

Chapter 6

**Minimum required distributions the final regulations under
Code section 401(a)(9)**

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**INTERNAL REVENUE SERVICE
TAX EXEMPT AND GOVERNMENT ENTITIES**

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Background of Section 401(a)(9)

Introduction statutory history

Section 401(a)(9) (“I.R.C. 401(a)(9)”) was added to the Code by the Self-Employed Individuals Retirement Act of 1962 and was expanded to all qualified plans by section 242 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). TEFRA required the distribution of the entire interest of the employee, in the taxable year the participant attains:

- age 70½ or,
- in the case of a non-key employee, retires, if later.

In the alternative, TEFRA permitted the amount to be distributed over the remaining life expectancy of the participant and his/her spouse. This requirement has been changed by statute.

TRA '86 and the Small Business Job Protection Act

The Tax Reform Act of 1986 (TRA '86) provided that the required beginning date must be no later than April 1 of the calendar year following the calendar year in which the employee attains 70½, (for both 5% owners and non-5% owners).

The Small Business Job Protection Act of 1996, (SBJPA), amended that provision to provide that the required beginning date must begin not later than April 1 of the calendar year following:

1. the calendar year in which the participant attained age 70½, or
2. in the case of non-5% owners, **the later** of the calendar year in which the participant attains age 70½ or of the calendar year in which the participant retires.

Thus, SBJPA permitted non-5% owners to delay taking their minimum distributions to when they retire.

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Background of Section 401(a)(9), Continued

SBJPA did not amend 411(d)(6) for when changing 401(a)(9)

Although SBJPA amended I.R.C. 401(a)(9) to delay the start of the minimum distributions for non-5% owners, SBJPA did not make any changes to I.R.C. 411(d)(6). As a result, the delay allowed by SBJPA violates I.R.C. 411(d)(6) because the right to receive a minimum distribution on April 1 following age 70½ is an optional form of benefit protected under I.R.C. 411(d)(6).

Thus, a plan that was amended immediately as of the SBJPA effective date to provide for the extended required beginning date (RBD) for non-5% owners violated I.R.C. 411(d)(6). The right to receive a minimum distribution on the April 1 following age 70½ would be eliminated by such an amendment.

To correct conflict between SBJPA and 411(d)(6)

To correct this conflict between the SBJPA amendment to I.R.C. 401(a)(9) and the application of I.R.C. 411(d)(6), Notice 97-75, Announcement 97-24, and Announcement 97-70 enabled plans to adopt the SBJPA changes without violating I.R.C. 411(d)(6) by providing three possible required beginning dates.

1. April 1 following the calendar year in which the participant turned 70½ . This would make no change to the RBD,
2. April 1 following the calendar year in which the participant turned 70½ or retires, except that benefits already accrued cannot be delayed until retirement, or
3. April 1 following the calendar year in which the participant turned 70½ or retires, except for 5% owners. In this case, participants must be able to elect to defer distributions.

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Background of Section 401(a)(9), Continued

Conditions to use the third option

There are conditions that must be met to use the third option above:

- Participants who attain age 70½ after 1995 can elect to defer distributions by the April 1 following the calendar year of attainment of age 70½. If no election is made, distributions begin by the April 1 following the calendar year of attainment of age 70½.
- Participants reaching age 70½ prior to 1997 could elect to stop and recommence distributions.

The delayed distribution to retirement can be made by plan amendment

The 70½ option can be eliminated for employees who reach age 70½ on or after the calendar year that begins after the later of:

- December 31, 1998 or
- the adoption of the amendment which changes the required beginning date to the later of 70½ or retirement for non-5% owners.

Proposed and final regulations

Regulatory Background

Comprehensive proposed regulations were published in the Federal Register on July 27, 1987. In 2001, new proposed regulations were issued, which superceded the 1987 proposed regulations.

These new proposed regulations allowed plans to follow either the 1987 Proposed Regulations or the 2001 Proposed Regulations.

Prior to January 1, 2002, plan sponsors could continue to rely on the 1987 proposed regulations as amended by SBJPA. During 2001, however, plan sponsors were permitted to use the new proposed regulations by adopting one of two published model amendments.

The new rules may then be used in a plan's operation without plan disqualification and without violating the requirement that a plan be operated in accordance with its terms.

Adopting model amendments-2001-18 and 2001-82

Announcement 2001-18 and Announcement 2001-82 were issued to allow plans to adopt a model amendment to incorporate and use the 2001 Proposed Regulations for plan and calendar years beginning on or after January 1, 2001.

In order to make distributions using the 2001 regulations for calendar year 2001, plans must adopt the model amendments no later than the end of the GUST remedial amendment period.

- Plans using the new rules for the entire plan year would use the model amendments under Announcement 2001-18.
 - Plans using the new rules for only part of the year would use the model amendments under Announcement 2001-82.
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Proposed and final regulations, Continued

**Final
regulations
issued in 2002**

The Proposed Regulations issued on January 17, 2001 were superceded by the Final and Temporary I.R.C. 401(a)(9) Regulations that were published in the Federal Register on April 17, 2002. (See also 2002-19 I.R. B. 852 (May 13, 2002)).

The Final Regulations issued on April 17, 2002 are effective for calendar years beginning after 12-31-2002. Furthermore, taxpayers were permitted to use the Final Regulations to determine required distributions for the 2002 calendar year.

When plans must be amended

**Master and
prototype plans**

The specimen document must be amended by 12-31-2003, and copies of the amendment must be sent to the adopting employers of the specimen plan document. Failure to do this will mean that the favorable Opinion Letter can not be relied on.

**Volume
submitter plans**

Employers must individually amend their plans by the last day of the first plan year beginning on or after January 1, 2003, to the extent necessary, to comply with the requirements of the I.R.C. 401(a)(9) Final and Temporary Regulations.

In addition, volume submitter practitioners must amend their Lead Document for the I.R.C. 401(a)(9) Final and Temporary Regulations by December 31, 2003, so that the amendments will apply to future adopters of the plan.

A favorable advisory letter may not be relied upon after December 31, 2003, unless the volume submitter practitioner satisfies this requirement.

**Service will not
consider final
regulations for
DB plans**

Section 3.03 of Revenue Procedure 2003-10 provides that with respect to opinion and advisory letter applications for DB plans submitted on or after January 1, 2003, the Service will consider the I.R.C. 401(a)(9) statutory requirements but not the I.R.C. 401(a)(9) Final and Temporary Regulations.

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When plans must be amended, Continued

DB plans-must be operated in compliance with final regs

Defined Benefit Plans **must be operated in compliance** with the Final and Temporary I.R.C. 401(a)(9) Regulations for calendar years beginning after 12-31-2002.

Defined Benefit Plans are required to operate in compliance with the Final and Temporary Regulations for calendar years beginning after 2002.

Section 1.401(a)(9)-6T of the Temporary Regulations, which provides the Required Minimum Distribution requirements for Defined Benefit Plans, has not yet been finalized. Thus, defined benefit plans are not required to be amended for the I.R.C. 401(a)(9) Final and Temporary Regulations, but must operate in compliance with these rules for calendar years beginning after 12-31-2002.

In short, Rev. Proc. 2003-10 postpones until the end of the EGTRRA remedial amendment period the time by which Defined Benefit plans must be amended.

Determination Letter applications for individually designed Defined Benefit plans, submitted on or after January 1, 2003, will be reviewed to determine if the plan contains the statutory rules but will not take into account the Final and Temporary I.R.C. 401(a)(9) regulations.

DC plans must adopt model amendments by end of 2003 plan year

Revenue Procedure 2002-29 contains Model Amendments that may be adopted by Defined Contribution Plans and Defined Benefit Plans to enable those plans to comply with the amendment requirements of the 2002 Final and Temporary I.R.C. 401(a)(9) Regulations.

Revenue Procedure 2003-10 and Notice 2003-2 modified Revenue Procedure 2002-29 by providing that **only Defined Contribution Plans are required to amend, by adoption of the model amendments or otherwise, by the end of the first plan year beginning after 12-31-2002.**

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When plans must be amended, Continued

Model amendments under RP 2002-29 for DC and terminating plans

Revenue Procedure 2002-29 requires that Defined Contribution Plans adopt the Model Amendments in Revenue Procedure 2002-29 by the end of the plan year beginning after 12-31-2002. The effective date is the first day of the calendar year beginning after 12-31-2002.

For defined contribution plans, model amendments are required to be adopted by the end of the plan year beginning after 12-31-2002. The effective date is required to be 1-1-2003.

All terminating plans must amend for the I.R.C. 401(a)(9) 2002 Final and Temporary Regulations for termination dates on or after 1-1-2003.

Failure to satisfy 401(a)(9)

Section 401(a)(9) is a qualification issue. If the plan fails to satisfy I.R.C. 401(a)(9), the plan and trust are subject to disqualification under I.R.C. 401(a) and 501(a).

Failure to make required minimum distributions under I.R.C. 401(a)(9) will also trigger a 50% excise tax under I.R.C. 4974 with respect to the employee based on the amount of the required minimum distribution that was not distributed.

Determining life expectancy under the final regulations

Which life expectancy tables to use

Distributions are determined by dividing the account balance by the “distribution period”. If distributions are made over a person’s lifetime, life expectancy tables are used to determine the distribution period.

For purposes of I.R.C. 401(a)(9), the life expectancy is based upon the employee’s birthday in the distribution calendar year. A distribution calendar year is a calendar year for which a minimum distribution is required.

If a minimum distribution is required for the year in which the employee attains 70½, the distribution calendar year is such a year, even though the distribution does not need to be made until April 1 of the following calendar year.

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Determining life expectancy under the final regulations,

Continued

Uniform lifetime table used for employee (used during employee's life)

The life expectancy table to use is the Uniform Lifetime Table found in section 1.401(a)(9)-9, Q & A-2. (See partial table directly below). This table is to be used for required minimum distributions for all distribution calendar years up to and including the distribution calendar year that includes the employee's date of death. However, use of this table may not be appropriate if the spouse is the sole designated beneficiary.

Table used when spouse is sole designated beneficiary

If the sole designated beneficiary is the employee's surviving spouse, the applicable distribution period is the longer of the distribution period using:

- the Uniform Life Expectancy Table or
- the joint life expectancy of the employee and spouse using the attained ages as of the employee's and spouse's birthdays in the distribution calendar year. (See the J&S table in Q&A 3 of section 1.401(a)(9)-9) and the partial table below.

If the spouse dies or a divorce occurs in the distribution calendar year, the Employee/Participant is deemed to have been married for the entire distribution calendar year. Thus, divorce or death after January 1 of a calendar year is disregarded until the next calendar year.

After the death of a spouse, the applicable distribution period with respect to any new beneficiary will be determined in the distribution calendar year following the distribution calendar year of the spouse's death.

