y maintains two unfunded, nonqualified deferred compensation plans under which *A* earns the right to receive post-employment payments from *Y*. Under one of the deferred compensation plans, participants are entitled to payments based on the balance of individual accounts of the kind described in § 31.3121(v)(2)-1(c)(1)(ii) of the Employment Tax Regulations. By the time of *A*'s divorce from *B*, *A* had an account balance of \$100*x* under that plan. Under the second deferred compensation plan maintained by *Y*, participants are entitled to receive single sum or periodic payments following separation from service based on a formula reflecting their years of service and compensation history with *Y*. By the time of *A*'s divorce from *B*, *A* had accrued the right to receive a single sum payment of \$50*x* under that plan following *A*'s termination of employment with *Y*. *A*'s contractual rights to the deferred compensation benefits under these plans were not contingent on *A*'s performance of future services for *Y*.

Under the law of State *X*, stock options and unfunded deferred compensation rights earned by a spouse during the period of marriage are marital property subject to equitable division between the spouses in the event of divorce. Pursuant to the property settlement incorporated

into their judgment of divorce, A transferred to B (1) one-third of the nonstatutory stock options issued to A by Y, (2) the right to receive deferred compensation payments from Y under the account balance plan based on \$75x of A's account balance under that plan at the time of the divorce, and (3) the right to receive a single sum payment of \$25x from Y under the other deferred compensation plan upon A's termination of employment with Y.

In 2006, B exercises all of the stock options and receives Y stock with a fair market value in excess of the exercise price of the options. In 2011, A terminates employment with Y, and B receives a single sum payment of \$150x from the account balance plan and a single sum payment of \$25x from the other deferred compensation plan.

LAW AND ANALYSIS

Section 1041 and the assignment of income doctrine

Section 1041(a) provides that no gain or loss is recognized on a transfer of property from an individual to or for the benefit of a spouse or, if the transfer is incident to divorce, a former spouse. Section 1041(b) provides that the property transferred is generally treated as acquired by the transferee by gift and that the transferee's basis in the property is the adjusted basis of the transferor.

Section 1041 was enacted in part to reverse the effect of the Supreme Court's decision in *United States v. Davis*, 370 U.S. 65 (1962), which held that the transfer of appreciated property to a spouse (or former spouse) in exchange for the release of marital claims was a taxable event resulting in the recognition of gain or loss to the transferor. See H.R. Rep. No. 432, 98th Cong., 2d Sess. 1491 (1984). Section 1041 was intended to "make the tax laws as unintrusive as possible with respect to relations between spouses" and to provide "uniform Federal income tax consequences" for transfers of property between spouses incident to divorce, "notwithstanding that the property may be subject to differing state property laws." *Id.* at 1492. Congress thus intended that § 1041 would eliminate differing federal tax treatment of property transfers and divisions between divorcing

taxpayers who reside in community property states and those who reside in non-community property states.

The term "property" is not defined in § 1041. However, there is no indication that Congress intended "property" to have a restricted meaning under § 1041. To the contrary, Congress indicated that § 1041 should apply broadly to transfers of many types of property, including those that involve a right to receive ordinary income that has accrued in an economic sense (such as interests in trusts and annuities). *Id.* at 1491. Accordingly, stock options and unfunded deferred compensation rights may constitute property within the meaning of § 1041. See also *Balding v. Commissioner*, 98 T.C. 368 (1992) (marital rights to military pension treated as property under § 1041).

Although § 1041 provides nonrecognition treatment to transfers between spouses and former spouses, whether income derived from the transferred property and paid to the transferee is taxed to the transferor or the transferee depends upon the applicability of the assignment of income doctrine. As first enunciated in *Lucas v. Earl*, 281 U.S. 111 (1930), the assignment of income doctrine provides that income is ordinarily taxed to the person who earns it, and that the incidence of income taxation may not be shifted by anticipatory assignments. However, the courts and the Service have long recognized that the assignment of income doctrine does not apply to every transfer of future income rights. See, e.g., *Rubin v. Commissioner*, 429 F.2d 650 (2d Cir. 1970); *Hempt Bros., Inc. v. United States*, 490 F.2d 1172 (3d Cir. 1974), *cert. denied*, 419 U.S. 826 (1974); Rev. Rul. 80-198 (1980-2 C.B. 113). Moreover, in cases arising before the effective date of § 1041, a number of courts had concluded that transfers of income rights between divorcing spouses were not voluntary assignments within the scope of the assignment of income doctrine. See *Meisner v. United States*, 133 F.3d 654 (8th Cir. 1998); *Kenfield v. United States*, 783 F.2d 966 (10th Cir. 1986); *Schulze v. Commissioner*, T.C.M. 1983-263; *Cofield v. Koehler*, 207 F. Supp. 73 (D. Kan. 1962).

In *Hempt Bros., Inc. v. United States*, the court concluded that the assignment of income doctrine should not apply to the transfer of accounts receivable by a

cash basis partnership to a controlled corporation in a transaction described in § 351(a), where there was a valid business purpose for the transfer of the accounts receivable together with the other assets and liabilities of the partnership to effect the incorporation of an ongoing business. The court reasoned that application of the assignment of income doctrine to tax the transferor in such circumstances would frustrate the Congressional intent reflected in the nonrecognition rule of § 351(a). Accordingly, the transferee, not the transferor, was taxed as it received payment of the receivables. In Rev. Rul. 80-198, the Service adopted the court's position in *Hempt Bros.*, but ruled that the assignment of income doctrine would nonetheless apply to transfers to controlled corporations where there was a tax avoidance purpose.

Similarly, applying the assignment of income doctrine in divorce cases to tax the transferor spouse when the transferee spouse ultimately receives income from the property transferred in the divorce would frustrate the purpose of § 1041 with respect to divorcing spouses. That tax treatment would impose substantial burdens on marital property settlements involving such property and thwart the purpose of allowing divorcing spouses to sever their ownership interests in property with as little tax intrusion as possible. Further, there is no indication that Congress intended § 1041 to alter the principle established in the pre-1041 cases such as *Meisner* that the application of the assignment of income doctrine generally is inappropriate in the context of divorce.

Specific provisions governing nonstatutory stock options

Section 83(a) provides, in general, that if property is transferred to any person in connection with the performance of services, the excess of the fair market value of the property over the amount, if any, paid for the property is included in the gross income of the person performing the services in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever is applicable. In the case of nonstatutory stock options that do not have a readily

ascertainable fair market value at the date of grant, § 83 does not apply to the grant of the option, but applies to property received upon exercise of the option or to any money or other property received in an arm's length disposition of the option. See § 83(e) and § 1.83-7(a).

Although a transfer of nonstatutory stock options in connection with a marital property settlement may, as a factual matter, involve an arm's length exchange for money, property, or other valuable consideration, it would contravene the gift treatment prescribed by § 1041 to include the value of the consideration in the transferor's income under § 83. Accordingly, the transfer of nonstatutory stock options between divorcing spouses is entitled to nonrecognition treatment under § 1041.

When the transferee exercises the stock options, the transferee rather than the transferor realizes gross income to the extent determined by § 83(a). Since § 1041 was intended to eliminate differing federal tax treatment for property transferred or divided between spouses in connection with divorce in community property states and in non-community property states, § 83(a) is properly applied in the same manner in both contexts. Where compensation rights are earned through the performance of services by one spouse in a community property state, the portion of the compensation treated as owned by the non-earning spouse under state law is treated as the gross income of the non-earning spouse for federal income tax purposes. *Poe v. Seaborn*, 282 U.S. 101 (1930). Thus, even though the non-employee spouse in a non-community property state may not have state law ownership rights in nonstatutory stock options at the time of grant, § 1041 requires that the ownership rights acquired by such a spouse in a marital property settlement be given the same federal income tax effect as the ownership rights of a non-employee spouse in a community property state. Accordingly, upon the subsequent exercise of the nonstatutory stock options, the property transferred to the non-employee spouse has the same character and is includible in the gross income of the non-employee spouse under § 83(a) to the same extent as if the non-employee

spouse were the person who actually performed the services.

The same conclusion would apply in a case in which an employee transfers a statutory stock option (such as those governed by § 422 or 423(b)) contrary to its terms to a spouse or former spouse in connection with divorce. The option would be disqualified as a statutory stock option, see §§ 422(b)(5) and 423(b)(9), and treated in the same manner as other nonstatutory stock options. Section 424(c)(4), which provides that a § 1041(a) transfer of stock acquired on the exercise of a statutory stock option is not a disqualifying disposition, does not apply to a transfer of the stock option. See H.R. Rep. No. 795, 100th Cong., 2d Sess. 378 (1988) (noting that the purpose of the amendment made to § 424(c) is to "clarif[y] that the transfer of stock acquired pursuant to the exercise of an incentive stock option between spouses or incident to divorce is tax free").

CONCLUSION

Under the present facts, the interests in nonstatutory stock options and nonqualified deferred compensation that *A* transfers to *B* are property within the meaning of § 1041. Section 1041 confers nonrecognition treatment on any gain that *A* might otherwise realize when *A* transfers these interests to *B* in 2002. Further, the assignment of income doctrine does not apply to these transfers. Therefore, *A* is not required to include in gross income any income resulting from *B*'s exercise of the stock options in 2006 or the payment of deferred compensation to *B* in 2011. When *B* exercises the stock options in 2006, *B* must include in income an amount determined under § 83(a) as if *B* were the person who performed the services. In addition, *B* must include the amount realized from payments of deferred compensation in income in the year such payments are paid or made available to *B*. The same conclusions would apply if *A* and *B* resided in a community property state and all or some of these income rights constituted community property that was divided between *A* and *B* as part of their divorce.

This ruling does not apply to transfers of property between spouses other than in

connection with divorce. This ruling also does not apply to transfers of nonstatutory stock options, unfunded deferred compensation rights, or other future income rights to the extent such options or rights are unvested at the time of transfer or to the extent that the transferor's rights to such income are subject to substantial contingencies at the time of the transfer. See *Kochansky v. Commissioner*, 92 F.3d 957 (9th Cir. 1996). Transfers of certain types of property incident to divorce, the tax consequences of which are governed by a specific provision of the Code or regulations (for example, § 402, 408, 414, 424, or 453B) are not affected by this ruling.

HOLDINGS

(1) A taxpayer who transfers interests in nonstatutory stock options and nonqualified deferred compensation to the taxpayer's former spouse incident to divorce is not required to include an amount in gross income upon the transfer.

(2) The former spouse, and not the taxpayer, is required to include an amount in gross income when the former spouse exercises the stock options or when the deferred compensation is paid or made available to the former spouse.

PROSPECTIVE APPLICATION

The Service will apply § 7805(b) and assignment of income principles to treat income as gross income of the transferor and not of the transferee if—

(i) The income is attributable to an interest in nonstatutory stock options, unfunded deferred compensation rights, or other similar intangible property rights;

(ii) The options or rights were transferred from one party to a divorce to the other party to the divorce;

(iii) The transfer was required by a provision of an agreement or court order;

(iv) The provision was contained in the agreement or order before November 9, 2002; and

(v) (a) The agreement or court order specifically provides that the transferor must report gross income attributable to the transferred interest, or

(b) It can be established to the satisfaction of the Service that the transferor

has reported the gross income for federal income tax purposes.

EFFECT ON OTHER DOCUMENTS

Rev. Rul. 87-112 (1987-2 C.B. 207) which deals with the treatment of transfers of United States savings bonds between spouses or former spouses, is clarified by eliminating references to assignment of income principles. As so clarified, the ruling is reaffirmed respecting the application of § 454 and the regulations thereunder to the transfer and the determination of the transferee's basis.

FURTHER INFORMATION

For further information or questions regarding § 61 or 1041, contact Edward Schwartz of the Office of Associate Chief Counsel (Income Tax and Accounting) at (202) 622-4960. For further information or questions regarding § 83, 402, 408, 414, 422, 423, 424, or 453B, contact Erinn Madden of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities) at (202) 622-6030. These are not toll-free calls.

Section 83.—Property Transferred in Connection With Performance of Services

26 CFR 1.83-7: Taxation of nonqualified stock options.

A taxpayer who transfers interests in nonstatutory stock options and nonqualified deferred compensation to the taxpayer's former spouse incident to divorce is not required to include an amount in gross income upon the transfer. Rather, the former spouse is required to include an amount in gross income when the former spouse exercises the stock options or when the deferred compensation is paid or made available to the former spouse. See Rev. Rul. 2002-22, page 849.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of May 2002. See Rev. Rul. 2002-25, page 904.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted applicable federal long-term rate is set forth for the month of May 2002. See Rev. Rul. 2002-25, page 904.

Section 401.—Qualified Pension, Profit-Sharing, and Stock Bonus Plans

26 CFR 1.401(a)-2: Impossibility of diversion under qualified plan or trust.

A revenue procedure describes limited relief from disqualification for certain defined contribution retirement plans maintained by Professional Employer Organizations. See Rev. Proc. 2002-21, page 911.

26 CFR 1.401(a)(9)-1: Minimum distribution requirement in general.

T.D. 8987

DEPARTMENT OF TREASURY Internal Revenue Service 26 CFR Parts 1, 54, and 602

Required Distributions From Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

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

ciaries of individual retirement plans; and employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts and beneficiaries of such contracts and accounts. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Cathy A. Vohs, 202-622-6090 (Not a toll free number).

SUPPLEMENTARY INFORMATION: Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the **Office of Management and Budget** in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-0996, in conjunction with the notice of proposed rulemaking published on July 27, 1987, 52 FR 28070, REG-EE-113-82 (1987-2 C.B. 881), Required Distributions From Qualified Plans and Individual Retirement Plans, under control number 1545-1466 for Third-Party Disclosure Requirements in IRS Regulations, and control number 1545-1573, in conjunction with the notice of proposed rulemaking published on December 30, 1997, 62 FR 67780, REG-209463-82 (1998-1 C.B. 376), Required Distributions from Qualified Plans and Individual Retirement Plans. Responses to the collections of information under control numbers 1545-0996 and 1545-1466 are mandatory. Responses to the collection of information under control number 1545-1573 are required to obtain the benefit of a trust being treated as a designated beneficiary under a retirement plan.

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

The estimated annual burden per respondent under control number 1545-0996 is 1 hour.

The estimated annual burden per respondent under control number 1545-1466 is 9 minutes.

The estimated annual burden per respondent under control number 1545-1573 is 20 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) and to the Pension Excise Tax Regulations (26 CFR Part 54) under sections 401, 403, 408, and 4974 of the Internal Revenue Code of 1986 (Code). These amendments conform the regulations to section 634 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) (115 Stat. 117), section 1404 of the Small Business Job Protection Act of 1996 (SBJPA) (110 Stat. 1791), sections 1121 and 1852 of the Tax Reform Act of 1986 (TRA of 1986) (100 Stat. 2464 and 2864), sections 521 and 713 of the Tax Reform Act of 1984 (TRA of 1984) (98 Stat. 865 and 955), and sections 242 and 243 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (96 Stat. 521). The regulations provide guidance on the minimum distribution requirements under section 401(a)(9) for plans qualified under section 401(a) and for other arrangements that incorporate the section 401(a)(9) rules by reference. The section 401(a)(9) rules are incorporated by reference in sections 408(a)(6) and (b)(3) for individual retirement accounts and annuities (IRAs)

(including Roth IRAs, except as provided in section 408A(c)(5)), section 403(b)(10) for section 403(b) annuity contracts, and section 457(d) for eligible deferred compensation plans.

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

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

Section 401(a)(9)(C) defines required beginning date for employees (other than 5-percent owners and IRA owners) as April 1 of the calendar year following the later of the calendar year in which the employee attains age 70½ or the calendar year in which the employee retires. For 5-percent owners and IRA owners, the required beginning date is April 1 of the calendar year following the calendar year in which the employee attains age 70½, even if the employee has not retired.

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

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

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

Section 401(a)(9)(B)(i) provides that, if the employee dies after distributions

have begun, the employee's interest must be distributed at least as rapidly as under the method used by the employee.

Section 401(a)(9)(B)(ii) and (iii) provides that, if the employee dies before required minimum distributions have begun, the employee's interest must be either: distributed (in accordance with regulations) over the life or life expectancy of the designated beneficiary with the distributions beginning no later than 1 year after the date of the employee's death, or distributed within 5 years after the death of the employee. However, under section 401(a)(9)(B)(iv), a surviving spouse may wait until the date the employee would have attained age 70½ to begin taking required minimum distributions.

Comprehensive proposed regulations under section 401(a)(9) were previously published in the **Federal Register** on January 17, 2001 (REG-130477-00/REG-130481-00, 2001-1 C.B. 865 [66 FR 3928]) and July 27, 1987 (EE-113-82, 1987-2 C.B. 881 [52 FR 28070]). The proposed regulations published in 2001 substantially simplified the rules for determining required minimum distributions for separate accounts provided in the 1987 proposed regulations. The public reaction to this simplification was very favorable. Consequently, these final regulations adopt the simplified rules in the 2001 proposed regulations for separate accounts, with the modifications described below in the Explanation of Provisions. These regulations continue to incorporate, with some modifications, applicable previously issued guidance (*i.e.*, Notice 83-23 (1983-2 C.B. 418), Notice 88-38 (1988-1 C.B. 524), Notice 96-67 (1996-2 C.B. 235), and Notice 97-75 (1997-2 C.B. 337)). To the extent not modified or superseded by these regulations, the guidance in Notice 83-23 and Notice 97-75 remains in effect. For example, if an employer uses the same required beginning date for all employees regardless of whether the employee has retired by age 70½, during the period before an employee retires, the employee may determine the portion of any distribution that is eligible for rollover using the statutory definition of required beginning date.

With respect to annuity payments, the 2001 proposed regulations retained the

basic structure of the 1987 proposed regulation. The preamble to the 2001 proposed regulations indicated that the IRS and Treasury were continuing to study these rules and specifically requested updated comments on current practices and issues relating to required minimum distributions from annuity contracts. Commentators provided information on the variety of annuity contracts being developed and available as insurance company products for purchase with separate accounts. In response to the comments received, temporary regulations under § 1.401(a)(9)-6T significantly expand the situations in which annuity payments under annuity contracts purchased with an employee's benefit may provide for increasing payments. These regulations are being issued in proposed (REG-108697-02) and temporary form rather than final form in order to give taxpayers an opportunity to comment on these changes.

Explanation of Provisions

Uniform Lifetime Table

These final regulations retain the simplifications to the minimum distribution rules for separate accounts provided in the 2001 proposed regulations, including the calculation of the required minimum distribution during the individual's lifetime using a uniform table. The basic calculation for individual accounts provides that the required minimum distribution is determined by dividing the account balance by the distribution period. For lifetime required minimum distributions, there is a uniform distribution period for almost all employees of the same age. The uniform lifetime distribution period table is based on the joint life and last survivor expectancy of an individual and a hypothetical beneficiary 10 years younger. However, if the employee's sole beneficiary is the employee's spouse and the spouse is more than 10 years younger than the employee, a longer distribution period measured by the joint life and last survivor life expectancy of the employee and spouse is permitted to be used.

For years after the year of the employee's death, the distribution period is generally the remaining life expectancy of the designated beneficiary. The beneficiary's remaining life expectancy is calcu-

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

New Mortality Tables

The 2001 proposed regulations provided that the life expectancies for purposes of section 401(a)(9) would be determined using the expected return multiples set forth in the regulations under section 72 that are used for other purposes under the Code. These tables, based upon the experience reflected in the 1983 individual annuity mortality table (without load), were adopted for purposes of section 72 in 1986 and had been used in both the 1987 proposed regulations and the 2001 proposed regulations under section 401(a)(9).

Section 634 of EGTRRA instructed the Secretary of Treasury to modify the life expectancy tables used for purposes of the minimum distribution rules to reflect current life expectancy. In accordance with that instruction, the final regulations adopt new tables of life expectancies to be used for determining required minimum distributions.

The new tables were derived by starting with the basic 2000 individual annuity mortality table and projecting mortality improvement for the period 2000 through 2003 using the assumed mortality improvement factors that were adopted in developing the Annuity 2000 mortality table. The resulting mortality rates were blended using a fixed 50% male 50% female blend. The uniform lifetime table provided in these final regulations has also been adjusted to reflect these new mortality tables.

These new tables also may be used to determine an employee's (or IRA owner's) life expectancy, or the joint life and last survivor expectancy of an employee

(or IRA owner) and designated beneficiary, for purposes of calculating the amount of substantially equal periodic payments under section 72(t)(2)(A)(iv) when applying a method permitted under A-12 of Notice 89-25 (1989-1 C.B. 662, 666). One of these methods allows use of the methodology underlying the minimum distribution calculations for separate accounts in which the account balance in the prior year is divided by life expectancy or joint life and last survivor expectancy. Under this method, the payments are not equal but are treated as substantially equal if the life expectancy is determined in a consistent manner. A series of substantially equal periodic payments under section 72(t)(2)(A)(iv) determined under this methodology will not be considered to have been modified merely because the new tables are used in the future to determine the annual periodic payments rather than the tables in the regulations under section 72.

Determination of the Designated Beneficiary

The 2001 proposed regulations provided that, generally, the designated beneficiary is determined as of the end of the year following the year of the employee's death. Thus, any beneficiary eliminated by distribution of the beneficiary's benefit or through disclaimer during the period between the employee's death and the end of the year following the year of death is disregarded in determining the employee's designated beneficiary for purposes of calculating required minimum distributions. If, as of the end of the year following the year of the employee's death, the employee has more than one designated beneficiary and the account or benefit has not been divided into separate accounts or shares for each beneficiary, the beneficiary with the shortest life expectancy is the designated beneficiary. Further, if a person other than an individual is a beneficiary as of that date, the employee is treated as not having a beneficiary (except as provided below with respect to trusts).

Commentators applauded the basic principle of the approach in the 2001 proposed regulations but suggested that the designated beneficiary determination should be made before the end of the year following the year of death so that there

will be adequate time to calculate and distribute the required minimum amount between the date the beneficiary determination is finalized and the end of the year following the year of the employee's death (*i.e.*, the date that required minimum distributions to nonspouse designated beneficiaries must commence). In response to these comments, the date for determining the designated beneficiary has been changed to September 30 of the year following the year of the employee's death. In response to comments, these final regulations clarify that in order for a beneficiary to disclaim entitlement to a benefit for purposes of section 401(a)(9), the disclaimer must satisfy section 2518. Finally, the final regulations clarify that if a designated beneficiary dies during the period between the employee's date of death and September 30 of the year following the year of the employee's death, the individual continues to be treated as the designated beneficiary for purposes of determining the distribution period rather than the successor beneficiary.

Some commentators requested that final regulations provide that, if the employee's estate was named as the beneficiary in the beneficiary designation or the employee's estate became beneficiary by operation of law, the beneficiary of the estate or the beneficiary of the IRA named under the employee's will could replace the estate as beneficiary by September 30 of the year following the year of death. This change is not being adopted in these final regulations. The period between death and the beneficiary determination date is a period during which beneficiaries can be eliminated but not replaced with a beneficiary not designated under the plan as of the date of death. In order for an individual to be a designated beneficiary, any beneficiary must be designated under the plan or named by the employee as of the date of death.

These regulations retain the rule in the proposed regulations that, in determining an employee's beneficiaries for purposes of applying the multiple beneficiary rule or determining if the employee's spouse is the employee's sole beneficiary, all beneficiaries of the employee's interest in the plan, including contingent beneficiaries, are taken into account. The regulations also retain the exception to this rule

under which, if a beneficiary (subsequent beneficiary) is entitled to any portion of an employee's benefit only if another beneficiary dies before the entire benefit to which that other beneficiary is entitled has been distributed by the plan, the subsequent beneficiary will not be considered a beneficiary. However, these regulations clarify that the exception from the multiple beneficiary rules for death contingencies only applies to a person who could be entitled to a portion of the employee's benefit by becoming the successor to the interest of one of the employee's beneficiaries after that beneficiary's death. The regulations provide that this rule 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 one beneficiary has a right to any income on an employee's individual account during that beneficiary's life and another beneficiary has a right to the principal but only after the death of the income beneficiary (with any portion of the principal distributed during the life of the income beneficiary to be held in trust until that 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.

Default Rule for Post-death Distributions

These regulations, as did the 2001 proposed regulations, provide that, if an employee dies before the employee's required beginning date and the employee has a designated beneficiary, then the life expectancy rule in section 401(a)(9)(B)(iii) (rather than the 5-year rule in section 401(a)(9)(B)(ii)) is the default distribution rule. Thus, absent a plan provision or election of the 5-year rule, the life expectancy rule applies in all cases in which the employee has a designated beneficiary, and the 5-year rule applies if the employee does not have a designated beneficiary. This is a change from the position in the 1987 proposed regulations that provided the 5-year rule as the default unless the spouse was the sole beneficiary. Commentators pointed out that, as a result of the default rule

under the 1987 regulations, some beneficiaries did not commence distributions under the life expectancy rules. In response to those comments, these final regulations provide a transition rule that permits beneficiaries subject to the 5-year rule under the 1987 proposed regulations to switch to the life expectancy rule, provided that all amounts that would have been required to be distributed under an application of the life expectancy rule are distributed by the earlier of December 31, 2003 or the end of the 5-year period following the year of the employee's death.

Temporary Rules for Defined Benefit Plans and Annuity Contracts

These temporary regulations provide a number of changes to the annuity rules provided in the 2001 proposed regulations including changes designed to make the rules more consistent with the rules for individual accounts and reflect new product designs. In order to allow taxpayers to comment on these changes, the section of the regulations governing defined benefit plans and annuities is being issued as temporary and proposed regulations rather than final regulations.

