INTERNAL REVENUE
BULLETIN

IRS

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2024–33
August 12, 2024

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

EMPLOYEE PLANS, EXCISE TAX, INCOME TAX

REG-103529-23, page 512.

These proposed regulations would address various provisions that are reserved in the final regulations under Code sections 401(a)(9) and 402(c) in Treasury Decision 10001 (TD 10001), which is being published simultaneously with these proposed regulations. The reserved provisions in TD 10001 which these proposed regulations would address reflect the following sections of the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted on December 29, 2022, as Division T of the Consolidated Appropriations Act, 2023, Public Law 117-328, 136 Stat. 4459 (2022), to the extent they are not addressed in TD 10001: 107 (increase in age for required beginning date for mandatory distributions), 202 (qualifying longevity annuity contracts), 204 (eliminating a penalty on partial annuitization of an employee's individual account under a defined contribution plan), 302 (reduction in excise tax on certain accumulations in qualified retirement plans), 325 (Roth plan distribution rules), and 327 (surviving spouse election to be treated as employee). In addition, these proposed regulations would provide guidance relating to provisions in TD 10001 permitting separate application of section 401(a)(9) with respect to multiple beneficiaries of a see-through trust.

T.D. 10001, page 412.

These regulations provide guidance related to section 401 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), enacted on December 20, 2019, as Division O of the Further Consolidated Appropriations Act of 2019, Pub. L. 116-94, 133 Stat. 2534 (2019), and by section 107 and various other sections of the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted on December 29, 2022, as Division T of the Consolidated Appropriations Act, 2022, Public Law 117-328, 136 Stat. 4459 (2022). Section 107 of the SECURE 2.0 Act increased the mandatory age by which distributions from a retirement plan are required to begin and section 401 of the SECURE Act limits the ability of designated beneficiaries to take distributions over their life expectancies unless they meet certain exceptions. In addition, the regulations will clarify certain issues related to trusts as beneficiaries and situations under which a beneficiary is identifiable for purposes of section 401(a)(9) of the Code. These regulations also provide guidance related to eligible rollover distributions under section 402(c) reflecting statutory changes to that section since regulations were first issued in 1995. Many rules in existing final regulations are restated without change to satisfy Federal Register requirements.

INCOME TAX

REG-102161-23, page 502.

This document contains proposed regulations that would identify transactions that are the same as, or substantially similar to, certain basket contract transactions as listed transactions for purposes of §1.6011-4. Material advisors with respect to and certain participants in these listed transactions would be required to file disclosures with the IRS and would be subject to penalties for failure to disclose.

T.D. 10004, page 489.

This document contains final regulations regarding the treatment of property used to acquire parent stock or securities in connection with certain triangular reorganizations involving one or more foreign corporations; the consequences to persons that receive parent stock or securities pursuant to such reorganizations; and the treatment of certain subsequent inbound nonrecognition transactions following such reorganizations and certain other transactions. The final regulations affect corporations engaged in certain triangular reorganizations involving one or more foreign corporations, certain shareholders of foreign corporations acquired in such reorganizations, and foreign corporations that participate in certain inbound nonrecognition transactions.

Finding Lists begin on page ii.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

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

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

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

The Bulletin is divided into four parts as follows:

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

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

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

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

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

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Part I

26 CFR 1.401(a)(9)-0 through 26 CFR 1.401(a)(9)-9; 26 CFR 1.402(c)-2; 26 CFR 1.403(b)-6; 26 CFR 1.457-6; 26 CFR 1.408-8; 26 CFR 54.4974-1

T.D. 10001

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Parts 1, 31, and 54

Required Minimum Distributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document sets forth final regulations relating to required minimum distributions from qualified plans; section 403(b) annuity contracts, custodial accounts, and retirement income accounts; individual retirement accounts and annuities; and certain eligible deferred compensation plans. These regulations affect administrators of, and participants in, those plans; owners of individual retirement accounts and annuities; employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts; and beneficiaries of those plans, contracts, accounts, and annuities.

DATES: *Effective date*: These regulations are effective on September 17, 2024.

Applicability date: Amended §§1.401(a)(9)-1 through 1.401(a)(9)-9, 1.403(b)-6(e), and 1.408-8 apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2025. Amended §1.402(c)-2 applies for distributions on or after January 1, 2025. Amended §54.4974-1 applies for taxable years beginning on or after January 1, 2025.

FOR FURTHER INFORMATION CONTACT: Brandon M. Ford at (202) 317-6700 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth amendments to the Income Tax Regulations (26 CFR Part 1) under section 401(a)(9) of the Internal Revenue Code of 1986 (Code). These regulations address the required minimum distribution requirements for plans qualified under section 401(a) and update the regulations to reflect the amendments made to section 401(a)(9) by sections 114 and 401 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), enacted on December 20, 2019, as Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, 133 Stat. 2534 (2019) and by various sections of the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted on December 29, 2022, as Division T of the Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4459 (2022).

The rules of section 401(a)(9) are adopted by reference in section 408(a)(6) and (b)(3) for individual retirement accounts and individual retirement annuities (collectively, IRAs); section 403(b)(10) for annuity contracts, custodial accounts, and retirement income accounts described in section 403(b) (section 403(b) plans); and section 457(d)(2) for eligible deferred compensation plans. The determination of the required minimum distribution is also relevant for purposes of the related excise tax under section 4974 and the definition of eligible rollover distribution in section 402(c). Accordingly, this document also sets forth conforming amendments to the Income Tax Regulations (26 CFR Part 1) under sections 402(c), 403(b), 408, and 457, and to the Pension Excise Tax Regulations (26 CFR Part 54) under section 4974.

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

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

Specifically, section 401(a)(9)(A)(ii) provides that the entire interest of an employee in a qualified plan must be distributed, beginning not later than the employee's required beginning date, in accordance with regulations, over the life of the employee or over the lives of the employee and a designated beneficiary (or over a period not extending beyond the life expectancy of the employee and a designated beneficiary). Section 401(a)(9)(B)(i) provides that, if the employee dies after distributions have begun, the employee's remaining interest must be distributed at least as rapidly as under the distribution method used by the employee as of the date of the employee's death (referred to in this preamble as the "at least as rapidly" rule).

Section 401(a)(9)(B)(ii) and (iii) provides that, if the employee dies before required minimum distributions have begun, the employee's interest must either be: (1) distributed within 5 years after the death of the employee; or (2) distributed (in accordance with regulations) over the life or life expectancy of the designated beneficiary with the distributions generally beginning not later than 1 year after the date of the employee's death.

However, under section 401(a)(9)(B)(iv) (as amended by section 327 of the SECURE 2.0 Act), a surviving spouse may elect to: (1) be treated as if the surviving spouse were the employee for purposes of section 401(a)(9)(B)(iii)(II); (2) wait until the date the employee would have attained the applicable age (as defined in section 401(a)(9)(C)(v)) to begin taking required minimum distributions; and (3) have the beneficiaries of the surviving spouse be treated as beneficiaries of the employee if the surviving spouse dies before distributions to the spouse begin.

Section 401(a)(9)(C)(i) (as amended by section 114 of the SECURE Act and further amended by section 107 of the SECURE 2.0 Act) defines the required beginning date for an employee (other than a 5-percent owner or IRA owner) as April 1 of the calendar year following

the later of the calendar year in which the employee attains the applicable age or the calendar year in which the employee retires. Section 401(a)(9)(C)(v)(I) provides that in the case of an individual who attains age 72 after December 31, 2022, and age 73 before January 1, 2033, the applicable age is 73. Section 401(a)(9)(C)(v)(II) provides that in the case of an individual who attains age 74 after December 31, 2032, the applicable age is 75. For a 5-percent owner or an IRA owner, the required beginning date is April 1 of the calendar year following the calendar year in which the individual attains the applicable age, even if the individual has not retired.

Section 401(a)(9)(C)(iii) provides that certain employees who commence benefits under a defined benefit plan after the year in which they attain age 70½ must receive an actuarial increase. However, section 401(a)(9)(C)(iv) provides that the actuarial increase requirement does not apply for a governmental plan or for a church plan (as defined in section 401(a)(9)(C)(iv)).

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

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

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

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

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

Section 401(a)(9)(H)(iv) provides that in the case of an applicable multi-beneficiary trust, if, under the terms of the trust, it is to be divided immediately upon the death of the employee into separate trusts for each beneficiary, then section 401(a)(9)(H)(ii) is applied separately with respect to the portion of the employee's interest that is payable to any disabled or chronically ill eligible designated beneficiary. Section 401(a)(9)(H)(iv) (as amended by section 337 of the SECURE 2.0 Act) also provides that in the case of an applicable multi-beneficiary trust, if, under the terms of the trust, no beneficiary (other than an eligible designated beneficiary who is disabled or chronically ill) has any right to the employee's interest in the plan until the death of all of those disabled or chronically ill eligible designated beneficiaries with respect to the trust, then: (1) section 401(a)(9)(B)(iii) (permitting payments over the life expectancy of a beneficiary) will apply to the distribution of the employee's interest; and (2) any beneficiary who is not disabled or chronically ill will be treated as a beneficiary of the eligible designated beneficiary who is disabled or chronically ill upon the death of that eligible designated beneficiary.

Section 401(a)(9)(H)(v) (as amended by section 337 of the SECURE 2.0 Act) defines the term *applicable multi-beneficiary trust* as a trust: (1) that has more than one beneficiary; (2) all of the beneficiaries of which are treated as designated beneficiaries for purposes of determining the distribution period pursuant to section 401(a)(9); and (3) at least one of the beneficiaries of which is an eligible designated beneficiary who is either disabled or chronically ill. Section 401(a)(9)(H)(v) also provides that, for purposes of that definition, in the case of a trust described in section 401(a)(9)(H)(iv)(II), any beneficiary which is an organization described in section 408(d)(8)(B)(i) is treated as a designated beneficiary.

Section 401(a)(9)(H)(vi) provides that, for purposes of applying section 401(a)(9)(H), an eligible retirement plan defined in section 402(c)(8)(B) (other than a defined benefit plan described in section 402(c)(8)(B)(iv) or (v)[1] or a qualified trust that is a

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

part of a defined benefit plan) is treated as a defined contribution plan.

Section 401(a)(9)(J) (which was added to the Code by section 201 of the SECURE 2.0 Act) provides that a commercial annuity (within the meaning of section 3405(e)(6)) that is issued in connection with any eligible retirement plan (within the meaning of section 402(c)(8)(B), other than a defined benefit plan) is not prohibited from making any of the following types of payments: (1) annuity payments that increase by a constant percentage, applied not less frequently than annually, at a rate that is less than 5 percent per year; (2) certain lump sum payments;[2] (3) an amount which is in the nature of a dividend or similar distribution, provided that the issuer of the contract determines the amount using reasonable actuarial methods and assumptions, as determined in good faith by the issuer of the contract, when calculating the initial annuity payments and the issuer's experience with respect to those factors; or (4) a final payment upon death that does not exceed the excess of the total amount of the consideration paid for the annuity payments, less the aggregate amount of prior distributions or payments from or under the contract.

Effective Date of SECURE Act Section 401

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

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

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

Section 401(b)(4) of the SECURE Act provides that the amendments made to section 401(a)(9)(E) and (H) of the Code do not apply to a qualified annuity that is a binding annuity contract in effect on the date of enactment of the SECURE Act (December 20, 2019) and at all times thereafter.[3]

Section 401(b)(5) of the SECURE Act provides that if an employee dies before the effective date of section 401(a)(9)(H) of the Code for a plan, then, in applying the amendments made to section 401(a)(9)(E) and (H) to the employee's designated beneficiary who dies on or after the effective date, (1) the amendments apply to any beneficiary of the designated beneficiary, and (2) the designated beneficiary is treated as an eligible designated beneficiary for purposes of section 401(a)(9)(H)(ii).

SECURE 2.0 Act Provisions

Prior to amendment by section 107 of the SECURE 2.0 Act, section 401(a)(9)(C) of the Code defined the required beginning date by reference to the calendar year in which the employee attains age 72. Section 107 of the SECURE 2.0 Act changes the age by reference to which the required beginning date is determined from 72 to either 73 or 75 (depending on an employee's date of birth). Section 107(e) of the SECURE 2.0 Act provides that the amendments made by section 107 of the SECURE 2.0 Act apply to distributions required to be made after December 31, 2022, with respect to individuals who attain age 72 after that date.

Section 202 of the SECURE 2.0 Act instructs the Secretary of the Treasury (or that person's delegate) to make certain amendments to §1.401(a)(9)-6. Those amendments are: (1) to eliminate the requirement that premiums for an individual's qualifying longevity annuity contracts (QLACs) be limited to 25-percent of an individual's account balance; (2) to increase the dollar limitation on premiums for an individual's QLACs from $125,000 to $200,000 (adjusted for inflation); (3) to provide that, in the case of a QLAC purchased with joint and survivor annuity benefits for an individual and the individual's spouse, a divorce occurring after the original purchase and before the date that the annuity payments commence under the contract will not affect the permissibility of the joint and survivor benefits if certain conditions related to an associated qualified domestic relations order (or, if applicable, a divorce or separation agreement) are met; and (4) to provide that a QLAC may include a provision under which an employee may rescind the purchase of the contract within a period not exceeding 90 days from the date of purchase.

Section 204 of the SECURE 2.0 Act instructs the Secretary of the Treasury (or that person's delegate) to amend the sec-

[2] Section 401(a)(9)(J)(ii) provides that the lump sum payment must either: (1) result in a shortening of the payment period with respect to an annuity or a full or partial commutation of the future annuity payments, provided that such lump sum is determined using reasonable actuarial methods and assumptions, as determined in good faith by the issuer of the contract; or (2) accelerate the receipt of annuity payments that are scheduled to be received within the ensuing 12 months, regardless of whether the acceleration shortens the payment period with respect to the annuity, reduces the dollar amount of benefits to be paid under the contract, or results in a suspension of annuity payments during the period being accelerated.

[3] Section 401(b)(4)(B) of the SECURE Act provides that the term *qualified annuity* means, with respect to an employee, an annuity—

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

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

(iii) with respect to which—

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

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

tion 401(a)(9) regulations to provide that if an employee's benefit is in the form of an individual account under a defined contribution plan, then the plan may allow the employee to elect to have the amount required to be distributed for a calendar year from that account to be calculated as the excess of the total required amount for that year over the annuity amount for that year. For this purpose, section 204(b)(1) of the SECURE 2.0 Act defines the total required amount with respect to a calendar year as the amount that would be required to be distributed under §1.401(a)(9)-5 by including in the balance of that account the value of all annuity contracts that were purchased with a portion of that account. Section 204(b)(2) of the SECURE 2.0 Act defines the annuity amount with respect to a calendar year as the total amount distributed in that year from all annuity contracts purchased with a portion of the employee's account under the plan. Section 204(c) of the SECURE 2.0 Act instructs the Secretary of the Treasury (or that person's delegate) to make conforming amendments to the regulations that apply to individual retirement plans (as defined in section 7701(a)(37) of the Code), section 403(b) plans, and section 457(b) eligible deferred compensation plans.

Section 325 of the SECURE 2.0 Act amended section 402A of the Code (relating to designated Roth accounts) to add a new paragraph (d)(5) providing that the rules requiring minimum distributions to be paid during the employee's lifetime do not apply to a designated Roth account. Section 325(b)(1) of the SECURE 2.0 Act provides that this amendment applies to taxable years beginning after December 31, 2023. However, section 325(b)(2) of the SECURE 2.0 Act provides that the amendment does not apply to a required minimum distribution for a year beginning before January 1, 2024, that is permitted to be paid by April 1, 2024.

Section 402(c) — Rollovers

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

Under section 402(c), any amount distributed from a qualified plan generally will be excluded from income if it is transferred to an eligible retirement plan no later than the 60th day following the day the distribution is received. Section 402(c)(3)(B) was added to the Code by section 644 of EGTRRA to provide that the Secretary may waive the 60-day rollover requirement in certain circumstances. Section 402(c)(3)(C) was added to the Code by section 13613 of the Tax Cuts and Jobs Act, Pub. L. 115-97, 131 Stat. 2054 (2017) (TCJA), to provide an extended rollover deadline for qualified plan loan offset (QPLO) amounts.[4] Specifically, the deadline for rollover of any portion of a QPLO amount is extended so that it ends no earlier than the distributee's tax filing due date (including extensions) for the taxable year in which the offset occurs.

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

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

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

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

Section 402(c)(11) was added to the Code by section 829 of the Pension Protection Act of 2006, Pub. L. 109-280, 120 Stat. 780 (2006) (PPA), to provide that an individual who is not the surviving spouse of the employee and who is a designated beneficiary (as defined by section 401(a)(9)(E) of the Code) may elect to have any portion of a distribution made in the form of a direct trustee-to-trustee transfer to an IRA established for the purpose of receiving that distribution. If a direct trustee-to-trustee transfer is made pursuant to section 402(c)(11), then the required minimum distribution rules applicable to distributions after the employee's death in section 401(a)(9)(B) (other than section 401(a)(9)(B)(iv)) will apply to the IRA. Section 402(c)(11)(B) provides that the Secretary may prescribe rules under which a trust for the benefit of one or more designated beneficiaries may be treated as a designated beneficiary for purposes of section 402(c)(11).

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

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

Under section 403(a)(1), a qualified annuity plan under section 403(a) must meet the requirements of section 404(a)(2) (which provides that an annuity plan must satisfy the required minimum distribution rules under section 401(a)(9)). Sections 403(b)(10), 408(a)(6), and 408(b)(3) provide that a section 403(b) plan, an individual retirement account, and an individual retirement annuity, respectively, must satisfy rules similar to the requirements of section 401(a)(9) and the incidental death benefit requirements of section 401(a). Under section 457(b)(5) and (d)(2), a plan is an eligible deferred compensation plan described in section 457(b) only if it satisfies the minimum distribution requirements of section 401(a)(9).

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

Section 4974(a) (as amended by section 302(a) of the SECURE 2.0 Act) provides that if the amount distributed during the taxable year of a payee under any qualified retirement plan (as defined in section 4974(c)) or any eligible deferred compensation plan (as defined in section 457(b)) is less than that taxable year's minimum required distribution (as defined in section 4974(b)), then an excise tax is imposed on the payee equal to 25 percent of the amount by which the minimum required distribution for the taxable year exceeds the amount actually distributed in that taxable year.

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

Section 4974(e) (as added to the Code by section 302(b) of the SECURE 2.0 Act) provides that in the case of a taxpayer who, by the last day of the correction window: (1) receives a distribution from the qualified retirement plan or eligible deferred compensation plan of the amount by which the required minimum distribution exceeds the actual amount distributed during the calendar year from that plan (the shortfall); and (2) submits a return reflecting that tax (as modified by section 4974(e)), then the tax imposed under section 4974(a) is 10 percent of the shortfall (in lieu of 25 percent). For this purpose, the correction window ends on the earliest of: (1) the date a notice of deficiency under section 6212 with respect to the tax imposed by section 4974(a) is mailed; (2) the date on which the tax imposed by section 4974(a) is assessed; or (3) the last day of the second taxable year that begins after the end of the taxable year in which the tax under section 4974(a) is imposed.

Good Faith Compliance Standard for Governmental Plans

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

2002 Final Regulations and Other Published Guidance

Final regulations relating to required minimum distributions from a qualified plan, an IRA, and a section 403(b) plan have been subject to a series of amendments and additions since they were published in the **Federal Register** on April 17, 2002 (67 FR 18834) (referred to in this preamble as the "2002 final regulations"). Final regulations relating to required minimum distributions from defined benefit plans and annuity contracts were published in the **Federal Register** on June 15, 2004 (69 FR 63288) (referred to in this preamble as the "2004 final regulations"). Final regulations published in the **Federal Register** on September 8, 2009 (74 FR 45993) updated the rules to permit a governmental plan to comply with the required minimum distribution rules using a reasonable, good faith interpretation of section 401(a)(9). Final regulations relating to qualifying longevity annuity contracts were published in the **Federal Register** on July 2, 2014 (79 FR 37633). Final regulations published in the **Federal Register** on November 12, 2020 (85 FR 72472) updated the life expectancy and distribution period tables for distribution calendar years that begin on or after January 1, 2022.

Final regulations relating to section 402(c) and eligible rollover distributions were published in the **Federal Register** on

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

Proposed Regulations and Enactment of SECURE 2.0 Act

Proposed regulations under section 401(a)(9) and related statutory provisions were published in the **Federal Register** on February 24, 2022 (87 FR 10504).[5] Comments were received on the proposed regulations, and a public hearing was held on June 15, 2022. After the close of the comment period, the SECURE 2.0 Act, which affected many of the provisions included in the proposed regulations was enacted.

After consideration of the comments and taking into account the enactment of the SECURE 2.0 Act, the proposed regulations are adopted by this Treasury decision with certain changes described in the section of this preamble entitled "**Summary of Comments and Explanation of Revisions**." Some of the rules in these final regulations that reflect provisions of the SECURE 2.0 Act are a clear application of statutory language for which it is unnecessary to solicit comments (see 5 U.S.C. 553(b)). Other rules in these final regulations are the logical outgrowth of rules in the proposed regulations that take into account both the comments received on those proposed rules and the subsequent enactment of the SECURE 2.0 Act. A notice of proposed rulemaking (REG-103529-23) in the Proposed Rules section of this issue of the Federal Register sets forth proposed rules that reflect other provisions of the SECURE 2.0 Act relating to section 401(a)(9) of the Code.

Summary of Comments and Explanation of Revisions

These regulations update several existing regulations under sections 401(a)(9), 402(c), 403(b), 457, and 4974 to reflect statutory amendments that have been made since those regulations were last issued and to clarify certain issues that have been raised in public comments and private letter ruling requests. These regulations also replace the question-and-answer format of the existing regulations under sections 401(a)(9), 402(c), 408, and 4974 with a standard format. Rules under the 2002 final regulations and the 2004 final regulations that were proposed to be retained in the updated regulations generally were not discussed in the Explanation of Provisions that accompanied the proposed regulations. Similarly, rules under the proposed regulations that are included in these final regulations without change generally are not discussed in this **Summary of Comments and Explanation of Revisions**.

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

A. *Section 1.401(a)(9)-1 — Minimum distribution requirement in general*

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

Section 1.401(a)(9)-1 provides general rules that apply for all of the regulations under section 401(a)(9), including rules addressing application of the effective date of section 401(a)(9)(H), which was added to the Code by section 401 of the SECURE Act to limit which beneficiaries may take distributions over their life expectancies. Generally, the amendments made by section 401 of the SECURE Act apply to distributions with respect to an employee who dies on or after January 1, 2020 (with a later effective date for certain collectively bargained plans or governmental plans). In addition, if an employee in a plan died before the section 401(a)(9)(H) effective date for that plan, the employee had only one designated beneficiary, and the employee's designated beneficiary dies on or after that effective date, then the amendments made by section 401 of the SECURE Act apply to any beneficiary of the designated beneficiary. In this situation, the designated beneficiary is treated as an eligible designated beneficiary for purposes of the 10-year payout required by section 401(a)(9)(H)(iii). Accordingly, the death of the designated beneficiary triggers a requirement to complete payment by the end of the calendar year that includes the tenth anniversary of the date of the death of that designated beneficiary. In contrast, if that designated beneficiary died before that effective date, then the amendments made by section 401 of the SECURE Act do not apply with respect to the employee's interest under the plan.

Under the proposed regulations, if an employee in a plan who died before the section 401(a)(9)(H) effective date for that plan had more than one designated beneficiary, whether the amendments made by section 401 of the SECURE Act apply depends on when the oldest of those beneficiaries dies. Thus, for example, if an employee who died before January 1, 2020, named a see-through trust as the sole beneficiary of the employee's interest in the plan, and the trust has three beneficiaries who are all individuals, then the amendments made by section 401 of the SECURE Act will apply with respect to distributions to the trust upon the death of the oldest trust beneficiary, but only if that beneficiary dies on or after the section 401(a)(9)(H) effective date for that plan. However, if the oldest of the trust beneficiaries died before that effective date, then the amendments made by section 401 of the SECURE Act do not apply with respect to distributions to the trust. Some commenters asked how these effective date rules apply if the beneficiaries were using the separate account alternative (under which section 401(a)(9) is applied separately to the separate accounts for each beneficiary). In that case, the separate application of section 401(a)(9) with respect to the separate account for a beneficiary is used to determine whether section 401(a)(9)(H) applies to that beneficiary.

[5] Correction notices were published in the Federal Register with respect to the proposed regulations on March 21, 2022 (87 FR 15907), and May 20, 2022 (87 FR 39845).

The proposed regulations reflected the exception for a qualified annuity (that is, an annuity contract for which an employee made an irrevocable election as to the method and the amount of the annuity payments before December 20, 2019) described in section 401(b)(4) of the SECURE Act. One commenter raised questions regarding whether the requirements for an irrevocable election as to the method and amount of annuity payments under the contract meant that the contract loses its exception from the application of section 401(a)(9)(H) merely because the contract permits additional premiums to be paid or permits the annuitant to select when distributions under the contract commence. The final regulations do not change the requirement that, in order for the contract to be excepted from the application of section 401(a)(9)(H), the method and amount of annuity payments under the contract be irrevocably selected before December 20, 2019. For this purpose, the mere ability to pay an additional premium or change the commencement date of benefits under the contract after December 20, 2019, does not cause the contract to lose its exception from the application of section 401(a)(9)(H). However, if an individual paid an additional premium or changed the commencement date of benefits under the contract after that date, then the contract would lose its exception.

Commenters also requested that the final regulations apply the qualified annuity exception to the situation in which the employee had died and, after the employee's death, the beneficiary had made an irrevocable election as to the method and the amount of the annuity payments before December 20, 2019. These final regulations make that change.

2. Applicability Date of Final Regulations under Section 401(a)(9)

A number of commentators requested that the applicability date of the final regulations be delayed from the proposed applicability date of distribution calendar years beginning on or after January 1, 2022, in order to provide adequate time for plan administrators and IRA providers to familiarize themselves with the new rules and to update administrative systems to implement necessary changes. In response to these comments, the final regulations under section 401(a)(9) apply for distribution calendar years beginning on or after January 1, 2025. For earlier distribution calendar years, taxpayers must apply the 2002 final regulations and 2004 final regulations, but taking into account a reasonable, good faith interpretation of the amendments made by sections 114 and 401 of the SECURE Act.[6] For the 2023 and 2024 distribution calendar years, taxpayers must also take into account a reasonable, good faith interpretation of the amendments made by sections 107, 201, 202, 204, and 337 of the SECURE 2.0 Act.

B. *Section 1.401(a)(9)-2 — Distributions commencing during an employee's lifetime*

Section 1.401(a)(9)-2 provides rules for determining the required beginning date for distributions and whether distributions are treated as having begun during an employee's lifetime. These rules are based on the rules in the 2002 final regulations, except that the rules have been updated to reflect the amendments to the required beginning date made by section 114 of the SECURE Act and section 107 of the SECURE 2.0 Act.

Specifically, these regulations generally provide that the required beginning date is April 1 of the calendar year following the later of (1) the calendar year in which the employee reaches the applicable age, and (2) the calendar year in which the employee retires from employment with the employer maintaining the plan. These regulations provide that the applicable age is determined based on an employee's date of birth, as follows: (1) for employees born before July 1, 1949, the applicable age is 70½; (2) for employees born on or after July 1, 1949, but before January 1, 1951, the applicable age is 72; (3) for employees born on or after January 1, 1951, but before January 1, 1959, the applicable age is 73; and (4) for employees born on or after January 1, 1960, the applicable age is 75.[7] The final regulations make conforming changes by replacing references to age 72 in the proposed regulations (when referring to the age for determining the required beginning date) with references to the applicable age. The **Summary of Comments and Explanation of Revisions** section of this preamble generally does not describe those changes.

One commenter asked whether a plan could provide a uniform required beginning date of April 1 of the calendar year following the year an employee attains age 70½ that would apply to all employees in the plan regardless of the employee's date of birth. While the final regulations do not provide for such an option, the Department of the Treasury (Treasury Department) and the IRS note that, subject to the requirements of section 411(a)(11), a plan could require benefits to commence by that date. In addition, in the case of a defined benefit plan, §1.401(a)(9)-6(k) provides that if distributions start prior to the required beginning date in a distribution form that is an annuity under which distributions are made in accordance with the requirements of that section, then the annuity starting date will generally be treated as the required beginning date for purposes of applying the rules of section 401(a)(9).

Another commenter asked whether an employee who is not a 5-percent owner, has benefits under a plan maintained by more than one employer, and retires from employment from any of the employers participating in the plan is treated as having retired for purposes of section 401(a)(9)(C) if that employee is employed by a different employer participating in the same plan. The final regulations add language clarifying that the employee is not treated as having retired for purposes of section 401(a)(9)(C)(i)(II) in this situation.

[6] The preamble to the proposed regulations provided that compliance with the proposed regulations will be treated as a reasonable, good faith interpretation of the amendments made by sections 114 and 401 of the SECURE Act.

[7] Section 107 of the SECURE 2.0 Act includes an ambiguity relating to the definition of applicable age for employees born in 1959 (section 401(a)(9)(C)(v) provides that the applicable age for those employees is both 73 and 75). Accordingly, these regulations reserve a paragraph that defines the applicable age for employees born in 1959, and that issue is addressed in a notice of proposed rulemaking (REG-103529-23) in the Proposed Rules section of this issue of the Federal Register.

C. *Section 1.401(a)(9)-3 — Death before required beginning date*

Section 1.401(a)(9)-3 provides rules for distributions if an employee dies before the employee's required beginning date. These rules are based on the rules in the 2002 final regulations but are updated to reflect new section 401(a)(9)(H). For example, the option for a designated beneficiary of an employee who participates in a defined contribution plan to elect to receive distributions over the designated beneficiary's life expectancy is limited to an eligible designated beneficiary. These regulations are also updated to reflect the amendment to section 402A(d) made by section 325 of the SECURE 2.0 Act and provide that if an employee's entire interest under a defined contribution plan is in a designated Roth account, then no distributions are required to be made to the employee during the employee's lifetime. Thus, upon the employee's death, that employee is treated as having died before his or her required beginning date.

The proposed regulations described satisfaction of the life expectancy rule for an eligible designated beneficiary of an employee in a defined contribution plan by reference to the rules in §1.401(a)(9)-5. The final regulations clarify that the requirement to take an annual distribution in accordance with the preceding sentence continues to apply for all subsequent calendar years until the employee's interest is fully distributed. Thus, a required minimum distribution is due for the calendar year of the eligible designated beneficiary's death, and that amount must be distributed during that calendar year to any beneficiary of the deceased eligible designated beneficiary to the extent it has not already been distributed to the eligible designated beneficiary.

Under the proposed regulations, if the employee has a designated beneficiary (who is an eligible designated beneficiary in the case of a defined contribution plan), the plan may: (1) provide that the 5-year rule (in the case of a defined benefit plan) or 10-year rule (in the case of a defined contribution plan) applies; (2) provide that the life expectancy rule applies; or (3) permit the employee or the designated beneficiary to elect between the applicable 5-year or 10-year rule or the life expectancy rule.[8] The proposed regulations also provided that, if a plan permits an employee or designated beneficiary to elect between the applicable 5-year or 10-year rule and the life expectancy rule, then the plan must specify the default that would apply when the employee or designated beneficiary has not made an election. Consistent with requests made by commenters, the final regulations provide that the requirement to specify a default applies only if the plan is intended to be operated using a default different than the default that would apply under the regulations if the employee or designated beneficiary did not make an affirmative election. Thus, for example, if the intended operation in the absence of an election is that a surviving spouse who is the sole beneficiary is to wait to begin distributions until the employee would have reached the applicable age, then the plan is not required to provide for a default (because that is the rule that would apply under the regulations if the surviving spouse did not make an affirmative election).

In addition, consistent with requests made by commenters, the final regulations clarify that a defined contribution plan may provide that a particular distribution method will apply to certain categories of eligible designated beneficiaries or that an election as to which distribution method applies is available only for certain categories of eligible designated beneficiaries. Thus, for example, a plan may provide that only an employee's surviving spouse may elect between the 10-year rule and life expectancy payments.

D. *Section 1.401(a)(9)-4 — Determination of the designated beneficiary*

Section 1.401(a)(9)-4 provides rules addressing the determination of the employee's beneficiary for purposes of section 401(a)(9), including the definition of eligible designated beneficiary in section 401(a)(9)(E)(ii). Section 1.401(a)(9)-4 also provides rules addressing the treatment of trust beneficiaries as designated beneficiaries when a trust is named as the beneficiary of an employee's interest in a plan.

1. Eligible Designated Beneficiaries

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

a. Definition of child

Under section 401(9)(E)(ii)(III), one of the categories of eligible designated beneficiary is a child of the employee who has not yet reached the age of majority. Consistent with requests made by commenters, the final regulations clarify that the definition of child in section 152(f)(1) applies for this purpose (so that the definition includes a stepchild, an adopted child, and an eligible foster child).

b. Definition of disability

The regulations provide rules for the determination of whether an individual is disabled for purposes of section 401(a)(9). Section 401(a)(9)(E)(ii)(III) applies the definition of disability under section 72(m)(7) for purposes of section 401(a)(9). Section 72(m)(7) provides a standard of disability based on whether an individual is unable to engage in substantial gainful activity. However, that standard may be difficult to apply for individuals under age 18. Accordingly, if, as of the date of the employee's death, a beneficiary is younger than age 18, then the regulations apply a comparable standard that requires the beneficiary to have a medically determinable physical or mental impairment that results in marked and severe functional limitations, and that can be expected to result in death or to be of long-continued and indefinite duration.

These regulations also provide a safe harbor for the determination of whether

[8] If a defined contribution plan does not include either the provision that applies the 10-year rule or the provision under which a beneficiary can elect between the 10-year rule and the life expectancy rule, then the plan must provide that the life expectancy rule applies for an eligible designated beneficiary.

a beneficiary is disabled. Specifically, if, as of the date of the employee's death, the Commissioner of Social Security has determined that the individual is disabled within the meaning of 42 U.S.C. 1382c(a)(3), then that individual will be deemed to be disabled for purposes of section 401(a)(9) of the Code. The final regulations clarify that this alternative is merely a safe harbor and that a beneficiary who does not have a Social Security determination of disability can apply the general standards described in the preceding paragraph.

Several commenters asked for additional safe harbors for the determination of whether a beneficiary is disabled. For example, one commenter requested that the final regulations include a safe harbor under which a beneficiary is considered to be a disabled individual if a State court has determined that the beneficiary is incapacitated for purposes of State guardianship proceedings. Another commentor asked for a safe harbor under which an individual is treated as disabled or chronically ill if that individual is an eligible individual with respect to an ABLE account as described in section 529A(e)(1). The regulations do not provide for those safe harbors because the standards required for a State law guardianship proceeding or to be an eligible individual with respect to an ABLE account could be broader than the definition of disability in section 72(m)(7).

c. Documentation requirements for disabled or chronically ill status

The regulations provide that, with respect to a beneficiary who is disabled or chronically ill as of the date of the employee's death, documentation of the disability or chronic illness must be provided to the plan administrator no later than October 31 of the calendar year following the calendar year of the employee's death. If the designated beneficiary is chronically ill under any of the definitions in section 7702B(c)(2)(A) as of the date of the employee's death, the documentation must include a certification by a licensed health care practitioner (as defined in section 7702B(c)(4)) that the designated beneficiary is chronically ill. Additionally, in accordance with section 401(a)(9)(E)(ii)(IV), if the beneficiary is chronically ill under the definition in section 7702B(c)(2)(A)(i), then the documentation also must include a certification from a licensed health care practitioner that, as of the date of the certification, the individual is unable to perform (without substantial assistance from another individual) at least 2 activities of daily living and the period of that inability is an indefinite one that is reasonably expected to be lengthy in nature.

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

One commenter requested that the final regulations replace the October 31 deadline for providing documentation reflecting a designated beneficiary's disability or chronic illness and instead provide that the deadline be before a full distribution would be required if the beneficiary was not disabled. The regulations do not make that change because of the need for a medical assessment of the designated beneficiary's disability or chronic illness as of the date of the employee's death. Allowing a 10-year delay before making this medical assessment (or an even further delay in the case of a child of the employee who had not reached the age of majority as of the date of the employee's death) could result in a less reliable assessment that the beneficiary was disabled or chronically ill as of the date of the employee's death than an assessment made within a short period after that date.

Several commenters requested that plan administrators be permitted to rely on self-certifications from a designated beneficiary (or, in the case of a see-through trust, the trustee of that trust) that the beneficiary is disabled or chronically ill within the meaning of §1.401(a)(9)-4(d). The commenters argued that plan administrators and IRA custodians should not be required to review personal health records or similar documents to determine whether a beneficiary is disabled or chronically ill and that the self-certification process has already been established for other areas of plan administration, including in the case of coronavirus-related distributions pursuant to Notice 2020-50, 2020-28 IRB 35.

The Treasury Department and the IRS generally disagree with the commenters' request that plan administrators should be able to rely on a beneficiary's self-certification of disability or chronic illness. This documentation requirement is different than that of coronavirus-related distributions because there is the potential for a delay of distributions of the employee's account for long periods if the beneficiary meets the disabled or chronically ill standard in the Code. As a result, plans should require documentation from a licensed health care practitioner (rather than rely on a certification by the beneficiary).

While the final regulations do not eliminate the deadline to provide documentation to a plan administrator, an example illustrating this rule has been modified to show that the required documentation need not be overly detailed. Under the example, the licensed health care practitioner merely certifies that, as of a specified date, the designated beneficiary is unable to engage in any substantial gainful activity by reason of a physical impairment that can be expected to be of long-continued and indefinite duration. In addition, the regulations include a transition rule for the documentation deadline in the case of an employee who died in 2020, 2021, 2022, or 2023. In that case, the documentation of the designated beneficiary's disability or chronic illness does not need to be furnished to the plan administrator until October 31, 2025. Finally, as described in section IV of this **Summary of Comments and Explanation of Revisions**, the final regulations provide that there is no requirement to provide documentation of a designated beneficiary's disability or chronic illness to an IRA custodian.

2. Trust as Beneficiary

The final regulations retain the see-through trust concept in the 2002 final regulations under which certain beneficiaries of a trust are treated as beneficiaries of the employee if the trust meets specified requirements. Specifically, to be a see-through trust, the trust must meet the following requirements: (1) the trust is valid under State law or would be valid but for the fact that there is no corpus; (2) the trust is irrevocable or will, by its terms, become irrevocable upon the death of the employee; (3) the beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable; and (4) the specified documentation requirements are satisfied.

a. Determining which see-through trust beneficiaries are treated as beneficiaries of the employee

1. See-through trust beneficiaries taken into account

Generally, the regulations provide that a beneficiary of a see-through trust is treated as a beneficiary of the employee if the beneficiary could receive amounts in the trust representing the employee's interest in the plan that are neither contingent upon nor delayed until the death of another trust beneficiary who does not predecease (and who is not treated as having predeceased)[9] the employee. A beneficiary described in the preceding sentence is referred to as a primary beneficiary in this **Summary of Comments and Explanation of Revisions**. One commenter requested that the final regulations provide a uniform simultaneous death provision for determining whether one beneficiary predeceases another beneficiary. The final regulations do not adopt this request because the disposition of property interests is governed by State law rather than by these regulations.

Whether any other see-through trust beneficiary also is treated as a beneficiary of the employee depends upon whether the see-through trust is a conduit trust or an accumulation trust. A conduit trust is defined in the regulations as a see-through trust, the terms of which provide that all plan distributions will, upon receipt by the trustee, be paid directly to, or for the benefit of, primary beneficiaries during their lifetimes. For example, if an employee names a see-through trust as the beneficiary of the employee's interest in a plan and the trust terms provide that all distributions from the plan to the trust during the surviving spouse's life will, upon receipt by the trustee, be paid directly to that surviving spouse, then the trust is a conduit trust and the surviving spouse is treated as a beneficiary of the employee because the surviving spouse could receive amounts in the trust with respect to the deceased employee's interest in the plan that are neither contingent upon nor delayed until the death of another trust beneficiary. In this case, any beneficiary who could receive distributions from the trust with respect to the deceased employee's interest in the plan after the surviving spouse's death is not treated as a beneficiary of the employee.

An accumulation trust is any see-through trust that is not a conduit trust, and under an accumulation trust, there are potentially more beneficiaries. A beneficiary of an accumulation trust is treated as a beneficiary of the employee if that beneficiary could receive amounts accumulated in the trust representing the employee's interest in the plan that were not distributed to other beneficiaries during their lifetimes (unless that beneficiary is disregarded pursuant to the rules described in section II.D.2.*a*.*2* of this **Summary of Comments and Explanation of Revisions**). A beneficiary described in the preceding sentence is referred to as a residual beneficiary in this **Summary of Comments and Explanation of Revisions**.

As an illustration of the rule in the preceding paragraph, assume an employee designates a see-through trust as the sole beneficiary of the employee's interest in the plan. The terms of the see-through trust provide that the trustee is to pay specified amounts from the trust to the employee's surviving spouse, but do not provide that all plan distributions made to the trust will, upon receipt by the trustee, be paid directly to, or for the benefit of, the spouse. Upon the spouse's death, the see-through trust will terminate and the amounts remaining in the trust will be paid to the employee's brother. The surviving spouse is treated as a beneficiary of the employee (because the surviving spouse could receive amounts in the see-through trust representing the deceased employee's interest in the plan that are neither contingent upon nor delayed until the death of another trust beneficiary). Moreover, because not all distributions from the plan to the see-through trust are required, upon receipt by the trustee, to be paid directly to, or for the benefit of, a trust beneficiary, the trust is an accumulation trust. As a result, the employee's brother is treated as a beneficiary of the employee because he is the residual beneficiary of an accumulation trust (unless the employee's brother is disregarded pursuant to the rules described in section II.D.2.*a*.*2* of this **Summary of Comments and Explanation of Revisions**).

One commenter requested that the final regulations provide that a see-through trust can still be a conduit trust if it includes certain trust terms. Specifically, the commenter requested that final regulations provide that a see-through trust will not fail to be treated as a conduit trust merely because that trust does not provide that, with respect to the deceased employee's interest in the plan, all distributions will, upon receipt by the trustee, be paid directly to a specified beneficiary provided that the beneficiary has a unilateral withdrawal right with respect to those amounts. The final regulations do not include this change because the Treasury Department and the IRS are concerned that if a trust merely provides a beneficiary with this type of unilateral withdrawal right (rather than providing that any distribution from the plan, upon receipt by the trustee, be paid directly to that beneficiary), then there could be an accumulation within the trust of amounts representing the employee's interest in the plan that could be paid to a different

[9] For purposes of this rule, a beneficiary is treated as having predeceased the employee if the beneficiary is treated as predeceasing the employee pursuant to a simultaneous death provision under applicable State law or a qualified disclaimer satisfying section 2518 that applies to the entire interest to which the beneficiary is entitled.

trust beneficiary. In those cases, the trust beneficiaries who could benefit from that accumulation should also be treated as beneficiaries of the employee for purposes of section 401(a)(9) (without regard to the taxability of the distribution).

Commenters requested that the regulations clarify the see-through trust rules in the case of payments that are not made directly to the trust beneficiary but are made indirectly for the benefit of the trust beneficiary (such as payments to a custodial account for the benefit of a minor child). In response to those comments, these regulations provide that a trust beneficiary will be treated as if that beneficiary could receive amounts in the trust representing the employee's interest in the plan regardless of whether those amounts could be paid directly to that beneficiary or indirectly for the benefit of that beneficiary.

2. Disregarded beneficiaries of see-through trusts

The regulations provide for certain beneficiaries of a see-through trust to be disregarded as beneficiaries of the employee for purposes of section 401(a)(9). Specifically, a beneficiary of a see-through trust is not treated as a beneficiary of the employee if that trust beneficiary could receive payments from the trust that represent the employee's interest in the plan only after the death of another trust beneficiary who is a residual beneficiary (and is not also a primary beneficiary) who did not predecease (and is not treated as having predeceased) the employee.

One commenter requested that the disregard described in the preceding paragraph should not be affected by a trustee's ability to make sprinkling distributions to a residual beneficiary (that is, distributions for the health, support, or maintenance of that residual beneficiary) during the lifetime of a primary beneficiary. The Treasury Department and the IRS disagree with this request because of the potential for the primary beneficiary to be entitled to only a nominal amount (so that the residual beneficiary entitled to sprinkling distributions is effectively the primary beneficiary). In that case, the beneficiary who is entitled to amounts representing the employee's interest in the plan after the death of the residual beneficiary has a significant interest in amounts accumulated in the trust representing the employee's interest in the plan and should be treated as a beneficiary of the employee.

The regulations provide another exception under which a see-through trust beneficiary with a residual interest is disregarded as a beneficiary of the employee. Specifically, the regulations provide that if the see-through trust terms require a full distribution of amounts in the trust representing the employee's interest in the plan to a specified trust beneficiary by the later of: (1) the calendar year following the calendar year of the employee's death; and (2) the end of the calendar year that includes the tenth anniversary of the date the designated beneficiary reaches the age of majority, then any other beneficiary whose sole entitlement to distributions is conditioned on the specified trust beneficiary's death before the full distribution is required is disregarded as a beneficiary of the employee.

One commenter requested that the final regulations also disregard beneficiaries who have a contingent interest in the employee's benefit under the plan if the likelihood of that contingency occurring is remote (for example, the probability of that contingency occurring is less than 5 percent). The final regulations do not adopt this broad disregard because it is too difficult to determine the likelihood of a stated event occurring prior to a specified date in cases other than an individual reaching a particular age or a residual beneficiary predeceasing another designated beneficiary entitled to amounts in the trust.

b. Documentation requirements for see-through trusts

The proposed regulations adopted the see-through trust documentation requirements described in the 2002 final regulations. The documentation requirements in the proposed regulations generally provided that the plan administrator must timely receive either (1) a copy of the actual trust instrument, or (2) a list of all the trust beneficiaries, including contingent beneficiaries, with a description of the conditions on their entitlement sufficient to establish who are the beneficiaries.

Commenters noted that plan administrators and IRA custodians are not experts in the intricacies of various State trust laws and thus, are not qualified to read through complex trust instruments to determine who the beneficiaries are for purposes of section 401(a)(9). The commenters requested that final regulations allow for a certification from the trustee of the trust as to the beneficiaries who are to be treated as beneficiaries of the employee for purposes of section 401(a)(9). The final regulations do not permit a trustee to certify to a plan administrator the list of beneficiaries to be treated as beneficiaries of the employee because plan administrators are better suited to determine how section 401(a)(9) applies with respect to an employee.

As an alternative to allowing a plan administrator to rely on the trustee's certification of the trust beneficiaries who are to be treated as the employee's beneficiaries for purposes of section 401(a)(9), the commenters requested that final regulations allow for a plan administrator to specify that a list of the trust beneficiaries with a description of the conditions on their entitlement must be provided (rather than the actual trust document). The final regulations clarify that a plan administrator may choose which of the two alternatives will be accepted. Thus, the plan administrator may require the trustee to provide a list of trust beneficiaries with a description of the conditions on their entitlement in lieu of the actual trust document. In addition, as described in section IV of this **Summary of Comments and Explanation of Revisions**, the regulations provide that a trustee of a see-through trust is not required to provide the trust documentation to an IRA custodian, trustee, or issuer.

c. Applicable multi-beneficiary trusts

The proposed regulations provided guidance on a particular type of see-through trust defined in section 401(a)(9)(H)(v) as an applicable multi-beneficiary trust. Specifically, the proposed regulations defined two types of applicable multi-beneficiary trusts. A type I applicable multi-beneficiary trust is a trust with at least one beneficiary who is disabled or chronically ill, the terms of which pro-

vide that the trust is to be divided immediately upon the death of the employee into separate trusts for each beneficiary (as described in section 401(a)(9)(H)(iv)(I)). A type II applicable multi-beneficiary trust is an applicable multi-beneficiary trust, the terms of which provide that no individual other than a disabled or chronically ill eligible designated beneficiary has any right to the employee's interest in the plan until the death of all such eligible designated beneficiaries with respect to the trust (as described in section 401(a)(9)(H)(iv)(II)).

The proposed regulations permitted section 401(a)(9) to be applied separately with respect to the separate interests of the beneficiaries reflected in the separate trusts of a type I applicable multi-beneficiary trust. However, the final regulations do not include a definition of a type I applicable multi-beneficiary trust. This is because, as described in section I.H of this **Summary of Comments and Explanation of Revisions**, the final regulations include a broader rule that permits separate application of section 401(a)(9) with respect to the separate interests of the beneficiaries reflected in a trust if that trust is to be divided immediately upon the death of the employee into separate trusts for each beneficiary, without regard to whether any of the beneficiaries are disabled or chronically ill.

With respect to the definition of a type II applicable multi-beneficiary trust, one commenter requested that the final regulations provide that the trust be permitted to include beneficiaries that are not individuals (such as a charity) that are entitled to distributions after the death of the disabled or chronically ill beneficiary. Section 337(b) of the SECURE 2.0 Act amended section 401(a)(9)(H)(v) of the Code to provide a modified version of that request. Accordingly, these regulations adopt a modified version of the definition of a type II applicable multi-beneficiary trust from the proposed regulations. Under that modification, certain organizations described in section 170(b)(1)(A) to which charitable contributions may be made are treated as designated beneficiaries.[10]

In addition, one commenter requested clarification in the case of a trust that provides for a disabled or chronically ill eligible designated beneficiary's interest in the trust to be terminated if necessary to preserve eligibility for certain public benefits. These regulations continue to require that no trust beneficiary other than the disabled or chronically ill beneficiary may receive payments from the trust prior to the death of that beneficiary in order for the trust to be treated as an applicable multi-beneficiary trust. However, if the trust provides that the other trust beneficiaries cannot receive any amounts from the trust until the death of the disabled or chronically ill beneficiary notwithstanding whether that beneficiary's interest in the trust is terminated, then the termination provision will not cause the trust to fail to be treated as an applicable multi-beneficiary trust. In this case, if the disabled or chronically ill beneficiary's interest is terminated pursuant to that trust provision after September 30 of the calendar year following the calendar year of the employee's death, then the trust is treated as having been modified to add those other beneficiaries as of the date the termination occurred.

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

1. In General

Like the proposed regulations, these final regulations retain the general method in the 2002 final regulations by which a required minimum distribution from a defined contribution plan is calculated in any calendar year when an employee dies on or after the required beginning date or when an employee's eligible designated beneficiary is taking annual life expectancy payments after an employee dies before the required beginning date. Specifically, the required minimum distribution for a calendar year is determined by dividing the employee's account balance as of the end of the prior calendar year by the applicable denominator. In addition to the requirement to take annual required minimum distributions, the regulations implement the amendments made by section 401 of the SECURE Act by requiring that a full distribution of the employee's remaining interest be taken in certain circumstances.

2. Purchase of Annuity Contract with Portion of Employee's Individual Account

The 2002 final regulations provided a special bifurcation rule in the case of an employee with an individual account who used a portion of that account to purchase an annuity contract. In that case, those regulations provided that payments from the annuity contract were required to satisfy the rules of §1.401(a)(9)-6 and payments of the remaining account balance were required to satisfy the rules of §1.401(a)(9)-5. In addition, because the required minimum distribution for a calendar year is determined based on the account balance as of the end of the previous calendar year, the 2002 final regulations provided that, for the calendar year in which the annuity contract is purchased, payments made under the contract are treated as distributions from the individual account for purposes of determining whether section 401(a)(9) has been satisfied with respect to that account. The proposed regulations generally retained these rules.

In accordance with section 204 of the SECURE 2.0 Act, these regulations provide that a plan may allow the employee to elect to have the amount required to be distributed for a calendar year from an individual account to be calculated as the excess of the total required amount (as defined in section 204(b)(1) of the SECURE 2.0 Act) for that year over the annuity amount (as defined in section 204(b)(2) of the SECURE 2.0 Act) for that year. Accordingly, these final regulations provide an alternative to the bifurcation rule described in the preceding paragraph. Under this rule, in lieu of satisfying section 401(a)(9) separately with respect to the annuity contract and the remaining account balance, a plan may permit an employee to elect to satisfy sec-

[10] The final regulations also reflect the change to section 401(a)(9)(H)(iv)(II) of the Code made by section 337 of the SECURE 2.0 Act. Under this change, the restriction on payments from a type II applicable multi-beneficiary trust prior to the death of the disabled or chronically ill individual applies to any other beneficiary (rather than applying to any other individual).

tion 401(a)(9) for the annuity contract and that account balance in the aggregate by adding the fair market value of the contract to the remaining account balance and treating payments under the annuity contract as distributions from the individual account. These regulations reserve a paragraph for rules of operation with respect to this alternative, including guidance related to the determination of the fair market value of the annuity contract. These rules are included in a notice of proposed rulemaking (REG-103529-23) in the Proposed Rules section of this issue of the **Federal Register**.

3. Distributions After the Employee's Death

a. Requirement to satisfy both section 401(a)(9)(B)(i) and (ii) in the case of an employee who dies on or after the required beginning date

Section 401(a)(9)(B)(i) provides rules that apply if an employee dies after benefits have commenced. While the 5-year rule under section 401(a)(9)(B)(ii) generally applies if an employee dies before the employee's required beginning date, section 401(a)(9)(H)(i) provides that section 401(a)(9)(B)(ii) applies in certain cases by substituting 10 years for 5 years and applies whether or not the employee dies before or after the employee's required beginning date. Accordingly, if an employee dies after the required beginning date, distributions to the employee's beneficiary for calendar years after the calendar year in which the employee died must satisfy section 401(a)(9)(B)(i) as well as section 401(a)(9)(B)(ii). In order to satisfy both of these requirements, the regulations provide for the same calculation of the annual required minimum distribution that was adopted in the 2002 final regulations but with an additional requirement that a full distribution of the employee's entire interest in the plan be made upon the occurrence of certain designated events (discussed in section I.E.3.*c* of this **Summary of Comments and Explanation of Revisions**).

Several commenters requested that the final regulations eliminate the requirement for continued annual distributions if an employee dies on or after the employee's required beginning date. The commenters set forth an interpretation of section 401(a)(9)(H) under which, if an employee dies on or after the employee's required beginning date, the 10-year rule described in section 401(a)(9)(B)(ii) (as modified by section 401(a)(9)(H)(i)) applies in lieu of the "at least as rapidly" rule described in section 401(a)(9)(B)(i). Commenters also asserted that requiring continued annual distributions adds complexity to the regulations (in that the beneficiary would have to know whether the employee died before or after the employee's required beginning date to apply this rule).

The final regulations do not eliminate the requirement for continued annual distributions if an employee dies on or after the employee's required beginning date. The Treasury Department and the IRS do not think that the commenters' interpretation is consistent with a plain reading of the statute. Instead, the Treasury Department and the IRS have determined that section 401(a)(9)(B)(i) and (ii) both apply if an employee dies after the employee's required beginning date (unless the designated beneficiary is an eligible designated beneficiary taking life expectancy payments under section 401(a)(9)(B)(iii)). Read together, those provisions generally require annual distributions to continue while also requiring full distribution of the employee's interest in the plan by the end of the calendar year that includes the tenth anniversary of the date of the employee's death.

The Treasury Department and the IRS have also concluded that the overarching policy of section 401(a)(9) and the amendments made by section 401 of the SECURE Act support the interpretation in these regulations. Since it was first added to the Code, section 401(a)(9) has always included the concept of a required beginning date, under which, once required minimum distributions began to either an employee or designated beneficiary, they were required to continue until the employee's entire interest under the plan was fully distributed, and these regulations retain this requirement. There is little indication in section 401 of the SECURE Act to suggest that Congress intended to allow distributions of an employee's account to temporarily cease for up to 9 years once annual required minimum distributions have begun. Moreover, the requirement to continue annual distributions does not increase complexity (in that this requirement merely retains the rules that were in place before the addition of section 401(a)(9)(H), but subject to the full distribution requirement described in section I.E.3.*c* of this **Summary of Comments and Explanation of Revisions**).

The proposed regulations provided a similar requirement to continue annual distributions for 10 years if an eligible designated beneficiary who was taking life expectancy payments dies or if an eligible designated beneficiary who is a minor child of the employee and who was taking life expectancy payments reaches the age of majority. Commenters raised similar concerns regarding this requirement. For the reasons described in the preceding paragraph, these regulations retain this requirement for continued annual distributions for up to 10 years after: (1) the death of an eligible designated beneficiary who was taking life expectancy payments; or (2) the attainment of the age of majority (in the case of an eligible designated beneficiary who was a minor child of the employee taking life expectancy payments).