CHAPTER 6 MINIMUM DISTRIBUTION REQUIREMENTS UNDER 401(a)(9)

PARTIAL UNIFORM LIFETIME TABLE (1.401(a)(9)-9 A-2)-USE FOR ALL SITUATIONS EXCEPT WHEN SPOUSE IS SOLE BENEFICIARY

<i>Age of Employee</i>	<i>Distribution Period</i>	<i>Age of Employee</i>	<i>Distribution Period</i>
70	27.4	78	20.3
71	26.5	79	19.5
72	25.6	80	18.7
73	24.7	81	17.9
74	23.8	82	17.1
75	22.9	83	16.3
76	22.0	84	15.5
77	21.2		

PARTIAL JOINT AND LAST SURVIVOR TABLE-1.401(a)(9)-9,Q&A 3-USE WHEN SPOUSE IS SOLE BENEFICIARY AND THE PERIOD IS LONGER THAN THE UNIFORM TABLE

<i>Ages</i>	<i>60</i>	<i>61</i>	<i>62</i>	<i>63</i>	<i>64</i>	<i>65</i>	<i>66</i>	<i>67</i>
60	30.9	30.4	30.0	29.6	29.2	28.8	28.5	28.2
61	30.4	29.9	29.5	29.0	28.6	28.3	27.9	27.6
62	30.0	29.5	29.0	28.5	28.1	27.7	27.3	27.0
63	29.6	29.0	28.5	28.1	27.6	27.2	26.8	26.4
64	29.2	28.6	28.1	27.6	27.1	26.7	26.3	25.9
65	28.8	28.3	27.7	27.2	26.7	26.2	25.8	25.4
66	28.5	27.9	27.3	26.8	26.3	25.8	25.3	24.9
67	28.2	27.6	27.0	26.4	25.9	25.4	24.9	24.4
68	27.9	27.3	26.7	26.1	25.5	25.0	24.5	24.0
69	27.6	27.0	26.4	25.7	25.2	24.6	24.1	23.6
70	27.4	26.7	26.1	25.4	24.8	24.3	23.7	23.2
71	27.2	26.5	25.8	25.2	24.5	23.9	23.4	22.8
72	27.0	26.3	25.6	24.9	24.3	23.7	23.1	22.5
73	26.8	26.1	25.4	24.7	24.0	23.4	22.8	22.2
74	26.6	25.9	25.2	24.5	23.8	23.1	22.5	21.9
75	26.5	25.7	25.0	24.3	23.6	22.9	22.3	21.6
76	26.3	25.6	24.8	24.1	23.4	22.7	22.0	21.4
77	26.2	25.4	24.7	23.9	23.2	22.5	21.8	21.2
78	26.1	25.3	24.6	24.6	23.1	22.4	21.7	21.0

Required beginning date—when participant is alive on required beginning date

Definition of required beginning date

As stated above, the required beginning date for non-5% owners is April 1 of the calendar year immediately following the later of the calendar year of:

- the attainment of age 70½ or,
- retirement.

Note that for all 5% owners, the required beginning date is April 1 of the calendar year immediately following the calendar year in which the employee attains 70½.

Also, A-2(e) of section 1.401(a)(9)-2 permits a plan to provide that the required beginning date for all employees, including non-5% owners, is to be April 1 of the calendar year following the calendar year in which an employee attains age 70½.

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Required beginning date—when participant is alive on required beginning date, Continued

First and second distribution calendar year

The first distribution calendar year is the year in which a distribution is required to be made, that is the calendar year which contains the later of attainment of age 70½ or of retirement for non-5% owners. The actual distribution for the first distribution calendar year is not required to take place until April 1 of the following calendar year.

The second distribution calendar year is the calendar year immediately following the first distribution calendar year. However, after the first distribution calendar year, distributions must be made by December 31st of the distribution calendar year.

Note that the second distribution calendar year is also the calendar year containing the required beginning date for the first distribution calendar year, e.g. the subsequent April 1. The distribution for the second distribution calendar year must take place by December 31 of the second distribution calendar year.

For the second distribution calendar year, two required distributions may take place, one distribution must be made no later than April 1 for the prior distribution calendar year, and one not later than December 31 for the second distribution calendar year. (See section 1.401(a)(9)-5 Q & A-1). Required Minimum Distributions in subsequent years are required to be made by December 31 of each distribution calendar year.

Example

Arthur was born June 30, 1932. The 70th anniversary of his date of birth is June 30, 2002. Arthur attains age 70½ on December 30, 2002. If Arthur is a 5% owner or retired, his required beginning date is April 1, 2003. His first required distribution must be made no later than April 1, 2003 and his second required distribution must be made no later than December 31, 2003. All subsequent distributions will be required to be made no later than December 31 of each following year.

If Arthur were born on July 1, 1932, the 70th anniversary of his date of birth would be July 1, 2002. In this case, Arthur would attain age 70½ on January 1, 2003 and his RBD would be April 1, 2004.

Distributions when the participant dies prior to the required beginning date.

Introduction If the employee dies before his/her required beginning date, distribution of the employee's entire interest must be distributed in accordance with either:

The five year rule under I.R.C.401(a)(9)(B)(ii), or

the life of designated beneficiary rule under either I.R.C. 401(a)(9)(B)(iii) or I.R.C. 401(a)(9)(B)(iv).

There are several variations to this rule, such as whether the designated beneficiary is a spouse or a non-spouse. In addition, the plan has options as to what it can provide.

Five year rule applies when there is no designated beneficiary If the employee has no designated beneficiary, distributions are to be made in accordance with the 5-year rule found in I.R.C. 401(a)(9)(B)(ii), (see generally, section 1.401(a)(9)-3, Q & A 4),

The entire account balance/accrued benefit must be distributed by the end of the calendar year containing the fifth anniversary of the employee's death, (see generally, section 1.401(a)(9)-3, Q & A 2).

No distributions are required prior to the end of the 5-year period.

Example illustrating 5 year rule Edward dies on January 23, 2002 without a designated beneficiary. He participated in his employer's 401(k) plan. His account balance must be completely distributed no later than December 31, 2007. His account can be distributed in a lump sum or in a series of distributions, as long as the final distribution occurs no later than the 5-year deadline.

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Distributions when the participant dies prior to the required beginning date., Continued

For designated beneficiary, when distributions must commence

A designated beneficiary becomes entitled to a portion of an employee's benefit contingent on the employee's death or another specified event. An employee's choice of beneficiary determines how and when distributions will be made.

If distribution takes place over the life of a non-spouse designated beneficiary, distributions must commence by the end of the calendar year following the calendar year of the employee's death. This rule also applies in the event a spouse is a beneficiary but is not the sole beneficiary.

If the surviving spouse is the sole beneficiary, distributions must commence by the later of

- (i) the end of the calendar year in which the employee would have attained age 70½, or
- (ii) the end of the calendar year following the calendar year of the employee's death.

Non-spouse beneficiary-Period over which distributions are made

The distribution period of the account balance/accrued benefit is over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such designated beneficiary)("Life Expectancy Rule").

The beneficiary's life expectancy is determined by using his/her age in the calendar year immediately following the calendar year of the employee's death. This distribution period is reduced by "one" for each year that has elapsed since the date life expectancy was first calculated.

Use the Single Life Expectancy Table found in section 1.401(a)(9)-9, Q&A-1, to determine life expectancy in the initial distribution period of the beneficiary. Then reduce this life expectancy by one for each subsequent calendar year.

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Distributions when the participant dies prior to the required beginning date., Continued

Distribution period for spouse beneficiary

If the sole designated beneficiary of the employee is the employee's spouse, the distribution period is based on the spouse's life expectancy.

This life expectancy is based upon 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. (See generally, section 1.401(a)(9)-3, and section 1.401(a)(9)-5, Q & A-5).

Thus, for a surviving spouse, the life expectancy is "recalculated" each year since the Single Life Expectancy Table of section 1.401(a)(9)-9, Q&A-1, is used. However, after the death of the spouse, the spouse's life expectancy is reduced by one for each calendar year that has elapsed after the calendar year of the spouse's death. In effect, recalculation ceases after the spouse dies.

If spouse dies after employee, but before distribution begins

If the spouse dies after the employee and before required distributions begin to the surviving spouse, the five year and life expectancy rules are applied as if the spouse were the employee. In this situation, the surviving spouse's date of death is substituted for the employee's date of death. Furthermore, the designated beneficiary, if any, is the spouse's designated beneficiary. This rule does not extend to the surviving spouse of the deceased employee's surviving spouse. (See section 1.401(a)(4), Q&A-4(b)).

If the plan does not specify the distribution method

If the plan does not contain a provision that specifies the distribution method after an employee dies, distribution must be made as follows:

- Life Expectancy Rule will apply if the employee has a designated beneficiary.
 - 5-Year Rule will apply if the employee has no designated beneficiary.
-

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Distributions when the participant dies prior to the required beginning date., Continued

If the plan does specify distribution method-can provide for certain options

The plan may provide for a specific distribution method after an employee dies. The same method does not have to be used for the benefits of all employees. (i.e. The plan may specify that the 5-Year Rule applies in every case or just to certain distributions after an employee's death even if the employee has a designated beneficiary.)

The plan may also apply different rules for different types of beneficiaries. (i.e. surviving spouses may have one set of rules and all other beneficiaries may have another set of rules.)

Plan can give employees or beneficiaries a choice to elect 5 year or life expectancy rule

A plan may provide that employees or beneficiaries can elect whether the five year or life expectancy rule applies to distributions after the death of an employee who has a designated beneficiary. Such election must be made before the earlier of:

- December 31 of the calendar year in which distributions would be required to commence under the Life Expectancy Rule, or
 - December 31 of the calendar year which contains the 5th anniversary of the employee's date of death.
 - As of the last date the election must be made, the election must be irrevocable with respect to the beneficiary (and all subsequent beneficiaries) and must apply to all subsequent calendar years.
-

Plan can specify which rule applies if no election is made

The plan may also specify which method applies if neither the employee nor the beneficiary makes the election.

Continued on next page

Distributions when the participant dies prior to the required beginning date., Continued

If election is not made and plan does not specify which rule applies If an election is not made and the plan does not specify which rule applies, distributions must be made using the 5-Year Rule if there is no designated beneficiary and the Life Expectancy Rule if there is a designated beneficiary.

Quick summary of rules The Life Expectancy Rule applies in all cases in which the employee has a designated beneficiary, unless there is a contrary plan provision or election of the 5-Year Rule.

The 5-Year Rule applies automatically only if the employee did not have a designated beneficiary as of the date of death.

When employee dies on or after the required beginning date

How the employee's remaining life expectancy is determined

For the calendar year that contains the date of the employee's death, the appropriate life expectancy for determining required distributions for said year is determined using the age of the employee as of the employee's birthday in that year (from the Uniform Lifetime Table found in A-2 of section 1.401(a)(9)-9).

General rule if employee dies after distributions have begun

For the distribution calendar year in which the employee dies, the distribution period applicable for calculating the amount that must be distributed during such year is determined as if the employee had lived throughout that year.

Under I.R.C. 401(a)(9)(B)(i), if distributions have commenced before the employee's death, then the remaining portion must be distributed at least as rapidly as the method of distribution being used as of the date of the employee's death.

Applicable distribution period after the employee dies-a non-spouse designated beneficiary

In order to satisfy the "at least as rapidly" rule, the applicable distribution period for distribution calendar years **after** the distribution calendar year containing the employee's date of death is:

- (1) If the employee has a designated beneficiary, the period is the longer of:
 - (i) The remaining life expectancy of the employee's designated beneficiary; or
 - (ii) The remaining life expectancy of the employee
 - (2) If the employee does not have a designated beneficiary, the applicable distribution period is measured by the employee's remaining life expectancy.
-

Continued on next page

When employee dies on or after the required beginning date,

Continued

**Example
determining life
expectancy
after a
participant dies**

The participant dies in 2005 at the age of 73. For the 2005 distribution calendar year, the factor of 24.7 is used, since the employee is assumed to have lived throughout the year of death. His beneficiary is his son, age 44 and single.