In response to comments, the following changes are being made. First, annuity payments are permitted to be provided for a period certain that is as long as the period under the uniform lifetime table for the employee's age in the year in which the annuity starting date occurs, regardless of who is the employee's designated beneficiary. Further, the period does not change upon the death of the employee even if the remaining period certain is longer or shorter than the beneficiary's single life expectancy. The same rule applies if the annuity also includes a life annuity or a joint and survivor annuity. If the employee's sole designated beneficiary is the employee's spouse, if the spouse is more than 10 years younger than the employee, and if the annuity is only for a period certain and does not have a life contingent element, the period certain can be as long as the joint life and last survivor expectancy of the employee and the employee's spouse.

These temporary regulations retain the rules in the 2001 proposed regulations interpreting the minimum distribution incidental benefit requirement. Under

these rules, if the survivor of a joint and survivor annuity is not the employee's spouse and if the survivor annuitant is more than 10 years younger than the employee, then the survivor portion must be less than 100% of the employee's benefit. In such a case, the survivor annuity must be reduced so that it does not exceed the employee's benefit multiplied by the percentage provided in the table in the regulations. However, the regulations clarify that if the joint and survivor annuity also has a period certain, the reduction in survivor annuity is only required after expiration of the period certain.

Further, in response to comments, the temporary regulations make a number of changes that expand the situations in which increasing annuity payments are permitted. The additional situations are generally only available to annuities purchased from insurance companies.

Under these temporary regulations, an annuity purchased from an insurance company can increase annually by a constant percentage, provided that the initial payment is sufficiently large that the total expected payments, determined without regard to these increases, exceed the account value being annuitized. This minimum payment requirement, together with the adverse economic interests of the insurer and the annuity purchaser, effectively limits the constant percentage increase under an annuity to the assumed interest rate used in pricing the annuity.

These temporary regulations also provide explicit rules relating to the payments of dividends under participating annuity contracts. Under the temporary regulations, a variation in the amount of the annuity payment (referred to as a dividend or other payment resulting from favorable actuarial experience) can be made provided that: (1) the initial payment meets the minimum threshold described above, (2) actuarial experience is measured at least annually, and (3) the resulting dividend payment or other payment is either paid no later than the year following the year for which the actuarial experience is measured or is payable in the same form as the payment of the annuity over the remaining period of the annuity. These requirements are intended to preclude backloading of the distribution stream through the use of conservative pricing assumptions where actuarial

gains with respect to those assumptions are deferred and paid at a later date. The definition of dividend or other payment resulting from actuarial gain is broad enough to encompass the contractual adjustment provided for in a variable annuity. Accordingly, the rules that permitted payments that vary with the investment performance of underlying assets have been replaced with this more general construct.

The temporary regulations allow full and partial withdrawals from purchased annuities in certain circumstances. The restrictions on these withdrawals are intended to preclude the use of a withdrawal or cash-out feature as a mechanism to distribute deferred actuarial gains. In the case of a full withdrawal (including a death benefit), the distribution must not exceed the expected future payments under the contract, taking into account the annuitants who are still alive and any remaining period certain, but without regard to any future increases. In the case of a partial withdrawal, the full withdrawal under the terms of the contract must satisfy the preceding sentence and, after the partial withdrawal, all future annuity payments must be reduced proportionately based on the ratio of the partial withdrawal to the maximum withdrawal under the terms of the contract.

As discussed above, these permitted increases are only available for insurance company products and not a distribution stream provided from a section 401(a) defined benefit trust. In addition, these temporary regulations do not permit annuity payments that vary with the value of the underlying assets of the plan to be provided by a defined benefit plan with a section 401(a) qualified trust. Further, these regulations clarify that an annuity under a defined benefit plan with a section 401(a) qualified trust is permitted to provide that annuity payments may increase with an annual percentage increase that does not exceed the percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics. Finally, the temporary regulations clarify that increases in these annuity payments to reflect benefit increases must be pursuant to a plan amendment increasing benefits.

The preamble to the 2001 proposed regulations indicated that the IRS and

Treasury were continuing to consider whether retention of the rule allowing an employee's minimum required distributions under a defined benefit plan to be determined using the rules for individual accounts was appropriate for defined benefit plans. Few comments specifically requested retention of this rule. As a result, the IRS and Treasury have concluded that this rule has little application outside of being used to determine the portion of a lump sum distribution of an employee's vested accrued benefit that is eligible for rollover. Accordingly, this rule has not been retained in these temporary regulations except for use in determining the amount that is eligible for rollover when a defined benefit plan pays an employee's entire vested accrued benefit in a lump sum. However, in response to comments, these temporary regulations permit a plan to treat the amount of a year of annuity payments that would have been payable under the normal form as the minimum required distribution for a year in the case of a lump sum payment.

Finally, in response to a comment, these temporary regulations clarify that actuarial increases to benefits under a defined benefit plan required under section 401(a)(9)(C)(iii), as added by SBJPA, need not be provided for any period before January 1, 1997.

Incidental Benefit Requirement

These final and temporary regulations provide rules relating to the interaction of the section 401(a)(9) requirements and the incidental benefit requirement of § 1.401-1(b)(1)(i). Under these rules, generally if distributions with respect to an employee's benefit satisfy the minimum distribution incidental benefit requirement under these regulations, the distribution will be deemed to satisfy any requirement for distributions under the incidental benefit requirements of § 1.401-1(b)(1)(i). However, if a plan provides for certain post-retirement ancillary death benefits or a section 403(b) contract includes an undistributed pre-1987 account, the employee's benefits must continue to satisfy the distribution requirements of the incidental benefit requirement of § 1.401-1(b)(1)(i), determined without regard to these regulations.

Existing revenue rulings continue to provide guidance with respect to the application of the incidental benefit requirements to permissible nonretirement benefits such as life, accident, or health benefits.

Trust as Beneficiary

The final regulations retain the provision in the proposed regulations allowing an underlying beneficiary of a trust to be an employee's designated beneficiary for purposes of determining required minimum distributions when the trust is named as the beneficiary of a retirement plan or IRA, provided that certain requirements are met. One of these requirements is that documentation of the underlying beneficiaries of the trust be provided to the plan administrator or IRA trustee, custodian, or issuer. In the case of individual accounts, unless the lifetime distribution period for an employee is measured by the joint life expectancy of the employee and the employee's spouse, the deadline under these regulations for providing the beneficiary documentation is October 31 of the year following the year of the employee's death, rather than the end of the year following the year of the employee's death as provided under the 2001 proposed regulations.

This deadline for providing the trust documentation is coordinated with the deadline for determining the employee's designated beneficiary. Amendments to the 1987 proposed regulations published in 1997 eliminated the requirement that the trust be irrevocable before death. Commentators indicated that some beneficiaries would have qualified for a longer distribution period as a result of this change except for the fact that they had not provided the required documentation by the deadline provided in the regulations, which, in some cases, was a date before the regulation was published. Consequently, the commentators requested that final regulations provide a transition period for providing this documentation. In response to these comments, these regulations provide that, if the date for providing this documentation is before October 31, 2003, the documentation is permitted to be provided to the plan administrator (or IRA trustee, custodian, or issuer) until October 31, 2003.

Commentators asked for clarification as to whether an election by a revocable

trust to be treated as part of an estate under section 645 causes the trust to be treated as an estate for purposes of section 401(a)(9). On this point, the IRS and Treasury intend that a revocable trust will not fail to be a trust for purposes of section 401(a)(9) merely because the trust elects to be treated as an estate under section 645, as long as the trust continues to be a trust under state law.

Separate Accounts

Several commentators requested clarification concerning when an employee's individual account can be divided into separate accounts that are permitted to satisfy section 401(a)(9) separately and concerning whether separate accounts could also provide for separate investments. In response to these comments, these final regulations provide that separate accounts with different beneficiaries under the plan can be established at any time, either before or after the employee's required beginning date. However, the final regulations provide that the separate accounts are recognized for purposes of determining required minimum distributions only after the later of the year of the employee's death (whether before or after the required beginning date) and the year the separate accounts are established. In addition, the final regulations clarify that, in order to determine the distribution period for the separate account by disregarding the beneficiaries of the other separate account, the separate account must be established no later than the end of the year following the year of the employee's death.

The separate accounting must allocate all post-death investment gains and losses for the period prior to the establishment of the separate accounts on a *pro rata* basis in a reasonable and consistent basis among the separate accounts for the different beneficiaries. The separate accounting must also allocate any post-death distribution to the separate account of the beneficiary receiving that distribution. Once the separate accounts are established, the final regulations permit the separate accounting to provide for separate investments for each separate account.

Elimination of Optional Forms of Benefit

Some commentators requested relief under section 411(d)(6) for the elimination of optional forms of benefit that were needed to satisfy section 401(a)(9) under the 1987 proposed regulations but that are no longer needed to satisfy these final regulations. For defined contribution plans, this relief generally is not needed because paragraph (e) of A-2 of § 1.411(d)-4 gives broad authority to employers to amend their defined contribution plan to eliminate installment payout options as long as the right to a lump sum option payable at the same time is preserved. These final regulations also provide that, 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). However, the IRS and Treasury invite public comment if additional relief under section 411(d)(6) is needed in order for defined benefit plans to satisfy section 401(a)(9).

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

These final regulations generally retain the clarifications in the 2001 proposed regulations regarding how and when a surviving spouse of a deceased IRA owner can elect to treat an IRA inherited by the surviving spouse from that owner as the spouse's own IRA. The 1987 proposed regulations provided that this election is deemed to have been made if the surviving spouse contributes to the IRA or does not take the required minimum distribution for a year under section 401(a)(9)(B) as a beneficiary of the IRA. Under the 2001 proposed regulations, this deemed election is permitted to be made only after the distribution of the required minimum amount for the account, if any, for the year of the individual's death. These final regulations provide that the election can be made at any time after the IRA owner's date of death, while clarifying that the minimum required distribution for the calendar year of the IRA's owner's death is determined assuming the IRA owner lived throughout the year. These regulations also clarify that the surviving spouse is required to receive a

minimum distribution for the year of the IRA owner's death only to the extent that the amount required was not distributed to the owner before death.

Some commentators raised concerns about the other clarifications in the 2001 proposed regulations. The 2001 proposed regulations clarified that a deemed election is permitted only if the spouse is the sole beneficiary of the account and has an unlimited right to withdraw from the account. This requirement is not satisfied if a trust is named as beneficiary of the IRA, even if the spouse is the sole beneficiary of the trust. As explained in the 2001 preamble, these clarifications make the election consistent with the underlying premise that the surviving spouse could have received a distribution of the entire decedent IRA owner's account and rolled it over to an IRA established in the surviving spouse's own name as IRA owner.

If the spouse actually receives a distribution from the IRA, the spouse is permitted to roll that distribution over within 60 days into an IRA in the spouse's own name to the extent that the distribution is not a required distribution, regardless of whether or not the spouse is the sole beneficiary of the IRA owner. Further, if the distribution is received by the spouse before the year that the IRA owner would have been 70½, no portion of the distribution is a required minimum distribution for purposes of determining whether it is eligible to be rolled over by the surviving spouse.

IRA Reporting of Required Minimum Distributions

The 2001 proposed regulations required the trustee, custodian, or issuer of an IRA to report the amount of the required minimum distribution from the IRA at the time and in the manner provided under additional guidance issued by the IRS and applicable IRS forms and instructions. A significant number of commentators objected to the requirement that the amount of the required minimum distribution for a year be reported because of concerns that the number may be inaccurate in certain cases. After thorough consideration of these comments and consultation with interested parties, the final regulations continue to provide authority

to the Service to determine the extent to which the trustee, custodian, or issuer of an IRA must report information with respect to the required minimum distribution from that IRA through guidance of general applicability as well as forms and publications.

In conjunction with these final regulations a notice is being published that specifies the reporting requirements that apply. Beginning in 2004, trustees, custodians, and issuers must identify to the IRS on Form 5498 each IRA for which a minimum distribution is required to be made to an IRA owner. The trustee, custodian, or issuer does not need to report the amount of the required distribution to the IRS. However, the trustee, custodian, or issuer of such an IRA, must provide additional information regarding the IRA to the IRA owner required to receive a minimum required distribution, beginning with the minimum required distribution for 2003. The trustee, custodian, or issuer of the IRA either must report the amount of the required minimum distribution for the IRA to the IRA owner, or must advise the IRA owner that a minimum distribution with respect to the IRA is required for the year, offer to calculate the amount of the required minimum distribution for the IRA owner upon request, and then, if requested, calculate the amount and provide it to the IRA owner. Although the delegation of authority in the regulations to require reporting would permit reporting to be required with respect to required minimum distributions to beneficiaries, no reporting is required with respect to beneficiaries at this time.

The reporting provisions in the 2001 proposed regulations, these final regulations, and the notice being published are intended to assist taxpayers in complying with the minimum distribution requirement. However, the Treasury and the IRS continue to have concerns about the overall level of compliance in this area and intend to monitor the effect of the new reporting regime on compliance to determine whether it would be appropriate to modify the regime in the future.

Calculation Simplification

In response to comments that there are too many variables that might change during a distribution calendar year for an

accurate calculation of the required minimum distribution for the year by the trustee at the beginning of the year, a number of simplifying changes are included in these final regulations. For lifetime distributions, the marital status of the employee is determined on January 1 each year. Divorce or death after that date is disregarded until the next year. Further, a change in beneficiary due to the spouse's death is not recognized until the following year. Contributions and distributions made after December 31 of a calendar year are disregarded for purposes of determining the minimum distribution for the following year. An employee's account balance for the valuation calendar year that is also the employee's first distribution calendar year is no longer reduced for a distribution on April 1 to satisfy the minimum distribution requirement for the first distribution calendar year. Contributions made after the calendar year that are allocated as of a date in the prior calendar year are no longer required to be added back. The only exceptions are rollover amounts, and recharacterized conversion contributions, that are not in any account on December 31 of a year. These changes are made to the qualified plan rules as well as IRA rules to maintain the parity between the rules.

Other Rules for IRAs

These final regulations retain the general rule that the rules applying section 401(a)(9) to qualified plans apply also to IRAs, unless otherwise provided. In addition to retaining the special rules for IRAs provided in the 2001 proposed regulations, these final regulations provide a special rule for trustee-to-trustee transfers between IRAs to coordinate with the rule that allows aggregation of IRA distributions. Although the IRA to IRA transfer is not treated as a distribution for purposes of section 401(a)(9), in light of the fact that the required minimum distribution with respect to the transferor IRA can be taken from any IRA, the transferor IRA will be able to transfer the entire balance and will not be required to retain the amount of the required minimum distribution for the year.

These regulations retain the basic rule in the 1987 and 2001 proposed regulations that a section 403(b) contract is treated as an individual retirement plan for purposes of satisfying the required minimum distribution rules. Consequently, the delegation of authority to require reporting with respect to IRAs also applies to section 403(b) contracts. However, the notice being issued in conjunction with these regulations provides that no reporting is required at this time with respect to required minimum distributions from section 403(b) contracts.

As requested in comments to the 1987 and the 2001 proposed regulations, these regulations provide that an annuity provided with respect to a section 403(b)(9) retirement income account will not fail to satisfy the requirements for annuity payment under an annuity contract merely because the annuity is not provided under a contract purchased from an insurance company.

Section 1852(a) of TRA '86 applied section 401(a)(9) to section 403(b) contracts effective for benefits accruing after December 31, 1986. The final regulations retain the rule in the proposed regulations interpreting the effective date of section 1852(a) of TRA '86 that does not apply section 401(a)(9) to the undistributed portion of the employee's account balance in a section 403(b) contract as of December 31, 1986 (the pre-'87 account balance). Further, the final regulations clarify that a contract will not lose the grandfather for a pre-'87 account balance merely because the account balance is transferred from one section 403(b) contract to another, provided the issuer of the transferee contract satisfies the recordkeeping requirements for the pre-'87 account balance. However, a distribution and rollover (including a direct rollover) of an amount from the pre-'87 account will cause that amount to lose the grandfather treatment.

Amendment of Qualified Plans

The IRS intends to publish procedures in the near future that will provide guidance on amending qualified plans to reflect these final regulations under section 401(a)(9).

Rev. Proc. 2002-10 (2002-4 I.R.B. 401), provides guidance on when IRA documents must be updated for these final regulations and for changes made by EGTRRA.

Effective Date

The regulations apply for determining required minimum distributions for calendar years beginning on or after January 1, 2003. For determining required minimum distributions for calendar year 2002, taxpayers may rely on these final regulations, the 2001 proposed regulations, or the 1987 proposed regulations.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations does not have a significant economic impact on a substantial number of small entities. This certification is based on the following. The only provisions requiring collection of information are in A-2 of § 1.401(a)(9)-1, A-4 of § 1.401(a)(9)-3, A-5 and A-6 of § 1.401(a)(9)-4, and A-2 of § 1.403(b)-3. The election described in A-4 of § 1.401(a)(9)-3 is expected to be an unusual occurrence for small entities because few individuals with benefits in retirement plans maintained by small entities are likely to make these elections. In the case of A-2 of § 1.401(a)(9)-1 and A-5 and A-6 of § 1.401(a)(9)-4, when determining required minimum distributions in cases where a plan participant wishes to designate a trust as beneficiary of the participant's benefit, the reporting burden is primarily on the plan participant, or trustee of the trust named as beneficiary, to supply information rather than on the entity maintaining the retirement plan and the fact that the number of participants per plan to whom the burden applies is insignificant. In A-2 of § 1.403(b)-3, the recordkeeping burden with respect to section 403(b) contracts under which the pre-1987 account balance must be maintained only applies to issuers and custodians of those contracts,

which generally are not small entities. Therefore, a Regulatory Flexibility Analysis (5 U.S.C. chapter 6) is not required for this regulation. Pursuant to section 7805(f) of the Internal Revenue Code, the notices of proposed rulemaking preceding the final rule were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business and temporary § 1.401(a)(9)-6T will be submitted to the Chief Counsel for such comments.

Drafting Information

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

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1 — INCOME TAXES

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

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

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

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

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

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

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

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

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

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

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

§ 1.403(b)-3 is also issued under 26 U.S.C. 403(b)(10). * * *

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

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

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

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

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

§ 1.401(a)(9)–1 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)–6T Required minimum distributions for defined benefit plans and annuity contracts (temporary).

§ 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)–3 for the distribution rules applicable to these annuity contracts or custodial accounts. Under sections 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)–6T, 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).

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)-6T.

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)-6T.

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)-6T, 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)-6T, 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)-6T 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)-6T 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)-6T, 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)-6T, 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 distribu-

tions 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 paragraphs (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)-6T 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) and (c) of this A-3.

(b) The account balance is increased by the amount of any contributions or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date. 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) If an amount is distributed by one plan and rolled over to another plan (receiving plan), A-2 of § 1.401(a)(9)-7 provides additional rules for determining the benefit and required minimum distribution under the receiving plan. If an amount is transferred from one plan (transferor plan) to another plan (transferee plan), A-3 and A-4 of § 1.401(a)(9)-7 provide additional rules for determining the amount of the required minimum distribution and the benefit under both the transferor and transferee plans.

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

A-4. (a) *General rule.* 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 A-2 of § 1.401(a)(9)-9 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 of 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 A-1 of § 1.401(a)(9)-9 and the Joint and Last Survivor Table in A-3 of § 1.401(a)(9)-9.

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 and employee contributions that, pursuant to § 1.415-6(b)(6)(iv), are returned (together with the income allocable to these corrective

distributions) as a result of the application of 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)-6T Required minimum distributions for defined benefit plans and annuity contracts (temporary).

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 A-1, distributions 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 certain, the period certain may not be changed even if the period certain is shorter than the maximum permitted. Life annuity payments must satisfy the minimum distribution incidental benefit requirements of A-2 of this section. Except as otherwise provided in A-4(b) of this section,

all payments (life and period certain) also must either be nonincreasing or increase only in accordance with one of more of the following:

(1) With an annual percentage increase that does not exceed the annual percentage increase in a cost-of-living index that is based on prices of all items and issued by the Bureau of Labor Statistics;

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

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

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

(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) *Lump sum distributions.* In the case of a lump 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 (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 calendar years would be treated as required minimum distributions, and not eligible for rollover.

(e) *Death benefits.* The rules prohibiting increasing payments under an annuity apply to payments made upon the death of the employee. The preceding sentence will not apply to an increase due to an ancillary death benefit described in this paragraph (e). 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 payable 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 is permitted to be 100 percent of the annuity payment payable to the employee regardless of the difference in the ages between the employee and the employee's spouse. The amount of the annuity payments must satisfy A-1 of this section (or A-4 of this section, if applicable).

(c) *Joint and survivor annuity, non-spouse 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 the distribution option provides that annuity payments to be made to the employee on and after the employee's required beginning date will satisfy the conditions of this paragraph (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 excess of the age of the employee on the employee's birthday in a calendar year over the age of the beneficiary as of the beneficiary's birthday in that calendar year. Additionally, the amount of the annuity payments must satisfy A-1 of this section (or A-4 of this section, if applicable). In the case of an annuity which provides for increasing payments, the requirement of this paragraph (c) will be satisfied if the increase is determined in the same manner for the employee and the beneficiary.

(2) *Table.*

Excess of age of employee over age of beneficiary	Applicable percentage
10 years or less	100%
11	96%
12	93%
13	90%
14	87%
15	84%
16	82%
17	79%
18	77%
19	75%
20	73%
21	72%
22	70%
23	68%
24	67%
25	66%
26	64%
27	63%
28	62%
29	61%
30	60%
31	59%
32	59%
33	58%
34	57%
35	56%

Excess of age of employee over age of beneficiary	Applicable percentage
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. There is no provision under the option for a change in the projected payments to Y, and corresponding increase to Z, as of April 1, 2008, Z's required beginning date. Accordingly, under A-10 of this section, compliance with the rules of this section is determined as of the annuity starting date. Consequently, 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 60 percent of Z's monthly payment (the maximum percentage for a difference of ages of 30 years).

(d) *Period certain and annuity features.* If a distribution form includes a life annuity and a period certain, the amount of the annuity payments payable to the 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 must be distributed in accordance with the incidental benefit requirement described in § 1.401-1(b)(1)(i) and must also satisfy the minimum distribution incidental benefit requirement of this A-2.

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

A-3. (a) *Distributions commencing during the employee's life.* The period certain for any annuity distributions commencing during the life of the employee with an annuity starting date on or after the employee's required beginning date generally is not permitted to exceed the applicable distribution period for the employee (determined in accordance with the Uniform Lifetime Table in A-2 of § 1.401(a)(9)-9) for the calendar year that contains the annuity starting date. See A-10 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 and the annuity provides only a period certain and no life annuity, 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.

(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) *General rule.* 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).

(b) *Permitted increases.* In the case of an annuity contract purchased from an insurance company with an employee's account balance under a defined contribution plan or under a section 403(a) annuity plan, if the total future expected payments (determined in accordance with paragraph (c)(3) of this A-4) exceed the

account value being annuitized, 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 payment upon the death of the employee equal to the excess of the account value being annuitized 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, 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);

(4) As a final payment under the annuity contract, but only if the payment does not exceed the total future expected payments as of the date of the payment; or

(5) As a partial distribution under the contract, but only if the contract provides for a final payment as of the date of partial distribution that satisfies paragraph (b)(4) of this A-4 and the future payments under the contract are reduced by multiplying the otherwise applicable future payments by a fraction, the numerator of which is the excess of that final payment over the amount of the partial distribution and the denominator of which is the amount of that final payment. For the purpose of determining this ratio, the denominator is reduced by the amount of any regularly scheduled payment due on the date of the partial distribution.

(c) *Definitions.* For purposes of this A-4, the following definitions apply —

(1) Account value being annuitized means 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) or, 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 the actuarial assumptions used in pricing (*i.e.*, investment return, mortality, expense, and other similar assumptions) and the actual experience with respect to those assumptions. Actuarial gain also includes differences between the actuarial assumptions used in pricing when an annuity was purchased and actuarial assumptions used in pricing annuities at the time the actuarial gain is determined.

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

(d) *Examples.* This A-4 is illustrated by the following examples:

Example 1. A 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 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. Because the total future expected payments on the purchase date exceed the account 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 (b)(3) of this A-4.

Example 2. A 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 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 for a total of \$272,000. Because the total future expected payments on the purchase date exceeds the account 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 (b)(3) of this A-4.

Example 3. 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 (b)(3) of this A-4. Neither does the dividend accumulation option fit within any of the other increases described in paragraph (b) of this A-4. Accordingly, the dividend accumulation option causes the contract, and consequently any distributions from the contract, to fail to meet the requirements of this A-4 and thus fail to satisfy the requirements of section 401(a)(9).

Example 4. 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 (b)(3) of this A-4. Neither does the option fit within any of the other increases described in paragraph (b) of this A-4. 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-4 and thus fail to satisfy the requirements of section 401(a)(9).

Example 5. A 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 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 account 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 (b)(1) of this A-4.

Example 6. 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 account value of \$110,000 used to purchase Contract Y3, distributions received by Z3 do not meet the requirements under paragraph (b) of this A-4 and thus fail to meet the requirements of section 401(a)(9).

Example 7. (i) A 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 fixed annual payments for 20 years (which does not exceed the maximum period certain permitted under A-3(a) of this section) and provides that, on any payment date, before receiving his payment due on that date, Z4 may cancel Contract Y4 and receive as a final payment an amount equal to his remaining payments discounted with interest at 4 percent. The value of Z4's account balance in Plan X at the time of purchase is \$500,000, and the purchase price of Contract Y4 is \$500,000. Contract Y4 provides Z4 with an initial payment in 2005 of \$35,376.

(ii) Under Contract Y4, the amount that Z4 could receive upon cancellation of Contract Y4 as a final payment, for all possible cancellation dates, will always be less than the total future expected payments on such cancellation date. This is so because the total future expected payments on any such cancellation date is equal to the remaining payments on such date, not discounted, an amount always greater than the final payment amount of these same remaining payments, discounted at 4 percent.

