Exhibit II

IRS Proposed Rules (REG-105954-20, February 24, 2022) on Required Minimum Distributions

Select Text from Preamble and Select Proposed Treasury Regulations

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE

26 CFR Parts 1 and 54

[REG-105954-20]

RIN 1545-BP82

Required Minimum Distributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to required minimum distributions from qualified plans; section 403(b) annuity contracts, custodial accounts, and retirement income accounts; individual retirement accounts and annuities; and eligible deferred compensation plans under section 457. These regulations will affect administrators of, and participants in, those plans; owners of individual retirement accounts and annuities; employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts; and beneficiaries of those plans, contracts, accounts, and annuities.

DATES: Written or electronic comments must be received by May 25, 2022. Outlines of topics to be discussed at the public hearing scheduled for June 15, 2022, at 10:00 a.m. must be received by May 25, 2022.

As of February 24, 2022, § 1.408-8 of the notice of proposed rulemaking that was published in the **Federal Register** on July 14, 1981 (46 FR 36198) is withdrawn.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG-105954-20) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment

submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG-105954-20), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Brandon M. Ford or Laura B. Warshawsky, (202) 317-6700; concerning submissions of comments and outlines of topics for the public hearing, Regina Johnson, (202) 317-5177 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 401(a)(9) of the Internal Revenue Code of 1986 (Code). These proposed regulations address the required minimum distribution requirements for plans qualified under section 401(a) and are being proposed to update the regulations to reflect the amendments made to section 401(a)(9) by sections 114 and 401 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), enacted on December 20, 2019, as Division O of the Further Consolidated Appropriations Act of 2019, Public Law 116-94, 133 Stat. 2534 (2019).

The rules of section 401(a)(9) are adopted by reference in section 408(a)(6) and (b)(3) for individual retirement accounts and individual retirement annuities (collectively, IRAs), section 408A(c)(5) for Roth IRAs, section 403(b)(10) for annuity contracts, custodial accounts, and retirement income accounts described in section 403(b) (section 403(b) plans), and section 457(d) for eligible deferred compensation plans. The determination of the required minimum distribution is also relevant for purposes of the related excise tax under section 4974 and the definition of eligible rollover distribution in section 402(c). Accordingly, this document also contains proposed conforming amendments to the Income Tax Regulations (26 CFR part 1) under sections 402(c), 403(b), 408, and 457, and to the Pension Excise Tax Regulations (26 CFR part 54) under section 4974.

Section 401(a)(9)—Required Minimum Distributions

Section 401(a)(9) provides rules for distributions from a qualified plan during the life of the employee in section 401(a)(9)(A) and after the death of the employee in section 401(a)(9)(B). The rules set forth a required beginning date for distributions and identify the period over which the employee's entire interest must be distributed.

Specifically, 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)(B)(i) provides that, if the employee dies after distributions have begun, the employee's remaining interest must be distributed at least as rapidly as under the distribution method used by the employee as of the date of the employee's death.

Section 401(a)(9)(B)(ii) and (iii) provides that, if the employee dies before required minimum distributions have begun, the employee's interest must either be: (1) Distributed (in accordance with regulations) over the life or life expectancy of the designated beneficiary with the distributions generally beginning no later than 1 year after the date of the employee's death; or (2) 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 72 to begin taking required minimum distributions.

Section 401(a)(9)(C) (as amended by section 114 of the SECURE Act) defines the required beginning date for an employee (other than a 5-percent owner or IRA owner) as April 1 of the calendar year following the later of the calendar year in which the employee attains age 72 or the calendar year in which the employee retires. For a 5-percent owner or an IRA owner, the required beginning date is April 1 of the calendar year following the calendar year in which the individual attains age 72, even if the individual has not retired. Section 401(a)(9)(C)(iii) provides that certain employees who commence benefits under a defined benefit plan after the year in which they attain age 70 1/2 must receive an actuarial increase.

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)(i) defines the term *designated beneficiary* as any individual designated as a beneficiary by the employee. Section 401(a)(9)(E)(ii) (which was added as part of section 401 of the SECURE Act) defines the term *eligible designated beneficiary* with respect to any employee, as any designated beneficiary who, as of the date of the employee's death, is: (1) The surviving spouse of the employee; (2) a child of the employee who has not reached the age of majority (within the meaning of section 401(a)(9)(F)); (3) disabled (within the meaning of section 72(m)(7)); (4) a chronically ill individual (within the meaning of section 7702B(c)(2), subject to certain exceptions); or (5) an individual not described elsewhere in section 401(a)(9)(E)(ii) who is not more than 10 years younger than the employee.

Section 401(a)(9)(E)(iii) provides that, subject to the rule in section 401(a)(9)(F), the treatment of an employee's child as an eligible designated beneficiary ends when the child attains the age of majority and that any remaining interest must be distributed within 10 years of that date. Section 401(a)(9)(F) provides that, under regulations, any amount paid to a child is treated as if it had been paid to the surviving spouse if it will be paid to the surviving spouse upon that 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 treated as a required minimum distribution.

Section 401(a)(9)(H) (which was added as part of section 401 of the SECURE Act) provides special rules that generally apply to the distribution of an employee's remaining interest in a defined contribution plan after the death of that employee. Specifically, section 401(a)(9)(H)(i) provides that, except in the case of a beneficiary who is not a designated beneficiary, section 401(a)(9)(B)(ii): (1) Is applied by substituting 10 years for 5 years; and (2) applies whether or not distributions of the employee's interest have begun in accordance with section 401(a)(9)(A). Section 401(a)(9)(H)(ii) provides that section 401(a)(9)(B)(iii) (permitting payments over the life or life expectancy of the designated beneficiary as an alternative to the 10-year rule) applies only in the case of an eligible designated beneficiary. Section 401(a)(9)(H)(iii) provides that if an eligible designated beneficiary dies before the employee's interest is entirely distributed, then section 401(a)(9)(H)(ii) does not apply to the beneficiary of the eligible designated beneficiary, and the remainder of the employee's interest must be distributed within 10 years after the death of the eligible designated beneficiary.

Section 401(a)(9)(H)(iv) provides that in the case of an applicable multi-beneficiary trust, if, under the terms of the trust, it is to be divided immediately upon the death of the employee into separate trusts for

each beneficiary, then section 401(a)(9)(H)(ii) is applied separately with respect to the portion of the employee's interest that is payable to any disabled or chronically ill eligible designated beneficiary. Section 401(a)(9)(H)(iv) also provides that in the case of an applicable multi-beneficiary trust, if, under the terms of the trust, no individual (other than an eligible designated beneficiary who is disabled or chronically ill) has any right to the employee's interest in the plan until the death of all of those disabled or chronically ill eligible designated beneficiaries with respect to the trust, then: (1) Section 401(a)(9)(B)(iii) (permitting payments over the life expectancy of a beneficiary) will apply to the distribution of the employee's interest; and (2) any beneficiary who is not disabled or chronically ill will be treated as a beneficiary of the eligible designated beneficiary who is disabled or chronically ill upon the death of that eligible designated beneficiary.

Section 401(a)(9)(H)(v) defines the term *applicable multi-beneficiary trust* as a trust: (1) Which has more than one beneficiary; (2) all of the beneficiaries of which are treated as designated beneficiaries for purposes of determining the distribution period pursuant to section 401(a)(9); and (3) at least one of the beneficiaries of which is an eligible designated beneficiary who is either disabled or chronically ill.