In 2006, his beneficiary is age 45. The life expectancy used is the greater of the beneficiary's life expectancy at age 45 (using the Single Life Table under A-1 of section 1.401(a)(9)-9 to give him a life expectancy factor of 38.8) or the employee's which is a "life expectancy" of 24.7-1 or 23.7.

Thus, the distribution period would be 38.8

The designated beneficiary can elect to use the 5-year distribution rule described in I.R.C. 401(a)(9)(B)(ii) by the end of the calendar year following the calendar year of the employee's death.

**Employee dies
after required
beginning date
and the
beneficiary is
the surviving
spouse**

If the sole designated beneficiary of an employee is the employee's surviving spouse, the life expectancy 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.

However, the life expectancy of the employee is used if the life expectancy is longer. The employee's life expectancy is based upon the employee's birthday in the calendar year of the employee's death. If the employee's life expectancy is used, it is reduced by one for each subsequent distribution calendar year.

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 their death. This life expectancy is also reduced by one for each calendar year that has elapsed after the calendar year of the spouse's death.

Continued on next page

When employee dies on or after the required beginning date,

Continued

**Employee dies
after required
beginning date
with no
designated
beneficiary**

The applicable distribution period is measured by the employee's remaining life expectancy, using the age of the employee as of the employee's birthday in the calendar year of his/her death.

In subsequent calendar years the applicable distribution period is based upon the employee's life expectancy determined in the calendar year of his/her death reduced by one for each subsequent calendar year that has elapsed after the calendar year of the employee's death.

So, if the employee is age 73 on his birthday in the calendar year of his death, his life expectancy would be 24.7, (from the Uniform Lifetime Table of A-2 of section 1.401(a)(9)-9). In the following distribution calendar year the life expectancy would be 24.7 minus one, or 23.7.

Determining the designated beneficiary

Who is the designated beneficiary

A designated beneficiary is either one determined by an affirmative election by the employee, or one that is designated by the terms of the plan document as a designated beneficiary.

A designated beneficiary must be an individual, e.g. an estate cannot be a designated beneficiary, and being named in a will as the beneficiary does not make an individual a designated beneficiary under the plan.

However, a “See-Through Trust” can be a beneficiary, as discussed below. (See generally, section 1.401(a)(9)-4, Qs & As-3 and 5).

Beneficiaries are determined as of date of date through September 30 of following year

Under section 1.401(a)(9)-4, Q & A 4, the designated beneficiary must be a beneficiary on the date of the death of the employee and remain a beneficiary as of September 30th of the calendar year immediately following the calendar year of the employee’s death.

If the beneficiary disclaims the benefit before September 30th of the calendar year immediately following the calendar year of death (assuming said disclaimer is timely), or receives the full benefit to which he is entitled prior to September 30th, then:

- That individual is not taken into account for either determining who is the designated beneficiary, or for determining the distribution period for the Required Minimum Distributions, and
 - Any contingent beneficiary will become the designated beneficiary.
-

If beneficiary dies after September 30

If a non-disclaiming designated beneficiary dies after the date of death of the deceased employee, even if the designated beneficiary dies before September 30th of the calendar year following the calendar year of the employee’s death, the distribution period and minimum required distributions are still determined based on the life expectancy of the deceased designated beneficiary. (See section 1.401(a)(9)-4, Q&A-4(c)).

Continued on next page

Determining the designated beneficiary, Continued

Multiple designated beneficiaries

If there are multiple Designated Beneficiaries, the life expectancy of the designated beneficiary with the shortest life expectancy is used as the measuring life to calculate and pay required minimum distributions. (See section 1.401(a)(9)-5, Q & A-7).

Surviving spouse treated as employee if dies before required beginning date-

As noted above, if the surviving spouse who is the designated beneficiary dies prior to his/her required beginning date, then the life expectancy and five year rule are to be applied as if the surviving spouse was the employee.

In such a case, the date of death of the spouse shall be substituted for the date of death of the employee for purposes of determining the required beginning date..

Requirements for trust to be a beneficiary

If a Trust is named as a Beneficiary, the beneficiaries of the trust will be treated as Designated Beneficiaries under the plan, for purposes of I.R.C. 401(a)(9), if the following requirements are satisfied:

1. The trust is valid under state law, or would be but for the fact that it does not have a trust corpus;
2. The trust is irrevocable or will, by its terms, become irrevocable upon the death of the employee;
3. The beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable from the trust instrument; and,
4. The trustee of the trust, must, by October 31 of the calendar year following the calendar year of the employee/ participant's death, provide documentation to the plan administrator described in A-6 of section 1.401(a)(9)-4.

Continued on next page

Determining the designated beneficiary, Continued

Effect of not meeting the trust requirements

This rule does not preclude a trust that fails these conditions from being named as a beneficiary. However, the participant is treated as having **no** designated beneficiary for I.R.C. 401(a)(9) purposes if one of these conditions is not met.

Note: A payment made by a plan to an estate or trust after an employee's death, may still satisfy I.R.C. 401(a)(9). (See section 1.401(a)(9)-8, Q&A-11.)

Note: Even if there is a "See-Through" trust (as described above), if there is no designated beneficiary of the trust, the 5-year rule of I.R.C. 401(a)(9)(B)(ii) will apply to determine the timing of the Required Minimum Distributions to the trust. (See A-11 of 1.401(a)(9)-8.)

In effect, after determining that a trust is a "See-Through" trust, you must still apply the general rules of I.R.C. 401(a)(9).

Calculating the minimum distribution

Formula for determining minimum required distribution

If the employee's benefit is in the form of an individual account under a defined contribution plan, the minimum amount to be distributed for each distribution calendar year, is equal to:

$$\frac{\text{account balance}}{\text{applicable distribution period.}}$$

The required minimum distribution can never exceed the entire employee's account balance on the date of the distribution.

Determining the account balance

The account balance is determined as of the Valuation Date in the calendar year immediately preceding the distribution calendar year. Such amount is:

- increased for contributions and forfeitures that occurred during the Valuation Calendar year but after the Valuation Date,
 - and decreased by distributions in the Valuation Calendar year but after the Valuation Date.
-

Examples illustrating minimum distribution calculation

Example illustrating calculation—first distribution calendar year

Bob was born October 1, 1932 and turned 70½ in 2003. He is not a 5% Owner and retired in 1998. He participates in a calendar year profit-Sharing plan of his former employer.

Bob's RBD is April 1, 2004. For purposes of calculating the amount to be distributed by April 1, 2004, the distribution year is 2003 and the valuation year is 2002.

Bob's account balance as of December 31, 2002, \$26,500, is used to make the first calculation. Bob has not designated his spouse as his beneficiary as of his RBD. His applicable distribution period is determined, using the uniform table found in section 1.401(a)(9)-9, Q&A-2, as of his birthday in the distribution calendar year (Bob turned 71 on October 1, 2003). The minimum distribution, for the 2003 calendar year, is \$26,500 /26.5, or \$1,000 and must be paid no later than April 1, 2004.

Illustration of calculation for the second distribution calendar year

Same facts as example above. Bob's next required distribution, for calendar year 2004, must be made by December 31, 2004. Although a distribution was made on April 1, 2004, that distribution was made on account of the first distribution calendar year, 2003.

For the 2004 distribution calendar year, the valuation year is 2003. Furthermore, the 2003 account balance is not reduced by the amount of the required distribution for the prior calendar year (including the distribution made by April 1, 2004). (See "Calculation Simplification" language in the Preamble to the Final Regulations).

Continued on next page

Examples illustrating minimum distribution calculation,

Continued

Illustration of calculation of second distribution calendar year-first distribution exceeded minimum.

Instead of taking the minimum distribution of 1,000 for the first distribution calendar year (on April 1, 2004), Bob took \$20,000 on such date. The account balance for valuation purposes as of December 31, 2003 is still not reduced by \$1,000 for the 2003 calendar year distribution that was distributed on April 1, 2004 on account of the 2003 calendar year.

Remember, the account balance on December 31, 2003 (the 2003 valuation date) is used to determine the minimum distribution amount for 2004.

The amount of the distribution that exceeded the required minimum, \$19,000, may be applied toward the required minimum for 2004. Assuming an account balance of \$22,000 as of December 31, 2003, the 2004 required minimum is \$867 ($\$22,000/25.6$) since the distribution took place in 2004.

According to the regulations, however, the remaining \$18,133 ($\$19,000 - \867) may not be used to satisfy the minimum distribution requirements for 2005, or later years since the distribution did not take place in those years. However, since the prior year's account balance is used to calculate a year's required minimum distribution, distributions of such greater amounts has the affect of reducing future required minimum distributions.

Determining the life expectancy with a spouse

Assume that the Employee is age 73 and the spouse is age 60, the factor from the Joint and Last Survivor Table, (see section 1.401(a)(9)-9, Q&A-3)) would be 26.8 in the relevant distribution calendar year.

Since 26.8 is the longer distribution period (life expectancy), when compared to the Uniform Lifetime Table factor at age 73 of 24.7, the 26.8 Life Expectancy would be used.

Note that the J&S Table provides a greater life expectancy since the spouse is more than 10 years younger than the Employee/Participant. Thus, it is more beneficial to the employee to use said J&S Table found at section 1.401(a)(9)-9 Q & A 3. The Uniform Table of section 1.401(a)(9)-9, Q&A-2, assumes a beneficiary who is exactly 10 years younger than the employee/plan participant.

Continued on next page

Examples illustrating minimum distribution calculation,

Continued

Illustration of calculation with a spouse

Michael was born January 15, 1933 and he turned 70½ (and 70) in 2003. He is not a 5% owner and retired in 1998.

He participates in a calendar year profit-sharing plan of his former employer. Michael's RBD is April 1, 2004. The value of his account at December 31, 2002 is \$90,000. Michael turned 70 in 2003, the year that he also turned 70½. Michael's sole designated beneficiary is his spouse, Laura, who is 67 in 2003.

The applicable distribution period is the longer of the period calculated using the Unified Table or the Joint Life Expectancy table.

Using the tables above, the distribution period for age 70 under the Unified Table is 27.4. The distribution period for ages 70 and 67 under the Joint Life Expectancy table is 23.2. The distribution period for the Unified Table would be used.

You may note that under the Joint Life Expectancy Table, the distribution period for ages 70 and 60 is 27.4. Thus, as noted above, the Unified Table provides Joint Life Expectancies for an employee and a beneficiary 10 years younger. If Michael's spouse was more than 10 years younger, the distribution period would be longer under the Joint and Survivor Life Expectancy table.

The distribution using the Unified Table would be $\$90,000/27.4$ or \$3,285.

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Examples illustrating minimum distribution calculation,

Continued

Summary of rules

In summary, the formula to determine the Required Minimum Distribution is:

$$\frac{\text{account balance}}{\text{distribution period}}$$

If the employee is alive on the required beginning date, and the employee's spouse is not the employee's sole designated beneficiary, the life expectancy is determined by the Uniform Lifetime Table in A-2 of section 1.401(a)(9)-9. The factor used from the Uniform Lifetime Table is based on the employee's age in the relevant distribution calendar year.