(iii) The total future expected payments to Z4 under Y4 are \$707,520, calculated as the annualized initial payment of \$35,376 multiplied by the period certain of 20 years. Because the total future expected payments on the purchase date exceed the account value used to purchase Contract Y4 and it is not possible for a final payment under Contract Y4 to ever exceed the total future expected payments on the day of such final payment, distributions received by Z4 under Contract Y4 meet the requirements under paragraph (b)(4) of this A-4.

(iv) As an illustration of the above, if Participant Z4 were to elect to cancel Contract Y4 on the day he was due to receive his eleventh payment, his contractual final payment would be \$298,408 (including the \$35,376 he was due to receive on that day) which is less than his total future expected payments on that date (\$353,760). These amounts are determined as follows. On the day Z4 was to receive his eleventh payment, Z4 was entitled to receive ten future payments of \$35,376 (including the payment he was due to receive on that day). The discounted value of an annuity of ten payments of \$35,376, with the first payment due on the date of the calculation of the discounted value, and a discount rate of 4 percent, is \$298,408. The product of the payment amount of \$35,376 multiplied by 10, the number of future payments to which Z4 would be entitled on the day Z4 was to receive the eleventh payment, is \$353,760.

Example 8. (i) The facts are the same as in *Example 7* except that the annuity provides an option for partial distributions of less than the final payment amount (the maximum distribution), with payments following such a partial distribution reduced by multiplying the otherwise applicable future payments by a fraction, the numerator of which is the excess of the final payment amount over the amount of the partial distribution and the denominator of which is the amount of that final payment. For the purposes of determining this ratio, the denominator is reduced by the amount of any regularly scheduled payment due on the date of partial distribution. This partial distribution option meets the requirements of paragraph (b)(5) of this A-4.

(ii) To illustrate the workings of this partial distribution option, assume Z4 takes a distribution of \$100,000 on the date he was to receive his eleventh payment of \$35,376. In such a case, under this partial distribution option, his remaining nine payments, absent any other extraordinary distributions, will be reduced to \$26,685. This amount is determined as follows. The numerator of the ratio described in the paragraph above is equal to \$198,408 (that is, the excess of a total distribution of \$298,408 over the partial distribution of \$100,000). The denominator of the ratio described in the paragraph above is equal to \$263,032 (that is, the maximum distribution on the date of the partial distribution of \$298,408 (see *Example 6*) less the regularly scheduled payment of \$35,376). Thus, future payments must be multiplied by 75.43 percent (that is, \$198,408 divided by \$263,032). Thus, his future payments must be \$26,685 (that is, \$35,376 multiplied by 75.43 percent).

Example 9. (i) A 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. Contract Y5 is a participating life annuity contract with a 20-year period certain. Contract Y5 provides an initial payment at the time of purchase of 5 percent of the purchase price, a second payment one year from the time of purchase of two percent of the purchase price, and 18 succeeding annual payments each increasing at a constant percentage rate of 16 percent from the preceding payment.

(ii) Contract Y5 fails to meet the requirements of paragraph (b) of this A-4, and thus fails to satisfy the requirements of section 401(a)(9), because the

expected total payments without regard to any increases in the annuity payment is only 43 percent of the purchase price (that is, an amount not exceeding the account value used to purchase the annuity), calculated as 5 percent of the purchase price in year one and two percent of the purchase price in each of years two through twenty (or, .05 multiplied by 1 year plus .02 multiplied by 19 years).

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 a 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). 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 (and if applicable A-4) of this section?

A-10. (a) *General rule.* If distributions commence to an employee on an irrevocable basis (except for acceleration) on a date before the employee's required beginning date over a period permitted under section 401(a)(9)(A)(ii) and the distribution form is an annuity under which distributions are made in accordance with the provisions of A-1 (and, if applicable, A-4) of this section, the annuity starting date will be treated as the required beginning date for purposes of applying the rules of this section and § 1.401(a)(9)-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 (single or joint lives or period certain, as applicable). 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 (determined in accordance with the Uniform Lifetime Table in A-2 of § 1.401(a)(9)-9) is the distribution period for age 70 using the Uniform Lifetime Table in A-2 of § 1.401(a)(9)-9 plus the excess of 70 over age of the employee as of the employee's birthday in the year that contains the annuity starting date.

Q-11. What rule applies if distributions commence on an irrevocable basis (except for acceleration) to the surviving

spouse of an employee over a period permitted under section 401(a)(9)(B)(iii)(II) before the date on which distributions are required to commence and the distribution form is an annuity under which distributions are made as of the date distributions commence in accordance with the provisions of A-1 (and if applicable A-4) of this section?

A-11. If distributions commence to the surviving spouse of an employee on an irrevocable basis (except for acceleration) over a period permitted under section 401(a)(9)(B)(iii)(II) before the date on which distributions are required to commence and the distribution form is an annuity under which distributions are made as of the date distributions commence in accordance with the provisions of A-1 (and if applicable A-4) of this section, distributions will be considered to have begun on the actual commencement date for purposes of section 401(a)(9)(B)(iv)(II). Consequently, in such case, A-5 of § 1.401(a)(9)-3 and section 401(a)(9)(B)(ii) and (iii) will not apply upon the death of the surviving spouse as though the surviving spouse were the employee. Instead, the annuity distributions must continue to be made, in accordance with the provisions of A-1 (and if applicable A-4) of this section over the remaining period over which distributions commenced (single life or period certain, as applicable).

Q-12. In the case of an annuity contract under an individual account plan from which annuity payments have not commenced to on an irrevocable basis (except for acceleration), 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. Prior to the date that annuity payments commence on an irrevocable basis (except for acceleration) under an individual account plan from an annuity contract, 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. For purposes of applying the rules in § 1.401(a)(9)-5, the entire inter-

est 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 value of any other benefits (such as minimum survivor benefits) that will be provided under the contract. See A-1 of § 1.401(a)(9)-5 for rules relating to the satisfaction of section 401(a)(9) in the year that annuity payments commence and A-2(a)(3) of § 1.401(a)(9)-8.

§ 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 roll-over 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 on 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 com-

mence 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)-6T 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 a 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 A-2 of § 1.401(a)(9)-9 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)-6T 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)-6T, 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)-6T, 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 transferor 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.

Q-1. What is the life expectancy for an individual for purposes of determining required minimum distributions under section 401(a)(9)?

A-1 The following table, referred to as the Single Life Table, is used for determining the life expectancy of an individual:

Single Life Table

Age	Life Expectancy	Age	Life Expectancy	Age	Life Expectancy	Age	Life Expectancy
0	82.4	29	54.3	58	27.0	87	6.7
1	81.6	30	53.3	59	26.1	88	6.3
2	80.6	31	52.4	60	25.2	89	5.9
3	79.7	32	51.4	61	24.4	90	5.5
4	78.7	33	50.4	62	23.5	91	5.2
5	77.7	34	49.4	63	22.7	92	4.9
6	76.7	35	48.5	64	21.8	93	4.6
7	75.8	36	47.5	65	21.0	94	4.3
8	74.8	37	46.5	66	20.2	95	4.1
9	73.8	38	45.6	67	19.4	96	3.8
10	72.8	39	44.6	68	18.6	97	3.6
11	71.8	40	43.6	69	17.8	98	3.4
12	70.8	41	42.7	70	17.0	99	3.1
13	69.9	42	41.7	71	16.3	100	2.9
14	68.9	43	40.7	72	15.5	101	2.7
15	67.9	44	39.8	73	14.8	102	2.5
16	66.9	45	38.8	74	14.1	103	2.3
17	66.0	46	37.9	75	13.4	104	2.1
18	65.0	47	37.0	76	12.7	105	1.9
19	64.0	48	36.0	77	12.1	106	1.7
20	63.0	49	35.1	78	11.4	107	1.5
21	62.1	50	34.2	79	10.8	108	1.4
22	61.1	51	33.3	80	10.2	109	1.2
23	60.1	52	32.3	81	9.7	110	1.1
24	59.1	53	31.4	82	9.1	111+	1.0
25	58.2	54	30.5	83	8.6		
26	57.2	55	29.6	84	8.1		
27	56.2	56	28.7	85	7.6		
28	55.3	57	27.9	86	7.1		

Q-2. What is the applicable distribution period for an individual account for purposes of determining required minimum distributions during an employee's lifetime under section 401(a)(9)?

A-2. *Table for determining distribution period.* The following table, referred to as the Uniform Lifetime Table, is used for determining the distribution period for lifetime distributions to an employee in situations in which the employee's spouse is either not the sole designated beneficiary or is the sole designated beneficiary but is not more than 10 years younger than the employee.

Uniform Lifetime Table

Age of employee	Distribution period	Age of employee	Distribution period
70	27.4	93	9.6
71	26.5	94	9.1
72	25.6	95	8.6
73	24.7	96	8.1
74	23.8	97	7.6
75	22.9	98	7.1
76	22.0	99	6.7
77	21.2	100	6.3
78	20.3	101	5.9
79	19.5	102	5.5
80	18.7	103	5.2
81	17.9	104	4.9
82	17.1	105	4.5
83	16.3	106	4.2
84	15.5	107	3.9
85	14.8	108	3.7
86	14.1	109	3.4
87	13.4	110	3.1
88	12.7	111	2.9
89	12.0	112	2.6
90	11.4	113	2.4
91	10.8	114	2.1
92	10.2	115+	1.9

Q-3. What is the joint life and last survivor expectancy of an individual and beneficiary for purposes of determining

required minimum distributions under section 401(a)(9)?

used for determining the joint and last survivor life expectancy of two individuals:

A-3. The following table, referred to as the Joint and Last Survivor Table, is

Joint and Last Survivor Table

AGES	0	1	2	3	4	5	6	7	8	9
0	90.0	89.5	89.0	88.6	88.2	87.8	87.4	87.1	86.8	86.5
1	89.5	89.0	88.5	88.1	87.6	87.2	86.8	86.5	86.1	85.8
2	89.0	88.5	88.0	87.5	87.1	86.6	86.2	85.8	85.5	85.1
3	88.6	88.1	87.5	87.0	86.5	86.1	85.6	85.2	84.8	84.5
4	88.2	87.6	87.1	86.5	86.0	85.5	85.1	84.6	84.2	83.8
5	87.8	87.2	86.6	86.1	85.5	85.0	84.5	84.1	83.6	83.2
6	87.4	86.8	86.2	85.6	85.1	84.5	84.0	83.5	83.1	82.6
7	87.1	86.5	85.8	85.2	84.6	84.1	83.5	83.0	82.5	82.1
8	86.8	86.1	85.5	84.8	84.2	83.6	83.1	82.5	82.0	81.6
9	86.5	85.8	85.1	84.5	83.8	83.2	82.6	82.1	81.6	81.0
10	86.2	85.5	84.8	84.1	83.5	82.8	82.2	81.6	81.1	80.6
11	85.9	85.2	84.5	83.8	83.1	82.5	81.8	81.2	80.7	80.1
12	85.7	84.9	84.2	83.5	82.8	82.1	81.5	80.8	80.2	79.7
13	85.4	84.7	84.0	83.2	82.5	81.8	81.1	80.5	79.9	79.2
14	85.2	84.5	83.7	83.0	82.2	81.5	80.8	80.1	79.5	78.9
15	85.0	84.3	83.5	82.7	82.0	81.2	80.5	79.8	79.1	78.5
16	84.9	84.1	83.3	82.5	81.7	81.0	80.2	79.5	78.8	78.1
17	84.7	83.9	83.1	82.3	81.5	80.7	80.0	79.2	78.5	77.8
18	84.5	83.7	82.9	82.1	81.3	80.5	79.7	79.0	78.2	77.5
19	84.4	83.6	82.7	81.9	81.1	80.3	79.5	78.7	78.0	77.3

Joint and Last Survivor Table

AGES	0	1	2	3	4	5	6	7	8	9
20	84.3	83.4	82.6	81.8	80.9	80.1	79.3	78.5	77.7	77.0
21	84.1	83.3	82.4	81.6	80.8	79.9	79.1	78.3	77.5	76.8
22	84.0	83.2	82.3	81.5	80.6	79.8	78.9	78.1	77.3	76.5
23	83.9	83.1	82.2	81.3	80.5	79.6	78.8	77.9	77.1	76.3
24	83.8	83.0	82.1	81.2	80.3	79.5	78.6	77.8	76.9	76.1
25	83.7	82.9	82.0	81.1	80.2	79.3	78.5	77.6	76.8	75.9
26	83.6	82.8	81.9	81.0	80.1	79.2	78.3	77.5	76.6	75.8
27	83.6	82.7	81.8	80.9	80.0	79.1	78.2	77.4	76.5	75.6
28	83.5	82.6	81.7	80.8	79.9	79.0	78.1	77.2	76.4	75.5
29	83.4	82.6	81.6	80.7	79.8	78.9	78.0	77.1	76.2	75.4
30	83.4	82.5	81.6	80.7	79.7	78.8	77.9	77.0	76.1	75.2
31	83.3	82.4	81.5	80.6	79.7	78.8	77.8	76.9	76.0	75.1
32	83.3	82.4	81.5	80.5	79.6	78.7	77.8	76.8	75.9	75.0
33	83.2	82.3	81.4	80.5	79.5	78.6	77.7	76.8	75.9	74.9
34	83.2	82.3	81.3	80.4	79.5	78.5	77.6	76.7	75.8	74.9
35	83.1	82.2	81.3	80.4	79.4	78.5	77.6	76.6	75.7	74.8
36	83.1	82.2	81.3	80.3	79.4	78.4	77.5	76.6	75.6	74.7
37	83.0	82.2	81.2	80.3	79.3	78.4	77.4	76.5	75.6	74.6
38	83.0	82.1	81.2	80.2	79.3	78.3	77.4	76.4	75.5	74.6
39	83.0	82.1	81.1	80.2	79.2	78.3	77.3	76.4	75.5	74.5
40	82.9	82.1	81.1	80.2	79.2	78.3	77.3	76.4	75.4	74.5
41	82.9	82.0	81.1	80.1	79.2	78.2	77.3	76.3	75.4	74.4
42	82.9	82.0	81.1	80.1	79.1	78.2	77.2	76.3	75.3	74.4
43	82.9	82.0	81.0	80.1	79.1	78.2	77.2	76.2	75.3	74.3
44	82.8	81.9	81.0	80.0	79.1	78.1	77.2	76.2	75.2	74.3
45	82.8	81.9	81.0	80.0	79.1	78.1	77.1	76.2	75.2	74.3
46	82.8	81.9	81.0	80.0	79.0	78.1	77.1	76.1	75.2	74.2
47	82.8	81.9	80.9	80.0	79.0	78.0	77.1	76.1	75.2	74.2
48	82.8	81.9	80.9	80.0	79.0	78.0	77.1	76.1	75.1	74.2
49	82.7	81.8	80.9	79.9	79.0	78.0	77.0	76.1	75.1	74.1
50	82.7	81.8	80.9	79.9	79.0	78.0	77.0	76.0	75.1	74.1
51	82.7	81.8	80.9	79.9	78.9	78.0	77.0	76.0	75.1	74.1
52	82.7	81.8	80.9	79.9	78.9	78.0	77.0	76.0	75.0	74.1
53	82.7	81.8	80.8	79.9	78.9	77.9	77.0	76.0	75.0	74.0
54	82.7	81.8	80.8	79.9	78.9	77.9	76.9	76.0	75.0	74.0
55	82.6	81.8	80.8	79.8	78.9	77.9	76.9	76.0	75.0	74.0
56	82.6	81.7	80.8	79.8	78.9	77.9	76.9	75.9	75.0	74.0
57	82.6	81.7	80.8	79.8	78.9	77.9	76.9	75.9	75.0	74.0
58	82.6	81.7	80.8	79.8	78.8	77.9	76.9	75.9	74.9	74.0
59	82.6	81.7	80.8	79.8	78.8	77.9	76.9	75.9	74.9	74.0
60	82.6	81.7	80.8	79.8	78.8	77.8	76.9	75.9	74.9	73.9
61	82.6	81.7	80.8	79.8	78.8	77.8	76.9	75.9	74.9	73.9
62	82.6	81.7	80.7	79.8	78.8	77.8	76.9	75.9	74.9	73.9
63	82.6	81.7	80.7	79.8	78.8	77.8	76.8	75.9	74.9	73.9
64	82.5	81.7	80.7	79.8	78.8	77.8	76.8	75.9	74.9	73.9
65	82.5	81.7	80.7	79.8	78.8	77.8	76.8	75.8	74.9	73.9
66	82.5	81.7	80.7	79.7	78.8	77.8	76.8	75.8	74.9	73.9
67	82.5	81.7	80.7	79.7	78.8	77.8	76.8	75.8	74.9	73.9
68	82.5	81.6	80.7	79.7	78.8	77.8	76.8	75.8	74.8	73.9
69	82.5	81.6	80.7	79.7	78.8	77.8	76.8	75.8	74.8	73.9

Joint and Last Survivor Table

AGES	0	1	2	3	4	5	6	7	8	9
70	82.5	81.6	80.7	79.7	78.8	77.8	76.8	75.8	74.8	73.9
71	82.5	81.6	80.7	79.7	78.7	77.8	76.8	75.8	74.8	73.8
72	82.5	81.6	80.7	79.7	78.7	77.8	76.8	75.8	74.8	73.8
73	82.5	81.6	80.7	79.7	78.7	77.8	76.8	75.8	74.8	73.8
74	82.5	81.6	80.7	79.7	78.7	77.8	76.8	75.8	74.8	73.8
75	82.5	81.6	80.7	79.7	78.7	77.8	76.8	75.8	74.8	73.8
76	82.5	81.6	80.7	79.7	78.7	77.8	76.8	75.8	74.8	73.8
77	82.5	81.6	80.7	79.7	78.7	77.7	76.8	75.8	74.8	73.8
78	82.5	81.6	80.7	79.7	78.7	77.7	76.8	75.8	74.8	73.8
79	82.5	81.6	80.7	79.7	78.7	77.7	76.8	75.8	74.8	73.8
80	82.5	81.6	80.7	79.7	78.7	77.7	76.8	75.8	74.8	73.8
81	82.4	81.6	80.7	79.7	78.7	77.7	76.8	75.8	74.8	73.8
82	82.4	81.6	80.7	79.7	78.7	77.7	76.8	75.8	74.8	73.8
83	82.4	81.6	80.7	79.7	78.7	77.7	76.8	75.8	74.8	73.8
84	82.4	81.6	80.7	79.7	78.7	77.7	76.8	75.8	74.8	73.8
85	82.4	81.6	80.6	79.7	78.7	77.7	76.8	75.8	74.8	73.8
86	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
87	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
88	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
89	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
90	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
91	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
92	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
93	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
94	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
95	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
96	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
97	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
98	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
99	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
100	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
101	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
102	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
103	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
104	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
105	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
106	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
107	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
108	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
109	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
110	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
111	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
112	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
113	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
114	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
115+	82.4	81.6	80.6	79.7	78.7	77.7	76.7	75.8	74.8	73.8
AGES	10	11	12	13	14	15	16	17	18	19
10	80.0	79.6	79.1	78.7	78.2	77.9	77.5	77.2	76.8	76.5
11	79.6	79.0	78.6	78.1	77.7	77.3	76.9	76.5	76.2	75.8

Joint and Last Survivor Table

AGES	10	11	12	13	14	15	16	17	18	19
12	79.1	78.6	78.1	77.6	77.1	76.7	76.3	75.9	75.5	75.2
13	78.7	78.1	77.6	77.1	76.6	76.1	75.7	75.3	74.9	74.5
14	78.2	77.7	77.1	76.6	76.1	75.6	75.1	74.7	74.3	73.9
15	77.9	77.3	76.7	76.1	75.6	75.1	74.6	74.1	73.7	73.3
16	77.5	76.9	76.3	75.7	75.1	74.6	74.1	73.6	73.1	72.7
17	77.2	76.5	75.9	75.3	74.7	74.1	73.6	73.1	72.6	72.1
18	76.8	76.2	75.5	74.9	74.3	73.7	73.1	72.6	72.1	71.6
19	76.5	75.8	75.2	74.5	73.9	73.3	72.7	72.1	71.6	71.1
20	76.3	75.5	74.8	74.2	73.5	72.9	72.3	71.7	71.1	70.6
21	76.0	75.3	74.5	73.8	73.2	72.5	71.9	71.3	70.7	70.1
22	75.8	75.0	74.3	73.5	72.9	72.2	71.5	70.9	70.3	69.7
23	75.5	74.8	74.0	73.3	72.6	71.9	71.2	70.5	69.9	69.3
24	75.3	74.5	73.8	73.0	72.3	71.6	70.9	70.2	69.5	68.9
25	75.1	74.3	73.5	72.8	72.0	71.3	70.6	69.9	69.2	68.5
26	75.0	74.1	73.3	72.5	71.8	71.0	70.3	69.6	68.9	68.2
27	74.8	74.0	73.1	72.3	71.6	70.8	70.0	69.3	68.6	67.9
28	74.6	73.8	73.0	72.2	71.3	70.6	69.8	69.0	68.3	67.6
29	74.5	73.6	72.8	72.0	71.2	70.4	69.6	68.8	68.0	67.3
30	74.4	73.5	72.7	71.8	71.0	70.2	69.4	68.6	67.8	67.1
31	74.3	73.4	72.5	71.7	70.8	70.0	69.2	68.4	67.6	66.8
32	74.1	73.3	72.4	71.5	70.7	69.8	69.0	68.2	67.4	66.6
33	74.0	73.2	72.3	71.4	70.5	69.7	68.8	68.0	67.2	66.4
34	73.9	73.0	72.2	71.3	70.4	69.5	68.7	67.8	67.0	66.2
35	73.9	73.0	72.1	71.2	70.3	69.4	68.5	67.7	66.8	66.0
36	73.8	72.9	72.0	71.1	70.2	69.3	68.4	67.6	66.7	65.9
37	73.7	72.8	71.9	71.0	70.1	69.2	68.3	67.4	66.6	65.7
38	73.6	72.7	71.8	70.9	70.0	69.1	68.2	67.3	66.4	65.6
39	73.6	72.7	71.7	70.8	69.9	69.0	68.1	67.2	66.3	65.4
40	73.5	72.6	71.7	70.7	69.8	68.9	68.0	67.1	66.2	65.3
41	73.5	72.5	71.6	70.7	69.7	68.8	67.9	67.0	66.1	65.2
42	73.4	72.5	71.5	70.6	69.7	68.8	67.8	66.9	66.0	65.1
43	73.4	72.4	71.5	70.6	69.6	68.7	67.8	66.8	65.9	65.0
44	73.3	72.4	71.4	70.5	69.6	68.6	67.7	66.8	65.9	64.9
45	73.3	72.3	71.4	70.5	69.5	68.6	67.6	66.7	65.8	64.9
46	73.3	72.3	71.4	70.4	69.5	68.5	67.6	66.6	65.7	64.8
47	73.2	72.3	71.3	70.4	69.4	68.5	67.5	66.6	65.7	64.7
48	73.2	72.2	71.3	70.3	69.4	68.4	67.5	66.5	65.6	64.7
49	73.2	72.2	71.2	70.3	69.3	68.4	67.4	66.5	65.6	64.6
50	73.1	72.2	71.2	70.3	69.3	68.4	67.4	66.5	65.5	64.6
51	73.1	72.2	71.2	70.2	69.3	68.3	67.4	66.4	65.5	64.5
52	73.1	72.1	71.2	70.2	69.2	68.3	67.3	66.4	65.4	64.5
53	73.1	72.1	71.1	70.2	69.2	68.3	67.3	66.3	65.4	64.4
54	73.1	72.1	71.1	70.2	69.2	68.2	67.3	66.3	65.4	64.4
55	73.0	72.1	71.1	70.1	69.2	68.2	67.2	66.3	65.3	64.4
56	73.0	72.1	71.1	70.1	69.1	68.2	67.2	66.3	65.3	64.3
57	73.0	72.0	71.1	70.1	69.1	68.2	67.2	66.2	65.3	64.3
58	73.0	72.0	71.0	70.1	69.1	68.1	67.2	66.2	65.2	64.3
59	73.0	72.0	71.0	70.1	69.1	68.1	67.2	66.2	65.2	64.3

