Employee Benefit Plans

Explanation No. 9

Required Distributions

Note:

Plans submitted during the Cycle A submission period must satisfy the applicable changes in plan qualification requirements listed in Section IV of Notice 2010-90, 2010-52 I.R.B. 909 (the 2010 Cumulative List).

The purpose of Worksheet Number 9 (Form 8387) and this explanation is to assist the specialist in determining whether a plan satisfies the distribution requirements of Internal Revenue Code section 401(a)(9), in accordance with the Final and Temporary regulations under section 401(a)(9), published in the Federal Register on April 17, 2002. However, for plans in existence prior to 2003, required minimum distributions may have been made in accordance with previous proposed regulations published in 1987 and 2001. See Rev. Proc. 2002-29, 2002-1 C.B. 1176 for background on when these earlier regulations could be used, and refer to such earlier regulations for distribution rules prior to 2003, if applicable.

The sections cited at the end of each paragraph of explanation are to the Internal Revenue Code and the Income Tax Regulations.

Note: This has only been updated with respect to defined contribution plans.

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The technical principles reflected in this publication may be changed by future regulations or guidelines.

I. Distributions Before Death

Line a. - d. A qualified plan must provide that distributions to each participant must commence by the participant's required beginning date.

For years beginning before 1997, the required beginning date for a participant (other than a participant in a governmental or a church plan) was April 1 of the calendar year following the calendar year in which the participant attained age 70½. The required beginning date for a participant in a governmental or church plan was April 1 of the calendar year following the later of the calendar year in which the participant attained age 70½ or the calendar year in which the participant retired.

For years beginning after 1996, the rules changed for plans other than governmental and church plans.

The required beginning date for a participant (other than a 5-percent owner) is April 1 of the calendar year following the later of the calendar year in which the participant attains age 70½ or the calendar year in which the participant retires. A participant's accrued benefit in a defined benefit plan must be actuarially increased to take into account the period after age 70½ in which the participant was not receiving any benefits under the plan. (See Explanation #2A for a discussion of the actuarial increase). This required beginning date also applies to a participant in a governmental or church plan, except that no actuarial increase described above must be provided. The required beginning date for a 5-percent owner continues to be April 1 of the calendar year following the calendar year in which the participant attains age 70½.

For years beginning after 1996, with respect to a participant (other than a 5-percent owner) there are several choices. The required plan language will vary depending on the three basic choices below.

(1) The plan may continue to require participants to commence benefit distributions no later than April 1 of the calendar year after the calendar year in which a participant reaches age 70½. If a plan retains this language, a participant who dies after that date will be treated as dying after the required beginning date under section 401(a)(9) for purposes of determining distributions after death. However, the required beginning date for purposes of the excise tax under section 4974 (excise tax on excess accumulations) and 402(c) (eligible rollover distributions) is determined as if the required beginning date is April 1 of the calendar year after the later of the calendar year the participant attained age 70½ or retired. Thus, no excise tax will apply prior to the calendar year in which the participant (other than a 5-percent owner) retires and distributions prior to that calendar year will be eligible for rollover unless they are excepted for some other reason.

(2) The plan may provide that benefit distributions must commence by April 1 of the calendar year following the later of the calendar year in which the participant attains age 70½ or the calendar year in which the participant retires, except that benefit distributions to a participant with respect to benefits accrued as of the later of the adoption or effective date of the amendment to the plan that implements the changes to the required beginning date of this paragraph must commence by the April 1 of the calendar year following the calendar year in which the participant attains age 70½.

(3) The plan may provide that benefit distributions must commence by April 1 of the calendar year following the later of the calendar year in which the participant attains age 70½ or retires.

Choice (3) above may only be elected if (i) it corresponds to an amendment previously made to the plan pursuant to section 1.411(d)-4, Q&A-10(b) of the regulations (described below) or (ii) it does not eliminate an age 70½ distribution option, as described in the preceding regulation, because either (A) the plan is a new plan or (B) the plan contains provisions below allowing a participant to elect whether or not to defer distributions or the plan already offers a pre-retirement distribution option at least as generous as the deferral option below.