If the employee's sole beneficiary is the spouse, then the distribution period is the greater of the distribution period under the Uniform Lifetime Table or under the Joint Life Expectancy Table. The Joint Life Expectancy Table will be used if the employee's spouse is more than 10 years younger than the employee.

The Single Life Table at section 1.401(a)(9)-9, Q&A-1, is never used to determine required distributions during an employee's/plan participant's life. It is used for purposes of determining the initial life expectancy of a beneficiary for distributions after the death of an employee/plan participant.

If the amount distributed in one distribution calendar year exceeds the Required Minimum Distribution required, the excess cannot be carried over as a credit to the next distribution calendar year. (See generally, 1.401(a)(9)-5, Qs&As 2 and 3).

Purchasing an annuity to satisfy the minimum distribution requirements

Requirements to purchase an annuity

The minimum distribution requirements can be met with respect to an individual account plan by dividing the account balance by the distribution period (as described above) under section A-1 of section 1.401(a)(9)-5. However, under section 1.401(a)(9)-5, A-1(e), the minimum distribution requirement can also be satisfied by purchasing an annuity contract from an insurance company. Distributions under the annuity contract must meet the requirements of A-4 of section 1.401(a)(9)-6T. If the payments actually made under the annuity contract do not meet the requirements of I.R.C. 401(a)(9), the plan fails to satisfy I.R.C. 401(a)(9). The requirements are as follows:

1. The Employee need not use his/her entire account balance to purchase a life annuity or a joint and survivor annuity. (See section 1.401(a)(9)-5, Q&A-1(e).)
2. If the annuity contract is purchased after the required beginning date, the first payment interval must begin on or before the purchase of the annuity contract and the payment required for one payment interval must be made no later than the end of such payment interval. The payment intervals must be evenly spread. If the payments actually made under the annuity contract do not satisfy I.R.C. 401(a)(9), the plan will fail to satisfy I.R.C. 401(a)(9).
3. The payments must be
 - made at least annually,
 - non-increasing payment, unless it fits into one of the 5 exceptions below.

Continued on next page

Purchasing an annuity to satisfy the minimum distribution requirements, Continued

**Requirements
to purchase an
annuity
(continued)**

4. The annuity must satisfy the Minimum Benefit Incidental Benefit Rule under section 1.401-1(b)(1)(i) and I.R.C. 401(a)(9)(G).
5. A-1 of section 1.401(a)(9)-6T provides that, except in certain circumstances, all payments must be non-increasing. However, there are two sets of exceptions to this rule:
One set of exceptions is located at in A-1(a), which allows for increases due to COLAs, plan amendments, cash refunds of employee contributions upon the employee's death ,or an increase due to a joint and survivor annuity being converted to a single life annuity.

A second set of exceptions is located in A-4(b) of section 1.401(a)(9)-6T and is applicable to distributions from an annuity contract purchased by a plan from an insurance company under which the future expected payments exceed the account value being annuitized.

These exceptions allow increases in payments:

- 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 payments made before the employee's death, or
 - 3) as a result of dividend or other payments that result from actuarial gains measured no less frequently than annually and made no later than the end of the year following the year for which the actuarial experience is measured ,etc.
-

Other issues, such as multiple beneficiaries, vesting etc.

Multiple beneficiaries

The designated beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the applicable distribution period. Contingent Beneficiaries are generally taken into account in determining the designated beneficiary with the shortest life expectancy and are generally considered Designated Beneficiaries. (For exception to rule, see “Successor Beneficiary” discussion in section 1.401(a)(9)-5, Q&A-7.)

Partially vested participants

For partially vested participants, the Required Minimum Distribution is calculated as if the employee were fully vested. The payments will be treated as having been made from the vested portion of the employee’s account balance. Payments will only be made from the vested portion of the account balance. (See section 1.401(a)(9)-5, Q&A-8).

If the vested benefit is less than the minimum required distribution for a particular distribution calendar year, only the vested portion of the employee’s benefit is required to be distributed for that year.

However, the Required Minimum Distributions in the subsequent calendar years will be increased by the amount of the undistributed non-vested payments that subsequently become vested.

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Other issues, such as multiple beneficiaries, vesting etc.,

Continued

Amounts considered distributions

Except as noted below, all amounts distributed from an employee's individual account are taken into account regardless of whether the amount is includible in income.

Amounts excluded from income under I.R.C. 72, recovery of investment in a contract, amounts excluded from income such as net unrealized appreciation on employer securities are all amounts counted toward satisfying the I.R.C. 401(a)(9) Required Minimum Distribution.

Amounts not credited toward a I.R.C. 401(a)(9) Required Minimum Distribution, are amounts distributed due to:

- the I.R.C. 415 limit;
- amounts contributed that are required to be distributed due to the I.R.C. 402(g) limits;
- corrective distributions to satisfy the ADP test under I.R.C. 401(k)(3) and the ACP test under I.R.C. 401(m)(2);
- loans that are treated as deemed distributions under I.R.C. 72(p);
- dividends described in I.R.C. 404(k) that are paid on employer securities; and
- the cost of life insurance coverage, P.S. 58 costs.

See section 1.401(a)(9)-5, Q&A-9(b).

Defined benefit plans

The regulations for DB plans are temporary Section 1.401(a)(9)-6T, also published on April 17, 2002, is the only section of the I.R.C. 401(a)(9) Regulations that is Temporary. Every other section of the I.R.C. 401(a)(9) regulations published on April 17, 2002 is finalized.

FOR DEFINED BENEFIT PLANS:

Annuities that satisfy 401(a)(9) The normal form of payment from a Defined Benefit Pension Plan under I.R.C. 401(a)(11) is a Joint and Survivor Annuity. For a Single Participant the normal form of payment would be a Single Life Annuity.

A-1 of section 1.401(a)(9)-6T provides the general requirements that an annuity must meet to satisfy I.R.C. 401(a)(9):

1. The benefit must be paid in the form of periodic annuity payments for either:
 - 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 by the Uniform Lifetime Table in section 1.401(a)(9)-9, A-2. See 1.401(a)(9)-6T, A-1 and A-3.
2. The interval between payments for the annuity must be uniform over the entire distribution period, and
3. Annuity payments must be made at least annually, that is payment intervals cannot exceed one year.
4. If payments are made over a period certain, the period certain may not be changed even if the period certain is shorter than the maximum life expectancy permitted.
5. Life annuity payments must satisfy the Incidental Benefit Rule of section 1.401-1(b)(1)(i), and I.R.C. 401(a)(9)(G).

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Defined benefit plans, Continued

Annuities must be non-increasing or meet one of the exceptions

The life and period certain annuity payments must either be non-increasing or increase:

1. With an annual percentage increase that does not exceed the annual percentage under 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 **prior** reduction in the amount of the employee's payments to provide for a survivor benefit upon death, where the survivor has died or is now covered by a QDRO, and the annuity is increased accordingly,
3. To provide for cash refunds of employee contributions upon the Employee's death, or
4. To pay increased benefits that result from a plan amendment.

These exceptions are found at section 1.401(a)(9)-6T, Q&A-1. Also see section 1.401(a)(9)-6T, Q&A-4(b) for further exceptions, noted above, which are also applicable to annuity contracts purchased by defined contribution plans.

Annuities begin prior to the participant's required beginning date

An annuity that begins prior to the required beginning date will satisfy I.R.C. 401(a)(9) if the distributions are:

- Irrevocable,
- made over the life or life expectancy of the employee or the employee and the designated beneficiary (under I.R.C. 401(a)(9)(A)(ii)), and
- the distribution form is an annuity under which distributions are made in accordance with A-1 and A-4 of section 1.401(a)(9)-6T (see above),

The annuity starting date will be treated as the required beginning date.

Continued on next page

Defined benefit plans, Continued

Effects of the annuity's starting date becoming the required beginning date

The designated beneficiary's distributions will be determined as of the annuity starting date.

If the Employee/Participant dies after the Annuity Starting Date but before the required beginning date, the remaining period over which distributions will be paid is the same period and using the same form as before death.

Thus, the remaining portion of such interest must be distributed at least as rapidly as under the method of distribution being used before the date of the employee's death.

The same rules apply if the surviving spouse begins to receive distributions on an irrevocable basis, prior to the required beginning date, and dies prior to the required beginning date. The remaining portion must be distributed at least as rapidly as under the method of distribution being used before the date of the surviving spouse's death. See section 1.401(a)(9)-6T, Q&A-10.

Subsequent accruals

Generally, with respect to annuity distributions under a DB plan, benefits that accrue after the employee's first distribution calendar year must be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year of accrual. Accruals after the First distribution calendar year may be delayed in their distribution due to administrative delays, etc.

This will not cause the plan to violate I.R.C. 401(a)(9), as long as the actual payment of such amount commences as soon as practicable, generally by the end of the calendar year following the calendar year in which the amounts accrue and as long as the total amount paid during such first calendar year is no less than the full amount required to be paid during that year under A-5(a) of section 1.401(a)(9)-6T.

See section 1.401(a)(9)-6T, Q&A-5(a) and (b).

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Defined benefit plans, Continued

**Annuities
purchased from
insurance
companies**

As noted above, with respect to individual accounts purchasing annuity contracts from insurance companies, the payments must satisfy section 1.401(a)(9)-6T, Q&A-4.

If the annuity contract is purchased after the required beginning date, the first payment 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 annuity contract does not satisfy I.R.C. 401(a)(9), the plan will fail to satisfy I.R.C. 401(a)(9).

Life annuity with a period certain

Introduction

The annuity may be a life annuity (or joint and survivor annuity) with a Period Certain feature, or simply a Period Certain annuity.

A period certain feature is a guarantee that annuity payments will be made for a certain number of years, regardless of whether the person receiving the annuity dies before that period ends. However, payments will be conditioned on life expectancy if the person dies after the term ends.

For example, a life annuity with a 10-year term certain. Payments will be made for at least 10 years, but will stop upon death of the annuitant if the annuitant lives more than 10 years.

A period certain annuity is an annuity for a fixed number of years, without any life feature. Thus, payments will stop after the term ends.

Each type of annuity will satisfy I.R.C. 401(a)(9) as long as it satisfies the provisions in A-1 of section 1.401(a)(9)-6T:

- paid in the form of a period annuity, over a period that does not exceed the maximum length of the period or life expectancy determined by the Uniform Lifetime Table in section 1.401(a)(9)-9, A-2, (based on the calendar year containing the annuity starting date);
- the interval between annuity payments must be uniform over the entire distribution period, and the length of time between annuity payments, must not exceed one year.
- annuity payments must satisfy the Incidental Benefit Rule under section 1.401-1(b)(1)(i) and I.R.C. 401(a)(9)(G).

Also, see the rules in section 1.401(a)(9)-6T, Q&A-3, applicable to period certain annuity distributions commencing during employee's life, and in section 1.401(a)(9)-6T, Q&A-10(b) for period certain distributions commencing prior to an employee's attaining age 70.

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Life annuity with a period certain, Continued

Period certain annuities—how long can the term be

If the employee dies prior to his/her RBD, and if the annuity starting date for a period certain annuity commences before the employee's required beginning date, the period certain cannot exceed the designated beneficiary's life expectancy using the beneficiary's age in the year that contains his/her annuity starting date.

