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DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

TD 9130

RIN 1545-BA60

Required Distributions from Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Final regulations

SUMMARY: This document contains final regulations concerning required minimum distributions under section 401(a)(9) for defined benefit plans and annuity contracts providing benefits under qualified plans, individual retirement plans, and section 403(b) contracts. This document also contains a change to the separate account rules in the final regulations concerning required minimum distributions for defined contribution plans. These final regulations provide the public with guidance necessary to comply with the law and will affect administrators of, participants in, and beneficiaries of qualified plans; institutions that sponsor and administer individual retirement plans, individuals who use individual retirement plans for retirement income, and beneficiaries of individual retirement plans; and employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts and beneficiaries of such contracts and accounts.

DATES: Effective Date: These regulations are effective June 15, 2004.

Applicability Date: These regulations apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003.

INFORMATION CONTACT: Cathy Vohs at (202)622-6090.

SUPPLEMENTARY INFORMATION:

Background

These final regulations amend 26 CFR part 1 relating to section 401(a)(9). The regulations provide guidance on the minimum distribution requirements under section 401(a)(9) for plans qualified under section 401(a) and for other arrangements that incorporate the section 401(a)(9) rules by reference. The section 401(a)(9) rules are incorporated by reference in section 408(a)(6) and (b)(3) for individual retirement accounts and annuities (IRAs) (including Roth IRAs, except as provided in section 408A(c)(5)), section 403(b)(10) for section 403(b) annuity contracts, and section 457(d) for eligible deferred compensation plans.

Section 401(a)(9) provides rules for distributions during the life of the employee in section 401(a)(9)(A) and rules for distributions after the death of the employee in section 401(a)(9)(B). 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)(C) defines required beginning date for employees (other than

5-percent owners and IRA owners) as April 1 of the calendar year following the later of the calendar year in which the employee attains age 70**2** or the calendar year in which the employee retires. For 5-percent owners and IRA owners, the required beginning date is April 1 of the calendar year following the calendar year in which the employee attains age 70**2**, even if the employee has not retired.

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 that is used to determine the period over which payments must be made may be redetermined, but not more frequently than annually.

Section 401(a)(9)(E) provides that the term <u>designated beneficiary</u> means any individual designated as a beneficiary by the employee.

Section 401(a)(9)(F) provides that, under regulations prescribed by the Secretary, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will be become payable to the surviving spouse upon such 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 a required minimum distribution.

Section 401(a)(9) also provides that, if the employee dies after distributions have begun, the employee=s interest must be distributed at least as rapidly as under the method used by the employee.

Section 401(a)(9) further provides that, if the employee dies before required minimum distributions have begun, the employee’s interest must be either distributed (in accordance with regulations) over the life or life expectancy of the designated beneficiary with the distributions beginning no later than 1 year after the date of the employee’s death, or distributed within 5 years after the death of the employee. However, under section 401(a)(9)(B)(iv), a surviving spouse may wait until the date the employee would have attained age 70½ to begin taking required minimum distributions.

Comprehensive proposed regulations under section 401(a)(9) were first published in **the Federal Register** on July 27, 1987 (52 FR 28070) (EE-113-82). Those proposed regulations were amended in 1997 (62 FR 67780) (REG-209463-82) to address the limited issue of the rules that apply when a trust is designated as an employee’s beneficiary. Comprehensive proposed regulations were reproposed in the **Federal Register** on January 17, 2001 ((66 FR 3928) (REG-130477-00/REG-130481-00)). The 2001 proposed regulations substantially revised and simplified the rules for defined contribution plans but maintained the basic structure for defined benefit plans and requested additional comments on the rules that should apply to those plans. With respect to annuity payments, the 2001 proposed regulations retained the basic structure of the 1987 proposed regulations and the preamble indicated that the IRS and Treasury were continuing to study these rules and specifically requested updated comments on current practices and issues relating to required minimum distributions from annuity contracts. Commentators on the 2001 proposed regulations provided information on the variety of annuity contracts being developed and available as insurance company products for purchase with separate accounts.

Final and temporary regulations relating to required minimum distributions from qualified plans, individual retirement plans, and section 403(b) annuity contracts, custodial accounts, and retirement income accounts were published in the **Federal Register** on April 17, 2002 (67 FR 18987). Proposed regulations that cross reference those temporary regulations were published in the Proposed Rules section of the **Federal Register** on April 17, 2002 ((67 FR 18834) (REG-108697-02)). The final and temporary regulations were effective with the 2003 calendar year.

The 2002 regulations finalized the rules for defined contribution plans and the basic rules regarding the determination of the required beginning date, determination of designated beneficiary and other general rules that apply to both defined benefit and defined contribution plans. The 2002 regulations also provided temporary regulations under '1.401(a)(9)-6T relating to minimum distribution requirements for defined benefit plans and annuity contracts purchased with an employee:s account balance under a defined contribution plan. In response to the comments to the 2001 proposed regulations, the temporary regulations significantly expanded the situations in which annuity payments under annuity contracts purchased with an employee's benefit may provide for increasing payments, but this guidance was provided in proposed and temporary form rather than final form in order to give taxpayers an opportunity to comment on these changes.

A public hearing was held on the temporary and proposed regulations on October 9, 2002. At the public hearing, and in comments on the temporary regulations, concerns were raised that requiring compliance with certain of the rules in the temporary regulations in 2003 would not be appropriate. Many of the comments relate to restrictions on variable annuity payments, and certain other increasing annuity payments, set forth in A-1 of '1.401(a)(9)-6T. Commentators also requested additional guidance in applying the rule in A-12 of '1.401(a)(9)-6T that requires the entire interest under an annuity contract to include the actuarial value of other benefits (such as minimum survivor benefits) provided under the contract and that the rule requiring the inclusion of these values be delayed until the guidance is provided. Finally, commentators requested that special consideration be provided to governmental plans.

In response to these comments and in order to provide adequate time to consider the issues raised, the IRS issued Notice 2003-2 (2003-1 C.B. 257) which provided that, pending the issuance of further regulations, plans are permitted to satisfy certain requirements in the 1987 or 2001 proposed regulations with respect to variable annuity payments in lieu of complying with the corresponding requirements in the 2002 temporary regulations, and that the entire interest under an annuity contract (including an annuity described in section 408(b) or section 403(b)) is permitted to be determined as the dollar amount credited to the employee or beneficiary without regard to the actuarial value of any other benefits (such as minimum survivor benefits) that will be provided under the contract. Notice 2003-2 also provided that, pending the issuance of further regulations under section 401(a)(9), governmental plans are only required to satisfy a reasonable and good faith interpretation of section 401(a)(9). Finally, Notice 2003-2 provided that the transitional relief would continue at least through the year in which additional regulations are published, with a later effective date for certain governmental plans.

In response to the comments received, these final regulations make a number of significant modifications to the proposed and temporary regulations and adopt the regulations as modified. They also make a minor modification to the rules in A-2 of '1.401(a)(9)-8 for separate accounts. These final regulations contain rules relating to minimum distribution requirements for defined benefit plans and annuity contracts purchased with an employee=s account balance under a defined contribution plan. For purposes of this discussion of the background of the regulations in this preamble, as well as the explanation of provisions below, whenever the term employee is used, it is intended to include not only an employee but also an IRA owner.

Explanation of Provisions

Overview

These final regulations retain the basic rules of the temporary regulations. For example, distributions of an employee's entire interest must be paid in the form of periodic annuity payments for the employee's or beneficiary's life (or the joint lives of the employee and beneficiary) or over a comparable period certain. The payments must be nonincreasing or only increase as provided in the regulations. As provided in the temporary regulations, the permitted increases under these final regulations include: adjustments to reflect increases in the cost of living; any increase in benefits pursuant to a plan amendment; a pop up in payments in the event of the death of the beneficiary or the divorce of the employee and spouse; or return of employee contributions upon an employee’s death. In addition, for both annuity contracts purchased from insurance companies and annuities paid from section 401(a) qualified trusts, the regulations allow variable annuities and other regular increases, if certain conditions are satisfied. The regulations also allow changes in distribution form in certain circumstances.