While the final regulations do not eliminate the annual distribution requirement in cases in which annual life expectancy payments have begun, the Treasury Department and the IRS issued Notice 2022-53, 2022-45 IRB 437, Notice 2023-54, 2023-31 IRB 382, and Notice 2024-35, 2024-19 IRB 1051, in response to comments requesting transition relief for this requirement. Under those notices, if a distribution would have been required to be made to certain beneficiaries under these regulations had they applied before January 1, 2025, then: (1) a plan will not fail to be qualified for failing to make that distribution in 2021, 2022, 2023, or 2024; and (2) the taxpayer who failed to take the distribution will not be assessed an excise tax for failing to do so.[11] This relief

[11] This relief does not require taxpayers to make up missed required minimum distributions nor does it permit taxpayers to extend the 10-year deadline by which a full distribution is required to be made. For example, if an employee died in 2020, then in 2025, there are six years remaining in the 10-year period without regard to whether the designated beneficiary took distributions in 2021, 2022, 2023, or 2024. In 2030, the designated beneficiary must take a distribution of the remaining account balance.

applies with respect to a beneficiary who is a designated beneficiary of an employee who died in 2020, 2021, 2022, or 2023, and after the employee's required beginning date, provided that the beneficiary was not an eligible designated beneficiary who used the lifetime or life expectancy payments exception under section 401(a)(9)(B)(iii). Those notices also provided comparable relief for the case in which an eligible designated beneficiary who was taking annual life expectancy payments died in 2020, 2021, 2022, or 2023, and that beneficiary's successor beneficiary failed to take a distribution in 2021, 2022, 2023, or 2024.

b. Determination of applicable denominator

If an employee died on or after the required beginning date (or the employee died before the required beginning date and the employee's eligible designated beneficiary is taking life expectancy distributions in accordance with section 401(a)(9)(B)(iii) and these regulations), then for calendar years after the calendar year in which the employee died, the applicable denominator generally is the remaining life expectancy of the designated beneficiary.[12] The beneficiary's remaining life expectancy generally is calculated using the age of the beneficiary in the year following the calendar year of the employee's death, reduced by one for each subsequent calendar year.

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

The final regulations reflect the amendments made to section 401(a)(9)(B)(iv) by section 327 of the SECURE 2.0 Act under which a surviving spouse who is the sole beneficiary of the employee may elect to be treated as the employee for certain purposes. However, the rules relating to this election are reserved in these final regulations and included in a notice of proposed rulemaking (REG-103529-23) in the Proposed Rules section of this issue of the **Federal Register**.

c. Full distribution required in certain circumstances

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

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

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

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

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

The final regulations generally retain these full distribution requirements (with minor language changes clarifying those requirements). However, consistent with requests made by commenters, the regulations remove the requirement for a full distribution by the end of the calendar year in which the applicable denominator would have been less than or equal to one if it were determined using the beneficiary's remaining life expectancy (which would have applied in the case of a designated beneficiary who was older than the employee). Accordingly, in the case of an eligible designated beneficiary who was born before the employee, if that beneficiary is taking distributions over the employee's remaining life expectancy, then a full distribution is not required until the calendar year in which the applicable denominator is less than or equal to one.

d. Multiple designated beneficiaries

The proposed regulations provided that if the employee has more than one designated beneficiary then the applicable denominator is determined using the life expectancy of the oldest designated beneficiary. Under the proposed regulations, whether a full distribution is required also generally is determined using the oldest of the designated beneficiaries.

The proposed regulations provided certain exceptions to these general rules for multiple designated beneficiaries. Under one exception, if the employee's beneficiary is an applicable multi-beneficiary trust, then only the disabled and chronically ill beneficiaries of the trust are taken into account in determining the oldest designated beneficiary. Under a second exception, if any of the employee's designated beneficiaries was a child of the employee who had not yet reached the age of majority as of the date of the employee's death, then, in applying the requirement to make a full distribution by the tenth year following the death of the oldest eligible designated beneficiary, only the employee's children who are designated beneficiaries and who are under the age of majority as of the employee's date of death were taken into account.

[12] In the case of an employee who died on or after the employee's required beginning date, the designated beneficiary may use the employee's remaining life expectancy if it is longer than the beneficiary's remaining life expectancy.

Thus, in a situation involving one or more designated beneficiaries who are children of the employee under the age of majority as of the date of the employee's death and one or more older designated beneficiaries, the death of an older designated beneficiary would not result in a requirement to pay a full distribution before the oldest of those children attains the age of majority plus 10 years.[13]

One commenter raised the concern that, if two of the employee's children are eligible designated beneficiaries, the rules in the proposed regulations would result in a requirement to pay the balance of the employee's account upon the attainment of the age of majority plus 10 years by the older of those children. To address this situation, the final regulations provide that, in the case described in this paragraph, a full distribution is not required until ten years after the youngest of the employee's children who are designated beneficiaries attains the age of majority (or, if earlier, ten years after the last of those minor children dies).

4. Treatment of Designated Roth Accounts

These final regulations provide that, in accordance with section 325 of the SECURE 2.0 Act, when determining the account balance subject to section 401(a)(9) of the Code for distribution calendar years up to and including the calendar year including the employee's date of death, amounts held by the employee in a designated Roth account (as described in section 402A(b)(2)) are not taken into account. These regulations reserve a paragraph for rules regarding how distributions from a designated Roth account are treated for purposes of section 401(a)(9) that are included in a notice of proposed rulemaking (REG-103529-23) in the Proposed Rules section of this issue of the **Federal Register**.

5. Disregard of Certain Distributions

The proposed regulations updated the list of amounts of distributions and deemed distributions that are not taken into account in determining whether the required minimum distribution has been made for a calendar year. Under the proposed regulations, that list was implemented by a cross-reference to a list of amounts in proposed §1.402(c)-2(c)(3) (relating to amounts that are not treated as eligible rollover distributions). The effect of the new cross-reference was to add the following items to the list of amounts that are disregarded for purposes of determining whether the required minimum distribution has been made from a defined contribution plan: prohibited allocations that are treated as deemed distributions pursuant to section 409(p); distributions of premiums for health and accident insurance under §1.402(a)-1(e)(1)(i); amounts treated as distributed with respect to collectibles pursuant to section 408(m); and distributions that are permissible withdrawals from an eligible automatic contribution arrangement within the meaning of section 414(w).

These exclusions are reflected in the final regulations with minor language changes. However, consistent with requests made by commenters, the final regulations clarify that the disregard for a distribution of premiums for health and accident insurance does not include a distribution described in section 402(l) (that is, certain distributions with respect to eligible retired public safety officers from governmental plans that are used to pay qualified health insurance premiums).

The final regulations reserve a paragraph for the treatment of a corrective distribution under section 4974(e) (that is, a distribution of a prior year's missed required minimum distribution within the statutory correction window that results in a reduction in the excise tax rate for the missed required minimum distribution) or §54.4974-1(g)(2) (relating to the automatic waiver of the excise tax for a missed required minimum distribution for the year of an individual's death). These rules are included in a notice of proposed rulemaking (REG-103529-23) in the Proposed Rules section of this issue of the **Federal Register**.

F. *Section 1.401(a)(9)-6 — Required minimum distributions from defined benefit plans and annuity contracts*

Section 1.401(a)(9)-6 provides rules for required minimum distributions from defined benefit plans and from annuity contracts (including annuity contracts that are used to pay benefits under a defined contribution plan). These rules are based on the 2004 final regulations and are updated to reflect the amendments to section 401(a)(9) of the Code made by various provisions of the SECURE 2.0 Act.

1. Rules Applicable to Defined Benefit Plans

The proposed regulations, like the 2004 final regulations, reflected the exceptions from the requirements of section 401(a)(9)(C)(ii) and (iii) provided under section 401(a)(9)(C)(iv) for governmental plans and church plans. Section 401(a)(9)(C)(iv) specifies that for purposes of these exceptions, a church plan is a plan maintained by a church for church employees, and the term *church* means any church as defined in section 3121(w)(3)(A) or any qualified church-controlled organization as defined in section 3121(w)(3)(B). The proposed regulations provided that, for this purpose, the determination of whether an employee is a church employee is made without regard to section 414(e)(3)(B).

One commenter requested that the final regulations provide that the rules under section 414(e)(3)(B) that treat certain individuals as employees of a church apply generally for the purposes of determining whether a plan is maintained for church employees under section 401(a)(9)(C)(iv). The Treasury Department and the IRS determined that such a rule would yield an inappropriate result in the case of a plan for employees of a tax-exempt organization that is associated with a church unless the organization is a qualified church-controlled organization. However, it would be appropriate to treat a plan for self-employed individuals who

[13] This rule works in conjunction with the rule in §1.401(a)(9)-4(e)(2)(ii), which provides that if any of the employee's designated beneficiaries is an eligible designated beneficiary because the beneficiary is the child of the employee who had not reached the age of majority at the time of the employee's death, then the employee is treated as having an eligible designated beneficiary even if the employee has other designated beneficiaries who are not eligible designated beneficiaries. Thus, if the employee has both an eligible designated beneficiary who is a minor child of the employee and an older designated beneficiary, annual distributions may continue until the minor child reaches the age of majority plus 10 years.

are licensed ministers of a church as a plan maintained by a church for employees of a church. Accordingly, these regulations provide that the determination of whether an individual is an employee of a church or qualified church-controlled organization is made in accordance with the rules of section 414(e)(3)(B) other than section 414(e)(3)(B)(ii). Thus, a licensed minister who is self-employed but is treated as an employee of a church under section 414(e)(3)(B)(i) is considered an employee of a church for purposes of section 401(a)(9)(C)(iv).

The commenter also requested that the exception apply to a multiple employer plan covering employees of a church or a qualified church-controlled organization that also covers other employees. These regulations do not adopt that rule. Instead, they provide that a plan is excepted from the actuarial increase requirement only if at least 85 percent of the individuals covered by the plan are employees of a church or a qualified church-controlled organization. Thus, if the employees in the plan who are not employees of a church or a qualified church-controlled organization constitute more than 15 percent of the covered employees, then the plan is not treated as a church plan that is exempted from the requirement under section 401(a)(9)(C)(iii) to provide an actuarial increase. However, these regulations provide that this actuarial increase requirement does not apply to benefits accrued by an individual that are attributable to service the individual performs as an employee of a church or a qualified church-controlled organization (including service performed as an employee described in section 414(e)(3)(B)(i)).

Another commenter asked whether the requirement to apply an actuarial increase applies to benefits that are not vested. These regulations provide that the actuarial increase applies to benefits that are accrued but treat benefits that are not vested as accruing when they become vested. Accordingly, benefits that are not vested are not required to be actuarially increased until they become vested.

2. Applicability of Section 401(a)(9)(H) to Annuity Contracts

One commentor noted that the language in §1.401(a)(9)-5(a)(5) of the proposed regulations requiring that an annuity contract purchased under a defined contribution plan satisfy the requirements of §1.401(a)(9)-5(e) (implementing the requirements of section 401(a)(9)(E)(iii), (H)(ii) and (iii) that the employee's entire interest be distributed by the end of a specified calendar year) was not clear (in that the rule in §1.401(a)(9)-5(e) of the proposed regulations referred to the situation in which an employee's benefit is in the form of an individual account). The final regulations clarify that, if an annuity contract is purchased under a defined contribution plan, or the annuity contract is otherwise subject to section 401(a)(9)(H), then payments under that annuity contract are not permitted to extend past the calendar year described in §1.401(a)(9)-5(e).[14]

Several commenters observed that, as of the annuity starting date, a participant may have elected to receive a joint and survivor annuity benefit under an annuity contract with the spouse as survivor annuitant, and that the participant and spouse may divorce after the annuity starting date. Commenters asserted that, in such a case, there should be no change in the terms of the annuity contract on account of the divorce (as would have been required under the proposed regulations if the former spouse were no longer considered to be a spouse and were not an alternate payee under a qualified domestic relations order (QDRO) issued in accordance with section 414(p) specifying that the former spouse is to be treated as the surviving spouse for purposes of the annuity contract). Consistent with these comments, the final regulations provide that, for a designated beneficiary who is a contingent annuitant under an annuity contract, the determination of whether that beneficiary is an eligible designated beneficiary is made as of the annuity starting date. Thus, if the employee elects a joint and survivor annuity with the employee's spouse as the contingent annuitant, and they divorce after the annuity starting date, then the former spouse who is a designated beneficiary and the contingent annuitant under the contract is treated as an eligible designated beneficiary without regard to whether there is a QDRO. This approach is consistent with the requirements of rules of sections 401(a)(11) and 417, and §1.401(a)-20, Q&A-25(b)(3), under which the spouse as of the annuity starting date continues to be entitled to a qualified joint and survivor annuity elected under the plan if the participant and the spouse divorce after the annuity starting date.

3. Increasing Payments

Similar to the 2004 final regulations, the proposed regulations provided that all payments under a defined benefit plan or annuity contract must be nonincreasing, subject to a number of exceptions. The proposed regulations retained the exceptions in the 2004 final regulations and added further exceptions under which annuity payments under a defined benefit plan or annuity contract may increase. Under the proposed regulations, the permitted increases in annuity payments were different for defined benefit plans and annuity contracts issued by insurance carriers. In the case of an annuity contract, certain of the exceptions to the nonincreasing rule in the proposed regulations applied only if the total future expected payments under the contract exceed the total value being annuitized (that is, the value of the employee's entire interest being annuitized).

One commenter requested that each of the annuity payment increases permitted under a defined benefit plan (such as a fixed percentage increase in annuity payments that is less than 5 percent) be permitted for annuity contracts without regard to the condition that the total future expected payments exceed the total value being annuitized. Consistent with this comment, and in accordance with section 401(a)(9)(J)(i) (as added to the Code by section 201 of the SECURE 2.0 Act), these regulations provide that the permitted increases

[14] One commenter asked for clarification of whether section 401(a)(9)(H) applies in the case of an annuity provided under a defined benefit plan that is attributable to a direct rollover from a defined contribution plan (as described in Rev. Rul. 2012-4, 2012-8 IRB 386). In that case, because the annuity is provided under a defined benefit plan, it is not subject to section 401(a)(9)(H).

in annuity payments under a defined benefit plan generally are also available under an annuity contract and eliminate the condition on increases under an annuity contract that the total future expected payments under the contract exceed the total value being annuitized. Thus, the permitted increases in annuity payments under an annuity contract are expanded under the regulations to include increases by a constant percentage, applied not less frequently than annually, at a rate that is less than 5 percent per year. However, consistent with the simplification of the permitted annuity increases under section 401(a)(9)(J), an increase of 5 percent or more per year is not permitted for an annuity contract under the final regulations, even if the annuity payments could have met the condition for that increase under the 2004 regulations.

These regulations also include modifications to the permitted increases for annuity contracts to reflect the addition of section 401(a)(9)(J)(ii) through (iv) to the Code. Thus, the following increases in annuity payments are permitted: (1) an increase as a result of the shortening of the payment period with respect to the annuity or a full or partial commutation of the future annuity payments, provided that the amount of the payment pursuant to the commutation is determined using reasonable actuarial methods and assumptions, as determined in good faith by the issuer of the contract;[15] (2) a payment of an amount that is in the nature of a dividend, provided that the issuer of the contract uses reasonable actuarial methods and assumptions, as determined in good faith, when calculating the initial annuity payments, the issuer's experience with respect to those factors, and the amount of the dividend or similar payment; and (3) a final payment upon death that does not exceed the amount by which the total consideration paid for the contract exceeds the aggregate amount of prior distributions under the contract.

In addition, these regulations provide rules that apply if the annuity contract purchased under a defined benefit plan is merely providing the same benefits that would have been payable under the defined benefit plan if an annuity contract had not been purchased.[16] In that case, the annuity contract is permitted to have the same increases in annuity payments as under the qualified defined benefit rules. This could occur, for example, if an annuity contract is purchased under a terminating defined benefit plan.

One commenter requested additional guidance as to whether section 401(a)(9) prohibits a plan from offering a period of time during which a participant or beneficiary may elect to receive a lump sum payment instead of future annuity payments. These regulations do not address this issue. As described in Notice 2019-18, 2019-13 IRB 915, the Treasury Department and the IRS will continue to study the issue of retiree lump sum windows. This study will take into account the enactment of section 342 of the SECURE 2.0 Act.

4. Qualifying Longevity Annuity Contracts

In 2014, the Treasury Department and the IRS amended the regulations under section 401(a)(9) to provide special rules that apply if a deferred annuity that commences annuity payments at an advanced age is purchased with a portion of the employee's interest under a defined contribution plan. See 79 FR 37633. Under those rules, if the annuity contract satisfies certain requirements, then the contract is a QLAC and the value of that QLAC is excluded from the account balance under the plan. Those requirements include that: (1) distributions commence not later than age 85; (2) the premiums paid with respect to all contracts intended to be QLACs not exceed an inflation-adjusted $125,000 (dollar limitation) or 25 percent of the employee's account balance (percentage limitation); and (3) the contract not make available any commutation benefit, cash surrender value, or other similar feature.

The proposed regulations retained these premium limitations for QLAC status. However, in accordance with section 202(a)(1) and (2) of the SECURE 2.0 Act, the final regulations eliminate the percentage limitation and increase the initial amount of the inflation-adjusted dollar limitation from $125,000 to $200,000. These higher limits apply to an annuity contract that was purchased before December 29, 2022, and that satisfied the requirements to be a QLAC as of that date. Thus, the contract need not be exchanged for another annuity contract on or after that date in order for the employee to take advantage of the higher premium limits under section 202(a)(1) and (2) of the SECURE 2.0 Act.

The proposed regulations included an exception to the requirement that the contract not include any commutation benefit, cash surrender value, or similar feature by permitting such a feature before the required beginning date. This change was proposed so that if a plan's investment options include a series of target date funds to which the relief under Notice 2014-66, 2014-46 IRB 820, applies,[17] those target date funds could include QLACs among their assets. Commenters observed that some State laws prohibit the purchase of an annuity contract that does not provide for a right to rescind the contract within a specified short period of time and requested that such a rescission right be accommodated for a QLAC. Consistent with this comment and as instructed by section 202(a)(4) of the SECURE 2.0 Act, the final regulations add an exception under which the contract may provide a right to rescind the contract within a period not exceeding 90 days after purchase.

One commenter asked how an issuer of a QLAC should report that a taxpayer utilized the option to commute a contract before the required beginning date. The final regulations do not modify the report-

[15] This commutation may be needed to comply with the requirement that, if the employee's designated beneficiary is not an eligible designated beneficiary, then payments under the annuity contract may not extend beyond the calendar year that includes the tenth anniversary of the date of the employee's death.

[16] The final regulations also make a change to §1.401(a)(9)-6(d) to broaden the applicability of the annuity rules by removing the requirement that an annuity be purchased with the employee's benefit under the plan.

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

ing required under §1.6047-2 and do not provide for a reversal of any premiums previously paid for a contract that is commuted prior to the required beginning date or rescinded within a short period after purchase. This is because the purpose of these exceptions is to accommodate the possibility that the contract will permit the commutation or recission and not to accommodate an employee who chooses to commute or rescind the contract and later decides to purchase another QLAC.

The proposed regulations provided that, for purposes of applying the limitation on premiums used to purchase a QLAC, if another insurance contract is exchanged for a QLAC then the fair market value of the exchanged contract will be treated as a premium paid for the QLAC. One commenter suggested that if an insurance contract is surrendered for its cash surrender value, the surrender extinguishes all benefits and other characteristics of the contract, and the cash is used to purchase a QLAC, then only the cash from the surrendered contract should be treated as a premium paid for the QLAC. These regulations include that modification to the rule.

One commenter asked for continued treatment of a former spouse as a spouse if the participant and spouse divorce after the QLAC is purchased but before the annuity starting date in the absence of a QDRO providing for this treatment. Consistent with this comment and as instructed in section 202(a)(3) of the SECURE 2.0 Act, these final regulations provide that the payment of survivor benefits to the employee's former spouse under an annuity contract will not cause the contract to fail to satisfy the requirements to be treated as a QLAC merely because the divorce between the employee and that former spouse occurred after the contract is purchased, provided that a QDRO satisfying certain requirements has been issued in connection with the divorce.

Specifically, the QDRO must: (1) provide that the former spouse is entitled to the survivor benefits under the contract; (2) provide that the former spouse is treated as a surviving spouse for purposes of the contract; (3) not modify the treatment of the former spouse as the beneficiary under the contract who is entitled to the survivor benefits; or (4) not modify the treatment of the former spouse as the measuring life for the survivor benefits under the contract.[18]

Section 202(a)(3) of the SECURE 2.0 Act provides for a comparable rule in the case of a plan not subject to the QDRO rules of section 414(p) of the Code or section 206(d) of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829, as amended (ERISA). These regulations reserve a paragraph for this comparable rule, which is included in a notice of proposed rulemaking (REG-103529-23) in the Proposed Rules section of this issue of the **Federal Register**.

G. *Section 1.401(a)(9)-7 — Rollovers and transfers*

As was the case for the proposed regulations, §1.401(a)(9)-7 retains the rollover and transfer rules that are in the 2002 final regulations.

H. *Section 1.401(a)(9)-8 — Special rules*

Section 1.401(a)(9)-8 provides special rules applicable to satisfying the minimum distribution requirement.

The proposed regulations retained the rules from the 2002 final regulations under which section 401(a)(9) may be applied separately with respect to the separate interests of each of the employee's beneficiaries under a plan. The final regulations clarify that the separate application of section 401(a)(9) only applies for calendar years after the death of the employee (and thus, does not apply for the calendar year of the employee's death) and adds expenses to the list of items that must be allocated in a reasonable and consistent manner among the separate accounts.

The final regulations also restore flexibility from §1.401(a)(9)-5 in the 2002 final regulations relating to the required minimum distribution for the calendar year of the employee's death by providing that a required minimum distribution must be paid to "any beneficiary" in the year of death rather than to "the beneficiary." Thus, for example, if an employee who is required to take a distribution in a calendar year dies before taking that distribution and has named more than one designated beneficiary, then any of those beneficiaries can satisfy the employee's requirement to take a distribution in that calendar year (as opposed to each of the beneficiaries being required to take a proportional share of the unpaid amount).

The proposed regulations generally retained the separate account rules applicable to beneficiaries after the death of the employee that were adopted in the 2002 final regulations, including the rule that prohibits separate application of section 401(a)(9) to separate interests in a trust. However, in light of the enactment of special rules that apply to an applicable multi-beneficiary trust described in section 401(a)(9)(H)(iv)(I) (a trust with at least one disabled or chronically ill beneficiary that provides that it is to be immediately divided upon the death of the employee into separate trusts for each beneficiary), the proposed regulations provided an exception to that prohibition that would permit separate application of section 401(a)(9) to those separate trusts.

Consistent with requests made by commenters, the final regulations expand the exception in the proposed regulations to permit separate application of section 401(a)(9) to the separate interests of beneficiaries of a see-through trust if certain requirements are met. This exception applies to the separate interests of beneficiaries of a see-through trust if the terms of that trust provide that it is to be divided immediately upon the death of the employee into separate shares for one or more trust beneficiaries (without regard to whether any of the beneficiaries are disabled or chronically ill).

For this purpose, the final regulations provide that a trust is divided immediately upon the death of the employee into separate shares for one or more trust beneficiaries only if the trust is terminated, the separate interests of the trust beneficiaries are held in separate trusts, and there is no

[18] The Treasury Department and the IRS remind taxpayers that in the case of a QDRO that does not provide that either the former spouse is entitled to the survivor benefits under the contract or that the former spouse is treated as a surviving spouse for purposes of the contract, there is a risk that the spousal rights rules of sections 401(a)(11) and 417 will be violated if the employee remarries.

discretion as to the extent to which the separate trusts will be entitled to receive post-death distributions attributable to the employee's interest in the plan. In addition, the final regulations clarify that a trust does not fail to be divided immediately upon the death of the employee merely because there are administrative delays between the date of the employee's death and the date on which the trust actually is divided and terminated provided that any amounts received by the trust during this period are allocated as if the trust had been divided on the date of the employee's death.

II. *Section 402(c) Regulations*

The proposed regulations provided updates to existing rules of §1.402(c)-2 that reflect certain statutory amendments made to section 402(c) since the regulations were issued in 1995. Those amendments are described in the Background section of this preamble under the heading Section 402(c) — Rollovers.

A. *Special Rule for Certain Distributions to Surviving Spouses*

The proposed regulations provided a new rule to limit the ability of a surviving spouse to use the 5-year rule or the 10-year rule to defer distributions beyond the calendar year that annual distributions would have been required to commence and then, after that calendar year, commence annual distributions. This rule, which applied in limited circumstances, would have been used to determine, with respect to a distribution to the employee's surviving spouse to whom the 5-year rule or 10-year rule applies, the portion of that distribution that is treated as a required minimum distribution under section 401(a)(9) (and thus is not an eligible rollover distribution). This special rule, which treated a portion of a distribution made before the last year of the 5-year or 10-year period (whichever applies to the spouse) as a required minimum distribution, applied if: (1) the distribution was made in or after the calendar year the surviving spouse attains age 72; and (2) the surviving spouse rolled over some or all of the distribution to an eligible retirement plan under which the surviving spouse is not treated as the beneficiary of the employee.

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

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

Several commenters requested that the final regulations eliminate the special rule for distributions to surviving spouses. In support of that request, commenters point to the absence of a similar rule in the statute (both pre- and post-SECURE Act). Commenters also argued that in the case of an individual with no financial advisor, determining the amount of the hypothetical required minimum distribution that is ineligible for rollover would be difficult because it requires complex calculations based on amounts actually distributed in prior years and reduced account balances for each year past what would have been the spouse's required beginning date that are based on the current account balance. Other commenters argued that plan administrators would not have the knowledge of whether a beneficiary was rolling over a distribution to their own IRA or to a beneficiary IRA and accordingly, what portion of that distribution is an eligible rollover distribution. As a result, the plan administrator would not know the proper withholding amount for the distribution.

The final regulations do not eliminate this special rule. The Treasury Department and the IRS concluded that this rule will prevent a spouse who will be taking annual distributions from effectively delaying the commencement of those distributions for a number of years beyond the spouse's required beginning date (or, if later, the year in which the employee would have reached the applicable age). The regulations accomplish this result by requiring the spouse to catch up on distributions that would have been made had the spouse been taking annual life expectancy payments starting in the year the spouse reached the applicable age (or, if later, the year in which the employee would have reached the applicable age). While there was no similar rule in effect prior to the enactment of section 401(a)(9)(H), the potential number of years that the commencement of life expectancy distributions may be delayed is much higher as a result of the expansion of the 5-year rule into a 10-year rule.

Although this special rule is not eliminated, to reflect that it is intended only to prevent the lengthened delay in commencement that resulted from the expansion of the 5-year rule into a 10-year rule, the final regulations provide that this rule does not apply in the case of a surviving spouse who is subject to the 5-year rule. Accordingly, this rule will apply only in the case of surviving spouse who is the beneficiary of an employee in a defined contribution plan. In addition, the final regulations provide that the hypothetical required minimum distribution is calculated assuming that the election described in §1.401(a)(9)-5(g)(3)(i) is in effect for that spouse.[19]

[19] Commenters requested an expansion of the numerical example of the application of the rules for determining the amount of a surviving spouse's distribution that is a required minimum distribution and therefore cannot be rolled over that were included in proposed §1.402(c)-2(j)(3)(iii) Because of the change to the calculation of the hypothetical required minimum distributions to assume that §1.401(a)(9)-5(g)(3)(i) is in effect for the surviving spouse, a paragraph is reserved for the example in these regulations, and the numerical example is included in a notice of proposed rulemaking (REG-103529-23) in the Proposed Rules section of this issue of the Federal Register.

The final regulations also provide that plan administrators may make reasonable assumptions related to distributions to the surviving spouse. Specifically, a plan administrator may assume that a surviving spouse to whom this special rule applies will roll over only the portion of the distribution that is eligible for rollover (in accordance with this rule) to an eligible retirement plan under which that spouse is not treated as the beneficiary of the employee. Thus, a plan administrator may treat that portion of the distribution as an eligible rollover distribution for purposes of sections 401(a)(31) and 3405(c). However, pursuant to §1.402(c)-2(k)(2), a surviving spouse may roll over the entire distribution to an individual retirement plan under which that spouse is treated as the beneficiary of the employee.

B. *Distributions to non-spousal beneficiaries*

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

If the distribution is made directly to a beneficiary who is not the surviving spouse of the employee (instead of a direct trustee-to-trustee transfer to an inherited IRA), then these regulations provide that the distribution is not an eligible rollover distribution for purposes of section 402(c)(4) (that is, it cannot be rolled over). However, in response to comments requesting clarity on the issue, these regulations provide that the distribution described in the preceding sentence is generally still subject to 20-percent withholding under section 3405(c) (which sets forth the withholding requirements for eligible rollover distributions as defined in section 402(f)(2)(A)). In this case, 20-percent withholding is required because section 402(f)(2)(A) specifies that the term "eligible rollover distribution" has the same meaning as in section 402(c)(4) but also includes a distribution to a non-spouse designated beneficiary that would be treated as an eligible rollover distribution if the requirements of section 402(c)(11) were satisfied. Under this definition, the amount that would be an eligible rollover distribution if the requirements of section 402(c)(11) were satisfied excludes amounts treated as a required minimum distribution.

III. *Section 403(b) Regulations*

The final regulations regarding section 403(b) plans are the same as proposed, except for a few changes. The final regulations clarify that the rule under which the minimum distribution requirements of section 401(a)(9) are applied to section 403(b) contracts in accordance with the provisions in §1.408-8 refers to the provisions in §1.408-8 that apply to an IRA that is not a Roth IRA. With respect to a designated Roth account in a section 403(b) contract, the final regulations reflect the provisions of section 325 of the SECURE 2.0 Act under which no required minimum distributions are due from a designated Roth account during the lifetime of the employee. Under the final regulations, the rules of §1.401(a)(9)-3(a)(2) (which provides that if an employee's entire interest under a defined contribution plan is in a designated Roth account, then the employee is treated as having died before the required beginning date), §1.401(a)(9)-5(b)(3) (which excludes amounts held in a designated Roth account from the employee's account balance during the employee's lifetime), and §1.401(a)(9)-5(g)(2)(iii) (treatment of distributions from designated Roth accounts, which is reserved in these regulations) apply, rather than the rules of §1.408-8(b)(1)(ii) that apply to a Roth IRA. Lastly, the final regulations provide that the changes to §1.403(b)-6 apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2025.

In the preamble to the proposed regulations, the Treasury Department and the IRS requested comments on possible changes to the required minimum distribution rules for section 403(b) plans, so that they would more closely follow the required minimum distribution rules for qualified plans (as opposed to IRAs). Commenters made various suggestions in response to this request and requested that any of those changes not be implemented in these final regulations. The Treasury Department and IRS are considering these comments, and any further changes relating to the required minimum distribution rules for section 403(b) plans will be set forth in separate guidance.

IV. *Section 1.408-8 — Distribution Requirements for IRAs*

These regulations amend §1.408-8 (which sets forth the required minimum distribution rules for IRAs) to implement the changes made to section 401(a)(9) under the SECURE Act and the SECURE 2.0 Act. Generally, the minimum distribution required from an individual retirement account is determined in accordance with the rules of §1.401(a)(9)-5 and the minimum distribution required from an individual retirement annuity is determined in accordance with the rules of §1.401(a)(9)-6 (including §1.401(a)(9)-6(d)(2)).

Like the proposed regulations, these final regulations retain the rules from the 2002 regulations under which the required minimum distribution from one IRA is permitted to be distributed from another IRA in order to satisfy section 401(a)(9), subject to the certain restrictions involving inherited IRAs and Roth IRAs. To implement the statutory instruction under section 204(c) of the SECURE 2.0 Act, these final regulations provide that, subject to the same limitations that apply to aggregation of IRAs generally, an individual who holds an IRA that is an annuity contract described in section 408(b) may elect to aggregate that IRA with one or more IRAs with account balances that the individual holds and apply the optional aggregation rule of §1.401(a)(9)-5(a)(5)(iv) (described in section I.E.2 of this **Summary of Com-**

ments and Explanation of Revisions) with respect to the annuity contract and the account balances under those IRAs as if the account balances were the remaining account balances following the purchase of the annuity contract with a portion of those account balances.

In addition, whether a designated beneficiary of an IRA owner is an eligible designated beneficiary and whether the beneficiaries of a trust are treated as beneficiaries of the IRA owner is generally determined in accordance with §1.401(a)(9)-4. Consistent with requests made by commenters, these regulations provide that, in determining whether an IRA owner's designated beneficiary is disabled or chronically ill within the meaning of §§1.401(a)(9)-4(e)(4) and (5), respectively, or whether the beneficiaries of a trust are treated as beneficiaries of the IRA owner, the required documentation described in §1.401(a)(9)-4(e)(7), or §1.401(a)(9)-4(h), respectively, need not be provided to the IRA custodian, issuer, or trustee.

The proposed regulations generally incorporated the rules in Notice 2007-7, Q&As-17 and 19 (relating to the carryover of the method of determining required minimum distributions from a plan to a receiving IRA when a beneficiary is making a transfer described in section 402(c)(11)) and extended those rules to provide comparable treatment to a surviving spouse. These rules relating to the distribution method of the receiving IRA did not apply to a surviving spouse when that spouse is rolling over a distribution to the spouse's own account in a qualified plan or to the spouse's own IRA (because distributions would then be made in accordance with section 401(a)(9)(A) instead of section 401(a)(9)(B)). In that case, the proposed regulations provided that the amount of the distribution treated as a required minimum distribution, and thus not eligible to be rolled over, is determined in accordance with §1.402(c)-2(j) (including the rule under which in certain circumstances a spouse who elects the 10-year rule is required to treat a portion of any distribution as a required minimum distribution as described in section II.A of this **Summary of Comments and Explanation of Revisions**).

To coordinate with the rules in §1.402(c)-2(j), the proposed regulations added a deadline for the election under which a surviving spouse may elect to treat a decedent's IRA as the spouse's own. Specifically, a surviving spouse must make that election by the later of (1) the end of the calendar year in which the surviving spouse reaches age 72, and (2) the end of the calendar year following the calendar year of the IRA owner's death. Under the proposed regulations, if the surviving spouse were to miss that deadline, the surviving spouse still would be permitted to roll over distributions to the spouse's own IRA but would be subject to the special rule on the catch-up of hypothetical required minimum distributions described in section II of this **Summary of Comments and Explanation of Revisions**.

Consistent with requests made by commenters, the final regulations eliminate the deadline described in the preceding paragraph. Instead, these regulations provide a timing rule that applies on a yearly basis and only if the special rule on the catch-up of hypothetical required minimum distributions would apply to the IRA owner's surviving spouse had a distribution been made directly to the surviving spouse in the calendar year. In addition, these regulations provide that, even if the timing rule otherwise applies, a surviving spouse may still make an election to treat an IRA as the surviving spouse's own IRA, but only if that election does not apply to amounts in the IRA that would be treated as required minimum distributions pursuant to §1.402(c)-2(j)(4)(ii) had they been distributed in that calendar year. Thus, the election can be made only in a calendar year after the amounts treated as required minimum distributions under §1.402(c)-2(j)(4)(ii) for that calendar year have been distributed from the IRA.

These regulations also clarify the rules for the beneficiaries of an owner of multiple IRAs that are aggregated for purposes of satisfying the required minimum distribution rules. The new rules apply in the case of an IRA owner who dies before taking the total required minimum distribution in a calendar year (that is, there is a shortfall) if the beneficiary designations with respect to all of those IRAs are not identical. In that case, each of the owner's IRAs is subject to a requirement to distribute a proportionate share of the shortfall to a beneficiary of that IRA. This allocation of the proportionate share of the shortfall to a particular IRA is made without regard to whether some of the required minimum distribution for the calendar year was already made to the IRA owner from that IRA. Similar rules apply in the case of a beneficiary of multiple IRAs that are aggregated for purposes of satisfying the required minimum distribution rules if a required minimum distribution is due for the calendar year of the beneficiary's death to the extent that the amount was not distributed to the beneficiary.

The proposed regulations provided that amounts that are treated as distributed pursuant to section 408(e) (relating to the loss of tax exemption when an IRA owner engages in a prohibited transaction or borrows any money under an individual retirement annuity, and the deemed distribution of amounts when an individual uses a portion of an individual retirement account as security for a loan) or amounts that are deemed to be distributed with respect to collectibles pursuant to section 408(m) may not be used to satisfy the required minimum distribution for a calendar year. Several commenters argued that final regulations should not exclude amounts treated as distributed under those sections for purposes of determining whether section 401(a)(9) has been satisfied. The commenters asserted that in this case, the IRA account balance could be zero and without any assets from which to take a required minimum distribution, the IRA owner would be required to pay an excise tax.

The final regulations retain the rules from the proposed regulations with minor changes. However, the Treasury Department and the IRS remind taxpayers that, pursuant to §1.401(a)(9)-5(a)(1), the required minimum distribution amount will never exceed the entire account balance on the date of the distribution. Accordingly, because section 408(e)(2)(B) and (3) reduces an IRA owner's account balance to zero as of the first day of the taxable year, the required minimum distribution for that calendar year would also be zero. By contrast, section 408(e)(4) and (m) does not reduce an IRA owner's account balance by the deemed distri-

bution and accordingly, the amount of the required minimum distribution for a calendar year is not affected by the deemed distribution. In that case, allowing the deemed distribution that results from the use of the IRA to secure a loan or to purchase a collectible to be used to satisfy the requirement to take a minimum distribution would reduce the deterrent effect of the statutorily specified tax consequence of those actions.

The proposed regulations provided that the limitation on premiums paid for a QLAC purchased under an IRA is the lesser of a dollar limitation and a percentage limitation. The percentage limitation in the proposed regulations was 25-percent of the total of all IRA account balances that an individual holds as the IRA owner (other than Roth IRAs) as of December 31 of the calendar year preceding the date the premium payment is made. Several commenters requested changes that would address the issue of the percentage limitation in the case of a taxpayer who has no IRAs other than a newly established IRA that received a rollover from a qualified plan (because, in such a case, the IRA did not have an account balance as of December 31 of the prior calendar year and thus, the taxpayer would not be permitted to purchase a QLAC with the assets of the IRA until the year after the year of the rollover). However, section 202(a)(1) of the SECURE 2.0 Act eliminated the percentage limitation. Accordingly, these final regulations provide that the limitation on premiums is the dollar limitation provided for in section 202(a)(2) of the SECURE 2.0 Act ($200,000, adjusted for inflation).

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

Several comments were received asking whether the rules of section 401(a)(9)(H) apply to an eligible deferred compensation plan of a tax-exempt entity. Section 401(a)(9)(H)(vi) provides that all eligible retirement plans (as defined in section 402(c)(8)(B) (other than certain defined benefit plans)) are treated as defined contribution plans for purposes of applying the rules of section 401(a)(9)(H). This provision does not provide an exhaustive list of the plans that are treated as defined contribution plans for purposes of applying the rules of section 401(a)(9)(H). Accordingly, the final regulations clarify that, if an eligible deferred compensation plan is subject to the rules of §1.401(a)(9)-5, then the plan must also satisfy the rules of section 401(a)(9)(H) (without regard to whether the plan is maintained by a tax-exempt entity).

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

The proposed regulations provided for an automatic waiver of the excise tax that applies in the case of an individual who had a minimum distribution requirement in a calendar year and died in that calendar year before satisfying that minimum distribution requirement. In this situation, a beneficiary of the individual must satisfy the minimum distribution requirement by the end of that calendar year. However, if that beneficiary fails to satisfy the minimum distribution requirement in that calendar year, then the proposed regulations provided that the excise tax for that failure is automatically waived provided that the beneficiary takes the missed required minimum distribution no later than the tax filing deadline (including extensions thereof) for the taxable year of that beneficiary that begins with or within that calendar year. Consistent with requests made by commenters, the final regulations extend the deadline for the beneficiary to take the missed required minimum distribution and be eligible for the automatic waiver. The new deadline is the later of the tax filing deadline for the taxable year of the beneficiary that begins with or within the calendar year in which the individual died and the end of the following calendar year.

These regulations also reflect the amendments made to section 4974 by section 302(a) of the SECURE 2.0 Act effective for taxable years beginning after December 29, 2022. In accordance with section 302(a) of the SECURE 2.0 Act, these regulations provide that the tax imposed by section 4974(a) of the Code generally is equal to 25 percent of the amount by which the required minimum distribution exceeds the actual amount distributed during the calendar year. In addition, these regulations reflect section 4974(e) (which was added to the Code by section 302(b) of the SECURE 2.0 Act) and provide that the excise tax is reduced to 10 percent in the case of a taxpayer who, by the last day of the correction window, receives a corrective distribution from the qualified retirement plan or eligible deferred compensation plan of the amount by which the required minimum distribution exceeds the actual amount distributed during the calendar year from that plan and submits a return reflecting the excise tax. For purposes of these regulations, the correction window ends on the earliest of: (1) the date a notice of deficiency under section 6212 with respect to the tax imposed by section 4974(a) is mailed; (2) the date on which the tax imposed by section 4974(a) is assessed; or (3) the last day of the second taxable year that begins after the end of the taxable year in which the tax under section 4974(a) is imposed.

In addition, these final regulations provide that if the minimum distribution was required to be paid from a particular qualified retirement plan or eligible deferred compensation plan, then the corrective distribution must be made from that particular qualified retirement plan or eligible deferred compensation plan. However, if the requirement to take a minimum distribution could have been satisfied by a payment from any one of a number of qualified retirement plans (such as an individual retirement account under section 408(a) or a section 403(b) plan), then the corrective distribution may be made from any one of those qualified retirement plans.

Applicability Dates

Amended §§1.401(a)(9)-1 through 1.401(a)(9)-9, 1.403(b)-6(e), and 1.408-8 apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2025. Amended §1.402(c)-2 applies for distributions made on or after January 1, 2025. Amended §54.4974-1 applies for taxable years beginning on or after January 1, 2025. For earlier years, taxpayers must apply the preexisting final regulations, but taking into account a reasonable, good faith interpretation of the amendments made by sections 114 and 401 of the SECURE Act. Compliance with the proposed regulations will satisfy that requirement. For the 2023 and 2024 distri-

bution calendar years, taxpayers must also take into account a reasonable, good faith interpretation of the amendments made by sections 107, 201, 202, 204, and 337 of the SECURE 2.0 Act.

Special Analyses

I. *Regulatory Planning and Review*

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

These regulations include third-party disclosures and recordkeeping requirements, in §§1.401(a)(9)-3(b)(4)(iii) and (c)(5)(iii), 1.401(a)(9)-4(e)(7), and 1.401(a)(9)-4(h), that are required to determine whether a beneficiary is an eligible designated beneficiary entitled to distributions over the beneficiary's life expectancy and to record the names of the taxpayer's beneficiaries under the trust. These collections of information would generally be used by the IRS for tax compliance purposes and by plan administrators to facilitate compliance with the required minimum distribution requirements under section 401(a)(9). The likely respondents to these collections are beneficiaries of employees participating in retirement plans (and, in limited circumstances, the participating employees).

Sections 1.401(a)(9)-3(b)(4)(iii) and (c)(5)(iii) allow a plan to permit an eligible designated beneficiary in that plan to elect between the 5-year rule (or 10-year rule, if applicable) and life expectancy rule in the case of an employee who dies before the employee's required beginning date. This election only arises in the context of a plan (and not an IRA) because the plan administrator will need that information to satisfy the required minimum distribution requirements with respect to the beneficiary. An IRA custodian has no obligation to ensure compliance with the required minimum distribution rules, so there is no need for a beneficiary of an IRA to file any type of election with the custodian. Although the plan may provide that the employee may make this election, it is expected that more commonly, the employee's beneficiary will be the individual making the election. Moreover, the plan will have specified a default method of payment to the beneficiary in the absence of an election (so that the beneficiaries will not be required to make an election).

Section 1.401(a)(9)-4(e)(7) requires a beneficiary to provide documentation to a plan administrator showing that the beneficiary was disabled or chronically ill as of the date of the employee's death. Typically, this requirement will be satisfied by having a licensed health care practitioner certify that the beneficiary was disabled or chronically ill in a statement that is provided to the plan administrator.

Section 1.401(a)(9)-4(h) permits an employee who wants to name a trust as a beneficiary to treat the underlying beneficiaries of the trust as designated beneficiaries of the employee's benefit under a retirement plan if the employee (or the trustee of the trust) either: (1) provides a copy of the trust instrument to the plan administrator or (2) provides a list of all the beneficiaries of the trust, certifies that, to the best of the employee's (or trustee's) knowledge, this list is correct and complete, and agrees to provide a copy of the trust instrument upon demand. If the trust instrument is amended at any time in the future, the employee (or trustee) must, within a reasonable time, provide a copy of each such amendment, or provide corrected certifications to the extent that the amendment changes the information previously certified. This requirement must generally be satisfied no later than October 31 of the calendar year following the calendar year of the employee's death.

The collections of information contained in this notice of final rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act. The Treasury Department and the IRS solicited public comments during the proposed rulemaking at 87 FR 10504 on February 24, 2022. During the public comment period, the Treasury Department and the IRS did not receive any comments on the collections of information. Several commenters requested that plan administrators be permitted to rely on self-certifications from a designated beneficiary (or, in the case of a see-through trust, the trustee of that trust) that the beneficiary is disabled or chronically ill within the meaning of §1.401(a)(9)-4(d). These final regulations do not adopt that rule for the reasons described in section I.D.1.*c* of the **Summary of Comments and Explanation of Revisions.** Commenters also requested that final regulations allow for a certification from the trustee of the trust as to the beneficiaries who are to be treated as beneficiaries of the employee for purposes of section 401(a)(9). These final regulations do not adopt that rule for the reasons described in section I.D.2.*b* of the **Summary of Comments and Explanation of Revisions.**

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. These regulations affect certain plan administrators and participants, owners of individual retirement accounts and annuities; employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts; and beneficiaries of those plans, contracts, accounts, and annuities. Because of the broad scope of the regulations, the rule may affect a substantial number of small entities. However, even if a substantial number of small entities are affected, the economic impact of these regulations will not be significant. These final regulations primarily update the existing regulations

to implement the statutory changes made since the issuance of the prior regulations, while clarifying certain technical issues that have arisen in applying those prior regulations. These regulations do not impose new compliance burdens and are not expected to result in economically meaningful changes in behavior relative to the 2002 or 2004 final regulations. The election described in §1.401(a)(9)-3(b)(4)(iii) and (c)(5)(iii) is expected to be an unusual occurrence for small entities because few individuals with benefits in retirement plans maintained by small entities are likely to make these elections. In the case of §1.401(a)(9)-4(e)(7), when determining whether a designated beneficiary is disabled or chronically ill, the reporting burden is primarily on the designated beneficiary rather than the plan sponsor. In the case of §1.401(a)(9)-4(h), when determining required minimum distributions in cases in which a plan participant wishes to designate a trust as beneficiary of the participant's benefit, the reporting burden is primarily on the plan participant (or the trustee of the trust named as beneficiary) to supply information rather than on the entity maintaining the retirement plan. In addition, the number of participants per plan to whom the burden applies is likely to be small. In §1.403(b)-3(e)(6)(ii), the recordkeeping burden with respect to section 403(b) contracts under which the pre-1987 account balance must be maintained only applies to issuers and custodians of those contracts, which generally are not small entities.

Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration (Office of Advocacy) for comment on their impact on small business. The Office of Advocacy commented on the proposed regulations[20] and recommended that the IRS publish for public comment either a supplemental regulatory flexibility act assessment with a valid factual basis in support of a certification or an initial regulatory flexibility analysis. The Office of Advocacy argued that the certification in the proposed regulations did not adequately address the economic impact of the proposed regulations on financial planners for the costs to learn those rules, update distribution plans, and advise clients. The Treasury Department and the IRS disagree because the certification is based on the direct economic impact of the proposed regulations on the regulated community rather than their advisors. Any economic impact on a financial planner is not a direct impact. The regulations do not address the conduct of, or requirements related to, financial planners.

IV. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. The regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

V. *Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. The regulations would not have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive order.

VI. *Congressional Review Act*

The Administrator of the Office of Information and Regulatory Affairs of the OMB has determined that this Treasury decision is a major rule for purposes of the Congressional Review Act (5 U.S.C. 801 et seq.) ("CRA").

Statement of Availability of IRS Documents

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

Drafting Information

The principal authors of these regulations are Brandon M. Ford and Linda S. F. Marshall, of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

26 CFR Part 54

Excise taxes, Health care, Pensions, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR parts 1, 31, and 54 as follows:

[20] The comment included a recommendation to eliminate the requirement for annual distribution in certain circumstances as described in section I.E.3.*a* of the Summary of Comments and Explanation of Revisions portion of this preamble. For the reasons described in that section, these regulations retain that rule.

PART 1 – INCOME TAX

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

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

Par. 2. For each section set forth below, revise the section by removing the text that appears in the column labeled "Remove" and replacing it with the text that appears in the column labeled "Insert":

Regulation section	Remove	Insert
§ 1.72(p)-1, Q&A-12	"§ 1.402(c)-2, Q&A-4(d)"	"§ 1.402(c)-2(c)(3)"
§ 1.72(p)-1, Q&A-13(a)(2)	"§ 1.402(c)-2, Q&A-9(b)"	"§ 1.402(c)-2(g)(3)(i)"
§ 1.72(p)-1, Q&A-13(b)	"§ 1.402(c)-2, Q&A-9(c), Example 6"	"Example 6 in § 1.402(c)-2(g)(5)(vi)"
§ 1.401(a)(31)-1, Q&A-1(a)	"§ 1.402(c)-2, Q&A-3 through Q&A-10 and Q&A-14"	"§ 1.402(c)-2"
§ 1.401(a)(31)-1, Q&A-1(a)	"§ 1.402(c)-2, Q&A-2"	"§ 1.402(c)-2(a)(1)(iii)"
§ 1.401(a)(31)-1, Q&A-1(a)	"§ 1.402(c)-2, Q&A-3 through Q&A-10 and Q&A-14"	"§ 1.402(c)-2"
§ 1.401(a)(31)-1, Q&A-14(b)(1)	"§ 1.402-2(c)-2, Q&A-1"	"§ 1.402(c)-2(a)"
§ 1.401(a)(31)-1, Q&A-14(b)(1)	"§ 1.402(c)-2, Q&A-9"	"§ 1.402(c)-2(g)"
§ 1.401(a)(31)-1, Q&A-14(b)(2)	"§ 1.402(c)-2, Q&A-1"	"§ 1.402(c)-2(a)"
§ 1.401(a)(31)-1, Q&A-16	"§ 1.402(c)-2(b), Q&A-9"	"§ 1.402(c)-2(g)"
§ 1.401(a)(31)-1, Q&A-17	"§ 1.402(c)-2), Q&A-10"	"§ 1.402(c)-2(h))"
§ 1.401(a)(31)-1, Q&A-17	"Section 1.402(c)-2, Q&A-10"	"Section 1.402(c)-2(h)"
§ 1.401(a)(31)-1, Q&A-18(a)	"§ 1.402(c)-2, Q&A-15"	"§ 1.402(c)-2(k)(2)"
§ 1.401(k)-2(b)(2)(vi)	"§ 1.402(c)-2, A-4"	"§ 1.402(c)-2(c)(3)"
§ 1.401(k)-2(b)(2)(vii)(C)	"§ 1.401(a)(9)-5, A-9(b)"	"§§ 1.401(a)(9)-5(g)(2)(ii) and 1.402(c)-2(c)(3)"
§ 1.401(k)-4(e)(1)	"§ 1.402(c)-2, Q&A-1(a)"	"§ 1.402(c)-2(a)"
§ 1.401(m)-2(b)(2)(vi)(A)	"§ 1.402(c)-2, A-4"	"§ 1.402(c)-2(c)(3)"
§ 1.401(m)-2(b)(3)(iii)	"§ 1.401(a)(9)-5, A-9(b)"	"§§ 1.401(a)(9)-5(g)(2)(ii) and 1.402(c)-2(c)(3)"
§ 1.402(a)-1(a)(2)	"1.401(a)(9)-6, Q&A-4"	"1.401(a)(9)-6(d)"
§ 1.402A-1, Q&A-11	"A-4 of § 1.402(c)-2"	"§ 1.402(c)-2(c)(3)"
§ 1.402A-1, Q&A-14	"§ 1.402(c)-2, A-10(a)"	"§ 1.402(c)-2(h)"
§ 1.408A-4, Q&A 14(b)(3)	"§ 1.401(a)(9)-6, Q&A-12"	"§ 1.401(a)(9)-6(m)(2)"
§ 1.408A-4, Q&A 14(b)(3)(iii)	"§ 1.401(a)(9)-6, Q&A-12(c)(1) and (c)(2)"	"§ 1.401(a)(9)-6(m)(3)"
§ 1.408A-6, Q&A-14(d)	"A-3 of §1.401(a)(9)-5"	"§ 1.401(a)(9)-5(b)(4)"
§ 1.408A-6, Q&A-14(d)	"A-12 of §1.408-8"	"§ 1.408-8(h)"
§ 1.408A-6, Q&A-14(d)	"A-17 of §1.401(a)(9)-6"	"§ 1.401(a)(9)-6(q)"
§ 1.409A-2(b)(2)(ii)(B)(*5*)	"§ 1.401(a)(9)-6, Q&A-14(a)(1) or (2)"	"§ 1.401(a)(9)-6(o)(1)(i) or (ii)"
§ 1.411(b)(5)-1(d)(4)(iii)	"§ 1.401(a)(9)-6, A-14(b)"	"§ 1.401(a)(9)-6(o)(2)"
§ 1.411(b)(5)-1(d)(4)(iii)	"§ 1.401(a)(9)-6, A-14(b)(2)"	"§ 1.401(a)(9)-6(o)(2)(ii)"
§ 1.6047-2(a)(1)	"A-17 of § 1.401(a)(9)-6"	"§ 1.401(a)(9)-6(q)"
§ 1.6047-2(b)(1)	"A-17(d)(2)(ii) of § 1.401(a)(9)-6"	"§ 1.401(a)(9)-6(q)(4)(ii)(B)"

Par. 3. Revise and republish §§1.401(a)(9)-0 through 1.401(a)(9)-8 to read as follows:

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

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

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

(a) Plans subject to minimum distribution requirement.

(1) In general.

(2) Participant in multiple plans.

(3) Governmental plans.

(b) Statutory effective date.

(1) In general.

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

(3) Examples.

(c) Required and optional plan provisions.

(1) Required provisions.
(2) Optional provisions.
(d) Regulatory applicability date.

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

(a) Distributions commencing during an employee's lifetime.
(1) In general.
(2) Amount required to be distributed for a calendar year.
(3) Distributions commencing before required beginning date.
(4) Distributions after death.
(b) Determination of required beginning date.
(1) General rule.
(2) Definition of applicable age.
(3) Required beginning date for 5-percent owner.
(4) Uniform required beginning date.
(5) Plans maintained by more than one employer.

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

(a) Distribution requirements.
(1) In general.
(2) Special rule for designated Roth accounts.
(b) Distribution requirements in the case of a defined benefit plan.
(1) In general.
(2) 5-year rule.
(3) Annuity payments.
(4) Determination of which rule applies.
(c) Distributions in the case of a defined contribution plan.
(1) In general.
(2) 5-year rule.
(3) 10-year rule.
(4) Life expectancy payments.
(5) Determination of which rule applies.
(d) Permitted delay for surviving spouse beneficiaries.
(e) Distributions that commence after surviving spouse's death.
(1) In general.
(2) Remarriage of surviving spouse.
(3) When distributions are treated as having begun to surviving spouse.

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

(a) Beneficiary designated under the plan.
(1) In general.
(2) Entitlement to employee's interest in the plan.
(3) Specificity of beneficiary designation.
(4) Affirmative and default elections of designated beneficiary.
(b) Designated beneficiary must be an individual.
(c) Rules for determining beneficiaries.
(1) Time period for determining the beneficiary.
(2) Circumstances under which a beneficiary is disregarded as a beneficiary of the employee.
(3) Examples.
(d) Application of beneficiary designation rules to surviving spouse.
(e) Eligible designated beneficiaries.
(1) In general.
(2) Multiple designated beneficiaries.
(3) Determination of age of majority.
(4) Disabled individual.
(5) Chronically ill individual.
(6) Individual not more than 10 years younger than the employee.
(7) Documentation requirements for disabled or chronically ill individuals.
(8) Applicability of definition of eligible designated beneficiary to beneficiary of surviving spouse.
(9) Examples.
(f) Special rules for trusts.
(1) Look-through of trust to determine designated beneficiaries.
(2) Trust requirements.
(3) Trust beneficiaries treated as beneficiaries of the employee.
(4) Multiple trust arrangements.
(5) Identifiability of trust beneficiaries.
(6) Examples.
(g) Applicable multi-beneficiary trust.
(1) Certain see-through trusts with disabled or chronically ill beneficiaries.
(2) Termination of interest in trust.
(3) Special definition of designated beneficiary.
(h) Documentation requirements for trusts.
(1) General rule.
(2) Required minimum distributions while employee is still alive.
(3) Required minimum distributions after death.
(4) Relief for discrepancy between trust instrument and employee certifications or earlier trust instruments.

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

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

(2) Distributions taken into account.
(3) Surviving spouse election under section 401(a)(9)(B)(iv).