Joint and Last Survivor Table

AGES	10	11	12	13	14	15	16	17	18	19
60	73.0	72.0	71.0	70.0	69.1	68.1	67.1	66.2	65.2	64.2
61	73.0	72.0	71.0	70.0	69.1	68.1	67.1	66.2	65.2	64.2
62	72.9	72.0	71.0	70.0	69.0	68.1	67.1	66.1	65.2	64.2
63	72.9	72.0	71.0	70.0	69.0	68.1	67.1	66.1	65.2	64.2
64	72.9	71.9	71.0	70.0	69.0	68.0	67.1	66.1	65.1	64.2
65	72.9	71.9	71.0	70.0	69.0	68.0	67.1	66.1	65.1	64.2
66	72.9	71.9	70.9	70.0	69.0	68.0	67.1	66.1	65.1	64.1
67	72.9	71.9	70.9	70.0	69.0	68.0	67.0	66.1	65.1	64.1
68	72.9	71.9	70.9	70.0	69.0	68.0	67.0	66.1	65.1	64.1
69	72.9	71.9	70.9	69.9	69.0	68.0	67.0	66.1	65.1	64.1
70	72.9	71.9	70.9	69.9	69.0	68.0	67.0	66.0	65.1	64.1
71	72.9	71.9	70.9	69.9	69.0	68.0	67.0	66.0	65.1	64.1
72	72.9	71.9	70.9	69.9	69.0	68.0	67.0	66.0	65.1	64.1
73	72.9	71.9	70.9	69.9	68.9	68.0	67.0	66.0	65.0	64.1
74	72.9	71.9	70.9	69.9	68.9	68.0	67.0	66.0	65.0	64.1
75	72.8	71.9	70.9	69.9	68.9	68.0	67.0	66.0	65.0	64.1
76	72.8	71.9	70.9	69.9	68.9	68.0	67.0	66.0	65.0	64.1
77	72.8	71.9	70.9	69.9	68.9	68.0	67.0	66.0	65.0	64.1
78	72.8	71.9	70.9	69.9	68.9	67.9	67.0	66.0	65.0	64.0
79	72.8	71.9	70.9	69.9	68.9	67.9	67.0	66.0	65.0	64.0
80	72.8	71.9	70.9	69.9	68.9	67.9	67.0	66.0	65.0	64.0
81	72.8	71.8	70.9	69.9	68.9	67.9	67.0	66.0	65.0	64.0
82	72.8	71.8	70.9	69.9	68.9	67.9	67.0	66.0	65.0	64.0
83	72.8	71.8	70.9	69.9	68.9	67.9	67.0	66.0	65.0	64.0
84	72.8	71.8	70.9	69.9	68.9	67.9	67.0	66.0	65.0	64.0
85	72.8	71.8	70.9	69.9	68.9	67.9	66.9	66.0	65.0	64.0
86	72.8	71.8	70.9	69.9	68.9	67.9	66.9	66.0	65.0	64.0
87	72.8	71.8	70.9	69.9	68.9	67.9	66.9	66.0	65.0	64.0
88	72.8	71.8	70.9	69.9	68.9	67.9	66.9	66.0	65.0	64.0
89	72.8	71.8	70.9	69.9	68.9	67.9	66.9	66.0	65.0	64.0
90	72.8	71.8	70.9	69.9	68.9	67.9	66.9	66.0	65.0	64.0
91	72.8	71.8	70.9	69.9	68.9	67.9	66.9	66.0	65.0	64.0
92	72.8	71.8	70.9	69.9	68.9	67.9	66.9	66.0	65.0	64.0
93	72.8	71.8	70.9	69.9	68.9	67.9	66.9	66.0	65.0	64.0
94	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
95	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
96	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
97	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
98	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
99	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
100	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
101	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
102	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
103	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
104	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
105	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
106	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
107	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
108	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
109	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0

Joint and Last Survivor Table

AGES	10	11	12	13	14	15	16	17	18	19
110	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
111	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
112	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
113	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
114	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
115+	72.8	71.8	70.8	69.9	68.9	67.9	66.9	66.0	65.0	64.0
AGES	20	21	22	23	24	25	26	27	28	29
20	70.1	69.6	69.1	68.7	68.3	67.9	67.5	67.2	66.9	66.6
21	69.6	69.1	68.6	68.2	67.7	67.3	66.9	66.6	66.2	65.9
22	69.1	68.6	68.1	67.6	67.2	66.7	66.3	65.9	65.6	65.2
23	68.7	68.2	67.6	67.1	66.6	66.2	65.7	65.3	64.9	64.6
24	68.3	67.7	67.2	66.6	66.1	65.6	65.2	64.7	64.3	63.9
25	67.9	67.3	66.7	66.2	65.6	65.1	64.6	64.2	63.7	63.3
26	67.5	66.9	66.3	65.7	65.2	64.6	64.1	63.6	63.2	62.8
27	67.2	66.6	65.9	65.3	64.7	64.2	63.6	63.1	62.7	62.2
28	66.9	66.2	65.6	64.9	64.3	63.7	63.2	62.7	62.1	61.7
29	66.6	65.9	65.2	64.6	63.9	63.3	62.8	62.2	61.7	61.2
30	66.3	65.6	64.9	64.2	63.6	62.9	62.3	61.8	61.2	60.7
31	66.1	65.3	64.6	63.9	63.2	62.6	62.0	61.4	60.8	60.2
32	65.8	65.1	64.3	63.6	62.9	62.2	61.6	61.0	60.4	59.8
33	65.6	64.8	64.1	63.3	62.6	61.9	61.3	60.6	60.0	59.4
34	65.4	64.6	63.8	63.1	62.3	61.6	60.9	60.3	59.6	59.0
35	65.2	64.4	63.6	62.8	62.1	61.4	60.6	59.9	59.3	58.6
36	65.0	64.2	63.4	62.6	61.9	61.1	60.4	59.6	59.0	58.3
37	64.9	64.0	63.2	62.4	61.6	60.9	60.1	59.4	58.7	58.0
38	64.7	63.9	63.0	62.2	61.4	60.6	59.9	59.1	58.4	57.7
39	64.6	63.7	62.9	62.1	61.2	60.4	59.6	58.9	58.1	57.4
40	64.4	63.6	62.7	61.9	61.1	60.2	59.4	58.7	57.9	57.1
41	64.3	63.5	62.6	61.7	60.9	60.1	59.3	58.5	57.7	56.9
42	64.2	63.3	62.5	61.6	60.8	59.9	59.1	58.3	57.5	56.7
43	64.1	63.2	62.4	61.5	60.6	59.8	58.9	58.1	57.3	56.5
44	64.0	63.1	62.2	61.4	60.5	59.6	58.8	57.9	57.1	56.3
45	64.0	63.0	62.2	61.3	60.4	59.5	58.6	57.8	56.9	56.1
46	63.9	63.0	62.1	61.2	60.3	59.4	58.5	57.7	56.8	56.0
47	63.8	62.9	62.0	61.1	60.2	59.3	58.4	57.5	56.7	55.8
48	63.7	62.8	61.9	61.0	60.1	59.2	58.3	57.4	56.5	55.7
49	63.7	62.8	61.8	60.9	60.0	59.1	58.2	57.3	56.4	55.6
50	63.6	62.7	61.8	60.8	59.9	59.0	58.1	57.2	56.3	55.4
51	63.6	62.6	61.7	60.8	59.9	58.9	58.0	57.1	56.2	55.3
52	63.5	62.6	61.7	60.7	59.8	58.9	58.0	57.1	56.1	55.2
53	63.5	62.5	61.6	60.7	59.7	58.8	57.9	57.0	56.1	55.2
54	63.5	62.5	61.6	60.6	59.7	58.8	57.8	56.9	56.0	55.1
55	63.4	62.5	61.5	60.6	59.6	58.7	57.8	56.8	55.9	55.0
56	63.4	62.4	61.5	60.5	59.6	58.7	57.7	56.8	55.9	54.9
57	63.4	62.4	61.5	60.5	59.6	58.6	57.7	56.7	55.8	54.9
58	63.3	62.4	61.4	60.5	59.5	58.6	57.6	56.7	55.8	54.8
59	63.3	62.3	61.4	60.4	59.5	58.5	57.6	56.7	55.7	54.8
60	63.3	62.3	61.4	60.4	59.5	58.5	57.6	56.6	55.7	54.7
61	63.3	62.3	61.3	60.4	59.4	58.5	57.5	56.6	55.6	54.7

Joint and Last Survivor Table

AGES	20	21	22	23	24	25	26	27	28	29
62	63.2	62.3	61.3	60.4	59.4	58.4	57.5	56.5	55.6	54.7
63	63.2	62.3	61.3	60.3	59.4	58.4	57.5	56.5	55.6	54.6
64	63.2	62.2	61.3	60.3	59.4	58.4	57.4	56.5	55.5	54.6
65	63.2	62.2	61.3	60.3	59.3	58.4	57.4	56.5	55.5	54.6
66	63.2	62.2	61.2	60.3	59.3	58.4	57.4	56.4	55.5	54.5
67	63.2	62.2	61.2	60.3	59.3	58.3	57.4	56.4	55.5	54.5
68	63.1	62.2	61.2	60.2	59.3	58.3	57.4	56.4	55.4	54.5
69	63.1	62.2	61.2	60.2	59.3	58.3	57.3	56.4	55.4	54.5
70	63.1	62.2	61.2	60.2	59.3	58.3	57.3	56.4	55.4	54.4
71	63.1	62.1	61.2	60.2	59.2	58.3	57.3	56.4	55.4	54.4
72	63.1	62.1	61.2	60.2	59.2	58.3	57.3	56.3	55.4	54.4
73	63.1	62.1	61.2	60.2	59.2	58.3	57.3	56.3	55.4	54.4
74	63.1	62.1	61.2	60.2	59.2	58.2	57.3	56.3	55.4	54.4
75	63.1	62.1	61.1	60.2	59.2	58.2	57.3	56.3	55.3	54.4
76	63.1	62.1	61.1	60.2	59.2	58.2	57.3	56.3	55.3	54.4
77	63.1	62.1	61.1	60.2	59.2	58.2	57.3	56.3	55.3	54.4
78	63.1	62.1	61.1	60.2	59.2	58.2	57.3	56.3	55.3	54.4
79	63.1	62.1	61.1	60.2	59.2	58.2	57.2	56.3	55.3	54.3
80	63.1	62.1	61.1	60.1	59.2	58.2	57.2	56.3	55.3	54.3
81	63.1	62.1	61.1	60.1	59.2	58.2	57.2	56.3	55.3	54.3
82	63.1	62.1	61.1	60.1	59.2	58.2	57.2	56.3	55.3	54.3
83	63.1	62.1	61.1	60.1	59.2	58.2	57.2	56.3	55.3	54.3
84	63.0	62.1	61.1	60.1	59.2	58.2	57.2	56.3	55.3	54.3
85	63.0	62.1	61.1	60.1	59.2	58.2	57.2	56.3	55.3	54.3
86	63.0	62.1	61.1	60.1	59.2	58.2	57.2	56.2	55.3	54.3
87	63.0	62.1	61.1	60.1	59.2	58.2	57.2	56.2	55.3	54.3
88	63.0	62.1	61.1	60.1	59.2	58.2	57.2	56.2	55.3	54.3
89	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
90	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
91	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
92	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
93	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
94	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
95	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
96	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
97	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
98	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
99	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
100	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
101	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
102	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
103	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
104	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
105	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
106	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
107	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
108	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
109	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
110	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
111	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3

Joint and Last Survivor Table

AGES	20	21	22	23	24	25	26	27	28	29
112	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
113	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
114	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
115+	63.0	62.1	61.1	60.1	59.1	58.2	57.2	56.2	55.3	54.3
AGES	30	31	32	33	34	35	36	37	38	39
30	60.2	59.7	59.2	58.8	58.4	58.0	57.6	57.3	57.0	56.7
31	59.7	59.2	58.7	58.2	57.8	57.4	57.0	56.6	56.3	56.0
32	59.2	58.7	58.2	57.7	57.2	56.8	56.4	56.0	55.6	55.3
33	58.8	58.2	57.7	57.2	56.7	56.2	55.8	55.4	55.0	54.7
34	58.4	57.8	57.2	56.7	56.2	55.7	55.3	54.8	54.4	54.0
35	58.0	57.4	56.8	56.2	55.7	55.2	54.7	54.3	53.8	53.4
36	57.6	57.0	56.4	55.8	55.3	54.7	54.2	53.7	53.3	52.8
37	57.3	56.6	56.0	55.4	54.8	54.3	53.7	53.2	52.7	52.3
38	57.0	56.3	55.6	55.0	54.4	53.8	53.3	52.7	52.2	51.7
39	56.7	56.0	55.3	54.7	54.0	53.4	52.8	52.3	51.7	51.2
40	56.4	55.7	55.0	54.3	53.7	53.0	52.4	51.8	51.3	50.8
41	56.1	55.4	54.7	54.0	53.3	52.7	52.0	51.4	50.9	50.3
42	55.9	55.2	54.4	53.7	53.0	52.3	51.7	51.1	50.4	49.9
43	55.7	54.9	54.2	53.4	52.7	52.0	51.3	50.7	50.1	49.5
44	55.5	54.7	53.9	53.2	52.4	51.7	51.0	50.4	49.7	49.1
45	55.3	54.5	53.7	52.9	52.2	51.5	50.7	50.0	49.4	48.7
46	55.1	54.3	53.5	52.7	52.0	51.2	50.5	49.8	49.1	48.4
47	55.0	54.1	53.3	52.5	51.7	51.0	50.2	49.5	48.8	48.1
48	54.8	54.0	53.2	52.3	51.5	50.8	50.0	49.2	48.5	47.8
49	54.7	53.8	53.0	52.2	51.4	50.6	49.8	49.0	48.2	47.5
50	54.6	53.7	52.9	52.0	51.2	50.4	49.6	48.8	48.0	47.3
51	54.5	53.6	52.7	51.9	51.0	50.2	49.4	48.6	47.8	47.0
52	54.4	53.5	52.6	51.7	50.9	50.0	49.2	48.4	47.6	46.8
53	54.3	53.4	52.5	51.6	50.8	49.9	49.1	48.2	47.4	46.6
54	54.2	53.3	52.4	51.5	50.6	49.8	48.9	48.1	47.2	46.4
55	54.1	53.2	52.3	51.4	50.5	49.7	48.8	47.9	47.1	46.3
56	54.0	53.1	52.2	51.3	50.4	49.5	48.7	47.8	47.0	46.1
57	54.0	53.0	52.1	51.2	50.3	49.4	48.6	47.7	46.8	46.0
58	53.9	53.0	52.1	51.2	50.3	49.4	48.5	47.6	46.7	45.8
59	53.8	52.9	52.0	51.1	50.2	49.3	48.4	47.5	46.6	45.7
60	53.8	52.9	51.9	51.0	50.1	49.2	48.3	47.4	46.5	45.6
61	53.8	52.8	51.9	51.0	50.0	49.1	48.2	47.3	46.4	45.5
62	53.7	52.8	51.8	50.9	50.0	49.1	48.1	47.2	46.3	45.4
63	53.7	52.7	51.8	50.9	49.9	49.0	48.1	47.2	46.3	45.3
64	53.6	52.7	51.8	50.8	49.9	48.9	48.0	47.1	46.2	45.3
65	53.6	52.7	51.7	50.8	49.8	48.9	48.0	47.0	46.1	45.2
66	53.6	52.6	51.7	50.7	49.8	48.9	47.9	47.0	46.1	45.1
67	53.6	52.6	51.7	50.7	49.8	48.8	47.9	46.9	46.0	45.1
68	53.5	52.6	51.6	50.7	49.7	48.8	47.8	46.9	46.0	45.0
69	53.5	52.6	51.6	50.6	49.7	48.7	47.8	46.9	45.9	45.0
70	53.5	52.5	51.6	50.6	49.7	48.7	47.8	46.8	45.9	44.9
71	53.5	52.5	51.6	50.6	49.6	48.7	47.7	46.8	45.9	44.9
72	53.5	52.5	51.5	50.6	49.6	48.7	47.7	46.8	45.8	44.9
73	53.4	52.5	51.5	50.6	49.6	48.6	47.7	46.7	45.8	44.8

Joint and Last Survivor Table

AGES	30	31	32	33	34	35	36	37	38	39
74	53.4	52.5	51.5	50.5	49.6	48.6	47.7	46.7	45.8	44.8
75	53.4	52.5	51.5	50.5	49.6	48.6	47.7	46.7	45.7	44.8
76	53.4	52.4	51.5	50.5	49.6	48.6	47.6	46.7	45.7	44.8
77	53.4	52.4	51.5	50.5	49.5	48.6	47.6	46.7	45.7	44.8
78	53.4	52.4	51.5	50.5	49.5	48.6	47.6	46.6	45.7	44.7
79	53.4	52.4	51.5	50.5	49.5	48.6	47.6	46.6	45.7	44.7
80	53.4	52.4	51.4	50.5	49.5	48.5	47.6	46.6	45.7	44.7
81	53.4	52.4	51.4	50.5	49.5	48.5	47.6	46.6	45.7	44.7
82	53.4	52.4	51.4	50.5	49.5	48.5	47.6	46.6	45.6	44.7
83	53.4	52.4	51.4	50.5	49.5	48.5	47.6	46.6	45.6	44.7
84	53.4	52.4	51.4	50.5	49.5	48.5	47.6	46.6	45.6	44.7
85	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.7
86	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.6
87	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.6
88	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.6
89	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.6
90	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.6
91	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.6
92	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.6
93	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.6
94	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.6	45.6	44.6
95	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
96	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
97	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
98	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
99	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
100	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
101	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
102	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
103	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
104	53.3	52.4	51.4	50.4	49.5	48.5	47.5	46.5	45.6	44.6
105	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
106	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
107	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
108	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
109	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
110	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
111	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
112	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
113	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
114	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
115+	53.3	52.4	51.4	50.4	49.4	48.5	47.5	46.5	45.6	44.6
AGES	40	41	42	43	44	45	46	47	48	49
40	50.2	49.8	49.3	48.9	48.5	48.1	47.7	47.4	47.1	46.8
41	49.8	49.3	48.8	48.3	47.9	47.5	47.1	46.7	46.4	46.1
42	49.3	48.8	48.3	47.8	47.3	46.9	46.5	46.1	45.8	45.4
43	48.9	48.3	47.8	47.3	46.8	46.3	45.9	45.5	45.1	44.8
44	48.5	47.9	47.3	46.8	46.3	45.8	45.4	44.9	44.5	44.2
45	48.1	47.5	46.9	46.3	45.8	45.3	44.8	44.4	44.0	43.6

Joint and Last Survivor Table

AGES	40	41	42	43	44	45	46	47	48	49
46	47.7	47.1	46.5	45.9	45.4	44.8	44.3	43.9	43.4	43.0
47	47.4	46.7	46.1	45.5	44.9	44.4	43.9	43.4	42.9	42.4
48	47.1	46.4	45.8	45.1	44.5	44.0	43.4	42.9	42.4	41.9
49	46.8	46.1	45.4	44.8	44.2	43.6	43.0	42.4	41.9	41.4
50	46.5	45.8	45.1	44.4	43.8	43.2	42.6	42.0	41.5	40.9
51	46.3	45.5	44.8	44.1	43.5	42.8	42.2	41.6	41.0	40.5
52	46.0	45.3	44.6	43.8	43.2	42.5	41.8	41.2	40.6	40.1
53	45.8	45.1	44.3	43.6	42.9	42.2	41.5	40.9	40.3	39.7
54	45.6	44.8	44.1	43.3	42.6	41.9	41.2	40.5	39.9	39.3
55	45.5	44.7	43.9	43.1	42.4	41.6	40.9	40.2	39.6	38.9
56	45.3	44.5	43.7	42.9	42.1	41.4	40.7	40.0	39.3	38.6
57	45.1	44.3	43.5	42.7	41.9	41.2	40.4	39.7	39.0	38.3
58	45.0	44.2	43.3	42.5	41.7	40.9	40.2	39.4	38.7	38.0
59	44.9	44.0	43.2	42.4	41.5	40.7	40.0	39.2	38.5	37.8
60	44.7	43.9	43.0	42.2	41.4	40.6	39.8	39.0	38.2	37.5
61	44.6	43.8	42.9	42.1	41.2	40.4	39.6	38.8	38.0	37.3
62	44.5	43.7	42.8	41.9	41.1	40.3	39.4	38.6	37.8	37.1
63	44.5	43.6	42.7	41.8	41.0	40.1	39.3	38.5	37.7	36.9
64	44.4	43.5	42.6	41.7	40.8	40.0	39.2	38.3	37.5	36.7
65	44.3	43.4	42.5	41.6	40.7	39.9	39.0	38.2	37.4	36.6
66	44.2	43.3	42.4	41.5	40.6	39.8	38.9	38.1	37.2	36.4
67	44.2	43.3	42.3	41.4	40.6	39.7	38.8	38.0	37.1	36.3
68	44.1	43.2	42.3	41.4	40.5	39.6	38.7	37.9	37.0	36.2
69	44.1	43.1	42.2	41.3	40.4	39.5	38.6	37.8	36.9	36.0
70	44.0	43.1	42.2	41.3	40.3	39.4	38.6	37.7	36.8	35.9
71	44.0	43.0	42.1	41.2	40.3	39.4	38.5	37.6	36.7	35.9
72	43.9	43.0	42.1	41.1	40.2	39.3	38.4	37.5	36.6	35.8
73	43.9	43.0	42.0	41.1	40.2	39.3	38.4	37.5	36.6	35.7
74	43.9	42.9	42.0	41.1	40.1	39.2	38.3	37.4	36.5	35.6
75	43.8	42.9	42.0	41.0	40.1	39.2	38.3	37.4	36.5	35.6
76	43.8	42.9	41.9	41.0	40.1	39.1	38.2	37.3	36.4	35.5
77	43.8	42.9	41.9	41.0	40.0	39.1	38.2	37.3	36.4	35.5
78	43.8	42.8	41.9	40.9	40.0	39.1	38.2	37.2	36.3	35.4
79	43.8	42.8	41.9	40.9	40.0	39.1	38.1	37.2	36.3	35.4
80	43.7	42.8	41.8	40.9	40.0	39.0	38.1	37.2	36.3	35.4
81	43.7	42.8	41.8	40.9	39.9	39.0	38.1	37.2	36.2	35.3
82	43.7	42.8	41.8	40.9	39.9	39.0	38.1	37.1	36.2	35.3
83	43.7	42.8	41.8	40.9	39.9	39.0	38.0	37.1	36.2	35.3
84	43.7	42.7	41.8	40.8	39.9	39.0	38.0	37.1	36.2	35.3
85	43.7	42.7	41.8	40.8	39.9	38.9	38.0	37.1	36.2	35.2
86	43.7	42.7	41.8	40.8	39.9	38.9	38.0	37.1	36.1	35.2
87	43.7	42.7	41.8	40.8	39.9	38.9	38.0	37.0	36.1	35.2
88	43.7	42.7	41.8	40.8	39.9	38.9	38.0	37.0	36.1	35.2
89	43.7	42.7	41.7	40.8	39.8	38.9	38.0	37.0	36.1	35.2
90	43.7	42.7	41.7	40.8	39.8	38.9	38.0	37.0	36.1	35.2
91	43.7	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.1	35.2
92	43.7	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.1	35.1
93	43.7	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.1	35.1
94	43.7	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.1	35.1
95	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.1	35.1

Joint and Last Survivor Table

AGES	40	41	42	43	44	45	46	47	48	49
96	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.1	35.1
97	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.1	35.1
98	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.0	35.1
99	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.0	35.1
100	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.0	35.1
101	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.0	35.1
102	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.0	35.1
103	43.6	42.7	41.7	40.8	39.8	38.9	37.9	37.0	36.0	35.1
104	43.6	42.7	41.7	40.8	39.8	38.8	37.9	37.0	36.0	35.1
105	43.6	42.7	41.7	40.8	39.8	38.8	37.9	37.0	36.0	35.1
106	43.6	42.7	41.7	40.8	39.8	38.8	37.9	37.0	36.0	35.1
107	43.6	42.7	41.7	40.8	39.8	38.8	37.9	37.0	36.0	35.1
108	43.6	42.7	41.7	40.8	39.8	38.8	37.9	37.0	36.0	35.1
109	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37.0	36.0	35.1
110	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37.0	36.0	35.1
111	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37.0	36.0	35.1
112	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37.0	36.0	35.1
113	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37.0	36.0	35.1
114	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37.0	36.0	35.1
115+	43.6	42.7	41.7	40.7	39.8	38.8	37.9	37.0	36.0	35.1
AGES	50	51	52	53	54	55	56	57	58	59
50	40.4	40.0	39.5	39.1	38.7	38.3	38.0	37.6	37.3	37.1
51	40.0	39.5	39.0	38.5	38.1	37.7	37.4	37.0	36.7	36.4
52	39.5	39.0	38.5	38.0	37.6	37.2	36.8	36.4	36.0	35.7
53	39.1	38.5	38.0	37.5	37.1	36.6	36.2	35.8	35.4	35.1
54	38.7	38.1	37.6	37.1	36.6	36.1	35.7	35.2	34.8	34.5
55	38.3	37.7	37.2	36.6	36.1	35.6	35.1	34.7	34.3	33.9
56	38.0	37.4	36.8	36.2	35.7	35.1	34.7	34.2	33.7	33.3
57	37.6	37.0	36.4	35.8	35.2	34.7	34.2	33.7	33.2	32.8
58	37.3	36.7	36.0	35.4	34.8	34.3	33.7	33.2	32.8	32.3
59	37.1	36.4	35.7	35.1	34.5	33.9	33.3	32.8	32.3	31.8
60	36.8	36.1	35.4	34.8	34.1	33.5	32.9	32.4	31.9	31.3
61	36.6	35.8	35.1	34.5	33.8	33.2	32.6	32.0	31.4	30.9
62	36.3	35.6	34.9	34.2	33.5	32.9	32.2	31.6	31.1	30.5
63	36.1	35.4	34.6	33.9	33.2	32.6	31.9	31.3	30.7	30.1
64	35.9	35.2	34.4	33.7	33.0	32.3	31.6	31.0	30.4	29.8
65	35.8	35.0	34.2	33.5	32.7	32.0	31.4	30.7	30.0	29.4
66	35.6	34.8	34.0	33.3	32.5	31.8	31.1	30.4	29.8	29.1
67	35.5	34.7	33.9	33.1	32.3	31.6	30.9	30.2	29.5	28.8
68	35.3	34.5	33.7	32.9	32.1	31.4	30.7	29.9	29.2	28.6
69	35.2	34.4	33.6	32.8	32.0	31.2	30.5	29.7	29.0	28.3
70	35.1	34.3	33.4	32.6	31.8	31.1	30.3	29.5	28.8	28.1
71	35.0	34.2	33.3	32.5	31.7	30.9	30.1	29.4	28.6	27.9
72	34.9	34.1	33.2	32.4	31.6	30.8	30.0	29.2	28.4	27.7
73	34.8	34.0	33.1	32.3	31.5	30.6	29.8	29.1	28.3	27.5
74	34.8	33.9	33.0	32.2	31.4	30.5	29.7	28.9	28.1	27.4
75	34.7	33.8	33.0	32.1	31.3	30.4	29.6	28.8	28.0	27.2
76	34.6	33.8	32.9	32.0	31.2	30.3	29.5	28.7	27.9	27.1
77	34.6	33.7	32.8	32.0	31.1	30.3	29.4	28.6	27.8	27.0