These regulations retain many rules from the temporary regulations without modification. These include, for example, rules regarding: the distribution of benefits that accrue after an employee’s first distribution calendar year; the treatment of nonvested benefits; the actuarial increase to an employee’s benefit that must be provided if the employee retires after the calendar year in which the employee attains age 70½; and benefits that commence in the form of an annuity prior to an employee’s required beginning date.

Incidental benefit requirement

The basic purpose of the incidental benefit rule is to ensure that the payments under the annuity are primarily to provide retirement benefits to the employee. These final regulations retain the basic rule in the temporary regulations that, if distributions commence under a distribution option that is in the form of a joint and survivor annuity where the beneficiary is not the employee's spouse, the incidental benefit requirement will not be satisfied unless the payments to the beneficiary as a percentage of the payments to the employee do not exceed the percentage provided in the table in the regulations. The percentage is based on the number of years that the employee’s age exceeds the beneficiary’s age, and the percentage decreases as the difference between the ages increases. This reflects the fact that the greater the number of years younger a beneficiary is than the employee, the greater the number of years of expected payments that will be made to the beneficiary after the death of the employee. Under the table in the temporary regulations, a plan may not provide a 100 percent survivor benefit to an employee's nonspouse beneficiary under a joint and survivor annuity if the beneficiary is more than 10 years younger than the employee. Some commentators suggested that an adjustment to the table is appropriate if the employee commences distributions before 70½. This is because, in such a case, more payments are expected to be made while the employee is alive.

In response to these comments, the final regulations provide that, if an employee's annuity starting date is at an age younger than age 70, an adjustment is made to the employee/beneficiary age difference. This adjusted employee/beneficiary age difference is determined by decreasing the age difference by the number of years the employee is younger than age 70 at the annuity starting date. The effect of this change is to permit a higher percentage after an employee's death for employees who commence benefits at earlier ages. Thus, for an employee age 55 at the time of the employee's annuity starting date, a joint and 100 percent survivor annuity can be provided if the survivor is not more than 25 years younger than the employee.

<u>Increasing annuities (including acceleration and cost-of-living increases)</u>

These final regulations clarify that a plan may provide an annual increase that does not exceed the increase in an eligible cost-of-living index for a 12-month period ending in the year during which the increase occurs or the prior year. An eligible cost-of-living index is a consumer price index (CPI) issued by the Bureau of Labor Statistics and based on prices of all items (or all items excluding food and energy), including an index for a population of consumers (such as urban consumers or urban wage earners and clerical workers) or geographic area or areas (such as a given metropolitan area or state).

Under these regulations, a plan may provide for annual cost-of-living increases, or may provide for less frequent cost-of-living increases that are cumulative since the most recent increase (or the employee's annuity starting date, if later), as long as there is no actuarial increase to reflect having not provided increases in the interim years.

For a plan that provides annual increases, but provides a ceiling on the annual increase, and thus does not allow a full cost-of-living increase in some years, the plan may allow an unused portion of the cost-of-living increase to be provided in a subsequent year when the ceiling exceeds the increase in the CPI for that year and still treat the increase in that subsequent year as an increase that does not exceed an eligible cost-of-living index.

Finally, a plan can provide for annuity payments with a percentage adjustment based on the increase in compensation for the position held by the employee at the time of retirement. However, in the case of a nongovernmental plan, this form of adjustment is only permitted if it is provided under the terms of the plan as in effect on April 17, 2002.

In addition to these permitted increases in the amount of annuity payments, the final regulations retain the rules in the temporary regulations allowing an annuity purchased from an insurance company with an employee's account balance under a defined contribution plan to provide for variable and increasing payments and clarify that these rules apply to an annuity contract purchased from an insurance company by a qualified trust for a defined benefit plan. For an annuity contract purchased from an insurance company, these final regulations retain the rule that the total expected future payments (disregarding any payment increases) as of the annuity starting date must exceed the premium being annuitized. This rule insures that annuity payments start at a high enough amount to prevent inappropriate deferral.

In response to comments asking for more flexibility in the rules relating to changes in distribution amounts from an annuity contract purchased from an insurance company, the final regulations replace the rule permitting partial and complete withdrawals with a broader rule permitting all types of acceleration. The final regulations allow any method that retains the same rate of increase in future payments but results in the total future expected payments under the annuity (disregarding any future payment increases and including the amount of any payment made as a result of the acceleration) being decreased, thereby allowing acceleration in the form of a shorter period as well as through withdrawals. In addition, the requirement that a total withdrawal option be available has been eliminated.

These final regulations also permit defined benefit plans under a qualified trust to provide variable or fixed-rate increasing annuities paid directly from the trust, but the control in the regulations on the rate of increase for these annuities is different. For these annuities, increases in payments solely to reflect better-than-assumed investment performance are permitted but only if the assumed interest rate for calculating the initial level of payments is at least 3 percent. Alternatively, fixed rate increases may be provided but only if the rate of increase is less than 5 percent. Paralleling the payment of the undistributed premium at death, the regulations allow a payment at death to the extent that the payments after annuitization are less than the present value of the employee's accrued benefit as of the annuity starting date calculated using the applicable interest and morality under section 417(e).

The rule allowing an acceleration of payments under an annuity has not been extended to annuity payments from a qualified trust. However, as noted below, such plans are permitted to allow changes in form of distribution in certain specific circumstances as described below. In addition, if distribution is in the form of a joint and survivor annuity, the final regulations allow the survivor to convert the survivor annuity into a lump sum upon the death of the employee.

Permitted changes in form of distribution

Some commentators requested that employees and beneficiaries be permitted to change the form of future distributions in response to changed circumstances, such as upon retirement or death. In response to these comments, the regulations allow an employee or beneficiary to change the form of future distributions in a number of circumstances provided certain conditions are satisfied. First, if distribution is in the form of a period certain only annuity (i.e., an annuity with no life contingency), the individual may change the form of distribution prospectively at any time. The employee or beneficiary also is permitted to change the form of distribution prospectively upon an employee's actual retirement or upon plan termination, regardless of the form of annuity payments before retirement or plan termination. In addition, an employee may change to a qualified joint and survivor annuity in connection with marriage.

In order to make these changes, the future payments must satisfy section 401(a)(9) (as though payments first commenced on the new annuity starting date, treating the actuarial value of the remaining payments as the employee’s or beneficiary’s entire interest). As a condition to changes in the form of distribution, whether under a period certain only annuity or a life contingent annuity, the stream of payments from the employee's original annuity starting date (both the payments before and after the change in form) must satisfy section 415 using the interest rate assumption and applicable mortality table in effect as of the annuity starting date. In addition, the end point of the new period certain, if any, may not be later the end point available at the original annuity starting date. Furthermore, the plan must treat an individual electing a new form of distribution under these rules as having a new annuity starting date for purposes of sections 415 and 417. Thus, the payments under the new form must satisfy section 415 as of its new annuity starting date based on the applicable interest rate and applicable mortality table for that date, taking into account prior payments. Although not stated, for plans subject to section 411, any form of distribution or change in the form of distribution must not result in an impermissible forfeiture of benefits.

A number of commentators requested that the final regulations provide the rule in prior proposed regulations that allowed minimum distributions from a defined benefit plan to be calculated using the rule for defined contribution plans in '1.401(a)(9)-5. The primary argument for allowing this level of flexibility in calculating distribution amounts from year to year is to allow employees to adjust to changed circumstances. The rules in these final regulations allowing a change in distribution form upon retirement or plan termination, and at any time when distribution is in the form of a term certain only, address this need.

Value of guarantees in determining account value prior to annuitization

The final regulations retain the basic rule in the temporary regulations that, before annuitization, the defined contribution plan rules apply. For this purpose, an employee's entire interest under an annuity contract is the dollar amount credited to the employee or beneficiary under the contract plus the actuarial value of any additional benefits (such as survivor benefits in excess of the account balance) that will be provided under the contract. A number of commentators requested guidance on how this actuarial value is calculated and indicated that, in certain circumstances it would be appropriate to disregard this additional value.