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

(a) General rules.
(1) In general.
(2) Definition of life annuity.
(3) Annuity commencement.
(4) Single-sum distributions.
(5) Death benefits.
(6) Separate treatment of separate identifiable components.
(7) Additional guidance.
(b) Application of incidental benefit requirement.
(1) Life annuity for employee.
(2) Joint and survivor annuity.
(3) Period certain and annuity features.
(4) Deemed satisfaction of incidental benefit rule.
(c) Period certain annuity.
(1) Distributions commencing during the employee's life.
(2) Distributions commencing after the employee's death.
(d) Use of annuity contract.
(1) In general.
(2) Applicability of section 401(a)(9)(H).
(e) Treatment of additional accruals.
(1) General rule.
(2) Administrative delay.
(f) Treatment of nonvested benefits.
(g) Requirement for actuarial increase.
(1) General rule.
(2) Nonapplication to 5-percent owners.
(3) Nonapplication to governmental plans.
(4) Nonapplication to church plans and church employees.
(h) Amount of actuarial increase.
(1) In general.
(2) Actuarial equivalence basis.
(3) Coordination with section 411 actuarial increase.
(i) [Reserved]
(j) Distributions restricted pursuant to section 436.
(1) General rule.
(2) Payments restricted under section 436(d)(3).
(3) Payments restricted under section 436(d)(1) or (2).
(k) Treatment of early commencement.
(1) General rule.
(2) Joint and survivor annuity, nonspouse beneficiary.
(3) Limitation on period certain.
(l) Early commencement for surviving spouse.
(m) Determination of entire interest under annuity contract.
(1) General rule.
(2) Entire interest.
(3) Exclusions.
(4) Examples.
(n) Change in annuity payment period.
(1) In general.
(2) Reannuitization.
(3) Conditions.
(4) Examples.
(o) Increase in annuity payments.
(1) General rules.
(2) Eligible cost of living index.
(3) Additional permitted increases for annuity contracts purchased from insurance companies.
(4) Additional permitted increases for annuity payments from a qualified trust.
(5) Actuarial gain defined.
(6) Examples.
(p) Payments to children.
(1) In general.
(2) Age of majority.
(q) Qualifying longevity annuity contract.
(1) Definition of qualifying longevity annuity contract.
(2) Limitation on premiums.
(3) Payments after death of the employee.
(4) Rules of application.

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

(a) Treatment of rollover from distributing plan.
(b) Treatment of rollover by receiving plan.
(c) Treatment of transfer under transferor plan.
(1) Generally not treated as distribution.
(2) Account balance decreased after transfer.
(d) Treatment of transfer under transferee plan.
(e) Treatment of spinoff or merger.

§1.401(a)(9)-8 Special rules.

(a) Use of separate accounts.
(1) Separate application of section 401(a)(9) for each beneficiary.
(2) Separate accounting requirements.
(b) Application of consent requirements.
(c) Definition of spouse.
(d) Treatment of QDROs.
(1) Continued treatment of spouse.
(2) Separate accounts.
(3) Other situations.
(e) Application of section 401(a)(9) pending determination of whether a domestic relations order is a QDRO is being made.
(f) Application of section 401(a)(9) when insurer is in State delinquency proceedings.
(g) In-service distributions required to satisfy section 401(a)(9).
(h) TEFRA section 242(b) elections.
(1) In general.
(2) Application of section 242(b) election after transfer.
(3) Application of section 242(b) election after rollover.
(4) Revocation of section 242(b) election.

§1.401(a)(9)-9 Life expectancy and Uniform Lifetime tables.

(a) In general.
(b) Single Life Table.
(c) Uniform Lifetime Table.
(d) Joint and Last Survivor Table.
(e) Mortality rates.
(f) Applicability dates.
(1) In general.
(2) Application to life expectancies that may not be recalculated.

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

(a) *Plans subject to minimum distribution requirement*—(1) *In general*. Under section 401(a)(9), all stock bonus, pension, and profit-sharing plans qualified under section 401(a) and annuity contracts described in section 403(a) are subject to required minimum distribution

rules. See this section and §§1.401(a)(9)-2 through 1.401(a)(9)-9 for the distribution rules applicable to these plans. Under section 403(b)(10), annuity contracts and custodial accounts described in section 403(b) are subject to required minimum distribution rules. See §1.403(b)-6(e) for the distribution rules applicable to these annuity contracts and custodial accounts. Under section 408(a)(6) and 408(b)(3), individual retirement accounts and individual retirements annuities (collectively, IRAs) are subject to required minimum distribution rules. See §1.408-8 for the minimum distribution rules applicable to IRAs and §1.408A-6 for the minimum distribution rules applicable to Roth IRAs under section 408A. Under section 457(d)(2), eligible deferred compensation plans described in section 457(b) for employees of tax-exempt organizations or employees of State and local governments are subject to required minimum distribution rules. See §1.457-6(d) for the minimum distribution rules applicable to those eligible deferred compensation plans.

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

(3) *Governmental plans*. A governmental plan (within the meaning of section 414(d)), or an eligible governmental plan described in §1.457-2(f), is treated as having complied with section 401(a)(9) if the plan complies with a reasonable, good faith interpretation of section 401(a)(9). Thus, the terms of a governmental plan that reflect a reasonable, good faith interpretation of section 401(a)(9) do not have to provide that distributions will be made in accordance with this section and §§1.401(a)(9)-2 through 1.401(a)(9)-9. Similarly, a governmental plan may apply the rules of section 401(a)(9)(F) using the rules of §1.401(a)(9)-6, Q&A-15 (as it appeared in the April 1, 2023, edition of 26 CFR part 1).

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

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

(ii) *Delayed effective date for collectively bargained plans*—(A) *General rule.* In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before December 20, 2019 (the date of enactment of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, 133 Stat. 2534 (2019)), section 401(a)(9)(H) generally applies with respect to employees who die on or after January 1, 2022.

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

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

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

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

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

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

(iii) *Applicability upon death of designated beneficiary*—(A) *In general*. Except as otherwise provided in this paragraph (b)(2)(iii), if an employee who died before the effective date described in paragraph (b)(2)(i) or (ii) of this section (whichever applies to the plan) has only one designated beneficiary and that beneficiary dies on or after that effective date, then, upon the death of the designated beneficiary, section 401(a)(9)(H) applies with respect to any beneficiary of the employee's designated beneficiary. Section 401(b)(5) of Division O of the Further Consolidated Appropriations Act, 2020 (known as the SECURE Act) provides that, if an employee dies before the effective date, then a designated beneficiary of an employee is treated as an eligible designated beneficiary. Accordingly, once the rules of section 401(a)(9)(H) apply with respect to the employee's designated beneficiary, the rules of section 401(a)(9)(H)(iii) (requiring full distribution of the employee's interest within 10 years after the death of an eligible designated beneficiary) apply upon the designated beneficiary's death.

(B) *Employee with multiple designated beneficiaries*. If an employee described in paragraph (b)(2)(iii)(A) of this section has more than one designated beneficiary, then whether section 401(a)(9)(H) applies is determined based on the date of death of the oldest of the employee's designated beneficiaries. Thus, section 401(a)(9)(H) will apply upon the death of the oldest of the employee's designated beneficiaries if that designated beneficiary is still alive on or after the effective date of section 401(a)(9)(H) for the plan as determined under the rules of paragraph (b)(2)(i) or (ii) of this section. However, see §1.401(a)(9)-8(a) for rules related to the separate application of section 401(a)(9) with respect to multiple beneficiaries if certain requirements are met.

(C) *Surviving spouse of the employee dies before employee's required beginning date*. If an employee described in paragraph (b)(2)(iii)(A) of this section dies

before the employee's required beginning date and the employee's surviving spouse is waiting to begin distributions until the year for which the employee would have been required to begin distributions pursuant to section 401(a)(9)(B)(iv)(II), then, in applying the rules of this paragraph (b)(2)(iii), the surviving spouse is treated as the employee. Thus, for example, if an employee with a required beginning date of April 1, 2025, names the employee's surviving spouse as the sole beneficiary of the employee's interest in the plan, both the employee and the employee's surviving spouse die before the effective date of section 401(a)(9)(H) for the plan, and that spouse's designated beneficiary dies on or after that effective date, then section 401(a)(9)(H) applies with respect to the surviving spouse's designated beneficiary upon the death of that designated beneficiary (so that full distribution of the employee's interest must be made no later than the end of the calendar year that includes the tenth anniversary of the date of that designated beneficiary's death).

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

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

(*2*) Under which payments satisfy the requirements of §§1.401(a)(9)-1 through 1.401(a)(9)-9 (as those sections appeared in the April 1, 2019, edition of 26 CFR part 1); and

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

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

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

(i) *Example 1*. Employer M maintains a defined contribution plan, Plan X. Employee A died in 2017, at the age of 68, and designated A's 40-year-old child, B, who was not disabled or chronically ill at the time of A's death, as the sole beneficiary of A's interest in Plan X. Pursuant to a plan provision in Plan X, B elected to take distributions over B's life expectancy under section 401(a)(9)(B)(iii). B dies in 2024, after the effective date of section 401(a)(9)(H). Because section 401(b)(5) of the SECURE Act treats B as an eligible designated beneficiary, the rules of section 401(a)(9)(H)(iii) apply to B's beneficiaries. Therefore, A's remaining interest in Plan X must be distributed by the end of 2034 (the calendar year that includes the tenth anniversary of B's death).

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

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

(iv) *Example 4*. The facts are the same as in paragraph (b)(3)(i) of this section (*Example 1*), except that A designates a see-through trust that satisfies the requirements of §1.401(a)(9)-4(f)(2) as the sole beneficiary of A's interest in Plan X. All of the trust beneficiaries are alive as of January 1, 2020. The oldest of the trust beneficiaries, C, died in 2022. Because section 401(b)(5) of the SECURE Act treats C as an eligible designated beneficiary, the rules of section 401(a)(9)(H)(iii) apply to the other trust beneficiaries. Thus, unless the rules of §1.401(a)(9)-5(f)(2)(ii)(B) or (iii) apply, A's remaining interest in Plan X must be distributed by the end of 2032 (the calendar year that includes the tenth anniversary of C's death).

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

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

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

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

(d) *Regulatory applicability date.* This section and §§1.401(a)(9)-2 through 1.401(a)(9)-9 apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2025. For earlier calendar years, the rules of §§1.401(a)(9)-1 through 1.401(a)(9)-9 (as those sections appeared in the April 1, 2023, edition of 26 CFR part 1) apply.

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

(a) *Distributions commencing during an employee's lifetime*—(1) *In general.* In order to satisfy section 401(a)(9)(A), the entire interest of each employee must be distributed to the employee not later than the required beginning date, or must be distributed, beginning not later than the required beginning date, over the life of the employee or the joint lives of the employee and a designated beneficiary or over a period not extending beyond the life expectancy of the employee or the joint life and last survivor expectancy of the employee and the designated beneficiary.

Under section 401(a)(9)(G), lifetime distributions must satisfy the incidental death benefit requirements of §1.401-1(b)(1).

(2) *Amount required to be distributed for a calendar year.* The amount required to be distributed for each calendar year in order to satisfy section 401(a)(9)(A) and (G) generally depends on whether the amount to be distributed is from an individual account under a defined contribution plan, is an annuity payment from a defined benefit plan, or is a payment under an annuity contract. For the method of determining the required minimum distribution in accordance with section 401(a)(9)(A) and (G) from an individual account under a defined contribution plan, see §1.401(a)(9)-5. For the method of determining the required minimum distribution in accordance with section 401(a)(9)(A) and (G) in the case of annuity payments from a defined benefit plan or under an annuity contract (including an annuity contract purchased under a defined contribution plan), see §1.401(a)(9)-6.

(3) *Distributions commencing before required beginning date*—(i) *In general.* Lifetime distributions made before the employee's required beginning date for calendar years before the employee's first distribution calendar year, as defined in §1.401(a)(9)-5(a)(2)(ii), need not be made in accordance with section 401(a)(9). However, if distributions commence before the employee's required beginning date under a particular distribution option (such as in the form of an annuity) and, under the terms of that distribution option, distributions to be made for the employee's first distribution calendar year (or any subsequent calendar year) will fail to satisfy section 401(a)(9), then the distribution option fails to satisfy section 401(a)(9) at the time distributions commence.

(ii) *Date distributions are treated as having begun.* Except as otherwise provided in paragraph (a)(3)(iii) of this section and §1.401(a)(9)-6(k), distributions to the employee are not treated as having begun in accordance with section 401(a)(9)(A)(ii) until the employee's required beginning date, as determined in accordance with paragraph (b)(1) or (3) of this section, whichever applies to the employee. The preceding sentence applies even if the employee has received distributions before the employee's required beginning date (either pursuant to plan terms that require distributions to begin by an earlier date or pursuant to the employee's election). Thus, even if payments have been made before the employee's required beginning date, the rules of §1.401(a)(9)-3 will apply if the employee dies before that date. For example, if A is an employee who retires in 2023, the calendar year A attains age 71, and begins receiving installment distributions from a profit-sharing plan over a period not exceeding the joint life and last survivor expectancy of A and A's spouse, benefits are not treated as having begun in accordance with section 401(a)(9)(A)(ii) until April 1, 2026 (the April 1 following the calendar year in which A attains age 73). Consequently, if A dies before April 1, 2026 (A's required beginning date), distributions after A's death must be made in accordance with §1.401(a)(9)-3 (addressing payments to beneficiaries pursuant to section 401(a)(9)(B)(ii), (iii), or (iv), whichever applies, in cases in which required distributions have not begun) rather than section 401(a)(9)(B)(i) (addressing payments to beneficiaries in cases in which required distributions have begun). This is the case without regard to whether, before A's death, the plan distributed the minimum distribution for the A's first distribution calendar year (as defined in §1.401(a)(9)-5(a)(2)(ii)).

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

(4) *Distributions after death.* Section 401(a)(9)(B)(i) provides that, if the distribution of an employee's interest has begun in accordance with section 401(a)(9)(A)(ii), and the employee dies before the employee's entire interest has been distributed to the employee, the remaining portion of the employee's interest must be distributed at least as rapidly as under the distribution method being used under section 401(a)(9)(A)(ii) as of the date of the employee's death. For the method of determining the required minimum distribution in accordance with section 401(a)(9)(B)(i) from an individual account under a defined contribution plan, see §1.401(a)(9)-5. In the case of annuity payments from a defined benefit plan or under an annuity contract (including an annuity contract purchased under a defined contribution plan), see §1.401(a)(9)-6.

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

(i) The calendar year in which the employee attains the applicable age; and

(ii) The calendar year in which the employee retires from employment with the employer maintaining the plan.

(2) *Definition of applicable age*—(i) *In general*. The applicable age is determined using the employee's date of birth as set forth in this paragraph (b)(2).

(ii) *Employees born before July 1, 1949*. In the case of an employee born before July 1, 1949, the applicable age is age 70½.

(iii) *Other employees born before 1951*. In the case of an employee born on or after July 1, 1949, but before January 1, 1951, the applicable age is age 72;

(iv) *Employees born in 1951 through 1958*. In the case of an employee born on or after January 1, 1951, but before January 1, 1959, the applicable age is age 73;

(v) [Reserved]

(vi) *Employees born after 1959*. In the case of an employee born on or after January 1, 1960, the applicable age is age 75.

(3) *Required beginning date for 5-percent owner*—(i) *In general.* In the case of an employee who is a 5-percent owner, the employee's required beginning date is April 1 of the calendar year following the calendar year in which the employee attains the applicable age.

(ii) *Definition of 5-percent owner*. For purposes of section 401(a)(9), a 5-percent owner is an employee who is a 5-percent owner (as defined in section 416) with

respect to the plan year ending in the calendar year in which the employee attains the applicable age.

(iii) *No applicability to governmental plan or church plan*. This paragraph (b)(3) does not apply in the case of a governmental plan (within the meaning of section 414(d)) or a church plan (within the meaning of §1.401(a)(9)-6(g)(4)(i)).

(4) *Uniform required beginning date*. A plan is permitted to provide that the required beginning date for purposes of section 401(a)(9) for all employees is April 1 of the calendar year following the calendar year described in paragraph (b)(1)(i) of this section, without regard to whether the employee is a 5-percent owner.

(5) *Plans maintained by more than one employer*. In the case of a plan maintained by more than one employer, an employee who retires from employment with any of those employers but continues to be employed by another employer that maintains the plan is not treated as having retired for purposes of paragraph (b)(1)(ii) of this section.

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

(a) *Distribution requirements*—(1) *In general*. Except as otherwise provided in §§1.401(a)(9)-2(a)(3) and 1.401(a)(9)-6(k), if an employee dies before the employee's required beginning date (and thus before distributions are treated as having begun in accordance with section 401(a)(9)(A)(ii)), then—

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

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

(2) *Special rule for designated Roth accounts.* If an employee's entire interest under a defined contribution plan is in a designated Roth account (as described in section 402A(b)(2)), then no distributions are required to be made to the employee during the employee's lifetime. Upon the employee's death, that employee is treated as having died before his or her required beginning date (so that distributions must be made in accordance with the requirements of paragraph (c) of this section).

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

(2) *5-year rule.* Except as otherwise provided in §1.401(a)(9)-6(j) (relating to defined benefit plans subject to limitations under section 436), distributions satisfy this paragraph (b)(2) if the employee's entire interest is distributed by the end of the calendar year that includes the fifth anniversary of the date of the employee's death. For example, if an employee dies on any day in 2022, then in order to satisfy the 5-year rule in section 401(a)(9)(B)(ii), the entire interest generally must be distributed by the end of 2027.

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

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

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

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

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

(iii) *Elections.* A defined benefit plan will not fail to satisfy section 401(a)(9) merely because it includes a provision that applies with respect to some or all of the employees who have a designated beneficiary under which the employee (or designated beneficiary) is permitted to elect whether the 5-year rule in paragraph (b)(2) of this section or the annuity payment rule in paragraph (b)(3) of this section applies. If a plan provides for this type of an election, then—

(A) The plan must specify the method of distribution that applies if neither the employee nor the designated beneficiary makes the election unless that method is the method specified in paragraph (b)(4)(i) of this section;

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

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

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

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

ary 1, 2020, then the 2020 calendar year is disregarded when determining the calendar year that includes the fifth anniversary of the date of the employee's death.

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

(4) *Life expectancy payments*. Distributions satisfy this paragraph (c)(4) if annual distributions that satisfy the requirements of §1.401(a)(9)-5 commence by the end of the calendar year following the calendar year in which the employee died, except as provided in paragraph (d) of this section (permitting a surviving spouse to delay the commencement of distributions). The requirement to take an annual distribution in accordance with the preceding sentence continues to apply for all subsequent calendar years until the employee's interest is fully distributed. Thus, a required minimum distribution is due for the calendar year of the eligible designated beneficiary's death, and that amount must be distributed during that calendar year to any beneficiary of the deceased eligible designated beneficiary to the extent it has not already been distributed to the eligible designated beneficiary.

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

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

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

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

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

(iii) *Elections.* A defined contribution plan will not fail to satisfy section 401(a)(9) merely because it includes a provision that applies with respect to some or all of the employees who have an eligible designated beneficiary or to some categories of eligible designated beneficiaries, under which the employee (or eligible designated beneficiary) is permitted to elect whether the 10-year rule in paragraph (c)(3) of this section or the life expectancy rule in paragraph (c)(4) of this section applies. If a plan provides for this type of election, then—

(A) The plan must specify the method of distribution that applies if neither the employee nor the designated beneficiary makes the election unless that method is the method specified in paragraph (c)(5)(i) of this section;

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

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

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

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

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

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

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

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

(2) *Entitlement to employee's interest in the plan.* A beneficiary designated

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

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

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

(b) *Designated beneficiary must be an individual*. A person that is not an individual, such as the employee's estate, is not a designated beneficiary. If a person other than an individual is a beneficiary designated under the plan, the employee will be treated as having no designated beneficiary, even if individuals are also designated as beneficiaries. However, see paragraphs (f)(1) and (3) of this section for a rule under which certain beneficiaries of a see-through trust that is designated as the employee's beneficiary under the plan are treated as the employee's beneficiaries under the plan rather than the trust and §1.401(a)(9)-8(a) for rules under which section 401(a)(9) is applied separately with respect to the separate interests of each of the employee's beneficiaries under the plan.

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

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

(i) The beneficiary predeceases the employee;

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

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

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

(i) *Example 1*. Employer M maintains a defined contribution plan, Plan X. Employee A dies in 2024 having designated A's three children—B, C, and D—as beneficiaries, each with a one-third share of A's interest in Plan X. B executes a disclaimer of B's entire share of A's interest in Plan X within 9 months of A's death and the disclaimer satisfies the other requirements of a qualified disclaimer under section 2518. Pursuant to the qualified disclaimer, B is disregarded as a beneficiary.

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

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

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

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

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

(d) *Application of beneficiary designation rules to surviving spouse*. This paragraph (d) applies in the case of distributions to which §1.401(a)(9)-3(e) applies (because the employee's spouse is the employee's sole beneficiary as of September 30 of the calendar year following the calendar year of the employee's death, and the surviving spouse dies before distributions to the spouse have begun). If this paragraph (d) applies, then the determination of whether a person is a beneficiary of the surviving spouse is made using the rules of paragraph (c) of this section, except that the date of the surviving spouse's death is substituted for the date of the employee's death. Thus, a person is a beneficiary if, as of the date of the surviving spouse's death, that person is a beneficiary designated under the plan

and remains a beneficiary as of September 30 of the calendar year following the calendar year of the surviving spouse's death.

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

(i) The surviving spouse of the employee;

(ii) A child of the employee (within the meaning of section 152(f)(1)) who has not reached the age of majority within the meaning of paragraph (e)(3) of this section;

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

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

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

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

(2) *Multiple designated beneficiaries*—(i) *In general*. Except as provided in paragraphs (e)(2)(ii) and (iii) of this section and §1.401(a)(9)-8(a) (relating to separate account treatment), if the employee has more than one designated beneficiary, and at least one of those beneficiaries is not an eligible designated beneficiary, then the employee is treated as not having an eligible designated beneficiary.

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

(iii) *Special rule for applicable multi-beneficiary trust.* If a trust that is designated as the beneficiary of an employee under a plan is an applicable multi-beneficiary trust described in paragraph (g) of this section, then the trust beneficiaries described in paragraph (g)(1)(ii) of this section are treated as eligible designated beneficiaries even if one or more of the other trust beneficiaries are not eligible designated beneficiaries.

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

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

(A) The individual is described in paragraph (e)(4)(ii) or (iii) of this section; or

(B) Paragraph (e)(4)(iv) of this section applies to the individual.

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

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

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

(5) *Chronically ill individual.* An individual is chronically ill if the individual is chronically ill within the definition of section 7702B(c)(2) and satisfies the documentation requirements of paragraph (e)(7) of this section. However, for purposes of the preceding sentence, an individual will be treated as chronically ill under section 7702B(c)(2)(A)(i) only if there is a certification from a licensed health care practitioner (as that term is defined in section 7702B(c)(4)) that, as of the date of the certification, the individual is unable to perform (without substantial assistance from another individual) at least 2 activities of daily living and the period of that inability is an indefinite one that is reasonably expected to be lengthy in nature.

(6) *Individual not more than 10 years younger than the employee*. Whether a designated beneficiary is not more than 10 years younger than the employee is determined based on the dates of birth of the employee and the beneficiary. Thus, for example, if an employee's date of birth is October 1, 1953, then the employee's beneficiary is not more than 10 years younger than the employee if the beneficiary was born on or before October 1, 1963.

(7) *Documentation requirements for disabled or chronically ill individuals*. This paragraph (e)(7) is satisfied with respect to an individual described in paragraph (e)(1)(iii) or (iv) of this section if documentation of the disability or chronic illness described in paragraph (e)(4) or (5) of this section, respectively, is provided to the plan administrator by October 31 of the calendar year following the calendar year of the employee's death (or October 31, 2025, if later). For individuals described in paragraph (e)(1)(iv) of this section, the documentation must include a certification from a licensed health care practitioner (as that term is defined in section 7702B(c)(4)).

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

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

(i) *Example 1*. Employer M maintains a defined contribution plan, Plan X. Employee A designates A's child, B, as the sole beneficiary of A's interest in Plan X. B will not reach the age of majority until 2024. A dies on July 1, 2022, after A's required beginning date. As of the date of A's death, B is disabled within the meaning of paragraph (e)(4) of this section. On November 1, 2024, B satisfies the requirements of paragraph (e)(7) of this section by providing the plan administrator a letter from a licensed health care practitioner stating that, as of July 1, 2022, B is unable to engage in any substantial gainful activity by reason of a physical impairment that can be expected to be of long-continued and indefinite

duration. Due to B's disability, B remains an eligible designated beneficiary even after reaching the age of majority in 2024, and Plan X is not required to distribute A's remaining interest in the plan by the end of 2034 pursuant to the rules of §1.401(a)(9)-5(e)(4), but instead may continue life expectancy payments to B during B's lifetime.

(ii) *Example 2*. The facts are the same as in paragraph (e)(9)(i) of this section (*Example 1*), except that the documentation requirements of paragraph (e)(7) of this section are not timely satisfied with respect to B. B ceases to be an eligible designated beneficiary upon reaching the age of majority in 2024, and Plan X is required to distribute A's remaining interest in the plan by the end of 2034 pursuant to the rules of §1.401(a)(9)-5(e)(4).

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

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

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

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

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

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

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

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

(iii) The beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's interest in the plan are identifiable (within the meaning of paragraph (f)(5) of this section) from the trust instrument.

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

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

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

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

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

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

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

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

(iii) *Certain accumulations disregarded.* For purposes of this paragraph (f)(3), a trust will not fail to be treated as a conduit trust merely because the trust terms requiring that distributions from the plan, upon receipt by the trustee, are paid directly to, or for the benefit of, trust beneficiaries do not apply after the death of all of the beneficiaries described in paragraph (f)(3)(i)(A) of this section.

(iv) *Treatment of payments for the benefit of a trust beneficiary*. For purposes of this paragraph (f)(3), a trust beneficiary will be treated as if the beneficiary could receive amounts in the trust representing the employee's interest in the plan regardless of whether those amounts could be paid to that beneficiary or for the benefit of that beneficiary. Thus, for example, if a trust beneficiary is a minor child of the employee, payments that could be made to a custodial account for the benefit of that child are treated as amounts that could be received by the child.

(4) *Multiple trust arrangements*. If a beneficiary of a see-through trust is another trust, the beneficiaries of the second trust will be treated as beneficiaries of the first trust, provided that the requirements of paragraph (f)(2) of this section are satis-

fied with respect to the second trust. In that case, the beneficiaries of the second trust are treated as having been designated as beneficiaries of the employee under the plan.

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

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

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

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

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

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

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

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

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

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

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

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

(i) *Example 1*—(A) *Facts*. Employer L maintains a defined contribution plan, Plan W. Unmarried Employee C died in 2024 at age 30. Prior to C's death, C named a testamentary trust (Trust T) that satisfies the requirements of paragraph (f)(2) of this section, as the beneficiary of C's interest in Plan W. The terms of Trust T require that all distributions received from Plan W, upon receipt by the trustee, be paid directly to D, C's sibling, who is 5 years older than C. The terms of Trust T also provide that, if D dies before C's entire account balance has been distributed to D, E will be the beneficiary of C's remaining account balance.

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

(ii) *Example 2*—(A) *Facts related to plan and beneficiary*. Employer M maintains a defined contribution plan, Plan X. Employee A died in 2024 at the age of 55, survived by Spouse B, who was then 50 years old. A's account balance in Plan X is invested only in productive assets and was includible in A's gross estate under section 2039. A named a testamentary trust (Trust P) as the beneficiary of all amounts payable from A's account in Plan X after A's death. Trust P satisfies the see-through trust requirements of paragraph (f)(2) of this section.

(B) *Facts related to trust*. Under the terms of Trust P, all trust income is payable annually to B, and no one has the power to appoint or distribute Trust P principal to any person other than B. A's sibling, C, who is less than 10 years younger than A (and thus is an eligible designated beneficiary) and is younger than B, is the sole residual beneficiary of Trust P. Also, under the terms of Trust P, if C predeceases B, then, upon B's death, all Trust P principal is distributed to Charity Z (an organization exempt from tax under section 501(c)(3)). No other person has a beneficial interest in Trust P. Under the terms of Trust P, B has the power, exercisable annually, to compel the trustee to withdraw from A's account balance in Plan X an amount equal to the income earned during the calendar year on the assets held in A's account in Plan X and to distribute that amount through Trust P to B. Plan X includes no prohibition on withdrawal from A's account of amounts in excess of the annual required minimum distributions under section 401(a)(9). In accordance with the terms of Plan X, the trustee of Trust P elects to take annual life expectancy payments pursuant to section 401(a)(9)(B)(iii). If B exercises the withdrawal power, the trustee must withdraw from A's account under Plan X the greater of the amount of income earned in the account during the calendar year or the required minimum distribution. However, under the terms of Trust P, and applicable State law, only the portion of the Plan X distribution received by the trustee equal to the income earned by A's account in Plan X is required to be distributed to B (along with any other trust income).

(C) *Analysis*. Because Trust P does not require that distributions from A's account in Plan X to Trust P, upon receipt by the trustee, be paid directly to (or for the benefit of) B, Trust P is not a conduit trust and accordingly is an accumulation trust (as described in paragraph (f)(1)(ii)(B) of this section). Pursuant to paragraph (f)(3)(i)(B) of this section, C, as the residual beneficiary of Trust P, is treated as a beneficiary designated under Plan X (even though access to those amounts is delayed until after B's death). Pursuant to paragraph (f)(2)(iii)(A) of this section, because Charity Z's entitlement to amounts in the trust is based on the death of a beneficiary described in paragraph (f)(3)(i)(B) of this section who is not also described in paragraph (f)(3)(i)(A) of this section, Charity Z is disregarded as a beneficiary of A. Under §1.401(a)(9)-5(f)(1), the designated beneficiary used to determine the applicable denominator is the oldest of the designated beneficiaries of Trust P's interest in Plan X. B is the oldest of the beneficiaries of Trust P's interest in Plan X (including residual beneficiaries). Thus, the applicable denominator for purposes of section 401(a)(9)(B)(iii) is B's life expectancy. Because C is a beneficiary of A's account in Plan X in addition to B, B is not the sole beneficiary of A's account and the special rule in section 401(a)(9)(B)(iv) and §1.401(a)(9)-3(d) is not available. Accordingly, the annual required minimum distributions from the account to Trust P must begin no later than the end of the calendar year following the calendar year of A's death.

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

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

(iv) *Example 4*—(A) *Facts related to plan and beneficiary*. Employer N maintains a defined contribution plan, Plan Y. Employee F died in 2025 at the age of 60. F named a testamentary trust (Trust Q), which was established under F's will, as the beneficiary of all amounts payable from F's account in Plan X after F's death. Trust Q satisfies the see-through trust requirements of paragraph (f)(2) of this section.

(B) *Facts related to trust*. Under the terms of Trust Q, all trust income is payable to F's surviving spouse G for life, no person has the power to appoint or distribute Trust Q principal to any person other than G, and G has a testamentary power of appointment to name the beneficiaries of the remainder in Trust Q. The power of appointment provides that, if G does not exercise the power, then upon G's death, F's descendants, per stirpes, are entitled to the remainder interest in Trust Q. As of the date of F's death, F has two children, K and L, neither of whom is disabled, chronically ill, or under age 21. Before September 30 of the calendar year following the calendar year in which F died, G irrevocably restricts G's power of appointment so that G may exercise the power to appoint the remainder beneficiaries of Trust Q only in favor of G's siblings (who all are less than 10 years younger than F and thus, are eligible designated beneficiaries).

(C) *Analysis*. Pursuant to paragraph (f)(5)(ii)(A) of this section, because G timely restricted the power of appointment so that G may exercise the power to appoint the residual interest in Trust Q only in favor of G's siblings, the designated beneficiaries are G and G's siblings. Because all of the designated beneficiaries are eligible designated beneficiaries, annual life expectancy payments are permitted under section 401(a)(9)(B)(iii). Note, however, that because §1.401(a)(9)-5(e)(3) applies, a distribution of the remaining interest is required by no later than 10 years after the calendar year in which the oldest of G and G's siblings dies.

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

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

(g) *Applicable multi-beneficiary trust*—(1) *Certain see-through trusts with disabled or chronically ill beneficiaries*. An applicable multi-beneficiary trust is a see-through trust with more than one beneficiary and with respect to which—

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

(ii) The trust terms identify one or more individuals, each of whom is disabled (as defined in paragraph (e)(1)(iii) of this section) or chronically ill (as defined in paragraph (e)(1)(iv) of this section), who are described in paragraph (f)(3)(i)(A) of this section; and

(iii) The terms of the trust provide that no beneficiary (other than an individual described in paragraph (g)(1)(ii) of this section) has any right to the employee's interest in the plan until the death of all of the eligible designated beneficiaries described in paragraph (g)(1)(ii) of this section.

(2) *Termination of interest in trust*. A provision in the trust agreement that permits the termination of the interest in the trust of a beneficiary described in paragraph (g)(1)(ii) of this section prior to that beneficiary's death will not cause

the trust to fail to be treated as an applicable multi-beneficiary trust, but only if paragraph (g)(1)(iii) of this section continues to apply. Upon the death of the last to survive of the beneficiaries described in paragraph (g)(1)(ii) of this section, the trust is treated as having been modified as of the date of that death to add the other trust beneficiaries. Thus, if the death occurs after September 30 of the calendar year following the calendar year of the employee's death, the rules of paragraph (f)(5)(iv) of this section will apply.

(3) *Special definition of designated beneficiary*. For purposes of paragraph (g)(1)(i) of this section, any beneficiary that is an organization described in section 408(d)(8)(B)(i) (certain organizations to which a charitable contribution may be made) is treated as a designated beneficiary.

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

(i) With respect to required minimum distributions for a distribution calendar year that begins on or before the date of the employee's death, paragraph (h)(2) of this section is satisfied no later than the first day of the distribution calendar year; or

(ii) With respect to required minimum distributions for a distribution calendar year that begins after the date of the employee's death, or that begins after the employee's surviving spouse has died in a case to which §1.401(a)(9)-3(d) applies, paragraph (h)(3) of this section is satisfied no later than October 31 of the calendar year following the calendar year that includes the employee's date of death or the date of death of the employee's surviving spouse, respectively.

(2) *Required minimum distributions while employee is still alive*—(i) *In general.* If an employee designates a trust as the beneficiary of the employee's entire benefit and the employee's spouse is the only beneficiary of the trust treated as a beneficiary of the employee pursuant to the rules of paragraph (f) of this section, then, in order to satisfy the documentation requirements of this paragraph (h)(2) (so that the applicable denominator for a distribution calendar year may be determined under the rules of §1.401(a)(9)-5(c)(2), assuming the other requirements of paragraph (f)(2) of this section are satisfied), the employee must satisfy either the requirements of paragraph (h)(2)(ii) of this section (requiring the employee to provide a copy of the trust instrument) or the requirements of paragraph (h)(2)(iii) of this section (requiring the employee to provide a list of beneficiaries). The plan administrator may determine which of the two alternatives in the preceding sentence is available to the employee.

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

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

(B) Agrees that, if the trust instrument is amended at any time in the future, the employee will, within a reasonable time, provide the plan administrator a copy of each amendment.

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

(A) Provides the plan administrator a list of all of the beneficiaries of the trust (including contingent beneficiaries) with a description of the conditions on their entitlement sufficient to establish that the spouse is the only beneficiary of the trust treated as a beneficiary of the employee pursuant to the rules of paragraph (f) of this section;

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

(C) Agrees that, if the trust instrument is amended at any time in the future, the employee will, within a reasonable time, provide the plan administrator corrected certifications to the extent that the amendment changes any information previously certified; and

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

(3) *Required minimum distributions after death*—(i) *In general*. In order to satisfy the documentation requirement of this paragraph (h)(3) for required minimum distributions after the death of the employee (or after the death of the employee's surviving spouse in a case to which §1.401(a)(9)-3(d) applies), the trustee of the trust must satisfy the requirements of either paragraph (h)(3)(ii) (requiring the trustee to provide a list of beneficiaries) or paragraph (h)(3)(iii) of this section (requiring the trustee to provide a copy of the trust instrument). The plan administrator may determine which of the two alternatives in the preceding sentence is available for the trust.

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

(A) Provides the plan administrator a final list of all beneficiaries of the trust as of September 30 of the calendar year following the calendar year of the death (including contingent beneficiaries) with a description of the conditions on their entitlement sufficient to establish which of those beneficiaries are treated as beneficiaries of the employee (or surviving spouse, if applicable);

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

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

(iii) *Trustee to provide copy of trust instrument*. A trustee satisfies the requirements of this paragraph (h)(3)(iii) if the trustee provides the plan administrator with a copy of the actual trust document for the trust that is named as a beneficiary of the employee under the plan as of the employee's date of death.

(4) *Relief for discrepancy between trust instrument and employee certifications or earlier trust instruments*—(i) *In general.* If required minimum distributions are determined based on the information provided to the plan administrator in certifications or trust instruments described in paragraph (h)(2) or (3) of this section, a plan will not fail to satisfy section 401(a)(9) merely because the actual terms of the trust instrument are inconsistent with the information in those certifications or trust instruments previously provided to the plan administrator, but only if—

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

(B) The required minimum distributions for calendar years after the calendar year in which the discrepancy is discovered are determined based on the actual terms of the trust instrument.

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

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

(a) *General rules*—(1) *In general.* Subject to the rules of paragraph (e) of this section (requiring distribution of an employee's entire interest by a specified deadline in certain situations), if an employee's accrued benefit is in the form of an individual account under a defined contribution plan, the minimum amount required to be distributed for each distribution calendar year beginning with the first distribution calendar year for the employee or designated beneficiary (as determined under paragraph (a)(2) of this section) is equal to the quotient obtained by dividing the account balance (determined under paragraph (b) of this section) by the applicable denominator (determined under paragraph (c) or (d) of this section, whichever applies). However, the required minimum distribution amount will never exceed the entire account balance on the date of the distribution. See paragraph (g)(1) of this section for rules that apply if a portion of the employee's account is not vested.

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

(ii) *First distribution calendar year for employee if employee dies on or after required beginning date*. If an employee's required beginning date is April 1 of the calendar year following the calendar year in which the employee attains the applicable age then the employee's first distribution calendar year is the year the employee attains the applicable age. If an employee's required beginning date is April 1 of the calendar year following the calendar year in which the employee retires, the employee's first distribution calendar year is the calendar year in which the employee retires.

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

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

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

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

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

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

(ii) *Transition from defined contribution rules to defined benefit rules*. If an annuity is purchased in accordance with paragraph (a)(5)(i) of this section after distributions are required to commence (the required beginning date, in the case of distributions commencing before death, or the calendar year determined under §1.401(a)(9)-3(c)(4) or, if applicable, §1.401(a)(9)-3(d), in the case of distributions commencing after death), then the plan will satisfy section 401(a)(9) only if, in the year of purchase, distributions from the individual account satisfy this section, and for calendar years following the year of purchase, payments under the annuity contract are made in accordance with §1.401(a)(9)-6. Payments under the annuity contract during the year in which the annuity contract is purchased are treated as distributions from the individual account for purposes of determining whether the distributions from the individual account satisfy this section in the calendar year of purchase.

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

(iv) *Optional aggregation rule*. In the case of an annuity contract purchased with a portion of the employee's account balance, in lieu of applying section 401(a)(9) separately with respect to the annuity contract and the remaining account balance as described in paragraph (a)(5)(iii) of this section, a plan may permit an employee to elect to satisfy section 401(a)(9) for the annuity contract and that account balance in the aggregate by—

(A) Adding the fair market value of the contract to the remaining account balance determined under paragraph (b) of this section; and

(B) Treating payments under the annuity contract as distributions from the employee's individual account.

(v) [Reserved]

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

(b) *Determination of account balance*—(1) *General rule*. In the case of an individual account under a defined contribution plan, the benefit used in determining the required minimum distribution for a distribution calendar year is the account balance as of the last valuation date in the calendar year preceding that distribution calendar year (valuation calendar year) adjusted in accordance with this paragraph (b). For this purpose, all of an employee's accounts under the plan are aggregated. Thus, all separate accounts, including a separate account for employee contributions under section 72(d)(2), are aggregated for purposes of this section.

(2) *Adjustment for subsequent allocations and distributions*—(i) *Subsequent allocations*. The account balance is increased by the amount of any contributions or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date. For this purpose, contributions that are allocated to the account balance as of dates in the valuation calendar year after the valuation date, but that are not actually made during the valuation calendar year, may be excluded.

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

(3) *Adjustment for designated Roth accounts*. For distribution calendar years up to and including the calendar year that includes the employee's date of death, the account balance does not include amounts held in a designated Roth account (as described in section 402A(b)(2)).

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

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

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

(2) *Spouse is sole beneficiary*—(i) *Determination of applicable denominator*. If the employee's surviving spouse who is more than 10 years younger than the employee is the employee's sole beneficiary, then the applicable denominator is the joint and last survivor life expectancy for the employee and spouse determined using the Joint and Last Survivor Table in §1.401(a)(9)-9(d) for the employee's and spouse's ages as of their birthdays in the relevant distribution calendar year (rather than the applicable denominator determined under paragraph (c)(1) of this section).

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

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

(d) *Applicable denominator after employee's death*—(1) *Death on or after the employee's required beginning date*—(i) *In general.* If an employee dies after distribution has begun as determined under §1.401(a)(9)-2(a)(3) (generally, on or after the employee's required beginning date), distributions must satisfy section 401(a)(9)(B)(i). In order to satisfy this requirement, the applicable denominator for distribution calendar years that begin after the employee's death is determined under the rules of this paragraph (d)(1) (or is determined under the rules of paragraph (g)(3) of this section, if applicable). The requirement to take an annual distribution in accordance with the preceding sentence continues to apply for every distribution calendar year until the employee's interest is fully distributed. Thus, a required minimum distribution is due for the calendar year of the beneficiary's death, and that amount must be distributed during that calendar year to any beneficiary of the deceased beneficiary to the extent it has not already been distributed to the deceased beneficiary. If section 401(a)(9)(H) applies to the employee's interest in the plan, then the distributions also must satisfy either section 401(a)(9)(B)(ii) (applied by substituting 10 years for 5 years) or, if the beneficiary is an eligi-

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

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

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

(B) The employee's remaining life expectancy.

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

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

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

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

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

(iv) *Spouse as designated beneficiary*. If the surviving spouse of the employee is the employee's sole beneficiary, then the surviving spouse's remaining life expectancy is redetermined each distribution calendar year up to and including the calendar year of the spouse's death using the surviving spouse's age as of the surviving spouse's birthday in the distribution calendar year. For each calendar year following the calendar year of the spouse's death, the spouse's remaining life expectancy is determined by reducing the spouse's remaining life expectancy in the calendar year of the spouse's death by one for each calendar year that has elapsed after that calendar year.

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

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

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

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

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

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

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

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

(A) Paragraph (e)(2) of this section does not apply;

(B) Paragraph (e)(3) of this section applies as if the death of the employee's eligible designated beneficiary does not occur until the death of all of the designated beneficiaries who are described in §1.401(a)(9)-4(e)(1)(ii); and

(C) Paragraph (e)(4) of this section applies as if the attainment of the age of majority of the employee's eligible designated beneficiary described in §1.401(a)(9)-4(e)(1)(ii) does not occur until the youngest of those eligible designated beneficiaries reaches the age of majority.

(iii) *Applicable multi-beneficiary trust*. If an employee's beneficiary is an applicable multi-beneficiary trust described in §1.401(a)(9)-4(g)(1), then paragraph (e)(3) of this section applies as if the death of the employee's eligible designated beneficiary does not occur until the death of the last to survive of the trust beneficiaries who are described in §1.401(a)(9)-4(g)(1)(ii).

(g) *Special rules*—(1) *Treatment of nonvested amounts.* If the employee's benefit is in the form of an individual account under a defined contribution plan, the benefit used to determine the required minimum distribution for any distribution calendar year will be determined in accordance with paragraph (a) of this section without regard to whether or not all of the employee's benefit is vested. If, as of the end of a distribution calendar year (or as of the employee's required beginning date, in the case of the employee's first distribution calendar year), the total amount of the employee's vested benefit is less than the required minimum distribution for the calendar year, only the vested portion, if any, of the employee's benefit is required to be distributed by the end of the calendar year (or, if applicable, by the employee's required beginning date). However, the required minimum distribution for the subsequent calendar year must be increased by the sum of amounts not distributed in prior calendar years because the employee's vested benefit was less than the required minimum distribution determined in accordance with paragraph (a) of this section.

(2) *Distributions taken into account*—(i) *General rule*. Except as provided in this paragraph (g)(2), all amounts distributed from an individual account under a defined contribution plan are distributions that are taken into account in determining whether this section is satisfied for a calendar year, regardless of whether the amount is includible in income. Thus, for example, amounts that are excluded from income as recovery of investment in the contract under section 72 generally are taken into account for purposes of determining whether this section is satisfied for a calendar year. Similarly, amounts excluded from income as net unrealized appreciation on employer securities generally are taken into account for purposes of satisfying this section.

(ii) *Amounts not eligible for rollover*. An amount is not taken into account in determining whether this section is satisfied for a calendar year if that amount is described in §1.402(c)-2(c)(3) (relating to amounts that are not treated as eligible rollover distributions).

(iii) [Reserved]

(iv) [Reserved]

(3) *Surviving spouse election under section 401(a)(9)(B)(iv)*—(i) *In general*. A defined contribution plan may include a provision, applicable to an employee whose sole beneficiary is that employee's surviving spouse, under which the surviving spouse may elect to be treated as the employee for purposes of determining the required minimum distribution for a calendar year under this section.

(ii) [Reserved]

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

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

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

(3) *Annuity commencement*—(i) *First payment and frequency*. Annuity payments must commence on or before the employee's required beginning date (within the meaning of §1.401(a)(9)-2(b)). The first payment, which must be made on or before the employee's required beginning date, must be the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Similarly, if the employee dies before the required beginning date, and distributions are to be made in accordance with section 401(a)(9)(B)(iii) (or, if applicable, section 401(a)(9)(B)(iv)), then the first payment, which must be made on or before the last day of the calendar year following the calendar year in which the employee died (or the date determined under §1.401(a)(9)-3(d), if applicable), must be the payment that is required for one payment interval. Payment intervals are the periods for which payments are received, for example, bimonthly, monthly, semi-annually, or annually. All benefit accruals as of the last day of the first distribution calendar year must be included in the calculation of the amount

of annuity payments for payment intervals ending on or after the employee's required beginning date.

(ii) *Example.* A defined benefit plan (Plan X) provides monthly annuity payments for the life of unmarried participants with a 10-year period certain. An unmarried, retired participant A in Plan X attains age 73 in 2025. A's monthly annuity payment under this single life annuity based on accruals through December 31, 2025, is $500. In order to meet the requirements of this paragraph (a)(3), the first monthly payment of $500 must be made on behalf of A on or before April 1, 2026, and monthly payments must continue to be made thereafter for the life of A (or over the 10-year period certain, if longer).

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

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

(iii) *Treatment as first annuity payment*. The portion of the single-sum distribution that is a required minimum distribution is permitted to be determined by expressing the employee's benefit as an annuity that would satisfy this section with an annuity starting date that is the first day of the distribution calendar year for which the required minimum distribution is being determined, and treating one year of annuity payments as the required minimum distribution for that year (and therefore, not an eligible rollover distribution). If the single-sum distribution is being made in the calendar year that includes the required beginning date, and the required minimum distribution for the employee's first distribution calendar year has not been made, then the benefit must be expressed as an annuity with an annuity starting date that is the first day of the first distribution calendar year, and the payments for the first two distribution calendar years are treated as required minimum distributions (and therefore not eligible rollover distributions).

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

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

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

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

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

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

(2) *Joint and survivor annuity*—(i) *Determination of designated beneficiary.* If the employee's benefit is paid in the form of a life annuity for the lives of the employee and a designated beneficiary, then the designated beneficiary is determined as of the annuity starting date.

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

(iii) *Joint and survivor annuity, nonspouse beneficiary.* If distributions commence in the form of a joint and survivor annuity for the lives of the employee and a beneficiary other than the employee's spouse, and the employee is the applicable age or older on the employee's birthday in the calendar year that includes the annuity starting date, then the MDIB requirement will not be satisfied as of the date distributions commence unless, under the distribution option, the annuity payments satisfy the conditions of this paragraph (b)(2)(iii). The periodic annuity payments to the survivor satisfy this paragraph (b)(2)(iii) only if, at any time on or after the employee's required beginning date, those payments do not exceed the applicable percentage of the periodic annuity payment payable to the employee using the table in this paragraph (b)(2)(iii). The applicable percentage is based on the employee/beneficiary age dif-

ference, which is equal to the excess of the age of the employee over the age of the beneficiary based on their ages on their birthdays in the calendar year that includes the annuity starting date. In the case of an annuity that provides for increasing payments, the requirement of this paragraph (b)(2)(iii) will not be violated merely because benefit payments to the beneficiary increase, provided the increase is determined in the same manner for the employee and the beneficiary. See paragraph (k)(2) of this section for rules regarding the application of the MDIB requirement in the case of annuity payments with an annuity starting date that is before the calendar year in which an employee attains the applicable age.

Table 1 to paragraph (b)(2)(iii)

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

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

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

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

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

(d) *Use of annuity contract*—(1) *In general*. A plan will not fail to satisfy section 401(a)(9) merely because distributions are made from an annuity contract purchased from an insurance company that is licensed to do business under the laws of the State in which the contract is sold, provided that the payments satisfy the requirements of this section. Except in the case of a qualifying longevity annuity contract (QLAC) described in paragraph (q) of this section, if the annuity contract is purchased after the required beginning date, then the first payment interval must begin on or before the purchase date and the payment that is made at the end of that payment interval is the amount required for one payment interval. If the payments actually made under the annuity contract do not meet the requirements of this section, the plan fails to satisfy section 401(a)(9). See also paragraph (o) of this section permitting certain increases under annuity contracts.

(2) *Applicability of section 401(a)(9)(H)*—(i) *Annuity contract subject to section 401(a)(9)(H)*. If an annuity contract is purchased under a defined contribution plan, or the annuity contract is otherwise subject to section 401(a)(9)(H), payments under that annuity contract cannot extend past the calendar year described in §1.401(a)(9)-5(e).

(ii) *Determination of an eligible designated beneficiary*. If an annuity contract is described in paragraph (d)(2)(i) of this section, then the determination of whether a beneficiary is an eligible designated beneficiary under section 401(a)(9)(E)(ii), is made as of the annuity starting date. For example, if, as of the annuity starting date, the employee's beneficiary under the contract is the employee's spouse, then the spouse is treated as an eligible designated beneficiary for purposes of applying the rules of section 401(a)(9)(H) even if the employee and spouse are subsequently divorced.

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

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

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

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

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

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

of this section to the end date described in paragraph (g)(1)(iii) of this section.

(ii) *Start date for actuarial increase.* The start date for the required actuarial increase is April 1 following the calendar year in which the employee attains age 70½ (or January 1, 1997, if the employee attained 70½ prior to January 1, 1997).

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

(iv) *Determination of when employee attains age 70½.* An employee attains age 70½ as of the date six calendar months after the 70th anniversary of the employee's birth. For example, if the date of birth of an employee is June 30, 1955, the 70th anniversary of the employee's birth is June 30, 2025, and the employee attains age 70½ in 2025. However, if the employee's date of birth is July 1, 1955, the 70th anniversary of the employee's birth is July 1, 2025, and the employee attains age 70½ in 2026.

(2) *Nonapplication to 5-percent owners*. This paragraph (g) does not apply to an employee if that employee is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains the applicable age.

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

(4) *Nonapplication to church plans and church employees*—(i) *Church plans.* The actuarial increase required under this paragraph (g) does not apply to a church plan. For purposes of this paragraph (g)(4)—

(A) The term *church plan* means a plan maintained by a church (as defined in section 3121(w)(3)(A)) or a qualified church-controlled organization (as defined in section 3121(w)(3)(B)) for its employees; and

(B) A plan is treated as a church plan only if at least 85 percent of the individuals covered by the plan are employees of a church or a qualified church-controlled organization.

(ii) *Determination of whether an individual is an employee of a church*. For purposes of this paragraph (g)(4), the determination of whether an individual is an employee of a church or a qualified church-controlled organization is made in accordance with the rules of section 414(e)(3)(B) other than section 414(e)(3)(B)(ii).

(iii) *Church employees covered in other plan*s. If a plan is not a church plan within the meaning of paragraph (g)(4)(i) of this section, then the actuarial increase required under this paragraph (g) does not apply to benefits accrued under the plan by an individual that are attributable to the service the individual performs as an employee of a church or a qualified church-controlled organization (including service performed as an employee described in section 414(e)(3)(B)(i)).

(h) *Amount of actuarial increase*—(1) *In general*. In order to satisfy section 401(a)(9)(C)(iii), the retirement benefits payable with respect to an employee as of the end of the period for which actuarial increases must be provided as described in paragraph (g) of this section must be no less than—

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

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

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

(2) *Actuarial equivalence basis*. For purposes of this paragraph (h), actuarial equivalence is determined using reasonable actuarial assumptions. If the plan is subject to section 411, the plan's assumptions must be the same as the assumptions used for determining actuarial equivalence for purposes of satisfying section 411.

(3) *Coordination with section 411 actuarial increase.* Under section 411, in order for an employee's accrued benefit under a defined benefit plan to be nonforfeitable, the plan must make an actuarial adjustment to any portion of that accrued benefit, the payment of which is deferred past normal retirement age. The only exception to this rule is that, generally, no actuarial adjustment is required to reflect the period during which a benefit is suspended as permitted under section 411(a)(3)(B). The actuarial increase required under section 401(a)(9)(C)(iii) for the period (if any) described in paragraph (g)(1)(i) of this section generally is the same as, and not in addition to, the actuarial increase required for the same period under section 411 to reflect any delay in the payment of retirement benefits after normal retirement age. However, unlike the actuarial increase required under section 411, the actuarial increase required under section 401(a)(9)(C)(iii) must be provided even during any period during which an employee's benefit has been suspended in accordance with section 411(a)(3)(B).

(i) [Reserved]

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

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

the section 436(d)(3) payment restriction ceases to apply (to the extent that a single-sum payment is permitted under section 436(d)(1) and (2)).

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

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

(i) The remaining portion of the employee's interest must continue to be distributed in accordance with this section over the remaining period over which distributions commenced; and

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

(2) *Joint and survivor annuity, nonspouse beneficiary*—(i) *Application of MDIB requirement.* If distributions commence in the form of a joint and survivor annuity for the lives of the employee and a beneficiary other than the employee's spouse, and as of the employee's birthday in the calendar year that includes the annuity starting date, the employee is younger than the applicable age, then the MDIB requirement will not be satisfied as of the date distributions commence unless, under the distribution option, the annuity payments to be made on and after the employee's required beginning date satisfy the conditions of this paragraph (k)(2). The periodic annuity payments payable to the survivor satisfy this paragraph (k)(2) if, at all times on and after the employee's annuity starting date, those payments do not exceed the applicable percentage of the periodic annuity payment payable to the employee determined using the table in paragraph (b)(2)(iii) of this section (but based on the adjusted employee/beneficiary age difference). The adjusted employee/beneficiary age difference is determined by first calculating the employee/beneficiary age difference under paragraph (b)(2)(iii) of this section and then reducing that age difference by the number of years by which the employee is younger than the applicable age on the employee's birthday in the calendar year that includes the annuity starting date. In the case of an annuity that provides for increasing payments, the requirement of this paragraph (k)(2) will not fail to be satisfied merely because benefit payments to the beneficiary increase, provided the increase is determined in the same manner for the employee and the beneficiary.

(ii) *Example*—(A) *Facts*. Distributions under a defined benefit plan commence on January 1, 2025, to an employee Z, born March 1, 1958. Z's daughter Y, born February 5, 1989, is Z's beneficiary. The distributions are in the form of a joint and survivor annuity for the lives of Z and Y with payments of $500 a month to Z and upon Z's death of $500 a month to Y (so that the monthly payment to Y is 100 percent of the monthly amount payable to Z).

(B) *Analysis and conclusion*. Z's required beginning date is April 1, 2032 (that is, April 1 of the calendar year following the calendar year in which Z will attain age 73). Under paragraph (k)(1) of this section, because distributions commence prior to Z's required beginning date and are in the form of a joint and survivor annuity for the lives of Z and Y, compliance with the rules of this section is determined as of the annuity starting date. Under this paragraph (k)(2), the adjusted employee/beneficiary age difference is calculated by taking the excess of the employee's age over the beneficiary's age and subtracting the number of years the employee is younger than the applicable age (in this case, age 73). In 2025, Z attains age 67 and Y attains age 36. Accordingly, the employee/beneficiary age difference is 31. Because Z is commencing benefits 6 years before attaining the applicable age, the adjusted employee/beneficiary age difference is 25 years. Under table 1 to paragraph (b)(2)(iii) of this section, the applicable percentage for a 25-year adjusted employee/beneficiary age difference is 66 percent. The plan does not satisfy the MDIB requirement because, as of January 1, 2025 (the annuity starting date), the distribution option provides that, as of Z's required beginning date, the monthly payment to Y upon Z's death will exceed 66 percent of Z's monthly payment.

(3) *Limitation on period certain.* If, as of the employee's birthday in the calendar year that includes the annuity starting date, the employee is younger than the applicable age, then the period certain may not exceed the limitation on the period certain for an individual who has attained the applicable age as specified in paragraph (c)(1) of this section, increased by the number of years by which the employee is younger than the applicable age on that birthday.

(l) *Early commencement for surviving spouse.* Generally, the determination of whether a stream of payments satisfies the requirements of this section is made as of the date on which distribu-

tions are required to commence. However, if the employee dies prior to the required beginning date, distributions commence to the surviving spouse of an employee over a period permitted under section 401(a)(9)(B)(iii)(II) prior to the date on which distributions are required to commence, and the distribution form is an annuity under which distributions are made in accordance with the provisions of paragraph (a) of this section, then the annuity starting date will be considered the required beginning date for purposes of section 401(a)(9)(B)(iv)(III). Thus, if the surviving spouse dies after commencing benefits and before the date described in 401(a)(9)(B)(iv)(II), then after the surviving spouse's death--

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

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

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

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

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

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

(B) An additional benefit that is the right to receive a final payment upon death that does not exceed the amount by which the total consideration paid exceeds the amount of prior distributions.

