

Treasury Regulation 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 payable 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).