The IRS and Treasury believe that it is generally appropriate to reflect the value of additional benefits under an annuity contract, just as the fair market value of all assets generally must be reflected in valuing an account balance under a defined contribution plan. However, in response to these comments, the final regulations allow the additional benefits to be disregarded when there is a pro-rata reduction in the additional benefits for any withdrawal, provided the actuarial present value of the additional benefits is not more than 20 percent of the account balance. An example is provided that illustrates an acceptable method of determining the value of an additional benefit that is a guaranteed death benefit. In addition, an exception is provided for an additional benefit in the form of a guaranteed return of premiums upon death.

Certain payments to children

The final regulations provide rules governing when, pursuant to section 401(a)(9)(F), payment of an employee's accrued benefit to a child may be treated as if such payments were made to a surviving spouse. Under the final regulations, payments under a defined benefit plan or annuity contract that are made to an employee's child until such child reaches the age of majority (or dies, if earlier) may be treated, for purposes of section 401(a)(9), as if such payments were made to the surviving spouse, provided they become payable to the surviving spouse upon cessation of the payments to the child. In addition, for this purpose, a child may be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26, or so long as the child is disabled.

Governmental plans

A number of commentators raised concerns that governmental plans offer annuity distribution options that are not permitted under the temporary regulations. Most of the suggestions made by commentators on behalf of governmental plans were incorporated into the final regulations, such as expanding the list of acceptable COLAs; permitting lump sum distributions to beneficiaries; and providing for pop-up payments to a surviving spouse after the cessation of payments to a child.

Nevertheless, some substantive changes recommended by or on behalf of governmental plans were not made in the final regulations. In light of the difficulties a governmental plan faces in changing its plan terms (e.g., in some states, the state constitution does not allow elimination of existing distribution options) and the public oversight of such plans, these final regulations provide a grandfather rule under which, in the case of an annuity distribution option provided under the terms of a governmental plan as in effect on April 17, 2002, the plan will not fail to satisfy section 401(a)(9) merely because the annuity payments do not satisfy the requirements set forth in these regulations. However, a grandfathered distribution option must satisfy the statutory requirements of section 401(a)(9), based on a reasonable and good faith interpretation of that section.

This grandfather rule only applies to existing plan provisions. Otherwise, the regulations provide that annuity payments under governmental plans within the meaning of section 414(d) must satisfy the rules for nongovernmental plans. Thus, any new distribution option in a governmental plan or change in a distribution option must comply with the rules applicable to nongovernmental plans under these final regulations.

Separate accounts under defined contribution plans

Several comments have been received raising administrative concerns with the rule in the final regulations applicable to defined contribution plans that recognizes separate accounts for purposes of section 401(a)(9) only after the separate account is actually established. In particular, concerns have been raised that, for employees who die late in a calendar year, it is nearly impossible to set up separate accounts by the end of the year so that they can be used to determine required minimum distributions for the year after death. In response to these comments the regulations have been modified to provide that if separate accounts, determined as of an employee's date of death, are actually established by the end of the calendar year following the year of an employee's death, the separate accounts can be used to determine required minimum distributions for the year following the year of the employee's death. Under the separate account rules, post-death investment experience must be shared on a pro-rata basis until the date on which the separate accounts are actually established.

Effective Date

As provided in the temporary and proposed regulations, these final regulations apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003. However, in order to fulfill the commitment in Notice 2003-2 to allow plans to continue to use certain provisions from the pre-existing proposed regulations and to provide plan sponsors sufficient time to make any adjustments in their plans needed to comply with these regulations, a distribution from a defined benefit plan or annuity contract for calendar years 2003, 2004, and 2005 will not fail to satisfy section 401(a)(9) merely because the payments do not satisfy the rules in these final regulations, provided the payments satisfy section 401(a)(9) based on a reasonable and good faith interpretation of the provisions of section 401(a)(9). For a plan that satisfies the parallel provisions of the 1987 proposed regulations, the 2001 proposed regulations, the 2002 temporary and proposed regulations, or these final regulations, a distribution will be deemed to satisfy a reasonable good faith interpretation of section 401(a)(9).

For governmental plans, this reasonable good faith standard extends to the end of the calendar year that contains the 90th day after the opening of the first legislative session of the legislative body with the authority to amend the plan that begins on or after **[ENTER DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER],** if such 90th day is later than December 31, 2005.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because '1.401(a)(9)-6 imposes no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. 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 for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Marjorie Hoffman and Cathy A. Vohs of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in the development of these regulations.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

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 removing the entry for "§1.401(a)(9)-6T" and adding an entry in numerical order to read, in part, as follows:

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

'1.401(a)(9)-6 is also issued under 26 U.S.C. 401(a)(9). * * *

Par. 2. Remove "'1.401(a)(9)-6T" and replace it with '1.401(a)(9)-6 each time it is used in the sections listed below:

§1.401(9)-0
§1.401(a)(9)-1 A-2(b)
§1.401(a)(9)-2 A-1(c)
§1.401(a)(9)-2 A-5
§1.401(a)(9)-2 A-6(a)
§1.401(a)(9)-3 A-1(a)
§1.401(a)(9)-3 A-1(b)
§1.401(a)(9)-3 A-6
§1.401(a)(9)-4 A-4(a)
§1.401(a)(9)-5 A-1(e)
§1.401(a)(9)-8 A-2(a)(3)
§1.401(a)(9)-8 A-6(b)(2)
§1.401(a)(9)-8 A-7
§1.401(a)(9)-8 A-8
§1.403(b)-3 A-1(c)(3)
§1.408-8 A-1(a)
§1.408-8 A-1(b)
§54.4974-2 A-3(a)
§54.4974-2 A-4(b)(2)(i)

Par. 3. Section 1.401(a)(9)-6 is added to read as follows as follows:

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

Q-1. How must distributions under a defined benefit plan be paid in order to satisfy section 401(a)(9)?

A-1. (a) General rules. 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 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 A-3 of this section. The interval between payments for the annuity must be uniform over the entire distribution period and must not exceed one year. Once payments have commenced over a period, the period may only be changed in accordance with A-13 of this section. Life (or joint and survivor) annuity payments must satisfy the minimum distribution incidental benefit requirements of A-2 of this section. Except as otherwise provided in this section (such as permitted increases described in A-14 of this section), all payments (whether paid over an employee's life, joint lives, or a period certain) also must be nonincreasing.

(b) Life annuity with period certain. The annuity may be a life annuity (or joint and survivor annuity) with a period certain if the life (or lives, if applicable) and period certain each meet the requirements of paragraph (a) of this A-1. 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.

(c) Annuity commencement. (1) Annuity payments must commence on or before the employee's required beginning date (within the meaning of A-2 of §1.401(a)(9)-2).

The first payment, which must be made on or before the employee's required beginning date, must be the payment which 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, in the case of distributions commencing after death in accordance with section 401(a)(9)(B)(iii) and (iv), the first payment, which must be made on or before the date determined under A-3(a) or (b) (whichever is applicable) of §1.401(a)(9)-3, must be the payment which is required for one payment interval. Payment intervals are the periods for which payments are received, e.g., 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.

(2) This paragraph (c) is illustrated by the following example:

Example. A defined benefit plan (Plan X) provides monthly annuity payments of $500 for the life of unmarried participants with a 10-year period certain. An unmarried, retired participant (A) in Plan X attains age 70½ in 2005. In order to meet the requirements of this paragraph, the first monthly payment of $500 must be made on behalf of A on or before April 1, 2006, and the payments must continue to be made in monthly payments of $500 thereafter for the life and 10-year period certain.

(d) Single sum distributions. In the case of a single sum distribution of an employee's entire accrued benefit during a distribution calendar year, the amount that is the required minimum distribution for the distribution calendar year (and thus not eligible for rollover under section 402(c)) is determined using either the rule in paragraph (d)(1) or the rule in paragraph (d)(2) of this A-1.