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

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

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

(i) *Example 1*—(A) *Facts*. G is the owner of a variable annuity contract (Contract S) under an individual account plan that has not been annuitized. Contract S provides a death benefit until the end of the calendar year in which the owner attains the age of 84 equal to the greater of the current Contract S notional account balance (dollar amount credited to G under the contract) and the largest notional account balance at any previous policy anniversary reduced proportionally for subsequent partial distributions (High Water Mark). Contract S provides a death benefit in calendar years after the calendar year in which the owner attains age 84 equal to the current notional account balance. Contract S provides that assets within the contract may be invested in a Fixed Account at a guaranteed rate of 2 percent. Contract S provides no other additional benefits.

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

Table 2 to paragraph (m)(4)(i)(B)

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

[1] $1,000,000 death benefit reduced 4.55 percent for withdrawal during 2028.
[2] Notional account balance at end of preceding year (after distribution) increased by 2 percent return for year.
[3] Average of $550,000 notional account balance at end of preceding year (after distribution) and $561,000 notional account balance at end of current year (before distribution).
[4] December 31, 2028 notional account balance (before distribution) divided by uniform lifetime table age 79 factor of 21.1.

Table 3 to paragraph (m)(4)(i)(B)

Year	Survivorship to start of year	Interest discount to end of 2028	Mortality rate during year	Discounted additional benefits within year
2028				
2029	1.00000	.97590	[5].03321	12,933
2030	.96679	[6].92943	.03739	[7]12,398
2031	[8].93064	.88517	.04198	11,756
2032	.89157	.84302	.04715	11,055
2033	.84953	.80288	.05305	10,310
2034	.80446	.76464	.05979	9,526
				$67,978

[5] One-quarter age 78 rate plus three-quarters age 79 rate.
[6] Five percent discounted 18 months ($1.05^{(-1.5)}$).
[7] Blended age 79/age 80 mortality rate (.03739) multiplied by the $369,023 excess of death benefit over the average notional account balance ($909,306 less $540,283) multiplied by .96679 probability of survivorship to the start of 2030 multiplied by 18-month interest discount of .92943.
[8] Survivorship to start of preceding year (.96679) multiplied by probability of survivorship during prior year (1-.03739).

(C) *Conclusion.* Because Contract S provides that, in the case of a distribution, the value of the additional death benefit (which is the only additional benefit available under the contract) is reduced by an amount that is at least proportional to the reduction in the notional account balance and, at age 78 and 9 months, the sum of the notional account balance (dollar amount credited to the employee under the contract) and the actuarial present value of the additional death benefit is no more than 120 percent of the notional account balance, the exclusion under paragraph (m)(3)(i) of this section applies for 2029. Therefore, for purposes of applying the rules in §1.401(a)(9)-5, the entire interest under Contract S may be determined as the notional account balance (that is, without regard to the additional death benefit).

(ii) *Example 2*—(A) *Facts.* The facts are the same as in paragraph (m)(4)(i) of this section (*Example 1*), except that the notional account balance is $550,000 at the end of 2028. In this instance, the actuarial present value of the death benefit in excess of the notional account balance in 2028 is determined to be $97,273 (24 percent of the notional account balance). The following two tables summarize the actuarial methodology used in determining the actuarial present value of the additional benefit.

Table 4 to paragraph (m)(4)(ii)(A)

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

Table 5 to paragraph (m)(4)(ii)(A)

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

(B) *Conclusion*. Because the sum of the notional account balance and the actuarial present value of the additional death benefit is more than 120 percent of the notional account balance, the exclusion under paragraph (m)(3)(i) of this section does not apply for 2029. Therefore, for purposes of applying the rules in §1.401(a)(9)-5, the entire interest under Contract S must include the actuarial present value of the additional death benefit.

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

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

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

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

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

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

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

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

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

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

(4) *Examples.* For the purposes of the examples in this paragraph (n)(4), assume

that the applicable segment rates under section 417(e)(3) are 5.00 percent, 5.50 percent, and 6.00 percent, and the applicable mortality table under section 417(e)(3) is the mortality table provided in Notice 2023-73, 2023-45 IRB 232. In addition, assume that the section 415 limit at age 72 for a straight life annuity is $306,667 (which is the lesser of the annual benefit under section 415(b)(1)(A), as adjusted pursuant to section 415(d) and further adjusted for age 72 in accordance with §1.415(b)-1(e)(1)(i), and 100 percent of the participant's average compensation for the participant's high 3 years):

(i) *Example 1*—(A) *Facts*—(*1*) *Background*. Participant D has 10 years of participation in a frozen defined benefit plan (Plan W). D is not retired and elects to receive distributions from Plan W in the form of a straight life annuity with annual payments of $310,000 per year beginning in 2025 at a date when D has an attained age of 72. Plan W offers non-retired employees in pay status the opportunity to modify their annuity payments due to an associated change in the payment period at retirement. Plan W treats the date of the change in payment period as a new annuity starting date for purposes of sections 415 and 417. Thus, for example, the plan provides a new qualified and joint survivor annuity election and obtains spousal consent. Plan W determines modifications of annuity payment amounts at retirement so that the present value of future new annuity payment amounts (taking into account the new associated payment period) is actuarially equivalent to the present value of future pre-modification annuity payments (taking into account the pre-modification annuity payment period). Actuarial equivalency for this purpose is determined using the applicable segment rates under section 417(e)(3)(C) and the applicable mortality table as of the date of modification.

(*2*) *Payment of retirement benefits to Participant D*. D retires in 2029 at the age of 76 and, after receiving four annual payments of $310,000, elects to receive the remaining distributions from Plan W in the form of an immediate final lump sum payment of $2,795,732. Because payment of retirement benefits in the form of an immediate final lump sum payment satisfies (in terms of form) section 401(a)(9), the condition under paragraph (n)(3)(i) of this section is met.

(B) *Analysis*. Because Plan W treats a modification of an annuity payment stream at retirement as a new annuity starting date for purposes of sections 415 and 417, the condition under paragraph (n)(3)(ii) of this section is met. After taking into account the modification, the annuity stream determined as of the original annuity starting date consists of annual payments beginning at age 72 of $310,000, $310,000, $310,000, $310,000, and $2,795,732. This benefit stream is actuarially equivalent to a straight life annuity at age 72 of $315,145, calculated in accordance with section 415(b)(2)(E)(ii), which is an amount less than the section 415 limit determined at the original annuity starting date. Thus, the condition under paragraph (n)(3)(iii) of this section is met. In addition, because the modified payment period does not include a period certain, paragraph (n)(3)(iv) of this section does not apply.

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

(ii) *Example 2*—(A) *Facts*. The facts are the same as in paragraph (n)(4)(i) of this section (*Example 1*), except that the straight life annuity payments are paid at a rate of $330,000 per year and, after D retires, the lump sum payment at age 76 is $2,976,102. Thus, after taking into account the modification, the annuity stream determined as of the original annuity starting date consists of annual payments beginning at age 72 of $330,000, $330,000, $330,000, $330,000, and $2,976,102.

(B) *Conclusion*. The benefit stream described in paragraph (n)(4)(ii)(A) of this section is actuarially equivalent to a straight life annuity at age 72 of $335,477, calculated in accordance with section 415(b)(2)(E)(ii), which exceeds the section 415 limit determined at the original annuity starting date. Thus, the lump sum payment to D fails to satisfy the condition under paragraph (n)(3)(iii) of this section. Therefore, the lump sum payment to D fails to meet the requirements of this paragraph (n) and fails to satisfy the requirements of section 401(a)(9).

(iii) *Example 3*—(A) *Facts*—(*1*) *Background*. Participant E has 10 years of participation in Plan X, a frozen defined benefit plan. E retires in 2025 at a date when E's attained age is 72. E elects to receive annual distributions from Plan X in the form of a 27-year period certain annuity (that is, a 27-year annuity payment period without a life contingency) paid at a rate of $37,000 per year beginning in 2025 with future payments increasing at a rate of 4.00 percent per year (that is, the 2026 payment will be $38,480, the 2027 payment will be $40,019 and so on). Plan X offers participants in pay status whose annuity payments are in the form of a term-certain annuity the opportunity to modify their payment period at any time and treats the modifications as a new annuity starting date for the purposes of sections 415 and 417. Thus, for example, the plan provides a new qualified and joint survivor annuity election and obtains spousal consent.

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

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

(B) *Analysis*. Because payment of retirement benefits in the form of a straight life annuity satisfies (in terms of form) section 401(a)(9), the condition under paragraph (n)(3)(i) of this section is met. Because Plan X treats a modification of an annuity payment stream at retirement as a new annuity starting date for purposes of sections 415 and 417, the condition under paragraph (n)(3)(ii) of this section is met. After taking into account the modification, the annuity stream determined as of the original annuity starting date consists of annual payments beginning at age 72 of $37,000, $38,480, and $40,019, and a straight life annuity beginning at age 75 of $92,133. This benefit stream is actuarially equivalent to a straight life annuity at age 72 of $81,924, calculated in accordance with section 415(b)(2)(E)(i), which is an amount less than the section 415 limit determined at the original annuity starting date. Thus, the condition under paragraph (n)(3)(iii) of this section is met. In addition, because the modified payment period does not include a period certain, paragraph (n)(3)(iv) of this section does not apply.

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

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

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

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

(iii) An increase by a constant percentage, applied not less frequently than annually, at a rate that is less than 5 percent per year;

(iv) An increase eliminating some or all of the reduction in the amount of the employee's payments to provide for a survivor benefit, but only if there is no longer a survivor benefit because the beneficiary whose life was being used to determine the period described in section 401(a)(9)(A)(ii) over which payments were being

made dies or is no longer the employee's beneficiary pursuant to a qualified domestic relations order within the meaning of section 414(p);

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

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

(vii) An increase to the extent permitted in accordance with paragraph (o)(3) or (4); or

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

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

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

(iii) *Consumer price index with banking*. An index is described in this paragraph (o)(2)(iii) if it is a percentage adjustment based on a cost-of-living index described in paragraph (o)(2)(ii) of this section, or a fixed percentage if less. In any year when the cost-of-living index is lower than the fixed percentage, the fixed percentage may be treated as an increase in an eligible cost-of-living index, provided it does not exceed the sum of—

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

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

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

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

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

(3) *Additional permitted increases for annuity contracts purchased from insurance companies.* Payments made from an annuity contract purchased from an insurance company will not fail to satisfy the nonincreasing payment requirement in paragraph (a)(1) of this section merely because the payments are increased in accordance with one or more of the following—

(i) As a result of dividend payments or other payments that result from actuarial gains (within the meaning of paragraph (o)(5) of this section), but only if—

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

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

(C) The issuer of the contract uses reasonable actuarial methods and assumptions, as determined in good faith, when calculating the initial annuity payments, the issuer's experience with respect to those factors, and the amount of the dividend payments or other payments;

(ii) As a result of a shortening of the payment period with respect to the annuity or a full or partial commutation of the future annuity payments, provided that the amount of the payment pursuant to the commutation is determined using reasonable actuarial methods and assumptions, as determined in good faith by the issuer of the contract.

(iii) To provide a final payment upon death that does not exceed the amount by which the total consideration paid for the contract exceeds the aggregate amount of prior distributions under the contract; or

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

(4) *Additional permitted increases for annuity payments from a qualified trust.* Annuity payments made under a defined benefit plan qualified under section 401(a) (including payments under an annuity contract purchased from an insurance company that provides the same benefits that would have been payable under the defined benefit plan if an annuity contract had not been purchased, but not an annuity contract that provides other benefits) will not fail to satisfy the nonincreasing payment requirement in paragraph (a)(1) of this section merely because the payments are increased in accordance with one of the following—

(i) As a result of dividend payments or other payments that result from actuarial gains (within the meaning of paragraph (o)(5) of this section), but only if—

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

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

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

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

(E) The payments are not increasing by a constant percentage as described in paragraph (o)(1)(iii) of this section; or

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

(5) *Actuarial gain defined.* For purposes of this paragraph (o), actuarial gain means the difference between an amount

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

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

(i) *Example 1. Variable annuity*—(A) *Facts*. A retired participant Z1 in Plan X, a defined contribution plan, attains age 72 in 2021. Z1 elects to purchase Contract Y1 from Insurance Company W in 2025. Contract Y1 is a single life annuity contract with a 10-year period certain. Contract Y1 provides for an initial annual payment calculated with an assumed interest rate (AIR) of 3 percent, which is assumed for purposes of this example to be a reasonable interest rate selected in good faith. Subsequent payments are determined by multiplying the prior year's payment by a fraction, the numerator of which is 1 plus the actual return on the separate account assets underlying Contract Y1 since the preceding payment (which is reasonably determined in good faith) and the denominator of which is 1 plus the AIR during that period.

(B) *Analysis*. Under paragraph (o)(3)(i) of this section, payments made from an annuity contract purchased from an insurance company will not fail to satisfy the nonincreasing payment requirement on account of payment increases that result from actuarial gains (within the meaning of paragraph (o)(5) of this section), if the conditions set forth in paragraphs (o)(3)(i)(A) through (C) of this section are satisfied. The payment increases under Contract Y1 are the result of actuarial gain within the meaning of paragraph (o)(5) of this section because they are the result of the difference between investment experience and the 3 percent interest rate used to calculate the initial payments under Contract Y1. Contract Y1 satisfies the requirement of paragraph (o)(3)(i)(A) of this section because actuarial gain under Contract Y1 is measured annually. Contract Y1 satisfies the requirement of paragraph (o)(3)(i)(B) of this section because the actuarial gains are paid over the remaining period of the annuity beginning in the year following the year for which the actuarial experience is measured. Contract Y1 satisfies the requirement of paragraph (o)(3)(i)(C) of this section because the issuer of Contract Y1 used reasonable actuarial methods and assumptions, as determined in good faith, when calculating the initial annuity payments, the issuer's experience with respect to those factors, and the amount of adjustments under Contract Y1.

(C) *Conclusion*. Because payments under Contract Y1 increase only as a result of actuarial gain, and those increases satisfy the conditions set forth in paragraphs (o)(3)(i)(A) through (C) of this section, those increases are described in paragraph (o)(3)(i) of this section and therefore are excepted from the nonincreasing payment requirement of paragraph (a)(1) of this section pursuant to the exception under paragraph (o)(1)(vii) of this section.

(ii) *Example 2. Participating annuity*—(A) *Facts*. A retired participant Z2 in Plan X, a defined contribution plan, attains age 73 in 2025. Z2 elects to purchase Contract Y2 from Insurance Company W in 2025. Contract Y2 is a participating single life annuity contract with a 10-year period certain. Contract Y2 provides for level annual payments with dividends paid in a lump sum in the year after the year for which the actuarial experience is measured or paid out levelly beginning in the year after the year for which the actuarial gain is measured over the remaining lifetime and period certain (that is, the period certain ends at the same time as the original period certain). Dividends are determined annually by the Board of Directors of Company W based upon a comparison of actual actuarial experience to expected actuarial experience in the past year, with those amounts determined on a reasonable basis in good faith. The initial payment was determined in good faith using reasonable actuarial assumptions and methods.

(B) *Analysis*. Under paragraph (o)(3)(i) of this section, payments made from an annuity contract purchased from an insurance company will not fail to satisfy the nonincreasing payment requirement on account of payment increases that result from actuarial gains (within the meaning of paragraph (o)(5) of this section), if the conditions set forth in paragraphs (o)(3)(i)(A) through (C) of this section are satisfied. The payment increases under Contract Y2 are the result of actuarial gain within the meaning of paragraph (o)(5) of this section. Contract Y2 satisfies the requirement of paragraph (o)(3)(i)(A) of this section because actuarial gain under Contract Y2 is measured annually. Contract Y2 satisfies the requirement of paragraph (o)(3)(i)(B) of this section because the resulting increases are paid either in the form of a lump sum or over the remaining period of the annuity beginning in the year following the year for which the actuarial experience is measured. Contract Y2 satisfies the requirement of paragraph (o)(3)(i)(C) of this section because the issuer of Contract Y2 used reasonable actuarial methods and assumptions, as determined in good faith, when calculating the initial annuity payments, the issuer's experience with respect to those factors, and the amount of adjustments under Contract Y2.

(C) *Conclusion*. Because payments under Contract Y2 increase only as a result of actuarial gain, and those increases satisfy the conditions set forth in paragraphs (o)(3)(i)(A) through (C) of this section, those increases are described in paragraph (o)(3)(i) of this section and therefore are excepted from the nonincreasing payment requirement of paragraph (a)(1) of this section pursuant to the exception under paragraph (o)(1)(vii) of this section.

(iii) *Example 3. Participating annuity with dividend accumulation*—(A) *Facts*. The facts are the same as in paragraph (o)(6)(ii) of this section (*Example 2*), except that the annuity provides a dividend accumulation option under which Z2 may defer receipt of the dividends to a time selected by Z2.

(B) *Conclusion*. Because the dividend accumulation option permits dividends to be paid commencing later than the end of the year following the year for which the actuarial experience is measured, the dividend accumulation option does not meet the requirements of paragraph (o)(3)(i)(B) of this section. Neither does the dividend accumulation option fit within any of the other permissible increases described in paragraph (o)(3) of this section. Accordingly, payment increases pursuant to the dividend accumulation option are not excepted from the nonincreasing payment requirement of paragraph (a)(1) of this section pursuant to the exception under paragraph (o)(1)(vii) of this section. Thus, Contract Y2, and consequently any distributions from the contract, fail to meet the requirements of this paragraph (o) and thus to fail to satisfy the requirements of section 401(a)(9).

(iv) *Example 4. Participating annuity with dividends used to purchase additional death benefits*—(A) *Facts*. The facts are the same as in paragraph (o)(6)(ii) of this section (*Example 2*), except that the annuity provides an option under which actuarial gain under the contract is used to provide additional death benefit protection for Z2.

(B) *Conclusion*. Because this option permits payments as a result of actuarial gain to be paid commencing later than the end of the year following the year for which the actuarial experience is measured, the option does not meet the requirements of paragraph (o)(3)(i)(B) of this section. Neither does the option fit within any of the other permissible increases described in paragraph (o)(3) of this section. Accordingly, payment increases pursuant to the dividend accumulation option are not excepted from the nonincreasing payment requirement of paragraph (a)(1) of this section pursuant to the exception under paragraph (o)(1)(vii) of this section. Thus, Contract Y2, and consequently any distributions from the contract, fail to meet the requirements of this paragraph (o) and thus to fail to satisfy the requirements of section 401(a)(9).

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

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

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

(A) Were adopted on or before February 24, 2022; and

(B) Met the requirements of A-15 of 26 CFR 1.401(a)(9)-6 (as it appeared in the April 1, 2021, edition of 26 CFR part 1).

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

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

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

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

(iv) After the required beginning date, the contract does not make available any commutation benefit, cash surrender right, or other similar feature (other than a right to rescind the contract within a period not exceeding 90 days from the date of purchase);

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

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

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

(2) *Limitation on premiums*—(i) *In general.* The premiums paid with respect to the contract on a date (premium payment date) satisfy the limitation of this paragraph (q)(2) if they do not exceed the dollar limitation of paragraph (q)(2)(ii) of this section.

(ii) *Dollar limitation.* The dollar limitation as of a premium payment date is an amount by which $200,000 (as adjusted under paragraph (q)(4)(ii)(A) of this section), exceeds the sum of—

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

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

(iii) *Exchange of insurance contract for QLAC*. For purposes of this paragraph (q)(2), if an insurance contract is exchanged for a contract intended to be a QLAC, the fair market value of the exchanged contract will be treated as a premium paid for the QLAC. However, if an insurance contract is surrendered for its cash value, the surrender extinguishes all benefits and other characteristics of the contract, and the cash is used to purchase a QLAC, then only the cash from the surrendered contract is treated as a premium paid for the QLAC.

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

(B) *Death before annuity starting date.* If the employee dies before the annuity starting date and the employee's surviving spouse is the sole beneficiary under the contract, then, except as provided in paragraph (q)(3)(iv) of this section, the only benefit permitted to be paid after the employee's death is a life annuity payable to the surviving spouse under which the periodic annuity payment does not exceed 100 percent of the periodic annuity payment that would have been payable to the employee as of the date that benefits to the surviving spouse commence. However, the annuity is permitted to exceed 100 percent of the periodic annuity payment that would have been payable to the employee to the extent necessary to satisfy the requirement to provide a qualified preretirement survivor annuity (as defined under section 417(c)(2) of the Code or section 205(e)(2) of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829, as amended (ERISA), pursuant to section 401(a)(11)(A)(ii) of the Code or section 205(a)(2) of ERISA). Any life annuity payable to the surviving spouse under this paragraph (q)(3)(i)(B) must commence no later than the date on which the annuity payable to the employee would have commenced under the contract if the employee had not died.

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

(B) *Death before annuity starting date.* If the employee dies before the annuity starting date and the employee's surviving spouse is not the sole beneficiary under the contract, then, except as provided in paragraph (q)(3)(iv) of this section, the

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

(C) *Designated beneficiary who is not an eligible designated beneficiary*. Benefits paid to a designated beneficiary under this paragraph (q)(3)(ii) must satisfy the rules of section 401(a)(9)(H) and paragraph (d)(2) of this section.

(iii) *Applicable percentage*—(A) *Contracts without pre-annuity starting date death benefits.* If, as described in paragraph (q)(3)(iii)(E) of this section, the contract does not provide for a pre-annuity starting date non-spousal death benefit, the applicable percentage is the percentage described in the table in paragraph (b)(3) of this section.

(B) *Contracts with set beneficiary designation.* If the contract provides for a set non-spousal beneficiary designation as described in paragraph (q)(3)(iii)(F) of this section (and is not a contract described in paragraph (q)(3)(iii)(E) of this section), the applicable percentage is the percentage described in table 6 to paragraph (q)(3)(iii)(D).

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

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

Table 6 to paragraph (q)(3)(iii)(D)

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

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

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

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

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

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

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

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

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

(vi) *Multiple beneficiaries.* If an employee has more than one designated beneficiary under a QLAC, the rules in §1.401(a)(9)-8(a) apply for purposes of paragraphs (q)(3)(i) and (ii) of this section.

(vii) *Treatment of former spouses*—(A) *In general*. The payment of survivor benefits to the employee's former spouse under an annuity contract will not cause the contract to fail to satisfy the requirements of this paragraph (q)(3) merely because the divorce between the employee and that former spouse occurred after the contract is purchased, provided that a qualified domestic relations order described in section 414(p) (or, to the extent provided in paragraph (q)(3)(vii)(B) of this section, a divorce or separation instrument) satisfying the requirements of paragraph (q)(3)(vii)(C) of this section has been issued in connection with the divorce.

(B) [Reserved]

(C) *Applicable requirements*. This paragraph (q)(3)(vii)(C) is satisfied if the qualified domestic relations order (or divorce or separation instrument) issued in connection with the divorce—

(*1*) Provides that the former spouse is entitled to the survivor benefits under the contract;

(*2*) Provides that the former spouse is treated as a surviving spouse for purposes of the contract;

(*3*) Does not modify the treatment of the former spouse as the beneficiary under the contract who is entitled to the survivor benefits; or

(*4*) Does not modify the treatment of the former spouse as the measuring life for the survivor benefits under the contract.

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

(B) *Consequences of excess premiums and correction.* If an annuity contract fails to be a QLAC solely because a premium for the contract exceeds the limits under paragraph (q)(2) of this section, then the contract is not a QLAC beginning on the date on which the premium is paid and the value of the contract may not be disregarded under §1.401(a)(9)-5(b)(4) as of the date on which the contract ceases to be a QLAC (unless the excess premium is returned to the non-QLAC portion of the employee's account in accordance with the next sentence). However, if the excess premium is returned (either in cash or in the form of a contract that is not intended to be a QLAC) to the non-QLAC portion of the employee's account by the end of the calendar year following the calendar year in which the excess premium was

originally paid, then the contract will not be treated as exceeding the limits under paragraph (q)(2) of this section at any time, and the value of the contract will not be included in the employee's account balance under §1.401(a)(9)-5(b)(4). If the excess premium (including the fair market value of an annuity contract that is not intended to be a QLAC, if applicable) is returned to the non-QLAC portion of the employee's account after the last valuation date for the calendar year in which the excess premium was originally paid, then the employee's account balance for that calendar year must be increased to reflect that excess premium in the same manner as an employee's account balance is increased under §1.401(a)(9)-7(b) to reflect a rollover received after the last valuation date. If the excess premium is returned to the non-QLAC portion of the employee's account as described in paragraph (q)(4)(ii)(B) of this section, it will not be treated as a violation of the requirement in paragraph (q)(1)(iv) of this section that the contract not provide a commutation benefit.

(ii) *Dollar and age limitations subject to adjustments*—(A) *Dollar limitation.* The $200,000 amount under paragraph (q)(2)(ii) of this section will be adjusted at the same time and in the same manner as the limits are adjusted under section 415(d), except that—

(*1*) The base period is the calendar quarter beginning July 1, 2022; and

(*2*) The amount of any increment to the limit that is not a multiple of $10,000 will be rounded to the next lowest multiple of $10,000.

(B) *Age limitation.* The maximum age set forth in paragraph (q)(1)(ii) of this section may be adjusted to reflect changes in mortality, with any adjusted age to be prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin. See §601.601(d) of this chapter.

(C) *Prospective application of adjustments.* If a contract fails to be a QLAC because it does not satisfy the dollar limitation in paragraph (q)(2)(ii) of this section or the age limitation in paragraph (q)(1)(ii) of this section, any subsequent adjustment that is made pursuant to this paragraph (q)(4)(ii) will not cause the contract to become a QLAC.

(iii) *Determination of whether contract is intended to be a QLAC*—(A) *Structural deficiency.* If a contract fails to be a QLAC at any time for a reason other than an excess premium described in paragraph (q)(4)(i)(B) of this section, then, as of the date of purchase, the contract will not be treated as a QLAC (for purposes of §1.401(a)(9)-5(b)(4)) or as a contract that is intended to be a QLAC (for purposes of paragraph (q)(2) of this section).

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

(iv) *Certain contract features permitted for QLACs*—(A) *Participating annuity contract.* An annuity contract does not fail to satisfy the requirement of paragraph (q)(1)(vii) of this section merely because it provides for the payment of dividends described in paragraph (n)(3)(iii) of this section.

(B) *Contracts with cost-of-living adjustments.* An annuity contract does not fail to satisfy the requirement of paragraph (q)(1)(vii) of this section merely because it provides for a cost-of-living adjustment as described in paragraph (o)(2) of this section.

(v) *Group annuity contract certificates.* The requirement under paragraph (q)(1)(vi) of this section that the contract state that it is intended to be a QLAC when issued is satisfied if a certificate is issued under a group annuity contract and the certificate, when issued, states that the employee's interest under the group annuity contract is intended to be a QLAC.

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

(a) *Treatment of rollover from distributing plan.* If an amount is distributed by a plan, then the amount distributed is still taken into account by the distributing plan for purposes of satisfying the requirements of section 401(a)(9), even if part of the distribution is rolled over into another eligible retirement plan described in section 402(c)(8). However, an amount that is a required minimum distribution under section 401(a)(9) is not eligible to be rolled over (and is therefore includible in the taxpayer's gross income under section 402). For this purpose, the amount that constitutes a required minimum distribution for a calendar year is determined in accordance with §1.402(c)-2(f) for a distribution to an employee and §1.402(c)-2(j) for a distribution to a beneficiary.

(b) *Treatment of rollover by receiving plan.* If an amount is distributed by one plan (distributing plan) and is rolled over to another plan (receiving plan), the benefit of the employee under the receiving plan is increased by the amount rolled over for purposes of determining the required minimum distribution for the calendar year following the calendar year in which the amount rolled over was distributed. If the amount rolled over is received after the last valuation date in the calendar year under the receiving plan, the benefit of the employee as of that valuation date, adjusted in accordance with §1.401(a)(9)-5(b), is increased by the rollover amount valued as of the date of receipt. In addition, if the amount rolled over is received in a different calendar year from the calendar year in which it is distributed, the amount rolled over is deemed to have been received by the receiving plan on the last day of the calendar year in which it was distributed.

(c) *Treatment of transfer under transferor plan*—(1) *Generally not treated as distribution*. In the case of a transfer of an amount of an employee's benefit from one plan (transferor plan) to another plan (transferee plan), the transfer is not treated as a distribution by the transferor plan for purposes of section 401(a)(9). Instead, the benefit of the employee under the transferor plan is decreased by the amount transferred. However, if any portion of an employee's benefit is transferred in a distribution calendar year with respect to that employee, in order to satisfy the requirements of section 401(a)(9), the transferor plan must determine the amount of the required minimum dis-

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

(2) *Account balance decreased after transfer*. For purposes of determining any required minimum distribution for the calendar year following the calendar year in which the transfer occurs, in the case of a transfer after the last valuation date for the calendar year of the transfer under the transferor plan, the benefit of the employee as of that valuation date, adjusted in accordance with §1.401(a)(9)-5(b), is decreased by the amount transferred, valued as of the date of the transfer.

(d) *Treatment of transfer under transferee plan.* In the case of a transfer from a transferor plan to a transferee plan, the benefit of the employee under the transferee plan is increased by the amount transferred in the same manner as if it were a plan receiving a rollover contribution under paragraph (b) of this section.

(e) *Treatment of spinoff or merger*. For purposes of determining an employee's benefit and required minimum distribution under section 401(a)(9), a spinoff, a merger, or a consolidation (as defined in §1.414(l)-1(b)) is treated as a transfer of the benefits of the employees involved. Consequently, the benefit and required minimum distribution with respect to each employee whose benefits are transferred will be determined in accordance with paragraphs (c) and (d) of this section.

§1.401(a)(9)-8 Special rules.

(a) *Use of separate accounts*—(1) *Separate application of section 401(a)(9) for each beneficiary*—(i) *In general.* Except as otherwise provided in this paragraph (a)(1), for calendar years beginning after the calendar year in which the employee dies, section 401(a)(9) is applied separately with respect to the separate interests of each of the employee's beneficiaries under the plan provided that those interests are held in separate accounts that satisfy the separate accounting requirements of paragraphs (a)(2)(i) and (ii) of this section.

(ii) *Separate accounting requirements not timely satisfied.* If the separate accounts that satisfy the separate accounting requirements of paragraph (a)(2) of this section are not established until after the end of the calendar year following the calendar year of the employee's death, then for distribution calendar years after those requirements are satisfied—

(A) The aggregate required distribution for a distribution calendar year is determined without regard to the separate account rule in paragraph (a)(1)(i) of this section;

(B) The amount of the aggregate required distribution determined in accordance with paragraph (a)(1)(ii)(A) of this section is allocated among the beneficiaries based on each respective beneficiary's share of the total remaining balance of the employee's interest in the plan; and

(C) The allocated share for each beneficiary determined under paragraph (a)(2)(ii)(B) of this section is required to be distributed to that beneficiary.

(iii) *Separate application of section 401(a)(9) for trust beneficiaries*—(A) *General prohibition*. Except as provided in paragraph (a)(1)(iii)(B) of this section, section 401(a)(9) may not be applied separately to the separate interests of each of the beneficiaries of a see-through trust described in §1.401(a)(9)-4(f)(1)(i). For purposes of the excise tax under section 4974, unless the exception in paragraph (a)(1)(iii)(B) of this section applies, the trust is the payee with respect to the required distribution of the employee's interest in the plan.

(B) *Exception for certain trusts divided upon the death of the employee.* Section 401(a)(9) is applied separately with respect to the separate interests of the beneficiaries of a see-through trust if the terms of the trust provide that it is to be divided immediately upon the death of the employee, provided that the requirements in paragraph (a)(1)(iii)(C) of this section are satisfied. The preceding sentence applies only if the separate interests are held in separate see-through trusts (in which case the rules of §§1.401(a)(9)-4(f) and 1.401(a)(9)-5 will apply separately to each separate trust).

(C) *Immediately divided defined*. For purposes of paragraph (a)(1)(iii)(B) of this section, a trust is immediately divided upon the death of the employee only if, as of the date of death, the trust is terminated and there is no discretion as to the extent to which of the separate trusts post-death distributions attributable to the employee's interest in the plan are allocated. A trust does not fail to be immediately divided upon the death of the employee merely because there are administrative delays between the date of the employee's death and the date on which the trust is divided and terminated, provided that any amounts received by the trust during this period are allocated as if the trust had been divided on the date of the employee's death.

(2) *Separate accounting requirements*—(i) *Allocation of post-death distributions required*. A separate accounting satisfies the requirements of this paragraph (a)(2)(i) only if all post-death distributions with respect to a beneficiary's interest are allocated to the separate account of the beneficiary receiving the distributions.

(ii) *Allocation of other items.* A separate accounting satisfies the requirements of this paragraph (a)(2)(ii) if all post-death investment gains and losses, contributions, forfeitures, and expenses for the period prior to the establishment of the separate accounts are allocated on a pro rata basis in a reasonable and consistent manner among the separate accounts. The separate accounting does not fail to satisfy the requirements of this paragraph (a)(2)(ii) merely because, in lieu of a pro rata allocation of investment gains and losses—

(A) Separate accounts are established that have separate investments; and

(B) The investment gains and losses attributable to assets held in each of those

separate accounts are allocated only to that separate account.

(b) *Application of consent requirements.* Section 411(a)(11) and section 417(e) require employee and spousal consent to certain distributions of plan benefits while those benefits are immediately distributable. If an employee's normal retirement age is later than the employee's required beginning date and, therefore, benefits are still immediately distributable (within the meaning of §1.411(a)-11(c)(4)), distributions must be made to the employee (or, if applicable, to the employee's spouse) in a manner that satisfies the requirements of section 401(a)(9) even though the employee (or, if applicable, the employee's spouse) fails to consent to the distribution. In that case, the benefit may be distributed in the form of a qualified joint and survivor annuity (QJSA) or in the form of a qualified preretirement survivor annuity (QPSA), as applicable, and the consent requirements of sections 411(a)(11) and 417(e) are deemed to be satisfied if the plan has made reasonable efforts to obtain consent from the employee (or, if applicable, the employee's spouse) and if the distribution otherwise meets the requirements of section 417. If the distribution is not required to be in the form of a QJSA to an employee or a QPSA to a surviving spouse, the required minimum distribution amount may be paid to satisfy section 401(a)(9), and the consent requirements of sections 411(a)(11) and 417(e) are deemed to be satisfied if the plan has made reasonable efforts to obtain consent from the employee (or, if applicable, the employee's spouse) and the distribution otherwise meets the requirements of section 417.

(c) *Definition of spouse.* Except as otherwise provided in paragraph (d)(1) of this section (in the case of distributions of a portion of an employee's benefit payable to a former spouse of an employee pursuant to a qualified domestic relations order), for purposes of satisfying the requirements of section 401(a)(9), an individual is the spouse or surviving spouse of an employee if the marriage of the employee and individual is recognized for Federal tax purposes under the rules of §301.7701-18. In the case of distributions after the death of an employee, for purposes of section 401(a)(9), the spouse of the employee is determined as of the date of death of the employee.

(d) *Treatment of QDROs*—(1) *Continued treatment of spouse*. A former spouse to whom all or a portion of the employee's benefit is payable pursuant to a qualified domestic relations order described in section 414(p) (QDRO) is treated as a spouse (including a surviving spouse) of the employee for purposes of satisfying the requirements of section 401(a)(9), including the minimum distribution incidental benefit requirement under section 401(a)(9)(G), regardless of whether the QDRO specifically provides that the former spouse is treated as the spouse for purposes of sections 401(a)(11) and 417.

(2) *Separate accounts*—(i) *In general*—(A) *Separate accounts while the employee is alive*. If a QDRO provides that an employee's benefit is to be divided and a portion is to be allocated to an alternate payee, that portion will be treated as a separate account (or segregated share) that separately must satisfy the requirements of section 401(a)(9) and may not be aggregated with other separate accounts (or segregated shares) of the employee for purposes of satisfying section 401(a)(9). Except as otherwise provided in paragraph (f)(2)(ii) of this section, distribution of a separate account allocated to an alternate payee pursuant to a QDRO must be made in accordance with section 401(a)(9). For example, distributions of the separate account will satisfy section 401(a)(9)(A) if required minimum distributions from the separate account during the employee's lifetime begin no later than the employee's required beginning date and the required minimum distribution is determined in accordance with §1.401(a)(9)-5 for each distribution calendar year using an applicable denominator determined under §1.401(a)(9)-5(c) (determined by treating the spousal alternate payee as the employee's spouse).

(B) *Separate accounts after the death of the employee*. The determination of whether distributions from the separate account after the death of the employee to the alternate payee will be made in accordance with section 401(a)(9)(B)(i), or in accordance with section 401(a)(9)(B)(ii) or (iii) and (iv), will depend on whether distributions have begun as determined under §1.401(a)(9)-2(a)(3) (which provides, in general, that distributions are not treated as having begun until the employee's required beginning date even though payments may actually have begun before that date). For example, if the alternate payee dies before the employee, and if distributions of the separate account allocated to the alternate payee pursuant to the QDRO are to be made to the alternate payee's beneficiary, then that beneficiary may be treated as a designated beneficiary for purposes of determining the required minimum distribution from the separate account after the death of the employee, provided that the beneficiary of the alternate payee is an individual who is a beneficiary under the plan or specified to or in the plan. Specification in or pursuant to the QDRO is treated as specification to the plan.

(ii) *Satisfaction of section 401(a)(9) requirements.* Distribution of the separate account allocated to an alternate payee pursuant to a QDRO satisfies the requirements of section 401(a)(9)(A)(ii) if the separate account is distributed, beginning no later than the employee's required beginning date, over the life of the alternate payee (or over a period not extending beyond the life expectancy of the alternate payee). Also, if, pursuant to §1.401(a)(9)-3(b)(4)(iii) or (c)(5)(iii), the plan permits the employee to elect the distribution method that will apply upon the death of the employee, that election is to be made only by the alternate payee for purposes of distributing the alternate payee's separate account. If the alternate payee dies after distribution of the alternate payee's separate account has begun (determined under §1.401(a)(9)-2(a)(3)) but before the employee dies, distribution of the remaining portion of that portion of the benefit allocated to the alternate payee must be made in accordance with the rules in §1.401(a)(9)-5(c) or §1.401(a)(9)-6(a) for distributions during the life of the employee. Only after the death of the employee is the amount of the required minimum distribution determined in accordance with the rules in §1.401(a)(9)-5(d) or §1.401(a)(9)-6(b).

(3) *Other situations*. If a QDRO does not provide that an employee's benefit is to be divided but provides that a portion of an employee's benefit (otherwise pay-

able to the employee) is to be paid to an alternate payee, that portion is not treated as a separate account (or segregated share) of the employee. Instead, that portion is aggregated with any amount distributed to the employee and treated as having been distributed to the employee for purposes of determining whether section 401(a)(9) has been satisfied with respect to that employee.

(e) *Application of section 401(a)(9) pending determination of whether a domestic relations order is a QDRO is being made.* A plan does not fail to satisfy the requirements of section 401(a)(9) merely because it fails to distribute an amount otherwise required to be distributed by section 401(a)(9) during the period in which the issue of whether a domestic relations order is a QDRO is being determined pursuant to section 414(p)(7), provided that the period does not extend beyond the 18-month period described in section 414(p)(7)(E). To the extent that a distribution otherwise required under section 401(a)(9) is not made during this period, any segregated amounts, as defined in section 414(p)(7)(A), are treated as though the amounts are not vested during the period and any distributions with respect to those amounts must be made under the relevant rules for nonvested benefits described in either §1.401(a)(9)-5(g)(1) or §1.401(a)(9)-6(f), as applicable.

(f) *Application of section 401(a)(9) when insurer is in State delinquency proceedings.* A plan does not fail to satisfy the requirements of section 401(a)(9) merely because an individual's distribution from the plan is less than the amount otherwise required to satisfy section 401(a)(9) because distributions were being paid under an annuity contract issued by a life insurance company in State insurer delinquency proceedings and have been reduced or suspended by reason of those State proceedings. To the extent that a distribution otherwise required under section 401(a)(9) is not made during the State insurer delinquency proceedings, that amount and any additional amount accrued during that period are treated as though those amounts are not vested during that period and any distributions with respect to those amounts must be made under the relevant rules for nonvested benefits described in either §1.401(a)(9)-5(g)(1) or §1.401(a)(9)-6(f), as applicable.

(g) *In-service distributions required to satisfy section 401(a)(9)*. A plan does not fail to qualify as a pension plan within the meaning of section 401(a) solely because the plan permits distributions to commence to an employee on or after the employee's required beginning date (as determined in accordance with §1.401(a)(9)-2(b)) even though the employee has not retired or attained the normal retirement age under the plan as of the date on which the distributions commence. This rule applies without regard to whether the employee is a 5-percent owner with respect to the plan year ending in the calendar year in which distributions commence.

(h) *TEFRA section 242(b) elections*—(1) *In general.* Even though the distribution requirements added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, 96 Stat. 324 (1982) (TEFRA), were retroactively repealed in 1984, the transitional election rule in section 242(b) of TEFRA (referred to as a section 242(b)(2) election in this paragraph (h)) was preserved. While sections 401(a)(11) and 417 must be satisfied with respect to any distribution subject to those requirements, satisfaction of those requirements is not considered a revocation of the section 242(b) election.

(2) *Application of section 242(b) election after transfer*—(i) *Section 242(b)(2) election made under transferor plan.* If an amount is transferred from one plan (transferor plan) to another plan (transferee plan), the amount transferred may be distributed in accordance with a section 242(b)(2) election made under the transferor plan if the employee did not elect to have the amount transferred and if the transferee plan separately accounts for the amount transferred. However, only the benefit attributable to the amount transferred, plus earnings thereon, may be distributed in accordance with the section 242(b)(2) election made under the transferor plan. If the employee elected to have the amount transferred or the transferee plan does not separately account for the amount transferred, the transfer is treated as a distribution and rollover of the amount transferred for purposes of this section.

(ii) *Section 242(b)(2) election made under transferee plan*. If an amount is transferred from one plan to another plan, the amount transferred may not be distributed in accordance with a section 242(b)(2) election made under the transferee plan. If a section 242(b)(2) election was made under the transferee plan, the transferee plan must separately account for the amount transferred. If the transferee plan does not separately account for the amount transferred, the section 242(b)(2) election under the transferee plan is revoked, and subsequent distributions by the transferee plan must satisfy section 401(a)(9).

(iii) *Spinoff, merger, or consolidation treated as transfer*. A spinoff, merger, or consolidation, as defined in §1.414(l)-1(b), is treated as a transfer for purposes of the section 242(b)(2) election.

(3) *Application of section 242(b) election after rollover.* If an amount is distributed from one plan (distributing plan) and rolled over into another plan (receiving plan), the amount rolled over must be distributed from the receiving plan in accordance with section 401(a)(9) whether or not the employee made a section 242(b)(2) election under the distributing plan. Further, if the amount rolled over was not distributed in accordance with the election, the election under the distributing plan is revoked and all subsequent distributions by the distributing plan must satisfy section 401(a)(9). Finally, if the employee made a section 242(b)(2) election under the receiving plan and the election is still in effect, the receiving plan must separately account for the amount rolled over and distribute that amount in accordance with section 401(a)(9). If the receiving plan does not separately account for the amounts rolled over, any section 242(b)(2) election under the receiving plan is revoked and subsequent distributions under the receiving plan must satisfy section 401(a)(9).

(4) *Revocation of section 242(b) election*—(i) *In general.* A section 242(b)(2) election may be revoked after the required beginning date under section 401(a)(9)(C). However, if the section 242(b)(2) election is revoked after the required beginning date, and the total amount of the distributions that would have been required prior to the date of the revocation in order to satisfy section 401(a)(9), but for the section 242(b)(2) election, have not been made, then—

(A) The catch-up distribution described in paragraph (h)(4)(ii) of this section must be made by the end of the calendar year following the calendar year in which the revocation occurs; and

(B) Distributions must continue in accordance with section 401(a)(9).

(ii) *Catch-up distribution.* The catch-up distribution must be equal to the total amount not yet distributed that would have been required to be distributed to satisfy the requirements of section 401(a)(9).

Par. 4. Amend §1.401(a)(9)-9 as follows:

a. Amend the title by removing the phrase "distribution period" and adding in its place the phrase "Uniform Lifetime";

b. Amend paragraph (a) by removing the phrase "applicable distribution period" and adding in its place the phrase "Uniform Lifetime";

c. Amend paragraph (c) by removing the phrase "distribution period" and adding in its place the phrase "applicable denominator";

d. Revise the heading of the second column of Table 2 to paragraph (c) by removing the phrase "Distribution period" and adding in its place the phrase "Applicable denominator"; and

e. Revise and republish paragraph (f)(2).

The revisions and republications read as follows:

§1.401(a)(9)-9 Life expectancy and Uniform Lifetime tables.

* * * * *

(f) * * *

(2) *Application to life expectancies that may not be recalculated*—(i) *Redetermination of initial life expectancy using current tables.* If an employee died before January 1, 2022, and, under the rules of §1.401(a)(9)-5, the applicable denominator for a calendar year following the calendar year of the employee's death is equal to a single life expectancy calculated as of the calendar year of the employee's death (or, if applicable, the following calendar year), reduced by 1 for each subsequent year, then that life expectancy is reset as provided in paragraph (f)(2)(ii) of this section. Similarly, if an employee's sole beneficiary is the employee's surviving spouse, and the spouse dies before January 1, 2022, then the spouse's life expectancy for the calendar year of the spouse's death (which is used to determine the applicable denominator for later years) is reset as provided in paragraph (f)(2)(ii) of this section.

(ii) *Determination of applicable denominator*—A) *Applicable denominator based on new life expectancy.* With respect to a life expectancy described in paragraph (f)(2)(i) of this section, the applicable denominator for a distribution calendar year beginning on or after January 1, 2022, is determined by using the Single Life Table in paragraph (b) of this section to determine the initial life expectancy for the age of the relevant individual in the relevant calendar year and then reducing the resulting applicable denominator by 1 for each subsequent year.

(B) *Example of redetermination.* Assume that an employee died at age 80 in 2019 and the employee's designated beneficiary (who was not the employee's spouse) was age 75 in the year of the employee's death. For 2020, the denominator that would have applied for the beneficiary was 12.7 years (the life expectancy for a 76-year-old under the Single Life Table in formerly applicable §1.401(a)(9)-9), and for 2021, it would have been 11.7 years (the original life expectancy, reduced by 1 year). For 2022, if the designated beneficiary is still alive, then the applicable denominator would be 12.1 years (the 14.1-year life expectancy for a 76-year-old under the Single Life Table in paragraph (b) of this section, reduced by 2 years).

Par. 5. Revise and republish §1.402(c)-2 to read as follows:

§1.402(c)-2 Eligible rollover distributions.

(a) *Overview of rollover and related statutory provisions*—(1) *General rule*—(i) *Rollover of distribution paid to employee.* Under section 402(c), any portion of a distribution paid to an employee from a qualified plan that is an eligible rollover distribution described in section 402(c)(4) may be rolled over to an eligible retirement plan described in section 402(c)(8)(B). See paragraph (j) of this section for rules relating to distributions paid to a surviving spouse or a non-spousal beneficiary.

(ii) *Exclusion from income*. Except as otherwise provided in this section, if an eligible rollover distribution is paid to an employee, then the amount distributed is not currently includible in gross income, provided that it is contributed to an eligible retirement plan no later than the 60th day following the day on which the employee received the distribution. However, if all or any portion of the amount distributed (including any amount withheld as income tax under section 3405(c)) is not contributed as a rollover, it is included in the employee's gross income to the extent required under section 402(a), and also may be subject to the 10-percent additional income tax under section 72(t).

(iii) *Definition of eligible retirement plan*—(A) *In general*. An eligible retirement plan means an IRA described in paragraph (a)(1)(iii)(B)(*1*) of this section or a qualified plan described in paragraph (a)(1)(iii)(B)(*2*) of this section. In addition, an eligible deferred compensation plan described in section 457(b) that is maintained by an employer described in section 457(e)(1)(A) is treated as an eligible retirement plan, but only if the plan separately accounts for the amount of the rollover.

(B) *Definitions of IRA and qualified plan*. For purposes of section 402(c) and this section—

(*1*) An IRA is an individual retirement account described in section 408(a) or an individual retirement annuity (other than an endowment contract) described in section 408(b); and

(*2*) A qualified plan is an employees' trust described in section 401(a) that is exempt from tax under section 501(a), an annuity plan described in section 403(a), or an annuity contract described in section 403(b).

(iv) *Multiple distributions*. If more than one distribution is received by an employee from a qualified plan during a taxable year, the 60-day deadline applies separately to each distribution. Because the amount withheld as income tax under section 3405(c) is considered an amount distributed under section 402(c), an amount equal to all or any portion of the amount withheld may be contributed as a rollover to an eligible retirement plan within the 60-day period in addition to the

net amount of the eligible rollover distribution actually received by the employee.

(v) *Definition of rollover*. For purposes of section 402(c) and this section, a rollover is—

(A) A direct rollover as described in §1.401(a)(31)-1, Q&A-3;

(B) A contribution of an eligible rollover distribution to an eligible retirement plan that, except as provided in paragraph (b)(2) of this section, satisfies the time period requirement in paragraph (a)(1)(ii) of this section and the designation requirement described in paragraph (k)(1) of this section; or

(C) A repayment of a distribution that is treated as a rollover, as described in paragraph (a)(1)(vi) of this section.

(vi) *Certain repayments treated as rollovers*. The repayment of a distribution is treated as a rollover if that treatment is prescribed under another statutory provision. For example, the repayment of a qualified disaster recovery distribution under section 72(t)(11)(C) is treated as a rollover for purposes of this section.

(2) *Related Internal Revenue Code provisions*—(i) *Direct rollover option.* Section 401(a)(31) requires qualified plans to provide a distributee of an eligible rollover distribution the option to elect to have the distribution paid directly to an eligible retirement plan in a direct rollover. See §1.401(a)(31)-1 for further guidance concerning this direct rollover option.

(ii) *Notice requirement.* Section 402(f) requires the plan administrator of a qualified plan to provide, within a reasonable time before making an eligible rollover distribution, a written explanation to the distributee of the distributee's right to elect a direct rollover and the withholding consequences of not making that election. The explanation also is required to provide certain other relevant information relating to the taxation of distributions. See §1.402(f)-1 for guidance concerning the written explanation required under section 402(f).

(iii) *Mandatory income tax withholding.* If a distributee of an eligible rollover distribution does not elect to have the eligible rollover distribution paid directly from the plan to an eligible retirement plan in a direct rollover under section 401(a)(31), the eligible rollover distribution is subject to mandatory income tax withholding under section 3405(c). See §31.3405(c)-1 of this chapter for provisions relating to the withholding requirements applicable to eligible rollover distributions.

(iv) *Section 403(b) annuities.* See §1.403(b)-7(b) for guidance concerning the direct rollover requirements for distributions from annuities described in section 403(b).

(3) *Applicability date*—(i) *In general*. The rules provided in this section apply to any distribution made on or after January 1, 2025.

(ii) *Distributions prior to January 1, 2025*. For any distribution made before January 1, 2025, the rules of 26 CFR §1.402(c)-2 and 26 CFR §1.402(c)-3 (as they appeared in the April 1, 2023, edition of 26 CFR part 1) apply. Alternatively, the rules provided in this section may be applied to those distributions.

(b) *Special rules*—(1) *Rules related to Roth accounts*—(i) *Treatment of Roth conversions*. If all or any portion of an eligible rollover distribution that is rolled over to a Roth IRA is not from a designated Roth account described in section 402A, then the amount rolled over to the Roth IRA is included in the employee's gross income to the extent required under section 402(a). However, the amount rolled over to a Roth IRA generally is not subject to the 10-percent additional income tax under section 72(t).

(ii) *Treatment of distributions from designated Roth accounts*. A distribution from a designated Roth account may be rolled over only to another designated Roth account or to a Roth IRA. See §1.402A-1, Q&A-5 for rules that apply to such a rollover.

(2) *Extensions of and exceptions to 60-day deadline*—(i) *Waiver of 60-day deadline.* The Commissioner may waive the 60-day deadline described in paragraph (a)(1)(ii) of this section if the failure to waive that requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual with respect to such requirement. See section 402(c)(3)(B).

(ii) *Frozen deposits*. The 60-day period described in paragraph (a)(1)(ii) of this section does not include any period during which the amount transferred to the employee is a frozen deposit described in section 402(c)(7)(B). The 60-day period also does not end earlier than 10 days after that amount ceases to be a frozen deposit.

(iii) *Exception for qualified plan loan offsets*. See paragraph (g) of this section for the timing requirements related to the rollover of a qualified plan loan offset amount.

(iv) *Other distributions treated as rollovers*. In the case of a repayment of a distribution treated as a rollover as described in paragraph (a)(1)(vi) of this section, see the applicable statutory provision and accompanying regulations, if any, for the timing requirements relating to the repayment.

(3) *Special rules for distribution that includes basis*—(i) *Rollover of basis to IRA*. If an eligible rollover distribution includes some or all of an employee's basis (that is, the employee's investment in the contract), then the portion of the distribution that is allocable to the employee's basis may be rolled over to an IRA.

(ii) *Rollover of basis to qualified trust must be done through direct trustee-to-trustee transfer*. If an eligible rollover distribution includes some or all of an employee's basis, then the portion of an eligible rollover distribution that is allocable to the employee's basis may be rolled over to a qualified plan only through a direct trustee-to-trustee transfer. In that case, the qualified trust or annuity contract must provide for separate accounting of the amount transferred (and earnings on that amount) including separately accounting for the portion of the distribution that includes an employee's basis and the portion of the distribution that does not include basis.

(iii) *Rollover of basis to section 457(b) plans not permitted*. The portion of an eligible rollover distribution that is allocable to an employee's basis may not be rolled over to an eligible deferred compensation plan described in section 457(b).

(iv) *Rollover of portion of distribution*. If an eligible rollover distribution includes some or all of an employee's basis and less than the entire distribution is being rolled over, then the amount rolled over is treated as consisting first of the portion of the distribution that is not allocable to the employee's basis.

(4) *Special rules for distributions that include property*—(i) *In general*. Except as provided in paragraph (b)(4)(ii) of this section, if an eligible rollover distribution consists of property other than money, then, only that property may be rolled over to an eligible retirement plan.

(ii) *Rollover of proceeds permitted*. In the case of an eligible rollover distribution that consists of property other than money, the proceeds of the sale of that property may be rolled over to an eligible retirement plan. However, to the extent those proceeds exceed the property's fair market value at the time of the sale, that excess may not be rolled over. See section 402(c)(6)(C) and (D) for other rules relating to the sale of distributed property.

(c) *Definition of eligible rollover distribution*—(1) *General rule.* Unless specifically excluded, an eligible rollover distribution means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified plan. Thus, except as specifically provided in paragraph (c)(2) or (3) of this section, any amount distributed to an employee from a qualified plan is an eligible rollover distribution, regardless of whether it is a distribution of a benefit that is protected under section 411(d)(6).

(2) *Exceptions.* An eligible rollover distribution does not include the following:

(i) Any distribution that is one of a series of substantially equal periodic payments made (not less frequently than annually) over any one of the following periods—

(A) The life of the employee (or the joint lives of the employee and the employee's designated beneficiary);

(B) The life expectancy of the employee (or the joint life and last survivor expectancy of the employee and the employee's designated beneficiary); or

(C) A specified period of ten years or more;

(ii) Any distribution to the extent the distribution is a required minimum distribution under section 401(a)(9); or

(iii) Any distribution that is made on account of hardship.

(3) *Other amounts not treated as eligible rollover distributions*. The following amounts are not treated as eligible rollover distributions:

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

(ii) Corrective distributions of excess deferrals as described in §1.402(g)-1(e)(3), together with the income allocable to these corrective distributions;

(iii) Corrective distributions of excess contributions under a qualified cash or deferred arrangement described in §1.401(k)-2(b)(2) and excess aggregate contributions described in §1.401(m)-2(b)(2), together with the income allocable to these distributions;

(iv) Loans that are treated as deemed distributions pursuant to section 72(p);

(v) Subject to the rules of paragraph (c)(4) of this section, dividends paid on employer securities as described in section 404(k);

(vi) The costs of life insurance coverage includible in the employee's income under section 72(m)(3)(B);

(vii) Prohibited allocations that are treated as deemed distributions pursuant to section 409(p);

(viii) Distributions that are permissible withdrawals from an eligible automatic contribution arrangement within the meaning of section 414(w);

(ix) Distributions of premiums for accident or health insurance under §1.402(a)-1(e)(1)(i) (other than distributions subject to section 402(l), as described in §1.402(a)-1(e)(3));

(x) Amounts treated as distributed as a result of the purchase of a collectible pursuant to section 408(m); and

(xi) Similar items designated by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See §601.601(d) of this chapter.

(4) *Dividends reinvested in employer securities*. Dividends paid to an employee stock ownership plan (as defined in section 4975(e)(7)) that are reinvested in employer securities pursuant to a participant election under section 404(k)(2)(A)(iii)(II) are included in the participant's account balance and lose their character as dividends when subsequently distributed from the account. As a result, these amounts are eligible rollover distributions if they otherwise meet the requirements of this paragraph (c).