Joint and Last Survivor Table

AGES	50	51	52	53	54	55	56	57	58	59
78	34.5	33.6	32.8	31.9	31.0	30.2	29.3	28.5	27.7	26.9
79	34.5	33.6	32.7	31.8	31.0	30.1	29.3	28.4	27.6	26.8
80	34.5	33.6	32.7	31.8	30.9	30.1	29.2	28.4	27.5	26.7
81	34.4	33.5	32.6	31.8	30.9	30.0	29.2	28.3	27.5	26.6
82	34.4	33.5	32.6	31.7	30.8	30.0	29.1	28.3	27.4	26.6
83	34.4	33.5	32.6	31.7	30.8	29.9	29.1	28.2	27.4	26.5
84	34.3	33.4	32.5	31.7	30.8	29.9	29.0	28.2	27.3	26.5
85	34.3	33.4	32.5	31.6	30.7	29.9	29.0	28.1	27.3	26.4
86	34.3	33.4	32.5	31.6	30.7	29.8	29.0	28.1	27.2	26.4
87	34.3	33.4	32.5	31.6	30.7	29.8	28.9	28.1	27.2	26.4
88	34.3	33.4	32.5	31.6	30.7	29.8	28.9	28.0	27.2	26.3
89	34.3	33.3	32.4	31.5	30.7	29.8	28.9	28.0	27.2	26.3
90	34.2	33.3	32.4	31.5	30.6	29.8	28.9	28.0	27.1	26.3
91	34.2	33.3	32.4	31.5	30.6	29.7	28.9	28.0	27.1	26.3
92	34.2	33.3	32.4	31.5	30.6	29.7	28.8	28.0	27.1	26.2
93	34.2	33.3	32.4	31.5	30.6	29.7	28.8	28.0	27.1	26.2
94	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27.1	26.2
95	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27.1	26.2
96	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27.0	26.2
97	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27.0	26.2
98	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27.0	26.2
99	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27.0	26.2
100	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27.0	26.1
101	34.2	33.3	32.4	31.5	30.6	29.7	28.8	27.9	27.0	26.1
102	34.2	33.3	32.4	31.4	30.5	29.7	28.8	27.9	27.0	26.1
103	34.2	33.3	32.4	31.4	30.5	29.7	28.8	27.9	27.0	26.1
104	34.2	33.3	32.4	31.4	30.5	29.6	28.8	27.9	27.0	26.1
105	34.2	33.3	32.3	31.4	30.5	29.6	28.8	27.9	27.0	26.1
106	34.2	33.3	32.3	31.4	30.5	29.6	28.8	27.9	27.0	26.1
107	34.2	33.3	32.3	31.4	30.5	29.6	28.8	27.9	27.0	26.1
108	34.2	33.3	32.3	31.4	30.5	29.6	28.8	27.9	27.0	26.1
109	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27.0	26.1
110	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27.0	26.1
111	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27.0	26.1
112	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27.0	26.1
113	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27.0	26.1
114	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27.0	26.1
115+	34.2	33.3	32.3	31.4	30.5	29.6	28.7	27.9	27.0	26.1
AGES	60	61	62	63	64	65	66	67	68	69
60	30.9	30.4	30.0	29.6	29.2	28.8	28.5	28.2	27.9	27.6
61	30.4	29.9	29.5	29.0	28.6	28.3	27.9	27.6	27.3	27.0
62	30.0	29.5	29.0	28.5	28.1	27.7	27.3	27.0	26.7	26.4
63	29.6	29.0	28.5	28.1	27.6	27.2	26.8	26.4	26.1	25.7
64	29.2	28.6	28.1	27.6	27.1	26.7	26.3	25.9	25.5	25.2

Joint and Last Survivor Table

AGES	60	61	62	63	64	65	66	67	68	69
65	28.8	28.3	27.7	27.2	26.7	26.2	25.8	25.4	25.0	24.6
66	28.5	27.9	27.3	26.8	26.3	25.8	25.3	24.9	24.5	24.1
67	28.2	27.6	27.0	26.4	25.9	25.4	24.9	24.4	24.0	23.6
68	27.9	27.3	26.7	26.1	25.5	25.0	24.5	24.0	23.5	23.1
69	27.6	27.0	26.4	25.7	25.2	24.6	24.1	23.6	23.1	22.6
70	27.4	26.7	26.1	25.4	24.8	24.3	23.7	23.2	22.7	22.2
71	27.2	26.5	25.8	25.2	24.5	23.9	23.4	22.8	22.3	21.8
72	27.0	26.3	25.6	24.9	24.3	23.7	23.1	22.5	22.0	21.4
73	26.8	26.1	25.4	24.7	24.0	23.4	22.8	22.2	21.6	21.1
74	26.6	25.9	25.2	24.5	23.8	23.1	22.5	21.9	21.3	20.8
75	26.5	25.7	25.0	24.3	23.6	22.9	22.3	21.6	21.0	20.5
76	26.3	25.6	24.8	24.1	23.4	22.7	22.0	21.4	20.8	20.2
77	26.2	25.4	24.7	23.9	23.2	22.5	21.8	21.2	20.6	19.9
78	26.1	25.3	24.6	23.8	23.1	22.4	21.7	21.0	20.3	19.7
79	26.0	25.2	24.4	23.7	22.9	22.2	21.5	20.8	20.1	19.5
80	25.9	25.1	24.3	23.6	22.8	22.1	21.3	20.6	20.0	19.3
81	25.8	25.0	24.2	23.4	22.7	21.9	21.2	20.5	19.8	19.1
82	25.8	24.9	24.1	23.4	22.6	21.8	21.1	20.4	19.7	19.0
83	25.7	24.9	24.1	23.3	22.5	21.7	21.0	20.2	19.5	18.8
84	25.6	24.8	24.0	23.2	22.4	21.6	20.9	20.1	19.4	18.7
85	25.6	24.8	23.9	23.1	22.3	21.6	20.8	20.1	19.3	18.6
86	25.5	24.7	23.9	23.1	22.3	21.5	20.7	20.0	19.2	18.5
87	25.5	24.7	23.8	23.0	22.2	21.4	20.7	19.9	19.2	18.4
88	25.5	24.6	23.8	23.0	22.2	21.4	20.6	19.8	19.1	18.3
89	25.4	24.6	23.8	22.9	22.1	21.3	20.5	19.8	19.0	18.3
90	25.4	24.6	23.7	22.9	22.1	21.3	20.5	19.7	19.0	18.2
91	25.4	24.5	23.7	22.9	22.1	21.3	20.5	19.7	18.9	18.2
92	25.4	24.5	23.7	22.9	22.0	21.2	20.4	19.6	18.9	18.1
93	25.4	24.5	23.7	22.8	22.0	21.2	20.4	19.6	18.8	18.1
94	25.3	24.5	23.6	22.8	22.0	21.2	20.4	19.6	18.8	18.0
95	25.3	24.5	23.6	22.8	22.0	21.1	20.3	19.6	18.8	18.0
96	25.3	24.5	23.6	22.8	21.9	21.1	20.3	19.5	18.8	18.0
97	25.3	24.5	23.6	22.8	21.9	21.1	20.3	19.5	18.7	18.0
98	25.3	24.4	23.6	22.8	21.9	21.1	20.3	19.5	18.7	17.9
99	25.3	24.4	23.6	22.7	21.9	21.1	20.3	19.5	18.7	17.9
100	25.3	24.4	23.6	22.7	21.9	21.1	20.3	19.5	18.7	17.9
101	25.3	24.4	23.6	22.7	21.9	21.1	20.2	19.4	18.7	17.9
102	25.3	24.4	23.6	22.7	21.9	21.1	20.2	19.4	18.6	17.9
103	25.3	24.4	23.6	22.7	21.9	21.0	20.2	19.4	18.6	17.9
104	25.3	24.4	23.5	22.7	21.9	21.0	20.2	19.4	18.6	17.8
105	25.3	24.4	23.5	22.7	21.9	21.0	20.2	19.4	18.6	17.8
106	25.3	24.4	23.5	22.7	21.9	21.0	20.2	19.4	18.6	17.8
107	25.2	24.4	23.5	22.7	21.8	21.0	20.2	19.4	18.6	17.8
108	25.2	24.4	23.5	22.7	21.8	21.0	20.2	19.4	18.6	17.8
109	25.2	24.4	23.5	22.7	21.8	21.0	20.2	19.4	18.6	17.8

Joint and Last Survivor Table

AGES	60	61	62	63	64	65	66	67	68	69
110	25.2	24.4	23.5	22.7	21.8	21.0	20.2	19.4	18.6	17.8
111	25.2	24.4	23.5	22.7	21.8	21.0	20.2	19.4	18.6	17.8
112	25.2	24.4	23.5	22.7	21.8	21.0	20.2	19.4	18.6	17.8
113	25.2	24.4	23.5	22.7	21.8	21.0	20.2	19.4	18.6	17.8
114	25.2	24.4	23.5	22.7	21.8	21.0	20.2	19.4	18.6	17.8
115+	25.2	24.4	23.5	22.7	21.8	21.0	20.2	19.4	18.6	17.8
AGES	70	71	72	73	74	75	76	77	78	79
70	21.8	21.3	20.9	20.6	20.2	19.9	19.6	19.4	19.1	18.9
71	21.3	20.9	20.5	20.1	19.7	19.4	19.1	18.8	18.5	18.3
72	20.9	20.5	20.0	19.6	19.3	18.9	18.6	18.3	18.0	17.7
73	20.6	20.1	19.6	19.2	18.8	18.4	18.1	17.8	17.5	17.2
74	20.2	19.7	19.3	18.8	18.4	18.0	17.6	17.3	17.0	16.7
75	19.9	19.4	18.9	18.4	18.0	17.6	17.2	16.8	16.5	16.2
76	19.6	19.1	18.6	18.1	17.6	17.2	16.8	16.4	16.0	15.7
77	19.4	18.8	18.3	17.8	17.3	16.8	16.4	16.0	15.6	15.3
78	19.1	18.5	18.0	17.5	17.0	16.5	16.0	15.6	15.2	14.9
79	18.9	18.3	17.7	17.2	16.7	16.2	15.7	15.3	14.9	14.5
80	18.7	18.1	17.5	16.9	16.4	15.9	15.4	15.0	14.5	14.1
81	18.5	17.9	17.3	16.7	16.2	15.6	15.1	14.7	14.2	13.8
82	18.3	17.7	17.1	16.5	15.9	15.4	14.9	14.4	13.9	13.5
83	18.2	17.5	16.9	16.3	15.7	15.2	14.7	14.2	13.7	13.2
84	18.0	17.4	16.7	16.1	15.5	15.0	14.4	13.9	13.4	13.0
85	17.9	17.3	16.6	16.0	15.4	14.8	14.3	13.7	13.2	12.8
86	17.8	17.1	16.5	15.8	15.2	14.6	14.1	13.5	13.0	12.5
87	17.7	17.0	16.4	15.7	15.1	14.5	13.9	13.4	12.9	12.4
88	17.6	16.9	16.3	15.6	15.0	14.4	13.8	13.2	12.7	12.2
89	17.6	16.9	16.2	15.5	14.9	14.3	13.7	13.1	12.6	12.0
90	17.5	16.8	16.1	15.4	14.8	14.2	13.6	13.0	12.4	11.9
91	17.4	16.7	16.0	15.4	14.7	14.1	13.5	12.9	12.3	11.8
92	17.4	16.7	16.0	15.3	14.6	14.0	13.4	12.8	12.2	11.7
93	17.3	16.6	15.9	15.2	14.6	13.9	13.3	12.7	12.1	11.6
94	17.3	16.6	15.9	15.2	14.5	13.9	13.2	12.6	12.0	11.5
95	17.3	16.5	15.8	15.1	14.5	13.8	13.2	12.6	12.0	11.4
96	17.2	16.5	15.8	15.1	14.4	13.8	13.1	12.5	11.9	11.3
97	17.2	16.5	15.8	15.1	14.4	13.7	13.1	12.5	11.9	11.3
98	17.2	16.4	15.7	15.0	14.3	13.7	13.0	12.4	11.8	11.2
99	17.2	16.4	15.7	15.0	14.3	13.6	13.0	12.4	11.8	11.2
100	17.1	16.4	15.7	15.0	14.3	13.6	12.9	12.3	11.7	11.1
101	17.1	16.4	15.6	14.9	14.2	13.6	12.9	12.3	11.7	11.1
102	17.1	16.4	15.6	14.9	14.2	13.5	12.9	12.2	11.6	11.0
103	17.1	16.3	15.6	14.9	14.2	13.5	12.9	12.2	11.6	11.0
104	17.1	16.3	15.6	14.9	14.2	13.5	12.8	12.2	11.6	11.0
105	17.1	16.3	15.6	14.9	14.2	13.5	12.8	12.2	11.5	10.9
106	17.1	16.3	15.6	14.8	14.1	13.5	12.8	12.2	11.5	10.9

Joint and Last Survivor Table

AGES	70	71	72	73	74	75	76	77	78	79
107	17.0	16.3	15.6	14.8	14.1	13.4	12.8	12.1	11.5	10.9
108	17.0	16.3	15.5	14.8	14.1	13.4	12.8	12.1	11.5	10.9
109	17.0	16.3	15.5	14.8	14.1	13.4	12.8	12.1	11.5	10.9
110	17.0	16.3	15.5	14.8	14.1	13.4	12.7	12.1	11.5	10.9
111	17.0	16.3	15.5	14.8	14.1	13.4	12.7	12.1	11.5	10.8
112	17.0	16.3	15.5	14.8	14.1	13.4	12.7	12.1	11.5	10.8
113	17.0	16.3	15.5	14.8	14.1	13.4	12.7	12.1	11.4	10.8
114	17.0	16.3	15.5	14.8	14.1	13.4	12.7	12.1	11.4	10.8
115+	17.0	16.3	15.5	14.8	14.1	13.4	12.7	12.1	11.4	10.8

AGES	80	81	82	83	84	85	86	87	88	89
80	13.8	13.4	13.1	12.8	12.6	12.3	12.1	11.9	11.7	11.5
81	13.4	13.1	12.7	12.4	12.2	11.9	11.7	11.4	11.3	11.1
82	13.1	12.7	12.4	12.1	11.8	11.5	11.3	11.0	10.8	10.6
83	12.8	12.4	12.1	11.7	11.4	11.1	10.9	10.6	10.4	10.2
84	12.6	12.2	11.8	11.4	11.1	10.8	10.5	10.3	10.1	9.9
85	12.3	11.9	11.5	11.1	10.8	10.5	10.2	9.9	9.7	9.5
86	12.1	11.7	11.3	10.9	10.5	10.2	9.9	9.6	9.4	9.2
87	11.9	11.4	11.0	10.6	10.3	9.9	9.6	9.4	9.1	8.9
88	11.7	11.3	10.8	10.4	10.1	9.7	9.4	9.1	8.8	8.6
89	11.5	11.1	10.6	10.2	9.9	9.5	9.2	8.9	8.6	8.3
90	11.4	10.9	10.5	10.1	9.7	9.3	9.0	8.6	8.3	8.1
91	11.3	10.8	10.3	9.9	9.5	9.1	8.8	8.4	8.1	7.9
92	11.2	10.7	10.2	9.8	9.3	9.0	8.6	8.3	8.0	7.7
93	11.1	10.6	10.1	9.6	9.2	8.8	8.5	8.1	7.8	7.5
94	11.0	10.5	10.0	9.5	9.1	8.7	8.3	8.0	7.6	7.3
95	10.9	10.4	9.9	9.4	9.0	8.6	8.2	7.8	7.5	7.2
96	10.8	10.3	9.8	9.3	8.9	8.5	8.1	7.7	7.4	7.1
97	10.7	10.2	9.7	9.2	8.8	8.4	8.0	7.6	7.3	6.9
98	10.7	10.1	9.6	9.2	8.7	8.3	7.9	7.5	7.1	6.8
99	10.6	10.1	9.6	9.1	8.6	8.2	7.8	7.4	7.0	6.7
100	10.6	10.0	9.5	9.0	8.5	8.1	7.7	7.3	6.9	6.6
101	10.5	10.0	9.4	9.0	8.5	8.0	7.6	7.2	6.9	6.5
102	10.5	9.9	9.4	8.9	8.4	8.0	7.5	7.1	6.8	6.4
103	10.4	9.9	9.4	8.8	8.4	7.9	7.5	7.1	6.7	6.3
104	10.4	9.8	9.3	8.8	8.3	7.9	7.4	7.0	6.6	6.3
105	10.4	9.8	9.3	8.8	8.3	7.8	7.4	7.0	6.6	6.2
106	10.3	9.8	9.2	8.7	8.2	7.8	7.3	6.9	6.5	6.2
107	10.3	9.8	9.2	8.7	8.2	7.7	7.3	6.9	6.5	6.1
108	10.3	9.7	9.2	8.7	8.2	7.7	7.3	6.8	6.4	6.1
109	10.3	9.7	9.2	8.7	8.2	7.7	7.2	6.8	6.4	6.0
110	10.3	9.7	9.2	8.6	8.1	7.7	7.2	6.8	6.4	6.0
111	10.3	9.7	9.1	8.6	8.1	7.6	7.2	6.8	6.3	6.0
112	10.2	9.7	9.1	8.6	8.1	7.6	7.2	6.7	6.3	5.9
113	10.2	9.7	9.1	8.6	8.1	7.6	7.2	6.7	6.3	5.9

Joint and Last Survivor Table

AGES	80	81	82	83	84	85	86	87	88	89
114	10.2	9.7	9.1	8.6	8.1	7.6	7.1	6.7	6.3	5.9
115+	10.2	9.7	9.1	8.6	8.1	7.6	7.1	6.7	6.3	5.9
AGES	90	91	92	93	94	95	96	97	98	99
90	7.8	7.6	7.4	7.2	7.1	6.9	6.8	6.6	6.5	6.4
91	7.6	7.4	7.2	7.0	6.8	6.7	6.5	6.4	6.3	6.1
92	7.4	7.2	7.0	6.8	6.6	6.4	6.3	6.1	6.0	5.9
93	7.2	7.0	6.8	6.6	6.4	6.2	6.1	5.9	5.8	5.6
94	7.1	6.8	6.6	6.4	6.2	6.0	5.9	5.7	5.6	5.4
95	6.9	6.7	6.4	6.2	6.0	5.8	5.7	5.5	5.4	5.2
96	6.8	6.5	6.3	6.1	5.9	5.7	5.5	5.3	5.2	5.0
97	6.6	6.4	6.1	5.9	5.7	5.5	5.3	5.2	5.0	4.9
98	6.5	6.3	6.0	5.8	5.6	5.4	5.2	5.0	4.8	4.7
99	6.4	6.1	5.9	5.6	5.4	5.2	5.0	4.9	4.7	4.5
100	6.3	6.0	5.8	5.5	5.3	5.1	4.9	4.7	4.5	4.4
101	6.2	5.9	5.6	5.4	5.2	5.0	4.8	4.6	4.4	4.2
102	6.1	5.8	5.5	5.3	5.1	4.8	4.6	4.4	4.3	4.1
103	6.0	5.7	5.4	5.2	5.0	4.7	4.5	4.3	4.1	4.0
104	5.9	5.6	5.4	5.1	4.9	4.6	4.4	4.2	4.0	3.8
105	5.9	5.6	5.3	5.0	4.8	4.5	4.3	4.1	3.9	3.7
106	5.8	5.5	5.2	4.9	4.7	4.5	4.2	4.0	3.8	3.6
107	5.8	5.4	5.1	4.9	4.6	4.4	4.2	3.9	3.7	3.5
108	5.7	5.4	5.1	4.8	4.6	4.3	4.1	3.9	3.7	3.5
109	5.7	5.3	5.0	4.8	4.5	4.3	4.0	3.8	3.6	3.4
110	5.6	5.3	5.0	4.7	4.5	4.2	4.0	3.8	3.5	3.3
111	5.6	5.3	5.0	4.7	4.4	4.2	3.9	3.7	3.5	3.3
112	5.6	5.3	4.9	4.7	4.4	4.1	3.9	3.7	3.5	3.2
113	5.6	5.2	4.9	4.6	4.4	4.1	3.9	3.6	3.4	3.2
114	5.6	5.2	4.9	4.6	4.3	4.1	3.9	3.6	3.4	3.2
115+	5.5	5.2	4.9	4.6	4.3	4.1	3.8	3.6	3.4	3.1
AGES	100	101	102	103	104	105	106	107	108	109
100	4.2	4.1	3.9	3.8	3.7	3.5	3.4	3.3	3.3	3.2
101	4.1	3.9	3.7	3.6	3.5	3.4	3.2	3.1	3.1	3.0
102	3.9	3.7	3.6	3.4	3.3	3.2	3.1	3.0	2.9	2.8
103	3.8	3.6	3.4	3.3	3.2	3.0	2.9	2.8	2.7	2.6
104	3.7	3.5	3.3	3.2	3.0	2.9	2.7	2.6	2.5	2.4
105	3.5	3.4	3.2	3.0	2.9	2.7	2.6	2.5	2.4	2.3
106	3.4	3.2	3.1	2.9	2.7	2.6	2.4	2.3	2.2	2.1
107	3.3	3.1	3.0	2.8	2.6	2.5	2.3	2.2	2.1	2.0
108	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	1.9	1.8
109	3.2	3.0	2.8	2.6	2.4	2.3	2.1	2.0	1.8	1.7
110	3.1	2.9	2.7	2.5	2.3	2.2	2.0	1.9	1.7	1.6
111	3.1	2.9	2.7	2.5	2.3	2.1	1.9	1.8	1.6	1.5
112	3.0	2.8	2.6	2.4	2.2	2.0	1.9	1.7	1.5	1.4
113	3.0	2.8	2.6	2.4	2.2	2.0	1.8	1.6	1.5	1.3

Joint and Last Survivor Table

AGES	100	101	102	103	104	105	106	107	108	109
114	3.0	2.7	2.5	2.3	2.1	1.9	1.8	1.6	1.4	1.3
115+	2.9	2.7	2.5	2.3	2.1	1.9	1.7	1.5	1.4	1.2
AGES	110	111	112	113	114	115+				
110	1.5	1.4	1.3	1.2	1.1	1.1				
111	1.4	1.2	1.1	1.1	1.0	1.0				
112	1.3	1.1	1.0	1.0	1.0	1.0				
113	1.2	1.1	1.0	1.0	1.0	1.0				
114	1.1	1.0	1.0	1.0	1.0	1.0				
115+	1.1	1.0	1.0	1.0	1.0	1.0				

Q-4. May the tables under this section be changed?

A-4. The Single Life Table, Uniform Lifetime Table and Joint and Last Survivor Table provided in A-1 through A-3 of this section may be changed 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.

Par. 3. Section 1.403(b)-3 is added to read as follows:

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

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

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

(b) For purposes of applying the distribution rules in section 401(a)(9), section 403(b) contracts will be treated as individual retirement annuities described in section 408(b) and individual retirement accounts described in section 408(a) (IRAs). Consequently, except as otherwise provided in paragraph (c) of this A-1, the distribution rules in section 401(a)(9) will be applied to section 403(b) contracts in accordance with the

provisions in § 1.408-8 for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003.

(c)(1) The required beginning date for purposes of section 403(b)(10) is April 1 of the calendar year following the later of the calendar year in which the employee attains 70½ or the calendar year in which the employee retires from employment with the employer maintaining the plan. The concept of 5-percent owner has no application in the case of employees of employers described in section 403(b)(1)(A).

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

(3) Annuity payments provided with respect to retirement income accounts described in section 403(b)(9) will not fail to satisfy the requirements of A-4 of § 1.401(a)(9)-6T merely because the payments are not made under an annuity contract purchased from an insurance company, provided the relationship between the annuity payments and the retirement income accounts is not inconsistent with any rules prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2)(ii)(b) of this chapter.

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

A-2. (a) The distribution rules provided in section 401(a)(9) apply to all benefits under section 403(b) contracts accruing after December 31, 1986 (post-'86 account balance). The distribution rules provided in section 401(a)(9) do not apply to the undistributed portion of the account balance under the section 403(b) contract valued as of December 31, 1986, exclusive of subsequent earnings (pre-'87 account balance). Consequently, the post-'86 account balance includes earnings after December 31, 1986, on contributions made before January 1, 1987, in addition to the contributions made after December 31, 1986, and earnings thereon.

(b) The issuer or custodian of the section 403(b) contract must keep records that enable it to identify the pre-'87 account balance and subsequent changes as set forth in paragraph (b) of this A-2 and provide such information upon request to the relevant employee or beneficiaries with respect to the contract. If the issuer or custodian does not keep such records, the entire account balance will be treated as subject to section 401(a)(9).

(c) In applying the distribution rules in section 401(a)(9), only the post-'86 account balance is used to calculate the required minimum distribution for a calendar year. The amount of any distribution from a contract will be treated as being paid from the post-'86 account balance to the extent the distribution is required to satisfy the minimum distribution requirement with respect to that contract for a calendar year. Any amount distributed in a calendar year from a contract

in excess of the required minimum distribution for a calendar year with respect to that contract will be treated as paid from the pre-'87 account balance, if any, of that contract.

(d) If an amount is distributed from the pre-'87 account balance and rolled over to another section 403(b) contract, the amount will be treated as part of the post-'86 account balance in that second contract. However, if the pre-'87 account balance under a section 403(b) contract is directly transferred to another section 403(b) contract, the amount transferred retains its character as a pre-'87 account balance, provided the issuer of the transferee contract satisfies the recordkeeping requirements of paragraph (b) of this A-2.

(e) The distinction between the pre-'87 account balance and the post-'86 account balance provided for under this A-2 has no relevance for purposes of determining the portion of a distribution that is includible in income under section 72.