(1) 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 containing 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.

(2) 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 as of 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 not eligible for rollover. If the single sum distribution is being made in the calendar year containing the required beginning date and the required minimum distribution for the employee's first distribution calendar year has not been made, the benefit must be expressed as an annuity with an annuity starting date as of the first day of the first distribution calendar year and the payments for the first two distribution calendar years would be treated as required minimum distributions, and not eligible for rollover.

(e) Death benefits. The rule in paragraph (a) of this A-1, prohibiting increasing payments under an annuity applies to payments made upon the death of an employee.

However, for purposes of this section, an ancillary death benefit described in this paragraph (e) may be disregarded in applying that rule. Such an ancillary death benefit is excluded in determining an employee's entire interest and the rules prohibiting increasing payments do not apply to such an ancillary death benefit. A death benefit with respect to an employee's benefit is an ancillary death benefit for purposes of this A-1 if --

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

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

(f) 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)(2)(ii)(b) of this chapter.

Q-2. How must distributions in the form of a life (or joint and survivor) annuity be made in order to satisfy the minimum distribution incidental benefit (MDIB) requirement of section 401(a)(9)(G) and the distribution component of the incidental benefit requirement of §1.401-1(b)(1)(i)?

A-2. (a) 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 MDIB requirement, the MDIB requirement of section 401(a)(9)(G) will be satisfied.

(b) Joint and survivor annuity, spouse beneficiary. If the employee's sole beneficiary, as of the annuity starting date for annuity payments, 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 of section 401(a)(9)(G). 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 was 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.

(c) Joint and survivor annuity, nonspouse beneficiary--(1) Explanation of rule. If distributions commence under a distribution option that is in the form of a joint and survivor annuity for the joint lives of the employee and a beneficiary other than the employee's spouse, the minimum distribution incidental benefit 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 will satisfy the conditions of this paragraph (c). The periodic annuity payment payable to the survivor must not at any time on and after the employee's required beginning date exceed the applicable percentage of the annuity payment payable to the employee using the table in paragraph (c)(2) of this A-2. The applicable percentage is based on the adjusted employee/beneficiary age difference. The adjusted employee/beneficiary age difference is determined by first calculating the excess of the age of the employee over the age of the beneficiary based on their ages on their birthdays in a calendar year. Then, if the employee is younger than age 70, the age difference determined in the previous sentence is reduced by the number of years that the employee is younger than age 70 on the employee's birthday in the calendar year that contains the annuity starting date. In the case of an annuity that provides for increasing payments, the requirement of this paragraph (c) 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.

(2) Table.

Adjusted 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) Example. This paragraph (c) is illustrated by the following example:

Example. Distributions commence on January 1, 2003 to an employee (Z), born March 1, 1937, after retirement at age 65. Z's daughter (Y), born February 5, 1967, 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, i.e., the projected monthly payment to Y is 100 percent of the monthly amount payable to Z. Accordingly, under A-10 of this section, compliance with the rules of this section is determined as of the annuity starting date. 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 age 70 . In this case, Z is 30 years older than Y and is commencing benefit 5 years before attaining age 70 so the adjusted employee/beneficiary age difference is 25 years. Under the table in paragraph (c)(2) of this A-2, the applicable percentage for a 25-year adjusted employee/beneficiary age difference is 66 percent. As of January 1, 2003 (the annuity starting date) the plan does not satisfy the MDIB requirement because, as of such 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.

(d) 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 (c) of this A-2 after the expiration of the period certain.

(e) 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-1(e) 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 minimum distribution incidental benefit requirement of this A-2. If the employee’s benefits include an ancillary death benefit described in paragraph A-1(e) 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 minimum distribution incidental benefit requirement of this A-2.

Q-3. How long is a period certain under a defined benefit plan permitted to extend?

A-3. (a) Distributions commencing during the employee’s life. The period certain for any annuity distributions commencing during the life of the employee with an annuity starting date on or after the employee’s required beginning date generally is not permitted to exceed the applicable distribution period for the employee (determined in accordance with the Uniform Lifetime Table in A-2 of §1.401(a)(9)-9) for the calendar year that contains the annuity starting date. See A-10 of this section for the rule for annuity payments with an annuity starting date before the required beginning date. However, if the employee’s sole beneficiary is the employee’s spouse, the period certain is permitted to be as long as the joint life and last survivor expectancy of the employee and the employee’s spouse, if longer than the applicable distribution period for the employee, provided the period certain is not provided in conjunction with a life annuity under A-1(b) of this section.

(b) Distributions commencing after the employee’s death. (1) If 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 cannot exceed the applicable distribution period determined under A-5(b) of §1.401(a)(9)-5 for the distribution calendar year that contains the annuity starting date.

(2) If the annuity starting date is in a calendar year before the first distribution calendar year, the period certain may not exceed the life expectancy of the designated beneficiary using the beneficiary’s age in the year that contains the annuity starting date.

Q-4. Will a plan fail to satisfy section 401(a)(9) merely because distributions are made from an annuity contract which is purchased from an insurance company?

A-4. A plan will not fail to satisfy section 401(a)(9) merely because distributions are made from an annuity contract which is purchased with the employee's benefit by the plan from an insurance company, as long as the payments satisfy the requirements of this section. If the annuity contract is purchased after the required beginning date, the first payment interval must begin on or before the purchase date and the payment required for one payment interval must be made no later than the end of such payment interval. If the payments actually made under the annuity contract do not meet the requirements of section 401(a)(9), the plan fails to satisfy section 401(a)(9). See also A-14 of this section permitting certain increases under annuity contracts.

Q-5. In the case of annuity distributions under a defined benefit plan, how must additional benefits that accrue after the employee's first distribution calendar year be distributed in order to satisfy section 401(a)(9)?

A-5. (a) In the case of annuity distributions under a defined benefit plan, if any additional benefits accrue in a calendar year after the employee's first distribution calendar year, distribution of the amount that accrues in the calendar year must commence in accordance with A-1 of this section beginning with the first payment interval ending in the calendar year immediately following the calendar year in which such amount accrues.

(b) A plan will not fail to satisfy section 401(a)(9) merely because there is an administrative delay in the commencement of the distribution of the additional benefits accrued in a calendar year, provided that the actual payment of such amount commences as soon as practicable. However, payment must commence no later than the end of the first calendar year following the calendar year in which the additional benefit accrues, and the total amount paid during such first calendar year must be no less than the total amount that was required to be paid during that year under A-5(a) of this section.

Q-6. If a portion of an employee's benefit is not vested as of December 31 of a distribution calendar year, how is the determination of the required minimum distribution affected?

A-6. In the case of annuity distributions from 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 such date will be 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, such portion will be treated as an additional accrual. See A-5 of this section for the rules for distributing benefits which accrue under a defined benefit plan after the employee's first distribution calendar year.

Q-7. If an employee (other than a 5-percent owner) retires after the calendar year in which the employee attains age 70½, for what period must the employee's accrued benefit under a defined benefit plan be actuarially increased?

A-7. (a) Actuarial increase starting date. If an employee (other than a 5-percent owner) retires after the calendar year in which the employee attains age 70½, in order to satisfy section 401(a)(9)(C)(iii), the employee’s accrued benefit under a defined benefit plan must be actuarially increased to take into account any period after age 70½ in which the employee was not receiving any benefits under the plan. The actuarial increase required to satisfy section 401(a)(9)(C)(iii) must be provided for the period starting on the April 1 following the calendar year in which the employee attains age 70½, or January 1, 1997, if later.

(b) Actuarial increase ending date. The period for which the actuarial increase must be provided ends on the date on which benefits commence after retirement in an amount sufficient to satisfy section 401(a)(9).

(c) Nonapplication to plan providing same required beginning date for all employees. If, as permitted under A-2(e) of §1.401(a)(9)-2, a plan provides 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 in which the employee attains age 70½ (regardless of whether the employee is a 5-percent owner) and the plan makes distributions in an amount sufficient to satisfy section 401(a)(9) using that required beginning date, no actuarial increase is required under section 401(a)(9)(C)(iii).