(d) *Determination of substantially equal periodic payments*—(1) *General rule.* For purposes of paragraph (c)(2)(i) of this section, and except as provided in this paragraph (d) or paragraph (e) of this section, whether a series of payments is a series of substantially equal periodic payments over a specified period is determined at the time payments begin, and by following the principles of section 72(t)(2)(A)(iv), without regard to contingencies or modifications that have not yet occurred. Thus, for example, a joint and 50-percent survivor annuity will be treated as a series of substantially equal periodic payments at the time payments commence, as will a joint and survivor annuity that provides for increased payments to the employee if the employee's beneficiary dies before the employee. Similarly, for purposes of determining if a disability benefit payment is part of a series of substantially equal periodic payments for a period described in section 402(c)(4)(A), any contingency under which payments cease upon recovery from the disability may be disregarded.

(2) *Certain supplements disregarded.* For purposes of determining whether a distribution is one of a series of periodic payments that are substantially equal, social security supplements described in section 411(a)(9) are disregarded. For example, if a distributee receives a life annuity of $500 per month, plus a social security supplement consisting of payments of $200 per month until the distributee reaches the age at which social security benefits of not less than $200 a month begin, the $200 supplemental payments are disregarded and, therefore, each monthly payment of $700 made before the social security age and each monthly payment of $500 made after the social security age is treated as one of a series of substantially equal periodic payments for life. A series of periodic payments that are not substantially equal solely because the amount of each payment is reduced upon attainment of social security retirement age (or, alternatively, upon commencement of social security

early retirement, survivor, or disability benefits) is also treated as substantially equal as long as the reduction in the actual payments is level and does not exceed the applicable social security benefit.

(3) *Changes in the amount of payments or the distributee.* If the amount (or, if applicable, the method of calculating the amount) of the payments changes so that subsequent payments are not substantially equal to prior payments, then a new determination must be made as to whether the remaining payments are a series of substantially equal periodic payments over a period specified in paragraph (c)(2)(i) of this section. This determination is made without taking into account payments made or the years of payment that elapsed prior to the change. However, a new determination is not made merely because, upon the death of the employee, the employee's beneficiary becomes the distributee. Thus, if distributions commence over a period that is at least as long as either the first annuitant's life or 10 years, then substantially equal payments to the survivor are not eligible rollover distributions even though the payment period remaining after the death of the employee is or may be less than the period described in section 402(c)(4)(A). For example, substantially equal periodic payments made under a life annuity with a five-year term certain would not be an eligible rollover distribution even when paid after the death of the employee with three years remaining under the term certain.

(4) *Defined contribution plans.* The following rules apply in determining whether a series of payments from a defined contribution plan constitutes a series of substantially equal periodic payments for a period described in section 402(c)(4)(A)—

(i) *Declining balance of years.* A series of payments from an account balance under a defined contribution plan over a period is considered a series of substantially equal periodic payments over that period if, for each year, the amount of the distribution is calculated by dividing the account balance by the number of years remaining in the period. For example, a series of payments is considered substantially equal payments over 10 years if the series is determined as follows. In year 1, the annual payment is the account balance divided by 10; in year 2, the annual payment is the remaining account balance divided by 9; and so on until year 10 when the entire remaining balance is distributed.

(ii) *Reasonable actuarial assumptions.* If an employee's account balance under a defined contribution plan is to be distributed in annual installments of a specified amount until the account balance is exhausted, then, for purposes of determining if the period of distribution is a period described in section 402(c)(4)(A), the period of years over which the installments will be distributed must be determined using reasonable actuarial assumptions. For example, if an employee has an account balance of $100,000, the employee elects distributions of $12,000 per year until the account balance is exhausted, and the future rate of return is assumed to be 5 percent per year, the account balance will be exhausted in approximately 12 years. Similarly, if the same employee elects a fixed annual distribution amount and the fixed annual amount is less than or equal to $10,000, it is reasonable to assume that the future rate of return will be greater than 0 percent and, thus, the account will not be exhausted in less than 10 years.

(e) *Determination of whether a payment is an independent payment*—(1) *Definition of independent payments.* Except as provided in paragraphs (e)(2) and (3) of this section, a payment is treated as independent of the payments in a series of substantially equal payments, and thus not part of the series described in paragraph (c)(2)(i) of this section, if the payment is substantially larger or smaller than the other payments in the series. An independent payment is an eligible rollover distribution if it is not otherwise excepted from the definition of eligible rollover distribution. This rule applies regardless of whether the payment is made before, with, or after payments in the series. For example, if an employee elects a single payment of half of the account balance with the remainder of the account balance paid over the life expectancy of the distributee, the single payment is treated as independent of the payments in the series and is an eligible rollover distribution unless otherwise excepted. Similarly, if an employee's surviving spouse receives a survivor life annuity of $1,000 per month plus a single payment on account of death of $7,500, the single payment is treated as independent of the payments in the annuity and is an eligible rollover distribution unless otherwise excepted.

(2) *Special rules*—(i) *Administrative error or delay.* If, due solely to reasonable administrative error or delay in payment, there is an adjustment after the annuity starting date to the amount of any payment in a series of payments that otherwise would constitute a series of substantially equal payments described in section 402(c)(4)(A) and this section, the adjusted payment or payments are treated as part of the series of substantially equal periodic payments and are not treated as independent of the payments in the series. For example, if, due solely to reasonable administrative delay, the first payment of a life annuity is delayed by two months and reflects an additional two months' worth of benefits, that payment is treated as a substantially equal payment in the series rather than as an independent payment. The result does not change merely because the amount of the adjustment is paid in a separate supplemental payment.

(ii) *Supplemental payments for annuitants.* A supplemental payment from a defined benefit plan to an annuitant (that is, a retiree or beneficiary) is treated as part of a series of substantially equal payments, rather than as an independent payment, provided that the following conditions are met—

(A) The supplement is a benefit increase for annuitants;

(B) The amount of the supplement is determined in a consistent manner for all similarly situated annuitants;

(C) The supplement is paid to annuitants who are otherwise receiving payments that would constitute substantially equal periodic payments; and

(D) The aggregate supplement is less than or equal to the greater of 10 percent of the annual rate of payment for the annuity, or $750.

(iii) *Final payment in a series.* If a payment in a series of periodic payments from an account balance under a defined contribution plan is equal to the remaining balance in the account and is substantially less than the other payments in the series, the final payment must nevertheless be treated as a payment in the series of substantially equal periodic payments and

may not be treated as an independent payment if the other payments in the series are substantially equal and the payments are for a period described in section 402(c)(4)(A) based on the rules provided in paragraph (d)(4)(ii) of this section. Thus, the final payment will not be an eligible rollover distribution.

(3) *Additional guidance.* The Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, may provide additional rules for determining what is an independent payment under paragraph (e)(1) of this section and may prescribe a higher amount than the $750 amount in paragraph (e)(2)(ii)(D) of this section. See §601.601(d) of this chapter.

(f) *Determination of whether a distribution is a required minimum distribution*—(1) *Determination for calendar year of distribution.* Except as provided in paragraphs (f)(2) and (3) of this section, if a minimum distribution is required for a calendar year, then the amounts distributed during that calendar year are treated as required minimum distributions under section 401(a)(9) to the extent that the total minimum distribution required under section 401(a)(9) for the calendar year has not been satisfied (and accordingly, those amounts are not eligible rollover distributions). For example, if an employee is required under section 401(a)(9) to receive a minimum distribution for a calendar year of $5,000 and the employee receives a total of $7,200 in that year, the first $5,000 distributed will be treated as the required minimum distribution and will not be an eligible rollover distribution, and the remaining $2,200 will be an eligible rollover distribution if it otherwise qualifies. If the total section 401(a)(9) required minimum distribution for a calendar year prior to the calendar year of the distribution is not distributed in that calendar year (for example, when the distribution for the calendar year in which the employee reaches the applicable age is made on April 1 of the following calendar year), then the amount that was required to be distributed, but not distributed, is added to the amount required to be distributed for the next calendar year in determining the portion of any distribution in the next calendar year that is a required minimum distribution (and, thus, is not an eligible rollover distribution).

(2) *Distribution before first distribution calendar year.* Any amount that is paid to an employee before January 1 of the first distribution calendar year for the employee (as described in §1.401(a)(9)-5(a)(2)(ii)) is not treated as required under section 401(a)(9) and, thus, is an eligible rollover distribution if it otherwise qualifies.

(3) *Special rule for annuities.* In the case of annuity payments from a defined benefit plan, or under an annuity contract purchased from an insurance company (including a qualified plan distributed annuity contract (as defined in paragraph (h) of this section)), the entire amount of any annuity payment made on or after January 1 of the first distribution calendar year for the employee (as described in §1.401(a)(9)-5(a)(2)(ii)) is treated as an amount required under section 401(a)(9) and, thus, is not an eligible rollover distribution.

(g) *Treatment of plan loan offset amounts*—(1) *General rule.* A distribution of a plan loan offset amount, as defined in paragraph (g)(3)(i) of this section (including a qualified plan loan offset amount, a type of plan loan offset amount defined in paragraph (g)(3)(ii) of this section), is an eligible rollover distribution if it is described in paragraph (c) of this section. See §1.401(a)(31)-1, Q&A-16, for guidance concerning the offering of a direct rollover of a plan loan offset amount. See also §31.3405(c)-1, Q&A-11, of this chapter for guidance concerning special withholding rules with respect to plan loan offset amounts.

(2) *Rollover period for a plan loan offset amount*—(i) *Plan loan offset amount that is not a qualified plan loan offset amount.* A distribution of a plan loan offset amount that is an eligible rollover distribution and that is not a qualified plan loan offset amount may be rolled over by the employee to an eligible retirement plan within the 60-day period set forth in section 402(c)(3)(A), as described in paragraph (a)(1)(ii) of this section.

(ii) *Plan loan offset amount that is a qualified plan loan offset amount*. A distribution of a plan loan offset amount that is an eligible rollover distribution and that is a qualified plan loan offset amount may be rolled over by the employee to an eligible retirement plan within the period set forth in section 402(c)(3)(C), which is the individual's tax filing due date (including extensions) for the taxable year in which the offset is treated as distributed from a qualified employer plan.

(3) *Definitions*—(i) *Plan loan offset amount*. For purposes of section 402(c), a plan loan offset amount is the amount by which, under the plan terms governing a plan loan, an employee's accrued benefit is reduced (offset) in order to repay the loan (including the enforcement of the plan's security interest in an employee's accrued benefit). A distribution of a plan loan offset amount can occur in a variety of circumstances, for example, when the terms governing a plan loan require that, in the event of the employee's termination of employment or request for a distribution, the loan be repaid immediately or treated as in default. A distribution of a plan loan offset amount also occurs when, under the terms governing the plan loan, the loan is cancelled, accelerated, or treated as if it were in default (for example, when the plan treats a loan as in default upon an employee's termination of employment or within a specified period thereafter). A distribution of a plan loan offset amount is an actual distribution, not a deemed distribution under section 72(p).

(ii) *Qualified plan loan offset amount*. For purposes of section 402(c), a qualified plan loan offset amount is a plan loan offset amount that satisfies the following requirements:

(A) The plan loan offset amount is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the termination of the qualified employer plan, or the failure to meet the repayment terms of the loan because of the severance from employment of the employee; and

(B) The plan loan offset amount relates to a plan loan that met the requirements of section 72(p)(2) immediately prior to the termination of the qualified employer plan or the severance from employment of the employee, as applicable.

(iii) *Qualified employer plan*. For purposes of section 402(c) and this section, a qualified employer plan is a qualified employer plan as defined in section 72(p)(4).

(4) *Special rules for qualified plan loan offset amounts*—(i) *Definition of severance from employment*. For purposes of paragraph (g)(3)(ii)(A) of this section, whether an employee has a severance from employment with the employer that maintains the qualified employer plan is determined in the same manner as under §1.401(k)-1(d)(2). Thus, an employee has a severance from employment when the employee ceases to be an employee of the employer maintaining the plan.

(ii) *Offset because of severance from employment*. A plan loan offset amount is treated as distributed from a qualified employer plan to an employee or beneficiary solely by reason of the failure to meet the repayment terms of a plan loan because of severance from employment of the employee if the plan loan offset:

(A) Relates to a failure to meet the repayment terms of the plan loan, and

(B) Occurs within the period beginning on the date of the employee's severance from employment and ending on the first anniversary of that date.

(5) *Examples*. The following examples illustrate the rules with respect to plan loan offset amounts, including qualified plan loan offset amounts, in this paragraph (g) and in §§1.401(a)(31)-1, Q&A-16, and 31.3405(c)-1, Q&A-11, of this chapter. For purposes of these examples, each reference to a plan refers to a qualified employer plan as described in section 72(p)(4).

(i) *Example 1*—(A) In 2025, Employee A has an account balance of $10,000 in Plan Y, of which $3,000 is invested in a plan loan to Employee A that is secured by Employee A's account balance in Plan Y. Employee A has made no after-tax employee contributions to Plan Y. The plan loan meets the requirements of section 72(p)(2). Plan Y does not provide any direct rollover option with respect to plan loans. Employee A severs from employment on June 15, 2025. After severance from employment, Plan Y accelerates the plan loan and provides Employee A 90 days to repay the remaining balance of the plan loan. Employee A, who is under the age set forth in section 401(a)(9)(C)(i)(I), does not repay the loan within the 90 days and instead elects a direct rollover of Employee A's entire account balance in Plan Y. On September 18, 2025 (within the 12-month period beginning on the date that Employee A severed from employment), Employee A's outstanding loan is offset against the account balance.

(B) In order to satisfy section 401(a)(31), Plan Y must make a direct rollover by paying $7,000 directly to the eligible retirement plan chosen by Employee A. When Employee A's account balance was offset by the amount of the $3,000 unpaid loan balance, Employee A received a plan loan offset amount (equivalent to $3,000) that is an eligible rollover distribution. However, under §1.401(a)(31)-1, Q&A-16, Plan Y satisfies section 401(a)(31), even though a direct rollover option was not provided with respect to the $3,000 plan loan offset amount.

(C) No withholding is required under section 3405(c) on account of the distribution of the $3,000 plan loan offset amount because no cash or other property (other than the plan loan offset amount) is received by Employee A from which to satisfy the withholding.

(D) The $3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (g)(3)(ii) of this section. Accordingly, Employee A may roll over up to the $3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on the employee's tax filing due date (including extensions) for the taxable year in which the offset occurs.

(ii) *Example 2*—(A) The facts are the same as in paragraph (g)(5)(i) of this section (*Example 1*), except that, rather than accelerating the plan loan, Plan Y permits Employee A to continue making loan installment payments after severance from employment. Employee A continues making loan installment payments until January 1, 2026, at which time Employee A does not make the loan installment payment due on January 1, 2026. In accordance with §1.72(p)-1, Q&A-10, Plan Y allows a cure period that continues until the last day of the calendar quarter following the quarter in which the required installment payment was due. Employee A does not make a plan loan installment payment during the cure period. Plan Y offsets the unpaid $3,000 loan balance against Employee A's account balance on July 1, 2026 (which is after the 12-month period beginning on the date that Employee A severed from employment).

(B) The conclusion is the same as in paragraph (g)(5)(i) of this section (*Example 1*), except that the $3,000 plan loan offset amount is not a qualified plan loan offset amount (because the offset did not occur within the 12-month period beginning on the date that Employee A severed from employment). Accordingly, Employee A may roll over up to the $3,000 plan loan offset amount to an eligible retirement plan within the 60-day period provided in section 402(c)(3)(A) (rather than within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs).

(iii) *Example 3*—(A) The facts are the same as in paragraph (g)(5)(i) of this section (*Example 1*), except that the terms governing the plan loan to Employee A provide that, upon severance from employment, Employee A's account balance is automatically offset by the amount of any unpaid loan balance to repay the loan. Employee A severs from employment but does not request a distribution from Plan Y. Nevertheless, pursuant to the terms governing the plan loan, Employee A's account balance is automatically offset on June 15, 2025, by the amount of the $3,000 unpaid loan balance.

(B) The $3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (g)(3)(ii) of this section. Accordingly, Employee A may roll over up to the $3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs.

(iv) *Example 4*—(A) The facts are the same as in paragraph (g)(5)(i) of this section (*Example 1*), except that Employee A elects to receive a cash distribution of the account balance that remains after the $3,000 plan loan offset amount, instead of electing a direct rollover of the remaining account balance.

(B) The amount of the distribution received by Employee A is $10,000 ($3,000 relating to the plan loan offset and $7,000 relating to the cash distribution). Because the amount of the $3,000 plan loan offset amount attributable to the loan is included in determining the amount of the eligible rollover distribution to which withholding applies, withholding in the amount of $2,000 (20 percent of $10,000) is required under section 3405(c). The $2,000 is required to be withheld from the $7,000 to be distributed to Employee A in cash, so that Employee A actually receives a cash amount of $5,000.

(C) The $3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (g)(3)(ii) of this section. Accordingly, Employee A may roll over up to the $3,000 qualified plan loan offset to an eligible retirement plan within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs. In addition, Employee A may roll over up to $7,000 (the portion of the distribution that is not related to the offset) within the 60-day period provided in section 402(c)(3).

(v) *Example 5*—(A) The facts are the same as in paragraph (g)(5)(iv) of this section (*Example 4*), except that the $7,000 distribution to Employee A after the offset consists solely of employer securities within the meaning of section 402(e)(4)(E).

(B) No withholding is required under section 3405(c) because the distribution consists solely of the $3,000 plan loan offset amount and the $7,000 distribution of employer securities. This is the result because the total amount required to be withheld does not exceed the sum of the cash and the fair market value of other property distributed, excluding plan loan offset amounts and employer securities.

(C) Employee A may roll over up to the $7,000 of employer securities to an eligible retirement plan within the 60-day period provided in section 402(c)(3). The $3,000 plan loan offset amount is a qualified plan loan offset amount within the meaning of paragraph (g)(3)(ii) of this section. Accordingly, Employee A may roll over up to the $3,000 qualified plan loan offset amount to an eligible retirement plan within the period that ends on Employee A's tax filing due date (including extensions) for the taxable year in which the offset occurs.

(vi) *Example 6*—(A) Employee B, who is age 40, has an account balance in Plan Z. Plan Z does not provide for after-tax employee contributions. In 2025, Employee B receives a loan from Plan Z, the terms of which satisfy section 72(p)(2). The loan is secured by elective contributions subject to the distribution restrictions in section 401(k)(2)(B).

(B) Employee B fails to make an installment payment due on April 1, 2026, or any other monthly payments thereafter. In accordance with §1.72(p)-1, Q&A-10, Plan Z allows a cure period that continues

until the last day of the calendar quarter following the quarter in which the required installment payment was due (September 30, 2026). Employee B does not make a plan loan installment payment during the cure period. On September 30, 2026, pursuant to section 72(p)(1), Employee B is taxed on a deemed distribution equal to the amount of the unpaid loan balance. Pursuant to paragraph (c)(3)(iv) of this section, the deemed distribution is not an eligible rollover distribution.

(C) Because Employee B has not severed from employment or experienced any other event that permits the distribution under section 401(k)(2)(B) of the elective contributions that secure the loan, Plan Z is prohibited from executing on the loan. Accordingly, Employee B's account balance is not offset by the amount of the unpaid loan balance at the time of the deemed distribution. Thus, there is no distribution of an offset amount that is an eligible rollover distribution on September 30, 2026.

(vii) *Example 7*—(A) The facts are the same as in paragraph (g)(5)(vi) of this section (*Example 6*), except that Employee B has a severance from employment on November 1, 2026. On that date, Employee B's unpaid loan balance is offset against the account balance on distribution.

(B) The plan loan offset amount is not a qualified plan loan offset amount. Although the offset occurred within 12 months after Employee B severed from employment, the plan loan does not meet the requirement in paragraph (g)(3)(ii)(B) of this section (that the plan loan meet the requirements of section 72(p)(2) immediately prior to Employee B's severance from employment). Instead, the loan was taxable on September 30, 2026 (prior to Employee B's severance from employment on November 1, 2026), because of the failure to meet the level amortization requirement in section 72(p)(2)(C). Accordingly, Employee B may roll over the plan loan offset amount to an eligible retirement plan within the 60-day period provided in section 402(c)(3)(A) (rather than within the period that ends on Employee B's tax filing due date (including extensions) for the taxable year in which the offset occurs).

(h) *Qualified plan distributed annuity contract*—(1) *Definition of a qualified plan distributed annuity contract.* A qualified plan distributed annuity contract is an annuity contract purchased for a participant, and distributed to the participant, by a qualified plan.

(2) *Treatment of amounts paid as eligible rollover distributions.* Amounts paid under a qualified plan distributed annuity contract are payments of the balance to the credit of the employee for purposes of section 402(c) and are eligible rollover distributions if they otherwise qualify. Thus, for example, if the employee surrenders the contract for a single sum payment of its cash surrender value, the payment would be an eligible rollover distribution to the extent it is not a required minimum distribution under section 401(a)(9). This rule applies even if the annuity contract is distributed in connection with a plan termination. See §1.401(a)(31)-1, Q&A-17 and §31.3405(c)-1, Q&A-13 of this chapter concerning the direct rollover requirements and 20-percent withholding requirements, respectively, that apply to eligible rollover distributions from such an annuity contract.

(i) [Reserved]

(j) *Treatment of distributions to beneficiary*—(1) *Spousal distributee*—(i) *In general.* Pursuant to section 402(c)(9), if any distribution attributable to an employee is paid to the employee's surviving spouse, section 402(c) applies to the distribution in the same manner as if the spouse were the employee. The same rule applies if any distribution attributable to an employee is paid in accordance with a qualified domestic relations order (as defined in section 414(p)) (QDRO) to the employee's spouse or former spouse who is an alternate payee. Therefore, a distribution to the surviving spouse of an employee (or to a spouse or former spouse who is an alternate payee under a QDRO), including a distribution of ancillary death benefits attributable to the employee, is an eligible rollover distribution if it would be described in paragraph (c) of this section had it been paid to the employee. For this purpose, the amount excluded from the definition of eligible rollover distribution under paragraph (c)(2)(ii) of this section as a required minimum distribution is determined under the rules of paragraph (j)(3) of this section (or paragraph (j)(4) of this section, if applicable).

(ii) *Rollovers to qualified plans must be in capacity of employee*. If a surviving spouse rolls over a distribution to a qualified plan described in paragraph (a)(1)(iii)(B)(*2*) of this section or to an eligible deferred compensation plan described in section 457(b) that is maintained by an employer described in section 457(e)(1)(A), then, with respect to the amount rolled over, that amount is treated as the spouse's own interest under the receiving plan and not the interest of the decedent under the distributing plan. Thus, for example, in determining the required minimum distribution from the receiving plan with respect to the amount rolled over, distributions must satisfy section 401(a)(9)(A) and not section 401(a)(9)(B).

(2) *Non-spousal distributee*—(i) *Eligibility for rollover.* A distributee other than the employee or the employee's surviving spouse (or a spouse or former spouse who is an alternate payee under a QDRO) is not permitted to roll over a distribution from a qualified plan. Therefore, a distribution to a non-spousal distributee does not constitute an eligible rollover distribution under section 402(c)(4).

(ii) *Direct transfer permitted*. Although a non-spousal distributee may not roll over a distribution, pursuant to section 402(c)(11), if the distributee is a designated beneficiary (as determined under §1.401(a)(9)-4) who is not described in paragraph (j)(1) of this section and the distribution would be an eligible rollover distribution had it been paid to the employee, then the distributee may elect that the distribution be made in the form of a direct trustee-to-trustee transfer to an IRA established for the purpose of receiving that distribution. If a direct trustee-to-trustee transfer is made pursuant to section 402(c)(11) then—

(A) The transfer is treated as an eligible rollover distribution;

(B) The IRA is an inherited IRA described in section 408(d)(3)(ii); and

(C) Section 401(a)(9)(B) (other than section 401(a)(9)(B)(iv)) will apply to the IRA.

(iii) *Applicability to see-through trusts*. If a distributee described in paragraph (j)(2)(ii) of this section is a see-through trust described in §1.401(a)(9)-4(f)(1)(i), then the beneficiaries of the trust that are treated as designated beneficiaries under §1.401(a)(9)-4(f)(3) are also treated as designated beneficiaries for purposes of section 402(c)(11)(A).

(iv) *Applicability of withholding rules*. An amount that could have been transferred to a beneficiary IRA in accordance with section 402(c)(11), but instead, was paid directly to a non-spouse beneficiary, is treated as an eligible rollover distribution for purposes of section 3405(c). Thus, 20-percent withholding under section 3405(c) applies to a distribution made directly to a non-spouse beneficiary.

(3) *Determination of amounts that constitute required minimum distributions for distributions to beneficiaries*—(i) *In general*—(A) *First portion of a distribution is treated as a required minimum distribu-*

tion. If a minimum distribution is required to be made to a beneficiary in a calendar year, then the amounts distributed during that calendar year are treated as required minimum distributions under section 401(a)(9), to the extent that the total required minimum distribution under section 401(a)(9) for the calendar year has not been satisfied. Accordingly, those amounts are not eligible rollover distributions. If the employee dies before the employee's required beginning date (within the meaning of §1.401(a)(9)-2(b)), then no amount is a required minimum distribution for the year in which the employee dies.

(B) *Determination of required minimum distribution based on distribution method*. Except as otherwise provided in paragraphs (j)(3)(ii) and (4) of this section, if an employee dies before the employee's required beginning date, then the amount that is not an eligible rollover distribution because it is a required minimum distribution for the calendar year is determined under paragraph (j)(3)(i)(C), (D), or (E) of this section, whichever applies to the beneficiary. See §1.401(a)(9)-3(b)(4) and (c)(5) to determine which rule applies. If an employee dies on or after the employee's required beginning date, then the amount that is not an eligible rollover distribution because it is a required minimum distribution for a calendar year is determined under paragraph (j)(3)(i)(F) of this section.

(C) *Five-year rule in the case of death before required beginning date*. If the 5-year rule described in §1.401(a)(9)-3(b)(2) or (c)(2) applies to the beneficiary, then no amount is required to be distributed until the end of the calendar year that includes the fifth anniversary of the date of the employee's death. In that year, the entire amount to which the beneficiary is entitled under the plan must be distributed, and because it is a required minimum distribution, it is not an eligible rollover distribution. Thus, if the 5-year rule applies with respect to a designated beneficiary, then any distribution made before the calendar year that includes the fifth anniversary of the date of the employee's death is eligible for rollover if it otherwise meets the requirements of this section.

(D) *Ten-year rule in the case of death before required beginning date*. If the 10-year rule described in §1.401(a)(9)-3(c)(3) applies to the beneficiary, then no amount is required to be distributed until the end of the calendar year that includes the tenth anniversary of the date of the employee's death. In that year, the entire amount to which the beneficiary is entitled under the plan must be distributed, and because it is treated as a required minimum distribution, it is not an eligible rollover distribution. Thus, if the 10-year rule applies with respect to a designated beneficiary, then any distribution made before the calendar year that includes the tenth anniversary of the date of the employee's death is eligible for rollover if it otherwise meets the requirements of this section.

(E) *Life expectancy rule*. If the life expectancy rule described in §1.401(a)(9)-3(c)(4) (or, in the case of a defined benefit plan, the annuity payment rule described in §1.401(a)(9)-3(b)(3)) applies to the designated beneficiary, then, in the first distribution calendar year for the beneficiary (as defined in §1.401(a)(9)-5(a)(2)(iii)) and in each subsequent calendar year, the amount treated as a required minimum distribution and not eligible to be rolled over is determined in accordance in with §1.401(a)(9)-5(d) and (e) (or, in the case of a defined benefit plan, §1.401(a)(9)-6).

(F) *Employee dies on or after required beginning date*. If the employee dies on or after the employee's required beginning date, then, in the calendar year of the employee's death, the amount treated as a required minimum distribution and not eligible to be rolled over is determined in accordance with §1.401(a)(9)-5(c) (or, in the case of a defined benefit plan, §1.401(a)(9)-6). For each subsequent calendar year, the amount treated as a required minimum distribution and not eligible to be rolled over is determined in accordance with §1.401(a)(9)-5(d) and (e) (or, in the case of a defined benefit plan, §1.401(a)(9)-6).

(ii) *Exception allowing beneficiary to change distribution method*. If the 5-year rule or 10-year rule described in §1.401(a)(9)-3(b)(2), (c)(2) or (c)(3) applies to a designated beneficiary under the plan, and the eligible designated beneficiary is using the exception under §1.408-8(d)(2)(ii) to switch to the use of the life expectancy rule under the IRA to which the distribution is rolled over or transferred, then the designated beneficiary must determine the portion of the distribution that is a required minimum distribution that is not eligible for rollover using the life expectancy rule described in §1.401(a)(9)-3(c)(4) (or, in the case of a defined benefit plan, the annuity payment rule described in §1.401(a)(9)-3(b)(3)).

(4) *Special rule applicable to a spouse beneficiary*—(i) *In general*. This paragraph (j)(4) provides a special rule relating to the determination of amounts treated as a required minimum distribution for distributions to an employee's surviving spouse to whom the 10-year rule described in §1.401(a)(9)-3(c)(3) applies. This rule, which treats a portion of a distribution made before the last year of the 10-year period as a required minimum distribution, applies if—

(A) The distribution is made in or after the calendar year the surviving spouse attains the applicable age described in §1.401(a)(9)-2(b)(2); and

(B) The surviving spouse rolls over a portion of that distribution to an eligible retirement plan under which the surviving spouse is not treated as the beneficiary of the employee.

(ii) *Catch-up of missed required minimum distributions*. If this paragraph (j)(4) applies to a distribution then, notwithstanding paragraph (j)(3)(i)(D) of this section, the portion of the distribution that is treated as a required minimum distribution, and thus is not an eligible rollover distribution, is the excess (if any) of—

(A) The sum of the hypothetical required minimum distributions determined under paragraph (j)(4)(iii) of this section for each year during the catch-up period with respect to that distribution (determined under paragraph (j)(4)(v) of this section), over

(B) The actual distributions made to the surviving spouse during those calendar years (other than the calendar year in which that distribution is made).

(iii) *Calculation of hypothetical required minimum distributions for the catch-up period*. This paragraph (j)(4)(iii) provides rules for determining the calculation of the hypothetical required minimum distribution for each calendar year during the catch-up period with respect to a distribution (determination year). The hypothetical required minimum distribution for a determination year is the amount that

would have been the required minimum distribution for that year had the election under §1.401(a)(9)-5(g)(3)(i) been in effect for the spouse. Thus, the hypothetical required minimum distribution is calculated using the applicable denominator determined under §1.401(a)(9)-5(g)(3). However, in lieu of the account balance that would otherwise be used to determine the required minimum distribution for the determination year, an adjusted account balance is used for this purpose. The adjusted account balance for a determination year is calculated by reducing the account balance that would otherwise be used to determine the required minimum distribution for the calendar year in which the distribution is made by the excess (if any) of—

(A) The sum of the hypothetical required minimum distributions determined under this paragraph (j)(4)(iii) beginning with the first applicable year and ending with the calendar year preceding the determination year; over

(B) The actual distributions made to the surviving spouse during those calendar years.

(iv) *Definition of first applicable year*. The first applicable year is the later of—

(A) The calendar year in which the surviving spouse attains the applicable age, and

(B) The calendar year in which the employee would have attained the applicable age.

(v) *Definition of catch-up period*. The catch-up period with respect to a distribution is the period that—

(A) Begins with first applicable year, and

(B) Ends in the calendar year in which the distribution is made.

(vi) *Reasonable assumptions by plan administrator*. For purposes of section 402(f)(2)(A), a plan administrator is permitted to assume that a surviving spouse to whom this paragraph (j)(4) applies will roll over (to the extent permitted under the rules of this paragraph (j)(4)) the entire distribution to an eligible retirement plan under which that spouse is not treated as the beneficiary of the employee. Thus, a plan administrator may assume that the catch-up of missed required minimum distributions described in paragraph (j)(4)(ii) of this section applies to the distribution and treat only the remaining portion of the distribution as an eligible rollover distribution for purposes of sections 401(a)(31) and 3405(c). See paragraph (k)(2) of this section concerning the effect of this assumption for purposes of section 402(c).

(vii) [Reserved]

(k) *Other rules*—(1) *Designation must be irrevocable*—(i) *Indirect rollover.* In order for a contribution of an eligible rollover distribution to an individual retirement plan to constitute a rollover and, thus, to qualify for exclusion from gross income under section 402(c), a distributee must elect, at the time the contribution is made, to treat the contribution as a rollover contribution. An election is made by designating to the trustee, issuer, or custodian of the eligible retirement plan that the contribution is a rollover contribution. This election is irrevocable. Once any portion of an eligible rollover distribution has been contributed to an individual retirement plan and designated as a rollover distribution, taxation of the withdrawal of the contribution from the individual retirement plan is determined under section 408(d) rather than under section 402 or 403. Therefore, the eligible rollover distribution is not eligible for capital gains treatment, five-year or ten-year averaging, or the exclusion from gross income for net unrealized appreciation on employer stock.

(ii) *Direct rollover*. If an eligible rollover distribution is paid to an eligible retirement plan in a direct rollover at the election of the distributee, the distributee is deemed to have irrevocably designated that the direct rollover is a rollover contribution.

(2) *Use of actual minimum required distribution calculation*. The portion of any distribution that an employee (or spousal distributee) may roll over as an eligible rollover distribution under section 402(c) is determined based on the actual application of section 402 and other relevant provisions of the Internal Revenue Code. The actual application of these provisions may produce different results than any assumption described in paragraph (j)(4)(vi) of this section or §1.401(a)(31)-1, Q&A-18, that is used by the plan administrator. Thus, for example, if the plan administrator assumes there is no designated beneficiary and calculates the portion of a distribution that is a required minimum distribution using the Uniform Lifetime Table under §1.401(a)(9)-9(c), but the portion of the distribution that is actually a required minimum distribution and thus not an eligible rollover distribution is determined by taking into account a spousal designated beneficiary who is more than 10 years younger than the employee, then a greater portion of the distribution is actually an eligible rollover distribution and the distributee may roll over the additional amount.

(3*) Plan rollover not counted towards one rollover per year limitation*. A distribution from a qualified plan that is rolled over to an individual retirement account or individual retirement annuity is not treated for purposes of section 408(d)(3)(B) as an amount received by an individual from an individual retirement account or individual retirement annuity that is not includible in gross income because of the application of section 408(d)(3).

§1.402(c)-3 [Removed]

Par. 6. Section 1.402(c)-3 is removed.

Par. 7. Amend §1.403(b)-6 by revising and republishing paragraph (e).

The revision and republication read as follows:

§1.403(b)-6 Timing of distributions and benefits.

* * * * *

(e) *Minimum required distributions for eligible plans*—(1) *In general*. Under section 403(b)(10), a section 403(b) contract must meet the minimum distribution requirements of section 401(a)(9) (in both form and operation). See section 401(a)(9) for these requirements.

(2) *Generally treated as IRAs*. For purposes of applying the minimum distribution requirements of section 401(a)(9) to section 403(b) contracts, the minimum distribution requirements applicable to individual retirement annuities described in section 408(b) and individual retirement accounts described in section 408(a) apply to section 403(b) contracts. Consequently, except as otherwise provided in this paragraph (e), the minimum distribution requirements of section 401(a)(9)

are applied to section 403(b) contracts in accordance with the provisions in §1.408-8 that apply to an IRA that is not a Roth IRA.

(3) *Exceptions under which qualified plan rules will apply*—(i) *Required beginning date.* The required beginning date for purposes of section 403(b)(10) is determined in accordance with §1.401(a)(9)-2(b) (rather than §1.408-8(b)(1)).

(ii) *Amounts not taken into account*. The amounts not taken into account in determining whether the minimum distribution requirement of section 401(a)(9) has been satisfied for a calendar year are the amounts described in §1.402(c)-2(c)(3) (rather than the amounts described in §1.408-8(g)(2)).

(iii) *Designated Roth account*. The rules of §1.401(a)(9)-3(a)(2) (which provides that if an employee's entire interest under a defined contribution plan is in a designated Roth account, then no distributions are required during the employee's lifetime and, upon death, the employee is treated as having died before the required beginning date), §1.401(a)(9)-5(b)(3) (which excludes amounts held in a designated Roth account from the employee's account balance), and §1.401(a)(9)-5(g)(2)(iii) (regarding distributions from designated Roth accounts) apply to a designated Roth account in a section 403(b) contract (rather than the rules of §1.408-8(b)(1)(ii) that apply to a Roth IRA).

(iv) *Qualifying longevity annuity contracts*. The rules in §1.401(a)(9)-6(q)(2)(i) (relating to the limitation on premiums for a qualifying longevity annuity contract (QLAC), as defined in §1.401(a)(9)-6(q)(1)) and §1.401(a)(9)-6(q)(4)(i)(A) (relating to reliance on representations with respect to a QLAC) apply to the purchase of a QLAC under a section 403(b) plan (rather than the rules in §1.408-8(h)(2) and (3)).

(4) *Surviving spouse rule does not apply*. The rule in §1.408-8(c) (under which the surviving spouse of an IRA owner is permitted to treat an IRA of the decedent as the spouse's own IRA) does not apply to a section 403(b) contract. Thus, the surviving spouse of a participant is not permitted to treat a section 403(b) contract as the spouse's own section 403(b) contract, even if the spouse is the sole beneficiary.

(5) *Retirement income accounts*. For purposes of §1.401(a)(9)-6(d) (relating to annuity contracts purchased under a defined contribution plan), annuity payments provided with respect to retirement income accounts do not fail to satisfy the requirements of section 401(a)(9) merely because the payments are not made under an annuity contract purchased from an insurance company that is licensed to do business under the laws of a State, provided that the relationship between the annuity payments and the retirement income accounts is not inconsistent with any rules prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see §601.601(d) of this chapter). See also §1.403(b)-9(a)(5) for additional rules relating to annuities payable from a retirement income account.

(6) *Special rules for benefits accruing before December 31, 1986*—(i) *Non-applicability of section 401(a)(9) to pre-'87 account balance*. The minimum distribution requirements of section 401(a)(9) do not apply to the undistributed portion of the account balance under a section 403(b) contract valued as of December 31, 1986, exclusive of subsequent earnings (pre-'87 account balance). The minimum distribution requirements of section 401(a)(9) apply to all benefits under any section 403(b) contract accruing after December 31, 1986 (post-'86 account balance), including earnings after December 31, 1986. Consequently, the post-'86 account balance includes earnings after December 31, 1986, on contributions made before January 1, 1987, in addition to the contributions made after December 31, 1986, and earnings thereon.

(ii) *Recordkeeping required*. The issuer or custodian of the section 403(b) contract must keep records that enable it to identify the pre-'87 account balance and subsequent changes as set forth in paragraph (e)(6)(iii) of this section and provide that information upon request to the relevant employee or beneficiaries with respect to the contract. If the issuer or custodian does not keep those records, the entire account balance is treated as subject to section 401(a)(9).

(iii) *Applicability of section 401(a)(9) to post-'86 account balance*. In applying the minimum distribution requirements of section 401(a)(9), only the post-'86 account balance is used to calculate the required minimum distribution for a calendar year. The amount of any distribution from a contract is treated as being paid from the post-'86 account balance to the extent the distribution is required to satisfy the minimum distribution requirement with respect to that contract for a calendar year. Any amount distributed in a calendar year from a contract in excess of the required minimum distribution for a calendar year with respect to that contract is treated as paid from the pre-'87 account balance, if any, of that contract.

(iv) *Rollover of amounts from pre-'87 account balance*. If an amount is distributed from the pre-'87 account balance and rolled over to another section 403(b) contract, the amount is treated as part of the post-'86 account balance in that second contract. However, if the pre-'87 account balance under a section 403(b) contract is directly transferred to another section 403(b) contract (as permitted under §1.403(b)-10(b)), the amount transferred retains its character as a pre-'87 account balance, provided the issuer of the transferee contract satisfies the recordkeeping requirements of paragraph (e)(6)(ii) of this section.

(v) *Relevance of distinction between pre-'87 and post-'86 account balance for purposes of section 72*. The distinction between the pre-'87 account balance and the post-'86 account balance provided for under this paragraph (e)(6) has no relevance for purposes of determining the portion of a distribution that is includible in income under section 72.

(vi) *Pre-'87 account balance distributions must satisfy incidental benefit requirement*. The pre-'87 account balance must be distributed in accordance with the incidental benefit requirement of §1.401-1(b)(1)(i). Distributions attributable to the pre-'87 account balance are treated as satisfying this requirement if all distributions from the section 403(b) contract (including distributions attributable to the post-'86 account balance) satisfy the requirements of §1.401-1(b)(1)(i) without regard to this section, and distributions attributable to the post-'86 account balance satisfy the rules of this paragraph (e) (without regard to this paragraph (e)(6)). Distributions attributable to the pre-'87

account balance are treated as satisfying the incidental benefit requirement if all distributions from the section 403(b) contract (including distributions attributable to both the pre-'87 account balance and the post-'86 account balance) satisfy the rules of this paragraph (e) (without regard to this paragraph (e)(6)).

(7) *Application to multiple contracts for an employee*. The required minimum distribution must be determined separately for each section 403(b) contract of an employee. However, because, as provided in paragraph (e)(2) of this section, the minimum distribution requirements of section 401(a)(9) apply to section 403(b) contracts in accordance with the provisions in §1.408-8, the required minimum distribution from one section 403(b) contract of an employee is permitted to be distributed from another section 403(b) contract in order to satisfy the minimum distribution requirements of section 401(a)(9). Thus, as provided in §1.408-8(e), with respect to IRAs, the required minimum distribution amount from each contract is then totaled and the total minimum distribution taken from any one or more of the individual section 403(b) contracts. However, consistent with the rules in §1.408-8(e), only amounts in section 403(b) contracts that an individual holds as an employee may be aggregated. In addition, amounts in section 403(b) contracts that a person holds as a beneficiary of a decedent may be aggregated, but those amounts may not be aggregated with amounts held in section 403(b) contracts that the person holds as the employee or as the beneficiary of another decedent. Distributions from section 403(b) contracts do not satisfy the minimum distribution requirements for IRAs, nor do distributions from IRAs satisfy the minimum distribution requirements for section 403(b) contracts.

(8) *Governmental plans*. A section 403(b) contract that is part of a governmental plan (within the meaning of section 414(d)) is treated as having complied with section 401(a)(9) for all years to which section 401(a)(9) applies to the contract, if the terms of the contract reflect a reasonable, good faith interpretation of section 401(a)(9).

(9) *Effective date*. This paragraph (e) applies for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2025. For earlier calendar years, the rules of 26 CFR §1.403(b)-6(e) (as it appeared in the April 1, 2023, edition of 26 CFR part 1) apply.

* * * * *

Par. 8. Revise and republish §1.408-8 to read as follows:

§1.408-8 Distribution requirements for individual retirement plans.

(a) *Applicability of section 401(a)(9)*—(1) *In general*. An IRA is subject to the required minimum distribution requirements of section 401(a)(9). In order to satisfy section 401(a)(9), the rules of §§1.401(a)(9)-1 through 1.401(a)(9)-9 must be applied, except as otherwise provided in this section. For example, if the owner of an individual retirement account dies before the IRA owner's required beginning date, whether the 10-year rule or the life expectancy rule applies to distributions after the IRA owner's death is determined in accordance with §1.401(a)(9)-3(c), and the rules of §1.401(a)(9)-4 apply for purposes of determining an IRA owner's designated beneficiary. The amount of the minimum distribution required for each calendar year from an individual retirement account is determined in accordance with §1.401(a)(9)-5 and the minimum distribution required for each calendar year from an individual retirement annuity described in section 408(b) is determined in accordance with §1.401(a)(9)-6 (including §1.401(a)(9)-6(d)(2)).

(2) *Definition of IRA and IRA owner*. For purposes of this section, an IRA is an individual retirement account or annuity described in section 408(a) or (b), and the IRA owner is the individual for whom an IRA is originally established by contributions for the benefit of that individual and that individual's beneficiaries.

(3) *Substitution of specific terms*. For purposes of applying the required minimum distribution rules of §§1.401(a)(9)-1 through 1.401(a)(9)-9, the IRA trustee, custodian, or issuer is treated as the plan administrator, and the IRA owner is substituted for the employee.

(4) *Treatment of SEPs and SIMPLE IRA Plans.* IRAs that receive employer contributions under a SEP arrangement (within the meaning of section 408(k)) or a SIMPLE IRA plan (within the meaning of section 408(p)) are treated as IRAs, rather than employer plans, for purposes of section 401(a)(9) and are, therefore, subject to the distribution rules in this section.

(b) *Different rules for IRAs and qualified plans*—(1) *Determination of required beginning date*—(i) *In general.* An IRA owner's required beginning date is determined using the rules for employees who are 5-percent owners under §1.401(a)(9)-2(b)(3). Thus, the IRA owner's required beginning date is April 1 of the calendar year following the calendar year in which the individual attains the applicable age.

(ii) *Special rules for Roth IRAs*. No minimum distributions are required to be made from a Roth IRA while the owner is alive. After the Roth IRA owner dies, the required minimum distribution rules apply to the Roth IRA as though the Roth IRA owner died before his or her required beginning date. In accordance with section 401(a)(9)(B)(iv)(II), if the sole beneficiary is the Roth IRA owner's surviving spouse, then the surviving spouse may delay distributions until the Roth IRA owner would have attained the applicable age.

(2) *Account balance determination.* For purposes of determining the required minimum distribution from an IRA for any calendar year, the account balance of the IRA as of December 31 of the calendar year preceding the calendar year for which distributions are required to be made is substituted for the account balance of the employee under §1.401(a)(9)-5(b). Except as provided in paragraph (d) of this section, no adjustments are made for contributions or distributions after that date.

(3) *Determination of portion of distribution that is a required minimum distribution.* The portion of a distribution from an IRA that is a required minimum distribution and thus not eligible for rollover is determined in the same manner as provided in §1.402(c)-2(f) and (j) for a distribution from a qualified plan. For example, if a minimum distribution to an IRA owner is required under section 401(a)(9)(A)(ii) for a calendar year, any amount distributed during a calendar year from an IRA of that IRA owner is treated as a required minimum distribution under

section 401(a)(9) to the extent that the total required minimum distribution for the year under section 401(a)(9) from all of that IRA owner's IRAs has not been satisfied (either by a distribution from the IRA or, as permitted under paragraph (e) of this section, from another IRA).

(4) *Documentation requirements*—(i) *Disabled or chronically ill beneficiaries*. In determining whether an IRA owner's designated beneficiary is disabled or chronically ill for purposes of §1.401(a)(9)-4(e), the required documentation described in §1.401(a)(9)-4(e)(7) need not be provided to the IRA trustee, custodian, or issuer.

(ii) *Trust documentation*. In determining whether the requirements of §1.401(a)(9)-4(f)(2) are met (to determine whether a trust is a see-through trust), the trust documentation described in §1.401(a)(9)-4(h) need not be provided to the IRA trustee, custodian, or issuer.

(c) *Surviving spouse treating IRA as own*—(1) *Election generally permitted*—(i) *In general*. The surviving spouse of an individual may elect, in the manner described in paragraph (c)(2) of this section, to treat the surviving spouse's entire interest as a beneficiary in the individual's IRA (or the remaining part of that interest if distributions have begun) as the surviving spouse's own IRA.

(ii) *Eligibility to make election.* In order to make the election described in this paragraph (c)(1), the surviving spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the surviving spouse is the sole beneficiary of the trust.

(iii) *Timing of election.* If §1.402(c)-2(j)(4) (the special rule for catch-up distributions after a surviving spouse reaches the applicable age) would apply to the IRA owner's surviving spouse had a distribution been made directly to the surviving spouse in a calendar year, then, except as provided in paragraph (c)(1)(iv) of this section, the election described in this paragraph (c)(1) may not be made in that calendar year.

(iv) *Exception for late elections.* In the case of a surviving spouse who, pursuant to the timing rule in paragraph (c)(1)(iii) of this section, may not make the election described in paragraph (c)(1)(i) of this section in a calendar year, the spouse may nevertheless make the election in that calendar year provided that the election does not apply to amounts in the IRA that would be treated as required minimum distributions under §1.402(c)-2(j)(4)(ii) had they been distributed in that calendar year. Thus, the election can be made in a calendar year only after the amounts treated as required minimum distributions under §1.402(c)-2(j)(4)(ii) for that calendar year have been distributed from the IRA.

(2) *Election procedures*. The election described in paragraph (c)(1) of this section is made by the surviving spouse redesignating the account as an account in the name of the surviving spouse as IRA owner rather than as beneficiary. Alternatively, a surviving spouse eligible to make the election is deemed to have made the election if, at any time, either of the following occurs—

(i) Any amount in the IRA that would be required to be distributed to the surviving spouse as beneficiary under section 401(a)(9)(B) for a calendar year following the calendar year of the IRA owner's death is not distributed within the time period required under section 401(a)(9)(B); or

(ii) A contribution (other than a rollover of a distribution from an eligible retirement plan of the decedent) is made to the IRA.

(3) *Effect of election*. Following an election described in paragraph (c)(1) of this section, the surviving spouse is considered the IRA owner for whose benefit the trust is maintained for all purposes under the Internal Revenue Code (including section 72(t)). Thus, for example, the required minimum distribution for the calendar year of the election and each subsequent calendar year is determined under section 401(a)(9)(A) with the spouse as IRA owner and not section 401(a)(9)(B) with the surviving spouse as the deceased IRA owner's beneficiary. However, if the election is made in the calendar year that includes the date of the IRA owner's death, the spouse is not required to take a required minimum distribution as the IRA owner for that calendar year. Instead, the spouse is required to take a required minimum distribution for that year, determined with respect to the deceased IRA owner under the rules of §1.401(a)(9)-5(c), to the extent the distribution was not made to the IRA owner before death.

(d) *Treatment of rollovers and transfers*—(1) *Treatment of rollovers*—(i) *In general*. If a distribution is rolled over to an IRA, then the rules in §1.401(a)(9)-7 apply for purposes of determining the account balance and the required minimum distribution for that IRA. However, because the value of the account balance is determined as of December 31 of the year preceding the year for which the required minimum distribution is being determined, and not as of a valuation date in the preceding year, the account balance of the IRA is adjusted only if the amount rolled over is not received in the calendar year in which the amount was distributed. If the amount rolled over is received in the calendar year following the calendar year in which the amount was distributed, then, for purposes of determining the required minimum distribution for that following calendar year, the account balance of the IRA as of December 31 of the calendar year in which the distribution was made must be adjusted by the amount received in accordance with §1.401(a)(9)-7(b).

(ii) *Spousal rollovers*. A surviving spouse is permitted to roll over a distribution to an IRA as the beneficiary of the deceased employee or IRA owner, and the rules of paragraph (d)(1)(i) of this section apply to that IRA. A surviving spouse may also elect to treat that IRA as the spouse's own IRA in accordance with paragraph (c) of this section.

(2) *Special rules for death before required beginning date*—(i) *Carryover of election under qualified plan or IRA*. If an employee or IRA owner dies before the required beginning date and the surviving spouse rolls over a distribution of the employee's or IRA owner's interest to an IRA in the spouse's capacity as a beneficiary of the deceased employee or IRA owner, then, except as provided in paragraph (d)(2)(ii) of this section, the method for determining required minimum distributions that applied to that surviving spouse under the distributing plan or IRA (such as when a beneficiary makes an election described in §1.401(a)(9)-3(c)(5)(iii)) also applies to the receiving IRA. Thus, for example, if an employee who died before the required beginning date desig-

nated the employee's surviving spouse as a beneficiary of the employee's interest in the plan and the plan provides that the surviving spouse is subject to the 10-year rule described in §1.401(a)(9)-3(c)(4), then the 10-year rule also applies to any IRA in the name of the decedent that receives a rollover of the employee's interest.

(ii) *Change from 5-year rule or 10-year rule to life expectancy payments*. If the 5-year rule or 10-year rule described in §1.401(a)(9)-3(b)(2), (c)(2), or (c)(3), respectively, applies to a distributing plan or IRA and a distribution is made to the employee's surviving spouse before the deadline described in §1.401(a)(9)-3(b)(4)(iii) or (c)(5)(iii) that would have applied had the distributing plan or IRA permitted the surviving spouse to make an election between the 5-year rule or 10-year rule and the life expectancy rule (or, in the case of a defined benefit plan, the annuity payment rule), then the surviving spouse may elect to have the life expectancy rule described in §1.401(a)(9)-3(c)(4) or the annuity payment rule described in §1.401(a)(9)-3(b)(3) apply to any IRA to which any portion of that distribution is rolled over. However, see §1.402(c)-2(j)(4)(ii) to determine the portion of that distribution that is treated as a required minimum distribution in the calendar year of the distribution and thus is not eligible for rollover.

(iii) *Spousal rollover to spouse's own IRA*. If an employee or IRA owner dies before the required beginning date and the surviving spouse rolls over a distribution described in paragraph (d)(2)(i) of this section from the surviving spouse's IRA in the capacity as the beneficiary of the decedent to the surviving spouse's own IRA, then, in determining the amount that is treated as a required minimum distribution under section 401(a)(9) and thus is not eligible for rollover, the rules of §1.402(c)-2(j)(4) are applied as if the distribution was made directly from the decedent's interest in the plan or IRA to the surviving spouse's own IRA.

(3) *Applicability of rollover rules to non-spouse beneficiary*. The rules of paragraphs (d)(1)(i), (2)(i) and (ii) of this section apply to a non-spouse beneficiary who makes an election to have a distribution made in the form of a direct trustee-to-trustee transfer as described in section 402(c)(11) in the same manner as a rollover of a distribution made by a surviving spouse.

(4) *Treatment of transfers.* In the case of a trustee-to-trustee transfer from one IRA to another IRA that is not a distribution and rollover, the transfer is not treated as a distribution by the transferor IRA for purposes of section 401(a)(9). Accordingly, the minimum distribution requirement with respect to the transferor IRA must still be satisfied. After the transfer, the employee's account balance and the required minimum distribution under the transferee IRA are determined in the same manner that an account balance and required minimum distribution are determined under an IRA receiving a rollover contribution under paragraph (d)(1) of this section.

(e) *Application of section 401(a)(9) for multiple IRAs*—(1) *Distribution from one IRA to satisfy total required minimum distribution*—(i) *In general*. The required minimum distribution from one IRA is permitted to be distributed from another IRA in order to satisfy section 401(a)(9), subject to the limitations of paragraphs (e)(2) and (3) of this section. Except as provided in paragraph (e)(1)(ii) of this section, the required minimum distribution must be calculated separately for each IRA and the sum of those separately calculated required minimum distributions may be distributed from any one or more of the IRAs under the rules set forth in this paragraph (e).

(ii) *Permitted aggregation of annuity contract and account balance*. Subject to the limitations of paragraphs (e)(2) and (3) of this section, an individual who holds an IRA that is an annuity contract described in section 408(b) may elect to aggregate that IRA with one or more IRAs with account balances that the individual holds and apply the optional aggregation rule of §1.401(a)(9)-5(a)(5)(iv) with respect to the annuity contract and the account balances under those IRAs as if the account balances were the remaining account balances following the purchase of the annuity contract with a portion of those account balances.

(2) *IRAs eligible for aggregate treatment*—(i) *IRA owners*. Generally, only amounts in IRAs that an individual holds as the IRA owner are aggregated for purposes of paragraph (e)(1) of this section. Except in the case of a surviving spouse electing to treat a decedent's IRA as the spouse's own IRA, an IRA that a beneficiary acquires as a result of the death of an individual is not treated as an IRA of the beneficiary but rather as an IRA of the decedent for purposes of this paragraph (e). Thus, for example, for purposes of satisfying the minimum distribution requirements with respect to one IRA by making distributions from another IRA, IRAs for which the individual is the IRA owner are not aggregated with IRAs for which the individual is a beneficiary.

(ii) *IRA beneficiaries*. IRAs that a person holds as a beneficiary of a decedent are aggregated for purposes of paragraph (e)(1) of this section, but those amounts are not aggregated with IRAs that the person holds as the owner or as the beneficiary of a different decedent.

(3) *Non-Roth IRAs are treated separately from section 403(b) contracts and Roth IRAs*. Distributions from an IRA that is not a Roth IRA may not be used to satisfy the required minimum distribution requirements with respect to a Roth IRA, or a section 403(b) contract (as defined in §1.403(b)-2(b)(16)(i)). Similarly, distributions from a Roth IRA do not satisfy the required minimum distribution requirements with respect to a section 403(b) contract or an IRA that is not a Roth IRA. In addition, distributions from a section 403(b) contract do not satisfy the required minimum distribution requirements with respect to an IRA.

(4) *Allocation rule for partial distributions in year of death*—(i) *Distribution required in year of IRA owner's death*. This paragraph (e)(4) provides a special rule that applies if an IRA owner has multiple IRAs (which do not all have identical beneficiary designations) that are aggregated in accordance with paragraph (e)(1) of this section and that IRA owner dies before taking the total required minimum distribution for the calendar year of the IRA owner's death (that is, there is a shortfall). In that case, each of the owner's IRAs is subject to a requirement to distribute a proportionate share of the shortfall for the calendar year to a beneficiary of that IRA, with the proportions based on the account balances determined under paragraph (b)(2) of this section. This allo-

cation of the shortfall to a particular IRA is made without regard to whether some of the required minimum distribution for the calendar year was already made to the IRA owner from that IRA.

(ii) *Distribution requirement in the year of beneficiary's death*. Rules similar to the rules of paragraph (e)(4)(i) of this section apply in the case of a beneficiary of multiple IRAs that are aggregated under paragraph (e)(1) of this section if a required minimum distribution is due for that beneficiary in the calendar year of the beneficiary's death, to the extent that the amount was not distributed to the beneficiary.