Section 401(a)(9)(H)(vi) provides that, for purposes of applying section 401(a)(9)(H), an eligible retirement plan defined in section 402(c)(8)(B) (other than a defined benefit plan described in section 402(c)(8)(B)(iv) or (v) or a qualified trust that is a part of a defined benefit plan) is treated as a defined contribution plan.[1]

Prior to amendment by section 114 of the SECURE Act, section 401(a)(9)(C) of the Code defined the required beginning date by reference to the calendar year in which the employee attains age 70 1/2. Section 114(d) of the SECURE Act provides that the amendments made by section 114 of the SECURE Act apply to distributions required to be made after December 31, 2019, with respect to individuals who attain age 70 1/2 after that date.

Section 401(b)(1) of the SECURE Act provides that, generally, the amendments made to section 401(a)(9)(E) and (H) of the Code apply to distributions with respect to employees who die after December 31, 2019.

Section 401(b)(2) of the SECURE Act provides that in the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers that were ratified before December 20, 2019, the amendments to sections 401(a)(9)(E) and (H) of the Code apply to distributions with respect to employees who die in calendar years beginning after December 31, 2021, or if earlier, the later of: (1) The date on which the last of the collective bargaining agreements terminated (without regard to any extension of the agreement to which the parties agree on or after December 20, 2019), or (2) December 31, 2019.

Section 401(b)(3) of the SECURE Act provides that in the case of a governmental plan (as defined in section 414(d) of the Code), the amendments to sections 401(a)(9)(E) and (H) will apply to distributions with respect to employees who die after December 31, 2021.

[1] The eligible retirement plans described in section 402(c)(8)(B)(iv) and (v) are an annuity plan described in section 403(a) and an eligible deferred compensation plan described in section 457(b) that is maintained by an eligible employer described in section 457(e)(1)(A), respectively.

Section 401(b)(4) of the SECURE Act provides that the amendments made to sections 401(a)(9)(E) and (H) of the Code do not apply to a qualified annuity that is a binding annuity contract in effect on December 20, 2019, and at all times thereafter.[2]

Section 401(b)(5) of the SECURE Act provides that if an employee dies before the effective date of section 401(a)(9)(H) of the Code for a plan, then, in applying the amendments made to sections 401(a)(9)(E) and (H) to the employee's designated beneficiary who dies on or after the effective date, (1) the amendments apply to any beneficiary of the designated beneficiary, and (2) the designated beneficiary is treated as an eligible designated beneficiary for purposes of section 401(a)(9)(H)(ii).

Section 402(c)—Rollovers

Section 402(c) provides rules related to the rollover of a distribution from a qualified plan to another eligible retirement plan. Prior to being amended by section 641 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107-16, 115 Stat. 38 (2001) (EGTRRA), section 402(c)(2) of the Code limited the portion of a distribution that could be rolled over to the amount that would have been includible in income in the absence of the rollover. Section 641 of EGTRRA and section 411(q) of the Job Creation and Worker Assistance Act of 2002, Public Law 107-147, 116 Stat. 21 (2002), expanded the rollover rules to permit a rollover to an IRA of the portion of the distribution that would have been excluded from gross income in the absence of the rollover (that is, the portion of the amount distributed that consists of the employee's investment in the contract). In addition, that portion may be transferred in a direct trustee-to-trustee transfer to a qualified trust or to an annuity contract described in section 403(b) of the Code, but only if the trust or annuity contract separately accounts for the amount that consists of the employee's investment in the contract. If only a portion of an eligible rollover distribution is rolled over or transferred, then the amount rolled over or transferred is treated as consisting first of the portion of the distribution that is not allocable to the employee's investment in the contract.

Under section 402(c), any amount distributed from a qualified plan generally will be excluded from income if it is transferred to an eligible retirement plan no later than the 60th day following the day the distribution is received. Section 402(c)(3)(B) was added by section 644 of EGTRRA to provide that the Secretary may waive the 60-day rollover requirement in certain circumstances. Section 402(c)(3)(C) was added to the Code by section 13613 of the Tax Cuts and Jobs Act, Public Law 115-97, 131 Stat. 2054 (2017) (TCJA) to provide an extended rollover deadline for qualified plan loan offset (QPLO) amounts.[3] Specifically, the deadline for rollover of any portion of a QPLO amount is extended so that it ends no earlier than the distributee's tax filing due date (including extensions) for the taxable year in which the offset occurs.

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[2] Section 401(b)(4)(B) of the SECURE Act provides that the term *qualified annuity* means, with respect to an employee, an annuity— (i) which is a commercial annuity (as defined in section 3405(e)(6) of the Internal Revenue Code of 1986); (ii) under which the annuity payments are made over the life of the employee or over the joint lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the joint life expectancy of such employee and a designated beneficiary) in accordance with the regulations described in section 401(a)(9)(A)(ii) of such Code (as in effect before such amendments) and which meets the other requirements of section 401(a)(9) of such Code (as so in effect) with respect to such payments; and (iii) with respect to which— (I) annuity payments to the employee have begun before the date of enactment of the SECURE Act, and the employee has made an irrevocable election before such date as to the method and amount of the annuity payments to the employee or any designated beneficiaries; or (II) if subclause (I) does not apply, the employee has made an irrevocable election before the date of enactment of the SECURE Act as to the method and amount of the annuity payments to the employee or any designated beneficiaries.

[3] A QPLO amount is defined in section 402(c)(3)(C)(ii) as a plan loan offset amount that is distributed from a qualified employer plan to a participant or beneficiary solely by reason of: (1) The termination of the qualified employer plan, or (2) the failure to meet the repayment terms of the loan from the plan because of the severance from employment of the participant.

Subject to certain exclusions, section 402(c)(4) provides that an eligible rollover distribution means any distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified plan. Section 402(c)(4)(A) excludes from the definition of an eligible rollover distribution any distribution that is one of a series of substantially equal periodic payments payable for the life (or life expectancy) of the employee (or the employee and the employee's designated beneficiary), or for a specified period of 10 years or more. Section 402(c)(4)(B) provides that any distribution that is required under section 401(a)(9) is excluded from the definition of an eligible rollover distribution. Section 402(c)(4)(C), which was added by section 636(b)(1) of EGTRRA, excludes hardship distributions from the definition of an eligible rollover distribution.

Prior to being amended by section 641 of EGTRRA, section 402(c)(8)(B) of the Code provided that the only type of eligible retirement plan permitted to receive a rollover from a qualified plan was another qualified plan or an IRA. Section 641 of EGTRRA amended section 402(c)(8)(B) to expand the list of retirement plans eligible to receive rollovers to include an annuity contract described in section 403(b) of the Code, and an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A). Section 617(c) of EGTRRA amended section 402(c)(8)(B) of the Code to provide that if any portion of an eligible rollover distribution is attributable to distributions from a designated Roth account (as defined in section 402A), that portion may be rolled over only to another designated Roth account or a Roth IRA (as described in section 408A). Section 641 of EGTRRA also added section 402(c)(10) to the Code to provide that an eligible deferred compensation plan described in section 457(b) maintained by an eligible employer described in section 457(e)(1)(A) may accept rollovers from a different type of eligible retirement plan only if it separately accounts for the amounts rolled into the plan.

Section 402(c)(9) provides that, if any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, then section 402(c) applies to that distribution in the same manner as if the spouse were the employee. At the time section 402(c)(9) was enacted, a surviving spouse was permitted to roll over an eligible rollover distribution only to an IRA. However, section 641 of EGTRRA amended section 402(c)(9) of the Code to expand the type of eligible retirement plan permitted to receive a spousal rollover to include not just an IRA, but also any other eligible retirement plan.

