

Additional Model Amendment for Retirement Plans for Proposed Regulations under Section 401(a)(9)

Announcement 2001-82

Proposed regulations under section 401(a)(9) of the Internal Revenue Code, relating to required minimum distributions from retirement plans, were published in the Federal Register on January 17, 2001 (the 2001 Proposed Regulations) and in the Internal Revenue Bulletin at 2001-11 I.R.B. 865. The preamble to the 2001 Proposed Regulations states that taxpayers may rely on regulations under § 401(a)(9) that were proposed in 1987 (the 1987 Proposed Regulations) or the 2001 Proposed Regulations for determining required minimum distributions for calendar year 2001 and subsequent calendar years prior to the effective date of the final regulations.

The preamble to the 2001 Proposed Regulations contains a model amendment that qualified plan sponsors can adopt if they wish to apply the 2001 Proposed Regulations in making all required minimum distributions for 2001 and subsequent calendar years prior to the effective date of the final regulations. After publication in the Federal Register, the model amendment was republished in Announcement 2001-18, 2001-10 I.R.B. 791, with minor corrections, and appeared (as corrected) in the preamble to the 2001 Proposed Regulations (REG-130477-00; REG-130481-00, 2001-11 I.R.B. 865).

This announcement responds to concerns by qualified plan sponsors that intended to use the 2001 Proposed Regulations for distributions for 2001 but made required minimum distributions for 2001 under the 1987 Proposed Regulations prior to the date on which the plan began operating under the 2001 Proposed Regulations. Qualified plan sponsors may adopt the alternative model amendment provided below in order to allow required minimum distributions made for 2001 prior to the date on which the plan began operating under the 2001 Proposed Regulations to be made under the 1987 Proposed Regulations. Required minimum

distributions made on or after the effective date of the amendment for 2001 will be made under the 2001 Proposed Regulations. The alternative model amendment also provides that, if the total amount of 2001 required minimum distributions made to a participant prior to the date on which the plan began operating in accordance with the 2001 Proposed Regulations are equal to or greater than the required minimum distributions determined under the 2001 Proposed Regulations, then no additional distributions are required for that participant for 2001 on or after such date. If the total amount of required minimum distributions made to a participant for 2001 prior to the date on which the plan began operating under the 2001 Proposed Regulations are less than the amount determined under the 2001 Proposed Regulations, then required minimum distributions for 2001 following such date will be determined so that the total amount of required minimum distributions for 2001 for that participant is the amount determined under the 2001 Proposed Regulations.

The model amendment described above is as follows:

With respect to distributions under the Plan made on or after **[SPECIFY DATE ON WHICH THE PLAN BEGAN OPERATING IN ACCORDANCE WITH THE 2001 PROPOSED REGULATIONS]** for calendar years beginning on or after January 1, 2001, the Plan will apply the minimum distribution requirements of section 401(a)(9) of the Internal Revenue Code in accordance with the regulations under section 401(a)(9) that were proposed on January 17, 2001 (the 2001 Proposed Regulations), notwithstanding any provision of the Plan to the contrary. If the total amount of required minimum distributions made to a participant for 2001 prior to **[SPECIFY DATE ON WHICH THE PLAN BEGAN OPERATING IN ACCORDANCE WITH THE 2001 PROPOSED REGULATIONS]** are equal to or greater than the amount of required minimum distributions determined under the 2001 Proposed Regulations, then no additional distributions are

required for such participant for 2001 on or after such date. If the total amount of required minimum distributions made to a participant for 2001 prior to **[SPECIFY DATE ON WHICH THE PLAN BEGAN OPERATING IN ACCORDANCE WITH THE 2001 PROPOSED REGULATIONS]** are less than the amount determined under the 2001 Proposed Regulations, then the amount of required minimum distributions for 2001 on or after such date will be determined so that the total amount of required minimum distributions for 2001 is the amount determined under the 2001 Proposed Regulations. This amendment shall continue in effect until the last calendar year beginning before the effective date of the final regulations under section 401(a)(9) or such other date as may be published by the Internal Revenue Service.

A plan sponsor that made required minimum distributions for 2001 under the 1987 Proposed Regulations prior to the date during 2001 that it began operating under the 2001 Proposed Regulations must amend its plan in accordance with the model amendment set forth above. The above model amendment may be used only if it is effective on a date in 2001 when the plan begins to operate in accordance with the 2001 Proposed Regulations. The original model amendment contained in Announcement 2001-18 is available for plans that follow the 2001 Proposed Regulations for determining required minimum distributions for 2001 for the entire calendar year 2001 or, if first effective after 2001, for later calendar years prior to the effective date of the final regulations.

In order for a qualified plan sponsor to use either model amendment, it must adopt the amendment prior to the end of the plan's GUST remedial amendment period. Revenue Procedure 2000-27, 2000-26 I.R.B. 1272, extends the GUST remedial amendment period for most plans until the end of the first plan year beginning on or after January 1, 2001.