(iii) *Example*. Assume IRA owner X died on December 31, 2024, at the age of 75. At the time of X's death, X owned two separate IRAs, IRA Y and IRA Z, neither of which is a Roth IRA. The balance of IRA Y as of December 31, 2023, was $100,000 and the balance of IRA Z as of December 31, 2023, was $50,000. X died after X's required beginning date and under the rules of paragraph (e)(1) of this section, the total of the 2024 required minimum distributions for IRA Y and IRA Z is $6,097.56 ($150,000/24.6). X designated A as his beneficiary under IRA Y and B as his beneficiary under IRA Z. Prior to X's death, X had taken a $3,000 distribution from IRA Z in 2024. Under the rules of paragraph (e)(4)(i) of this section, the remaining portion of the 2024 required minimum distribution ($3,097.56) is allocated two-thirds to IRA Y and one-third to IRA Z. Thus, in the calendar year of X's death A is required to take a required minimum distribution of $2,065.04 from IRA Y and B is required to take a required minimum distribution of $1,032.52 from IRA Z.

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

(g) *Distributions taken into account*—(1) *General rule.* Except as provided in paragraph (g)(2) of this section, all amounts distributed from an IRA are taken into account in determining whether section 401(a)(9) is satisfied, regardless of whether the amount is includible in income. Thus, for example, a qualified charitable distribution made pursuant to section 408(d)(8) is taken into account in determining whether section 401(a)(9) is satisfied.

(2) *Amounts not taken into account*. The following amounts are not taken into account in determining whether the required minimum distribution with respect to an IRA for a calendar year has been made—

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

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

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

(iv) Amounts that are treated as distributed pursuant to section 408(e);

(v) Amounts that are treated as distributed as a result of the purchase of a collectible pursuant to section 408(m);

(vi) Corrective distributions of excess deferrals as described in §1.402(g)-1(e), together with the income allocable to these corrective distributions; and

(vii) Similar items designated by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See §601.601(d) of this chapter.

(h) *Qualifying longevity annuity contracts*—(1) *General rule.* The special rule in §1.401(a)(9)-5(b)(4) for a QLAC, defined in §1.401(a)(9)-6(q), applies to an IRA, subject to the modifications set forth in this paragraph (h).

(2) *Reliance on representations.* For purposes of the limitation described in §1.401(a)(9)-6(q)(2)(ii), unless the trustee, custodian, or issuer of an IRA has actual knowledge to the contrary, the trustee, custodian, or issuer may rely on the IRA owner's representation (made in writing or other form as may be prescribed by the Commissioner) of the amount of the premiums described in §1.401(a)(9)-6(q)(2)(ii) that are not paid under the IRA.

(3) *Permitted delay in setting beneficiary designation.* In the case of a contract that is rolled over from a plan to an IRA before the required beginning date under the plan, the contract will not violate the rule in §1.401(a)(9)-6(q)(3)(iii)(F) that a non-spouse beneficiary must be irrevocably selected on or before the later of the date of purchase and the required beginning date under the IRA, provided that the contract requires a beneficiary to be irrevocably selected by the end of the year following the year of the rollover.

(4) *Roth IRAs.* The rule in §1.401(a)(9)-5(b)(4) does not apply to a Roth IRA. Accordingly, a contract that is purchased under a Roth IRA is not treated as a contract that is intended to be a QLAC for purposes of applying the dollar limitation rule in §1.401(a)(9)-6(q)(2)(ii). If a QLAC is purchased or held under a plan, annuity, account, or traditional IRA, and that contract is later rolled over or converted to a Roth IRA, the contract is not treated as a contract that is intended to be a QLAC after the date of the rollover or conversion. Thus, premiums paid with respect to the contract will not be taken into account under §1.401(a)(9)-6(q)(2)(ii) after the date of the rollover or conversion.

(i) [Reserved]

(j) *Applicability date*. This section applies for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2025. For earlier calendar years, the rules of 26 CFR §1.408-8 (as it appeared in the April 1, 2023, edition of 26 CFR part 1) apply.

Par. 9. Amend §1.457-6 by revising and republishing paragraph (d).

The revision and republication read as follows:

§1.457-6 Timing of distributions under eligible plans.

* * * * *

(d) *Minimum required distributions for eligible plans*. In order to be an eligible plan, a plan must meet the distribution requirements of section 457(d)(1) and (2). Under section 457(d)(2), a plan must meet the minimum distribution requirements of section 401(a)(9). See section 401(a)(9) and the regulations thereunder for these requirements. For taxable years beginning

on or after January 1, 2025, if an eligible plan is subject to the rules of §1.401(a)(9)-5, then the plan must meet the requirements of section 401(a)(9)(H). The preceding sentence applies to an eligible plan maintained by any eligible employer (including an eligible plan of a tax-exempt entity).

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PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 10. The authority citation for part 31 continues to read in part as follows: **Authority:** 26 U.S.C. 7805, unless otherwise noted.

Par. 11. For each section set forth below, revise the section by removing the text that appears in the column labeled "Remove" and replacing it with the text that appears in the column labeled "Insert":

Regulation section	Remove	Insert
§ 31.3405(c)-1, Q&A-1(a)	"§ 1.402(c)-2, Q&A-2"	"§ 1.402(c)-2(a)(1)(iii)"
§ 31.3405(c)-1, Q&A-1(b)	"§ 1.402(c)-2, Q&A-3 through Q&A-10 and Q&A-14"	"§ 1.402(c)-2"
§ 31.3405(c)-1, Q&A-4	"§ 1.402(c)-2, Q&A-10"	"§ 1.402(c)-2(h)"
§ 31.3405(c)-1, Q&A-7(a)	"§ 1.402(c)-2, Q&A-2"	"§ 1.402(c)-2(a)(1)(iii)"
§ 31.3405(c)-1, Q&A-10(a)	"§ 1.402(c)-2, Q&A-15"	"§ 1.402(c)-2(k)(2)"
§ 31.3405(c)-1, Q&A-11	"§ 1.402(c)-2, Q&A-9"	"§ 1.402(c)-2(g)"
§ 31.3405(c)-1, Q&A-13	"Q&A-10 of § 1.402(c)-2"	"§ 1.402(c)-2(h)"
§ 31.3405(c)-1, Q&A-13	"§ 1.402(c)-2, Q&A-10"	"§ 1.402(c)-2(h)"

PART 54—PENSION EXCISE TAXES

Par. 12. The authority citation for part 54 continues to read in part as follows: **Authority:** 26 U.S.C. 7805, unless otherwise noted.

Par. 13. Revise and republish §54.4974-1 to read as follows:

§54.4974-1 Excise tax on accumulations in qualified retirement plans.

(a) *Imposition of excise tax*—(1) *In general*. If the amount distributed to a payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in section 457(b)) for a calendar year is less than the required minimum distribution for that year, section 4974 imposes an excise tax on the payee for the taxable year beginning with or within the calendar year during which the amount is required to be distributed. Except as provided in paragraph (a)(2) of this section, the tax is equal to 25 percent of the amount by which the required minimum distribution for a calendar year exceeds the actual amount distributed during the calendar year.

(2) *Reduction of tax in certain cases*—(i) *In general*. In the case of a taxpayer who satisfies this paragraph (a)(2), the tax described in paragraph (a)(1) of this section is equal to 10 percent (in lieu of 25 percent) of the amount by which the required minimum distribution for a calendar year exceeds the actual amount distributed during the calendar year.

(ii) *Eligible taxpayers*. This paragraph (a)(2) is satisfied if, by the last day of the correction window described in paragraph (a)(2)(iii) of this section, the taxpayer—

(A) Receives a corrective distribution from the applicable plan described in paragraph (a)(2)(iv) of this section of the amount by which the required minimum distribution for a calendar year exceeds the actual amount distributed during the calendar year from that plan; and

(B) Files a return reflecting the tax described in this paragraph (a).

(iii) *Correction window*. For purposes of paragraph (a)(2) of this section, the correction window ends on the earliest of—

(A) The date a notice of deficiency under section 6212 with respect to the tax imposed by section 4974(a) is mailed;

(B) The date on which the tax imposed by section 4974(a) is assessed; or

(C) The last day of the second taxable year that begins after the end of the taxable year in which the tax under section 4974(a) is imposed.

(iv) *Applicable plan*. If the minimum distribution was required to be paid from a particular qualified retirement plan or eligible deferred compensation plan, then the applicable plan is that particular qualified retirement plan or eligible deferred compensation plan. However, if the requirement to take a minimum distribution could have been satisfied by a payment from any one of a number of qualified retirement plans (such as an individual retirement account under section 408(a) or a section 403(b) plan), then the corrective distribution may be taken from any one of those qualified retirement plans.

(3) *Definition of required minimum distribution*. For purposes of section 4974, the term required minimum distribution means the minimum amount required to be distributed pursuant to section 401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3), or 457(d)(2), as the case may be. Except as otherwise provided in paragraph (f) of this section (which provides a special rule for amounts required to be distributed by an employee's, or an individual's, required beginning date), the required minimum distribution for a calendar year is the required minimum distribution amount required to be distributed during the calendar year.

(b) *Definition of qualified retirement plan*. For purposes of section 4974, each of the following is a qualified retirement plan—

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

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

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

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

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

(6) Any other plan, contract, account, or annuity that, at any time, has been treated as a plan, account, or annuity described in paragraphs (b)(1) through (5) of this section but that no longer satisfies the applicable requirements for that treatment.

(c) *Determination of required minimum distribution for individual accounts*—(1) *General rule*. Except as otherwise provided in this paragraph (c), if a payee's interest under a qualified retirement plan or any eligible deferred compensation plan is in the form of an individual account (and distribution of that account is not being made under an annuity contract purchased in accordance with §1.401(a)(9)-5(a)(5) and §1.401(a)(9)-6(d)), the amount of the required minimum distribution for any calendar year for purposes of section 4974 is the amount required to be distributed to that payee for that calendar year determined in accordance with §1.401(a)(9)-5 as provided in the following (whichever applies)—

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

(ii) Section 403(b)(10) and §1.403(b)-6(e) in the case of an annuity contract, custodial account, or retirement income account described in section 403(b);

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

(iv) Section 457(d) and §1.457-6(d) in the case of an eligible deferred compensation plan.

(2) *Distributions under 5-year rule or 10-year rule*. If an employee dies before the required beginning date and either §1.401(a)(9)-3(c)(2) or (3) applies to the employee's beneficiary, there is no required minimum distribution until the end of the calendar year described in whichever of those paragraphs applies to the beneficiary (that is, the calendar year that includes the fifth anniversary or the tenth anniversary of the date of the employee's death, as applicable). The required minimum distribution due in that fifth or tenth calendar year is the employee's entire interest in the plan.

(3) *Default provisions*. Unless otherwise provided under the qualified retirement plan or eligible deferred compensation plan (or, if applicable, the governing instrument of the plan), the default provisions in §1.401(a)(9)-3(c)(5)(i) apply in determining whether paragraph (c)(1) or (2) of this section applies.

(4) *Plans providing uniform required beginning date*. For purposes of this section, if the plan provides a uniform required beginning date for purposes of section 401(a)(9) for all employees in accordance with §1.401(a)(9)-2(b)(4), then the required minimum distribution for each calendar year for an employee who is not a 5-percent owner is the lesser of the amount determined based on a required beginning date of April 1 of the calendar year following the calendar year in which the employee attains the applicable age or the amount determined based on the required beginning date under the plan. Thus, for example, if an employee who was not a 5-percent owner participated in a defined contribution plan with a uniform required beginning date (as described in the preceding sentence) and the employee died after the applicable age (but before April 1 of the calendar year following the calendar year in which the employee retired) without a designated beneficiary, then required minimum distributions for calendar years after the calendar year that includes the date of the employee's death are equal to the lesser of—

(i) The required minimum distribution determined by treating the employee as dying before the required beginning date (that is, the 5-year rule of §1.401(a)(9)-3(c)(2)); or

(ii) The required minimum distribution determined by treating the employee as dying on or after the required beginning date (annual distributions over the employee's remaining life expectancy, as set forth in §1.401(a)(9)-5(d)).

(d) *Determination of required minimum distribution under a defined benefit plan or annuity*—(1) *General rule.* If a payee's interest in a qualified retirement plan or eligible deferred compensation plan is being distributed in the form of an annuity (either directly from the plan, in the case of a defined benefit plan, or under an annuity contract purchased from an insurance company), then the amount of the required minimum distribution for purposes of section 4974 depends on whether the annuity is a permissible annuity distribution option or an impermissible annuity distribution option. For this purpose—

(i) A permissible annuity distribution option is an annuity contract (or, in the case of annuity distributions from a defined benefit plan, a distribution option) that specifically provides for distributions that, if made as provided, would for every calendar year equal or exceed the minimum distribution amount required to be distributed to satisfy the applicable section enumerated in paragraph (b) of this section for that calendar year; and

(ii) An impermissible annuity distribution option is any other annuity distribution option.

(2) *Permissible annuity distribution option*. If the annuity contract (or, in the case of annuity distributions from a defined benefit plan, a distribution option) under which distributions to the payee are being made is a permissible annuity distribution option, then the required minimum distribution for a given calendar year for purposes of section 4974 equals the amount that the annuity contract (or distribution option) provides is to be distributed for that calendar year.

(3) *Impermissible annuity distribution option*—(i) *General rule*. If the annuity contract (or, in the case of annuity distributions from a defined benefit plan, the distribution option) under which distributions to the payee are being made is an impermissible annuity distribution option, then the required minimum distribution for each calendar year for purposes of

section 4974 is the amount that would be distributed under the applicable permissible annuity distribution option described in this paragraph (d)(3) (or the amount determined by the Commissioner if there is no option of this type). The determination of which permissible annuity distribution applies depends on whether distributions commenced before the death of the employee, whether the plan is a defined benefit or defined contribution plan, whether there is a designated beneficiary for purposes of section 401(a)(9), and whether the designated beneficiary is an eligible designated beneficiary under section 401(a)(9)(E)(ii). For this purpose, the determination of whether there is a designated beneficiary and whether that designated beneficiary is an eligible designated beneficiary is made in accordance with §1.401(a)(9)-4, and the determination of which designated beneficiary's life is to be used in the case of multiple designated beneficiaries in made in accordance with §1.401(a)(9)-5(f).

(ii) *Defined benefit plan*—(A) *Benefits commence before employee dies*. If the plan under which distributions are being made is a defined benefit plan, benefits commence before the employee dies, and there is a designated beneficiary, then the applicable permissible annuity distribution option is the joint and survivor annuity option under the plan for the lives of the employee and the designated beneficiary that is a permissible annuity distribution option and that provides for the greatest level amount payable to the employee determined on an annual basis. If the plan does not provide an option described in the preceding sentence (or there is no designated beneficiary under the impermissible annuity distribution option), then the applicable permissible annuity distribution option is the life annuity option under the plan payable for the life of the employee in level amounts with no survivor benefit.

(B) *Employee dies before benefits commence*. If the plan under which distributions are being made is a defined benefit plan, the employee dies before benefits commence, there is a designated beneficiary, and the plan has a life annuity option payable for the life of the designated beneficiary in level amounts, then the applicable permissible annuity distribution option is that life annuity option. If there is no designated beneficiary, then the 5-year rule in section 401(a)(9)(B)(ii) applies in accordance with paragraph (d)(4)(i) of this section.

(iii) *Defined contribution plan*—(A) *In general.* If the plan under which distributions are being made is a defined contribution plan and the impermissible annuity distribution option is an annuity contract purchased from an insurance company, then the applicable permissible annuity distribution option is the applicable annuity described in paragraph (d)(3)(iii)(B) or (C) of this section that could have been purchased with the portion of the employee's or individual's account that was used to purchase the annuity contract that is the impermissible annuity distribution option. The amount of the payments under that annuity contract are determined using the interest rate prescribed under section 7520 determined as of the date the contract was purchased, the ages of the annuitants on that date, and the mortality rates in §1.401(a)(9)-9(e).

(B) *Benefits commence before employee dies*. If the plan under which distributions are being made is a defined contribution plan, the benefits commence before the employee dies, and there is a designated beneficiary who is an eligible designated beneficiary within the meaning of section 401(a)(9)(E)(ii), then the applicable annuity is the joint and survivor annuity option providing level annual payments for the lives of the employee and the designated beneficiary, under which the amount of the periodic payment that would have been payable to the survivor is the applicable percentage under the table in §1.401(a)(9)-6(b)(2) (taking into account the rules of §1.401(a)(9)-6(k)(2)) of the amount of the periodic payment that would have been payable to the employee or individual. If there is no designated beneficiary, or if the designated beneficiary is not an eligible designated beneficiary under the impermissible distribution option, then the annuity described in this paragraph (d)(3)(iii)(B) is a life annuity for the life of the employee with no survivor benefit that provides level annual payments.

(C) *Employee dies before benefits commence.* If the plan under which distributions are being made is a defined contribution plan, the employee dies before benefits commence, and there is an eligible designated beneficiary under the impermissible annuity distribution option, then the applicable annuity is a life annuity for the life of the designated beneficiary that provides level annual payments and that would have been a permissible annuity distribution option. If there is no designated beneficiary, then section 401(a)(9)(B)(ii) applies in accordance with paragraph (d)(4)(i) of this section. If the designated beneficiary is not an eligible designated beneficiary, then section 401(a)(9)(B)(ii) applies in accordance with paragraph (d)(4)(ii) of this section.

(4) *Application of section 401(a)(9)(B)(ii)*—(i) *Application of 5-year rule*. If the 5-year rule in section 401(a)(9)(B)(ii) applies to the distribution to the payee under the contract (or distribution option), then no amount is required to be distributed to satisfy the applicable enumerated section in paragraph (b) of this section until the end of the calendar year that includes the fifth anniversary of the date of the employee's death. For the calendar year that includes the fifth anniversary of the date of the employee's death, the amount required to be distributed to satisfy the applicable enumerated section is the payee's entire remaining interest in the annuity contract (or under the plan in the case of distributions from a defined benefit plan). However, see §1.401(a)(9)-6(j) for rules regarding payments that are not permitted under section 436.

(ii) *Application of 10-year rule.* If the employee dies before distribution of the employee's entire interest, section 401(a)(9)(H) applies, and the designated beneficiary of the remaining interest is not an eligible designated beneficiary, then no amount is required to be distributed to satisfy the applicable enumerated section in paragraph (b) of this section until the end of the calendar year that includes the tenth anniversary of the date of the employee's death. For the calendar year that includes the tenth anniversary of the date of the employee's death, the amount required to be distributed to satisfy the applicable enumerated section is the payee's entire remaining interest in the annuity contract.

(5) *Plans providing uniform required beginning date*. Rules similar to the rules of paragraph (c)(4) of this section (relating to plans that have adopted a uniform

required beginning date) apply in the case of a defined benefit plan.

(e) *Distribution of remaining benefit after deadline for required distribution*. If there is any remaining benefit with respect to an employee (or IRA owner) after the calendar year in which the entire remaining benefit is required to be distributed, the required minimum distribution for each calendar year subsequent to that calendar year is the entire remaining benefit. Thus, for example, if the designated beneficiary of the employee is not an eligible designated beneficiary, then, pursuant to §1.401(a)(9)-5(e)(2), the entire interest of the employee must be distributed no later than the end of the calendar year that includes the tenth anniversary of the date of the employee's death, and the required minimum distribution for that calendar year and each subsequent calendar year is the remaining portion of the employee's interest in the plan.

(f) *Excise tax for first distribution calendar year.* If the amount not paid is an amount required to be paid by April 1 of a calendar year that includes the employee's required beginning date, the missed distribution is a required minimum distribution for the previous calendar year (that is, for the employee's or the individual's first distribution calendar year as determined in accordance with §1.401(a)(9)-5(a)(2)(ii)). However, the excise tax under section 4974 is calculated with respect to the calendar year that includes the last day by which the amount is required to be distributed (that is, the calendar year that includes the employee's or individual's required beginning date) even though the preceding calendar year is the calendar year for which the amount is required to be distributed. There is also a required minimum distribution for the calendar year that includes the employee's or individual's required beginning date, and that distribution is also required to be made during the calendar year that includes the employee's or individual's required beginning date.

(g) *Waiver of excise tax*—(1) *General rule*. The tax under paragraph (a) of this section may be waived if the payee establishes to the satisfaction of the Commissioner that—

(i) The failure to distribute the required minimum distribution described in this section was due to reasonable error; and

(ii) Reasonable steps are being taken to remedy the failure.

(2) *Automatic waiver after election to distribute within 10 years of employee's death.* Unless the Commissioner determines otherwise, the tax under paragraph (a) of this section is waived automatically if—

(i) The employee's or individual's death is before the employee's or individual's required beginning date;

(ii) The payee is an individual—

(A) Who is an eligible designated beneficiary (as defined in §1.401(a)(9)-4(e));

(B) Whose required minimum distribution amount for a calendar year is determined under the life expectancy rule described in §1.401(a)(9)-3(c)(4); and

(C) Who did not make an affirmative election to have the life expectancy rule apply as described in §1.401(a)(9)-3(c)(5)(iii);

(iii) The payee fails to satisfy the minimum distribution requirement; and

(iv) The payee elects the 10-year rule described in §1.401(a)(9)-3(c)(3) by the end of the ninth calendar year following the calendar year of the employee's death.

(3) *Automatic waiver for failure to take required minimum distribution for the year of death.* Unless the Commissioner determines otherwise, the tax under paragraph (a) of this section is waived automatically if—

(i) A distribution is required to be made to an individual under §1.401(a)(9)-3 or §1.401(a)(9)-5 in a calendar year;

(ii) The individual who was required to take the distribution described in paragraph (g)(3)(i) of this section died in that calendar year without satisfying that distribution requirement; and

(iii) The beneficiary of the individual described in paragraph (g)(3)(ii) of this section takes a corrective distribution in the amount needed to satisfy that distribution requirement no later than the tax filing deadline (including extensions thereof) for the taxable year of that beneficiary that begins with or within that calendar year (or, if later, the last day of the calendar year following that calendar year).

(h) *Applicability date*. This section applies for taxable years beginning on or after January 1, 2025. For earlier taxable years, the rules of 26 CFR §54.4974-2 (as it appeared in the April 1, 2023, edition of 26 CFR part 54) apply.

§54.4974-2 [Removed]

Par. 14. Section 54.4974-2 is removed.

Douglas W. O'Donnell,
Deputy Commissioner.

Approved: May 31, 2024.

Aviva R. Aron-Dine,
Acting Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register July 18, 2024, 8:45 a.m., and published in the issue of the Federal Register for July 19, 2024, 89 FR 58886)

T.D. 10004

DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 1

Guidance under Section 367(b) Related to Certain Triangular Reorganizations and Inbound Nonrecognition Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations regarding the treatment of property used to acquire parent stock or securities in connection with certain triangular reorganizations involving one or more foreign corporations; the consequences to persons that receive parent stock or securities pursuant to such reorganizations; and the treatment of certain subsequent inbound nonrecognition transactions following such reorganizations and certain other transactions. The final regulations affect corporations engaged in

certain triangular reorganizations involving one or more foreign corporations, certain shareholders of foreign corporations acquired in such reorganizations, and foreign corporations that participate in certain inbound nonrecognition transactions.

DATES: *Effective date*: These regulations are effective on July 17, 2024.

Applicability dates: For dates of applicability, *see* §§1.367(a)-3(g)(1)(viii), 1.367(b)-3(g)(7)(i), 1.367(b)-4(i), 1.367(b)-6(a)(1)(v) and (vi), 1.367(b)-10(e)(2), (3), and (5), and 1.1411-10(i).

FOR FURTHER INFORMATION CONTACT: Brady Plastaras at (202) 317-6937 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On October 6, 2023, the Department of the Treasury (Treasury Department) and the IRS published proposed regulations (REG-117614-14) in the ***Federal Register*** (88 FR 69559) under section 367(b) of the Internal Revenue Code (the "Proposed Regulations") that would implement the regulations announced and described in Notice 2014-32 (2014-20 IRB 1006) and Notice 2016-73 (2016-52 IRB 908), with modifications. This document finalizes the Proposed Regulations without substantive change. Terms used but not defined in this preamble have the meaning provided in the Proposed Regulations.

In response to a request for comments in the Proposed Regulations, one comment was received and is discussed in the Summary of Comment and Explanation of Revisions. This comment is available at *https://www.regulations.gov* or upon request. No public hearing was held on the Proposed Regulations because there were no requests to speak.

Summary of Comment and Explanation of Revisions

I. *§1.367(b)-10(d) Anti-Abuse Rule*

As the preamble to the Proposed Regulations explained, the existing regulations in §1.367(b)-10 (the "2011 Final Regulations") contain an anti-abuse rule under which "appropriate adjustments" are made if, "in connection with a triangular reorganization, a transaction is engaged in with a view to avoid the purpose" of the 2011 Final Regulations. *See* §1.367(b)-10(d). The anti-abuse rule contains an example illustrating that the earnings and profits of S may, under certain circumstances, be deemed to include the earnings and profits of a corporation related to P or S for purposes of determining the consequences of the adjustments provided for in the 2011 Final Regulations.

Notice 2014-32 described certain clarifications with respect to the scope of the anti-abuse rule and illustrated certain of those clarifications with an additional example. *See* Notice 2014-32, sections 4.03 and 4.04. The Proposed Regulations proposed to implement those clarifications along with two new examples that further illustrate the broad scope of the anti-abuse rule. *See* proposed §1.367(b)-10(d)(3) (*Example* 2) (relating to a downstream property transfer) and (d)(4) (*Example 3*) (relating to a taxable debt exchange). The Proposed Regulations did not propose to alter the anti-abuse rule's operative text, which remains unchanged from the 2011 Final Regulations. Because *Examples 2* and *3* (as well as *Example 1*, which was described in Notice 2014-32) merely illustrate applications of the same operative rule finalized in the 2011 Final Regulations, the adjustments described in those examples reflect adjustments that would be made under the 2011 Final Regulations. That is, these examples illustrate fact patterns to which the anti-abuse rule already applies, independent of the inclusion of the examples in the Proposed Regulations. The additional language that was proposed to be added to §1.367(b)-10(d)(1) similarly clarifies potential situations to which the anti-abuse rule applies, and therefore also reflects adjustments that would be made under the 2011 Final Regulations, notwithstanding that that language was first described in Notice 2014-32.

The comment asserted that *Examples 2* and *3* are an expansion of the operative anti-abuse rule because they involve fact patterns and impose corrective adjustments that were not described in prior guidance and implicate concerns that were not present when the 2011 Final Regulations were issued. The comment claimed that the anti-abuse rule has a narrow application that is limited to scenarios described by the one example in §1.367(b)-10(d) of the 2011 Final Regulations. In that example, S's earnings and profits are increased where S is "created, organized, or funded to avoid the application of [the 2011 Final Regulations] with respect to the earnings and profits of [a related corporation]." As the comment correctly observed, this adjustment increases the likelihood that the 2011 Final Regulations will apply to treat the P acquisition as a deemed distribution. The comment also argued, however, that the only type of adjustments permitted under the anti-abuse rule are adjustments that increase S's earnings and profits and, moreover, that the anti-abuse rule may impose those adjustments only if they bear on the P acquisition, because the P acquisition is the only type of transaction that can be "in connection with" an applicable triangular reorganization.

The comment contended that *Example 3* effectively introduces a new rule by, for the first time, applying the anti-abuse rule to "override" the §1.367(b)-10(a)(2)(iii) priority rule, which in the example would otherwise prevent the P acquisition from being treated as a deemed distribution. The comment also argued that *Example 3* further expands the scope of the anti-abuse rule by applying it "in connection with" a transaction that occurs after the applicable triangular reorganization rather than in connection with the P acquisition itself. The comment similarly asserted that *Example 2* presents a fact pattern that is not within the purview of the anti-abuse rule because that example references a regulation that was issued after the TCJA, and as such cannot reflect an abuse that the 2011 Final Regulations contemplate. Therefore, the comment recommended that *Examples 2* and *3* should either be eliminated from the final regulations or made to apply only prospectively as of October 5, 2023, the date the Proposed Regulations were filed with the ***Federal Register***.

The Treasury Department and the IRS maintain that *Examples 2* and *3* are simply illustrations of the same opera-

tive anti-abuse rule -- unchanged since it was published in the 2011 Final Regulations -- and therefore decline to adopt the comment's recommendation. The comment misunderstands the nature and purpose of the anti-abuse rule, which is intended to serve as a backstop to §1.367(b)-10 in cases where taxpayers purposely attempt to structure around the application of those regulations. That structuring may take many forms and implicate other technical provisions in ways that are not foreseeable, including by taking advantage of changes in law that create novel planning opportunities. The anti-abuse rule is designed to be adaptable to such changing or unforeseen circumstances and, as such, is not limited to a particular type of avoidance transaction.

This adaptability is reflected in the wording of the anti-abuse rule, which, as described above, applies (i) "if, in connection with a triangular reorganization," (ii) "a transaction is engaged in with a view to avoid the purpose" of §1.367(b)-10. Neither of those two elements limit the anti-abuse rule to a specific form of avoidance transaction, as doing so would undercut the adaptability that is essential to the proper functioning of the rule. Moreover, the preamble to temporary regulations issued in 2008 (TD 9400, 73 FR 30301), the predecessor regulations to the 2011 Final Regulations in §1.367(b)-10, explains that the phrase "in connection with" is "a broad standard that includes any transaction related to the reorganization even if the transaction is not part of the plan of reorganization" (73 FR 30302). The P acquisition is not the exclusive type of transaction that may implicate the anti-abuse rule, nor is there any requirement that such transaction precede the applicable triangular reorganization.

Once the anti-abuse rule applies, "appropriate" adjustments may be made. The types of corrective adjustments that may be appropriate are not circumscribed to a particular set of adjustments for the same reason that the anti-abuse rule is not limited to a particular form of avoidance transaction. That is, the anti-abuse rule naturally accommodates a range of adjustments because the nature of the corrective adjustment will depend on the form of the abusive transaction. These adjustments necessarily include adjustments that may have the effect of modifying the application of technical rules, including the priority rule, as almost any avoidance transaction involves the exploitation of some technical provision. The Treasury Department and the IRS have long maintained that the anti-abuse rule is not defined by the one example described in the 2011 Final Regulations, which uses the phrase "for example" to indicate explicitly that the example is just one possible illustration of the rule and not, as the comment argues, the only possible illustration. *See* Notice 2014-32, section 3 (expressing the concern that taxpayers "may be interpreting the anti-abuse rule too narrowly . . . .").

These final regulations do, however, make a minor change to the facts of *Example 3*. As described in the Proposed Regulations, that example stated that USP did not satisfy the holding period requirement with respect to section 245A because "USP has held its stock in FP for fewer than 365 days." The Treasury Department and the IRS did not intend for that statement to create any inference as to how the holding period requirement could be satisfied and accordingly revise the example's facts to provide that USP simply "will not" satisfy the holding period requirement.

The comment also questioned why the clarifications to the application of the anti-abuse rule that were described in Notice 2014-32, such as *Example 1*, were not included among the rules listed in proposed §1.367(b)-10(e)(2) as having an April 25, 2014, applicability date. Section 1.367(b)-10(e)(2) does not explicitly reference those clarifications because, as noted above, they simply clarify potential situations to which the anti-abuse rule applies. On the other hand, the other changes described in Notice 2014-32 modify substantive rules and are therefore listed under §1.367(b)-10(e)(2) as having an April 25, 2014, applicability date.

II. *Definition of "Foreign Subsidiary"*

Under the Proposed Regulations, the excess asset basis ("EAB") rules create a deemed distribution of specified earnings to the foreign acquired corporation from foreign subsidiaries, with specified earnings drawn from each subsidiary on a pro rata basis. *See* proposed §1.367(b)-3(g)(1) and (3). A "foreign subsidiary" is defined by reference to the ownership requirements of section 1248(c)(2)(B). Section 1248(c)(2)(B) describes a 10-percent ownership threshold, taking into account the constructive ownership rules in section 958(b). Under that definition, therefore, a foreign subsidiary could include a foreign corporation that the foreign acquired corporation is treated as owning solely through constructive ownership and in which it has no direct or indirect ownership interest. These final regulations make a minor change to §1.367(b)-3(g)(1) to clarify that possible result. *See* §1.367(b)-3(g)(1), fourth sentence ("the distribution is treated as being made through any intermediate owners, *or directly from any constructively owned foreign subsidiaries, where applicable*") (emphasis added).

The Treasury Department and the IRS believe this rule appropriately balances the need for a comprehensive mechanism to correct a foreign acquired corporation's basis imbalance with administrability concerns. For example, while in many cases the basis imbalance could be corrected by taking into account the earnings and profits of the particular subsidiary that participated in an applicable triangular reorganization, that subsidiary may no longer be identifiable or exist when the EAB rules are applied to the foreign acquired corporation. Thus, sourcing specified earnings on a pro rata basis from related foreign corporations provides an administrable rule while reducing the possibility that the basis imbalance goes uncorrected.

Effect on Other Documents

The following publications are obsoleted as of July 17, 2024:

Notice 2014-32 (2014-20 IRB 1006)

Notice 2016-73 (2016-52 IRB 908)

Special Analyses

I. *Regulatory Planning and Review – Economic Analysis*

Pursuant to the Memorandum of Agreement, Review of Treasury Regula-

tions under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the OMB.

The collections of information in §1.367(b)-1(c)(4)(viii) and (ix) apply to taxpayers that engage in transactions described in §1.367(b)-3(g) or §1.367(b)-10. These reporting requirements are necessary for the IRS's audit and examination purposes, and in particular to identify transactions that should be subject to these final regulations.

The information collection is a statement by corporations attached to their timely filed Federal tax returns (or Form 5471, as applicable) that describes certain transactions and computations, as described in §§1.367(b)-3(g) and 1.367(b)-10, that are relevant to these final regulations. Any collection burden will be accounted for in OMB control number 1545-0123.

Taxpayers should keep copies of their filed returns and associated documentation as required by section 6001 of the Internal Revenue Code (the Code). These general tax records are already approved by the OMB under control number 1545-0123. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Code.

III. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act. As discussed in the preamble to the Proposed Regulations, this certification is based on the expectation that the taxpayers affected by these final regulations will generally be domestic and foreign corporations that participate in certain triangular reorganizations. The triangular reorganizations at issue represent a narrow set of abusive transactions that have typically been engaged in by large, publicly traded corporations. Such transactions are highly sophisticated and are thus unlikely to involve small domestic entities.

IV. *Section 7805(f)*

Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations (REG-117614-14) preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business, and no comments were received.

V. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. These final regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

VI. *Executive Order 13132: Federalism*

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These final regulations do not have federalism implications, do not impose substantial direct compliance costs on State and local governments, and do not preempt State law within the meaning of the Executive order.

Statement of Availability of IRS Documents

Any IRS Revenue Procedure, Revenue Ruling, Notice, or other guidance cited in this document is published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov*.

Drafting Information

The principal author of these regulations is Brady Plastaras of the Office of the Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for §1.1411-10 in numerical order to read in part as follows:

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

Section 1.1411-10 also issued under 26 U.S.C. 367.

* * * * *

Par. 2. Section 1.367(a)-3 is amended by revising paragraphs (a)(2)(iv) and (g)(1)(viii) to read as follows:

§1.367(a)-3 Treatment of transfers of stock or securities to foreign corporations.

(a) * * *

(2) * * *

(iv) *Certain triangular reorganizations described in §1.367(b)-10*. If, in an exchange under section 354 or 356, one or more U.S. persons exchange stock or securities of T (as defined in §1.367(b)-10(a)(3)(i)) in connection with a transaction described in §1.367(b)-10 (applying to certain acquisitions of parent stock or securities for property in triangular reorganizations), section 367(a)(1) does not apply to such U.S. persons with respect to the exchange of the stock or securities of T if the condition in paragraph (a)(2)(iv)(A) or (B) of this section is satisfied. *See* §1.367(b)-10(a)(2)(iii) (providing a similar rule that excludes certain transactions from the application of §1.367(b)-10).

(A) The amount of gain in the T stock or securities that would otherwise be recognized under section 367(a)(1) (without regard to any exceptions thereto) pursuant to the indirect stock transfer rules of paragraph (d) of this section is less than the sum of the amount of the deemed distribution under §1.367(b)-10 that would be treated and subject to U.S. tax as a dividend under section 301(c)(1) (or would give rise to an inclusion under section 951(a)(1)(A) or 951A(a) that would be subject to U.S. tax) and the amount of such deemed distribution that would be treated and subject to U.S. tax as gain from the sale or exchange of property under section 301(c)(3) (or would give rise to an inclusion under section 951(a)(1)(A) or 951A(a) that would be subject to U.S. tax) if §1.367(b)-10 would otherwise apply to the triangular reorganization.

(B) T is a foreign corporation, but only to the extent that the stock or securities of T are exchanged for stock or securities of P that were acquired by S in exchange for property in the P acquisition (as the terms P, S, property, and P acquisition are defined in §1.367(b)-10(a)). Such exchange of T stock or securities is subject to the rules under §1.367(b)-4(g). Section 367(a) applies to the exchange of T stock or securities to the extent that such stock or securities are exchanged for P stock or securities that were not acquired by S in exchange for property in the P acquisition.

* * * * *

(g) * * *

(1) * * *

(viii) Except as provided in this paragraph (g)(1)(viii), paragraph (a)(2)(iv) of this section applies to exchanges occurring on or after May 17, 2011. For exchanges that occur prior to May 17, 2011, *see* §1.367(a)-3T(b)(2)(i)(C) as contained in 26 CFR part 1 revised as of April 1, 2011. Paragraph (a)(2)(iv)(A) of this section, to the extent it relates to amounts that would be subject to U.S. tax or give rise to an inclusion under section 951(a)(1)(A) that would be subject to U.S. tax, applies to triangular reorganizations that are completed on or after April 25, 2014, unless T was not related to P or S (within the meaning of section 267(b)) immediately before the triangular reorganization; the triangular reorganization was entered into either pursuant to a written agreement that was (subject to customary conditions) binding before April 25, 2014, and at all times afterwards, or pursuant to a tender offer announced before April 25, 2014, that is subject to section 14(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78n(d)(1)) and Regulation 14(D) (17 CFR 240.14d-1 through 240.14d-101) or that is subject to comparable foreign laws; and to the extent the P acquisition that occurs pursuant to the plan of reorganization is not completed before April 25, 2014, the P acquisition was included as part of the plan before April 25, 2014. Paragraph (a)(2)(iv)(B) of this section applies to transactions completed on or after December 2, 2016. Paragraph (a)(2)(iv)(A) of this section, to the extent it relates to amounts that would give rise to an inclusion under section 951A(a) that would be subject to U.S. tax, applies to triangular reorganizations that are completed on or after October 5, 2023.

* * * * *

Par. 3. Section 1.367(b)-1 is amended by:

1. Removing the language "and" at the end of paragraph (c)(2)(iv)(B);

2. Removing the period at the end of paragraph (c)(2)(v) and adding the language "; and" in its place;

3. Adding paragraph (c)(2)(vi);

4. In paragraph (c)(3)(ii)(A), removing the language "paragraph (c)(2)(i) or (v)" and adding in its place the language "paragraph (c)(2)(i), (v), or (vi)";

5. Revising paragraph (c)(4)(v);

6. Removing the language "and" at the end of paragraph (c)(4)(vi);

7. Removing the period at the end of paragraph (c)(4)(vii)(B) and adding a semicolon in its place; and

8. Adding paragraphs (c)(4)(viii) and (ix).

The additions and revision read as follows:

§1.367(b)-1 Other transfers.

* * * * *

(c) * * *

(2) * * *

(vi) A domestic or foreign corporation (S) that acquires stock or securities of another corporation (P) in a transaction described in §1.367(b)-10(a)(1), without regard to the exceptions in §1.367(b)-10(a)(2).

* * * * *

(4) * * *

(v) Any information that is or would be required to be furnished with a Federal income tax return pursuant to regulations or other guidance under section 332, 351, 354, 355, 356, 361, 368, or 381 (whether or not a Federal income tax return is required to be filed), if such information has not otherwise been provided by the person filing the section 367(b) notice;

* * * * *

(viii) In the case of a corporation (S) described in paragraph (c)(2)(vi) of this section, the rules of this paragraph (c)(4) apply by treating the acquisition of the stock or securities of P in exchange for property as the section 367(b) exchange referred to in paragraph (a) of this section. The section 367(b) notice must also include a complete description of the acquisition of the stock or securities of P in exchange for property, including a description of the property provided in exchange for the stock or securities and any related transactions involving the acquisition of the stock or securities. The section 367(b) notice must describe any adjustments made pursuant

to §1.367(b)-10 or, if no adjustments are made, explain why no such adjustments were made; and

(ix) In the case of an exchange to which §1.367(b)-3(g) applies, a statement describing how any excess asset basis (as defined in §1.367(b)-3(g)(2)(i)) arose, the amount of excess asset basis, and a description of the computation of the amount of excess asset basis.

* * * * *

Par. 4. Section 1.367(b)-2 is amended by:

1. In paragraph (c)(1), adding a sentence after the current first sentence;

2. Adding a sentence to the end of paragraph (d)(2)(ii);

3. In paragraph (d)(3)(ii), removing the language "subsidiaries of" and adding in its place the language "corporations owned by";

4. Adding a sentence to the end of paragraph (d)(3)(ii);

5. In paragraph (e)(4) (*Example 2*), removing the language "foreign subsidiary" and adding in its place the language "foreign corporation"; and

6. In paragraphs (j)(2)(i) and (ii), removing the language "is required to include in income either the all earnings and profits amount or the section 1248 amount under the provisions of §1.367(b)-3 or 1.367(b)-4" and adding in its place the language "exchanges stock pursuant to a transaction described in §1.367(b)-3 or §1.367(b)-4(b)(1)(i), (b)(2)(i), (b)(3), (e), or (g)".

The additions read as follows:

§1.367(b)-2 Definitions and special rules.

* * * * *

(c) * * *

(1) * * * But *see* §1.1411-10(c)(3)(ii), which for certain exchanges modifies the section 1248 amount for purposes of section 1411. * * *

* * * * *

(d) * * *

(2) * * *

(ii) * * * But *see* §1.1411-10(c)(3)(ii), which for certain exchanges modifies the all earnings and profits amount for purposes of section 1411.

* * * * *

(3) * * *

(ii) * * * But *see* §1.367(b)-3(g)(1), which adjusts the all earnings and profits amount through a deemed distribution of certain earnings and profits of foreign subsidiaries owned by the foreign acquired corporation.

* * * * *

Par. 5. Section 1.367(b)-3 is amended by adding paragraph (g) to read as follows:

§1.367(b)-3 Repatriation of foreign corporate assets in certain nonrecognition transactions.

* * * * *

(g) *All earnings and profits amount adjusted for excess asset basis*—(1) *General rule*. If there is excess asset basis with respect to a foreign acquired corporation and the condition described in paragraph (g)(1)(i) or (ii) of this section is satisfied, then, except as provided in paragraph (g)(5) of this section, an exchanging shareholder to which paragraph (b)(3)(i) of this section applies must compute the all earnings and profits amount with respect to its stock in the foreign acquired corporation as if, immediately before the inbound nonrecognition transaction, the foreign acquired corporation had received a distribution of property from a foreign subsidiary under section 301 in an amount equal to the specified earnings. In addition, the deemed distribution described in the preceding sentence is treated as occurring for all purposes of the Internal Revenue Code. For purposes of this paragraph (g)(1), the amount of the distribution from a foreign subsidiary is equal to the amount of earnings and profits of that foreign subsidiary that is designated as specified earnings under paragraph (g)(3) of this section. In the case of a foreign subsidiary the stock of which is not held directly by the foreign acquired corporation, the distribution is treated as being made through any intermediate owners, or directly from any constructively owned foreign subsidiaries, where applicable. For purposes of this paragraph (g)(1), references to the foreign acquired corporation, S, and a foreign subsidiary include any predecessor corporation.

(i) S previously acquired in exchange for property stock or securities of the foreign acquired corporation in connection with a triangular reorganization described in §1.358-6(b)(2), and the foreign acquired corporation and S did not make adjustments that have the effect of a distribution of property from S to the foreign acquired corporation under §1.367(b)-10(b)(1).

(ii) The excess asset basis is attributable, directly or indirectly, to property previously provided by a foreign subsidiary of the foreign acquired corporation in connection with a transaction not described in paragraph (g)(1)(i) of this section and undertaken with a principal purpose to create such excess asset basis.

(2) *Definitions*. The following definitions apply for purposes of this paragraph (g).

(i) *Excess asset basis*. The term *excess asset basis* means, with respect to a foreign acquired corporation, the amount by which the inside asset basis of that corporation exceeds the sum of the following amounts:

(A) The earnings and profits of the foreign acquired corporation attributable to its outstanding stock. For purposes of this paragraph (g)(2)(i)(A), such earnings and profits are determined under the principles of §1.367(b)-2(d) but without regard to whether the exchanging shareholder is described in paragraph (b)(1) of this section or whether the exchanging shareholder is a U.S. person or a foreign person. Such earnings and profits include amounts described in section 1248(d)(3) or (4).

(B) The aggregate basis in the outstanding stock of the foreign acquired corporation determined immediately before the nonrecognition transaction described in paragraph (a) of this section (the inbound nonrecognition transaction) and therefore without regard to any basis increase described in §1.367(b)-2(e)(3)(ii) resulting from such inbound nonrecognition transaction.

(C) The aggregate amount of liabilities of the foreign acquired corporation that are assumed (determined under the principles of section 357(d)) by the domestic acquiring corporation in the inbound nonrecognition transaction.

(ii) *Foreign subsidiary*. The term *foreign subsidiary* means, with respect to a foreign acquired corporation, a foreign corporation with respect to which the foreign acquired corporation satisfies the ownership requirements of section 1248(c)(2)(B) but for this purpose treat-

ing the foreign acquired corporation as the United States person referred to in section 1248(c)(2)(B).

(iii) *Inbound nonrecognition transaction*. The term *inbound nonrecognition transaction* has the meaning set forth in paragraph (g)(2)(i)(B) of this section.

(iv) *Inside asset basis*. The term *inside asset basis* means, with respect to a foreign acquired corporation, the aggregate of the adjusted basis of all the assets of that corporation in the hands of the domestic acquiring corporation determined immediately after the inbound nonrecognition transaction.

(v) *Lower-tier earnings*. The term *lower-tier earnings* means, with respect to a foreign acquired corporation, the sum of the earnings and profits (including deficits) of each foreign subsidiary.

(vi) *Property*. The term *property* has the same meaning as in §1.367(b)-10(a)(3)(ii).

(vii) *S*. The term *S* has the same meaning as in §1.367(b)-10(a)(3)(i).

(viii) *Specified earnings*. The term *specified earnings* means, with respect to a foreign acquired corporation, the lesser of the following amounts:

(A) Lower-tier earnings; and

(B) The excess asset basis of the foreign acquired corporation.

(3) *Designation of specified earnings*. If lower-tier earnings exceed specified earnings, then the portion of lower-tier earnings that is designated as specified earnings is determined by reference to the earnings and profits of each foreign subsidiary on a pro rata basis in proportion to each foreign subsidiary's share of lower-tier earnings.

(4) *Anti-abuse rule*. Appropriate adjustments are made pursuant to this section if a transaction is engaged in with a view to avoid the purposes of this paragraph (g). For example, if a transaction is engaged in with a view to reduce excess asset basis, including by increasing the basis in the stock of the foreign acquired corporation without a corresponding increase in the basis of the assets of the foreign acquired corporation, that increase in the basis in the stock of the foreign acquired corporation will be disregarded for purposes of computing excess asset basis.

(5) *Prohibition against affirmative use*. This paragraph (g) does not apply to an inbound nonrecognition transaction if a transaction described in paragraph (g)(1) of this section was entered into with a principal purpose of subjecting the inbound nonrecognition transaction to this paragraph (g). For example, this paragraph (g) will not apply to an inbound nonrecognition transaction if a taxpayer engaged in a transaction described in paragraph (g)(1) of this section with a principal purpose of accessing tax attributes of lower-tier foreign subsidiaries by reason of a deemed distribution of lower-tier earnings of the foreign acquired corporation.

(6) *Examples*. The application of this paragraph (g) is illustrated by the examples in this paragraph (g)(6). In each example, all corporations have a calendar year-end and use the United States dollar as their functional currency.

(i) *Example 1: Excess asset basis from triangular reorganization*—(A) *Facts*. USP, a domestic corporation, owns all of the stock of USS, also a domestic corporation, and 80 percent of the stock of FP, a foreign corporation. USS owns the remaining 20 percent of the stock of FP. FP owns all of the stock of FS1, which in turn owns all of the stock of FS2. Both FS1 and FS2 are foreign corporations. In a reorganization described in section 368(a)(1)(F) (F reorganization), US Newco, a newly formed domestic corporation, acquires all of the assets of FP solely in exchange for stock of US Newco, which FP distributes to USP and USS in liquidation. Immediately before the F reorganization, the stock of FP owned by USP has a fair market value of $80x and an adjusted basis of $4x. The stock of FP owned by USS has a fair market value of $20x and an adjusted basis of $1x. The all earnings and profits amounts with respect to USP's stock of FP and USS's stock of FP, determined before any adjustments required by paragraph (g)(1) of this section, are $32x and $8x, respectively. FP holds assets with an adjusted basis of $95x, has no liabilities, and has $40x of earnings and profits attributable to its outstanding stock. FS1 and FS2 have $30x and $70x of earnings and profits, respectively, all of which are described in section 959(c)(3). Dividends paid by FS2 to FS1, and by FS1 to FP, would qualify for the exception to foreign personal holding company income under section 954(c)(6). Before the applicability date described in paragraph (g)(7)(i) of this section, and separate from the F reorganization, FS1 provided property to FP in exchange for stock of FP in connection with a triangular reorganization described in §1.358-6(b)(2), and neither FP nor FS1 made adjustments that had the effect of a distribution of property from FS1 to FP under §1.367(b)-10(b)(1).

(B) *Analysis*—(*1*) *All earnings and profits amount*. The F reorganization is an asset acquisition described in section 368(a)(1) and is thus subject to section 367(b) and this section. Under paragraph (b)(3) of this section, USP and USS each must include in income as a deemed dividend the all earnings and profits amount with respect to their stock of FP. Because there is excess asset basis with respect to FP (as determined in paragraph (g)(6)(i)(B)(*2*) of this section), USP and USS must compute the all earnings and profits amounts attributable to their stock of FP as if FP had received a distribution of specified earnings, immediately before the F reorganization. *See* paragraph (g)(1) of this section. Because the stock of FS2 is indirectly owned by FP, to the extent the specified earnings are determined by reference to the earnings and profits of FS2, FS2 is treated as making a distribution to FS1 under section 301, and FS1 is then treated as making a distribution to FP under section 301 in an amount equal to the sum of the amount of specified earnings determined by reference to the earnings and profits of FS1 (determined without regard to the deemed distribution from FS2) and the amount of the deemed distribution received from FS2. *See id*.

(*2*) *Excess asset basis*. The amount of excess asset basis is $50x, calculated as the amount by which FP's inside asset basis ($95x) exceeds the sum of FP's earnings and profits ($40x), the aggregate basis in the outstanding stock of FP ($5x), and the amount of liabilities of FP assumed by US Newco in the F reorganization ($0). *See* paragraph (g)(2)(i) of this section.

(*3*) *Deemed distribution of specified earnings*. The amount of specified earnings equals $50x, the lesser of the following amounts: the sum of the earnings and profits of FS1 and FS2 ($100x); and the amount of excess asset basis with respect to FP ($50x). *See* paragraph (g)(2)(viii) of this section. FP is accordingly treated as receiving a distribution of $50x from FS1. *See* paragraph (g)(1) of this section. Under paragraph (g)(3) of this section, $15x ($50x x ($30x / $100x)) of FS1's earnings and profits and $35x ($50x x ($70x / $100x)) of FS2's earnings and profits are designated as specified earnings. FS2 is treated as distributing $35x to FS1. *See* paragraph (g)(1) of this section. Under sections 301(c)(1) and 954(c)(6), the $35x deemed distribution from FS2 to FS1 is treated as a dividend that does not give rise to foreign personal holding company income. FS1 must accordingly increase its earnings and profits described in section 959(c)(3) by $35x to $65x, and FS2 must decrease its earnings and profits described in section 959(c)(3) by the same amount. FS1 is then treated as making a distribution of $50x to FP. *See* paragraph (g)(1) of this section. Under sections 301(c)(1) and 954(c)(6), the $50x deemed distribution is also treated as a dividend that does not give rise to foreign personal holding company income. FP must accordingly increase its earnings and profits described in section 959(c)(3) by $50x to $90x, and FS1 must decrease its earnings and profits described in section 959(c)(3) by the same amount.

(*4*) *Adjusted all earnings and profits amount attributable to USP's FP stock*. USP must compute the all earnings and profits amount attributable to its stock of FP after taking into account the $50x increase to FP's earnings and profits that resulted from the deemed distribution of specified earnings. *See* paragraph (g)(1) of this section. Because USP owns 80% of the stock of FP, $40x (calculated as

80% of $50x) of the specified earnings are attributable to USP's stock of FP and are included in the all earnings and profits amount attributable to USP's stock of FP. The all earnings and profits amount that USP must include in income as a deemed dividend is therefore $72x ($32x + $40x).

(*5*) *Adjusted all earnings and profits amount attributable to USS's FP stock*. USS must compute the all earnings and profits amount attributable to its stock of FP after taking into account the $50x increase to FP's earnings and profits that resulted from the deemed distribution of specified earnings. *See* paragraph (g)(1) of this section. Because USS owns 20% of the stock of FP, $10x (calculated as 20% of $50x) of the specified earnings are attributable to USS's stock of FP and are included in the all earnings and profits amount attributable to USS's stock of FP. The all earnings and profits amount that USS must include in income as a deemed divided is therefore $18x ($8x + $10x).

(ii) *Example 2: Principal purpose of creating excess asset basis*--(A) *Facts*. USP, a domestic corporation, owns all of the stock of FP, which in turn owns all of the stock of FS. Both FP and FS are foreign corporations. The all earnings and profits amount with respect to USP's stock of FP, determined before any adjustments required by paragraph (g)(1) of this section, is $50x. FP has no other earnings and profits other than the $50x that reflect USP's all earnings and profits amount. FS has $200x of earnings and profits, all of which are earnings and profits described in section 959(c)(2) (PTEP) because those earnings and profits gave rise to an earlier income inclusion under section 951 with respect to USP. Increases in stock basis were made under section 961 by reason of USP's section 951 inclusion. FP has excess asset basis of $100x as a result of a previous transaction that was undertaken with a principal purpose of creating excess asset basis in which FS provided $100x of property to FP. At the time of that transaction, FP did not also have a principal purpose of subjecting an inbound nonrecognition transaction to this paragraph (g) and thus paragraph (g)(5) of this section is not applicable. Subsequently, in a liquidation described in section 332, FP distributes all of its assets to USP and the stock of FP is cancelled (the FP liquidation).

(B) *Analysis*—(*1*) *All earnings and profits amount*. The FP liquidation is subject to section 367(b) and this section. Under paragraph (b)(3) of this section, USP must include in income as a deemed dividend the all earnings and profits amount with respect to its stock of FP. Because there is excess asset basis with respect to FP, USP must compute the all earnings and profits amount attributable to its stock of FP as if FP had received a distribution of specified earnings immediately before the FP liquidation. *See* paragraph (g)(1) of this section.

(*2*) *Deemed distribution of specified earnings*. The amount of specified earnings equals $100x, the lesser of the following amounts: the earnings and profits of FS ($200); and the amount of excess asset basis with respect to FP ($100x). *See* paragraph (g)(2)(viii) of this section. FS is accordingly treated as making a distribution of $100x to FP. *See* paragraph (g)(1) of this section. Under sections 301(c)(1) and 959(b), the $100x deemed distribution from FS to FP is treated as a distribution of PTEP that is not included in the gross income of FP for purposes of section 951. The distribution reduces FS's earnings and profits and PTEP with respect to USP by $100x and increases FP's earnings and profits and PTEP with respect to USP by $100x. Furthermore, appropriate adjustments are made under section 961 for the distribution of PTEP.

(*3*) *Adjusted all earnings and profits amount attributable to USP's stock of FP*. USP must compute the all earnings and profits amount attributable to its stock of FP after taking into account the $100x increase to FP's earnings and profits that resulted from the deemed distribution of specified earnings. *See* paragraph (g)(1) of this section. Because the deemed distribution consisted entirely of PTEP with respect to USP, the deemed distribution does not affect USP's all earnings and profits amount of $50x. *See* §1.367(b)-2(d)(2)(ii). USP must therefore include $50x in income as a deemed dividend under this section. USP must also recognize any foreign currency gain or loss under section 986(c) with respect to the $100x of PTEP of FP. *See* §1.367(b)-2(j)(2).

(7) *Applicability date*—(i) *In general*. This paragraph (g) (other than paragraphs (g)(2)(viii), (g)(3) and (5) of this section) applies to transactions completed on or after December 2, 2016, and to any transactions treated as completed before December 2, 2016, as a result of an entity classification election made under §301.7701-3 of this chapter that is filed on or after December 2, 2016. Paragraphs (g)(2)(viii), (g)(3) and (5) of this section apply to transactions completed on or after October 5, 2023.