With respect to a period certain annuity, 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 applicable distribution period for the employee (using the Uniform Lifetime Table of section 1.401(a)(9)-2), is the distribution period for age 70 plus the excess of 70 over the age of the employee in the calendar year that contains his annuity starting date. (See section 1.401(a)(9)-6T, Q&A-10(b).)

With respect to period certain annuities, without life annuity features, if the sole beneficiary of the Employee/Participant is the Employee/Participant's spouse, the period certain is permitted to be as long as the joint life and survivor expectancy of the employee and the employee's spouse if longer than the applicable distribution period for the employee.

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Life annuity with a period certain, Continued

If the participant dies before a term certain annuity begins

For term certain annuities, if the employee dies before the annuity starting date, the requirements are:

1. If the designated beneficiary is a non-spouse beneficiary, the beneficiary's remaining life expectancy is used, which is the beneficiary's age as of his/her birthday in the calendar year immediately following the calendar year of the employee's death. In subsequent calendar years, the remaining life expectancy of the beneficiary is reduced by one for each subsequent calendar year immediately following the calendar year in which the beneficiaries remaining life expectancy was determined.
2. If the designated beneficiary is the spouse, 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.
3. 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 his/her birthday in the calendar year of their death. Such life expectancy is reduced by one for each calendar year that has elapsed after the calendar year of the spouse's death. The Single Life Table in A-1 of section 1.401(a)(9)-9 is used to determine the life expectancy.
4. If there is no designated beneficiary, the applicable distribution period is measured by the employee's remaining life expectancy 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, using the Uniform Lifetime Table in A-2 of section 1.401(a)(9)-9.

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Life annuity with a period certain, Continued

When do the required distributions begin under a life or term certain annuity

For an employee, the first annuity payment must be made by April 1 of the calendar year following the calendar year of the later of attainment of age 70½ or retirement (for a non-5% owner).

Thus, for an annual, monthly or bi-monthly annuity, the first payment must be paid on or before April 1 of the calendar year immediately following the calendar year of (1) attainment of age 70½ or of (2) retirement (non-5% owners). (See section 1.401(a)(9)-6T A-1 (c)). All benefit accruals as of the last day of the first distribution calendar year must be included in the calculation of the annuity payments for payment intervals ending on or after the employee's required beginning date.

Single sum distribution and rollover to an IRA

If the participant's entire accrued benefit is distributed to the Employee/Participant in an I.R.C.401 (a)(31) qualified rollover to an IRA, before his/her required beginning date, then the Required Minimum Distribution rules will apply by treating the IRA as a DC plan with an individual account.

If the single-sum distribution takes place after the required beginning date, the amount required to be distributed in the distribution calendar year will not be eligible for rollover treatment under I.R.C. 402(c) and 401(a)(31).

If a single-sum distribution is rolled over during a distribution calendar year, that amount is deemed to be part of an individual account balance on the relevant Valuation Date. Thus, the rules in section 1.401(a)(9)-5 which are used to determine the life expectancy and the required minimum distribution for the first distribution calendar year, and subsequent distribution calendar years will be applied to the rolled over amounts.

Joint and survivor benefits and the incidental benefit rule

Joint and survivor annuity and the incidental benefit rule-introduction

“Incidental benefits” are those benefits which are not really retirement benefits, but are benefits that are ancillary benefits to the plan. For example, a death benefit to a non-spouse beneficiary is an ancillary death benefit, and is subject to the minimum incidental benefit requirements (see below).

Thus, a joint and survivor benefit in which a 100% survivor benefit is paid to a person who is 5 years old is really a post retirement death benefit that is ancillary to the purpose of a retirement plan.

Survivor benefit to a surviving spouse

A joint and survivor annuity where the employee’s spouse is the sole beneficiary, that is payable over their joint lives, satisfies I.R.C. 401(a)(9) and satisfies the incidental benefit rule under section 1.401-1(b)(1)(i) and I.R.C. section 401(a)(9).

The survivor (spousal) benefit can be 100% of the annuity payments payable to the employee/participant without regard to the age difference between the participant and the spouse.

Survivor benefit to a non-spouse beneficiary

If have a joint and survivor annuity with a non-spouse designated beneficiary, the survivor annuity must be limited to the percentage found in the table found in section 1.401(a)(9)-6T A-2(c) in order to satisfy the Minimum Distribution Incidental Benefit Rule under section 1.401-1(b)(1)(i) and I.R.C. 401(a)(9)(G).

This table requires a reduction in the survivor beneficiary’s benefit percentage if the survivor is more than 10 years younger than the employee. The J&S survivor annuity for a non-spouse beneficiary cannot exceed the percentage in this particular table. Therefore if the J& S annuitant otherwise had a 100% survivor annuity, the annuity would have to be reduced for a designated beneficiary more than 10 years younger than the employee as follows:

Minimum Incidental Death Benefit Table

<i>number of years the beneficiary is younger than employee</i>	<i>Applicable percentage of survivor annuity</i>
10	100%
11	96%
12	93%
13	90%
14	87%
15	84%
16	82%
17	79%
18	77%

Example

Minimum required distributions begin to an employee on April 1, 2003, which is also the annuity starting date. The distributions are in the form of a joint and survivor annuity for the employee and the designated beneficiary. The employee is 71 in the distribution calendar year, 2002. The non-spouse designated beneficiary is 53.

The benefit to the employee is \$500 per month, and to the survivor \$500 per month upon the employee's death. Since there is no reduction to the survivor annuity, the joint and survivor annuity fails the MDIB rules because the survivor annuity exceeds 77% of the employee's payment.

These benefits are determined on the annuity starting date, and must satisfy the Minimum Distribution Incidental Benefit Rule of section 1.401-1(b)(1)(i) on that date.

The annuity must also satisfy A-1 of section 1.401(a)(9)-6T, which requires at least one annuity payment a year, paid over the beneficiary's life, in regular intervals, and which does not increase unless it falls under one of the enumerated exceptions.

Continued on next page

Joint and survivor benefits and the incidental benefit rule,
Continued

**Life annuity
with a Term
certain**

If the annuity is a term certain annuity and life, no reduction is required during the period the annuity is a term certain, but, in the case of a J&S annuity with a period certain feature, once the term certain period ends, payment of the remainder of the annuity could violate the Minimum Distribution Incidental Benefit Rule under section 1.401-1(b)(1)(i). (See section 1.401(a)(9)-6T, Q&A-2(d).)

Other rules

Partially vested employees In the case of an annuity distribution from a defined benefit plan, if any portion of the employee's benefit under the plan that is not vested by the last day of the distribution calendar year, that portion is treated as not having accrued for purposes of determining the Required Minimum Distribution for that distribution calendar year. When an additional portion of the employee's benefit becomes vested, that portion is treated as an additional accrual. (See section 1.401(a)(9)-6T, Q&A-6.)

Actuarial increase for Employees delaying their required beginning date I.R.C. 411 requires that accrued benefits be actuarially increased from normal retirement age to the actual annuity starting date elected by the employee.

The actuarial increase required by section 1.401(a)(9)-6T A-7, A-8, and A-9 mirrors the requirement of I.R.C. 411 to actuarially increase the employee's accrued benefit from normal retirement age to the actual annuity starting date elected by the employee.

Thus, A-7 of section 1.401(a)(9)-6T provides that non-5% owners who delay their required beginning date beyond April 1 of the calendar year following the calendar year of their retirement must have their benefit actuarially increased from:

April 1st of the calendar year following the calendar year in which they attained age 70 ½ to

The date on which benefits commence after retirement in an amount sufficient to satisfy I.R.C. 401(a)(9).

The actuarial increase is calculated using the plan's assumptions as stated in the Actuarial Equivalent definition of the plan document used to satisfy I.R.C. 411.

Continued on next page

Other rules, Continued

No actuarial increase required in certain circumstances

Under A-2(e) of section 1.401(a)(9)-2, a plan can provide that the required beginning date for all Employee/Participants is April 1 of the calendar year following the calendar year of attaining age 70½ . In this case, no actuarial increase would be required.

The actuarial increase does not apply to government plans within the meaning of I.R.C. 414(d) or a church plan. A church means any church (as defined in I.R.C. 3121(w)(3)(A)) or a qualified church controlled organization (as defined in I.R.C. 3121(w)(3)(B))

Rollovers transfers

A rollover from one plan to another plan is still treated as a distribution for purposes of I.R.C. 401(a)(9). The amount rolled over is deemed rolled over in the calendar year of distribution from the transferor plan.

Generally, if an amount is rolled over from a plan (distributing plan) into another plan (receiving plan), the benefit of the individual under the receiving plan is increased by the amount rolled over for purposes of determining the required distribution for the calendar year immediately following the calendar year in which the amount rolled over is distributed.

Continued on next page

Other rules, Continued

Transfers

If an amount is transferred in a Distribution Calendar year, the Transferor Plan has the responsibility to determine the amount of the Required Minimum Distribution for that employee for the calendar year of the transfer. This is to be determined before the transfer takes place.

If the transfer occurs in the second distribution calendar year, and before the required beginning date, the transferor plan may calculate The Required Minimum Distribution for the employee for both the first and second distribution calendar years, and segregate those amounts from the transfer amount. . The Minimum Required Distribution for the first two distribution calendar years can be segregated and retained by the transferor plan and must be distributed on or before the required beginning date under section 401(a)(9).

When the transfer occurs, the transferor plan has its valuation as of the valuation date in the applicable calendar year reduced by the amount of the transfer in the calendar year of the transfer. The transferee plan has its valuation on the Valuation Date increased by the amount of the transfer in the applicable calendar year.

(See section 1.401(a)(9)-7, Q&A-2, for further guidance regarding rollovers and transfers).

Special rules under section 1.401(a)(9)-8

If employee has several individual accounts

If an employee has several individual accounts in several plans, each plan must separately satisfy I.R.C. 401(a)(9). With respect to a I.R.C. 414(k) account established in a Defined Benefit Plan, both the Defined Benefit accrued benefit and the I.R.C. 414(k) account will have to separately satisfy I.R.C. 401(a)(9).

However, if an employee has several separate accounts within the same plan, i.e., an employer contribution account and an employee voluntary contribution account, they can be aggregated to satisfy I.R.C. 401(a)(9).

If separate accounts are established to benefit separate designated beneficiaries, then each account must satisfy I.R.C. 401(a)(9). The separate account must be established no later than the last day of the calendar year following the calendar year of the employee's death. Furthermore, separate accounts must reflect the separate interests of an employee's beneficiaries under a plan as of the date of the employee's death for which separate accounting is maintained.

If accounts are separate accounts, the I.R.C. 401(a)(9) requirements apply to each one separately. Thus, a surviving spouse can delay his/her Required Minimum Distribution until the calendar year containing the employee's 70½ birthday. Another designated beneficiary may have a required beginning date as of the end of the calendar year following the calendar year of the Employee's death. Yet another designated beneficiary may elect to use the 5-year rule, etc. Benefits under a Defined Benefit Plan can be separated as well.

Consent not required when making minimum distribution

The consent requirements of I.R.C. 401(a)(11) and I.R.C. 417 do not apply when a minimum distribution is required. Thus, the plan may distribute a QJSA or QPSA, as applicable, and the consent requirements are deemed satisfied if the plan has made reasonable efforts to obtain consent from the employee (or spouse, if applicable) and if the distribution otherwise meets I.R.C. 417.