(d) Nonapplication to governmental and church plans. The actuarial increase required under this A-7 does not apply to a governmental plan (within the meaning of section 414(d)) or a church plan. For purposes of this paragraph, the term church plan means 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 qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

Q-8. What amount of actuarial increase is required under section 401(a)(9)(C)(iii)?

A-8. 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 actuarial increases (described in A-7 of this section) must be no less than: the actuarial equivalent of the employee's retirement benefits that would have been payable as of the date the actuarial increase must commence under paragraph (a) of A-7 of this section if benefits had commenced on that date; plus the actuarial equivalent of any additional benefits accrued after that date; reduced by the actuarial equivalent of any distributions made with respect to the employee's retirement benefits after that date. Actuarial equivalence is determined using the plan's assumptions for determining actuarial equivalence for purposes of satisfying section 411.

Q-9. How does the actuarial increase required under section 401(a)(9)(C)(iii) relate to the actuarial increase required under section 411?

A-9. In order for any of an employee's accrued benefit to be nonforfeitable as required under section 411, a defined benefit plan must make an actuarial adjustment to an 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 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) (88 Stat. 829). The actuarial increase required under section 401(a)(9)(C)(iii) for the period described in A-7 of this section is generally 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 ERISA section 203(a)(3)(B).

Q-10. What rule applies if distributions commence to an employee on a date before the employee's required beginning date over a period permitted under section 401(a)(9)(A)(ii) and the distribution form is an annuity under which distributions are made in accordance with the provisions of A-1 of this section?

A-10. (a) General rule. If distributions commence to an employee on a date before the employee's required beginning date over a period permitted under section 401(a)(9)(A)(ii) and the distribution form is an annuity under which distributions are made in accordance with the provisions of A-1 of this section, 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 designated beneficiary distributions will be determined as of the annuity starting date. Similarly, if the employee dies after the annuity starting date but before the required beginning date determined under A-2 of §1.401(a)(9)-2, after the employee's death, 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. The rules in §1.401(a)(9)-3 and section 401(a)(9)(B)(ii) or (iii) and (iv) do not apply.

(b) Period certain. If, as of the employee's birthday in the year that contains the annuity starting date, the age of the employee is under 70, the following rule applies in applying the rule in paragraph (a) of A-3 of this section. The applicable distribution period for the employee is the distribution period for age 70, determined in accordance with the Uniform Lifetime Table in A-2 of §1.401(a)(9)-9, plus the excess of 70 over the age of the employee as of the employee's birthday in the year that contains the annuity starting date.

(c) Adjustment to employee/beneficiary age difference. See A-2(c)(1) of this section for the determination of the adjusted employee/beneficiary age difference in the case of an employee whose age on the annuity starting date is less than 70.

Q- 11. What rule applies if distributions commence to the surviving spouse of an employee over a period permitted under section 401(a)(9)(B)(iii)(II) before the date on which distributions are required to commence and the distribution form is an annuity under which distributions are made as of the date distributions commence in accordance with the provisions of A-1 of this section.

A-11. If distributions commence to the surviving spouse of an employee over a period permitted under section 401(a)(9)(B)(iii)(II) before the date on which distributions are required to commence and the distribution form is an annuity under which distributions are made as of the date distributions commence in accordance with the provisions of A-1 of this section, distributions will be considered to have begun on the actual commencement date for purposes of section 401(a)(9)(B)(iv)(II). Consequently, in such case, A-5 of §1.401(a)(9)-3 and section 401(a)(9)(B)(ii) and (iii) will not apply upon the death of the surviving spouse as though the surviving spouse were the employee. Instead, the annuity distributions must continue to be made, in accordance with the provisions of A-1 of this section, over the remaining period over which distributions commenced.

Q-12. In the case of an annuity contract under an individual account plan that has not yet been annuitized, how is section 401(a)(9) satisfied with respect to the employee's or beneficiary's entire interest under the annuity contract for the period prior to the date annuity payments so commence?

A-12. (a) 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 A-1 of §1.401(a)(9)-5 for rules relating to the satisfaction of section 401(a)(9) in the year that annuity payments commence and A-2(a)(3) of §1.401(a)(9)-8.

(b) 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 A-3 of §1.401(a)(9)-5. The entire interest under an annuity contract is the dollar amount credited to the employee or beneficiary under the contract plus the actuarial present value of any additional benefits (such as survivor benefits in excess of the dollar amount credited to the employee or beneficiary) that will be provided under the contract. However, paragraph (c) of this A-12 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 A-12 is to be determined using reasonable actuarial assumptions, including reasonable assumptions as to future distributions, and without regard to an individual's health.

(c) Exclusions. (1) The actuarial present value of any additional benefits provided under an annuity contract described in paragraph (b) of this A-12 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 contract provides only for the following additional benefits:

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

(ii) An additional benefit that is the right to receive a final payment upon death that does not exceed the excess of the premiums paid less the amount of prior distributions.

(2) If the only additional benefit provided under the contract is the additional benefit described in paragraph (c)(1)(ii) of this A-14, 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.

(3) The Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter) may provide additional guidance on additional benefits that may be disregarded.

(d) Examples. The following examples, which use a 5 percent interest rate and the Mortality Table provided in Rev. Rul. 2001-62 (2001-2 C.B. 632), illustrate the application of the rules in this A-12:

Example 1. (i) G is the owner of a variable annuity contract (Contract S) under an individual account plan which 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 value (dollar amount credited to G under the contract) and the largest notional account value 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 value. 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.

(ii) At the end of 2008, when G has an attained age of 78 and 9 months the notional account value of Contract S (after the distribution for 2008 of 4.93% of the notional account value as of December 31, 2007) is $550,000, and the High Water Mark, before adjustment for any withdrawals from Contract S in 2008 is $1,000,000. Thus, Contract S will provide additional benefits (i.e. the death benefits in excess of the notional account value) through 2014, the year S turns 84. The actuarial present value of these additional benefits at the end of 2008 is determined to be $84,300 (15 percent of the notional account value). In making this determination, the following assumptions are made: on the average, deaths occur mid-year; the investment return on his notional account value 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 table summarizes the actuarial methodology used in determining the actuarial present value of the additional benefit.

Year	Death Benefit During Year	End-of-Year Notional Account Before Withdrawal	Average Notional Account	Withdrawal at End of Year	End-of-Year Notional Account After Withdrawal
2008	$1,000,000				$550,000
2009	$ 950,739[1]	$561,000[2]	$555,500[3]	$28,205[4]	$532,795
2010	$ 901,983	$543,451	$538,123	$28,492	$514,959
2011	$ 853,749	$525,258	$520,109	$28,769	$496,490
2012	$ 806,053	$506,419	$501,454	$29,034	$477,385
2013	$ 758,916	$486,933	$482,159	$29,287	$457,645
2014	$ 712,356	$466,798	$462,222	$29,525	$437,273

Year	Survivorship to Start of Year	Interest Discount to End of 2008	Mortality Rate During Year	Discounted Additional Benefits Within Year
2008				
2009	1.00000	.97590	.04426[5]	$17,070
2010	.95574	.92943[6]	.04946	$15,987[7]
2011	.90847[8]	.88517	.05519	$14,807
2012	.85833	.84302	.06146	$13,546
2013	.80558	.80288	.06788	$12,150
2014	.75090	.76464	.07477	$10,739

				$84,300

1 $1,000,000 death benefit reduced 4.93 percent for withdrawal during 2008.
2. Notional account value at end of prior year (after distribution) increased by 2 percent return for year.
3 Average of $550,000 notional account value at end of prior year (after distribution) and $561,000 notional account value at end of current year (before distribution).
4. December 31, 2008 notional account (before distribution) divided by uniform lifetime table age 79 factor of 19.5.
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 (.04946) multiplied by the $363,860 excess of death benefit over the average notional account value (901,983 less 538,123) multiplied by .95574 probability of survivorship to the start of 2010 multiplied by 18 month interest discount of .92943.
8 Survivorship to start of preceding year (.95574) multiplied by probability of survivorship during prior year (1 - .04946).