Q-3. Must the pre-'87 account balance be distributed in accordance with the incidental benefit requirement?

A-3. Yes, the pre-'87 account balance must be distributed in accordance with the incidental benefit requirement of § 1.401-1(b)(1)(i). Distributions attributable to the pre-'87 account balance are treated as satisfying this requirement if all distributions from the section 403(b) contract (including distributions attributable to the post-'86 account balance) satisfy the requirements of § 1.401-1(b)(1)(i) without regard to this section, and distributions attributable to the post-'86 account balance satisfy the rules of this section. Alternatively, distributions attributable to the pre-'87 account balance are treated as satisfying the incidental benefit requirement if all distributions from the section 403(b) contract (including distributions attributable to both the pre-'87 account balance and the post-'86 account balance) satisfy the rules of this section.

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

A-4. Yes, as provided in paragraph (b) of A-1 of this section, the distribution rules in section 401(a)(9) will be applied to section 403(b) contracts in accordance

with the provisions in § 1.408-8. Thus, the required minimum distribution must be separately determined for each section 403(b) contract of an employee. However, as provided in A-9 of § 1.408-8 with respect to IRAs, such amounts may then be totaled and the total distribution taken from any one or more of the individual section 403(b) contracts. However, consistent with the rules in A-9 of § 1.408-8, only amounts in section 403(b) contracts that an individual holds as an employee may be aggregated. Amounts in section 403(b) contracts that an individual holds as a beneficiary of the same decedent may be aggregated, but such amounts may not be aggregated with amounts held in section 403(b) contracts that the individual holds as the employee or as the beneficiary of another decedent. Distributions from section 403(b) contracts or accounts will not satisfy the minimum distribution requirements for IRAs, nor will distributions from IRAs satisfy the minimum distribution requirements for section 403(b) contracts or accounts.

Par. 4. Section 1.408-8 is added to read as follows:

§ 1.408-8 Distribution requirements for individual retirement plans.

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

Q-1. Is an IRA subject to the distribution rules provided in section 401(a)(9) for qualified plans?

A-1. (a) Yes, an IRA is subject to the required minimum distribution rules provided in section 401(a)(9). In order to satisfy section 401(a)(9) for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003, the rules of §§ 1.401(a)(9)-1 through 1.401(a)(9)-9 and 1.401(a)(9)-6T for defined contribution plans must be applied, except as otherwise provided in this section. For example, whether the 5-year rule or the life expectancy rule applies to distributions after death occurring before the IRA owner's required beginning date is determined in accordance with § 1.401(a)(9)-3 and the rules of § 1.401(a)(9)-4 apply for purposes of determining an IRA owner's designated beneficiary. Similarly, the

amount of the minimum distribution required for each calendar year from an individual account is determined in accordance with § 1.401(a)(9)-5. For purposes of this section, the term IRA means an individual retirement account or annuity described in section 408(a) or (b). The IRA owner is the individual for whom an IRA is originally established by contributions for the benefit of that individual and that individual's beneficiaries.

(b) For purposes of applying the required minimum distribution rules in §§ 1.401(a)(9)-1 through 1.401(a)(9)-9 and 1.401(a)(9)-6T for qualified plans, the IRA trustee, custodian, or issuer is treated as the plan administrator, and the IRA owner is substituted for the employee.

(c) See A-14 and A-15 of § 1.408A-6 for rules under section 401(a)(9) that apply to a Roth IRA.

Q-2. Are IRAs that receive employer contributions under a simplified employee pension (defined in section 408(k)) or a SIMPLE IRA (defined in section 408(p)) treated as IRAs for purposes of section 401(a)(9)?

A-2. Yes, IRAs that receive employer contributions under a simplified employee pension (defined in section 408(k)) or a SIMPLE plan (defined in section 408(p)) are treated as IRAs, rather than employer plans, for purposes of section 401(a)(9) and are, therefore, subject to the distribution rules in this section.

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

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

Q-4. What portion of a distribution from an IRA is not eligible for rollover because the amount is a required minimum distribution?

A-4. The portion of a distribution that is a required minimum distribution from an IRA and thus not eligible for rollover is determined in the same manner as provided in A-7 of § 1.402(c)-2 for distributions from qualified plans. For example, if a minimum distribution is required under section 401(a)(9) for a calendar year, an amount distributed during a calendar year from an IRA is treated as a

required minimum distribution under section 401(a)(9) to the extent that the total required minimum distribution for the year under section 401(a)(9) for that IRA has not been satisfied. This requirement may be satisfied by a distribution from the IRA or, as permitted under A-9 of this section, from another IRA.

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

A-5. (a) The surviving spouse of an individual may elect, in the manner described in paragraph (b) of this A-5, to treat the spouse's entire interest as a beneficiary in an individual's IRA (or the remaining part of such interest if distribution thereof has commenced to the spouse) as the spouse's own IRA. This election is permitted to be made at any time after the individual's date of death. In order to make this election, the spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the spouse is the sole beneficiary of the trust. If the surviving spouse makes the election, the required minimum distribution for the calendar year of the election and each subsequent calendar year is determined under section 401(a)(9)(A) with the spouse as IRA owner and not section 401(a)(9)(B) with the surviving spouse as the deceased IRA owner's beneficiary. However, if the election is made in the calendar year containing the IRA owner's death, the spouse is not required to take a required minimum distribution as the IRA owner for that calendar year. Instead, the spouse is required to take a required minimum distribution for that year, determined with respect to the deceased IRA owner under the rules of A-4(a) of § 1.401(a)(9)-5, to the extent such a distribution was not made to the IRA owner before death.

(b) The election described in paragraph (a) of this A-5 is made by the surviving spouse redesignating the account as an account in the name of the surviving spouse as IRA owner rather than as beneficiary. Alternatively, a surviving

spouse eligible to make the election is deemed to have made the election if, at any time, either of the following occurs —

(1) Any amount in the IRA that would be required to be distributed to the surviving spouse as beneficiary under section 401(a)(9)(B) is not distributed within the time period required under section 401(a)(9)(B); or

(2) Any additional amount is contributed to the IRA which is subject, or deemed to be subject, to the lifetime distribution requirements of section 401(a)(9)(A).

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

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

A-6. For purposes of determining the minimum distribution required to be made from an IRA in any calendar year, the account balance of the IRA as of December 31 of the calendar year immediately preceding the calendar year for which distributions are required to be made is substituted in A-3 of § 1.401(a)(9)-5 for the account balance of the employee. Except as provided in A-7 and A-8 of this section, no adjustments are made for contributions or distributions after that date.

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

A-7. If the surviving spouse of an employee rolls over a distribution from a qualified plan, such surviving spouse may elect to treat the IRA as the spouse's own IRA in accordance with the provisions in A-5 of this section. In the event of any other rollover to an IRA of an amount distributed by a qualified plan or another IRA, the rules in § 1.401(a)(9)-7 will apply for purposes of determining the account balance for the receiving IRA and the required minimum distribution from the receiving IRA. However, because the value of the account balance is determined as of December 31 of the year preceding the year for which the required minimum distribution is being determined

and not as of a valuation date in the preceding year, the account balance of the receiving IRA is only adjusted if the amount is not received in the calendar year in which the amount rolled over is distributed. In that case, for purposes of determining the required minimum distribution for the calendar year in which such amount is actually received, the account balance of the receiving IRA as of December 31 of the preceding year must be adjusted by the amount received in accordance with A-2 of § 1.401(a)(9)-7.

Q-8. What rules apply in the case of a transfer (including a recharacterization) from one IRA to another?

A-8. (a) *General rule.* In the case of a trustee-to-trustee transfer from one IRA to another IRA that is not a distribution and rollover, the transfer is not treated as a distribution by the transferor IRA for purposes of section 401(a)(9). Accordingly, the minimum distribution requirement with respect to the transferor IRA must still be satisfied. Except as provided in paragraph (b) of this A-8 for recharacterizations, after the transfer the employee's account balance and the required minimum distribution under the transferee IRA are determined in the same manner as an account balance and required minimum distribution are determined under an IRA receiving a rollover contribution under A-7 of this section.

(b) *Recharacterizations.* If an amount is contributed to a Roth IRA that is a conversion contribution or failed conversion contribution and that amount (plus net income allocable to that amount) is transferred to another IRA (transferee IRA) in a subsequent year as a recharacterized contribution, the recharacterized contribution (plus allocable net income) must be added to the December 31 account balance of the transferee IRA for the year in which the conversion or failed conversion occurred.

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

A-9. Yes, the required minimum distribution must be calculated separately for each IRA. The separately calculated amounts may then be totaled and the total distribution taken from any one or more of the individual's IRAs under the rules set forth in this A-9. Generally, only

amounts in IRAs that an individual holds as the IRA owner may be aggregated. However, amounts in IRAs that an individual holds as a beneficiary of the same decedent and which are being distributed under the life expectancy rule in section 401(a)(9)(B)(iii) or (iv) may be aggregated, but such amounts may not be aggregated with amounts held in IRAs that the individual holds as the IRA owner or as the beneficiary of another decedent. Distributions from section 403(b) contracts or accounts will not satisfy the distribution requirements from IRAs, nor will distributions from IRAs satisfy the distribution requirements from section 403(b) contracts or accounts. Distributions from Roth IRAs (defined in section 408A) will not satisfy the distribution requirements applicable to IRAs or section 403(b) accounts or contracts and distributions from IRAs or section 403(b) contracts or accounts will not satisfy the distribution requirements from Roth IRAs.

Q-10. Is any reporting required by the trustee, custodian, or issuer of an IRA with respect to the minimum amount that is required to be distributed from that IRA?

A-10. Yes, the trustee, custodian, or issuer of an IRA is required to report information with respect to the minimum amount required to be distributed from the IRA for each calendar year to individuals or entities, at the time, and in the manner, prescribed by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter) as well as the applicable Federal tax forms and accompanying instructions.

Q-11. Which amounts distributed from an IRA are taken into account in determining whether section 401(a)(9) is satisfied?

A-11. (a) *General rule.* Except as provided in paragraph (b) of this A-11, all amounts distributed from an IRA are taken into account in determining whether section 401(a)(9) is satisfied, regardless of whether the amount is includible in income.

(b) Amounts not taken into account. The following amounts are not taken into account in determining whether the

required minimum amount with respect to an IRA for a calendar year has been distributed —

(1) Contributions returned pursuant to section 408(d)(4), together with the income allocable to these contributions;

(2) Contributions returned pursuant to section 408(d)(5);

(3) Corrective distributions of excess simplified employee pension contributions under section 408(k)(6)(C), together with the income allocable to these distributions; and

(4) 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.

PART 54 — PENSION EXCISE TAXES

Par. 5. The authority for part 54 is amended by adding the following citation to read in part as follows:

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

Section 54.4974-2 also issued under 26 U.S.C. 4974. ***

Par. 6. Section after § 54.4974-2 is added to read as follows:

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

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

A-1. Yes, if the amount distributed to a payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in section 457(b)) for a calendar year is less than the required minimum distribution for such year, an excise tax is imposed on such payee under section 4974 for the taxable year beginning with or within the calendar year during which the amount is required to be distributed. The tax is equal to 50 percent of the amount by which such required minimum distribution exceeds the actual amount distributed during the calendar year. Section 4974 provides that this tax shall be paid by the payee. For purposes of section 4974, the term *required minimum distribution*

means the minimum distribution amount required to be distributed pursuant to section 401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3), or 457(d)(2), as the case may be, and the regulations thereunder. Except as otherwise provided in A-6 of this section, the required minimum distribution for a calendar year is the required minimum distribution amount required to be distributed during the calendar year. A-6 of this section provides a special rule for amounts required to be distributed by an employee's (or individual's) required beginning date.

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

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

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

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

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

(d) An individual retirement account described in section 408(a) (including a Roth IRA described in section 408A);

(e) An individual retirement annuity described in section 408(b) (including a Roth IRA described in section 408A); or

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

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

A-3. (a) *General rule.* If a payee's interest under a qualified retirement plan is in the form of an individual account and distribution of such account is not being made under an annuity contract purchased in accordance with A-4 of § 1.401(a)(9)-6T, the amount of the required minimum distribution for any calendar year for purposes of section 4974 is the required minimum distribution amount

required to be distributed for such calendar year in order to satisfy the minimum distribution requirements in § 1.401(a)(9)–5 as provided in the following (whichever is applicable) —

(1) Section 401(a)(9) and §§ 1.401(a)(9)–1 through 1.401(a)(9)–5 and 1.401(a)(9)–7 through 1.401(a)(9)–9 in the case of a plan described in section 401(a) which includes a trust exempt under section 501(a) or an annuity plan described in section 403(a);

(2) Section 403(b)(10) and § 1.403(b)–3 (in the case of an annuity contract, custodial account, or retirement income account described in section 403(b));

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

(4) Section 457(d) in the case of an eligible deferred compensation plan (as defined in section 457(b)).

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

(c) *Five-year rule.* If the 5–year rule in section 401(a)(9)(B)(ii) applies to the distribution to a payee, no amount is required to be distributed for any calendar year to satisfy the applicable enumerated section in paragraph (a) of this A–3 until the calendar year which contains the date 5 years after the date of the employee’s death. For the calendar year which contains the date 5 years after the employee’s death, the required minimum distribution amount required to be distributed to satisfy the applicable enumerated section is the payee’s entire remaining interest in the qualified retirement plan.

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

A–4. If a payee’s interest in a qualified retirement plan is being distributed in the form of an annuity (either directly from the plan, in the case of a defined benefit plan, or under an annuity contract purchased from an insurance company), the amount of the required minimum distri-

bution for purposes of section 4974 will be determined as follows:

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

(b) *Impermissible annuity distribution option.* An impermissible annuity distribution option is an annuity contract (or, in the case of annuity distributions from a defined benefit plan, a distribution option) under which distributions to the payee are being made that specifically provides for distributions which, if made as provided, would for any calendar year be less than the minimum distribution amount required to be distributed to satisfy the applicable section enumerated in paragraph (a) of A–3 of this section. If the annuity contract (or, in the case of annuity distributions from a defined benefit plan, the distribution option) under which distributions to the payee are being made is an impermissible annuity distribution option, the required minimum distribution for each calendar year will be determined as follows:

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

(i) In the case of distributions commencing before the death of the

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

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

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

required minimum distribution for each calendar year will be the amount that would have been distributed under an annuity described in paragraph (b)(2)(i) or (ii) of this A-4 purchased with the employee's or individual's account used to purchase the annuity contract that is the impermissible annuity distribution option.

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

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

mination of which designated beneficiary's life is to be used in the case of multiple beneficiaries will be made in accordance with § 1.401(a)(9)-4 and A-7 of § 1.401(a)(9)-5.

(3) If the 5-year rule in section 401(a)(9)(B)(ii) applies to the distribution to the payee under the contract (or distribution option), no amount is required to be distributed to satisfy the applicable enumerated section in paragraph (a) of this A-4 until the calendar year which contains the date 5 years after the date of the employee's death. For the calendar year which contains the date 5 years after the employee's death, the required minimum distribution amount required to be distributed to satisfy the applicable enumerated section is the payee's entire remaining interest in the annuity contract (or under the plan in the case of distributions from a defined benefit plan).

(4) If the plan provides that the required beginning date for purposes of section 401(a)(9) for all employees is April 1 of the calendar year following the calendar year in which the employee attained age 70½ in accordance with paragraph A-2(e) of § 1.401(a)(9)-2, the required minimum distribution for each calendar year for an employee who is not a 5-percent owner for purposes of this section will be the lesser of the amount determined based on the required beginning date as set forth in A-2(a) of § 1.401(a)(9)-2 or the required beginning date under the plan. Thus, for example, if an employee dies after attaining age 70½, but before April 1 of the calendar year following the calendar year in which the employee retired, and there is no designated beneficiary as of September 30 of the year following the employee's year of death, required minimum distributions for calendar years after the calendar year containing the employee's date of death may be based on either the applicable distribution period provided under either the 5-year rule of A-1 of § 1.401(a)(9)-3 or the employee's remaining life expectancy as set forth in A-5(c)(3) of § 1.401(a)(9)-5.

Q-5. If there is any remaining benefit with respect to an employee (or IRA owner) after any calendar year in which the entire remaining benefit is required to be distributed under section 401(a)(9), what is the amount of the required mini-

num distribution for each calendar year subsequent to such calendar year?

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

Q-6. With respect to which calendar year is the excise tax under section 4974 imposed in the case in which the amount not distributed is an amount required to be distributed by April 1 of a calendar year (by the employee's or individual's required beginning date)?

A-6. In the case in which the amount not paid is an amount required to be paid by April 1 of a calendar year, such amount is a required minimum distribution for the previous calendar year, *i.e.*, for the employee's or the individual's first distribution calendar year. However, the excise tax under section 4974 is imposed for the calendar year containing the last day by which the amount is required to be distributed, *i.e.*, the calendar year containing the employee's or individual's required beginning date, even though the preceding calendar year is the calendar year for which the amount is required to be distributed. There is also a required minimum distribution for the calendar year which contains the employee's or individual's required beginning date. Such distribution is also required to be made during the calendar year which contains the employee's or individual's required beginning date.

Q-7. Are there any circumstances when the excise tax under section 4974 for a taxable year may be waived?

A-7. (a) *Reasonable cause.* The tax under section 4974(a) may be waived if the payee described in section 4974(a) establishes to the satisfaction of the Commissioner the following —

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

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

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

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

(2) The employee's or individual's entire benefit to which that beneficiary is

entitled is distributed by the end of the fifth calendar year following the calendar year that contains the employee's or individual's date of death.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7808.

Par. 8. In § 602.101, paragraph (b) is amended by adding entries for “1.401(a)(9)-1”, “1.401(a)(9)-3”, “1.401(a)(9)-4”, and “1.403(b)-3” in numerical order to the table to read in part as follows:

§ 602.101 OMB Control numbers.

* * * * *
(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.401(a)(9)-1.....	1545-1573
* * * * *	
1.401(a)(9)-3.....	1545-1466
* * * * *	
1.401(a)(9)-4.....	1545-1573
* * * * *	
1.403(b)-3.....	1545-0996
* * * * *	

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.

Approved March 26, 2002.

Mark Weinberger,
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on April 16, 2002, 8:45 a.m., and published in the issue of the Federal Register for April 17, 2002, 67 F.R. 18988)

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2002. See Rev. Rul. 2002-25, page 904.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2002. See Rev. Rul. 2002-25, page 904.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2002. See Rev. Rul. 2002-25, page 904.

Section 482.—Allocation of Income and Deductions Among Taxpayers

Federal short-term, mid-term, and long-term rates are set forth for the month of May 2002. See Rev. Rul. 2002-25, page 904.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2002. See Rev. Rul. 2002-25, page 904.

Section 642.—Special Rules for Credits and Deductions

Federal short-term, mid-term, and long-term rates are set forth for the month of May 2002. See Rev. Rul. 2002-25, page 904.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2002. See Rev. Rul. 2002–25, on this page.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2002. See Rev. Rul. 2002–25, on this page.

Section 1041.—Transfers of Property Between Spouses or Incident to Divorce

26 CFR 1.1041–1T: Treatment of transfer of property between spouses or incident to divorce.

A taxpayer who transfers interests in nonstatutory stock options and nonqualified deferred compensation to the taxpayer's former spouse incident to divorce is not required to include an amount in gross income upon the transfer. Rather, the former spouse is required to include an amount in gross

income when the former spouse exercises the stock options or when the deferred compensation is paid or made available to the former spouse. See Rev. Rul. 2002–22, page 849.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate; and the long-term exempt rate. For purposes of sections 382, 1274, 1288, and other sections of the Code, tables set forth the rates for May 2002.

Rev. Rul. 2002–25

This revenue ruling provides various prescribed rates for federal income tax purposes for May 2002 (the current month). Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 2002–25 TABLE 1

Applicable Federal Rates (AFR) for May 2002

Period for Compounding

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Short-Term</i>				
AFR	3.21%	3.18%	3.17%	3.16%
110% AFR	3.53%	3.50%	3.48%	3.47%
120% AFR	3.86%	3.82%	3.80%	3.79%
130% AFR	4.17%	4.13%	4.11%	4.09%
<i>Mid-Term</i>				
AFR	4.99%	4.93%	4.90%	4.88%
110% AFR	5.49%	5.42%	5.38%	5.36%
120% AFR	6.01%	5.92%	5.88%	5.85%
130% AFR	6.51%	6.41%	6.36%	6.33%
150% AFR	7.54%	7.40%	7.33%	7.29%
175% AFR	8.82%	8.63%	8.54%	8.48%

REV. RUL. 2002-25 TABLE 1—CONTINUED

Applicable Federal Rates (AFR) for May 2002

Period for Compounding

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
<i>Long-Term</i>				
AFR	5.85%	5.77%	5.73%	5.70%
110% AFR	6.45%	6.35%	6.30%	6.27%
120% AFR	7.04%	6.92%	6.86%	6.82%
130% AFR	7.64%	7.50%	7.43%	7.39%

REV. RUL. 2002-25 TABLE 2

Adjusted AFR for May 2002

Period for Compounding

	<i>Annual</i>	<i>Semiannual</i>	<i>Quarterly</i>	<i>Monthly</i>
Short-term adjusted AFR	2.56%	2.54%	2.53%	2.53%
Mid-term adjusted AFR	3.98%	3.94%	3.92%	3.91%
Long-term adjusted AFR	5.01%	4.95%	4.92%	4.90%

REV. RUL. 2002-25 TABLE 3

Rates Under Section 382 for May 2002

Adjusted federal long-term rate for the current month	5.01%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	5.01%

REV. RUL. 2002-25 TABLE 4

Appropriate Percentages Under Section 42(b)(2) for May 2002

Appropriate percentage for the 70% present value low-income housing credit	8.27%
Appropriate percentage for the 30% present value low-income housing credit	3.54%

REV. RUL. 2002-25 TABLE 5

Rate Under Section 7520 for May 2002

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest

6.0%

Section 1288.—Treatment of Original Issue Discounts on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2002. See Rev. Rul. 2002-25, page 904.

Section 2032A.—Valuation of Certain Farm, etc., Real Property

26 CFR 20.2032A-4: Method of valuing farm real property.

Special use value; farms; interest rates. The 2002 interest rates to be used in computing the special use value of farm real property for which an election is made under section 2032A of the Code are listed for estates of decedents.

Rev. Rul. 2002-26

This revenue ruling contains a list of the average annual effective interest rates on new loans under the Farm Credit Bank system. This revenue ruling also contains a list of the states within each Farm Credit Bank District.

Under § 2032A(e)(7)(A)(ii) of the Internal Revenue Code, rates on new Farm Credit Bank loans are used in computing the special use value of real property used as a farm for which an election is made under § 2032A. The rates in this revenue ruling may be used by estates that value farmland under § 2032A as of a date in 2002.

Average annual effective interest rates, calculated in accordance with § 2032A(e)(7)(A) and § 20.2032A-4(e) of the Estate Tax Regulations, to be used under § 2032A(e)(7)(A)(ii), are set forth in the accompanying Table of Interest Rates

(Table 1). The states within each Farm Credit Bank District are set forth in the accompanying Table of Farm Credit Bank Districts (Table 2).

Rev. Rul. 81-170 (1981-1 C.B. 454) contains an illustrative computation of an average annual effective interest rate. The rates applicable for valuation in 2001 are in Rev. Rul. 2001-21 (2001-1 C.B. 1144). For rate information for years prior to 2001, see Rev. Rul. 2000-26 (2000-1 C.B. 1124), and other revenue rulings that are referenced therein.

DRAFTING INFORMATION

The principal author of this revenue ruling is Lane Damazo of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling, contact Lane Damazo at (202) 622-3090 (not a toll-free call).

REV. RUL. 2002-26 TABLE 1

TABLE OF INTEREST RATES

(Year of Valuation 2002)

Farm Credit Bank District in Which Property Is Located	Interest Rate
Columbia	9.68
Omaha/Spokane	7.77
Sacramento	7.66
St. Paul	7.88
Springfield	8.16
Texas	7.80
Wichita	7.96

REV. RUL. 2002-26 TABLE 2

TABLE OF FARM CREDIT BANK DISTRICTS

District	States
Columbia	Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia, West Virginia.
Omaha/Spokane	Alaska, Idaho, Iowa, Montana, Nebraska, Oregon, South Dakota, Washington, Wyoming.
Sacramento	Arizona, California, Hawaii, Nevada, Utah.
St. Paul	Arkansas, Illinois, Indiana, Kentucky, Michigan, Minnesota, Missouri, North Dakota, Ohio, Tennessee, Wisconsin.
Springfield	Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont.
Texas	Alabama, Louisiana, Mississippi, Texas.
Wichita	Colorado, Kansas, New Mexico, Oklahoma.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2002. See Rev. Rul. 2002-25, page 904.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of May 2002. See Rev. Rul. 2002-25, page 904.

Part III. Administrative, Procedural, and Miscellaneous

Notice of Proposed Rules Regarding Employment Taxation of Transfers Incident to Divorce

Notice 2002-31

I. Overview and Purpose

This notice sets forth the contents of a proposed revenue ruling explaining how the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at Source on Wages (income tax withholding) apply to a transfer of interests in nonstatutory stock options and nonqualified deferred compensation to a former spouse incident to a divorce. The proposed revenue ruling also contains proposed reporting requirements with respect to such transferred interests.

This notice solicits comments regarding the proposed revenue ruling. The Department of the Treasury and the Internal Revenue Service anticipate issuing a final revenue ruling after the comments have been considered.

II. Proposed Revenue Ruling

The facts in the proposed revenue ruling below are the same as in Rev. Rul. 2002-22, page 849, this Bulletin, and are restated here for convenience.