(ii) *Transactions completed (or elections made) on or after December 2, 2016, and before October 5, 2023.* Except as provided in paragraph (g)(7)(iii) of this section, the following definitions (in lieu of the corresponding definitions or in addition to the definitions in paragraph (g)(2) of this section) and rules apply with respect to transactions completed on or after December 2, 2016, and to any transactions treated as completed before December 2, 2016, as a result of an entity classification election made under §301.7701-3 of this chapter that is filed on or after December 2, 2016, but before October 5, 2023:

(A) The term *specified earnings* means, with respect to the stock of a foreign acquired corporation that is exchanged by an exchanging shareholder, the lesser of the following amounts (but not below zero):

(*1*) The sum of the earnings and profits (including a deficit) with respect to each foreign subsidiary of the foreign acquired corporation that are attributable under section 1248(c)(2) to the stock of the foreign acquired corporation exchanged (lower-tier earnings). For purposes of the preceding sentence, the modifications described in §1.367(b)-2(d)(2) and (d)(3)(i) apply. Thus, for example, the amount of the earnings and profits of a foreign subsidiary that are attributable to stock of the foreign acquired corporation is determined without regard to whether the foreign subsidiary was a controlled foreign corporation at any time during the five years preceding the inbound nonrecognition transaction.

(*2*) The product of the excess asset basis of the foreign acquired corporation, multiplied by the exchanging shareholder's specified percentage.

(*3*) The amount of gain that would be realized by the exchanging shareholder if, immediately before the inbound nonrecognition transaction, the exchanging shareholder had sold the stock of the foreign acquired corporation for fair market value, reduced by the exchanging shareholder's all earnings and profits amount (for this purpose, determined without regard to the modifications described in this paragraph (g)) (specified stock gain).

(B) The term *specified percentage* means, with respect to an exchanging shareholder, a fraction (expressed as a percentage), the numerator of which is the sum of the aggregate of the specified stock gain with respect to all exchanging shareholders to which paragraph (b)(3) of this section applies and the aggregate of the gain realized (regardless of whether such gain is recognized) with respect to the stock exchanged by all other exchanging shareholders.

(C) If there is excess asset basis with respect to a foreign acquired corporation, as determined under paragraph (g)(2)(i) of this section, a taxpayer may reduce the excess asset basis to the extent that the excess asset basis is not attributable, directly or indirectly, to property provided by a foreign subsidiary of the foreign acquired corporation. For example, if there was a transfer of prop-

erty to the foreign acquired corporation described in section 362(e)(2), and the election described in section 362(e)(2)(C) was made to limit the basis in the stock received in the foreign acquired corporation to its fair market value, then, for purposes of determining excess asset basis, the basis in the stock of the foreign acquiring corporation may be determined without regard to the application of section 362(e)(2).

(iii) *Early application*. A taxpayer and its related parties (within the meaning of sections 267(b) and 707(b)(1)) may choose to apply paragraphs (g)(1) through (6) of this section to all open taxable years beginning before July 17, 2024, provided that the taxpayer and its related parties consistently apply paragraphs (g)(1) through (6) of this section and §1.367(b)-1(c)(4)(ix) for such years.

Par. 6. Section 1.367(b)-4 is amended by:

1. In paragraph (a), adding a sentence after the fifth sentence;

2. In paragraph (a), removing the language "paragraph (g)" in the current sixth sentence and adding in its place the language "paragraph (h)" and removing the language "paragraph (h)" in the current seventh sentence and adding in its place the language "paragraph (i)";

3. In paragraph (e)(5) *Example 2* (ii)(B), removing the language "paragraph (g)(1)" wherever it appears and adding in its place the language "paragraph (h)(1)";

4. In paragraph (f)(3) *Example 2* (ii), removing the language "paragraph (g)(1)" wherever it appears and adding in its place the language "paragraph (h)(1)";

5. Redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively;

6. Adding a new paragraph (g);

7. In newly redesignated paragraph (i), adding a sentence after the sixth sentence; and

8. In newly redesignated paragraph (i), removing the language "paragraph (h), paragraphs (a), (b) introductory text, (b)(1)(i)(C), (d)(1), (e), (f), and (g)" and adding in its place the language "paragraph (i), paragraphs (a), (b) introductory text, (b)(1)(i)(C), (d)(1), (e), (f), and (h)", and removing the language "paragraphs (f) and (g)(5)" and adding in its place the language "paragraphs (f) and (h)(5)".

The additions read as follows:

§1.367(b)-4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

(a) * * * Paragraph (g) of this section provides rules regarding exchanges that occur pursuant to a transaction described in §1.367(b)-10(a)(1), without regard to the exceptions in §1.367(b)-10(a)(2). * * * * * * * *

(g) *Income inclusion and gain recognition in exchanges occurring in connection with certain triangular reorganizations*—(1) *Rule*. If, in an exchange under section 354 or 356 that occurs in connection with a transaction described in §1.367(b)-10, an exchanging shareholder exchanges stock or securities of a foreign acquired corporation, then, to the extent that the exchanging shareholder receives stock or securities of P acquired by S in exchange for property in the P acquisition, the shareholder must--

(i) Include in income as a deemed dividend the section 1248 amount attributable to the stock that the shareholder exchanges; and

(ii) After taking into account the increase in basis in the stock provided in §1.367(b)-2(e)(3)(ii) resulting from the deemed dividend (if any), recognize all realized gain with respect to the stock or securities that would not otherwise be recognized.

(2) *Special rules and definitions*. For the purposes of this paragraph (g), an *exchanging shareholder* means a United States person or foreign person that exchanges stock of a foreign acquired corporation in a prescribed exchange, regardless of whether such United States person is a section 1248 shareholder or such foreign person is a foreign corporation in which a United States person is a section 1248 shareholder. As used in this paragraph (g), the terms P, S, property, and P acquisition have the meanings provided in §1.367(b)-10(a), and the term *foreign person* means a person that is not a United States person.

(3) *Example*. The following example illustrates the rules of this paragraph (g):

(i) *Facts*. USP, a domestic corporation, owns all of the stock of FP and USS. FP is a foreign corporation that owns all of the stock of FS, a foreign corporation. USS is a domestic corporation that owns all of the stock of FT, a foreign corporation. USS owns 100 shares of stock of FT, which constitutes a single block of stock with a fair market value of $100x, an adjusted basis of $20x, and a section 1248 amount of $50x. FS has earnings and profits of $60x. A dividend from FS to FP would qualify for the exception to foreign personal holding company income under section 954(c)(6). FP issues 100 shares of voting stock with a fair market value of $100x to FS, $40x of which (the 40-percent FP block) is issued in exchange for $40x of newly issued common stock of FS and $60x of which (the 60-percent FP block) is issued in exchange for $60x of cash. FS acquires all of the stock of FT held by USS solely in exchange for the $100x of voting stock of FP (that is, FS exchanges both the 40-percent FP block and the 60-percent FP block) in a triangular reorganization described in section 368(a)(1)(B) (triangular B reorganization).

(ii) *Analysis*—(A) *Application of §1.367(b)-10*. The triangular B reorganization is described in §1.367(b)-10, and the $60x of cash constitutes property under §1.367(b)-10(a)(3)(ii). Pursuant to §1.367(b)-10(b)(1), adjustments must be made that have the effect of a distribution of property in the amount of $60x from FS to FP under section 301. The $60x deemed distribution is treated as separate from, and occurring immediately before, FS's acquisition of the 60-percent FP block used in the triangular B reorganization. The $60x deemed distribution from FS to FP results in $60x of dividend income to FP under section 301(c)(1) that is not foreign personal holding company income under section 954(c)(6).

(B) *Application of paragraph (g) of this section*. Pursuant to §1.367(a)-3(a)(2)(iv)(B), this paragraph (g) applies to $60x of the stock of FT (the 60-percent FT block) exchanged for the 60-percent FP block. Thus, under paragraph (g)(1)(i) of this section, USS must include in income a $30x deemed dividend (representing 60 percent of USS's $50x section 1248 amount) with respect to the 60-percent FT block exchanged for the 60-percent FP block. In addition, under paragraph (g)(1)(ii) of this section, USS must recognize its realized gain that would not otherwise be recognized with respect to the 60-percent FT block. USS's fair market value and adjusted basis in the 60-percent FT block are $60x (60 percent of the $100x fair market value of the stock of FT) and $12x (60 percent of the $20x adjusted basis of the stock of FT), respectively. USS's initial built-in gain with respect to the 60-percent FT block is accordingly $48x ($60x fair market value less $12x adjusted basis). The $30x deemed dividend increases USS's basis in the 60-percent FT block to $42 ($12x + $30x), leaving $18x ($60x - $42x) of built-in gain. USS must therefore recognize the remaining $18x of gain with respect to the 60-percent FT block.

(C) *Application of paragraph (b) of this section and regulations under section 367(a)*. USS has $32x of built-in gain in the remaining $40x of stock of FT (the 40-percent FT block) that USS exchanged for the 40-percent FP block, calculated as USS's initial $80 of built-in gain in all of its stock of FT less the $48x of initial built-in gain attributable to the 60-percent FT block. USS's section 1248 amount in the 40-percent FT block is $20x, calculated as 40 percent of USS's $50x section 1248 amount. USS does not recognize a deemed dividend of the $20x

section 1248 amount under paragraph (b) of this section because FT remains a controlled foreign corporation with respect to which USS is a section 1248 shareholder immediately after the triangular B reorganization. Unless USS properly files a gain recognition agreement pursuant to §§1.367(a)-3(b) and 1.367(a)-8, USS recognizes the $32x of built-in gain under section 367(a)(1) with respect to the 40-percent FT block.

* * * * *

(i) * * * Paragraph (g) of this section applies to transactions completed on or after December 2, 2016. * * *

Par. 7. Section 1.367(b)-6 is amended by adding paragraphs (a)(1)(v) and (vi) to read as follows:

§1.367(b)-6 Effective/applicability dates and coordination rules.

(a) * * *

(1) * * *

(v) Section 1.367(b)-2(j)(2) applies to transactions completed on or after October 5, 2023, and to any transactions treated as completed before October 5, 2023, as a result of an entity classification election made under §301.7701-3 of this chapter that is filed on or after October 5, 2023.

(vi) Section 1.367(b)-1(c)(2)(vi), (c)(4)(viii), and (c)(4)(ix) apply to taxable years ending on or after October 5, 2023. However, a taxpayer and its related parties (within the meaning of sections 267(b) and 707(b)(1)) may choose to apply the rules referred to in the preceding sentence to all open taxable years ending before October 5, 2023, provided that the taxpayer and its related parties consistently apply such rules and §1.367(b)-3(g) for such years.

* * * * *

Par. 8. Section 1.367(b)-10 is amended by:

1. Adding two sentences to the end of paragraph (a)(1);

2. Revising paragraphs (a)(2)(ii) and (iii);

3. Removing the language "and" at the end of paragraph (a)(3)(ii)(A);

4. Removing the period at the end of paragraph (a)(3)(ii)(B) and adding the language "; and" in its place;

5. Adding paragraph (a)(3)(ii)(C);

6. Removing paragraph (b)(2);

7. Redesignating paragraphs (b)(3), (4), and (5) as paragraphs (b)(2), (3), and (4), respectively;

8. Revising newly redesignated paragraph (b)(2);

9. Adding two sentences to the end of newly redesignated paragraph (b)(3);

10. In newly redesignated paragraph (b)(4)(ii), removing the sixth sentence, revising the current seventh sentence, and adding two sentences at the end of the paragraph; and

11. Revising paragraphs (c), (d), and (e).

The revisions and additions read as follows:

§1.367(b)-10 Acquisition of parent stock or securities for property in triangular reorganizations.

(a) * * *

(1) * * * *See* §1.367(b)-3(g) for the treatment of certain inbound nonrecognition transactions following transactions described in this section. *See* §1.367(b)-4(g) for rules applicable to certain exchanging shareholders that exchange stock of T in connection with a transaction described in this section.

(2) * * *

(ii) S is a domestic corporation, P is not a controlled foreign corporation (within the meaning of §1.367(b)-2(a)), P's stock in S is not a United States real property interest (within the meaning of section 897(c)), and the deemed distribution that would result from the application of this section would not be treated as a dividend under section 301(c)(1) that would be subject to U.S. tax under either section 881 (for example, by reason of an applicable treaty or by reason of an absence of earnings and profits) or section 882; or

(iii) In an exchange under section 354 or 356, one or more U.S. persons exchange stock or securities of T and the amount of gain in the T stock or securities that would otherwise be recognized under section 367(a)(1) is equal to or greater than the sum of the amount of the deemed distribution under this section that would be treated and subject to U.S. tax as a dividend under section 301(c)(1) (or would give rise to an inclusion under section 951(a)(1)(A) or 951A(a) that would be subject to U.S. tax) and the amount of such deemed distribution that would be treated and subject to U.S. tax as gain from the sale or exchange of property under section 301(c)(3) (or would give rise to an inclusion under section 951(a)(1)(A) or 951A(a) that would be subject to U.S. tax) if this section would otherwise apply to the triangular reorganization. The exception provided in this paragraph (a)(2)(iii) does not apply if T is a foreign corporation. *See* §1.367(a)-3(a)(2)(iv) (providing a similar rule that excludes certain transactions from the application of section 367(a)(1)).

(3) * * *

(ii) * * *

(C) Stock of S that is nonqualified preferred stock (as defined in section 351(g)(2)).

* * * * *

(b) * * *

(2) *Timing of deemed distribution*. If P controls (within the meaning of section 368(c)) S at the time of the P acquisition, the adjustments described in paragraph (b)(1) of this section are made as if the deemed distribution is a separate transaction occurring immediately before the P acquisition. If P does not control (within the meaning of section 368(c)) S at the time of the P acquisition, the adjustments described in paragraph (b)(1) of this section are made as if the deemed distribution is a separate transaction occurring immediately after P acquires control of S, but before the reorganization.

(3) * * * Thus, P's adjustment to the basis in its S stock under §1.358-6 is determined as if P provided the P stock or securities pursuant to the plan of reorganization, notwithstanding that S acquired the P stock or securities in exchange for property in the P acquisition. *See also* §1.367(b)-13.

(4) * * *

(ii) * * * Pursuant to paragraph (b)(2) of this section, the adjustments described in paragraph (b)(1) of this section are made as if the deemed distribution is a separate transaction occurring immediately before FS's purchase of the P stock on the open market. * * * US1's transfer of its FT stock in exchange for P stock is subject to §1.367(b)-4(g). If, contrary to the facts in this paragraph (b)(4), US1 had built-in gain with respect to its FT stock, then such gain would be recognized in accordance with §1.367(b)-4(g).

(c) *Collateral adjustments*. This paragraph (c) provides additional rules that apply by reason of the deemed dis-

tribution described in paragraph (b)(1) of this section. A deemed distribution described in paragraph (b)(1) of this section is treated as occurring for all purposes of the Internal Revenue Code. Thus, for example, the ordering rules of section 301(c) apply to characterize the deemed distribution to P as a dividend from the earnings and profits of S, return of stock basis, or gain from the sale or exchange of property, as the case may be. Furthermore, section 959 may apply to the deemed distribution if S is a foreign corporation, and section 881, 882, 897, 1442, or 1445 may apply to the deemed distribution if S is a domestic corporation. Appropriate corresponding adjustments must be made to S's earnings and profits consistent with the principles of section 312.

(d) *Anti-abuse rule*—(1) *Rule*. Appropriate adjustments must be made pursuant to this section if, in connection with a triangular reorganization, a transaction is engaged in with a view to avoid the purpose of this section. For example, if S is created, organized, or funded to avoid the application of this section with respect to the earnings and profits of another corporation, the earnings and profits of S (or any successor corporation) may be deemed to include the earnings and profits of such other corporation (or any successor corporation) for purposes of determining the consequences of the adjustments provided in this section, and appropriate corresponding adjustments may be made to account for the application of this section to the earnings and profits of such other corporation (or any successor corporation). Adjustments may be made under this paragraph (d) whether S is funded before or after a triangular reorganization, and such funding may include capital contributions, loans, and distributions. The following examples illustrate the application of this paragraph (d), the application of which is not limited to the particular situations described in the examples.

(2) *Example 1: Deemed increase to S's earnings and profits*--(i) *Facts*. FP is a foreign corporation that owns all of the stock of USS, a domestic corporation. USS has no assets, liabilities, or earnings and profits. FP issues $10x of voting stock to USS in exchange for $10x of newly issued stock of USS, and FP also issues $90x of voting stock to USS in exchange for a note newly issued by USS with a fair market value of $90x (USS note). FP would be subject to U.S. tax under section 881 on a distribution from USS if, contrary to the facts, USS had earnings and profits for purposes of applying section 301(c) to the distribution. USS acquires all the stock of UST, a domestic corporation that is unrelated to FP and USS, from a foreign person in exchange for the $100x of voting stock of FP in a triangular reorganization described in section 368(a)(1)(B) (triangular B reorganization). UST has $100x of earnings and profits. USS's purchase of the $90x of stock of FP in exchange for the USS note in connection with the triangular B reorganization is engaged in with a view to avoid the purpose of this section.

(ii) *Analysis*. Because USS's purchase of the $90x of stock of FP in exchange for the USS note is engaged in with a view to avoid the purpose of this section, the anti-abuse rule applies and appropriate adjustments are made. In particular, for purposes of determining the consequences of the deemed distribution provided for in paragraph (b)(1) of this section, the earnings and profits of USS are deemed to include the earnings and profits of UST. USS is therefore treated as having made a deemed distribution equal to $90x, which reflects the portion of the stock of FP that USS acquired in exchange for property (the USS note). Because USS is deemed to have $100x of earnings and profits, the entire $90x deemed distribution is treated as a dividend under section 301(c)(1). The deemed distribution is treated as separate from, and occurring immediately before, USS's acquisition of the stock of FP used in the triangular B reorganization. No adjustments are made by FP to the basis in its stock of USS except as provided in §1.358-6. Under paragraph (b)(3) of this section, FP's adjustment to the basis in its stock of USS under §1.358-6 is determined as if FP provided all $100x of the stock of FP pursuant to the plan of reorganization.

(3) *Example 2: Downstream property transfer*—(i) *Facts*. USP is a domestic corporation that owns all of the stock of FS1, a foreign corporation, FS1 holds a note receivable issued by USP with a fair market value of $100x (USP note), and FS1 has more than $100x of earnings and profits. USP has no income inclusion under section 951(a)(1)(B) with respect to the USP note after the application of §1.956-1(a)(2). FS1 forms USS Newco, a domestic corporation, to which it transfers the USP note in exchange for voting stock of USS Newco. USS Newco then forms FS2 Newco, a foreign corporation, and FS1 transfers all of its remaining assets (except for its stock in USS Newco) to FS2 Newco in exchange for additional voting stock of USS Newco in a transaction intended to qualify as a triangular reorganization described in section 368(a)(1)(C) (triangular C reorganization). FS1 liquidates into USP pursuant to the triangular C reorganization, and USP receives the stock of USS Newco held by FS1. FS1's transfer of the USP note to USS Newco in connection with the intended triangular C reorganization is engaged in with a view to avoid the purpose of this section.

(ii) *Analysis*. Because FS1's transfer of the USP note to USS Newco is in connection with a triangular reorganization and is engaged in with a view to avoid the purpose of this section, the anti-abuse rule applies and appropriate adjustments are made. FS1's formation of USS Newco and transfer of the USP note to USS Newco, together with the distribution of the shares of USS Newco pursuant to the liquidation of FS1, is treated under the anti-abuse rule as a distribution of $100x, consistent with its substance. Accordingly, adjustments are made consistent with there having been such a distribution. Because FS1 has more than $100x of earnings and profits, the adjustments made are consistent with USS Newco having received a $100x dividend from FS1 separate from, and immediately before, the triangular C reorganization. USS Newco must therefore include $100x in gross income as if it had received that amount as a dividend and increase its earnings and profits by the same amount. FS1 must decrease its earnings and profits by $100x. For purposes of determining USS Newco's basis in its stock of FS2 Newco, §1.367(b)-13 applies by treating USS Newco as P (within the meaning of §1.367(b)-13(a)(2)(ii)). Under paragraph (b)(3) of this section, USS Newco's adjustment to the basis in its FS2 Newco stock under §1.367(b)-13 is determined as if USS Newco provided the stock of USS Newco stock pursuant to the plan of reorganization.

(4) *Example 3: Taxable debt exchange*—(i) *Facts*. USP is a domestic corporation that owns all of the stock of FP, a foreign corporation, and USS, a domestic corporation. Furthermore, FP owns all of the stock of FS, a foreign corporation, and USS owns all of the stock of UST, a domestic corporation. FP has no earnings and profits, and FS has more than $100x of earnings and profits. USP will not satisfy the requirements of sections 245A and 246(c) with respect to dividends received from FP. FS transfers a note issued by FS with a fair market value of $100x (FS note) to FP in exchange for $100x of voting stock of FP, and FS then uses the stock of FP to acquire all of the stock of UST held by USS in a triangular reorganization described in section 368(a)(1)(B) (triangular B reorganization). Because a dividend from FS to FP would not constitute foreign personal holding company income under section 954(c)(6), the taxpayer asserts that the exception in paragraph (a)(2)(iii) of this section applies and therefore does not make any adjustments pursuant to this section. FP then transfers the FS note to USP in exchange for a note issued by USP with a fair market value of $100x (USP note). The USP note constitutes United States property within the meaning of section 956(c), and USP would otherwise have an inclusion under section 951(a)(1)(B) and §1.956-1(a)(2) if FP had earnings and profits. FS's transfer of the FS note to FP, and FP's subsequent transfer of the FS note to USP in connection with the triangular B reorganization, are engaged in with a view to avoid the purpose of this section.

(ii) *Analysis*. Because the transfers of the FS note are in connection with a triangular reorganization and are engaged in with a view to avoid the purpose of this section, the anti-abuse rule applies and appropriate adjustments are made. FS is therefore treated as having made a distribution to FP of $100x, reflecting the value of the stock of FP that FS acquired in exchange for property (the FS note).

The deemed distribution is treated as separate from, and occurring immediately before, FS's acquisition of the stock of FP stock used in the triangular B reorganization. Because FS has more than $100x of earnings and profits, the entire deemed distribution is treated as a dividend under section 301(c)(1). The deemed dividend causes FP to increase its earnings and profits by $100x but does not constitute foreign personal holding company income to FP under section 954(c)(6). FP thus has $100x of earnings and profits available to support inclusions under section 951(a)(1)(B) in connection with FP's subsequent acquisition of the USP note. No adjustments are made by FP to the basis in its stock of FS except as provided in §1.358-6. Under paragraph (b)(3) of this section, FP's adjustment to the basis in its stock of FS under §1.358-6 is determined as if FP provided the stock of FP pursuant to the plan of reorganization.

(e) *Applicability dates*—(1) *General rule*. This section applies to triangular reorganizations occurring on or after May 17, 2011. For triangular reorganizations that occur before May 17, 2011, *see* §1.367(b)-14T as contained in 26 CFR part 1 revised as of April 1, 2011.

(2) *Triangular reorganizations completed on or after April 25, 2014*. The following paragraphs apply to triangular reorganizations that are completed on or after April 25, 2014, unless T was not related to P or S (within the meaning of section 267(b)) immediately before the triangular reorganization; the triangular reorganization was entered into either pursuant to a written agreement that was (subject to customary conditions) binding before April 25, 2014, and at all times afterwards, or pursuant to a tender offer announced before April 25, 2014, that is subject to section 14(d) of the Securities and Exchange Act of 1934 (15 U.S.C. 78n(d)(1)) and Regulation 14(D) (17 CFR 240.14d-1 through 240.14d-101) or that is subject to comparable foreign laws; and to the extent the P acquisition that occurs pursuant to the plan of reorganization is not completed before April 25, 2014, the P acquisition was included as part of the plan before April 25, 2014:

(i) Paragraph (a)(2)(ii) of this section, to the extent it does not apply where P is a controlled foreign corporation, and to the extent it relates to dividends that would be subject to U.S. tax;

(ii) Paragraph (a)(2)(iii) of this section, to the extent it relates to amounts that would be subject to U.S. tax or give rise to an inclusion under section 951(a)(1)(A) that would be subject to U.S. tax;

(iii) Paragraph (b)(3) of this section, to the extent it relates to P's provision of its stock or securities pursuant to the plan of reorganization; and

(iv) Paragraphs (b) and (c) of this section, to the extent they do not reference the rule described in former paragraph (b)(2) of this section (relating to the deemed contribution), as contained in 26 CFR part 1 revised as of April 1, 2021.

(3) *Transactions completed on or after December 2, 2016*. The following paragraphs apply to transactions completed on or after December 2, 2016:

(i) Paragraph (a)(2)(iii) of this section, to the extent it does not apply where T is a foreign corporation; and

(ii) Paragraph (a)(3)(ii)(C) of this section.

(4) *Deemed distributions that occurred in taxable years ending before November 2, 2020*. Former paragraph (c)(1) of this section, as contained in 26 CFR part 1 revised as of April 1, 2021, to the extent it references section 902, applies to deemed distributions that occur in taxable years ending before November 2, 2020.

(5) *Triangular reorganizations completed on or after October 5, 2023.* Paragraph (a)(2)(iii) of this section, to the extent it relates to amounts that would give rise to an inclusion under section 951A(a) that would be subject to U.S. tax, applies to triangular reorganizations that are completed on or after October 5, 2023.

Par. 9. Section 1.1248-1 is amended by adding a sentence to the end of paragraph (a)(1) to read as follows:

§1.1248-1 Treatment of gain from certain sales or exchanges of stock in certain foreign corporations.

(a) * * *

(1) * * * *See* §1.1411-10(c)(3) for additional rules concerning the application of section 1248 for purposes of section 1411.

* * * * *

Par. 10. Section 1.1411-10 is amended by:

1. In paragraph (c)(3), revising the paragraph heading and removing the language "With respect to stock of a CFC" and adding in its place "With respect to stock of a foreign corporation that is a CFC (or that was a CFC at any time during the 5-year period ending on the date of sale or exchange)";

2. Revising paragraph (c)(3)(i) and the introductory text of paragraph (c)(3)(ii); and

3. Adding paragraph (d)(5) and adding a sentence to the end of paragraph (i).

The revisions and additions read as follows:

§1.1411-10 Controlled foreign corporations and passive foreign investment companies.

* * * * *

(c) * * *

(3) *Application of sections 1248 and 367(b)*. * * *

(i) In determining the amount of gain recognized on the sale or exchange of stock of a foreign corporation under section 1248(a) or the amount of gain realized on the exchange of stock of a foreign corporation under §1.367(b)-4 or 1.367(b)-5, basis is determined in accordance with the provisions of paragraph (d) of this section; and

(ii) Section 1248(a), and §1.367(b)-2(c)(1) and (d)(2)(ii) apply without regard to the exclusions for certain earnings and profits under section 1248(d)(1) and (6), except that those exclusions will apply with respect to the earnings and profits of a foreign corporation that are attributable to:

* * * * *

(d) * * *

(5) *Basis adjustments under section 367(b)*. With respect to stock of a foreign corporation that is exchanged in a transaction subject to section 367(b), the portion of the basis increase provided by §1.367(b)-2(e)(3)(ii) by reason of paragraph (c)(3)(ii) of this section is made solely for purposes of section 1411.

* * * * *

(i) * * * Paragraph (c)(3) of this section, to the extent it references regulations issued under section 367(b), and paragraph (d)(5) of this section, apply to transactions completed on or after October 5, 2023, and to any transactions treated as completed before October 5, 2023, as a result of an entity classification election made under §301.7701-3 of this chapter that is filed on or after October 5, 2023.

Douglas W. O'Donnell,
Deputy Commissioner.

Approved: June 26, 2024.

Aviva R. Aron-Dine,
Acting Assistant Secretary of the Treasury (Tax Policy).

(Filed by the Office of the Federal Register July 17, 2024, 8:45 a.m., and published in the issue of the Federal Register for July 18, 2024, 89 FR 58275)

Part IV

Notice of Proposed Rulemaking

Identification of Basket Contract Transactions as Listed Transactions

REG-102161-23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would identify transactions that are the same as, or substantially similar to, certain basket contract transactions as listed transactions, a type of reportable transaction. Material advisors and certain participants in these listed transactions would be required to file disclosures with the IRS and would be subject to penalties for failure to disclose. The proposed regulations would affect participants in these transactions as well as material advisors. This document also provides notice of a public hearing on the proposed regulations.

DATES: *Comments:* Written or electronic comments must be received by September 10, 2024.

Public Hearing: A public hearing has been scheduled for September 26, 2024**,** at 10:00 a.m. ET. Pursuant to Announcement 2023-16, 2023-20 I.R.B. 854 (May 15, 2023), the public hearing is scheduled to be conducted in person, but the IRS will provide a telephonic option for individuals who wish to attend or testify at the hearing by telephone. Requests to speak and outlines of topics to be discussed at the public hearing must be received by September 10, 2024. If no outlines are received by September 10, 2024, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5:00 p.m. ET on September 24, 2024. The hearing will be made accessible to people with disabilities. Requests for special assistance during the hearing must be received by 5:00 p.m. on September 23, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG-102161-23) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG-102161-23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC, 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Danielle M. Heavey of the Office of Associate Chief Counsel (Financial Institutions & Products), (202) 317-5931 (not a toll-free number); concerning the submission of comments or the hearing, Publications and Regulations Section at (202) 317-6901 (not a toll-free number) or by email at *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed additions to 26 CFR part 1 (Income Tax Regulations) under section 6011 of the Internal Revenue Code (Code). The proposed additions identify certain transactions as "listed transactions" for purposes of section 6011.

I. *Disclosure of Reportable Transactions by Participants and Penalties for Failure to Disclose*

Section 6011(a) generally provides that, when required by regulations prescribed by the Secretary of the Treasury or her delegate (Secretary), any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

Section 1.6011-4(a) provides that every taxpayer that has participated in a reportable transaction within the meaning of §1.6011-4(b) and who is required to file a tax return must file a disclosure statement within the time prescribed in §1.6011-4(e). Reportable transactions are identified in §1.6011-4 and include listed transactions, confidential transactions, transactions with contractual protection, loss transactions, and transactions of interest. *See* §1.6011-4(b)(2) through (6). Section 1.6011-4(b)(2) defines a listed transaction as a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction. Section 1.6011-4(b)(6) defines a "transaction of interest" as a transaction that is the same as or substantially similar to one of the types of transactions that the IRS has identified by notice, regulation, or other form of published guidance as a transaction of interest.

Section 1.6011-4(c)(4) provides that a transaction is "substantially similar" if it is expected to obtain the same or similar types of tax consequences and is either factually similar or based on the same or similar tax strategy. Receipt of an opinion regarding the tax consequences of the transaction is not relevant to the determination of whether the transaction is the same as or substantially similar to another transaction. Further, the term substantially similar must be broadly construed in favor of disclosure. For example, a transaction may be substantially similar to a listed transaction even though it may involve different entities or use different Code provisions.

Section 1.6011-4(c)(3)(i)(A) provides that a taxpayer has participated in a listed transaction if the taxpayer's tax return

reflects tax consequences or a tax strategy described in the published guidance that lists the transaction under §1.6011-4(b)(2). Published guidance may identify other types or classes of persons that will be treated as participants in a listed transaction. Published guidance may also identify types or classes of persons that will not be treated as participants in a listed transaction. Section 1.6011-4(c)(3)(i)(E) provides that a taxpayer has participated in a transaction of interest if the taxpayer is one of the types or classes of persons identified as participants in the transaction in the published guidance describing the transaction of interest.

Sections 1.6011-4(d) and (e) provide that the disclosure-statement — Form 8886, *Reportable Transaction Disclosure Statement* (or successor form) — must be attached to the taxpayer's tax return for each taxable year for which a taxpayer participates in a reportable transaction. A copy of the disclosure statement must be sent to IRS's Office of Tax Shelter Analysis (OTSA) at the same time that any disclosure statement is first filed by the taxpayer pertaining to a particular reportable transaction.

Section 1.6011-4(e)(2)(i) provides that if a transaction becomes a listed transaction or a transaction of interest after the filing of a taxpayer's tax return reflecting the taxpayer's participation in the transaction and before the end of the period of limitations for assessment for any taxable year in which the taxpayer participated in the transaction, then a disclosure statement must be filed with OTSA within 90 calendar days after the date on which the transaction becomes a listed transaction or transaction of interest. This requirement extends to an amended return and exists regardless of whether the taxpayer participated in the transaction in the year the transaction became a listed transaction or transaction of interest. The Commissioner of Internal Revenue may also determine the time for disclosure of listed transactions and transactions of interest in the published guidance identifying the transaction.

Participants required to disclose these transactions under §1.6011-4 who fail to do so are subject to penalties under section 6707A. Section 6707A(b) provides that the amount of the penalty is 75 percent of the decrease in tax shown on the return as a result of the reportable transaction (or which would have resulted from such transaction if such transaction were respected for Federal tax purposes), subject to minimum and maximum penalty amounts. The minimum penalty amount is $5,000 in the case of a natural person and $10,000 in any other case. For listed transactions, the maximum penalty amount is $100,000 in the case of a natural person and $200,000 in any other case. For other reportable transactions, including transactions of interest, the maximum penalty is $10,000 in the case of a natural person and $50,000 in any other case.

Additional penalties may also apply. In general, section 6662A imposes a 20 percent accuracy-related penalty on any understatement (as defined in section 6662A(b)(1)) attributable to an adequately disclosed reportable transaction. If the taxpayer had a requirement to disclose participation in the reportable transaction but did not adequately disclose the transaction in accordance with the regulations under section 6011, the taxpayer is subject to an increased penalty rate equal to 30 percent of the understatement. *See* section 6662A(c). Section 6662A(b)(2) provides that section 6662A applies to any item which is attributable to any listed transaction and any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

Participants required to disclose listed transactions who fail to do so are also subject to an extended period of limitations under section 6501(c)(10). That section provides that the time for assessment of any tax with respect to the transaction does not expire before the date that is one year after the earlier of the date the participant discloses the transaction or the date a material advisor discloses the participation pursuant to a written request under section 6112(b)(1)(A).

II. *Disclosure of Reportable Transactions by Material Advisors and Penalties for Failure to Disclose*

Section 6111(a) provides that "[e]ach material advisor with respect to any reportable transaction shall make a return… setting forth… (1) information identifying and describing the transaction, (2) information describing any potential tax benefits expected to result from the transaction, and (3) such other information as the Secretary may prescribe. Such return shall be filed not later than the date specified by the Secretary."

Section 301.6111-3(a) of the Procedure and Administration Regulations provides that each material advisor with respect to any reportable transaction, as defined in §1.6011-4(b), must file a return as described in §301.6111-3(d) by the date described in §301.6111-3(e).

Section 301.6111-3(b)(1) provides that a person is a material advisor with respect to a transaction if the person provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and directly or indirectly derives gross income in excess of the threshold amount as defined in §301.6111-3(b)(3) for the material aid, assistance, or advice. Under §301.6111-3(b)(2)(i) and (ii), a person provides material aid, assistance, or advice if the person provides a tax statement, which is any statement (including another person's statement), oral or written, that relates to a tax aspect of a transaction that causes the transaction to be a reportable transaction as defined in §1.6011-4(b)(2) through (7).

Material advisors must disclose transactions on Form 8918, *Material Advisor Disclosure Statement* (or successor form), as provided in §301.6111-3(d) and (e). Section 301.6111-3(e) provides that the material advisor's disclosure statement for a reportable transaction must be filed with OTSA by the last day of the month that follows the end of the calendar quarter in which the advisor becomes a material advisor with respect to a reportable transaction or in which the circumstances necessitating an amended disclosure statement occur. The disclosure statement must be sent to OTSA at the address provided in the instructions for Form 8918 (or successor form).

Section 301.6111-3(d)(2) provides that the IRS will issue to a material advisor a reportable transaction number with respect to the disclosed reportable transaction. Receipt of a reportable transaction number does not indicate that the dis-

closure statement is complete, nor does it indicate that the transaction has been reviewed, examined, or approved by the IRS. Material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor as defined in §301.6111-3(b). The reportable transaction number must be provided at the time the transaction is entered into, or, if the transaction is entered into prior to the material advisor receiving the reportable transaction number, within 60 calendar days from the date the reportable transaction number is mailed to the material advisor.

Section 6707(a) provides that a material advisor who fails to file a timely disclosure, or files an incomplete or false disclosure statement, is subject to a penalty. Pursuant to section 6707(b)(2), for listed transactions, the penalty is the greater of (A) $200,000, or (B) 50 percent of the gross income derived by such person with respect to aid, assistance, or advice which is provided with respect to the listed transaction before the date the return is filed under section 6111. Pursuant to section 6707(b)(1), the penalty for other reportable transactions, including transactions of interest, is $50,000.

A material advisor may also be subject to a penalty under section 6708 for failing to maintain a list under section 6112(a) and failing to make the list available upon written request to the Secretary in accordance with section 6112(b) within 20 business days after the date of such request. Section 6708(a) provides that the penalty is $10,000 per day for each day of the failure after the 20th day. However, no penalty will be imposed with respect to the failure on any day if such failure is due to reasonable cause.

Additionally, section 6112(a) provides that "[e]ach material advisor … with respect to any reportable transaction …shall (whether or not required to file a return under section 6111 with respect to such transaction) maintain (in such manner as the Secretary may by regulations prescribe) a list (1) identifying each person with respect to whom such advisor acted as a material advisor with respect to such transaction and (2) containing such other information as the Secretary may by regulations require." Material advisors must furnish such lists to the IRS in accordance with §301.6112-1(e).

III. *Basket Contract Transactions and Notices 2015-73 and 2015-74*

The Treasury Department and the IRS are aware of a type of structured financial transaction in which a taxpayer attempts to defer income recognition and to convert short-term capital gain and ordinary income to long-term capital gain using a contract denominated as an option, notional principal contract, forward contract, or other derivative contract (basket contract). On July 8, 2015, the Treasury Department and the IRS released Notice 2015-47, 2015-30 I.R.B. 76, which identified certain basket contracts described in that notice as listed transactions. In addition, on July 8, 2015, the Treasury Department and the IRS released Notice 2015-48, 2015-30 I.R.B. 77, which identified certain basket contracts described in that notice as transactions of interest. Although Notice 2015-47 and Notice 2015-48 did not request comments, some industry comments were submitted expressing concern that difficulty in identifying transactions described in Notice 2015-47 and Notice 2015-48 may cause taxpayers to file disclosures for transactions that were not intended to be treated as listed transactions or transactions of interest.

Responding to these concerns, on October 21, 2015, the Treasury Department and the IRS released Notice 2015-73, 2015-46 I.R.B. 660, which revoked Notice 2015-47 and provided additional details on the types of basket contracts that were identified as listed transactions. Similarly, on October 21, 2015, the Treasury Department and the IRS released Notice 2015-74, 2015-46 I.R.B. 663, which revoked Notice 2015-48 and provided additional details on the types of basket contracts that were identified as transactions of interest. Also in response to commenter concerns, Notice 2015-73 and Notice 2015-74 more specifically describe the tax benefits that identify the transaction as a listed transaction or transaction of interest, respectively.

The background section of Notice 2015-73 provides the following description of one type of structured financial transaction that the Treasury Department and the IRS were concerned about when the Notice was issued: a taxpayer (T) enters into a contract denominated as an option with a counterparty (C) to receive a return based on the performance of a notional basket of referenced actively traded personal property (reference basket). T, or a designee named by T, will either determine the assets that comprise the reference basket or design or select a trading algorithm that determines the assets. While the basket contract remains open, T[1] has the right to change the assets in the reference basket, request that C change the assets in the reference basket, change the trading algorithm, or request that C change the trading algorithm (collectively, discretion). The terms of the basket contract may permit C to reject certain changes requested by T to the assets in the reference basket or the trading algorithm. C, however, generally accepts all or nearly all of the changes requested by T.

When the basket contract is entered into, T typically makes an upfront cash payment to C of between 10 and 40 percent of the value of the assets in the reference basket. To manage its risk under the basket contract, C typically acquires substantially all of the assets in the reference basket at the inception of the contract and acquires and disposes of assets during the term of the contract either when T changes the assets in the reference basket or the trading algorithm provides for such changes. C generally supplies the additional cash required to purchase the assets in the reference basket. The assets in the reference basket would typically generate ordinary income if held directly by T, and short-term gains and losses if purchases and sales of the assets were carried out directly by T.

The basket contract has a stated term of more than one year but contains provisions that in effect allow either party to terminate the contract at any time during the stated contract term with proper

[1] When used in this sentence and subsequently with respect to changing or requesting changes to the assets in the reference basket or the trading algorithm, references to "T" include T's designee.

notice. The amount that T receives upon settlement of the basket contract is based on the performance of the assets in the reference basket. A common payout formula on the basket contract entitles T to a return equal to the upfront payment, plus net basket gain or minus net basket loss. The net basket gain or net basket loss includes net changes in the values of the assets in the reference basket, together with interest, dividend, and other periodic income on the assets, reduced by C's fee for its role in the transaction. The basket contract typically includes a provision automatically terminating the contract if the amount of the net basket loss reaches the amount of the upfront payment, giving T a cash settlement amount of zero. The basket contract also may permit or require T to provide additional collateral or otherwise reduce risk in the reference basket if a specified level of risk is reached.

The basket contract typically contains other safeguards to minimize the economic risk to C. For example, C may terminate the basket contract if T violates investment guidelines that are part of the contract. C typically holds the rights associated with legal title to the assets and positions in the reference basket, including voting rights and the right to comingle, lend, pledge, transfer, or otherwise use the assets in the basket without notice to T.

Notice 2015-73 identifies a transaction as being the same as, or substantially similar to, the described basket contract transaction only if: (1) T enters into a transaction with C that is denominated as an option contract; (2) T receives a return based on the performance of the reference basket; (3) substantially all of the assets in the reference basket primarily consist of actively traded personal property as defined under §1.1092(d)-1(a); (4) the contract is not fully settled at intervals of one year or less; (5) T or T's designee has exercised discretion to change (either directly or through a request to C) the assets in the reference basket or the trading algorithm; and (6) T's tax return for a taxable year ending on or after January 1, 2011 reflects a tax benefit consisting of a deferral of income into a later taxable year or a conversion of ordinary income or short-term capital gain or loss into long-term capital gain or loss.

The basket contracts identified as transactions of interest in Notice 2015-74 closely resemble the basket contracts identified as listed transactions in Notice 2015-73. The primary factual differences between the basket contracts identified in Notice 2015-73 and the basket contracts identified in Notice 2015-74 are: (1) the form of the derivative contract; (2) the type of assets in the reference basket; and (3) the term of the contract. Regarding the form of the derivative contract, Notice 2015-73 identifies only contracts denominated as options, while Notice 2015-74 identifies contracts more generally, including those denominated as options, notional principal contracts, forwards, or other derivative contracts. Regarding the type of assets in the reference basket, the transactions identified in Notice 2015-73 are transactions in which substantially all of the assets in the reference basket primarily consist of actively traded personal property as defined under §1.1092(d)-1(a), while, with respect to the contracts identified in Notice 2015-74, the assets that comprise the reference basket can include (i) interests in entities that trade securities, commodities, foreign currency, or similar property (hedge fund interests), (ii) securities, (iii) commodities, (iv) foreign currency, or (v) similar property (or positions in such property). Regarding the term of the contract, Notice 2015-73 identifies contracts with a term of more than one year, while Notice 2015-74 identifies contracts with a term of more than one year and contracts that overlap two taxable years.

In the basket contracts identified in Notice 2015-73 and Notice 2015-74, T takes the position that T's short-term trading gains and interest, dividend, and other ordinary income from the performance of the reference basket are deferred until the basket contract terminates and, if the basket contract is held for more than one year, that the entire gain is treated as long-term capital gain. The Treasury Department and the IRS are concerned that taxpayers may be using basket contracts to inappropriately defer income recognition or convert ordinary income or short-term capital gain into long-term capital gain. The Treasury Department and the IRS are also concerned that taxpayers may be mischaracterizing the transaction as an option or certain other derivatives in an effort to avoid application of section 1260 (with respect to constructive ownership transactions), section 1291 (with respect to passive foreign investment companies), or both.

Explanation of Provisions

A. *Basket Contract Listed Transactions*

1. *In general*

Since the release of Notice 2015-74, examinations of taxpayers and promoters and information received through disclosures filed in response to Notice 2015-74 have clarified the Treasury Department's and the IRS's understanding of basket contracts identified in Notice 2015-74. The information received indicates that basket contracts identified in Notice 2015-74 have been used to inappropriately defer income recognition or inappropriately convert ordinary income or short-term capital gain into long-term capital gain. In other words, the Treasury Department and the IRS believe that there is now sufficient information to conclude that one or both of the abuses about which the Treasury Department and the IRS are concerned exists in the transactions identified in both Notice 2015-73 and Notice 2015-74. Therefore, the Treasury Department and the IRS are proposing in these proposed regulations to identify both the transactions in Notice 2015-73 and the transactions in Notice 2015-74 as listed transactions. Consistent with this determination, the definition of a basket contract listed transaction in these proposed regulations would include the transactions in Notice 2015-74.

The IRS may assert one or more arguments to challenge the parties' tax characterization of a basket contract, including: (1) that C, in substance, holds the assets in the reference basket as an agent of T and that T is the beneficial owner of the assets for tax purposes; (2) that the basket contract is not an option or other derivative contract for tax purposes; (3) that changes to the assets in the reference basket during the year materially modify the basket contract and result in taxable dispositions of the contract under section 1001 of the Code throughout the term

of the contract; (4) that T actually owns separate contractual rights with respect to each asset in the reference basket such that each change to assets in the basket results in a taxable disposition of a contractual right under section 1001 with respect to the asset affected by the change; (5) that T is mischaracterizing the transaction as an option or certain other derivatives in an effort to avoid application of section 1260 (with respect to constructive ownership transactions), section 1291 (with respect to passive foreign investment companies), or both; (6) that a change from accounting for basket contracts as derivative contracts with respect to the referenced assets to accounting for the contracts in a manner consistent with T's beneficial ownership of the referenced assets results in one or more accounting method changes within the meaning of section 446; and (7) any accounting method change generally will be implemented with a section 481(a) adjustment that takes on the character of the item to which the adjustment relates. The IRS may also assert other arguments supporting the conclusion that T is the beneficial owner of the assets in the reference basket for tax purposes. Furthermore, the IRS may challenge, including by asserting judicial doctrines, claimed tax positions under sections 871, 881, and 882 or other provisions of the Code, and may assert failures to comply with reporting obligations associated with investments in passive foreign investment companies and withholding and reporting obligations under chapters 3 and 4 of the Code.

2. *Definition of Basket Contract Listed Transaction*

Proposed §1.6011-16(a) would provide that a transaction that is the same as, or substantially similar to, a transaction described in proposed §1.6011-16(c) is a listed transaction for purposes of §1.6011-4(b)(2), except as provided in proposed §1.6011-16(d).

Proposed §1.6011-16(b) would provide definitions of terms used to describe basket contract listed transactions, including counterparty (or C), taxpayer (or T), designee, discretion, tax benefit, and reference basket.

The term designee, with respect to a T having discretion or having exercised discretion, is defined in proposed §1.6011-16(b)(3) as any person who is: T's agent under principles of agency law; compensated by T for suggesting, requesting, or determining changes in the assets in the reference basket or the trading algorithm; or selected by T to suggest, request, or determine changes in the assets in the reference basket or the trading algorithm. A person would not, however, be treated as compensated or selected by T as a result of: the person's position as an investment advisor, officer, or employee of an entity, such as a mutual fund, when the entity's publicly offered securities are included in the reference basket; or the person's use of, the person's payment of a licensing fee for the right to use, or the person's authority to suggest, request, or determine changes in the assets included in a widely used and publicly quoted index that is based on objective financial information or an index that tracks a broad market or a market segment.

With respect to the term discretion, proposed §1.6011-16(b)(4) would provide that discretion includes T's right to change, either directly or through a request to C, the assets in the reference basket or the trading algorithm, even if the terms of the transaction permit C to reject certain changes requested by T to the assets in the reference basket or the trading algorithm. T would not be treated as having discretion to change (either directly or through a request to C) the assets in the reference basket or the trading algorithm if changes in the assets in the reference basket or the trading algorithm were made according to objective instructions, operations, or calculations that were disclosed at the inception of the transaction (the rules) and T does not have the right to alter or amend the rules during the term of the transaction or to deviate from the assets in the reference basket or the trading algorithm selected in accordance with the rules. For these purposes, T would not be treated as having the right to alter or amend the rules solely because T has the authority: to exercise routine judgment in the administration of the rules, which would not include deviations or alterations to the rules that are designed to improve the financial performance of the reference basket; to correct errors in the implementation of the rules or calculations made pursuant to the rules; or to make an adjustment to respond to an unanticipated event outside of T's control, such as a stock split, merger, listing or delisting, nationalization, or insolvency of a component of a basket, a disruption in the financial markets for specific assets or in a particular jurisdiction, regulatory compliance requirement, force majeure, or any other unanticipated event of similar magnitude and significance.

The term tax benefit would be defined in proposed §1.6011-16(b)(5) as a deferral of income into a later taxable year or a conversion of ordinary income or short-term capital gain or loss into long-term capital gain or loss.

The term reference basket would be defined in proposed §1.6011-16(b)(6) as a notional basket of assets that may include: actively traded personal property as defined under §1.1092(d)-1(a); interests in entities that trade securities, commodities, foreign currency, digital assets as defined in section 6045(g)(3)(D), or similar property; securities; commodities; foreign currency; digital assets as defined in section 6045(g)(3)(D); or similar property (or positions in such property).

The types of assets included in the definition of reference basket in these proposed regulations would be expanded from the types set forth in Notice 2015-73 and Notice 2015-74. Specifically, since the publication of Notice 2015-73 and Notice 2015-74, digital assets have grown in popularity as an investment or trading asset. Taxpayers can trade digital assets directly and also trade digital assets through derivatives, including futures and option contracts, on digital assets. The Treasury Department and the IRS believe that derivatives on digital assets raise the same issues as derivatives on other types of assets. As a result, the types of assets in the definition of reference basket in these proposed regulations include digital assets. No inference is intended as to whether a digital asset should or should not be properly classified for Federal income tax purposes as a security, commodity, option, securities futures contract, regulated futures contract, or forward contract. Similarly, the potential characterization of digital assets as securities, commodities,

or derivatives for purposes of any other legal regime, such as the Federal securities laws and the Commodity Exchange Act, is outside the scope of these proposed regulations.

A transaction would be described in proposed §1.6011-16(c) if it meets the five elements described in proposed §1.6011-16(c)(1) through (5). These five elements are as follows:

(i) T enters into a contract with C, including a contract denominated as an option, notional principal contract (as defined in §1.446-3(c)(1)(i)), forward contract, or other derivative contract to receive a return based on the performance of a reference basket;

(ii) The contract has a stated term of more than one year, or overlaps two of T's taxable years;

(iii) T or T's designee has exercised discretion to change (either directly or through a request to C) the assets in the reference basket or the trading algorithm;

(iv) T's tax return for a taxable year ending on or after January 1, 2011, reflects a tax benefit described in proposed §1.6011-16(b)(5) with respect to the transaction; and

(v) The transaction is not described in proposed §1.6011-16(d).

3. *Exceptions*

Proposed §1.6011-16(d) would provide that a transaction is not the same as, or substantially similar to, the transaction described in proposed §1.6011-16(c) if any of the three exceptions described in proposed §1.6011-16(d)(1) through (3) applies. Certain exceptions would apply only to C. Proposed §1.6011-16(d) would provide that these three exceptions are as follows:

(i) The contract is traded on a national securities exchange that is regulated by the Securities and Exchange Commission or a domestic board of trade regulated by the Commodity Futures Trading Commission, or a foreign exchange or board of trade that is subject to regulation by a comparable regulator.

(ii) The contract is treated as a contingent payment debt instrument under §1.1275-4 (including a short-term contingent payment debt instrument) or a variable rate debt instrument under §1.1275-5.

(iii) With respect to C, if:

(A) T represents to C in writing under penalties of perjury that none of T's tax returns for taxable years ending on or after January 1, 2011, has reflected or will reflect a tax benefit of the transaction that is described in proposed §1.6011-16(b)(5); or

(B) C has established that T is a nonresident alien that is not engaged in a U.S. trade or business or a foreign corporation that is not engaged in a U.S. trade or business by obtaining a valid withholding certificate (W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)*, or W-8BEN-E, *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)* (or successor forms)) upon which it may rely under the requirements of §1.1441-1 from T as the beneficial owner of the payments made or to be made under the basket contract, or in the case of payments made outside of the U.S. on offshore obligations, by obtaining documentary evidence described in §1.1441-1(c)(17) upon which it is permitted to rely.

4. *Participants*

Proposed §1.6011-16(e) would provide the rules for determining who is a participant in a listed transaction identified in proposed §1.6011-16(a). The rules provided in proposed §1.6011-16(e) generally are consistent with Notice 2015-73 and Notice 2015-74, which included rules regarding the treatment of a general partner of a partnership or a managing member of a limited liability company as a participant. However, because an entity may be treated as a partnership for Federal tax purposes but not have one or more general partners or managing members, proposed §1.6011-16(e) would provide that in such a case each partner is a participant for purposes of §1.6011-4(c)(3)(i)(A).

B. *Effect of Becoming a Listed Transaction Under these Regulations*

If these proposed regulations are finalized as proposed, taxpayers that participate in the basket contract transactions that would be identified as listed transactions by these proposed regulations, and persons who act as material advisors with respect to these transactions, would be required to disclose these transactions in accordance with the final regulations and the regulations issued under sections 6011 and 6111. Material advisors also would have list maintenance requirements under the final regulations and the regulations issued under section 6112. Participants required to disclose these transactions under §1.6011-4 who fail to do so would be subject to penalties under section 6707A. Participants required to disclose listed transactions under §1.6011-4 who fail to do so would also be subject to an extended period of limitations under section 6501(c)(10). Material advisors required to disclose these transactions under section 6111 who fail to do so would be subject to the penalty under section 6707. Material advisors required to maintain lists of investors under section 6112 who fail to do so (or who fail to provide such lists when requested by the IRS) would be subject to the penalty under section 6708(a). In addition, the IRS might impose other penalties on persons involved in these transactions or substantially similar transactions, including accuracy-related penalties under section 6662 or section 6662A, the section 6694 penalty for understatements of a taxpayer's liability by a tax return preparer, the section 6700 penalty for promoting abusive tax shelters, and the section 6701 penalty for aiding and abetting understatement of a tax liability.

Taxpayers who have filed a tax return (including an amended return (or Administrative Adjustment Request (AAR) for certain partnerships)) reflecting their participation in these transactions prior to [date of publication of final regulations in the ***Federal Register***] would be required to disclose the transactions as provided in §1.6011-4(d) and (e) provided that the period of limitations for assessment of tax, including any applicable extensions, for any taxable year in which the taxpayer participated in the transaction has not ended on or before [date of publication of final regulations in the ***Federal Register***].

Taxpayers who have filed a tax return reflecting their participation in

a basket contract transaction identified as a listed transaction in Notice 2015-73 and in the final regulations before [date of publication of final regulations in the ***Federal Register***] and who have not disclosed the transaction pursuant to Notice 2015-73 would be required by the final regulations and §1.6011-4(e)(2)(i) to file a disclosure within 90 calendar days after [date of publication of final regulations in the ***Federal Register***] if the period of limitations for assessment for any taxable year in which the taxpayer participated in the transaction remains open.

A participant in a transaction that is a basket contract listed transaction that has previously filed a disclosure statement with OTSA pursuant to Notice 2015-73 regarding the transaction would be treated as having disclosed the transaction pursuant to the final regulations for taxable years for which the taxpayer filed returns before [date of publication of final regulations in the ***Federal Register***]**.** However, if a taxpayer described in the preceding sentence participates in the basket contract listed transaction in a taxable year for which the taxpayer files a return on or after [date of publication of final regulations in the ***Federal Register***], the taxpayer would be required to file a disclosure statement with OTSA at the same time the taxpayer files its return for the first such taxable year.

A participant in a transaction that is a basket contract listed transaction under the proposed regulations and that is identified as a transaction of interest under Notice 2015-74 would be required to file a disclosure statement with OTSA when required to do so under the rules provided in §1.6011-4(e)(2)(i) for disclosure of listed transactions, notwithstanding that the participant has previously disclosed the transaction to OTSA pursuant to Notice 2015-74.

In addition, material advisors would have disclosure requirements with regard to transactions occurring in prior years. However, notwithstanding §301.6111-3(b)(4)(i) and (ii), material advisors would be required to disclose only if they have made a tax statement on or after the date that is 6 years before [date of publication of final regulations in the ***Federal Register***].

A material advisor with respect to a transaction that is a basket contract listed transaction would be required to file a disclosure statement with OTSA when required to do so under §301.6111-3(e), regardless of whether the material advisor has previously disclosed the transaction to OTSA pursuant to Notice 2015-73 or Notice 2015-74.

Proposed Applicability Dates

Proposed §1.6011-16 would identify transactions that are the same as, or substantially similar to, the basket contract transactions described in proposed §1.6011-16(c) as listed transactions effective as of [date of publication of final regulations in the ***Federal Register***].

Effect on Other Documents

This document obsoletes Notice 2015-74, 2015-46 I.R.B. 663, as of **July 12, 2024**. These proposed regulations do not obsolete, revoke, or modify Notice 2015-73, 2015-46 I.R.B. 660.