(iii) 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 value and, at age 78 and 9 months, the sum of the notional account value (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 value, the exclusion under paragraph (c)(2) of this A-12 is applicable for 2009. 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 value (i.e. without regard to the additional death benefit).

Example 2. (i) The facts are the same as in Example 1 except that the notional account value is $450,000 at the end of 2008. In this instance, the actuarial present value of the death benefit in excess of the notional account value in 2008 is determined to be $108,669 (24 percent of the notional account value). The following table summarizes the actuarial methodology used in determining the actuarial present value of the additional benefit.

Year	Death Benefit During Year	End-of-Year Notional Account Before Withdrawal	Average Notional Account	Withdrawal at End of Year	End-of-Year Notional Account After Withdrawal
2008	$1,000,000				$450,000
2009	$ 950,739	$459,000	$454,500	$23,077	$435,923
2010	$ 901,983	$444,642	$440,282	$23,311	$421,330
2011	$ 853,749	$429,757	$425,543	$23,538	$406,219
2012	$ 806,053	$414,343	$410,281	$23,755	$390,588
2013	$ 758,916	$398,399	$394,494	$23,962	$374,437
2014	$ 712,356	$381,926	$378,181	$24,157	$357,768

Year	Survivorship to Start of year	Interest Discount to end of 2008	Mortality Rate During Year	Discounted Additional Benefits Within Year
2008				
2009	1.00000	.97590	.04426	$21,432
2010	.95574	.92943	.04946	$20,286
2011	.90847	.88517	.05519	$19,004
2012	.85833	.84302	.06146	$17,601
2013	.80558	.80288	.06788	$15,999
2014	.75090	.76464	.07477	$14,347

				$108,669

(ii) 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 value, the exclusion under paragraph (b)(1) of this A-12 does not apply for 2009. 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.

Q-13: When can an annuity payment period be changed?

A-13. (a) In general. An annuity payment period may be changed in accordance with the provisions set forth in paragraph (b) of this A-13 or in association with an annuity payment increase described in A-14 of this section.

(b) 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 (c) of this A-13 are satisfied, and either --

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

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

(3) 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 designated beneficiary, and the modification occurs in connection with the employee becoming married to such spouse.

(c) Conditions. In order to modify a stream of annuity payments in accordance with paragraph (b) of this A-13, the following conditions must be satisfied --

(1) 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);

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

(3) 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 to such date); and

(4) 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.

(d) Examples. For the following examples in this A-13, assume that the Applicable Interest Rate throughout the period from 2005 through 2008 is 5 percent and throughout 2009 is 4 percent, the Applicable Mortality Table throughout the period from 2005 to 2009 is the table provided in Rev. Rul. 2001-62 (2001-C.B. 632) and the section 415 limit in 2005 at age 70 for a straight life annuity is $255,344:

Example 1. (i) A participant (D), who has 10 years of participation in a frozen defined benefit plan (Plan W), attains age 70½ in 2005. D is not retired and elects to receive distributions from Plan W in the form of a straight life (i.e. level payment) annuity with annual payments of $240,000 per year beginning in 2005 at a date when D has an attained age of 70. 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 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.

(ii) Plan W determines modifications of annuity payment amounts at retirement such 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 Interest Rate and the Applicable Mortality Table as of the date of modification.

(iii) D retires in 2009 at the age of 74 and, after receiving four annual payments of $240,000, elects to receive his remaining distributions from Plan W in the form of an immediate final lump sum payment (calculated at 4 percent interest) of $2,399,809.

(iv) 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 (c)(1) of this A-13 is met.

(v) 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 (c)(2) of this A-13 is met.

(vi) After taking into account the modification, the annuity stream determined as of the original annuity starting date consists of annual payments beginning at age 70 of $240,000, $240,000, $240,000, $240,000, and $2,399,809. This benefit stream is actuarially equivalent to a straight life annuity at age 70 of $250,182, an amount less than the section 415 limit determined at the original annuity starting date, using the interest and mortality rates applicable to such date. Thus, the condition under paragraph (c)(3) of this A-13 is met.

(vii) Thus, 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 (c) of this A-13 are satisfied, the modification of annuity payments to D described in this example meets the requirements under of this A-13.

Example 2. The facts are the same as in Example 1 except that the straight life annuity payments are paid at a rate of $250,000 per year and after D retires the lump sum payment at age 75 is $2,499,801. 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 70 of $250,000, $250,000, $250,000, $250,000, and $2,499,801. This benefit stream is actuarially equivalent to a straight life annuity at age 70 of $260,606, an amount greater than the section 415 limit determined at the original annuity starting date, using the interest and mortality rates applicable to such date. Thus, the lump sum payment to D fails to satisfy the condition under paragraph (c)(3) of this A-13. Therefore, the lump sum payment to D fails to meet the requirements of this

A-13 and thus fails to satisfy the requirements of section 401(a)(9).

Example 3. (i) A participant (E), who has 10 years of participation in a frozen defined benefit plan (Plan X), attains age 70½ and retires in 2005 at a date when his attained age is 70. E elects to receive annual distributions from Plan X in the form of a 27 year period certain annuity (i.e., a 27 year annuity payment period without a life contingency) paid at a rate of $37,000 per year beginning in 2005 with future payments increasing at a rate of 4 percent per year (i.e., the 2006 payment will be $38,480, the 2007 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 such 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

(ii) Plan X determines modifications of annuity payment amounts such 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 percent and the Applicable Mortality Table as of the date of modification.

(iii) In 2008, E, after receiving annual payments of $37,000, $38,480, and $40,019, elects to receive his remaining distributions from Plan W in the form of a straight life annuity paid with annual payments of $92,133 per year.

(iv) 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 (c)(1) of this A-13 is met.

(v) 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 (c)(2) of this A-13 is met.

(vi) After taking into account the modification, the annuity stream determined as of the original annuity starting date consists of annual payments beginning at age 70 of $37,000, $38,480, $40,019, and a straight life annuity beginning at age 73 of $92,133. This benefit stream is equivalent to a straight life annuity at age 70 of $82,539, an amount less than the section 415 limit determined at the original annuity starting date, using the interest and mortality rates applicable to such date. Thus, the condition under paragraph (c)(3) of this A-13 is met.

(vii) Thus, 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 (c) of this A-13 are satisfied, the modification of annuity payments to E described in this example meets the requirements of this A-13.

Q-14. Are annuity payments permitted to increase?

A-14. (a) General rules. Except as otherwise provided in this section, all annuity payments (whether paid over an employee’s life, joint lives, or a period certain) must be nonincreasing or increase only in accordance with one of more of the following --

(1) With an annual percentage increase that does not exceed the percentage increase in an eligible cost-of-living index as defined in paragraph (b) of this A-14 for a 12-month period ending in the year during which the increase occurs or the prior year;

(2) With a percentage increase that occurs at specified times (e.g., 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 (b) of this A-14 since the annuity starting date, or if later, the date of the most recent percentage increase. However, in cases providing such a cumulative increase, an actuarial increase may not be provided to reflect the fact that increases were not provided in the interim years;

(3) To the extent 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);

(4) To pay increased benefits that result from a plan amendment;

(5) 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; or

(6) To the extent increases are permitted in accordance with paragraph (c) or (d) of this A-14.

(b) (1) For purposes of this A-14, an eligible cost-of-living index means an index described in paragraphs (b)(2), (b)(3), or (b)(4) of this A-14.

(2) 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 (such as urban consumers or urban wage earners and clerical workers) and an index for a geographic area or areas (such as a given metropolitan area or state).

(3) A percentage adjustment based on a cost-of-living index described in paragraph (b)(2) of this A-14, 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:

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

(ii) 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 (b)(3)(ii)).

(4) 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 the terms of a governmental plan within the meaning of section 414(d) or under the terms of a nongovernmental plan as in effect on April 17, 2002.