PROPOSED REVENUE RULING

ISSUES

(1) What is the effect upon taxation under the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at Source on Wages (income tax withholding) of a transfer of interests in nonstatutory stock options and nonqualified deferred compensation to a former spouse incident to divorce?

(2) What is the appropriate reporting of income and/or wages recognized with respect to nonstatutory stock options and

nonqualified deferred compensation transferred to a former spouse incident to divorce?

FACTS

Prior to their divorce in 2002, *A* and *B* were married individuals residing in State *X* who used the cash receipts and disbursements method of accounting.

A is employed by Corporation *Y*. Prior to the divorce, *Y* issued nonstatutory stock options to *A* as part of *A*'s compensation. The nonstatutory stock options did not have a readily ascertainable fair market value within the meaning of section 1.83-7(b) of the Income Tax Regulations at the time granted to *A*, and thus no amount was included in *A*'s gross income with respect to those options at the time of grant.

Y maintains two unfunded, deferred compensation plans under which *A* earns the right to receive post-employment payments from *Y*. Under one of the deferred compensation plans, participants are entitled to payments based on the balance of individual accounts of the kind described in section 31.3121(v)(2)-1(c)(1)(ii) of the Employment Tax Regulations. By the time of *A*'s divorce from *B*, *A* had an account balance of \$100x under that plan. Under the second deferred compensation plan maintained by *Y*, participants are entitled to receive single sum or periodic payments following separation from service based on a formula reflecting their years of service and compensation history with *Y*. By the time of *A*'s divorce from *B*, *A* had accrued the right to receive a single sum payment of \$50x under that plan following *A*'s termination of employment with *Y*. *A*'s contractual rights to the deferred compensation benefits under these plans were not contingent on *A*'s performance of future services for *Y*.

Under the law of State *X*, stock options and unfunded deferred compensation rights earned by a spouse during the period of marriage are marital property subject to equitable division between the spouses in the event of divorce. Pursuant to the property settlement incorporated into their judgment of divorce, *A* trans-

ferred to *B* (1) one-third of the nonstatutory stock options issued to *A* by *Y*, (2) the right to receive deferred compensation payments from *Y* under the account balance plan based on \$75x of *A*'s account balance under that plan at the time of the divorce, and (3) the right to receive a single sum payment of \$25x from *Y* under the other deferred compensation plan upon *A*'s termination of employment with *Y*.

In 2006, *B* exercises all of the transferred stock options and receives *Y* stock with a fair market value in excess of the exercise price of the options. In 2011, *A* terminates employment with *Y*, and *B* receives a single sum payment of \$150x from the account balance plan and a single sum payment of \$25x from the other deferred compensation plan.

LAW AND ANALYSIS

Rev. Rul. 2002-22, page 849, concludes that a taxpayer who transfers interests in nonstatutory stock options and nonqualified deferred compensation to the taxpayer's former spouse incident to divorce is not required to include an amount in gross income upon the transfer. The ruling also concludes that the former spouse, rather than the taxpayer, is required to include an amount in gross income when the former spouse exercises the stock options or when the deferred compensation is paid or made available to the former spouse.

FICA Wages

Sections 3101 and 3111 impose FICA taxes on "wages" as that term is defined in section 3121(a). FICA taxes consist of the Old-Age, Survivors and Disability Insurance tax (social security tax) and the Hospital Insurance tax (Medicare tax). These taxes are imposed on both the employer and employee. Sections 3101(a) and 3101(b) impose the employee portions of the social security tax and the Medicare tax, respectively. Sections 3111(a) and (b) impose the employer portions of the social security tax and the Medicare tax, respectively.

Section 3102(a) provides that the employee portion of FICA taxes must be collected by the employer of the taxpayer by deducting the amount of the tax from wages as and when paid. Section 31.3102(a)-1(a) of the Employment Tax Regulations provides that the employer is required to collect the tax, notwithstanding that wages are paid in something other than money. Section 3102(b) provides that every employer required to deduct the FICA employee tax is liable for the payment of that tax, and is indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

The term “wages” is defined in section 3121(a) for FICA purposes as all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash, with certain specific exceptions. Section 3121(b) defines “employment” as any service, of whatever nature, performed by an employee for the person employing him, with certain specific exceptions.

Section 31.3121(a)-1(e) of the regulations provides that in general the medium in which the remuneration is paid is immaterial. It may be paid in cash or other than in cash. Remuneration paid in any medium other than cash is computed on the basis of the fair market value of such items at the time of payment.

Under section 3121(v)(2), amounts deferred under a nonqualified deferred compensation plan generally are to be taken into account when the services are performed or, if later, when there is no substantial risk of forfeiture. To the extent benefit payments under a nonqualified deferred compensation plan are attributable to amounts deferred under the plan that have been taken into account for FICA tax purposes, the benefit payments are not treated as FICA wages. To the extent benefit payments are attributable to an amount deferred that has not been taken into account for FICA tax purposes, then the benefit payments are treated as FICA wages. See section 31.3121(v)(2)-1(d)(1)(ii) of the regulations.

In the Social Security Amendments of 1983, Public Law No. 98-21 (1983-2 C.B. 309), Congress added language to section 3121(a) providing that nothing in the income tax withholding regulations

that provides an exclusion from wages for income tax withholding purposes shall be construed to require a similar exclusion from wages for FICA purposes. The legislative history in connection with this provision states that “[s]ince the [social] security system has objectives which are significantly different from the objective underlying the income tax withholding rules, the committee believes that amounts exempt from income tax withholding should not be exempt from FICA tax unless Congress provides an explicit tax exclusion.” S. Rep. No. 23, 98th Cong., 1st Sess. at 42 (1983).

The fact that payments are includible in the gross income of an individual other than an employee does not remove the payments from FICA wages. See Rev. Rul. 71-116 (1971-1 C.B. 277) holding that payments of wages to an employee in a community property state are FICA wages although one-half of the wages is includible in the gross income of the nonemployee spouse. See also Rev. Rul. 86-109 (1986-2 C.B. 196) which holds that payments of remuneration for employment made after the death of an employee and in the calendar year of the death are wages for FICA tax purposes, although the amounts are includible in the gross income of the recipient and not the employee.

Rev. Rul. 2002-22 holds that, upon the exercise of nonstatutory stock options obtained by a nonemployee spouse pursuant to divorce, the property transferred to the nonemployee spouse by the employer has the same character and is includible in the income of the nonemployee spouse under section 83(a) to the same extent as the property would have been includible in the income of the employee spouse had the options been retained and exercised by the employee spouse. Rev. Rul. 2002-22 further holds that nonqualified deferred compensation, the right to which is obtained by a nonemployee spouse pursuant to divorce, paid or made available to the nonemployee spouse has the same character and is includible in the income of the nonemployee spouse to the same extent as the compensation would have been includible in the income of the employee spouse had the compensation been paid or made available to the employee spouse. Nothing in section 1041 excludes payments to a person other

than an employee from wages for purposes of FICA. In the absence of a specific provision that would exclude these payments from FICA wages, the compensation realized on the exercise of the stock options by the nonemployee spouse and the deferred compensation paid or made available to the nonemployee spouse retain their character as wages of the employee spouse for purposes of FICA. Thus, the payment of such remuneration is subject to FICA to the same extent as if paid to the employee spouse.

Accordingly, the nonqualified deferred compensation paid or made available to the former spouse remains subject to the rules of section 3121, including section 3121(v) and the regulations thereunder, to determine when and whether FICA tax is applicable. Thus, to the extent the amount deferred has been previously taken into account for FICA purposes, the distribution to the former spouse of the proceeds of the account balance plan would not be treated as wages for FICA tax purposes. However, to the extent the amount deferred has not been previously taken into account for FICA tax purposes, the distribution to the former spouse of the proceeds of the account balance plan would be wages of the employee for FICA tax purposes. Similarly, under section 3121 and the regulations thereunder, a former spouse’s exercise of nonqualified stock options results in FICA wages of the employee to the extent that the fair market value of the stock received pursuant to the exercise of the option exceeds the option exercise price.

To the extent the distributed payments are FICA wages, the employee FICA tax is deducted from the payment made to the transferee. The amount includible in the gross income of the transferee is not reduced by any FICA withholding from the payments (including transfers of property) to the transferee. See Rev. Rul. 86-109 and Rev. Rul. 71-116.

Because A was the service performer and the remuneration relates to A’s service in employment with Y, the wages, although paid to B, are FICA wages of A. See Rev. Rul. 71-116. Thus, because the payments are wages for FICA tax purposes, the payments are reportable by Y as social security wages and Medicare wages on a Form W-2, *Wage and Tax Statement*, issued for A, and the social

security tax withheld and Medicare tax withheld are also reportable on the Form W-2 for A. Y may take into account other wages previously paid to A in that calendar year in determining whether these distributions are excepted from social security wages under section 3121(a)(1), the maximum social security wage base exception. Finally, these payments should not be included in Box 1, Wages, tips, other compensation, nor should any amount be reflected in Box 2, Federal income tax withheld, of the Form W-2 issued to A with respect to these payments.

FUTA

The FUTA taxation provisions applicable with respect to nonqualified stock options and nonqualified deferred compensation plans are similar to the FICA provisions, except that only the employer pays the tax imposed under FUTA. See sections 3301, 3306(b), and 3306(r)(2) and the regulations thereunder. Because of the similar statutory provisions, FUTA taxation applies at the same time and in the same manner as FICA. To the extent wage taxation applies, the wages are FUTA wages of the employee A, subject to the maximum wage base contained in section 3306(b)(1). As with FICA, wages previously paid to the employee during the calendar year may be taken into account in determining whether these amounts qualify for the FUTA maximum wage base exception.

Income Tax Withholding

Section 3402(a) of the Code, relating to income tax withholding, generally requires every employer making a payment of wages to deduct and withhold upon those wages a tax determined in accordance with prescribed tables or computational procedures.

Section 3401(a) provides that “wages” for income tax withholding purposes means all remuneration for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash, with certain exceptions not pertinent to this ruling.

Under section 31.3402(a)-1(c) of the regulations, an employer is required to

deduct and withhold the tax notwithstanding that the wages are paid in something other than money (for example, wages paid in stock or bonds) and to pay over the tax in money. If the wages are paid in property other than money, the employer should make necessary arrangements to insure that the amount of the tax required to be withheld is available for payment in money.

Section 31 provides that the amount withheld from wages as income tax withholding will be allowed to the “recipient of the income” as a credit against the income taxes imposed by Subtitle A. Section 1.31-1(a) of the Income Tax Regulations provides that the “recipient of the income” for purposes of the section 31 credit is the individual who is subject to income taxes upon the wages from which the tax was withheld. For example, if an employee spouse and nonemployee spouse are domiciled in a community property state and file separate income tax returns, each reporting for income tax purposes one-half of the wages received by the employee spouse, each spouse is entitled to one-half of the credit allowable for the tax withheld at the source with respect to the wages.

Because the compensatory interests transferred under section 1041 to the nonemployee spouse pursuant to the divorce remain taxable for employment tax purposes to the same extent as if retained by the employee spouse, the income recognized by the nonemployee spouse with respect to the exercise of the nonqualified stock options and the distributions from the nonqualified deferred compensation plans are remuneration for employment and wages for purposes of income tax withholding under section 3402. Pursuant to section 1.31-1(a) of the regulations, because the income recognized with respect to this compensation is includible in the gross income of the nonemployee spouse, the nonemployee spouse is entitled to the credit for the income tax withheld with respect to these wage payments.

Reporting of payments

Section 6051 requires payors of remuneration to an employee to report those payments on Form W-2, *Wage and Tax Statement*. Because the former spouse is

not an employee, the reporting requirements of section 6051 do not apply.

Section 6041(a) requires that all persons engaged in a trade or business who make a payment to a third party during the course of such business must file a return with the IRS, reporting all payments totaling \$600 or more in a taxable year, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits and income. In this case, pursuant to section 6041(a), Y must file an information return reporting both the income B realized from B's exercise of the nonstatutory stock options and the payments made to B from the deferred compensation plans.

Under section 31.6051-1(a)(1) of the regulations, the wages of an employee that are subject to social security and Medicare taxes are included in the appropriate boxes on the Form W-2 issued to the employee. See also Rev. Rul. 71-116.

Because there is no provision for the issuance of Form W-2 in the name of a nonemployee spouse, the income realized upon the exercise of the nonqualified stock options would be reportable to the nonemployee spouse by Y on Form 1099-MISC, *Miscellaneous Income*, issued to the nonemployee spouse, in Box 3, Other Income, with the income tax withheld reported in Box 4, Federal income tax withheld. The payments to the nonemployee spouse B from the nonqualified deferred compensation plans and the withholding thereon would also be reportable by Y on a Form 1099-MISC in Box 3, with the income tax withheld reported in Box 4.

Social security wages, social security tax withheld, Medicare wages, and Medicare taxes withheld, if applicable, are reported on the employee spouse's Form W-2 as described above.

Employers would report the income tax withholding on wages paid to the nonemployee spouse on Form 945, *Annual Return of Withheld Federal Income Tax*. The social security and Medicare tax paid with respect to these wages of the employee spouse would be reported on Form 941, *Employer's Quarterly Federal Tax Return*. FUTA tax with respect to wages of the employee spouse would be reported on Form 940, *Employer's Annual Federal Unemployment Tax Return*.

HOLDINGS

(1) The transfer of interests in non-statutory stock options and nonqualified deferred compensation from the employee spouse to the nonemployee spouse incident to divorce does not result in a payment of wages for FICA and FUTA tax purposes.

The nonstatutory stock options are subject to FICA and FUTA taxes at the time of exercise by the nonemployee spouse to the same extent as if the options had been retained by the employee spouse and exercised by the employee spouse. The nonqualified deferred compensation also remains subject to FICA and FUTA taxes to the same extent as if the rights to the compensation had been retained by the employee spouse. To the extent FICA and FUTA taxation apply, the wages are the wages of the employee spouse. The employee portion of the FICA taxes is deducted from the wages as and when the wages are taken into account for FICA tax purposes.

The income recognized by the nonemployee spouse with respect to the exercise of the nonqualified stock options is subject to withholding under section 3402. The amounts distributed to the nonemployee spouse from the nonqualified deferred compensation plans are also subject to withholding under section 3402. Pursuant to section 31, the nonemployee spouse is entitled to the credit allowable for the income tax withheld at the source on these wages.

(2) The social security wages, Medicare wages, social security taxes withheld, and Medicare taxes withheld, if applicable, are reportable on a Form W-2 with the name, address, and social security number of the employee spouse. However, no amount is includible in Box 1 and Box 2 of the employee's Form W-2 with respect to these payments. The income with respect to the exercise of the nonqualified stock option by the nonemployee spouse and the distributions from the nonqualified deferred compensation plans to the nonemployee spouse are reportable in Box 3 as other income on a Form 1099-MISC with the name, address, and social security number of the nonemployee spouse. Income tax withholding with respect to these payments of

wages is included in Box 4, Federal income tax withheld.

Income tax withholding on payments to the nonemployee spouse is included on a Form 945 filed by Y. The social security tax and Medicare tax is reported on Y's Form 941, and the FUTA tax is reported on Y's Form 940.

III. Request for Comments

Comments are requested regarding the proposed FICA, FUTA, income tax withholding, and reporting obligations with respect to transfers of interests in non-statutory stock options and nonqualified deferred compensation incident to divorce. All comments will be available for public inspection and copying. Comments must be submitted by July 15, 2002. Comments should reference Notice 2002-31, and be addressed to:

Associate Chief Counsel
(Tax Exempt and Government
Entities)
CC:TEGE
Attn: Employment Taxation of
Transfers Incident to Divorce
Room 5214
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224

In addition, comments may be submitted electronically via the Internet by sending them in an e-mail to notice.comments@irs.counsel.treas.gov and specifying the comments concern Notice 2002-31.

IV. Proposed Effective Date of Proposed Revenue Ruling

It is proposed that the revenue ruling described above be effective January 1 of the calendar year beginning not less than 120 days after the publication of the conclusions proposed in this notice as a revenue ruling or other document. For periods before the effective date, it is expected that the revenue ruling will provide relief to employers for reasonable, good faith interpretations, including the interpretation in the proposed revenue ruling. However, with respect to compensation that is transferred to a spouse incident to divorce, it is expected that failure

to treat nonqualified stock option compensation, or amounts deferred under a nonqualified deferred compensation plan, as subject to FICA will not be considered a reasonable, good faith interpretation.

Drafting Information

The principal author of this notice is A. G. Kelley of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from Treasury and the Service participated in its development. For further information regarding this notice, contact A. G. Kelley at (202) 622-6040 (not a toll-free call).

26 CFR 601.201: Rulings and determination letters (Also, Part I, § 401; § 1.401(a)-2.)

Rev. Proc. 2002-21

SECTION 1. INTRODUCTION

.01 *Introduction.* This revenue procedure describes steps that may be taken to ensure the qualified status of defined contribution retirement plans maintained by professional employer organizations (PEOs) for the benefit of Worksite Employees. PEOs are also commonly known as employee leasing organizations.

.02 *Potential for plan disqualification.* The employment relationship between workers and the employer maintaining a plan is fundamental to whether a plan is qualified under § 401(a) of the Internal Revenue Code. The determination of whether an employment relationship exists depends on the facts and circumstances of each particular case. If a retirement plan provides benefits for individuals who are not employees of the employer maintaining the plan, the plan does not satisfy the exclusive benefit rule contained in § 401(a)(2), and therefore could be disqualified.

.03 *Relief from disqualification of plan.* The Service recognizes the complexity involved in the determination of whether a Worksite Employee is the common law employee of the PEO or the client organization (CO), as well as the need of the PEO, the CO, Worksite Employees, and plan administrators for certainty in this area. Accordingly, this revenue procedure provides a framework under which

plans sponsored by PEOs will not be treated as violating the exclusive benefit rule solely because they provide benefits to Worksite Employees. Under the approach provided in this revenue procedure, a PEO that maintains a defined contribution retirement plan may establish a multiple employer plan that benefits Worksite Employees providing services to COs. For PEOs that do not wish to establish a multiple employer plan, the revenue procedure provides transition rules under which the existing PEO plan will be treated as a qualified plan if it is terminated by a specified date.

SECTION 2. PURPOSE

.01 *In general.* The purpose of this revenue procedure is to provide relief with respect to certain defined contribution retirement plans maintained by a PEO (“PEO Retirement Plans”) that benefit Worksite Employees.

.02 *Scope of relief.* With regard to PEO Retirement Plans established prior to May 13, 2002, if the requirements of section 5 are met, the Service will not disqualify the PEO Retirement Plan solely on account of an exclusive benefit rule violation under § 401(a)(2) for a plan year beginning before the Compliance Date if that violation results from the PEO Retirement Plan benefitting Worksite Employees who are not the PEO’s employees. Relief provided under this revenue procedure applies only with respect to the PEO Retirement Plan for which relief is granted and not to other plans maintained by a CO or the PEO.

.03 *No effect on other law.* The relief provided under this revenue procedure with respect to the provisions of § 401(a) has no effect on the rights of any party under any other law, including Title I of the Employee Retirement Income Security Act of 1974 and other provisions of the Internal Revenue Code.

SECTION 3. BACKGROUND

.01 *In general.* An employee leasing arrangement typically involves the interaction among three parties: the PEO, the CO, and the Worksite Employees. In a typical situation, a PEO enters into an agreement with a CO whereby employees become Worksite Employees and continue to provide services to the CO.

.02 *Employment relationship.* The issue of whether a worker is an employee of a particular entity for employment tax purposes is determined by reference to § 3121(d), which incorporates the common law definition of employee. The Supreme Court has also applied this common law definition of employee for purposes of determining whether a worker is an employee entitled to receive benefits under a retirement plan. See *Nationwide Mutual Insurance Co. v. Darden*, 503 U.S. 318 (1992). Courts have also found that common law factors are applicable to determine which of two entities is the employer for purposes of retirement plans. The critical issue in determining who is the employer of an individual is which entity has the right to direct and control the individual performing the services. If it is found that the CO, not the PEO, is the employer, the plan maintained by a PEO that benefits Worksite Employees of the CO would fail to satisfy the exclusive benefit rule. See *Professional and Executive Leasing, Inc. v. Commissioner*, 89 T.C. 225 (1987), *aff’d*, 862 F.2d 751 (9th Cir. 1988).

.03 *Exclusive benefit rule.* Section 401(a)(2) provides that a trust forming a part of a qualified pension, profit-sharing, or stock bonus plan must be a trust established and maintained by an employer for the exclusive benefit of that employer’s employees and their beneficiaries (“exclusive benefit rule”). Therefore, a retirement plan that provides benefits for individuals who are not employees of the employer maintaining the plan (and who are not otherwise treated as employees under rules such as those under § 414) violates the exclusive benefit rule and does not satisfy the requirements of § 401(a).

.04 *Leased employees.* Section 414(n) does not permit PEOs to maintain plans for Worksite Employees who are not the common law employees of the PEO. Section 414(n) deals with individuals who are not common law employees of the entity for which they perform services (“recipient”) but who might have to be taken into account in determining whether a retirement plan maintained by the recipient satisfies the requirements of § 401(a). Notice 84-11 (1984-2 C.B. 469) provides questions and answers relating to § 414(n). Section 414(n)

addresses the relationship between the recipient and the leased workers, but it does not apply to situations in which a worker is the common law employee of the recipient.

.05 *Multiple employer plan.* Section 413(c) provides rules for the qualification of a plan maintained by more than one employer (*i.e.*, a “multiple employer plan”). Under § 413(c)(2), in determining whether a multiple employer plan complies with the exclusive benefit rule, all employees benefitting under the multiple employer plan are treated as the employees of all employers who maintain the plan. Additionally, an employee’s service with all of the employers participating in the plan is taken into account for purposes of vesting under § 411 and plan participation under § 410(a). See § 413(c)(1) and (3). Similarly, for purposes of the contribution and benefit limitations of § 415, an employee’s compensation from all employers participating in the plan is taken into account. See § 1.415-1(e)(1) of the Income Tax Regulations. Other rules apply separately to each participating employer and its employees. For example, nondiscrimination testing under § 401(a)(4) and § 401(k), and coverage testing under § 410(b), are performed separately for each employer maintaining the multiple employer plan. See § 1.401(a)(4)-1(c)(4), § 1.413-2(a)(3)(ii) and § 1.401(k)-1(g)(11). Top-heavy requirements under § 416 also apply separately to each employer. See § 1.416-1, Q&A G-2.

SECTION 4. RELIEF AVAILABLE

.01 *No disqualification of PEO Retirement Plan.* If a PEO has a PEO Retirement Plan in existence on May 13, 2002, that benefits Worksite Employees, section 5 provides the PEO with the option of either converting the PEO Retirement Plan to a multiple employer plan or terminating the plan. If a PEO timely satisfies the requirements of section 5, the Service will not disqualify its PEO Retirement Plan solely on the grounds that the plan violates or has violated the exclusive benefit rule for plan years beginning before the Compliance Date by benefitting Worksite Employees who are not the PEO’s employees.

.02 *Effective Dates.* (1) *Compliance Date.* Except as specifically provided, all

remedial actions and other requirements in section 5 must be completed by the Compliance Date. The Compliance Date is the last day of the first plan year of the PEO Retirement Plan beginning on or after January 1, 2003. For a calendar year plan, the Compliance Date is December 31, 2003.

(2) *PEO Decision Date.* The PEO Decision Date is the date by which the PEO must take specified actions affirming its decision whether to terminate the PEO Retirement Plan or maintain a multiple employer retirement plan that benefits Worksite Employees. The PEO Decision Date is the date that is 120 days after the first day of the plan year beginning on or after January 1, 2003. For a calendar year plan, the PEO Decision Date is May 2, 2003.

.03 *Plan terminations.* For the purpose of determining whether a PEO Retirement Plan or Spinoff Retirement Plan satisfies the qualification requirements in § 401(a) upon plan termination (as described in section 5.06), Worksite Employees may be treated as if they were employees of the PEO.

SECTION 5. REMEDIAL ACTION REQUIRED

.01 *In general.* In order to obtain the relief provided in section 4, the plan sponsor of a PEO Retirement Plan must either terminate the PEO Retirement Plan in accordance with section 5.02, or convert the PEO Retirement Plan into a multiple employer plan (“Multiple Employer Retirement Plan”) in accordance with section 5.03.

.02 *Termination Option.* (1) *Termination of PEO Retirement Plan.* If a PEO chooses to terminate a PEO Retirement Plan in accordance with this section, the PEO must adopt a resolution of its board of directors (or, if the PEO is not a corporation, it must take comparable binding action, such as a partnership vote) on or before the PEO Decision Date, providing that the plan will be terminated on or before the Compliance Date. After the date of termination, all assets in the plan’s related trust must be distributed as soon as administratively feasible. *See* Rev. Rul. 89–87 (1989–2 C.B. 81). Consequently, the mere discontinuance of contributions under the PEO Retirement

Plan is not a termination of the plan and will not satisfy the requirements of this section.

(2) *Notification of COs.* The PEO must provide notice of the options set forth in section 5.02(3) to each CO that has Worksite Employees with accrued benefits in the PEO Retirement Plan. The PEO must specify in the notice the date by which each CO must notify the PEO of the option it selects. This notice must be sent on or before the PEO Decision Date.

(3) *CO Options.* The PEO must provide each CO with all of the following options:

(a) *Transfer of assets and liabilities to CO plans.* The CO may choose to have the assets and liabilities of the PEO Plan that are attributable to Worksite Employees performing services for the CO transferred to a retirement plan of the CO as provided in section 5.04(1). The transfer of assets and liabilities attributable to Worksite Employees performing services for the CO to the CO’s plan must be completed on or before the Compliance Date.