Special Analyses

I. *Regulatory Planning and Review*

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. *Paperwork Reduction Act*

The collection of information contained in these proposed regulations is reflected in the collection of information for Forms 8886 and 8918 that have been reviewed and approved by OMB in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545-1800 and 1545-0865.

To the extent there is a change in burden as a result of these regulations, the change in burden will be reflected in the updated burden estimates for the Forms 8886 and 8918. The requirement to maintain records to substantiate information on Forms 8886 and 8918 is already contained in the burden associated with the control numbers for the forms and is unchanged.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

III. *Regulatory Flexibility Act*

The Secretary of the Treasury hereby certifies that the proposed regulations will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

The basis for these proposed regulations relates to the transactions described in Notice 2015-73 and Notice 2015-74. The following charts set forth the gross receipts of respondents to Notice 2015-73 and Notice 2015-74, based on data for the tax year 2021. The number of small entities affected in all cases is expected to be less than 50.

Notice 2015-73 Respondents by Size		
Receipts	**Firms**	**Filings**
Under 25M	60%	10%
Over 25M	40%	90%

Notice 2015-74 Respondents by Size		
Receipts	**Firms**	**Filings**
Under 25M	75%	33%
Over 25M	25%	67%

These charts show that the majority of respondents reported gross receipts under $25 million. The proposed regulations will not have a significant economic impact on these entities because the proposed regulations implement sections 6111 and 6112 and §1.6011-4 by specifying the manner in which and the time at which an identified basket contract transaction must be reported. Accordingly, because the proposed regulations are limited in scope to time and manner of information reporting and definitional information, the economic impact of the proposal is expected to be minimal.

Further, the Treasury Department and the IRS expect that the reporting burden is low; the information sought is necessary for regular annual return preparation and ordinary recordkeeping. The estimated burden for any taxpayer required to file Form 8886 is approximately 10 hours, 16 minutes for recordkeeping; 4 hours, 50 minutes for learning about the law or the form; and 6 hours, 25 minutes for preparing, copying, assembling, and sending the form to the IRS. The IRS's Research, Applied Analytics, and Statistics division estimates that the appropriate wage rate for this set of taxpayers is $59.45 (2021 dollars) per hour for Notice 2015-73 and $55.67 (2021 dollars) per hour for Notice 2015-74. Thus, it is estimated that a respondent will incur costs of approximately $1,873.67 per filing for Notice 2015-73 and $1,754.53 per filing for Notice 2015-74. Disclosures received to date by the Treasury Department and the IRS in response to the reporting requirements of Notice 2015-73 and Notice 2015-74 indicate that this small amount will not pose any significant economic impact for those taxpayers who would be required to disclose if the proposed regulations were finalized as proposed.

For the reasons stated, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Treasury Department and the IRS invite comments on the impact of the proposed regulations on small entities. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

IV. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million (updated annually for inflation). This proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments or by the private sector in excess of that threshold.

V. *Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed in the preamble under the "**ADDRESSES"** section.

The Treasury Department and the IRS request comments on all aspects of the proposed regulations. The Treasury Department and the IRS are aware that there have been developments in the financial markets since Notice 2015-73 and Notice 2015-74 were issued, and that taxpayers may have questions about how certain definitions or terms in the notices apply to transactions of a kind that did not exist at that time. Accordingly, the Treasury Department and the IRS are soliciting comments in order to better understand these more recent transactions and to determine whether any responsive changes should be made to the proposed regulations. Any comment should explain how any proposal contained in the comment would be consistent with the objective of these proposed regulations to require disclosure of transactions involving the abuse described in these proposed regulations to enable the Treasury Department and the IRS to learn about abusive transactions.

The Treasury Department and the IRS specifically request comments on the following:

1. Are there types of transactions to which the proposed regulations may apply that did not exist when Notice 2015-73 and Notice 2015-74 were issued?

2. Specific examples of indices that should qualify as a "widely used and publicly quoted index that is based on objective financial information" (*see* proposed §1.6011-16(b)(3)(ii)(B)).

3. Specific examples of indices that should be treated as one that "tracks a broad market or a market segment" (*see* proposed §1.6011-16(b)(3)(ii)(B)).

4. Specific examples of "objective instructions, operations or calculations" (*see* proposed §1.6011-16(b)(4)(ii)(A)).

5. Specific examples of the exercise of "routine judgment in the administration of the rules" (*see* proposed §1.6011-16(b)(4)(iii)(A)).

6. Are there changes that could be made to clarify how to apply the terms described in requests 2 through 5, above, to specific types of transactions?

7. Are there alternative rules that should apply to determine which persons treated as partners in an arrangement or entity that is treated as a partnership for Federal income tax purposes but that does not have one or more general partners or managing members should be treated as participants in a transaction carried out by the partnership?

All comments will be made available at *https://www.regulations.gov*. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for September 26, 2024, beginning at 10:00 a.m. ET in the Auditorium at the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic by September 10, 2024. A period of 10 minutes will be allotted for each person making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by September 10, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the ***Federal Register***.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG-102161-23 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-102161-23.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-102161-23 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-102161-23.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG-102161-23 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG-102161-23. Requests to attend the public hearing must be received by 5:00 p.m. ET on September 24, 2024.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-102161-23 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-102161-23. Requests to attend the public hearing must be received by 5:00 p.m. EST on September 24, 2024.

Hearings will be made accessible to people with disabilities. To request special assistance during a hearing please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317-6901 (not a toll-free number) by at least September 23, 2024.

Statement of Availability of IRS Documents

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

Drafting Information

The principal author of these proposed regulations is Danielle M. Heavey, Office of Associate Chief Counsel (Financial Institutions & Products). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry for §1.6011-16 in numerical order to read in part as follows:

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

* * * * *

Section 1.6011-16 also issued under 26 U.S.C. 6001 and 26 U.S.C. 6011.

* * * * *

Par. 2. Section 1.6011-16 is added to read as follows:

§1.6011-16 Basket contract listed transaction.

(a) *Identification as listed transaction*. Transactions that are the same as, or substantially similar to, transactions described in paragraph (c) of this section are identified as listed transactions for purposes of §1.6011-4(b)(2).

(b) *Definitions*. The following definitions apply for purposes of this section:

(1) *Counterparty*. The term *counterparty* or *C* means a person who enters into a contract described in paragraph (c) of this section with the taxpayer.

(2) *Taxpayer*. The term *taxpayer* or *T* means—

(i) A taxpayer as defined in §1.6011-4(c)(1) that enters into a contract described in paragraph (c) of this section with the counterparty; and

(ii) With respect to any reference to T having discretion, or having exercised discretion, T's designee.

(3) *Designee*--(i) *In general*. Except as provided in paragraph (b)(3)(ii) of this section, the term *designee*, with respect to a T having discretion or having exercised discretion, means any person who is--

(A) T's agent under principles of agency law;

(B) Compensated by T for suggesting, requesting, or determining changes in the assets in the reference basket or the trading algorithm; or

(C) Selected by T to suggest, request, or determine changes in the assets in the reference basket or the trading algorithm.

(ii) *Exceptions*. A person will not be treated as compensated by T under paragraph (b)(3)(i)(B) of this section, or selected by T under paragraph (b)(3)(i)(C) of this section, as a result of:

(A) The person's position as an investment advisor, officer, or employee of an entity, such as a mutual fund, when the entity's publicly offered securities are included in the reference basket; or

(B) The person's use of, the person's payment of a licensing fee for the right to use, or the person's authority to suggest, request, or determine changes in the assets included in a widely used and publicly quoted index that is based on objective financial information or an index that tracks a broad market or a market segment.

(4) *Discretion*--(i) *In general*. Except as provided in paragraphs (b)(4)(ii) and (iii) of this section, the term *discretion* includes T's right to change, either directly or through a request to C, the assets in the reference basket or the trading algorithm, even if the terms of the transaction permit C to reject certain changes requested by T to the assets in the reference basket or the trading algorithm.

(ii) *Changes made according to rules that T cannot amend or alter*. T will not be treated as having discretion to change (either directly or through a request to C) the assets in the reference basket or the trading algorithm if—

(A) Changes in the assets in the reference basket or the trading algorithm are made according to objective instructions, operations, or calculations that are disclosed at the inception of the transaction (rules); and

(B) T does not have the right to alter or amend the rules during the term of the transaction or to deviate from the assets in the reference basket or the trading algorithm selected in accordance with the rules.

(iii) *Exception for certain rights*. T will not be treated as having the right to alter or amend the rules for purposes of paragraph (b)(4)(ii)(B) of this section solely because T has the authority to--

(A) Exercise routine judgment in the administration of the rules, which does not include deviations or alterations to the rules that are designed to improve the financial performance of the reference basket;

(B) Correct errors in the implementation of the rules or calculations made pursuant to the rules; or

(C) Make an adjustment to respond to an unanticipated event outside of T's control, such as a stock split, merger, listing or delisting, nationalization, or insolvency of a component of a basket, a disruption in the financial markets for specific assets or in a particular jurisdiction, a regulatory compliance requirement, force majeure, or any other unanticipated event of similar magnitude and significance.

(5) *Tax benefit*. The term *tax benefit* means a deferral of income into a later taxable year or a conversion of ordinary income or short-term capital gain or loss into long-term capital gain or loss.

(6) *Reference basket*. The term *reference basket* means a notional basket of assets that may include:

(i) Actively traded personal property as defined under §1.1092(d)-1(a);

(ii) Interests in entities that trade securities, commodities, foreign currency, digital assets as defined in section 6045(g)(3)(D) of the Internal Revenue Code, or similar property;

(iii) Securities;

(iv) Commodities;

(v) Foreign currency;

(vi) Digital assets as defined in section 6045(g)(3)(D); or

(vii) Similar property (or positions in such property).

(c) *Transaction description*. A transaction is described in this paragraph (c) if--

(1) T enters into a contract with C, including a contract denominated as an option contract, notional principal contract (as defined in §1.446-3(c)(1)(i)), forward contract, or other derivative contract, to receive a return based on the performance of a reference basket;

(2) The contract has a stated term of more than one year, or overlaps two or more of T's taxable years;

(3) T has exercised discretion to change (either directly or through a request to C) the assets in the reference basket or the trading algorithm;

(4) T's tax return for a taxable year ending on or after January 1, 2011, reflects a tax benefit with respect to the transaction; and

(5) The transaction is not described in paragraph (d) of this section.

(d) *Exceptions*. A transaction is not the same as, or substantially similar to, the transaction described in paragraph (c) of this section if it is described in any of paragraphs (d)(1) through (3) of this section.

(1) The contract is traded on a national securities exchange that is regulated by the Securities and Exchange Commission or a domestic board of trade regulated by the Commodity Futures Trading Commission, or a foreign exchange or board of trade that is subject to regulation by a comparable regulator.

(2) The contract is treated as a contingent payment debt instrument under §1.1275-4 (including a short-term contingent payment debt instrument) or a variable rate debt instrument under §1.1275-5.

(3) With respect to C, a transaction is not the same as, or substantially similar to, the transaction described in paragraph (c) of this section if--

(i) T represents to C in writing under penalties of perjury that none of T's tax returns for taxable years ending on or after January 1, 2011, has reflected or will reflect a tax benefit with respect to the transaction; or

(ii) C has established that T is a nonresident alien that is not engaged in a U.S. trade or business or a foreign corporation that is not engaged in a U.S. trade or business by obtaining a valid withholding certificate (W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)*, or W-8BEN-E, *Certificate of Status of Beneficial Owner for United States Tax Withholding and Reporting (Entities)* (or successor forms)) upon which it may rely under the requirements of §1.1441-1 from T as the beneficial owner of the payments made or to be made under the basket contract, or in the case of payments made outside of the U.S. on offshore obligations, by obtaining documentary evidence described in §1.1441-1(c)(17) upon which it is permitted to rely.

(e) *Special participation rules*. For purposes of §1.6011-4(c)(3)(i)(A), for each year in which a transaction identified in paragraph (a) of this section is open, only the following parties are treated as participating in the listed transaction identified in this section:

(1) The taxpayer;

(2) If the taxpayer is treated as a partnership for Federal tax purposes and has one or more general partners or managing members, each general partner or managing member of the taxpayer;

(3) If the taxpayer is treated as a partnership for Federal tax purposes and does not have a general partner or managing member, each partner in the partnership;

(4) The counterparty to the contract.

(f) *Applicability date*--(1) *In general*. This section identifies transactions that are the same as, or substantially similar to, the transactions described in paragraph (c) of this section as listed transactions for purposes of §1.6011-4(b)(2) effective on [date of publication of final regulations in the ***Federal Register***].

(2) *Obligations of participants with respect to prior periods*. Taxpayers who have filed a tax return (including an amended return) reflecting their participation in transactions described in paragraph (a) of this section prior to [date of publication of final regulations in the ***Federal Register***], must disclose the transactions as required by §1.6011-4(d) and (e) provided that the period of limitations for assessment of tax (as determined under section 6501 of the Code, including section 6501(c)) for any taxable year in which the taxpayer participated has not ended on or before [date of publication of final regulations in the ***Federal Register***]. However, taxpayers who have filed a disclosure statement regarding their participation in the transaction with the Office of Tax Shelter Analysis pursuant to Notice 2015-73, 2015-46 I.R.B. 660, will be treated as having made the disclosure with respect to the transaction pursuant to the final regulations for the taxable years for which the taxpayer filed returns before [date of publication of final regulations in the ***Federal Register***]. If a taxpayer described in the preceding sentence participates in the basket contract listed transaction in a taxable year for which the taxpayer files a return on or after [date of publication of final regulations in the ***Federal Register***], the taxpayer must file a disclosure statement with the Office of Tax Shelter Analysis at the same time the taxpayer files its return for the first such taxable year.

(3) *Obligations of material advisors with respect to prior periods*. Material advisors defined in §301.6111-3(b) of this chapter who have previously made a tax statement with respect to a transaction described in paragraph (a) of this section have disclosure and list maintenance obligations as described in §§301.6111-3 and 301.6112-1 of this chapter, respectively. Notwithstanding §301.6111-3(b)(4)(i) and (iii) of this chapter, material advisors are required to disclose only if they have made a tax statement on or after the date that is six years before [date of publication of final regulations in the ***Federal Register***].

Douglas W. O'Donnell,
Deputy Commissioner.

(Filed by the Office of the Federal Register July 11, 2024, 8:45 a.m., and published in the issue of the Federal Register for July 12, 2024, 89 FR 57111)

Notice of Proposed Rulemaking

Required Minimum Distributions

REG-103529-23

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document sets forth proposed regulations that would provide guidance relating to required minimum distributions from qualified plans; section 403(b) annuity contracts, custodial accounts, and retirement income accounts; individual retirement accounts and annuities; and eligible deferred compensation plans under section 457. These proposed regulations would affect administrators of, and participants in, those plans; owners of individual retirement accounts and annuities; employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts; and beneficiaries of those plans, contracts, accounts, and annuities. This document also provides notice of a public hearing.

DATES: Written or electronic comments must be received by September 17, 2024. A public hearing on this proposed regulation has been scheduled for September 25, 2024, at 10:00 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by September 17, 2024. If no outlines are

received by September 17, 2024, the public hearing will be cancelled.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG-103529-23) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket on *www.regulations.gov*. Send paper submissions to: CC:PA:01:PR (REG-103529-23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, call Brandon M. Ford or Jessica S. Weinberger at (202) 317-6700; concerning submission of comments, the hearing, and the access code to attend the hearing by telephone, call Vivian Hayes at (202) 317-6901 (not toll-free numbers) or email *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Background

This document sets forth proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 401(a)(9) of the Internal Revenue Code of 1986 (Code). Section 401(a)(9) sets forth required minimum distribution rules for plans qualified under section 401(a). These rules are incorporated by reference in section 408(a)(6) and (b)(3) for individual retirement accounts and individual retirement annuities (collectively, IRAs); section 403(b)(10) for annuity contracts, custodial accounts, and retirement income accounts described in section 403(b) (section 403(b) plans); and section 457(d)(2) for eligible deferred compensation plans. The determination of the required minimum distribution is also relevant for purposes of the related excise tax under section 4974 and the definition of eligible rollover distribution in section 402(c).

The Rules and Regulations section of this issue of the **Federal Register** includes final regulations that amend the Income Tax Regulations and Excise Tax Regulations (26 CFR parts 1 and 54) relating to sections 401(a)(9), 402(c), 403(b), 408, 457, and 4974 (T.D. 10001). The background section in the preamble to those final regulations (2024 final regulations) describes those provisions.

Explanation of Provisions

A. *Overview*

These proposed regulations would address various provisions that were reserved in the 2024 final regulations. These proposed regulations address sections 107, 202, 204, 302, 325, and 327 of the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted on December 29, 2022, as Division T of the Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4459 (2022), and certain other issues.

B. *Determination of Applicable Age for Employees Born in 1959*

The 2024 final regulations include rules for determining an employee's applicable age, as defined in section 401(a)(9)(C)(v), which is a component of the determination of the employee's required beginning date. Under those rules, which reflect the amendment to section 401(a)(9)(C) made by section 107 of the SECURE 2.0 Act, an employee's applicable age varies based on the employee's date of birth. However, as noted in the preamble to the 2024 final regulations, employees who were born in 1959 are described in section 401(a)(9)(C)(v)(I) of the Code (which provides that the applicable age for those employees is age 73) as well as section 401(a)(9)(C)(v)(II) (which provides that the applicable age for those employees is age 75).

The 2024 final regulations reserve §1.401(a)(9)-2(b)(2)(v) for the determination of the applicable age for employees born in 1959, and these proposed regulations would fill in the reserved paragraph. Under the proposed regulations, the applicable age for an employee who was born in 1959 would be age 73.

C. *Purchase of Annuity Contract with Portion of Employee's Individual Account – Rules of Operation for Aggregation Option*

The 2024 final regulations include guidance issued pursuant to section 204 of the SECURE 2.0 Act (relating to the application of section 401(a)(9) of the Code in a situation in which an employee's interest in a defined contribution plan is partially annuitized by using a portion of the employee's individual account to purchase an annuity contract). Specifically, §1.401(a)(9)-5(a)(5)(iv) provides that, in lieu of satisfying section 401(a)(9) separately with respect to an annuity contract purchased with a portion of the employee's account and the remaining account balance, a plan may permit an employee to elect to satisfy section 401(a)(9) for the annuity contract and that account balance in the aggregate by adding the fair market value of the contract to the remaining account balance and treating payments under the annuity contract as distributions from the employee's individual account. However, the 2024 final regulations reserve §1.401(a)(9)-5(a)(5)(v) for rules of operation with respect to this aggregation option, and these proposed regulations would fill in the reserved paragraph.

Under proposed §1.401(a)(9)-5(a)(5)(v), the fair market value of the annuity contract would be determined as of December 31 of the calendar year preceding the distribution calendar year. In addition, beginning with the determination used for the 2026 distribution calendar year, the determination would have to be made using the applicable method set forth in §1.408A-4, Q&A-14(b)(2).[1]

D. *Distributions from Designated Roth Accounts*

Section 325 of the SECURE 2.0 Act added a new paragraph (5) to section 402A(d) of the Code, which provides that

[1] Section 1.408A-4, Q&A-14(b)(2) sets forth rules for determining the fair market value of a traditional IRA that is an individual retirement annuity if that IRA is converted to a Roth IRA.

the provisions of section 401(a)(9)(A) (requiring that minimum distributions be paid during an employee's lifetime) and the incidental death benefit requirements of section 401(a) do not apply to any designated Roth account. The 2024 final regulations include limited guidance relating to the application of that new paragraph.

Specifically, in the case of an employee for whom only a portion of the employee's account under a defined contribution plan is held in a designated Roth account described in section 402A(b)(2), §1.401(a)(9)-5(b)(3) of the 2024 final regulations provides that, for distribution calendar years up to and including the calendar year that includes the employee's date of death, amounts held in that designated Roth account are not taken into account for purposes of determining the account balance that is used to calculate the required minimum distribution. However, the 2024 final regulations reserve §1.401(a)(9)-5(g)(2)(iii) for rules regarding how distributions from a designated Roth account are treated for purposes of section 401(a)(9), and these proposed regulations fill in the reserved paragraph.

Under proposed §1.401(a)(9)-5(g)(2)(iii), a distribution from a designated Roth account made in a calendar year for which the employee is required to take a minimum distribution under the plan would not count towards satisfying that requirement. Consistent with this rule, the proposed regulations would provide that such a distribution is not treated as a required minimum distribution for purposes of §1.402(c)-2(f). Thus, the distribution could be rolled over to a Roth IRA if it otherwise meets the requirements to be an eligible rollover distribution.

E. *Corrective Distributions Giving Rise to Reduction or Waiver of the Section 4974 Excise Tax*

The 2024 final regulations include guidance relating to the application of section 4974(e) (as added to the Code by section 302(b) of the SECURE 2.0 Act). Specifically, §54.4974-1(a)(2) provides that, in the case of a taxpayer who doesn't receive the full required minimum distribution under any qualified retirement plan (as defined in section 4974(c) of the Code) or any eligible deferred compensation plan (as defined in section 457(b)) for a calendar year, the excise tax under section 4974 is reduced from 25 percent of the shortfall to 10 percent if, by the last day of the correction window, the taxpayer: (1) receives a corrective distribution from the applicable plan in the amount of the shortfall; and (2) submits a return reflecting that reduced tax.

In addition, the 2024 final regulations provide for an automatic waiver of the section 4974 excise tax associated with a failure by a beneficiary of an individual to take a required minimum distribution in the calendar year in which the individual died if that individual had not already satisfied the minimum distribution requirement for that year provided that the failure is corrected within a specified period (generally by the end of the following calendar year). Specifically, §54.4974-1(g)(3)(iii) provides for an automatic waiver of the excise tax under section 4974 if, by the tax filing deadline (including extensions thereof) for the taxable year of the beneficiary that begins with or within the calendar year of the individual's death (or, if later, the last day of the calendar year following that calendar year), the beneficiary takes a corrective distribution in the amount needed to satisfy the minimum distribution requirement for the calendar year of the death of the individual.

The 2024 final regulations reserve §1.401(a)(9)-5(g)(2)(iv) for the treatment of corrective distributions that give rise to a reduction or waiver of the section 4974 excise tax, and these proposed regulations would fill in that reserved paragraph. Under proposed §1.401(a)(9)-5(g)(2)(iv), a corrective distribution described in section 4974(e) or §54.4974-1(g)(3)(iii) would not be taken into account for purposes of determining whether §1.401(a)(9)-5 is satisfied for the calendar year in which the corrective distribution is made. Thus, under the proposed regulations, if a missed required minimum distribution is corrected by a distribution made in a subsequent calendar year, the required minimum distribution for that subsequent year must be made in addition to the corrective distribution. Furthermore, under §1.402(c)-2(f)(1) of the 2024 final regulations, the corrective distribution is treated as a required minimum distribution and thus is not eligible for rollover.

These proposed regulations would make a conforming change to §1.408-8(g)(2) under which these corrective distributions would not be taken into account for purposes of determining whether §1.408-8 of the 2024 final regulations is satisfied for the calendar year in which the corrective distribution is made. In addition, because §1.408-8(b)(3) of the 2024 final regulations provides that the determination of whether a distribution from an IRA is a required minimum distribution (and thus not eligible for rollover pursuant to section 408(d)(3)(E)) is made in the same manner as provided in §1.402(c)-2(f) and (j), the treatment under §1.402(c)-2(f)(1) of the corrective distribution as a required minimum distribution (and thus not eligible for rollover) would also apply for purposes of section 408(d)(3)(E).

F. *Spousal Election Under Section 327 of the SECURE 2.0 Act*

The 2024 final regulations permit a defined contribution plan to provide that, if an employee participating in the plan dies before the required beginning date, then an eligible designated beneficiary of the employee (including the employee's surviving spouse) may elect to receive the beneficiary's interest under the plan under the 10-year rule or as annual payments over a period not extending beyond the beneficiary's life expectancy.[2] Section 401(a)(9)(B)(iv)(I) through (III) of the Code, as amended by section 327(a) of the SECURE 2.0 Act, provides that, if the designated beneficiary of an employee who dies before the employee's required beginning date is the employee's surviving spouse, then the spouse may elect to: (1) be treated as if the surviving spouse were the employee for purposes of the regulations referred to in section 401(a)(9)(B)(iii)(II) of the Code (providing for annual payments over the beneficiary's life or life expectancy), (2) delay commencement of required minimum distributions until the year the employee would have attained the applicable age (as defined in sec-

[2] If the employee is a participant in a defined benefit plan, the election is between receiving the beneficiary's interest under a 5-year rule or as annuity payments over the beneficiary's lifetime.

tion 401(a)(9)(C)(v)), and (3) be treated as the employee in the event the surviving spouse dies before distributions to the spouse begin.[3]

Under the 2024 final regulations, if: (1) the employee dies before the employee's required beginning date; (2) the employee's surviving spouse is the sole beneficiary of the employee; and (3) that spouse is subject to the life expectancy rule, then the treatment described in section 401(a)(9)(B)(iv)(II) and (III) will apply automatically (that is, a separate election is not required). *See* §1.401(a)(9)-3(d) and (e) of the 2024 final regulations.

Section 327(b) of the SECURE 2.0 Act instructs the Secretary to modify the regulations applicable to defined contribution plans under section 401(a)(9) of the Code so that an election under section 401(a)(9)(B)(iv) by the surviving spouse will extend the distribution period in the case of an employee's death after the required beginning date. In accordance with this instruction, §1.401(a)(9)-5(g)(3)(i) of the 2024 final regulations provides that a defined contribution plan may permit a surviving spouse who is the sole beneficiary of the employee to elect to be treated as the employee for purposes of determining the required minimum distribution for a calendar year. The 2024 final regulations reserve §1.401(a)(9)-5(g)(3)(ii) for rules relating to this election, and these proposed regulations would fill in that reserved paragraph.

Proposed §1.401(a)(9)-5(g)(3)(ii) provides a series of rules that would apply with respect to the spousal election described in §1.401(a)(9)-5(g)(3)(i) of the 2024 final regulations. Under the proposed regulations, if the employee dies before the required beginning date and the sole beneficiary of the employee is the surviving spouse who is subject to the life expectancy rule, then the spouse would automatically be treated as making the election described in section 401(a)(9)(B)(iv). As a result, the proposed regulations provide that section 401(a)(9)(B)(iv)(I) (under which the spouse is treated as the employee for purposes of section 401(a)(9)(B)(iii)(II)) would apply automatically in this case (in addition to the automatic application of sections 401(a)(9)(B)(iv)(II) and (III)). If the employee dies on or after the required beginning date, then the corresponding election under section 327(b) of the SECURE 2.0 Act does not apply automatically. However, these proposed regulations would provide that this corresponding election may be the default election under the terms of a plan (so that the surviving spouse need not take any action to have this election apply).

If the election under §1.401(a)(9)-5(g)(3)(i) is in effect for a surviving spouse, then, regardless of whether the employee died before, on, or after the required beginning date, the proposed regulations provide that the applicable denominator used for determining the required minimum distribution for each distribution calendar year up to and including the calendar year that includes the surviving spouse's date of death would be determined using the Uniform Lifetime Table (rather than the Single Life Table) for the surviving spouse's age as of the surviving spouse's birthday in the distribution calendar year.[4] In accordance with §1.401(a)(9)-5(d)(1)(i) of the 2024 final regulations, the required minimum distribution for the calendar year of the surviving spouse's death must be made to a beneficiary of the surviving spouse to the extent it has not already been distributed to the surviving spouse.

These proposed regulations provide that, if the election described in §1.401(a)(9)-5(g)(3)(i) is in effect for the surviving spouse and the spouse dies on or after the date on which distributions are considered to have begun to the spouse under the rules of §1.401(a)(9)-3(e)(3) of the 2024 final regulations (that is, the end of the calendar year in which the employee would have reached the applicable age), then annual distributions to the spouse's beneficiary would have to continue. Those distributions would be determined using the spouse's remaining life expectancy for the spouse's age as of the spouse's birthday in the calendar year of the spouse's death from the Single Life Table, reduced by one for each subsequent calendar year. In addition, the proposed regulations add a conforming sentence to §1.401(a)(9)-4(e)(8), providing that the spouse's beneficiary would not be an eligible designated beneficiary in this situation. As a result, a final distribution of the employee's interest would have to be made by the end of the calendar year that includes the tenth anniversary of the spouse's death.

Under the proposed regulations, the spousal election described in §1.401(a)(9)-5(g)(3)(i) would be available only if the first year for which annual required minimum distributions to the surviving spouse must be made is 2024 or later. For example, if an employee who died in 2017 and before the employee's required beginning date would have reached the applicable age in 2024 or later, then the first year for which an annual required minimum distribution is due would be 2024 or later, and the spousal election could apply. However, if the employee would have reached the applicable age in 2022, then the first year for which an annual required minimum distribution is due to the spouse was 2022, and the spousal election would not be available. Similarly, if the employee died in 2021 and after the employee's required beginning date, then the spouse must begin receiving annual required minimum distributions (based on the spouse's remaining life expectancy) in 2022, and the spousal election would not be available.

Although an election under section 401(a)(9)(B)(iv) of the Code results in the spouse being treated as the employee for purposes of the regulations referred to in section 401(a)(9)(B)(iii)(II) (that is, §1.401(a)(9)-5), that treatment does not extend to other purposes.[5] For example, the spouse would not be subject to the 10 percent additional tax under section 72(t)

[3] Section 401(a)(9)(B)(iv)(II) and (III) correspond to section 401(a)(9)(B)(iv)(I) and (II) before the changes made by section 327(a) of the SECURE 2.0 Act.

[4] However, if the employee dies on or after the employee's required beginning date and the employee's remaining life expectancy is greater than the applicable denominator determined under the Uniform Lifetime Table for the surviving spouse's age (which would occur only if the surviving spouse was more than ten years older than the employee), then that greater life expectancy is used as the applicable denominator.

[5] However, if the spouse dies before distributions have begun, then in accordance with section 401(a)(9)(B)(iv)(III), the spouse is treated as the employee for purposes of determining the beneficiary designated under the plan. In addition, if the spouse executes a spousal rollover to the spouse's own IRA in accordance with section 402(c)(9) after having made the election described in section 401(a)(9)(B)(iv), then the spouse will not be treated as a beneficiary with respect to any amounts in that IRA.

(2)(A)(ii) even if the spouse takes a distribution before attaining age 59½. Similarly, the date by which the surviving spouse must commence distributions is determined by reference to the employee's attainment of the applicable age (rather than by reference to the spouse's attainment of the applicable age[6]). In addition, for purposes of determining the account balance under a plan while the surviving spouse is taking distributions, §1.401(a)(9)-5(b)(3) of the 2024 final regulations (which excludes amounts held in a designated Roth account from the employee's account balance during the employee's lifetime) does not apply. Thus, all amounts held in a designated Roth account and any other account under the plan are included for purposes of determining the required minimum distribution due under the plan for the calendar year.

These proposed regulations also provide an updated Uniform Lifetime Table that provides the applicable denominator for individuals ages 10 through 120+. This table was originally published in Notice 2022-6, 2022-5 IRB 460, relating to the determination of whether a series of payments is considered a series of substantially equal periodic payments.

Section 1.402(c)-2(j)(4) of the 2024 final regulations sets forth a special rule under which a portion of a distribution to certain surviving spouses (that is, the portion of the distribution that represents a catch-up of missed hypothetical required minimum distributions) is treated as a required minimum distribution that is not eligible for rollover. Section 1.402(c)-2(j)(4)(iii), which provides rules for the calculation of the hypothetical required minimum distributions, includes the assumption that the election in §1.401(a)(9)-5(g)(3)(i) was in effect for the spouse. The 2024 final regulations reserve §1.402(c)-2(j)(4)(vii) for an example of the calculation of the hypothetical required minimum distributions, and proposed §1.402(c)-2(j)(4)(vii) would fill in the reserved paragraph with an example of the calculation of the hypothetical required minimum distributions over multiple years, which reflects the use of the Uniform Lifetime Table.

The proposed regulations do not include any changes to the defined benefit rules of §1.401(a)(9)-6 to reflect the amendment to section 401(a)(9)(B)(iv) made by section 327 of the SECURE 2.0 Act. Comments are requested on whether there are circumstances under which that provision would affect the required minimum distribution rules applicable to defined benefit plans.

G. *Divorce After Purchase of Qualifying Longevity Annuity Contract*

Section 202(a)(3) of the SECURE 2.0 Act instructs the Secretary of the Treasury (or that person's delegate) to amend §1.401(a)(9)-6 to provide that, in the case of a qualifying longevity annuity contract (QLAC) which was purchased with joint and survivor annuity benefits for an individual and the individual's spouse, a divorce occurring after the original purchase and before the date that the annuity payments commence under the contract will not affect the permissibility of the joint and survivor benefits if certain conditions related to an associated qualified domestic relations order (QDRO) described in section 414(p) of the Code are met. Section 202(a)(3) of the SECURE 2.0 Act also provides that if the arrangement is not subject to section 414(p) of the Code or section 206(d) of the Employee Retirement Income Security Act of 1974,[7] a divorce or separation instrument may be substituted for a QDRO. The 2024 final regulations reserve §1.401(a)(9)-6(q)(3)(vii)(B) for rules related to this divorce or separation instrument alternative, and these proposed regulations would fill in the reserved paragraph.

Under proposed §1.401(a)(9)-6(q)(3)(vii)(B), the divorce or separation instrument alternative would be available only if the plan is not subject to both section 414(p) of the Code and section 206(d) of ERISA (for example, a governmental plan described in section 414(d) of the Code). In accordance with section 202(b) of the SECURE 2.0 Act, these proposed regulations would provide that, for purposes of this alternative, a divorce or separation instrument is: (1) a decree of divorce or separate maintenance or a written instrument incident to such a decree; (2) a written separation agreement; or (3) any other decree requiring an individual to make payments for the support or maintenance of the individual's former spouse.

H. *Outright Distribution to Trust Beneficiary*

The 2024 final regulations provide rules for the separate application of section 401(a)(9) of the Code with respect to multiple beneficiaries of a see-through trust (within the meaning of §1.401(a)(9)-4(f)(1)). Specifically, §1.401(a)(9)-8(a) of the 2024 final regulations permits separate application of section 401(a)(9) with respect to each of the beneficiaries' separate interests if the terms of a see-through trust meet certain requirements. One of those requirements is that the trust must provide that it is to be divided immediately upon the death of the employee, with the separate interests to be held in separate see-through trusts.

Proposed §1.401(a)(9)-8(a)(1)(iii)(B) sets forth an exception to that requirement in the case of an outright distribution to a trust beneficiary, as described in proposed §1.401(a)(9)-8(a)(1)(iii)(D). Under the proposed regulations, the rules under §1.401(a)(9)-8(a)(1)(iii)(C) of the 2024 final regulations (prohibiting discretion in the allocation of post-death distributions attributable to the employee's interest in the plan) would be extended to apply when that outright distribution exception is used.

Under proposed §1.401(a)(9)-8(a)(1)(iii)(D), the separate interests of the beneficiaries held in a see-through trust would not fail to be eligible for the exception

[6] The election under section 401(a)(9)(B)(iv) does not affect the ability of the employee's surviving spouse to make a rollover to the spouse's own IRA or to treat an IRA as the surviving spouse's own IRA. In either of these cases, the date by which distributions from that IRA must commence would be determined by reference to the surviving spouse's attainment of the applicable age.

[7] The Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829, as amended, is referred to in this preamble as "ERISA." 7 The Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829, as amended, is referred to in this preamble as "ERISA."

in proposed §1.401(a)(9)-8(a)(1)(iii)(B) merely because, upon termination of that trust, a beneficiary's separate interest in the trust is to be held directly by that beneficiary rather than being held by a separate see-through trust. Thus, for example, if a trust which is a named beneficiary provides that each of three children have equal interests in the portion of the trust attributable to the employee's interest in the plan, and the trust provides that it is to be immediately divided upon the death of the employee, then section 401(a)(9) is permitted to be applied separately with respect to the separate interests of the three children, even if the separate interest of one of the children is held by a subtrust while the separate interests of the other children are held directly by those children.

Applicability dates

The amendments to §§1.401(a)(9)-4, 1.401(a)(9)-5, 1.401(a)(9)-6, 1.401(a)(9)-8, 1.401(a)(9)-9, and 1.408-8 are proposed to apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2025. The amendments to §1.402(c)-2 are proposed to apply for distributions on or after January 1, 2025. Thus, these amendments would have the same applicability dates as the corresponding provisions in the 2024 final regulations.

Special Analyses

I. *Regulatory Planning and Review*

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

These proposed regulations include third-party disclosures and recordkeeping requirements, in sections 1.401(a)(9)-5(a)(5)(iv) and 1.401(a)(9)-5(g)(3)(ii), that are required to determine the required minimum distribution for a calendar year for certain defined contribution plan participants and beneficiaries. These collections of information would generally be used by the IRS for tax compliance purposes and plan administrators to facilitate compliance with the required minimum distribution requirements under section 401(a)(9) of the Code. The likely respondents to these collections are employees participating in retirement plans and their beneficiaries.

The 2024 final regulations include guidance relating to the application of section 401(a)(9) in a situation in which an employee's interest in a defined contribution plan is partially annuitized by using a portion of the employee's account to purchase an annuity contract. Specifically, section 1.401(a)(9)-5(a)(5)(iv) of the final regulations provides that, in lieu of satisfying section 401(a)(9) separately with respect to an annuity contract purchased with a portion of an employee's defined contribution plan account and the remaining account balance, a plan may permit an employee to elect to satisfy section 401(a)(9) for the annuity contract and the remaining account balance in the aggregate by adding the fair market value of the contract to the remaining account balance and treating payments under the annuity contract as distributions from the individual account. Section 1.401(a)(9)-5(a)(5)(v) of the proposed regulations provides rules of operation with respect to this aggregation option – specifically, the method and date for valuation of the annuity contract. Under these rules of operation, annuity contract issuers are expected to provide the annuity valuations as a third-party disclosure. In addition, the amount of payments made under the annuity contract and the underlying value of the annuity contract is expected to be reported to the employer as a third-party disclosure. The associated burden is as follows:

Estimated number of respondents: 19,620.

Estimated average annual burden per respondent: 0.5 hours (30 minutes).

Estimated frequency of responses: Once.

Estimated total annual reporting burden: 9,810 hours.

Section 1.401(a)(9)-5(g)(3)(i) of the 2024 final regulations[8] provides that a plan may permit a surviving spouse who is the sole beneficiary of an employee to elect to be treated as the employee for purposes of determining the required minimum distribution from a defined contribution plan for a calendar year. Section 1.401(a)(9)-5(g)(3)(ii) of these proposed regulations supplements that provision by providing a series of rules that would apply with respect to the spousal election described in the preceding sentence. Under these proposed regulations, if the employee dies before the employee's required beginning date and the sole beneficiary of the employee is the surviving spouse who is subject to the life expectancy rule, then the spouse would automatically be treated as making the election. If the employee dies on or after the required beginning date, then the election would not apply automatically. However, the proposed regulations provide that the election may be the default under the terms of a plan (so that the surviving spouse need not take any action to have the election apply). This election is expected to be made as a third-party disclosure between the surviving spouse and the plan administrator, who will keep records of the election. The associated burden is as follows:

Estimated number of respondents: 156,960.

Estimated average annual burden per respondent: 0.17 hours (10 minutes).

[8] These proposed regulations are being published simultaneously with the 2024 final regulations, and address various provisions that were reserved in those regulations. The collection requirements in the 2024 final regulations are approved under OMB control number 1545-1573.

Estimated frequency of responses: Once.

Estimated total annual reporting burden: 26,683 hours.

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations for the proposed information collection should be sent to www.reginfo.gov/public/do/PRAMain, with copies to the Internal Revenue Service. Find this particular information collection by selecting "*Currently under Review - Open for Public Comments*" and using the search function. Submit electronic submissions for the proposed information collection to the IRS via email at pra.comments@irs.gov (indicate REG-103529-23 on the Subject line). Comments on the collection of information should be received by September 17, 2024. Comments are specifically requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility; the accuracy of the estimated burden associated with the proposed collection of information; how the quality, utility, and clarity of the information to be collected may be enhanced; how the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

III. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect individuals and businesses, some of which may be small entities. The rule affects administrators of, and participants in, certain plans; owners of individual retirement accounts and annuities; employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts; and beneficiaries of those plans, contracts, accounts, and annuities. These proposed regulations do not impose new compliance burdens and are not expected to result in economically meaningful changes in behavior relative to the existing regulations. It is expected that most plans will provide the spousal election under §1.401(a)(9)-5(g)(3) as a default election under the plan and that surviving spouses will rarely opt out of the default (because of the tax benefit of the default election). Therefore, the economic impact of the rule is not expected to be significant.

Notwithstanding this certification that the proposed regulations would not have a significant economic impact on a substantial number of small entities, the Treasury Department and the IRS invite comments on the impacts these proposed regulations may have on small entities. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

IV. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. The proposed regulations do not propose any rule that would include any Federal mandate that may result in expenditures by State, local, or tribal governments, or by the private sector, in excess of that threshold.

V. *Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. The proposed regulations do not propose rules that would have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive order.

Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulation. All comments will be made available at www.regulations.gov. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for September 25, 2024, beginning at 10:00 a.m. ET in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit an outline of the topics to be addressed and the time to be devoted to each topic by September 17, 2024. A period of 10 minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by

September 17, 2024, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG-103529-23 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-103529-23.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-103529-23 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-103529-23.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have your name added to the building access list. The subject line of the email must contain the regulation number REG-103529-23 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG-103529-23. Requests to attend the public hearing must be received by 5:00 p.m. ET on September 23, 2024.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-103529-23 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-103529-23. Requests to attend the public hearing must be received by 5:00 p.m. ET on September 23, 2024.

Hearings will be made accessible to people with disabilities. To request special assistance during the hearing, please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317-6901 (not a toll-free number) by September 20, 2024.

Statement of Availability of IRS Documents

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

Drafting Information

The principal authors of these proposed regulations are Jessica S. Weinberger and Brandon M. Ford, of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of the proposed regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1--INCOME TAXES

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

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

* * * * *

Par. 2. Section 1.401(a)(9)-2, as revised in a final rule published elsewhere in this issue of the *Federal Register*, effective September 17, 2024, is amended by adding paragraph (b)(2)(v) to read as follows:

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

* * * * *

(b) * * *

(2) * * *

(v) *Employees born in 1959*. In the case of an employee born in 1959, the applicable age is age 73.

* * * * *

Par. 3. Section 1.401(a)(9)-4, as revised in a final rule published elsewhere in this issue of the *Federal Register*, effective September 17, 2024, is amended by adding a sentence to the end of paragraph (e)(8) to read as follows:

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

* * * * *

(e) * * *

(8) * * * However, if the surviving spouse dies after benefits are considered to have commenced under §1.401(a)(9)-3(e)(3), then the beneficiary of the spouse is not an eligible designated beneficiary.

* * * * *

Par. 4. Section 1.401(a)(9)-5, as revised in a final rule published elsewhere in this issue of the *Federal Register*, effective September 17, 2024, is amended by:

a. Revising paragraph (a)(5)(iv)(A);

b. Revising paragraph (a)(5)(v); and

c. Adding paragraphs (g)(2)(iii) and (iv), and (g)(3)(ii).

The revision and additions read as follows:

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

(a) * * *

(5) * * *

(iv) * * *

(A) Adding the fair market value of the contract (determined in accordance with paragraph (a)(5)(v) of this section) to the remaining account balance determined under paragraph (b) of this section; and

* * * * *

(v) *Rules of operation for aggregation option*. For purposes of applying the optional aggregation rule described in paragraph (a)(5)(iv) of this section, the

fair market value of the annuity contract is determined as of December 31 of the calendar year preceding the distribution calendar year. Beginning with the determination used for the 2026 distribution calendar year, the applicable method set forth in §1.408A-4, Q&A-14(b)(2) must be used for this purpose.

* * * * *

(g) * * *

(2) * * *

(iii) *Distributions from designated Roth accounts*. For distribution calendar years up to and including the calendar year that includes the employee's date of death, distributions from a designated Roth account (as described in section 402A(b)(2)) are not taken into account for purposes of determining whether this section is satisfied.

(iv) *Corrective distributions that give rise to reduction or waiver of section 4974 excise tax*. A corrective distribution described in section 4974(e) or §54.4974-1(g)(3)(iii) is not taken into account for purposes of determining whether this section is satisfied for the calendar year in which the distribution is made. Thus, for the year in which the corrective distribution is made, the required minimum distribution for that year must be made in addition to the corrective distribution.

(3) * * *

(ii) *Rules relating to election*--(A) *Employee dies before required beginning date*. If the employee dies before the employee's required beginning date, §1.401(a)(9)-3(c)(4) applies to the designated beneficiary (under which life expectancy payments will be made to the employee's designated beneficiary), and the designated beneficiary is the employee's surviving spouse who is eligible to make the election described in paragraph (g)(3)(i) of this section, then the spouse is treated as having made that election.

(B) *Employee dies on or after required beginning date.* If the employee dies on or after the employee's required beginning date, the spouse is not automatically treated as having made the election described in paragraph (g)(3)(i) of this section. However, that election may be a default election under the terms of the plan.

(C) *Use of Uniform Lifetime Table*. If the election described in paragraph (g)(3)(i) of this section applies with respect to a surviving spouse, then the applicable denominator for each distribution calendar year beginning with the calendar year following the year of the employee's death and up to and including the calendar year that includes the surviving spouse's date of death is determined using the Uniform Lifetime Table in §1.401(a)(9)-9(c) for the surviving spouse's age as of the surviving spouse's birthday in the distribution calendar year. However, if the employee died on or after the required beginning date, then the applicable denominator for a distribution calendar year is the greater of the applicable denominator determined under the preceding sentence and the employee's remaining life expectancy.

(D) *Distribution after spouse's death*. If the election described in paragraph (g)(3)(i) of this section applies with respect to an employee who dies on or after the required beginning date (or whose surviving spouse dies after distributions are considered to have begun to the spouse as determined under §1.401(a)(9)-3(e)(3)), then--

(*1*) For calendar years following the calendar year that includes the surviving spouse's date of death, the applicable denominator used for determining the required minimum distribution for each distribution calendar year is determined under the rules of paragraph (d)(3)(iv) of this section, and

(*2*) A final distribution of the employee's entire interest must be made by the end of the calendar year that includes the tenth anniversary of the surviving spouse's death.

(E) *Applicability dates for spousal election*. The spousal election described in paragraph (g)(3)(i) of this section applies only if the first year for which annual required minimum distributions to the surviving spouse must be made is 2024 or later. Thus, the election described in paragraph (g)(3)(ii)(A) of this section (relating to employees who die before the required beginning date) applies only if the calendar year in which life expectancy payments must begin under §1.401(a)(9)-3(d) is 2024 or later. Similarly, the election described in paragraph (g)(3)(ii)(B) of this section (relating to an employee who dies on or after the required beginning date) applies only if the first year for which the surviving spouse must take annual required minimum distributions under paragraph (d) of this section is 2024 or later (that is, if the employee died in 2023 or later).

Par. 5. Section 1.401(a)(9)-6, as revised in a final rule published elsewhere in this issue of the *Federal Register*, effective September 17, 2024, is amended by adding paragraph (q)(3)(vii)(B) to read as follows:

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

* * * * *

(q) * * *

(3) * * *

(vii) * * *

(B) *QDRO not required for certain plans*. If the rules of section 414(p) and section 206(d)(3) of ERISA do not apply to a plan (for example, a governmental plan described in section 414(d) of the Code), then a divorce or separation instrument that satisfies the requirements of paragraph (q)(3)(vii)(C) of this section may be used in lieu of a qualified domestic relations order. For this purpose, a divorce or separation instrument is—

(*1*) A decree of divorce or separate maintenance or a written instrument incident to such a decree;

(*2*) A written separation agreement; or

(*3*) A decree (not described in paragraph (q)(3)(vii)(B)(*1*) of this section) requiring an individual to make payments for the support or maintenance of the individual's former spouse.

* * * * *

Par. 6. Section 1.401(a)(9)-8, as revised in a final rule published elsewhere in this issue of the *Federal Register*, effective September 17, 2024, is amended by:

a. Revising the second sentence of paragraph (a)(1)(iii)(B);

b. Revising the first sentence of paragraph (a)(1)(iii)(C); and

c. Adding paragraph (a)(1)(iii)(D).

The revisions and addition read as follows:

§1.401(a)(9)-8 Special rules.

(a) * * *

(1) * * *

(iii) * * *

(B) * * * Except as provided in paragraph (a)(1)(iii)(D) of this section, the preceding sentence applies only if the separate interests are held by separate see-through trusts (in which case the rules of §§1.401(a)(9)-4(f) and 1.401(a)(9)-5 will apply separately to each separate trust).

(C) * * * For purposes of paragraph (a)(1)(iii)(B) of this section, a trust is immediately divided upon the death of the employee only if, as of the date of death, the trust is terminated and there is no discretion as to the extent to which the separate trusts (or the beneficiaries described in paragraph (a)(1)(iii)(D) of this section) will be entitled to receive post-death distributions attributable to the employee's interest in the plan.* * *

(D) *Outright distribution to trust beneficiary*. The separate interests of the beneficiaries in a see-through trust will not fail to be eligible for the exception under paragraph (a)(1)(iii)(B) of this section merely because, upon termination of the trust, a beneficiary's separate interest in the trust is to be held directly by that beneficiary rather than being held by a separate see-through trust.

* * * * *

Par. 7. In §1.401(a)(9)-9, revise and republish the table set forth in paragraph (c) to read as follows:

§1.401(a)(9)-9 Life expectancy and Uniform Lifetime tables.

* * * * *

(c) * * *

Table 2 to Paragraph (c)

Age of employee	*Applicable denominator*
10	88.2
11	87.2
12	86.2
13	85.2
14	84.2
15	83.2
16	82.2
17	81.2
18	80.2
19	79.2
20	78.2
21	77.2
22	76.2
23	75.2
24	74.2
25	73.3
26	72.3
27	71.3
28	70.3
29	69.3
30	68.3
31	67.3
32	66.3
33	65.3
34	64.3
35	63.3
36	62.3
37	61.3
38	60.3
39	59.4
40	58.4

Age of employee	*Applicable denominator*
41	57.4
42	56.4
43	55.4
44	54.4
45	53.4
46	52.4
47	51.5
48	50.5
49	49.5
50	48.5
51	47.5
52	46.5
53	45.6
54	44.6
55	43.6
56	42.6
57	41.6
58	40.7
59	39.7
60	38.7
61	37.7
62	36.8
63	35.8
64	34.9
65	33.9
66	33.0
67	32.0
68	31.1
69	30.1
70	29.2
71	28.3
72	27.4
73	26.5
74	25.5
75	24.6
76	23.7
77	22.9
78	22.0
79	21.1
80	20.2
81	19.4
82	18.5
83	17.7
84	16.8

Age of employee	*Applicable denominator*
85	16.0
86	15.2
87	14.4
88	13.7
89	12.9
90	12.2
91	11.5
92	10.8
93	10.1
94	9.5
95	8.9
96	8.4
97	7.8
98	7.3
99	6.8
100	6.4
101	6.0
102	5.6
103	5.2
104	4.9
105	4.6
106	4.3
107	4.1
108	3.9
109	3.7
110	3.5
111	3.4
112	3.3
113	3.1
114	3.0
115	2.9
116	2.8
117	2.7
118	2.5
119	2.3
120 +	2.0

* * * * *

Par. 8. Section 1.402(c)-2, as revised in a final rule published elsewhere in this issue of the *Federal Register*, effective September 17, 2024, is amended by:

a. In the first sentence of paragraph (f)(1), removing "paragraphs (f)(2) and (3)" and adding in its place "paragraphs (f)(2) through (4)";

b. Redesignating paragraph (f)(3) as (f)(4) and adding new paragraph (f)(3); and

c. Adding paragraph (j)(4)(vii).

The addition and revision read as follows:

§1.402(c)-2 Eligible rollover distributions.

* * * * *

(f) * * *

(3) *Distributions from designated Roth accounts*. If a distribution is not taken into account for purposes of section 401(a)(9)

under the rule in §1.401(a)(9)-5(g)(2)(iii), then it is not treated as a distribution that is a required minimum distribution for purposes of this paragraph (f).

* * * * *

(j) * * *

(4) * * *

(vii) *Example*. (A) *Facts*. Employee A is a participant in Plan X, sponsored by Employer M. A, who was born in 1957, died in 2024 (the calendar year A would have reached age 67 and accordingly before A's required beginning date), having named A's surviving spouse, B, who was born in 1958, as the sole beneficiary. The applicable age for both A and B is 73. In accordance with the terms of Plan X, B is subject to the 10-year rule. B takes a $1,000 distribution in 2031 (the calendar year in which B reaches age 73). B takes no further distributions until taking a distribution of A's remaining interest in Plan X in 2033 (the ninth calendar year following the year of A's death, when B is age 75 and A would have reached age 76). The account balance as of December 31, 2032, was $100,000, and the distribution of the remaining interest to B equals $103,000. B would like to roll over the distribution to B's own IRA to the extent the distribution does not constitute a required minimum distribution.

(B) *Catch-up of required minimum distributions required*. Because the distribution is made in a calendar year after B attained the applicable age and B intends to roll over the distribution to B's own IRA, this paragraph (j)(4) applies to determine the portion of the distribution that is treated as a required minimum distribution. The first applicable year (determined in accordance with paragraph (j)(4)(iv) of this section) is 2031 (the calendar year in which B reached age 73 and the seventh year after the year of A's death). Pursuant to paragraph (j)(4)(ii) of this section, the portion of the $103,000 distributed in 2033 that is not an eligible rollover distribution because it is treated as a required minimum distribution under section 401(a)(9), is the excess, if any, of the sum of the hypothetical required minimum distributions, determined in accordance with paragraph (j)(4)(iii) of this section for each calendar year beginning with the first applicable year and ending in the year of distribution over the sum of the actual distributions made in each calendar year beginning with the first applicable year and ending in the year before the year of the distribution.

(C) *Calculation of hypothetical required minimum distribution*. Pursuant to paragraph (j)(4)(iii) of this section, the hypothetical required minimum distribution for 2031 (the year in which B reaches age 73) is $3,773.58 ($100,000.00/26.5). For 2032 (the year in which B reaches age 74), the adjusted account balance is calculated by reducing the $100,000.00 account balance by the excess of the hypothetical required minimum distribution for the first applicable year over the actual distributions made to the surviving spouse in that calendar year, which is $2,773.58 ($3,773.58-$1,000.00). In this case, for the second determination year, the adjusted account balance is $97,226.42 ($100,000.00-$2,773.58) and the hypothetical required minimum distribution for 2032 is $3,812.80 ($97,226.42/25.5). For 2033 (the year in which B reaches age 75), the adjusted account balance is calculated by reducing the $100,000.00 account balance by the excess of the sum of the hypothetical required minimum distributions for determination years preceding 2033 of $7,586.38 ($3,773.58+$3,812.80) over the actual distributions made to the surviving spouse during those calendar years ($1,000.00), which is $6,586.38 ($7,586.38-$1,000.00). Thus, the adjusted account balance for 2033 is $93,413.62 ($100,000.00-$6,586.38) and the hypothetical required minimum distribution for 2033 is $3,797.30 ($93,413.62/24.6). The portion of the $103,000 distribution of the employee's remaining interest that is treated as a required minimum distribution, and thus not an eligible rollover distribution, is the excess of the sum of the hypothetical required minimum distributions for each determination year in the catch-up period, which is $11,383.68 ($3,773.58+$3,812.80+$3,797.30), over the actual distributions made during the calendar years preceding 2033 ($1,000.00), which is $10,383.68 ($11,383.68-$1,000.00). Accordingly, the portion of the $103,000 distribution that is treated as a required minimum distribution is $10,383.68.

(D) *Calculation of eligible rollover distribution*. Pursuant to paragraph (j)(4)(vi) of this section, the plan administrator may assume that, for purposes of section 402(f)(2)(A), a portion of the $103,000 distribution equal to $10,383.68 is not an eligible rollover distribution. However, B could choose to roll over the entire $103,000 distribution to an IRA, provided the IRA is established as a beneficiary IRA, and not as B's own IRA. In that case, in accordance with §1.408-8(d)(2)(i), the IRA would be subject to the 10-year rule that applied to the spouse under the plan (so that a distribution of the employee's entire interest would be required by 2034).

* * * * *

Par. 9. Section 1.408-8, as revised in a final rule published elsewhere in this issue of the *Federal Register*, effective September 17, 2024, is amended as follows:

a. Redesignate paragraph (g)(2)(vii) as paragraph (g)(2)(viii); and

b. Add new paragraph (g)(2)(vii).

The addition reads as follows:

§1.408-8 Distribution requirements for individual retirement plans.

* * * * *

(g) * * *

(2) * * *

(vii) Corrective distributions that give rise to a reduction or waiver of the section 4974 excise tax, as described in §1.401(a)(9)-5(g)(2)(iv).

* * * * *

Douglas W. O'Donnell,
Deputy Commissioner.

(Filed by the Office of the Federal Register July 18, 2024, 8:45 a.m., and published in the issue of the Federal Register for July 19, 2024, 89 FR 58644)

Definition of Terms

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

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

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

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

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

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

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

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

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

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

Abbreviations

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

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2024–27 through 2024–52 is in Internal Revenue Bulletin 2024–52, dated December 30, 2024.

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