(c) Additional permitted increases for annuity payments under annuity contracts purchased from insurance companies. In the case of annuity payments paid from an annuity contract purchased from an insurance company, if the total future expected payments (determined in accordance with paragraph (e)(3) of this A-14) exceed the total value being annuitized (within the meaning of paragraph (e)(1) of this A-14) , the payments under the annuity will not fail to satisfy the nonincreasing payment requirement in A-1(a) of this section merely because the payments are increased in accordance with one or more of the following--

(1) By a constant percentage, applied not less frequently than annually;

(2) To provide a final payment upon the death of the employee that does not exceed the excess of the total value being annuitized (within the meaning of paragraph (e)(1) of this A-14) over the total of payments before the death of the employee;

(3) As a result of dividend payments or other payments that result from actuarial gains (within the meaning of paragraph (e)(2) of this A-14), but only if actuarial gain is measured no less frequently than annually and 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

(4) An acceleration of payments under the annuity (within the meaning of paragraph (e)(4) of this A-14).

(d) Additional permitted increases for annuity payments from a qualified trust. In the case of annuity payments paid under a defined benefit plan qualified under section 401(a) (other than annuity payments under an annuity contract purchased from an insurance company that satisfy paragraph (c) of this section), the payments under the annuity will not fail to satisfy the nonincreasing payment requirement in A-1(a) of this section merely because the payments are increased in accordance with one of the following --

(1) By a constant percentage, applied not less frequently than annually, at a rate that is less than 5 percent per year;

(2) 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 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) over the total of payments before the death of the employee; or

(3) As a result of dividend payments or other payments that result from actuarial gains (within the meaning of paragraph (e)(2) of this A-14), but only if --

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

(ii) 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);

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

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

(v) The payments are not increasing by a constant percentage as described in paragraph (d)(1) of this A-14.

(e) Definitions. For purposes of this A-14, the following definitions apply --

(1) Total value being annuitized means --

(i) In the case of annuity payments under a section 403(a) annuity plan or under a deferred annuity purchased by a section 401(a) trust, the value of the employee's entire interest (within the meaning of A-12 of this section) being annuitized (valued as of the date annuity payments commence);

(ii) In the case of annuity payments under an immediate annuity contract purchased by a trust for a defined benefit plan qualified under section 401(a), the amount of the premium used to purchase the contract; and

(iii) In the case of a defined contribution plan, the value of the employee's account balance used to purchase an immediate annuity under the contract.

(2) Actuarial gain means the difference between an amount determined using the actuarial assumptions (i.e., 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 such amount determined using actuarial assumptions used in calculating payments at the time the actuarial gain is determined.

(3) Total future expected payments means the total future payments expected to be made under the annuity contract as of the date of the determination, calculated using the Single Life Table in A-1 of §1.401(a)(9)-9 (or, if applicable, the Joint and Last Survivor Table in A-3 of in §1.401(a)(9)-9) for annuitants who are still alive, without regard to any increases in annuity payments after the date of determination, and taking into account any remaining period certain.

(4) Acceleration of payments means a shortening of the payment period with respect to an annuity or a full or partial commutation of the future annuity payments. An increase in the payment amount will be treated as an acceleration of payments in the annuity only if the total future expected payments under the annuity (including the amount of any payment made as a result of the acceleration) is decreased as a result of the change in payment period.

(f) Examples. Paragraph (c) of this A-14 is illustrated by the following examples:

Example 1. Variable annuity. A retired participant (Z1) in defined contribution plan X attains age 70 on March 5, 2005, and thus, attains age 70½ in 2005. Z1 elects to purchase annuity Contract Y1 from Insurance Company W in 2005. 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. 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 and the denominator of which is 1 plus the AIR during that period. The value of Z1's account balance in Plan X at the time of purchase is $105,000, and the purchase price of Contract Y1 is $105,000. Contract Y1 provides Z1 with an initial payment of $7,200 at the time of purchase in 2005. The total future expected payments to Z1 under Contract Y1 are $122,400, calculated as the initial payment of $7,200 multiplied by the age 70 life expectancy of 17 provided in the Single Life Table in A-1 of '1.401(a)(9)-9. Because the total future expected payments on the purchase date exceed the total value used to purchase Contract Y1 and payments may only increase as a result of actuarial gain, with such increases, beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity, distributions received by Z1 from Contract Y1 meet the requirements under paragraph (c)(3) of this A-14.

Example 2. Participating annuity. A retired participant (Z2) in defined contribution plan X attains age 70 on May 1, 2005, and thus, attains age 70½ in 2005. Z2 elects to purchase annuity Contract Y2 from Insurance Company W in 2005. 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, i.e., 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. The value of Z2's account balance in Plan X at the time of purchase is $265,000, and the purchase price of Contract Y2 is $265,000. Contract Y2 provides Z2 with an initial payment of $16,000 in 2005. The total future expected payments to Z2 under Contract Y2 are calculated as the annual initial payment of $16,000 multiplied by the age 70 life expectancy of 17 provided in the Single Life Table in A-1 of '1.401(a)(9)-9 for a total of $272,000. Because the total future expected payments on the purchase date exceeds the total value used to purchase Contract Y2 and payments may only increase as a result of actuarial gain, with such increases, beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity, distributions received by Z2 from Contract Y2 meet the requirements under paragraph (c)(3) of this A-14.

Example 3. Participating annuity with dividend accumulation. The facts are the same as in 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. Because the dividend accumulation option permits dividends to be paid later than the end of the year following the year for which the actuarial experience is measured or as a stream of payments that only increase as a result of actuarial gain, with such increases beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity in Example 2, the dividend accumulation option does not meet the requirements of paragraph (c)(3) of this A-14. Neither does the dividend accumulation option fit within any of the other increases described in paragraph (c) of this A-14. Accordingly, the dividend accumulation option causes the contract, and consequently any distributions from the contract, to fail to meet the requirements of this A-14 and thus fail to satisfy the requirements of section 401(a)(9).

Example 4. Participating annuity with dividends used to purchase additional death benefits. The facts are the same as in 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. Because this option permits payments as a result of actuarial gain to be paid later than the end of the year following the year for which the actuarial experience is measured or as a stream of payments that only increase as a result of actuarial gain, with such increases beginning no later than the next year, paid in the same form as the payment of the annuity over the remaining period of the annuity in Example 2, the option does not meet the requirements of paragraph (c)(3) of this A-14. Neither does the option fit within any of the other increases described in paragraph (c) of this A-14. Accordingly, the addition of the option causes the contract, and consequently any distributions from the contract, to fail to meet the requirements of this A-14 and thus fail to satisfy the requirements of section 401(a)(9).

Example 5. Annuity with a fixed percentage increase. A retired participant (Z3) in defined contribution plan X attains age 70½ in 2005. Z3 elects to purchase annuity contract Y3 from Insurance Company W. Contract Y3 is a single life annuity contract with a 20-year period certain (which does not exceed the maximum period certain permitted under A-3(a) of this section) with fixed annual payments increasing 3 percent each year. The value of Z3's account balance in Plan X at the time of purchase is $110,000, and the purchase price of Contract Y3 is $110,000. Contract Y3 provides Z3 with an initial payment of $6,000 at the time of purchase in 2005. The total future expected payments to Z3 under Contract Y3 are $120,000, calculated as the initial annual payment of $6,000 multiplied by the period certain of 20 years. Because the total future expected payments on the purchase date exceed the total value used to purchase Contract Y3 and payments only increase as a constant percentage applied not less frequently than annually, distributions received by Z3 from Contract Y3 meet the requirements under paragraph (c)(1) of this A-14.

Example 6. Annuity with excessive increases. The facts are the same as in Example 5 except that the initial payment is $5,400 and the annual rate of increase is 4 percent. In this example, the total future expected payments are $108,000, calculated as the initial payment of $5,400 multiplied by the period certain of 20 years. Because the total future expected payments are less than the total value of $110,000 used to purchase Contract Y3, distributions received by Z3 do not meet the requirements under paragraph (c) of this A-14 and thus fail to meet the requirements of section 401(a)(9).