A former spouse who is a Beneficiary of a QDRO will be treated as the spouse of the employee/participant for purposes of I.R.C. 401(a)(9), including the minimum incidental benefit distribution requirement. (See section 1.401(a)(9)-8, Q&A-6, for further guidance regarding QDROs.)

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters
(Also, Part I, §§ 401; 1.401(a)(9)-1.)

Rev. Proc. 2002-29

SECTION 1. PURPOSE

This revenue procedure provides that qualified retirement plans generally must be amended by the end of the first plan year beginning on or after January 1, 2003 to the extent necessary to comply with final and temporary regulations under § 401(a)(9) of the Internal Revenue Code, relating to required minimum distributions. The revenue procedure contains model plan amendments that sponsors of master and prototype (M&P), volume submitter and individually designed plans may adopt to satisfy this requirement. The revenue procedure also provides that determination letter applications filed on or after the first day of the 2003 plan year will be reviewed with respect to whether the form of the plan satisfies the requirements of the final and temporary regulations under § 401(a)(9).

SECTION 2. BACKGROUND

.01 Section 401(a)(9) provides rules for required minimum distributions from plans qualified under § 401(a). The rules also apply to § 403(b) annuity contracts, § 408 IRAs, § 408A Roth IRAs, and § 457 eligible deferred compensation plans.

.02 Proposed regulations under § 401(a)(9) were published in the **Federal Register** on July 27, 1987, 52 FR 28070, and January 17, 2001, 66 FR 3928. The proposed regulations published in 2001 (the § 401(a)(9) 2001 Proposed Regulations) substantially simplified many of the rules in regulations that had been proposed in 1987 (the § 401(a)(9) 1987 Proposed Regulations) and also incorporated other guidance published after 1987, including guidance relating to the changes to § 401(a)(9) made by the Small Business Job Protection Act of 1996, Pub. L. 104-188 (SBJPA).

.03 The preamble to the § 401(a)(9) 2001 Proposed Regulations stated that taxpayers could rely on the § 401(a)(9) 1987 Proposed Regulations or the § 401(a)(9) 2001 Proposed Regulations for determining required minimum distributions for calendar year 2001 and subsequent calendar years prior to the effective date of the final regulations. The preamble also contained a model amendment that sponsors of qualified plans could adopt if they wished to apply the § 401(a)(9) 2001 Proposed Regulations in making all required minimum distributions for 2001 and subsequent calendar years prior to the effective date of the final regulations. After publication in the **Federal Register**, the model amendment was republished in Announcement 2001-18, 2001-1 C.B. 791, with minor corrections, and appeared (as corrected in the I.R.B.) in the preamble to the § 401(a)(9) 2001 Proposed Regulations (REG-130477-00; REG-130481-00, 2001-11 I.R.B. 865).

.04 An alternative model amendment was published in Announcement 2001-82, 2001-32 I.R.B. 123. This additional model amendment was provided in response to the concerns of qualified plan sponsors that intended to use the § 401(a)(9) 2001 Proposed Regulations for distributions for 2001 but made required minimum distributions for 2001 under the § 401(a)(9) 1987 Proposed Regulations prior to the date in 2001 on which the plan began operating under the § 401(a)(9) 2001 Proposed Regulations. The alternative model amendment in Announcement 2001-82 allowed required minimum distributions made for 2001 prior to the date in 2001 on which the plan began operating under the § 401(a)(9) 2001 Proposed Regulations to be made under the § 401(a)(9) 1987 Proposed Regulations.

.05 The alternative model amendment in Announcement 2001-82 provided the following rules with respect to distributees who received 2001 required distributions prior to the date in 2001 on which the plan began operating under the § 401(a)(9) 2001 Proposed Regulations. If the total amount of 2001 required minimum distributions made to a participant prior to the date on which the plan began operating in accordance with the § 401(a)(9) 2001 Proposed Regulations equaled or exceeded the required minimum distributions determined under the § 401(a)(9) 2001 Proposed Regulations, then no additional distributions were required for that participant for 2001 on or after such date. If the total amount of 2001 required minimum distributions made to a participant prior to the date on which the plan began operating in accordance with the § 401(a)(9) 2001 Proposed Regulations was less than the amount determined under the § 401(a)(9) 2001 Proposed Regulations, then required minimum distributions for 2001 on and after such date would be determined so that the total amount of required minimum distributions for 2001 for that participant would be the amount determined under the § 401(a)(9) 2001 Proposed Regulations.

.06 In order for a qualified plan sponsor to use either the original model amendment in Announcement 2001-18 or the alternative model amendment in Announcement 2001-82, the plan sponsor was required to adopt the amendment by the deadline for amending its plan for GUST. See Rev. Proc. 2001-55, 2001-49 I.R.B. 552.

.07 Final and temporary regulations under § 401(a)(9) were published in the **Federal Register** on April 17, 2002, 74 FR 18987 (the § 401(a)(9) Final and Temporary Regulations). The § 401(a)(9) Final and Temporary Regulations generally adopt the simplifications proposed in 2001 and provide additional simplifications. The § 401(a)(9) Final and Temporary 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 the § 401(a)(9) Final and Temporary Regulations, the § 401(a)(9) 2001 Proposed Regulations, or the § 401(a)(9) 1987 Proposed Regulations.

.08 Section 401(b) and the regulations thereunder provide a remedial amendment period during which an amendment to a disqualifying provision may be made retroactively effective, under certain circumstances, to comply with the requirements of § 401(a). Section 1.401(b)-1(b) provides that a disqualifying provision includes an amendment to an existing plan that causes the plan to fail to satisfy the requirements of § 401(a). Notice 2001-42, 2001-30 I.R.B. 70, provides

a remedial amendment period under § 401(b) ending not prior to the last day of the first plan year beginning on or after January 1, 2005, in which any needed retroactive amendment with regard to the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, (EGTRRA), may be adopted. The availability of this remedial amendment period is conditioned on the adoption of a good faith EGTRRA plan amendment no later than the later of: (i) the end of the plan year in which the EGTRRA change in the qualification requirement is required to be, or is optionally, put into effect under the plan; or (ii) the end of the GUST remedial amendment period for the plan.

.09 Rev. Proc. 2000-20, 2000-1 C.B. 553, as modified by Rev. Proc. 2000-27, 2000-1 C.B. 1272, Notice 2001-42, 2001-30 I.R.B. 70, and Rev. Proc. 2001-55, contains the Service's procedures for issuing opinion letters regarding the acceptability of the form of M&P plans.

.10 Rev. Proc. 2002-6, 2002-1 I.R.B. 203, contains the Service's procedures for issuing determination letters on the qualified status of employee plans under §§ 401(a), 403(a), 409 and 4975(e)(7) of the Code and the exempt status of related trusts or custodial accounts under § 501(a).

.11 Section 1.401(a)(9)-1, Q&A-3, describes the provisions that a plan must contain in order to satisfy § 401(a)(9). The plan must generally set forth the statutory rules of § 401(a)(9), including the incidental death benefit requirement in § 401(a)(9)(G), and must provide that distributions must be made in accordance with the § 401(a)(9) Final and Temporary Regulations. The plan must provide that its provisions reflecting § 401(a)(9) override any inconsistent distribution options in the plan and must include such other provisions as the Commissioner may prescribe in guidance published in the Internal Revenue Bulletin.

SECTION 3. REQUIRED PLAN AMENDMENTS

.01 In general, qualified plans must be amended by the last day of the first plan year beginning on or after January 1, 2003 to the extent necessary to comply with the requirements of the § 401(a)(9) Final and Temporary Regulations. Whether and the extent to which a particular plan must be amended depends on the plan's current terms. Any plan amendments for the § 401(a)(9) Final and Temporary Regulations must apply in determining required minimum distributions under the plan for calendar years beginning on or after January 1, 2003. If a plan sponsor begins operating its plan under the § 401(a)(9) Final and Temporary Regulations on a date in 2002, then the amendments must also apply in determining required minimum distributions under the plan for 2002 that are made on or after such date, although the amendments are not required to be adopted before the last day of the first plan year beginning on or after January 1, 2003.

.02 If a plan sponsor begins operating its plan under the § 401(a)(9) Final and Temporary Regulations on a date in 2002 and prior to such date the plan sponsor has made required minimum distributions for 2002 under the § 401(a)(9) 1987 Proposed Regulations or the § 401(a)(9) 2001 Proposed Regulations, then the plan must also be amended to provide the transitional rule for 2002 required minimum distributions that is set forth in section 1.2 of the model amendments in the Appendix to this revenue procedure.

.03 Every M&P plan must allow the M&P plan sponsor to amend the plan on behalf of all adopting employers so that changes in the Code, regulations, revenue rulings, other statements published by the Internal Revenue Service, or corrections of prior approved plans may be applied to all employers who have adopted the plan. Therefore, by December 31, 2003, every sponsor of an M&P plan must amend its plan to the extent necessary to comply with the requirements of the § 401(a)(9) Final and Temporary Regulations and must furnish copies of the amendments to all employers who have adopted the plan. A favorable opinion letter may not be relied upon after December 31, 2003, unless the M&P plan sponsor satisfies this requirement.

.04 Practitioners that sponsor volume submitter plans generally are not authorized to amend the plan on behalf of adopting employers. In this case, employers that have adopted the plan must individually amend their plans by the last day of the first plan year beginning on or after January 1, 2003 to the extent necessary to comply with the requirements of the § 401(a)(9) Final and Temporary Regulations. Nevertheless, volume submitter practitioners must amend their specimen plans for the § 401(a)(9) Final and Temporary Regulations by December 31, 2003 so that the amendments will apply to future adopters of the plan. A favorable advisory letter may not be relied upon after December 31, 2003, unless the volume submitter practitioner satisfies this requirement.

.05 Until further notice, sponsors of pre-approved plans are not required to request opinion or advisory letters that consider whether their plans satisfy the requirements of the § 401(a)(9) Final and Temporary Regulations. However, opinion and advisory letter applications filed on or after January 1, 2003 will be reviewed with respect to whether the form of the plan satisfies these requirements. Opinion and advisory letter applications filed before January 1, 2003 will be reviewed with respect to whether the form of the plan satisfies the requirements of the § 401(a)(9) Final and Temporary Regulations if a plan amendment to comply with the § 401(a)(9) Final and Temporary Regulations is submitted in conjunction with and at the same time as the request for the opinion or advisory letter.

.06 Determination letter applications for individually designed plans filed on or after the first day of the first plan year beginning on or after January 1, 2003 will be reviewed with respect to whether the form of the plan satisfies the requirements of the § 401(a)(9) Final and Temporary Regulations. Determination letter applications for individually designed plans filed before the first day of the first plan year beginning on or after January 1, 2003 will be reviewed with respect to whether the form of the plan satisfies the requirements of the § 401(a)(9) Final and Temporary Regulations if a plan amendment to comply with the § 401(a)(9) Final and Temporary Regulations is submitted in conjunction with and at the same time as the request for the determination letter. In both cases, determination letters issued for such applications may be relied on with respect to the requirements of the § 401(a)(9) Final and Temporary Regulations. Determination letters issued for pre-approved plans may be relied on with respect to the requirements of the § 401(a)(9) Final and Temporary Regulations if those requirements were considered in issuing the opinion or advisory letter.