Section 402(c)(11) of the Code was added by section 829 of the Pension Protection Act of 2006, Public Law 109-280, 120 Stat. 780 (2006) (PPA), to provide that an individual who is not the surviving spouse of the employee and who is a designated beneficiary (as defined by section 401(a)(9)(E) of the Code) may elect to have any portion of a distribution made in the form of a direct trustee-to-trustee transfer to an individual retirement plan established for the purpose of receiving that distribution. If a direct trustee-to-trustee transfer is made pursuant to section 402(c)(11), then the required minimum distribution rules applicable to distributions after the employee's death in section 401(a)(9)(B) (other than section 401(a)(9)(B)(iv)) will apply to the individual retirement plan.

The rollover rules of section 402(c) also apply to a distribution from a section 403(a) qualified annuity plan, a section 403(b) plan, and an eligible deferred compensation plan described in section 457(b) maintained by an eligible employer described in section 457(e)(1)(A). See sections 403(a)(4)(B), 403(b)(8)(B), and 457(e)(16)(B), respectively.

Sections 403(a), 403(b), 408, and 457—Other Arrangements Subject to Section 401(a)(9)

Under section 403(a)(1), a qualified annuity plan under section 403(a) must meet the requirements of section 404(a)(2) (which provides that an annuity plan must satisfy the required minimum distribution rules under section 401(a)(9)). Sections 403(b)(10), 408(a)(6), and 408(b)(3) provide that a section 403(b)

plan, an individual retirement account, and an individual retirement annuity, respectively, must satisfy rules similar to the requirements of section 401(a)(9) and the incidental death benefit requirements of section 401(a). Under section 457(b)(5) and (d)(2), a plan is an eligible deferred compensation plan described in section 457(b) only if it satisfies the minimum distribution requirements of section 401(a)(9).

Section 4974—Excise Tax on Failure To Satisfy Section 401(a)(9)

Section 4974(a) provides that if the amount distributed during the taxable year of a payee under any qualified retirement plan (as defined in section 4974(c)) or any eligible deferred compensation plan (as defined in section 457(b)) is less than that taxable year's minimum required distribution (as defined in section 4974(b)), then an excise tax is imposed on the payee equal to 50 percent of the amount by which the minimum required distribution for the taxable year exceeds the amount actually distributed in that taxable year.

Section 4974(d) provides that if the taxpayer establishes to the satisfaction of the Secretary that the failure to distribute the entire amount required in a taxable year was due to reasonable error and reasonable steps are being taken to remedy that shortfall, then the Secretary may waive the excise tax imposed in section 4974(a) for that taxable year.

Good Faith Compliance Standard for Governmental Plans

Section 823 of PPA provides that a governmental plan (as defined in section 414(d) of the Code) is treated as having complied with section 401(a)(9) if the plan complies with a reasonable, good faith interpretation of section 401(a)(9).

Existing Regulations

Final regulations relating to required minimum distributions from a qualified plan, an IRA, and a section 403(b) plan, have been subject to a series of amendments and additions since they were published in the **Federal Register** on April 17, 2002 (67 FR 18988).[4] Final regulations relating to required minimum distributions from defined benefit plans and annuity contracts were published in the **Federal Register** on June 15, 2004 (69 FR 68077). Final regulations published in the **Federal Register** on September 8, 2009 (74 FR 45993) updated the rules to permit a governmental plan to comply with the required minimum distribution rules using a reasonable, good faith interpretation of section 401(a)(9). Final regulations relating to qualified longevity annuity contracts were published in the **Federal Register** on July 2, 2014 (79 FR 37633). Final regulations published in the **Federal Register** on November 12, 2020 (85 FR 72477) updated the life expectancy and distribution period tables for distribution calendar years that begin on or after January 1, 2022.

Final regulations relating to section 402(c) and eligible rollover distributions were published in the **Federal Register** on September 22, 1995 (60 FR 49199). Since those regulations were issued, section 402(c) has been amended several times, and guidance related to those amendments has generally been issued in the Internal Revenue Bulletin rather than through the issuance of new regulations. For example, Notice 2007-7, 2007-1 C.B. 395, provided guidance related to the amendments to section 402(c) made by PPA. However, final regulations related to the extended period of time to roll over a QPLO amount under

[4] Final regulations under section 4974 (relating to excise taxes for excess accumulations in qualified plans) were published at the same time but have not been amended.

section 402(c)(3)(C) were published in the **Federal Register** on January 6, 2021 (86 FR 464). See § 1.402(c)-3.

Explanation of Provisions

These proposed regulations would update several existing regulations under sections 401(a)(9), 402(c), 403(b), 457, and 4974 to reflect statutory amendments that have been made since those regulations were last issued. These proposed regulations also clarify certain issues that have been raised in public comments and private letter ruling requests. These proposed regulations also replace the question-and-answer format of the existing regulations under sections 401(a)(9), 402(c), 408, and 4974 with a standard format. Rules under the existing regulations that are retained in these proposed regulations are generally not discussed in this Explanation of Provisions.

[TEXT OMITTED]

C. Section 1.401(a)(9)-3—Death Before Required Beginning Date

Proposed § 1.401(a)(9)-3 provides rules for distributions if an employee dies before the employee's required beginning date. These rules are based on the rules in the existing regulations but are updated to reflect new section 401(a)(9)(H). Because section 401(a)(9)(H) applies only to defined contribution plans, the rules for distributions from defined benefit plans and defined contribution plans have been separated, with the rules for distributions from defined benefit plans set forth in proposed § 1.401(a)(9)-3(b) and the rules for distributions from defined contribution plans set forth in proposed § 1.401(a)(9)-3(c).

Section 401(a)(9)(H)(i) provides for a new 10-year distribution period in certain cases (10-year rule). Specifically, in the case of a defined contribution plan, if an employee who has a designated beneficiary dies before the employee's required beginning date, then section 401(a)(9)(B)(ii) is satisfied if the employee's entire interest is distributed by the end of the calendar year that includes the tenth anniversary of the employee's death. This 10-year rule is similar to the 5-year rule in the existing regulations (under which distributions may be delayed until the end of the fifth calendar year following the calendar year of the employee's death if the employee dies before the required beginning date) and permits distributions to be delayed until the end of the tenth calendar year following the calendar year of the employee's death if the employee dies before the required beginning date.

The 5-year rule is retained in these proposed regulations and continues to apply to a defined benefit plan. It also applies to a defined contribution plan if section 401(a)(9)(H) does not apply to the employee (which could occur if the employee does not have a designated beneficiary or if the employee died before the effective date of section 401(a)(9)(H) and the employee's designated beneficiary elected the 5-year rule).

These proposed regulations retain the rule that permits an employee's interest to be distributed over the designated beneficiary's life or life expectancy in accordance with section 401(a)(9)(B)(iii) (life expectancy payments rule). However, pursuant to section 401(a)(9)(H)(ii), in the case of a defined contribution plan, that rule is available only if the designated beneficiary is an eligible designated beneficiary as defined in section 401(a)(9)(E)(ii). Thus, in the case of a defined contribution plan, if the

employee dies before the required beginning date and the employee's designated beneficiary is not an eligible designated beneficiary, the 10-year rule applies.

These proposed regulations also provide that in the case of a defined contribution plan, if the employee has a designated beneficiary who is an eligible designated beneficiary, the plan may provide either that the 10-year rule applies or that the life expectancy payments rule applies. Alternatively, the plan may provide the employee or the eligible designated beneficiary an election between the 10-year rule or the life expectancy payments rule. However, if a defined contribution plan does not include either of those optional provisions and the employee has an eligible designated beneficiary, the plan must provide for the life expectancy payments rule.

