Treasury Regulation 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 January 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.