.07 If a plan is timely amended to comply with the § 401(a)(9) Final and Temporary Regulations and, as a result of the amendment, there is a disqualifying provision under § 401(b),

the remedial amendment period with respect to the disqualifying provision will end at the end of the EGTRRA remedial amendment period. Therefore, an application for a determination letter regarding the effect of the plan amendment need not be filed earlier than the last day of the EGTRRA remedial amendment period. The timely adoption of the appropriate model amendment in the Appendix will provide reliance, without the need to request a letter, that the plan has been amended to comply with the § 401(a)(9) Final and Temporary Regulations and will not result in a disqualifying provision.

.08 The Appendix provides two model plan amendments to facilitate the amendment of qualified plans to comply with the requirements of the § 401(a)(9) Final and Temporary Regulations. The model amendments may be adopted by M&P plans sponsors and volume submitter practitioners and also by sponsors of individually designed plans. The model amendments are “snap-on” amendments designed to work with a plan’s existing minimum distribution provisions by superseding those that are inconsistent with the provisions of the model amendment and retaining those (such as the plan’s definition of required beginning date) that are not inconsistent. Plans that are amended to adopt the model amendments must retain their existing required minimum distribution provisions in order to have reliance that the form of the plan has been properly amended to comply with the § 401(a)(9) Final and Temporary Regulations. Adoption of one of the model amendments will not amend a plan for the changes to § 401(a)(9) made by § 1404 of SBJPA or to provide that 2001 or 2002 required minimum distributions will be determined in accordance with the § 401(a)(9) 2001 Proposed Regulations.

The first model amendment is for defined contribution plans. The second model amendment is for defined benefit plans. A plan sponsor or a sponsor of a pre-approved plan that timely adopts the appropriate model amendment verbatim (or with only minor changes) will have reliance that the form of its plan satisfies the requirements of the § 401(a)(9) Final and Temporary Regulations, and the adoption of the model amendment will not adversely affect the plan sponsor's reliance on a favorable determination, opinion or advisory letter, or cause a pre-approved plan to be treated as an individually designed plan. For this purpose, changes to either of the model amendments to incorporate the adoption agreement elective provisions into the body of the amendment or to remove the elective provisions in favor of the default rules in the body of the amendment are minor changes.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2000-20 and Rev. Proc. 2002-6 are modified.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective June 24, 2002.

DRAFTING INFORMATION

The principal authors of this revenue procedure are James Flannery and Steven Linder of 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 between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday (a toll-free number). Mr. Flannery and Mr. Linder may be reached at 1-202-283-9888 (not a toll-free call).

APPENDIX - MODEL AMENDMENTS

The following are model plan amendments that sponsors of pre-approved plans and sponsors of individually designed plans may adopt to comply with the § 401(a)(9) Final and Temporary Regulations. Except as provided below, a plan that is amended to adopt one of the model amendments will satisfy, in form, the requirements of § 401(a)(9) and the § 401(a)(9) Final and Temporary Regulations in determining required minimum distributions for calendar years beginning on or after January 1, 2003 (as well as required minimum distributions for calendar year 2002 made on or after the date the plan sponsor begins to operate its plan in accordance with the § 401(a)(9) Final and Temporary Regulations). Adoption of the model amendments will not amend a plan to reflect the change to the definition of required beginning date in § 401(a)(9)(C) that was made by § 1404 of SBJPA or to provide the actuarial adjustment that may be required in a defined benefit plan that is so amended. A plan sponsor that wishes to amend its plan to reflect the provisions of § 1404 of SBJPA must do so through a separate amendment. Consequently, the model amendments may not be relied upon with respect to whether a plan's definition of required beginning date is correct or whether a defined benefit plan makes the correct actuarial adjustment required by § 401(a)(9)(C)(iii). Adoption of the model amendments also will not amend a plan to provide that 2001 or 2002 required minimum distributions will be determined in accordance with the § 401(a)(9) 2001 Proposed Regulations. A plan sponsor that has operated its plan in accordance with the § 401(a)(9) 2001 Proposed Regulations must adopt the model amendment in Announcement 2001-18 or the alternative model amendment in Announcement 2001-82 within the plan's GUST remedial amendment period. Plans that are amended to adopt the model amendments must retain their existing required minimum distribution provisions in order have reliance that the form of the plan has been properly amended to comply with the § 401(a)(9) Final and Temporary Regulations.

MODEL PLAN AMENDMENT 1 - DEFINED CONTRIBUTION PLANS

Article _____. MINIMUM DISTRIBUTION REQUIREMENTS.

Section 1. General Rules

1.1. Effective Date. Unless an earlier effective date is specified in the adoption agreement, the provisions of this article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

1.2. Coordination with Minimum Distribution Requirements Previously in Effect. If the adoption agreement specifies an effective date of this article that is earlier than calendar years beginning with the 2003 calendar year, required minimum distributions for 2002 under this article will be determined as follows. If the total amount of 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this article equals or exceeds the required minimum distributions determined under this article, then no

additional distributions will be required to be made for 2002 on or after such date to the distributee. If the total amount of 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this article is less than the amount determined under this article, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this article.

1.3. Precedence. The requirements of this article will take precedence over any inconsistent provisions of the plan.

1.4. Requirements of Treasury Regulations Incorporated. All distributions required under this article will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code.

1.5. TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this article, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that relate to section 242(b)(2) of TEFRA.

Section 2. Time and Manner of Distribution.

2.1. Required Beginning Date. The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date.

2.2. Death of Participant Before Distributions Begin. If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(a) If the participant's surviving spouse is the participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later.

(b) If the participant's surviving spouse is not the participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.

(c) If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(d) If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse begin,

this section 2.2, other than section 2.2(a), will apply as if the surviving spouse were the participant.

For purposes of this section 2.2 and section 4, unless section 2.2(d) applies, distributions are considered to begin on the participant's required beginning date. If section 2.2(d) applies, distributions are considered to begin on the date distributions are required to begin to the surviving spouse under section 2.2(a). If distributions under an annuity purchased from an insurance company irrevocably commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under section 2.2(a)), the date distributions are considered to begin is the date distributions actually commence.

2.3. Forms of Distribution. Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with sections 3 and 4 of this article. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury regulations.

Section 3. Required Minimum Distributions During Participant's Lifetime.

3.1. Amount of Required Minimum Distribution For Each Distribution Calendar Year. During the participant's lifetime, the minimum amount that will be distributed for each distribution calendar year is the lesser of:

(a) the quotient obtained by dividing the participant's account balance by the distribution period in the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the participant's age as of the participant's birthday in the distribution calendar year; or

(b) if the participant's sole designated beneficiary for the distribution calendar year is the participant's spouse, the quotient obtained by dividing the participant's account balance by the number in the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the distribution calendar year.

3.2. Lifetime Required Minimum Distributions Continue Through Year of Participant's Death. Required minimum distributions will be determined under this section 3 beginning with the first distribution calendar year and up to and including the distribution calendar year that includes the participant's date of death

Section 4. Required Minimum Distributions After Participant's Death.

4.1. Death On or After Date Distributions Begin.

(a) Participant Survived by Designated Beneficiary. If the participant dies on or after the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the longer of the remaining life expectancy of the participant or the remaining life expectancy of the participant's designated beneficiary, determined as follows:

(1) The participant's remaining life expectancy is calculated using the age of the participant in the year of death, reduced by one for each subsequent year.

(2) If the participant's surviving spouse is the participant's sole designated beneficiary, the remaining life expectancy of the surviving spouse is calculated for each distribution calendar year after the year of the participant's death using the surviving spouse's age as of the spouse's birthday in that year. For distribution calendar years after the year of the surviving spouse's death, the remaining life expectancy of the surviving spouse is calculated using the age of the surviving spouse as of the spouse's birthday in the calendar year of the spouse's death, reduced by one for each subsequent calendar year.

(3) If the participant's surviving spouse is not the participant's sole designated beneficiary, the designated beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the participant's death, reduced by one for each subsequent year.

(b) No Designated Beneficiary. If the participant dies on or after the date distributions begin and there is no designated beneficiary as of September 30 of the year after the year of the participant's death, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the participant's remaining life expectancy calculated using the age of the participant in the year of death, reduced by one for each subsequent year.

4.2. Death Before Date Distributions Begin.

(a) Participant Survived by Designated Beneficiary. Except as provided in the adoption agreement, if the participant dies before the date distributions begin and there is a designated beneficiary, the minimum amount that will be distributed for each distribution calendar year after the year of the participant's death is the quotient obtained by dividing the participant's account balance by the remaining life expectancy of the participant's designated beneficiary, determined as provided in section 4.1.

(b) No Designated Beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(c) Death of Surviving Spouse Before Distributions to Surviving Spouse Are Required to Begin. If the participant dies before the date distributions begin, the participant's surviving spouse is the

participant's sole designated beneficiary, and the surviving spouse dies before distributions are required to begin to the surviving spouse under section 2.2(a), this section 4.2 will apply as if the surviving spouse were the participant.

Section 5. Definitions.

5.1. Designated beneficiary. The individual who is designated as the beneficiary under section ____ of the plan and is the designated beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

5.2. Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin under section 2.2. The required minimum distribution for the participant's first distribution calendar year will be made on or before the participant's required beginning date. The required minimum distribution for other distribution calendar years, including the required minimum distribution for the distribution calendar year in which the participant's required beginning date occurs, will be made on or before December 31 of that distribution calendar year.

5.3. Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.

5.4. Participant's account balance. The account balance as of the last valuation date in the calendar year immediately preceding the distribution calendar year (valuation calendar year) increased by the amount of any contributions made and allocated or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date and decreased by distributions made in the valuation calendar year after the valuation date. The account balance for the valuation calendar year includes any amounts rolled over or transferred to the plan either in the valuation calendar year or in the distribution calendar year if distributed or transferred in the valuation calendar year.

5.5 Required beginning date. The date specified in section ____ of the plan.

Adoption Agreement

(Check and complete section 1 below if any required minimum distributions for the 2002 distribution calendar year were made in accordance with the § 401(a)(9) Final and Temporary Regulations.)

Section 1. Effective Date of Plan Amendment for Section 401(a)(9) Final and Temporary Treasury Regulations.

CHAPTER 6 MINIMUM DISTRIBUTION REQUIREMENTS UNDER 401(a)(9)

_____. Article _____, Minimum Distribution Requirements, applies for purposes of determining required minimum distributions for distribution calendar years beginning with the 2003 calendar year, as well as required minimum distributions for the 2002 distribution calendar year that are made on or after _____.

(Check and complete any of the remaining sections if you wish to modify the rules in sections 2.2 and 4.2 of Article _____ of the plan.)

Section 2. Election to Apply 5-Year Rule to Distributions to Designated Beneficiaries.

_____ If the participant dies before distributions begin and there is a designated beneficiary, distribution to the designated beneficiary is not required to begin by the date specified in section 2.2 of Article _____ of the plan, but the participant's entire interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of the participant's death. If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to either the participant or the surviving spouse begin, this election will apply as if the surviving spouse were the participant.

This election will apply to:

_____ All distributions.

_____ The following distributions: _____.

Section 3. Election to Allow Participants or Beneficiaries to Elect 5-Year Rule.