D. Section 1.401(a)(9)-4—Determination of the Designated Beneficiary

Proposed § 1.401(a)(9)-4 provides rules addressing the determination of the employee's beneficiary for purposes of section 401(a)(9) and these proposed regulations are substantially similar to the rules in the existing regulations. In addition to providing rules addressing the new definition of eligible designated beneficiary, these proposed regulations include rules that clarify and simplify the determination of a beneficiary for purposes of section 401(a)(9) in certain situations involving the use of a trust.

A designated beneficiary within the meaning of section 401(a)(9)(E)(i) generally is an individual designated under the plan as a beneficiary who is entitled to a portion of an employee's benefit, contingent on the employee's death or another specified event. If a beneficiary designated under the plan is a person other than an individual, then the employee is treated as not having a designated beneficiary (even if there is an individual who is designated as a beneficiary under the plan). However, if a beneficiary designated under the plan is a see-through trust as described in Section I.D.2 of this Explanation of Provisions, then certain beneficiaries of that trust are treated as the employee's beneficiaries under the plan rather than the trust. In addition, designating a person that is not an individual as a beneficiary under the plan does not cause the employee to be treated as not having a designated beneficiary to the extent separate account treatment applies with respect to that person as described in Section I.H of this Explanation of Provisions.

1. Eligible Designated Beneficiaries

These proposed regulations incorporate the new definition of eligible designated beneficiary in section 401(a)(9)(E)(ii). Specifically, an eligible designated beneficiary is a designated beneficiary who, as of the date of the employee's death, is (1) the surviving spouse of the employee, (2) a child of the employee who has not yet reached the age of majority, (3) disabled, (4) chronically ill, or (5) not more than 10 years younger than the employee.

a. Definition of Age of Majority

Section 401(a)(9)(E)(ii)(II) provides that if the employee's designated beneficiary, as of the date of the employee's death, is a child of the employee who has not yet reached the age of majority (as defined in section 401(a)(9)(F)), then that child is an eligible designated beneficiary. Section 1.401(a)(9)-6, A-15, of the existing regulations provides guidance regarding the application of section 401(a)(9)(F). That regulatory provision does not specify a particular age as a generally applicable age of majority, but provides that 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.

The Treasury Department and the IRS have determined that it is necessary to revise the definition of age of majority from the definition used under the existing regulations (the pre-SECURE Act application of which is limited to defined benefit plans and rarely applied). As more plans are expected to apply an age of majority definition, plans may find it difficult to implement the existing standard under which the plan administrator obtains information about the education of an employee's child for purposes of applying section 401(a)(9)(H). Furthermore, because the definition of age of majority is intended to apply to all of an individual's accounts in defined contribution plans, which may be in multiple qualified plans and IRAs, the Treasury Department and the IRS have concluded that the definition, which will determine whether a designated beneficiary is an eligible designated beneficiary across plans and accounts, should not be a plan design choice. The potential for different plans to have different definitions would lead to confusion and complexity for individuals in planning and for their beneficiaries, as well as plan administrators and custodians, in determining payment streams. Accordingly, for purposes of section 401(a)(9)(E)(ii)(II) and (F), these proposed regulations provide that a child of the employee reaches the age of majority on that child's 21st birthday (which accommodates the age of majority definition in all of the States). However, as described in Section I.F of this Explanation of Provisions, the proposed regulations permit defined benefit plans that have used the prior definition of age of majority to retain that plan provision.

b. Definition of Disability

These proposed regulations provide rules for the determination of whether an individual is disabled for purposes of section 401(a)(9). Section 401(a)(9)(E)(ii)(III) applies the definition of disability under section 72(m)(7) for purposes of section 401(a)(9). Section 72(m)(7) provides a standard of disability based on whether an individual is unable to engage in substantial gainful activity. However, for individuals under age 18, that standard may be difficult to apply. Accordingly, if, as of the date of the employee's death, a beneficiary is younger than age 18, the proposed regulations apply a comparable standard that requires the beneficiary to have a medically determinable physical or mental impairment that results in marked and severe functional limitations, and that can be expected to result in death or to be of long-continued and indefinite duration.

These proposed regulations also provide a safe harbor for the determination of whether a beneficiary is disabled. Specifically, if, as of the date of the employee's death, the Commissioner of Social Security has determined that the individual is disabled within the meaning of 42 U.S.C. 1382c(a)(3), then that individual will be deemed to be disabled for purposes of section 401(a)(9).

Pursuant to section 401(a)(9)(E)(ii), the determination of whether a beneficiary is disabled is made as of the date of the employee's death. For example, if, as of the employee's death, the employee's designated beneficiary is the employee's 10-year-old child who is not disabled but who becomes disabled 5 years after the employee's death, then pursuant to section 401(a)(9)(E)(iii) and these proposed regulations, that child's later disability will not be taken into account, and that child will cease to be an eligible designated beneficiary on the child's 21st birthday.

c. Documentation Requirements for Disabled or Chronically Ill Status

These proposed regulations provide that, with respect to a beneficiary who is disabled or chronically ill as of the date of the employee's death, documentation of the disability or chronic illness must be provided to the plan administrator no later than October 31 of the calendar year following the calendar year of the employee's death. If the designated beneficiary is chronically ill under any of the definitions in section 7702B(c)(2)(A) as of the date of the employee's death, the documentation must include a certification by a licensed health care practitioner (as defined in section 7702B(c)(4)) that the designated beneficiary is

chronically ill. Additionally, in accordance with section 401(a)(9)(E)(ii)(IV), if the beneficiary is chronically ill under the definition in section 7702B(c)(2)(A)(i), then the documentation also must include a certification from a licensed health care practitioner that, as of the date of the certification, the individual is unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for an indefinite period that is reasonably expected to be lengthy in nature.

For a designated beneficiary who is an eligible designated beneficiary because, at the time of the employee's death, the designated beneficiary is the employee's minor child and that child also is disabled or chronically ill within the meaning of these proposed regulations, the designated beneficiary will continue to be treated as an eligible designated beneficiary after reaching the age of majority (on account of being disabled or chronically ill) only if these documentation requirements are timely met with respect to that designated beneficiary. Similarly, if the employee's designated beneficiary is the employee's surviving spouse and that spouse also is disabled or chronically ill at the time of the employee's death, then the surviving spouse will be treated as disabled or chronically ill for purposes of the applicable multi-beneficiary trust rules only if the documentation requirements are timely met with respect to the surviving spouse.

d. Other Rules Related to Eligible Designated Beneficiaries

These proposed regulations provide that, if an employee has more than one designated beneficiary and one of them is not an eligible designated beneficiary, then for purposes of section 401(a)(9), the employee generally is treated as not having an eligible designated beneficiary. In addition, these proposed regulations provide that if the surviving spouse is waiting to begin distributions until the year in which the employee would have attained age 72 and the surviving spouse dies before the beginning of that year, then the determination of whether the surviving spouse's designated beneficiary is an eligible designated beneficiary is made by substituting the surviving spouse for the employee (including for purposes of establishing the date as of which that determination is made). For example, a child of the surviving spouse is an eligible designated beneficiary if the child has not yet reached the age of majority as of the date of the surviving spouse's death.

2. Trust as Beneficiary

These proposed regulations retain the see-through trust concept in the existing regulations under which certain beneficiaries of a trust are treated as beneficiaries of the employee if the trust meets the requirements to be a see-through trust. Specifically, to be a see-through trust, the trust must meet the following requirements: (1) The trust is valid under state law or would be valid but for the fact that there is no corpus; (2) the trust is irrevocable or will, by its terms, become irrevocable upon the death of the employee; (3) the beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable; and (4) the specified documentation requirements are satisfied.