(b) *Spinoff of assets and liabilities to a separate plan and termination of that plan.* The CO may choose to have the assets and liabilities of the PEO Retirement Plan that are attributable to its Worksite Employees spun off to a Spinoff Retirement Plan, which is then terminated, as provided in section 5.04(2). The spinoff and termination must be completed on or before the Compliance Date. Plan assets must be distributed as soon as administratively feasible after the plan termination date.

(4) *CO Decision and Implementation.* The CO must provide notice of the selected option to the PEO by a date specified by the PEO. If a CO fails to timely inform the PEO of the option it selected, the PEO must treat the CO as having selected option 5.02(3)(b) (Spinoff and Termination). The PEO must implement the choice made or deemed made by each CO on or before the Compliance Date.

(5) *Determination Letter request.* The PEO must request determination letters on the termination of the PEO Retirement Plan and the Spinoff Retirement Plan. *See* section 5.06 of this revenue procedure for further information on determination letters on plan terminations.

.03 *Conversion Option.* (1) *Conversion to Multiple Employer Retirement Plan.* A PEO may choose to convert the PEO Retirement Plan to a Multiple Employer Retirement Plan, effective the first day of the first plan year beginning after the Compliance Date. If the PEO chooses this option, the PEO must satisfy the requirements of section 5.03(2) through (6). In addition, the Multiple Employer Retirement Plan must be adopted by those COs that wish to have Worksite Employees participate in the plan. To the extent that a PEO Retirement Plan is converted into a Multiple Employer Retirement Plan, assets and liabilities will remain in the plan and not be distributed to participants.

(2) *Adoption of Plan Amendments.* The PEO must adopt plan amendments necessary to convert the PEO Retirement Plan to a Multiple Employer Retirement Plan on or before the PEO Decision Date. The effective date of the plan amendments adopted by the PEO must be no later than the first day of the first plan year beginning after the Compliance Date.

(3) *Notification of COs.* The PEO must provide notice of the options set forth in section 5.03(4) to each CO that has Worksite Employees with accrued benefits in the PEO Retirement Plan. The PEO must specify in the notice the date by which each CO must notify the PEO of the option it selects. This notice must be sent on or before the PEO Decision Date.

(4) *CO Options.* The PEO must provide each CO with all of the following options:

(a) *Adoption of Multiple Employer Retirement Plan.* The CO may adopt the Multiple Employer Retirement Plan. The CO must adopt the Multiple Employer Retirement Plan by the first day of the first plan year beginning after the Compliance Date (or any earlier date as may be specified by the PEO). If a CO chooses this option, the Worksite Employees performing services for the CO may participate in the Multiple Employer Retirement Plan after its adoption by the CO without causing the plan to fail to satisfy the exclusive benefit rule. If a CO has not adopted the Multiple Employer Retirement Plan by the first day of the first plan year beginning after the Compliance Date (or any earlier date as may be specified by the PEO), the Multiple Employer Retirement Plan may

not accept contributions after the Compliance Date on behalf of the Worksite Employees performing services for the CO. In that event, the assets and liabilities attributable to the COs must be spun off as soon as administratively feasible to a Spinoff Retirement Plan.

(b) *Transfer of assets and liabilities to CO plans.* The CO may choose to have the assets and liabilities of the PEO Retirement Plan that are attributable to its Worksite Employees transferred to a retirement plan of the CO as provided in section 5.04(1). The transfer must be completed on or before the Compliance Date.

(c) *Spinoff of assets and liabilities to a separate plan and termination of that plan.* The CO may choose to have the assets and liabilities of the PEO Retirement Plan that are attributable to its Worksite Employees spun off to a Spinoff Retirement Plan that is then terminated, as provided for in section 5.04(2). The spinoff and termination must occur on or before the Compliance Date. Plan assets must be distributed as soon as administratively feasible after the plan termination date

(5) *CO Decision and Implementation.* The CO must provide notice of the selected option to the PEO by a date specified by the PEO. If a CO fails to timely inform the PEO of the option it selected, the PEO must treat the CO as having selected option 5.03(4)(c) (Spinoff of assets and liabilities). The PEO must implement the choice made or deemed made by each CO on or before the Compliance Date.

(6) *Determination Letter request.* The PEO must request determination letters on the Multiple Employer Retirement Plan and the Spinoff Retirement Plan. See section 7.02 of this revenue procedure for further information on an application for a determination letter on the qualified status of a Multiple Employer Retirement Plan. See section 5.06 of this revenue procedure for further information on determination letters on plan terminations.

.04 *Transfers to CO's plan or Spinoff of CO's assets and liabilities.* This section 5.04 applies if the PEO decides to terminate the PEO Retirement Plan; if a CO chooses to terminate its participation in the PEO Retirement Plan and transfer its

attributable assets and liabilities to the CO's plan; or if a CO's attributable assets and liabilities are spun off to a Spinoff Retirement Plan and distributed in connection with the termination of the Spinoff Retirement Plan.

(1) *Transfers to CO's plan.* (a) *Documentation of qualified status of plan maintained by the CO.* If a CO chooses to transfer its attributable assets and liabilities in a PEO's Retirement Plan to the CO's plan, the CO must provide the PEO, on or before a date specified by the PEO, with documentation that the plan to which assets are transferred is a qualified plan established and maintained by the CO. If such documentation is provided, the PEO must transfer the assets and liabilities attributable to the Worksite Employees from the PEO Retirement Plan to the CO's plan before the Compliance Date. If the CO fails to provide the PEO with this documentation, or any other information required by the PEO to effect transfer, on or before the date specified by the PEO, the PEO must utilize the procedures in section 5.04(2).

(b) *Qualified Plan Determination.* For purposes of determining whether a CO maintains a qualified plan, a "qualified plan" is a retirement plan that on or before the Compliance Date either (i) had received a favorable determination, notification, or opinion letter that considered GUST (GUST is an acronym for the Uruguay Round Agreements Act (GATT), the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), the Small Business Job Protection Act of 1996 (SBJPA), the Taxpayer Relief Act of 1997 (TRA'97), the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA'98) and the Community Renewal Tax Relief Act of 2000) or (ii) had submitted a request to the Service for a determination letter that considers GUST.

(2) *Spinoff and termination.* If a CO chooses a spinoff, or fails to timely notify the PEO of its selection, the PEO must implement a spinoff of the assets and liabilities of the PEO's Retirement Plan that are attributable to the CO's Worksite Employees to a Spinoff Retirement Plan. The Spinoff Retirement Plan may receive and hold assets and liabilities attributable to Worksite Employees of all of the COs that selected the spinoff option or failed

to timely notify the PEO of a selection. The PEO must then terminate the Spinoff Retirement Plan on or before the Compliance Date and distribute benefits to the Worksite Employees performing services for the COs as soon as administratively feasible after the termination date. For purposes of this revenue procedure, a *spinoff* means a spinoff of plan assets and liabilities attributable to the Worksite Employees performing services for the COs selecting the spinoff option (or failing to timely select an option) from the PEO Retirement Plan to a Spinoff Retirement Plan that satisfies the transfer requirements of § 414(l).

.05 *Methods of providing notice.* Any notice required to be provided under this revenue procedure may be sent by any method, including an electronic medium, that reasonably ensures that the intended recipient will receive timely and adequate notice. For purposes of this revenue procedure, notice sent by United States mail is considered sent as of the date of the United States postmark stamped on the cover in which the notice is mailed.

.06 *Plan terminations.* (1) *Request for determination letter on plan termination.* In choosing any of the options relating to plan terminations, a PEO must request a determination letter on the plan termination. Section 12 of Rev. Proc. 2002-6 (2002-1 I.R.B. 203) explains the procedures for requesting determination letters involving qualification of a plan upon plan termination. The permanency requirement described in § 1.401-1(b)(2) will not be raised as a disqualifying defect for plans being terminated pursuant to this revenue procedure. The request for a determination letter must be made within one year of the date of termination using the applicable provisions of Rev. Proc. 2002-6.

(2) *Distribution treated as being from a qualified plan.* Distributions made to Worksite Employees upon the termination of the PEO Retirement Plan or Spinoff Retirement Plan in accordance with this section will not fail to be eligible for favorable tax treatment accorded distributions from qualified plans (including eligibility for tax-free rollovers) solely because the plan violated the exclusive benefit rule of § 401(a)(2).

.07 *Example.* (i) A PEO maintains a PEO Retirement Plan established in 1994,

and the PEO uses the calendar year for its plan year. The PEO Retirement Plan treats all Worksite Employees performing services for COs as employees of the PEO. There are 75 COs with Worksite Employees benefiting under the PEO Retirement Plan.

(ii) After reviewing the options set forth in section 5, the PEO decides to convert the PEO Retirement Plan to a Multiple Employer Retirement Plan. In accordance with the requirements of section 5.03, on January 31, 2003, the PEO adopts amendments to the PEO Retirement Plan converting the plan to a Multiple Employer Retirement Plan, effective January 1, 2004. On February 14, 2003, the PEO mails notification to each CO that it has decided to convert the PEO Retirement Plan to a Multiple Employer Retirement Plan and explains the options available to the CO as described in section 5.03(4). In its letter to the COs, the PEO explains that each CO has until August 15, 2003, to notify the PEO, in writing, of its choice. The letter explains that if the CO does not notify the PEO of its selected option on or before August 15, 2003, the PEO will treat the CO as having selected the spinoff and termination option. The letter further explains that if a CO elects to adopt the Multiple Employer Retirement Plan, the Plan must be adopted on or before December 1, 2003.

(iii) By August 15, 2003, fifty of the COs with Worksite Employees benefitting under the PEO Retirement Plan notify the PEO of their decision to adopt and maintain the Multiple Employer Retirement Plan for the Worksite Employees. By December 1, 2003, forty-nine of the fifty COs adopted the Multiple Employer Retirement Plan, effective January 1, 2004. In accordance with section 5.03(4)(a) of this revenue procedure, on December 10, 2003, the PEO spins off the assets and liabilities attributable to the one CO that did not timely adopt the Multiple Employer Retirement Plan to a Spinoff Retirement Plan.

(iv) Ten COs timely elect a transfer, in which the assets and liabilities attributable to each CO's Worksite Employees are transferred to a qualified retirement plan established and maintained by each CO, and that satisfy the requirements

described in section 5.04(1). The ten COs timely provide all information required to effect the transfer, including documentation of the plans' qualified status. The transfers to each of the CO plans are completed by December 31, 2003.

(v) Ten COs affirmatively elect the spinoff and termination option. The PEO spins off plan assets and liabilities attributable to the Worksite Employees performing services for those COs to the Spinoff Retirement Plan on December 10, 2003.

(vi) The remaining five COs failed to notify the PEO of their choice by August 15, 2003. Therefore, in accordance with requirements in section 5.03(5), each of those COs is treated as having selected the spinoff and termination option as its choice. The PEO spins off the assets and liabilities of these COs to the Spinoff Retirement Plan on December 10, 2003.

(vii) On December 11, 2003, the PEO terminates the Spinoff Retirement Plan. On February 5, 2004, the PEO submits an application for a determination letter on the termination of the Spinoff Retirement Plan. The PEO receives a favorable determination letter on the termination of the plan. As soon as administratively feasible following the termination, distributions are made to the Worksite Employees performing services for the sixteen COs (the one CO that failed to timely adopt the Multiple Employer Retirement Plan, the ten COs that selected the spinoff and termination option, and the five COs that failed to timely notify the PEO of their choice) with assets in the Spinoff Retirement Plan.

(viii) On February 5, 2004, the PEO submits an application for a determination letter on the qualified status of the Multiple Employer Retirement Plan, and subsequently receives such a determination letter from the Service. Because the PEO took all of the steps required in section 5 of the revenue procedure, the PEO Retirement Plan is entitled to the relief set forth in section 4 of the revenue procedure.

.08 *PEOs not electing to take advantage of relief under this revenue procedure.* If a PEO does not, as of the Compliance Date, either terminate the PEO Retirement Plan it maintains for Worksite Employees performing services for COs

(as provided for in section 5.02) or convert the PEO Retirement Plan to a Multiple Employer Retirement Plan (as provided for in section 5.03), the relief in this revenue procedure is not available for any violations of the qualification requirements, including violations of the exclusive benefit rule, by PEO Retirement Plan.

.09 *No Reliance on Determination Letters for PEO Retirement Plans.* After the Compliance Date, a PEO may not rely on a determination letter for a PEO Retirement Plan that benefits Worksite Employees performing services for COs, regardless of when the determination letter was issued.

SECTION 6. DEFINITIONS

.01 *PEO Retirement Plan.* The term "PEO Retirement Plan" means a defined contribution plan (including a plan that includes a cash or deferred arrangement described in § 401(k)) intended to satisfy the requirements of § 401(a) or § 403(a). The definition of a PEO Retirement Plan does not include a plan maintained as a multiple employer plan that has been adopted by a PEO and one or more COs.

.02 *Multiple Employer Retirement Plan.* The term "Multiple Employer Retirement Plan" means a defined contribution plan (including a plan that includes a cash or deferred arrangement described in § 401(k)) intended to satisfy the requirements of § 401(a) or § 403(a), and § 413(c), under which each CO is treated as an employer.

.03 *Spinoff Retirement Plan.* The term "Spinoff Retirement Plan" means a separate plan established by a PEO for the specific purpose of a spinoff and termination as provided for in section 5.04(2).

.04 *Worksite Employees.* The term "Worksite Employees" means employees who receive amounts from a PEO for providing services to a CO pursuant to a service agreement between the PEO and the CO.

.05 *Client Organization.* The term "Client Organization" (CO) means an organization that enters into a service agreement with a PEO under which Worksite Employees provide services to the organization.

SECTION 7. PROCEDURES AND TRANSITIONAL RULE

.01 *Other qualification issues.* (1) *Use of EPCRS.* Plan qualification issues, other than the exclusive benefit issue for which relief is provided under this revenue procedure, may be resolved under the Employee Plans Compliance Resolution System (EPCRS). See Rev. Proc. 2001-17 (2001-1 C.B. 589).

(2) *Transitional relief for PEOs.* For purposes of determining whether a retirement plan maintained by a PEO for the benefit of Worksite Employees of COs satisfies the requirements of § 401(a)(2) prior to the Compliance Date, a PEO may treat Worksite Employees as its employees.

(3) *Transitional Rule for Code section 416.* For purposes of determining whether the Multiple Employer Retirement Plan is top heavy (as defined in § 416(g)(1)(A)(ii)) in its first plan year, the determination date with respect to the first plan year of such plan shall be the last day of such plan year. See § 416(g)(4)(C)(ii).

.02 *Determination letters.* (1) *Determination letter application.* Any application for a determination letter on the qualified status of any Multiple Employer Retirement Plan adopted and maintained by PEOs and COs that are seeking relief under this revenue procedure shall be made under the relevant provisions of Rev. Proc. 2002-6.

(2) *Time of disqualification provision.* For purposes of § 1.401(b)-1(b) the Service will treat the requirement that the PEO adopt a Multiple Employer Retirement Plan by the Compliance Date as a disqualifying provision.

.03 *Pending examinations no bar to relief.* A PEO Retirement Plan under examination by the Service is eligible for the relief provided by this revenue procedure.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002-6 is modified.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective on May 13, 2002.

DRAFTING INFORMATION

The principal author of this revenue procedure is Jeanne Royal Singley of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans taxpayer assistance telephone service at 1-877-829-5500 (a toll-free number), between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday. Ms. Singley may be reached at 1-202-283-9888 (not a toll-free number).

26 CFR 1.148-10: Anti-abuse rules and Authority of Commissioner.
(Also Part I, §§ 103, 148, 1.148-1, 148-2, 148-6)

Rev. Proc. 2002-31

SECTION 1. PURPOSE

This final revenue procedure sets forth a safe harbor under which an issue of tax or revenue anticipation bonds will not be treated as outstanding longer than is reasonably necessary to accomplish the governmental purposes of the bonds for purposes of § 1.148-10(a)(4) of the Income Tax Regulations. On August 20, 2001, this revenue procedure was published in proposed form as Notice 2001-49 (2001-34 I.R.B. 188). Public comments were invited concerning the proposed revenue procedure and none were received. This final revenue procedure is unchanged from the proposed revenue procedure.

SECTION 2. BACKGROUND

01. Section 103(a) of the Internal Revenue Code of 1986 provides that, except as provided in section 103(b), gross income does not include interest on any state or local bond.

02. Section 103(b) provides that the exclusion described in section 103(a) does not apply to any arbitrage bond.

03. Section 148(a) provides that an arbitrage bond is any bond issued as part

of an issue any portion of the proceeds of which are to be used directly or indirectly—

- (1) to acquire higher yielding investments, or
- (2) to replace funds which were used directly or indirectly to acquire higher yielding investments.

04. Section 148(c)(1) provides that a bond will not be treated as an arbitrage bond solely by reason of the fact that the proceeds of the issue of which such bond is a part may be invested in higher yielding investments for a reasonable temporary period until such proceeds are needed for the purpose for which such issue was issued.

05. Section 1.148-2(e)(3)(i) of the Income Tax Regulations provides that the proceeds of an issue that are reasonably expected to be allocated to restricted working capital expenditures within 13 months after the issue date qualify for a temporary period of 13 months beginning on the issue date.

06. Section 1.148-2(e)(3)(ii) provides that if an issuer reasonably expects to use tax revenues arising from tax levies for a single fiscal year to redeem or retire an issue, and the issue matures by the earlier of 2 years after the issue date or 60 days after the last date for payment of those taxes without interest or penalty, the temporary period under § 1.148-2(e)(3)(i) is extended until the maturity date of the issue.

07. Section 1.148-1(b) provides that restricted working capital expenditures are working capital expenditures that are subject to the proceeds-spent-last rule in § 1.148-6(d)(3)(i) and are ineligible for any exception to that rule.

08. Section 1.148-10(a)(1) provides that bonds of an issue are arbitrage bonds if an abusive arbitrage device under § 1.148-10(a)(2) is used in connection with the issue.

09. Section 1.148-10(a)(2) provides that any action is an abusive arbitrage device if the action has the effect of (i) enabling the issuer to exploit the difference between tax-exempt and taxable interest rates to obtain a material financial advantage and (ii) overburdening the tax-exempt bond market.

10. Section 1.148-10(a)(4) provides that an action overburdens the tax-exempt bond market if it results in issuing more

bonds, issuing bonds earlier, or allowing bonds to remain outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes of the bonds, based on all the facts and circumstances.

11. Under § 1.148-10(a)(4), one factor evidencing that bonds may remain outstanding longer than necessary is a term that exceeds the safe harbors against the creation of replacement proceeds under § 1.148-1(c)(4)(i)(B). This factor may be outweighed by other factors, however, such as long-term financial distress.

12. Section 1.148-1(c)(4)(i)(A) provides that certain replacement proceeds arise to the extent that the issuer reasonably expects as of the issue date that the term of the issue will be longer than is reasonably necessary for the governmental purposes of the issue and that there will be available amounts during the period that the issue remains outstanding longer than necessary. Whether an issue is outstanding longer than necessary is determined under § 1.148-10.

13. Section 1.148-1(c)(4)(i)(B)(1) provides a safe harbor against the creation of replacement proceeds under § 1.148-1(c)(4)(i)(A) for the portion of an issue that finances restricted working capital expenditures. This safe harbor is met if that portion is not outstanding longer than 2 years.

14. Section 1.148-1(c)(4)(i)(B)(2) provides a safe harbor against the creation of

replacement proceeds under § 1.148-1(c)(4)(i)(A) for the portion of an issue (including a refunding issue) that finances or refinances capital projects. This safe harbor is met if that portion has a weighted average maturity that does not exceed 120 percent of the average reasonably expected economic life of the financed capital projects.

15. Section 1.148-10(d) contains examples illustrating the application of the anti-abuse rules of § 1.148-10. Example 2(i) describes a particular transaction in which an issue is deemed to have a longer weighted average maturity than necessary, notwithstanding that the issue satisfies the safe harbor against the creation of replacement proceeds in § 1.148-1(c)(4)(i)(B)(2).

SECTION 3. SCOPE

This revenue procedure applies to an issue of tax or revenue anticipation bonds the proceeds of which qualify for a temporary period for restricted working capital expenditures under § 1.148-2(e)(3).

SECTION 4. SAFE HARBOR

For purposes of § 1.148-10(a)(4), an issue of tax or revenue anticipation bonds within the scope of this revenue procedure will not be treated as outstanding longer than is reasonably necessary to accomplish the governmental purposes of those bonds if the final maturity date of

the issue is not later than the end of the applicable temporary period under § 1.148-2(e)(3)(i) or § 1.148-2(e)(3)(ii) for which proceeds of the issue qualify. This revenue procedure does not apply to determine whether an issue of tax or revenue anticipation bonds meets the other requirements of section 148.

SECTION 5. ADVANCE RULINGS

The Service will consider requests for rulings on proposed issues of tax or revenue anticipation bonds that do not satisfy the safe harbor provided in section 4.

SECTION 6. EFFECTIVE DATE

This revenue procedure applies to tax or revenue anticipation bonds sold after May 13, 2002.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Rose M. Weber and Timothy L. Jones of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in the development of this revenue procedure. For further information regarding this revenue procedure, contact Rose M. Weber or Timothy L. Jones at (202) 622-3980 (not a toll-free call).

Part IV. Items of General Interest

Notice of Proposed Rulemaking by Cross-Reference to Temporary Regulations

Required Distributions From Retirement Plans

REG-108697-02

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of the **Federal Register**, the IRS is issuing temporary regulations (T.D. 8987 on page 852 of this Bulletin) that provide guidance concerning required minimum distributions for defined benefit plans and annuity contracts providing benefits under qualified plans, individual retirement plans, and section 403(b) contracts. The regulations will provide the public with guidance necessary to comply with the law and will affect administrators of, participants in, and beneficiaries of qualified plans; institutions that sponsor and individuals who administer individual retirement plans, individuals who use individual retirement plans for retirement income, and beneficiaries of individual retirement plans; and employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts and beneficiaries of such contracts and accounts. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by July 16, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG-108697-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU (REG-108697-02), Courier's Desk, Internal Revenue Service,

1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at <http://www.irs.gov/regs>.

FOR FURTHER INFORMATION CONTACT: Cathy Vohs at 622-6090

SUPPLEMENTARY INFORMATION:

Background

Final and Temporary regulations in the Rules and Regulations portion of the Federal Register amend the Income Tax Regulations (26 CFR part 1) relating to section 401(a)(9). The temporary regulations (§ 1.401(a)(9)-6T) contain rules relating to minimum distribution requirements for defined benefit plans and annuity contracts purchased with an employee's account balance under a defined contribution plan. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because § 1.401(a)(9)-6 imposes no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a

signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

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

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

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

Par. 2. Section 1.401(a)(9)-6 is added to read as follows:

§ 1.401(a)(9)-6 Required minimum distributions from defined benefit plans.

[The text of proposed § 1.401(a)(9)-6 is the same as the text of § 1.401(a)(9)-6T published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,
*Deputy Commissioner of
Internal Revenue.*

(Filed by the Office of the Federal Register on April 16, 2002, 8:45 a.m., and published in the issue of the Federal Register for April 17, 2002, 67 F.R. 18834)

Extended Period for Use of Certain Forms

Announcement 2002-49

In Rev. Proc. 2002-10 (2002-4 I.R.B. 401), the Service provided that existing model IRAs, SEPs, and SIMPLE IRA plans may not be used after June 1, 2002, to establish new IRAs, SEPs, or SIMPLE IRA plans. In response to comments, the Service is extending the June 1 deadline to October 1, 2002. Thus, a financial institution may use an existing model IRA to establish a new IRA for a customer through October 1, 2002. Similarly, an employer may use an existing model SEP or SIMPLE IRA plan to establish such a plan through October 1, 2002. The deadlines by which revised model forms must be adopted under Rev. Proc. 2002-10 are unchanged.

Filing of Form 8851, Summary of Archer MSAs, Extended to Calendar Year 2002

Announcement 2002-52

General

As a result of the Job Creation and Worker Assistance Act of 2002, Public Law 107-147, the filing of Form 8851, *Summary of Archer MSAs*, was extended into calendar year 2002.

01. The most current electronic/magnetic filing procedures are found in Revenue Procedure 2001-31, printed in Internal Revenue Bulletin 2001-20, dated May 14, 2001.

02. The due date for filing paper returns with IRS also applies to electronic and magnetic media filing. File Form 8851, postmarked no later than August 1, 2002, to report the number of Archer MSAs you established from January 1 through June 30, 2002.

03. All correspondence, paper forms and media relating to Form 8851 should be sent to:

IRS-Martinsburg Computing Center
Information Reporting Program
Attn: 8851 Coordinator
240 Murall Drive
Kearneysville, WV 25430

.04 A list of the acceptable media and methods of filing Form 8851 are as follows:

- Electronic Filing — FIRE System
- Magnetic Tape
- Tape Cartridge
- 8mm, 4mm, and Quarter Inch Cartridges (QIC)
- 3 ½-Inch Diskette

☞ **Note: Beginning in January 2003, IRS/MCC will no longer accept 9-track magnetic tape for the filing of Form 8851. Beginning in January 2004, 8mm, 4mm, or Quarter Inch Cartridges (QIC) will no longer be acceptable.**

.05 The Information Reporting Program (IRP) Call Site was reorganized and is now the IRP Customer Service Section. The IRP Customer Service Section continues to assist filers via a toll-free number and e-mail with information return issues. **The new toll-free number is 866-455-7438.** The toll-free number can only be used within the United States. Filers may continue to use the original telephone number, 304-263-8700 or TTY/TDD 304-267-3367 (not toll-free). E-mail may be sent to mccirp@irs.gov. Hours of operation are Monday through Friday, 8:30 a.m. to 4:30 p.m., Eastern time.

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it

applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.

E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.

PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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¹ A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2001–27 through 2001–53 is in Internal Revenue Bulletin 2002–1, dated January 7, 2002.

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8973

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8975

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8976

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8978

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