_____ Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in sections 2.2 and 4.2 of Article _____ of the plan applies to distributions after the death of a participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under section 2.2 of Article _____ of the plan, or by September 30 of the calendar year which contains the fifth anniversary of the participant's (or, if applicable, surviving spouse's) death. If neither the participant nor beneficiary makes an election under this paragraph, distributions will be made in accordance with sections 2.2 and 4.2 of Article _____ of the plan and, if applicable, the elections in section 2 above.

Section 4. Election to Allow Designated Beneficiary Receiving Distributions Under 5-Year Rule to Elect Life Expectancy Distributions.

_____ A designated beneficiary who is receiving payments under the 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period.

MODEL PLAN AMENDMENT 2 - DEFINED BENEFIT PLANS

Article _____. MINIMUM DISTRIBUTION REQUIREMENTS.

Section 1. General Rules

1.1. Effective Date. Unless an earlier effective date is specified in the adoption agreement, the provisions of this article will apply for purposes of determining required minimum distributions for calendar years beginning with the 2003 calendar year.

1.2. Coordination with Minimum Distribution Requirements Previously in Effect. If the adoption agreement specifies an effective date of this article that is earlier than calendar years beginning with the 2003 calendar year, required minimum distributions for 2002 under this article will be determined as follows. If the total amount of 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this article equals or exceeds the required minimum distributions determined under this article, then no additional distributions will be required to be made for 2002 on or after such date to the distributee. If the total amount of 2002 required minimum distributions under the plan made to the distributee prior to the effective date of this article is less than the amount determined under this article, then required minimum distributions for 2002 on and after such date will be determined so that the total amount of required minimum distributions for 2002 made to the distributee will be the amount determined under this article.

1.3. Precedence. The requirements of this article will take precedence over any inconsistent provisions of the plan.

1.4. Requirements of Treasury Regulations Incorporated. All distributions required under this article will be determined and made in accordance with the Treasury regulations under section 401(a)(9) of the Internal Revenue Code.

1.5. TEFRA Section 242(b)(2) Elections. Notwithstanding the other provisions of this article, other than section 1.4, distributions may be made under a designation made before January 1, 1984, in accordance with section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act (TEFRA) and the provisions of the plan that relate to section 242(b)(2) of TEFRA.

Section 2. Time and Manner of Distribution.

2.1. Required Beginning Date. The participant's entire interest will be distributed, or begin to be distributed, to the participant no later than the participant's required beginning date.

2.2. Death of Participant Before Distributions Begin. If the participant dies before distributions begin, the participant's entire interest will be distributed, or begin to be distributed, no later than as follows:

(a) If the participant's surviving spouse is the participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the surviving spouse will begin by December 31 of the calendar year immediately following the calendar year in which the

participant died, or by December 31 of the calendar year in which the participant would have attained age 70½, if later.

(b) If the participant's surviving spouse is not the participant's sole designated beneficiary, then, except as provided in the adoption agreement, distributions to the designated beneficiary will begin by December 31 of the calendar year immediately following the calendar year in which the participant died.

(c) If there is no designated beneficiary as of September 30 of the year following the year of the participant's death, the participant's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

(d) If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to the surviving spouse begin, this section 2.2, other than section 2.2(a), will apply as if the surviving spouse were the participant.

For purposes of this section 2.2 and section 5, distributions are considered to begin on the participant's required beginning date (or, if section 2.2(d) applies, the date distributions are required to begin to the surviving spouse under section 2.2(a)). If annuity payments irrevocably commence to the participant before the participant's required beginning date (or to the participant's surviving spouse before the date distributions are required to begin to the surviving spouse under section 2.2(a)), the date distributions are considered to begin is the date distributions actually commence.

2.3. Form of Distribution. Unless the participant's interest is distributed in the form of an annuity purchased from an insurance company or in a single sum on or before the required beginning date, as of the first distribution calendar year distributions will be made in accordance with sections 3, 4 and 5 of this article. If the participant's interest is distributed in the form of an annuity purchased from an insurance company, distributions thereunder will be made in accordance with the requirements of section 401(a)(9) of the Code and the Treasury regulations. Any part of the participant's interest which is in the form of an individual account described in section 414(k) of the Code will be distributed in a manner satisfying the requirements of section 401(a)(9) of the Code and the Treasury regulations that apply to individual accounts.

Section 3. Determination of Amount to be Distributed Each Year.

3.1. General Annuity Requirements. If the participant's interest is paid in the form of annuity distributions under the plan, payments under the annuity will satisfy the following requirements:

(a) the annuity distributions will be paid in periodic payments made at intervals not longer than one year;

(b) the distribution period will be over a life (or lives) or over a period certain not longer than the period described in section 4 or 5;

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(c) once payments have begun over a period certain, the period certain will not be changed even if the period certain is shorter than the maximum permitted;

(d) payments will either be nonincreasing or increase only as follows:

(1) by 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 participant's payments to provide for a survivor benefit upon death, but only if the beneficiary whose life was being used to determine the distribution period described in section 4 dies or is no longer the participant'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 participant's death; or

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

3.2. Amount Required to be Distributed by Required Beginning Date. The amount that must be distributed on or before the participant's required beginning date (or, if the participant dies before distributions begin, the date distributions are required to begin under section 2.2(a) or (b)) is the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Payment intervals are the periods for which payments are received, e.g., bi-monthly, monthly, semi-annually, or annually. All of the participant's benefit accruals as of the last day of the first distribution calendar year will be included in the calculation of the amount of the annuity payments for payment intervals ending on or after the participant's required beginning date.

3.3. Additional Accruals After First Distribution Calendar Year. Any additional benefits accruing to the participant in a calendar year after the first distribution calendar year will be distributed beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

Section 4. Requirements For Annuity Distributions That Commence During Participant's Lifetime.

4.1. Joint Life Annuities Where the Beneficiary Is Not the Participant's Spouse. If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspouse beneficiary, annuity payments to be made on or after the participant's required beginning date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of section 1.401(a)(9)-6T of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspouse beneficiary and a period

certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

4.2. Period Certain Annuities. Unless the participant's spouse is the sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain for an annuity distribution commencing during the participant's lifetime may not exceed the applicable distribution period for the participant under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations for the calendar year that contains the annuity starting date. If the annuity starting date precedes the year in which the participant reaches age 70, the applicable distribution period for the participant is the distribution period for age 70 under the Uniform Lifetime Table set forth in section 1.401(a)(9)-9 of the Treasury regulations plus the excess of 70 over the age of the participant as of the participant's birthday in the year that contains the annuity starting date. If the participant's spouse is the participant's sole designated beneficiary and the form of distribution is a period certain and no life annuity, the period certain may not exceed the longer of the participant's applicable distribution period, as determined under this section 4.2, or the joint life and last survivor expectancy of the participant and the participant's spouse as determined under the Joint and Last Survivor Table set forth in section 1.401(a)(9)-9 of the Treasury regulations, using the participant's and spouse's attained ages as of the participant's and spouse's birthdays in the calendar year that contains the annuity starting date.

Section 5. Requirements For Minimum Distributions Where Participant Dies Before Date Distributions Begin.

5.1. Participant Survived by Designated Beneficiary. Except as provided in the adoption agreement, if the participant dies before the date distribution of his or her interest begins and there is a designated beneficiary, the participant's entire interest will be distributed, beginning no later than the time described in section 2.2(a) or (b), over the life of the designated beneficiary or over a period certain not exceeding:

(a) unless the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the participant's death; or

(b) if the annuity starting date is before the first distribution calendar year, the life expectancy of the designated beneficiary determined using the beneficiary's age as of the beneficiary's birthday in the calendar year that contains the annuity starting date.

5.2. No Designated Beneficiary. If the participant dies before the date distributions begin and there is no designated beneficiary as of September 30 of the year following the year of the participant's death, distribution of the participant's entire interest will be completed by December 31 of the calendar year containing the fifth anniversary of the participant's death.

5.3. Death of Surviving Spouse Before Distributions to Surviving Spouse Begin. If the participant dies before the date distribution of his or her interest begins, the participant's

surviving spouse is the participant's sole designated beneficiary, and the surviving spouse dies before distributions to the surviving spouse begin, this section 5 will apply as if the surviving spouse were the participant, except that the time by which distributions must begin will be determined without regard to section 2.2(a).

Section 6. Definitions.

6.1. Designated beneficiary. The individual who is designated as the beneficiary under section _____ of the plan and is the designated beneficiary under section 401(a)(9) of the Internal Revenue Code and section 1.401(a)(9)-1, Q&A-4, of the Treasury regulations.

6.2. Distribution calendar year. A calendar year for which a minimum distribution is required. For distributions beginning before the participant's death, the first distribution calendar year is the calendar year immediately preceding the calendar year which contains the participant's required beginning date. For distributions beginning after the participant's death, the first distribution calendar year is the calendar year in which distributions are required to begin pursuant to section 2.2.

6.3 Life expectancy. Life expectancy as computed by use of the Single Life Table in section 1.401(a)(9)-9 of the Treasury regulations.

6.4. Required beginning date. The date specified in section _____ of the plan.

Adoption Agreement

(Check and complete section 1 below if any required minimum distributions for the 2002 distribution calendar year were made in accordance with the § 401(a)(9) Final and Temporary Regulations.)

Section 1. Effective Date of Plan Amendment for Section 401(a)(9) Final and Temporary Treasury Regulations.

_____ Article _____, Minimum Distribution Requirements, applies for purposes of determining required minimum distributions for distribution calendar years beginning with the 2003 calendar year, as well as required minimum distributions for the 2002 distribution calendar year that are made on or after _____.

(Check and complete any of the remaining sections if you wish to modify the rules in sections 2.2 and 5 of Article _____ of the plan.)

Section 2. Election to Apply 5-Year Rule to Distributions to Designated Beneficiaries.

_____ If the participant dies before distributions begin and there is a designated beneficiary, distribution to the designated beneficiary is not required to begin by the date specified in section 2.2 of Article _____ of the plan, but the participant's entire interest will be distributed to the designated beneficiary by December 31 of the calendar year containing the fifth anniversary of

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the participant's death. If the participant's surviving spouse is the participant's sole designated beneficiary and the surviving spouse dies after the participant but before distributions to either the participant or the surviving spouse begin, this election will apply as if the surviving spouse were the participant.

This election will apply to:

_____ All distributions.

_____ The following distributions: _____.

Section 3. Election to Allow Participants or Beneficiaries to Elect 5-Year Rule.

_____ Participants or beneficiaries may elect on an individual basis whether the 5-year rule or the life expectancy rule in sections 2.2 and 5 of Article _____ of the plan applies to distributions after the death of a participant who has a designated beneficiary. The election must be made no later than the earlier of September 30 of the calendar year in which distribution would be required to begin under section 2.2 of Article _____ of the plan, or by September 30 of the calendar year which contains the fifth anniversary of the participant's (or, if applicable, surviving spouse's) death. If neither the participant nor beneficiary makes an election under this paragraph, distributions will be made in accordance with sections 2.2 and 5 of Article _____ of the plan and, if applicable, the elections in section 2 above.

Section 4. Election to Allow Designated Beneficiary Receiving Distributions Under 5-Year Rule to Elect Life Expectancy Distributions.

_____ A designated beneficiary who is receiving payments under the 5-year rule may make a new election to receive payments under the life expectancy rule until December 31, 2003, provided that all amounts that would have been required to be distributed under the life expectancy rule for all distribution calendar years before 2004 are distributed by the earlier of December 31, 2003 or the end of the 5-year period.