In response to issues raised in private letter ruling requests and comments submitted to the Treasury Department and the IRS, these proposed regulations provide additional guidance in determining which beneficiaries of the see-through trust are treated as beneficiaries of the employee.[5] These proposed rules are consistent with the examples that are in § 1.401(a)(9)-5, Q&A-7(c), of the existing regulations, but address many more fact patterns. The Treasury Department and the IRS intend for these more detailed rules to address many of the issues raised in comment letters and private letter ruling requests and expect

[5] These proposed regulations provide for the determination of the trust beneficiaries that are treated as beneficiaries of the employee in § 1.401(a)(9)-4(f). In the existing regulations, these provisions were in § 1.401(a)(9)-5.

that this more comprehensive and definitive guidance will minimize the need for taxpayers to request private letter rulings.

a. Determining Which See-Through Trust Beneficiaries Are Treated as Beneficiaries of the Employee

1. See-Through Trust Beneficiaries Taken Into Account

Generally, the proposed regulations provide that a beneficiary of a see-through trust is treated as a beneficiary of the employee if the beneficiary could receive amounts in the trust representing the employee's interest in the plan that are neither contingent upon nor delayed until the death of another trust beneficiary who does not predecease (and is not treated as having predeceased)[6] the employee.

Whether any other see-through trust beneficiary also is treated as a beneficiary of the employee depends upon whether the see-through trust is a conduit trust or accumulation trust. A conduit trust is defined in the proposed regulations as a see-through trust, the terms of which provide that all plan distributions will, upon receipt by the trustee, be paid directly to, or for the benefit of, specified beneficiaries. A see-through trust will not fail to be a conduit trust merely because the trust terms do not require an immediate distribution after the death of all of the specified beneficiaries described in the preceding sentence.

For example, if an employee names a conduit trust as the beneficiary of the employee's interest in a plan and the trust terms require all distributions from the plan to the trust during the surviving spouse's life to be distributed immediately to that surviving spouse, then the surviving spouse is treated as a beneficiary of the employee because the surviving spouse could receive amounts in the trust that are neither contingent upon nor delayed until the death of another trust beneficiary. In this case, if distributions have begun from the plan and the surviving spouse dies before the employee's entire interest is distributed, any beneficiary who could receive distributions from the conduit trust at the time of the surviving spouse's death is not treated as a beneficiary of the employee because that beneficiary's ability to receive amounts from the trust is contingent upon the death of the surviving spouse.

An accumulation trust is any see-through trust that is not a conduit trust, and under an accumulation trust, there are potentially more beneficiaries. A beneficiary of an accumulation trust is treated as a beneficiary of the employee if that beneficiary has a residual interest in the portion of the trust representing the employee's interest in the plan (that is, the beneficiary could receive amounts in the trust, representing the employee's interest in the plan, that were not distributed to individuals described in the first paragraph of this Section I.D.2.a.1). For example, assume an employee names a see-through trust as the sole beneficiary of the employee's interest in the plan. The terms of the see-through trust require the trustee to pay specified amounts from the trust to the employee's surviving spouse, and those specified amounts do not include the immediate payment of plan distributions made to the trust. Upon the spouse's death, the see-through trust is to terminate and the amounts remaining in the trust are to be paid to the employee's brother. The surviving spouse is treated as a beneficiary of the employee (because the surviving spouse could receive amounts in the see-through trust that are neither contingent upon nor delayed until the death of another trust beneficiary). Moreover, because not all distributions from the plan to the see-through trust are immediately distributed to a trust beneficiary, the trust is an accumulation trust. As a result, the employee's brother is treated as a beneficiary of the employee because he has a residual interest in the see-through trust (that is, he could receive amounts in the trust representing the employee's interest in the plan that were not distributed to the surviving spouse).

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[6] For purposes of this rule, a beneficiary is treated as having predeceased the employee if the beneficiary is treated as predeceasing the employee pursuant to a simultaneous death provision or a qualified disclaimer.

2. Disregarded Beneficiaries of See-Through Trusts

These proposed regulations also provide for certain beneficiaries of a see-through trust to be disregarded as beneficiaries of the employee for purposes of section 401(a)(9), because they have only minimal or remote interests. Specifically, a see-through trust beneficiary is not treated as a beneficiary of the employee if that beneficiary could receive payments from the trust that represent the employee's interest in the plan only after the death of another trust beneficiary whose sole interest is a residual interest in the trust (as described in the preceding paragraph) and who did not predecease (and is not treated as having predeceased) the employee. Thus, using the example in the preceding paragraph, assume the see-through trust terms provide that if the employee's brother survives the employee but predeceases the surviving spouse, then the amounts remaining in the trust after the death of the surviving spouse are to be paid to a charity. In that case, the charity is disregarded as a beneficiary of the employee because the charity could receive only amounts in the trust that are contingent upon the death of the employee's brother, whose only interest was a residual interest (that is, an interest in the amounts remaining in the trust after the death of the surviving spouse). In contrast, the charity would be treated as a beneficiary of the employee if the brother could receive amounts in the trust not subject to any contingencies or contingent upon an event other than the death of the surviving spouse (such as the surviving spouse's remarriage).

These proposed regulations provide another exception under which a see-through trust beneficiary with a residual interest is disregarded as a beneficiary of the employee because the beneficiary would have only a minimal or remote interest in the trust. These proposed regulations provide that if the see-through trust terms require a full distribution of amounts in the trust representing the employee's interest in the plan to a specified individual described in the first paragraph of Section I.D.2.a.1 of this Explanation of Provisions by the later of: (1) The calendar year following the calendar year of the employee's death; and (2) the end of the tenth calendar year following the calendar year in which that specified individual attains the age of majority, then any other beneficiary whose sole entitlement to distributions is conditioned on the unlikely event that specified individual dies before the full distribution is required is disregarded as a beneficiary of the employee.

To illustrate this exception, assume an employee names a see-through trust as the sole beneficiary, the trust permits specified amounts to be paid to the employee's niece until the niece reaches age 31 (age of majority plus 10 years), and those specified amounts are not required to include the immediate payment of plan distributions made to the trust. The trust is scheduled to terminate with a full distribution of all trust assets to the niece when the niece reaches age 31, but if the niece dies before this scheduled termination, then the amounts remaining in the trust will be paid to the employee's sibling. In that case, the only beneficiary designated under the plan for purposes of section 401(a)(9) and these regulations is the employee's niece because the employee's sibling is disregarded under the exception described in the preceding paragraph. However, if the see-through trust terms do not require a full distribution of amounts in the trust representing the employee's interest in the plan until the niece reaches age 35, then this exception does not apply, and both the employee's niece and sibling are treated as beneficiaries designated under the plan for purposes of section 401(a)(9) and these regulations.

b. Identifiability of Trust Beneficiaries

These proposed regulations retain the requirement from the existing regulations that the employee's beneficiaries (including beneficiaries of a see-through trust) be identifiable, but modify the definition of identifiability in light of the enactment of section 401(a)(9)(H). Generally, trust beneficiaries are identifiable if it is possible to identify each person designated by the employee as eligible to receive a portion of the employee's interest in the plan through the trust. Under the proposed regulations, if an employee names a class of individuals as the beneficiary (such as the employee's grandchildren), the

addition of another member of that class (for example, the birth of another grandchild) will not cause the trust to fail to meet the identifiability requirements.