A plan may provide for an option allowing a participant attaining age 70½ in years after 1995 to make an election by April 1 of the calendar year following the year in which the participant attained age 70½ (or by December 31, 1997 in the case of a participant attaining age 70½ in 1996) to defer distributions until a date specified in the plan that is no later than the April 1 of the calendar year following the calendar year in which the participant retires, or to begin receiving distributions by the April 1 of the calendar year following the year in which the participant attained age 70½ (or by December 31, 1997 in the case of a participant attaining age 70½ in 1996).

A plan amendment to provide for such an option to defer must have been made retroactively effective in accordance with the pre-amendment operation of the plan by the end of the GUST remedial amendment period. A plan may still provide for this option to defer after the expiration of the GUST remedial amendment period, but may no longer make it retroactively effective.

Section 411(d)(6) provides that the accrued benefit of a participant may not be decreased by a plan amendment. The right to commence benefits in any form at a particular time is a separate optional form of benefit protected from elimination. The relief provisions of section 1.411(d)-4, Q&A-10, of the Income Tax Regulations, however, permit the elimination of the age 70½ option with respect to certain employees, as provided above, and also give examples of circumstances under which no relief is required under section 411(d)(6). The relief under section 411(d)(6) is only for amendments adopted within the GUST remedial amendment period.

A plan may also provide for an option allowing a participant attaining age 70½ in years prior to 1997 to stop distributions that had previously commenced and to recommence distributions at a later date, that is no later than April 1 of the calendar year following the year in which the participant retires, and that specifies, in accordance with Notice 97-75, that there is either a new annuity starting date upon recommencement for purposes of determining the applicable spousal consent rules under section 417, or that there is no new annuity starting date upon recommencement. This amendment must correspond to an amendment previously made to the plan, in accordance with Notice 97-75. See Notice 97-75, 1997-2 C.B. 337, Q&A-7 & 8.

Line e. For a defined benefit plan, an actuarial increase is required with respect to a participant who retires in a calendar year after the calendar year in which the participant attains age 70½ for the period after age 70½ in which the participant 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 April 1 following the calendar year in which the employee reaches age 70½, or January 1, 1997, if later, and ending on the date on which benefits commence after retirement in an amount sufficient to satisfy section 401(a)(9). For requirements on plan amendments to provide for actuarial increases for participants who retire in a calendar year after they reach age 70½, see Explanation No. 2A, Minimum Vesting Standards, Defined Benefit Plans.

For the special rule governing distributions to participants who made, and still have in effect, valid elections under section 242(b)(2) of TEFRA, see IV below. 401(a)(9)(A) and (C) Reg. 1.401(a)(9)-6, Q&A-7, Notice 97-75.

Line f. When the distribution of the participant's entire interest is not made in a lump sum, the plan must require the distribution to be made in one or more of the following ways: over the life of the participant, over the life of the participant and a designated beneficiary, over a period certain not extending beyond the life expectancy of the participant, or over a period certain not extending beyond the joint life and last survivor expectancy of the participant and a designated beneficiary. 401(a)(9)(A), Reg. 1.401(a)(9)-2 Q&A-1.

II. Distributions After Death

Line a. A qualified plan must provide that if the participant dies before distributions of his or her entire interest is completed, but after distributions have commenced under a method that satisfies I above, the remaining portion will be distributed at least as rapidly as under the method of distribution being used on the date of the participant's death using the participant's remaining life expectancy if there is no designated beneficiary, and if there is a designated beneficiary, using the remaining life expectancy of either the participant or the designated beneficiary, whichever is longer. 401(a)(9)(B)(i), Reg. 1.401(a)(9)-2 Q&A-5, 1.401(a)(9)-5, Q&A-5, Notice 97-75.