Example 7. Annuity with full commutation feature. (i) A retired participant (Z4) in defined contribution Plan X attains age 78 in 2005. Z4 elects to purchase Contract Y4 from Insurance Company W. Contract Y4 provides for a single life annuity with a 10 year period certain (which does not exceed the maximum period certain permitted under A-3(a) of this section) with annual payments. Contract Y4 provides that Z4 may cancel Contract Y4 at any time before Z4 attains age 84, and receive, on his next payment due date, a final payment in an amount determined by multiplying the initial payment amount by a factor obtained from Table M of Contract Y4 using the Y4's age as of Y4's birthday in the calendar year of the final payment. The value of Z4's account balance in Plan X at the time of purchase is $450,000, and the purchase price of Contract Y4 is $450,000. Contract Y4 provides Z4 with an initial payment in 2005 of $40,000. The factors in Table M are as follows:

Age at Final Payment	Factor
79	10.5
80	10.0
81	9.5
82	9.0
83	8.5
84	8.0

(ii) The total future expected payments to Z4 under Contract Y4 are $456,000, calculated as the initial payment of 40,000 multiplied by the age 78 life expectancy of 11.4 provided in the Single Life Table in A-1 of '1.401(a)(9)-9. Because the total future expected payments on the purchase date exceed the total value being annuitized (i.e., the $450,000 used to purchase Contract Y4), the permitted increases set forth in paragraph (c) of this A-14 are available. Furthermore, because the factors in Table M are less than the life expectancy of each of the ages in the Single Life Table provided in A-1 of '1.401(a)(9)-9, the final payment is always less than the total future expected payments. Thus, the final payment is an acceleration of payments within the meaning of paragraph (c)(4) of this A-14.

(iii) As an illustration of the above, if Participant Z4 were to elect to cancel Contract Y4 on the day before he was to attain age 84, his contractual final payment would be $320,000. This amount is determined as $40,000 (the annual payment amount due under Contract Y4) multiplied by 8.0 (the factor in Table M for the next payment due date, age 84). The total future expected payments under Contract Y4 at age 84 before the final payment is $324,000, calculated as the initial payment amount multiplied by 8.1, the age 84 life expectancy provided in the Single Life Table in A-1 of '1.401(a)(9)-9. Because $320,000 (the total future expected payments under the annuity contract, including the amount of the final payment) is less than $324,000 (the total future expected payments under the annuity contract, determined before the election), the final payment is an acceleration of payments within the meaning of paragraph (c)(4) of this A-14.

Example 8. Annuity with partial commutation feature. (i) The facts are the same as in Example 7 except that the annuity provides Z4 may request, at any time before Z4 attains age 84, an ad hoc payment on his next payment due date with future payments reduced by an amount equal to the ad hoc payment divided by the factor obtained from Table M (from Example 7) corresponding to Z4's age at the time of the ad hoc payment.

Because, at each age, the factors in Table M are less than the corresponding life expectancies in the Single Life Table in A-1 of '1.401(a)(9)-9, total future expected payments under Contract Y4 will decrease after an ad hoc payment. Thus, ad hoc distributions received by Z4 from Contract Y4 will satisfy the requirements under paragraph (c)(4) of this A-4.

(ii) As an illustration of paragraph (i) of this Example 8, if Z4 were to request, on the day before he was to attain age 84, an ad hoc payment of $100,000 on his next payment due date, his recalculated annual payment amount would be reduced to $27,500. This amount is determined as $40,000 (the amount of Z4's next annual payment) reduced by $12,500 (his $100,000 ad hoc payment divided by the Table M factor at age 84 of 8.0). Thus, Z4's total future expected payments after the ad hoc payment (and including the ad hoc payment) are equal to $322,750 ($100,000 plus $27,500 multiplied by the Single Life Table value of 8.1). Note that this $322,750 amount is less than the amount of Z4's total future expected payments before the ad hoc payment ($324,000, determined as $40,000 multiplied by 8.1), and the requirements under paragraph (c)(4) of this A-4 are be satisfied.

Example 9. Annuity with excessive increases. (i) A retired participant (Z5) in defined contribution plan X attains age 70½ in 2005. Z5 elects to purchase annuity Contract Y5 from Insurance Company W in 2005 with a premium of $1,000,000. Contract Y5 is a single life annuity contract with a 20-year period certain. Contract Y5 provides for an initial payment of $200,000, a second payment one year from the time of purchase of $40,000, and 18 succeeding annual payments each increasing at a constant percentage rate of 4.5 percent from the preceding payment.

(ii) Contract Y5 fails to meet the requirements of section 401(a)(9) because the total future expected payments without regard to any increases in the annuity payment, calculated as $200,000 in year one and $40,000 in each of years two through twenty, is only $960,000 (i.e., an amount that does not exceed the total value used to purchase the annuity).

Q-15: Are there special rules applicable to payments made under a defined benefit plan or annuity contract to a surviving child?

A-15: Yes, Pursuant to section 401(a)(9)(F), payments under a defined benefit plan or annuity contract that are made to an employee's child until such child reaches the age of majority (or dies, if earlier) may be treated, for purposes of section 401(a)(9), as if such payments were made to the surviving spouse to the extent they become payable to the surviving spouse upon cessation of the payments to the child. For purposes of the preceding sentence, a child may be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26. In addition, a child who is disabled within the meaning of section 72(m)(7) when the child reaches the age of majority may be treated as having not reached the age of majority so long as the child continues to be disabled. Thus, when payments described in this paragraph A-15 become payable to the surviving spouse because the child attains the age of majority, recovers from a disabling illness, dies, or completes a specified course of education, there is not an increase in benefits under A-1 of this section. Likewise, the age of child receiving such payments is not taken into consideration for purposes of the minimum incidental benefit requirement of A-2 of this section.

Q-16: Will a governmental plan within the meaning of section 414(d) fail to satisfy section 401(a)(9) if annuity payments under the plan do not satisfy this section?

A-16: (a) Except as provided in paragraph (b) of this A-16, annuity payments under a governmental plan within the meaning of section 414(d) must satisfy this section.

(b) In the case of an annuity distribution option provided under the terms of a governmental plan as in effect on April 17, 2002, the plan will not fail to satisfy section 401(a)(9) merely because the annuity payments do not satisfy the requirements A-1 through A-15 of this section, provided the distribution option satisfies section 401(a)(9) based on a reasonable and good faith interpretation of the provisions of section

401(a)(9).

Q-17: What are the rules for determining required minimum distributions for defined benefit plans and annuity contracts for calendar years 2003, 2004, and 2005?

A-17: A distribution from a defined benefit plan or annuity contract for calendar years 2003, 2004, and 2005 will not fail to satisfy section 401(a)(9) merely because the payments do not satisfy A-1 through A-16 of this section, provided the payments satisfy section 401(a)(9) based on a reasonable and good faith interpretation of the provisions of section 401(a)(9). For governmental plans, this reasonable good faith standard extends to the end of the calendar year that contains the 90th day after the opening of the first legislative session of the legislative body with the authority to amend the plan that begins on or after June 15, 2004, if such 90th day is later than December 31, 2005.

§1.401(a)(9)-6T [Removed]

Par. 4. Section 1.401(a)(9)-6T is removed.

Par. 5. In '1.401(a)(9)-8 A-2, the first sentence in paragraph (a)(2) is revised to read as follows:

'1.401(a)(9)-8 Special rules.

* * * * *

A-2 * * *

(a) * * *

(2) If the employee's benefit in a defined contribution plan is divided into separate accounts and the beneficiaries with respect to one separate account differ from the beneficiaries with respect to the other separate accounts of the employee under the

plan, for years subsequent to the calendar year containing the date as of which the separate accounts were established, or date of death if later, such separate account under the plan is not aggregated with the other separate accounts under the plan in order to determine whether the distributions from such separate account under the plan satisfy section 401(a)(9). * * *

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Mark E. Matthews,
Deputy Commissioner for Services and Enforcement.

Approved: June 1, 2004

Gregory F. Jenner,
Acting Assistant Secretary of the Treasury.