These proposed regulations provide another exception to the general identifiability rule under which a trust will not fail to satisfy the identifiability requirements merely because an individual has a power of appointment with respect to a portion of the employee's interest in the plan. Specifically, these proposed regulations provide that if, by September 30 of the calendar year following the calendar year of the employee's death, the power is exercised in favor of one or more beneficiaries that are identifiable or is restricted so that any appointment made at a later time may only be made in favor of one or more identifiable beneficiaries, then all of those identifiable beneficiaries are taken into account as beneficiaries of the employee. If the power is not exercised by that September 30 in favor of one or more beneficiaries that are identifiable (and is not so restricted) then each taker in default (that is, each person who would be entitled to the portion subject to the power if that power is not exercised) is treated as a beneficiary of the employee.

These proposed regulations include a rule that applies when a beneficiary is added who was not initially taken into account in determining the employee's beneficiaries. Under this rule, if a beneficiary is added after September 30 of the calendar year following the calendar year of the employee's death (for example, if an individual exercises a power of appointment after that September 30), then the determination of whether there is no designated beneficiary because one of the employee's beneficiaries is not an individual, and the rules relating to multiple designated beneficiaries described in Sections I.D.1.d and I.E.3.d of this Explanation of Provisions must be applied taking into account the new beneficiary along with all of the beneficiaries that were taken into account before the addition of the new beneficiary. However, if the addition of the beneficiary would cause a full distribution of the employee's interest in the plan to be required pursuant to section 401(a)(9)(H) during the calendar year in which the beneficiary is added or in an earlier calendar year (and a full distribution would not have been required in the absence of the new beneficiary), then the proposed regulations provide that the full distribution is not required until the end of the calendar year following the calendar year in which the beneficiary was added.

To illustrate this rule, assume an employee named a see-through trust as the beneficiary of the employee's interest in the plan, the terms of the trust require the trustee to pay specified amounts from the trust to the employee's surviving spouse, and those specified amounts do not require the immediate payment of plan distributions made to the trust. In this case, the trust is an accumulation trust. The trust terms also provide the spouse with a testamentary power of appointment to name the beneficiary of any portion of the employee's interest in the plan that has not been distributed before the surviving spouse dies, but in the absence of an appointment, the employee's only child is entitled to that residual interest in the trust. If the power of appointment is not exercised by September 30 of the calendar year following the calendar year of the employee's death, then the trust does not fail to satisfy the identifiability requirements, and both the employee's surviving spouse and child are treated as beneficiaries of the employee. If, after that September 30, the surviving spouse exercises the power by naming the spouse's sibling as the beneficiary of the residual interest in the trust, then the employee's surviving spouse, the employee's child, and the spouse's sibling are all taken into account when applying the rules for multiple designated beneficiaries for each calendar year after the year during which the sibling is added as a beneficiary.

These proposed regulations also provide that a see-through trust will not fail to satisfy the identifiability requirements merely because the trust is subject to state law that permits the trust terms to be modified after the death of the employee (such as by a court reformation, through a decanting, or otherwise), thus permitting a change in the beneficiaries of the trust. If a beneficiary of a see-through trust is removed through a modification of the trust terms by September 30 of the calendar year following the calendar year of the employee's death, the proposed regulations provide that the beneficiary that was removed is

disregarded as a beneficiary of the employee for purposes of section 401(a)(9) and these regulations. Similarly, if a beneficiary is added pursuant to such a modification, that beneficiary is taken into account as a beneficiary of the employee for purposes of section 401(a)(9) and these regulations. However, if a beneficiary is added pursuant to such a modification after that September 30, then the rules that apply to a beneficiary that is added pursuant to a power of appointment will apply also to a beneficiary that is added pursuant to the modification.

c. Applicable Multi-Beneficiary Trusts

These proposed regulations also provide guidance on a particular type of see-through trust defined in section 401(a)(9)(H)(v) as an applicable multi-beneficiary trust. Specifically, these proposed regulations define two types of applicable multi-beneficiary trusts. A type I applicable multi-beneficiary trust is an applicable multi-beneficiary trust, the terms of which provide that the trust is to be divided immediately upon the death of the employee into separate trusts for each beneficiary (as described in section 401(a)(9)(H)(iv)(I)). A type II applicable multi-beneficiary trust is an applicable multi-beneficiary trust, the terms of which provide that no individual other than a disabled or chronically ill eligible designated beneficiary has any right to the employee's interest in the plan until the death of all such eligible designated beneficiaries with respect to the trust (as described in section 401(a)(9)(H)(iv)(II)).

When dividing a type I applicable multi-beneficiary trust, one of the separate trusts could be a type II applicable multi-beneficiary trust. Thus, if a type I applicable multi-beneficiary trust is divided into separate trusts and one of the separate trusts satisfies the requirements to be a type II applicable multi-beneficiary trust, then the beneficiaries of that separate trust who are not disabled or chronically ill are disregarded as beneficiaries of the employee for purposes of section 401(a)(9) and these regulations. However, for any separate trust that does not satisfy the requirements to be a type II applicable multi-beneficiary trust, the beneficiaries of that separate trust are treated as beneficiaries of the employee for purposes of section 401(a)(9) and these regulations.

The Treasury Department and the IRS are aware of concerns related to the application of the amendments made by section 401 of the SECURE Act to section 401(a)(9) of the Code in the case of a trust with terms intended to ensure that a disabled individual who is a beneficiary of the trust remains eligible for means-tested government benefits. The Treasury Department and the IRS request comments on whether under applicable law a trust for a disabled individual (for example, a supplemental needs trust) could include terms providing that the disabled individual would lose the individual's interest in the trust in the event the interest would disqualify the individual for means-tested government benefits and still satisfy the requirements under the Code to be a type II applicable multi-beneficiary trust. Specifically, comments are requested on whether this type of provision may be included in a trust (thereby allowing a disabled individual to continue to qualify for means-tested government benefits), while not providing for trust payments to any other beneficiary until the death of the disabled individual.

3. Other Rules Related to Designated Beneficiaries.

a. Special Rules for Multiple Designated Beneficiaries

As described in the first paragraph of Section I.D.1.d of this Explanation of Provisions, these proposed regulations provide a general rule under which, if an employee has more than one designated beneficiary, and at least one of them is not an eligible designated beneficiary, then for purposes of section 401(a)(9), the employee is treated as not having an eligible designated beneficiary. As a result, the employee's

interest must be distributed no later than the end of the tenth calendar year following the calendar year of the employee's death.

These proposed regulations include two exceptions to this general rule that allow an eligible designated beneficiary to use the life expectancy rule even if there is another designated beneficiary who is not an eligible designated beneficiary. The first exception is that if any of the employee's designated beneficiaries is a child of the employee who, as of the date of the employee's death, has not yet reached the age of majority, then the employee is still treated as having an eligible designated beneficiary (which allows payments to continue until 10 years after the child reaches the age of majority even if there are other designated beneficiaries who are not eligible designated beneficiaries). The second exception is if the see-through trust is a type II applicable multi-beneficiary trust, then the beneficiaries who either are disabled or chronically ill are treated as eligible designated beneficiaries without regard to whether any of the other trust beneficiaries are not eligible designated beneficiaries.