Line b. A qualified plan must provide that if a participant dies before distributions are treated as having begun to the participant, distributions will be made as follows. Any portion of the participant's interest that is not distributed to a beneficiary designated by the participant must be distributed by the end of the calendar year which contains the fifth anniversary of the date of the participant's death (the five-year rule). Any portion of the participant's interest that is payable to a beneficiary designated by the participant must be distributed either under the five-year rule or under the following exception to the five-year rule (the life expectancy rule). Under the life expectancy rule, the portion of the participant's interest payable to a designated beneficiary must be distributed, commencing not later than the end of the calendar year immediately following the calendar year in which the participant died, over the life of the beneficiary or over a period not extending beyond the life expectancy of the beneficiary. If the designated beneficiary is the participant's surviving spouse, distributions to the spouse may be postponed until the end of the calendar year in which the participant would have attained 70½, and if the surviving spouse dies before distributions to such spouse begin, the date of death of the surviving spouse will be substituted for the date of death of the participant in applying the five-year rule and the life expectancy rule. If a plan does not adopt an optional provision specifying the method of distribution after the death of the participant or allow participants or beneficiaries to elect on an individual basis whether the 5-year rule or the life expectancy rule applies, the default rule when the participant has a designated beneficiary is the life expectancy rule. A plan may adopt a provision that permits employees (or beneficiaries) to elect, in accordance with section 1.401(a)(9)-3 of the regulations, on an individual basis whether the five-year rule or the life expectancy rule applies to distributions after the death of an employee who has a designated beneficiary. See 401(a)(9)(B)(ii), (iii), and (iv), Reg. 1.401(a)(9)-3 Q&A-1-5, Reg. 1.401(a)(9)-5, Q&A-5, Notice 97-75.

III. Minimum Distribution Requirements

Regulation section 1.401(a)(9)-5 describes the minimum distribution that must be made to a participant or beneficiary in each distribution calendar year in order to satisfy section 401(a)(9). Section 401(a)(9)(G) also provides that any distribution that is required under the incidental death benefit requirement of section 401(a) (i.e., the requirement that death and other nonretirement benefits payable under the plan be incidental to the primary purpose of the plan) is to be treated as a distribution required under section 401(a)(9).

A plan must therefore provide that distributions will be made in accordance with the regulations under section 401(a)(9), including the incidental death benefit requirement under section 401(a)(9)(G). A plan may, of course, also set forth the manner of calculation of minimum distributions, provided such provisions are not inconsistent with section 401(a)(9) and the regulations thereunder. In addition, any plan provisions regarding optional provisions governing plan distributions may not conflict with section 401(a)(9) and the regulations thereunder. Section1.401(a)(9)-6 of the regulations applies specifically to defined benefit and defined contribution plans using annuity contracts. That section provides details on a plan's ability to make payments using a term-certain annuity or an annuity that increases over the payout period, without violating the incidental benefit rule. Section 1.401(a)(9)-8 of the regulations provides special rules, including rules applicable to separate accounts.

Section 401(a)(9)(H) provides that section 401(a)(9) does not apply to defined contribution plans for 2009.

401(a)(9)(A), (B), (G), and (H), Regs. 1.401(a)(9)-1 Q&A-3, 1.401(a)(9)-6, 1.401(a)(9)-8, Notice 2009-82, 2009-2 C.B. 491.

IV. TEFRA Transitional Rule

Section 242(b)(2) of TEFRA permitted a participant to make a transitional rule election that would govern the distribution made to the participant. If the participant made such an election, and the election is still valid, the distribution made pursuant to the election must satisfy the requirements of IRC section 401(a)(9) as in effect on December 31, 1983. Such a distribution must also satisfy the spousal consent and other survivor benefit rules of sections 401(a)(11) and 417. Reg. 1.401(a)(9)-8 Q&A-13-16.