



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-103529-23]

RIN 1545-BQ66

Required Minimum Distributions

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 **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. 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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If no outlines are received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, 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 Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.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 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

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.

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

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.

or life expectancy), (2) delay commencement of required minimum distributions until the year the employee would have attained the applicable age (as defined in section 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

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.

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

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.

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)(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 age⁶). 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.

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.

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.

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.

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."

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 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 sub-trust 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 regulations⁸ 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

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.

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).

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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. 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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. 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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, 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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, 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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, 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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, 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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, 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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, 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)

<i>Age of employee</i>	<i>Applicable denominator</i>
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
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
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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, 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 **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, 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.