To illustrate these rules, if an employee who is a participant in a defined contribution plan names a see-through trust as the sole beneficiary of the employee's interest in the plan, and the trust beneficiaries are the employee's surviving spouse and the employee's adult child who is not disabled or chronically ill, then the employee is treated as not having an eligible designated beneficiary. As a result, the employee's entire interest must be distributed no later than 10 years after the employee's death. However, if there is another designated beneficiary who is the employee's child and who, as of the date of the employee's death, has not yet reached the age of majority, then, under the exception described in the preceding paragraph, the employee is treated as having an eligible designated beneficiary. In that second situation, if the trust is receiving annual distributions using the life expectancy rule, then a full distribution from the plan would not be required until ten years after the minor child reaches the age of majority.

b. Determining the Beneficiary for Purposes of Calculating the Required Minimum Distribution

These proposed regulations largely retain the rules of the existing regulations related to determining who is a beneficiary for purposes of section 401(a)(9), so that a person is a beneficiary if that person is a beneficiary designated under the plan as of the date of the employee's death and remains a beneficiary as of September 30 of the calendar year following the calendar year in which the employee died. For this purpose, a beneficiary need not be specified by name in order to be designated under the plan, provided the beneficiary is identifiable pursuant to the designation.

The existing regulations provide that a beneficiary is disregarded if certain events occur before September 30 of the calendar year following the calendar year in which the employee dies. In response to issues raised in private letter ruling requests and comments submitted to the Treasury Department and the IRS, these proposed regulations provide an exclusive list of events that permit a beneficiary to be disregarded. Specifically, the proposed regulations provide that if any of the following events occurs by September 30 of the calendar year following the calendar year in which the employee dies with respect to a person who was a beneficiary as of the employee's date of death, then that person will be disregarded in identifying the beneficiaries of the employee for purposes of section 401(a)(9): (1) The individual predeceases the employee; (2) the individual is treated as having predeceased the employee pursuant to a simultaneous death provision or pursuant to a qualified disclaimer that satisfies section 2518 and applies to the entire interest to which the beneficiary is entitled; or (3) the person receives the entire benefit to which the person is entitled.

To illustrate the rule in the preceding paragraph, if an individual makes a disclaimer satisfying section 2518 that applies to the individual's entire interest (including the requirement that the disclaimer be made within 9 months of the employee's death), that individual is not treated as a beneficiary for purposes of

section 401(a)(9). However, if the disclaimer is executed more than 9 months after the employee's death, then that individual will not be disregarded for purposes of identifying the beneficiaries. As another example, assume a see-through trust is designated as a beneficiary of the employee's interest in the plan and that trust could be liable for expenses of administering and distributing the deceased employee's estate at death. In this case, the decedent's estate is treated as a beneficiary of the employee designated under the plan because some portion of the employee's interest in the plan may be used for the payment of those administration expenses, thus satisfying an obligation of the estate. However, if all of those expenses that could be paid from the employee's interest in the plan are paid by September 30 of the calendar year following the calendar year in which the employee died (so that by that date, the deceased employee's estate received the entire interest to which it was entitled), then the deceased employee's estate is disregarded, and the other beneficiaries of the see-through trust are considered beneficiaries of the employee.

E. Section 1.401(a)(9)-5—Required Minimum Distributions From Defined Contribution Plans

1. In General

Proposed § 1.401(a)(9)-5 retains the general method in the existing regulations by which a required minimum distribution from a defined contribution plan is calculated in any calendar year when an employee dies on or after the required beginning date or when an employee's eligible designated beneficiary is taking life expectancy payments after an employee dies before the required beginning date. Specifically, the required minimum distribution for a calendar year is determined by dividing the employee's account balance as of the end of the prior year by an applicable divisor. The existing regulations refer to the divisor as the applicable distribution period. However, in light of the amendments made by section 401 of the SECURE Act that may result in different distribution periods, these proposed regulations refer to the divisor as the applicable denominator. In addition to the requirement to take annual required minimum distributions, the proposed regulations implement those amendments by requiring that a full distribution of the remaining interest be taken in certain circumstances.

These proposed regulations also update the list of amounts of distributions and deemed distributions that are not taken into account in determining whether the required minimum distribution has been made for a calendar year. Under the proposed regulations, that list is implemented by a cross-reference to a list of amounts in § 1.402(c)-2(c)(3) (relating to amounts that are not treated as eligible rollover distributions). The effect of the new cross-reference is to add the following items to the list of amounts that are disregarded for purposes of determining the required minimum distribution from a defined contribution plan: Prohibited allocations that are treated as deemed distributions pursuant to section 409(p), distributions of premiums for health and accident insurance, deemed distributions with respect to a collectible pursuant to section 408(m), and distributions that are permissible withdrawals from an eligible automatic contribution arrangement within the meaning of section 414(w).

2. Distributions While the Employee Is Alive

These proposed regulations provide that, in determining the required minimum distribution for a distribution calendar year beginning while the employee is alive, the employee divides the account balance as of December 31 of the preceding calendar year by the employee's applicable denominator. Generally, the applicable denominator is determined using the Uniform Lifetime Table in § 1.401(a)(9)-9(c). However, if the employee's sole beneficiary is the employee's spouse who is more than 10 years younger than the employee, then the applicable denominator is determined using the Joint and Last Survivor Table in § 1.401(a)(9)-9(d) (providing for a longer payout period).

3. Distributions After the Employee's Death

a. Requirement To Satisfy Both Section 401(a)(9)(B)(i) and (ii) in the Case of an Employee Who Dies on or After the Required Beginning Date

Section 401(a)(9)(B)(i) provides rules that apply if an employee dies after benefits have commenced. While the 5-year rule under section 401(a)(9)(B)(ii) (expanded to a 10-year rule in certain cases by section 401(a)(9)(H)(i)(I)) generally applies if an employee dies before the employee's required beginning date, section 401(a)(9)(H)(i)(II) provides that section 401(a)(9)(B)(ii) applies whether or not distributions have commenced. Accordingly, if an employee dies after the required beginning date, distributions to the employee's beneficiary for calendar years after the calendar year in which the employee died must satisfy section 401(a)(9)(B)(i) as well as section 401(a)(9)(B)(ii). In order to satisfy both of these requirements, these proposed regulations provide for the same calculation of the annual required minimum distribution that was adopted in the existing regulations but with an additional requirement that a full distribution of the employee's entire interest in the plan be made upon the occurrence of certain designated events (discussed in section I.E.3.c. of this Explanation of Provisions).

b. Determination of Applicable Denominator

If an employee died on or after the required beginning date (or the employee died before the required beginning date and the employee's eligible designated beneficiary is taking life expectancy distributions in accordance with section 401(a)(9)(B)(iii) and these proposed regulations), then for calendar years after the calendar year in which the employee died, the applicable denominator generally is the remaining life expectancy of the designated beneficiary. The beneficiary's remaining life expectancy generally is calculated using the age of the beneficiary in the year following the calendar year of the employee's death, reduced by one for each subsequent calendar year.

However, as an exception to these general rules, if the employee's spouse is the employee's sole beneficiary, then the applicable denominator during the spouse's lifetime is the spouse's life expectancy (which reflects a recalculation in accordance with section 401(a)(9)(D)). In this case, for calendar years after the calendar year in which the spouse died, in determining the required minimum distribution to the spouse's beneficiary, the applicable denominator is the spouse's life expectancy calculated in the calendar year in which the spouse died, reduced by one for each subsequent calendar year.

If the employee has no designated beneficiary, then the applicable denominator is the employee's life expectancy calculated in the calendar year in which the employee died, reduced by one for each subsequent calendar year. This applicable denominator is also used in the case of an employee who died after the required beginning date and who was younger than the designated beneficiary.

c. Full Distribution Required in Certain Circumstances

In order to satisfy the 5-year rule of section 401(a)(9)(B)(ii) (or, if applicable, the exception to that rule in section 401(a)(9)(B)(iii), taking into account section 401(a)(9)(H), and (E)(iii)), these proposed regulations provide that, if an employee's interest is in a defined contribution plan to which section 401(a)(9)(H) applies, then the employee's entire interest in the plan must be distributed by the earliest of the following dates:

(1) The end of the tenth calendar year following the calendar year in which the employee died if the employee's designated beneficiary is not an eligible designated beneficiary;

(2) The end of the tenth calendar year following the calendar year in which the designated beneficiary died if the employee's designated beneficiary was an eligible designated beneficiary;

(3) The end of the tenth calendar year following the calendar year in which the beneficiary reaches the age of majority if the employee's designated beneficiary is the child of the employee who has not yet reached the age of majority as of the date of the employee's death; and

(4) The end of the calendar year in which the applicable denominator would have been less than or equal to one if it were determined using the beneficiary's remaining life expectancy, if the employee's designated beneficiary is an eligible designated beneficiary, and if the applicable denominator is determined using the employee's remaining life expectancy.

For example, if an employee died after the required beginning date with a designated beneficiary who is not an eligible designated beneficiary, then the designated beneficiary would continue to have required minimum distributions calculated using the beneficiary's life expectancy as under the existing regulations for up to nine calendar years after the employee's death. In the tenth year following the calendar year of the employee's death, a full distribution of the employee's remaining interest would be required.

Similarly, if an employee died after the required beginning date with an eligible designated beneficiary, then the eligible designated beneficiary would continue to have required minimum distributions calculated during the beneficiary's lifetime using the rules under the existing regulations. However, if the eligible designated beneficiary dies before the entire interest of the employee is distributed, then the beneficiary of that eligible designated beneficiary would continue taking annual distributions using the rules under the existing regulations for up to nine years after the death of the eligible designated beneficiary. In the tenth year following the calendar year of the eligible designated beneficiary's death, a full distribution of the employee's remaining interest would be required.

If the employee's designated beneficiary is a child of the employee who, as of the employee's death, has not yet reached the age of majority, then the child would have annual required minimum distributions calculated during the child's lifetime using the rules of the existing regulations. However, those distributions would be permitted to be paid for up to only nine years after the child reaches the age of majority with a full distribution of the employee's remaining interest required in the tenth year following the calendar year in which the child reaches the age of majority.

As another example, if an employee died at age 75 after the required beginning date and the employee's non-spouse eligible designated beneficiary was age 80 at the time of the employee's death, the applicable denominator would be determined using the employee's remaining life expectancy. However, these proposed regulations require a full distribution of the employee's remaining interest in the plan in the calendar year in which the applicable denominator would have been less than or equal to one if it were determined using the beneficiary's remaining life expectancy (even though the applicable denominator for determining the required minimum distribution is based on the remaining life expectancy of the employee). In this case, based on the beneficiary's life expectancy of 11.2 in the year of the employee's death, a full distribution would be required in the year the beneficiary reaches age 91 (because in the 11th calendar year after the employee's death the beneficiary's life expectancy would be less than or equal to one).

d. Multiple Designated Beneficiaries

These proposed regulations include a modified version of the general rule adopted in the existing regulations that applies if an employee has more than one designated beneficiary. Specifically, instead of

determining the applicable denominator using the beneficiary with the shortest life expectancy, these proposed regulations provide that the applicable denominator is determined using the life expectancy of the oldest designated beneficiary. The proposed regulations provide that whether a full distribution is required also generally is determined using the oldest of the designated beneficiaries. For example, if an employee has multiple eligible designated beneficiaries who are born in the same calendar year, then full distribution of the employee's remaining interest generally is required by the tenth calendar year following the death of the oldest designated beneficiary.

These general rules for multiple designated beneficiaries are subject to certain exceptions. Under one exception, if the employee's beneficiary is a type II applicable multi-beneficiary trust, then only the disabled and chronically ill beneficiaries of the trust are taken into account in determining the oldest designated beneficiary. Thus, the ages of the other beneficiaries are disregarded in determining the applicable denominator, and the death of the last of the disabled or chronically ill trust beneficiaries triggers the 10-year payout requirement under section 401(a)(9)(H)(iii).

Under a second exception to the general rule, if any of the employee's designated beneficiaries is a child of the employee who has not yet reached the age of majority as of the date of the employee's death, then, in applying the requirement to make a full distribution by the tenth year following the death of the oldest eligible designated beneficiary, only the employee's children who are designated beneficiaries and who are under the age of majority at the employee's date of death are taken into account. Thus, in a situation involving one or more designated beneficiary children under the age of majority and one or more older designated beneficiaries, the death of an older designated beneficiary will not result in a requirement to pay a full distribution before the oldest child attains the age of majority plus ten years. In this case, a full distribution of the employee's remaining interest is not required until the tenth calendar year following the calendar year in which the oldest child of the employee who is a designated beneficiary and who had not attained the age of majority as of the employee's death reaches the age of majority (or, if earlier, the tenth calendar year following the calendar year of that child's death).

To illustrate these rules, assume an employee died at the age of 75 after the employee's required beginning date, and the employee named a see-through trust that is an accumulation trust as the employee's beneficiary under the plan. The terms of the trust require specified amounts to be paid to the employee's surviving spouse (who was age 74 at the time of the employee's death). Upon the spouse's death, the trust will terminate and the amounts remaining in the trust that have not been paid to the spouse will be paid to the employee's sibling (who was age 67 at the time of the employee's death). If the employee's sibling predeceases the surviving spouse, the amounts remaining in the trust that have not been paid to the surviving spouse will be paid to a charity. In this case, the charity is disregarded as a beneficiary of the employee (as described in Section I.D.2.a.2 of this Explanation of Provisions), and all of the other trust beneficiaries are eligible designated beneficiaries (a surviving spouse and a beneficiary who is not more than 10 years younger than the employee). Under these proposed regulations, required minimum distributions are made to the trust beginning in the calendar year after the calendar year of the employee's death using the surviving spouse's remaining life expectancy, because the surviving spouse is the oldest beneficiary of the employee. Upon the surviving spouse's death, annual distributions must continue to the trust using the surviving spouse's remaining life expectancy in the calendar year of the spouse's death, reduced by one in each subsequent calendar year. In addition, the entire interest of the employee must be distributed no later than the tenth calendar year following the calendar year of the spouse's death.

[REMAINDER OF PREAMBLE TEXT OMITTED]

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 54 are proposed to be amended as follows:

PART 1—INCOME TAX

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805, unless otherwise noted.

Par. 2. Revise sections 1.401(a)(9)-0 through 1.401(a)(9)-8 to read as follows:

[TEXT of 1.401(a)(9)-0 through 1.401(a)(9)-2 OMITTED]

§ 1.401(a)(9)-3. Death before required beginning date.

(a) *In general.* Except as otherwise provided in §§ 1.401(a)(9)-2(a)(3) and 1.401(a)(9)-6(j), if an employee dies before the employee's required beginning date (and thus before distributions are treated as having begun in accordance with section 401(a)(9)(A)(ii)), then—

(1) In the case of a defined benefit plan, distributions are required to be made in accordance with paragraph (b) of this section, and

(2) In the case of a defined contribution plan, distributions are required to be made in accordance with paragraph (c) of this section.

(b) *Distribution requirements in the case of a defined benefit plan* —

(1) *In general.* Distributions from a defined benefit plan are made in accordance with this paragraph (b) if the distributions satisfy either paragraph (b)(2) or (3) of this section, whichever applies with respect to the employee. The determination of whether paragraph (b)(2) or (3) of this section applies is made in accordance with paragraph (b)(4) of this section.

(2) *5-year rule.* Except as otherwise provided in § 1.401(a)(9)-6(j) (relating to defined benefit plans subject to limitations under section 436), distributions satisfy this paragraph (b)(2) if the employee's entire interest is distributed by the end of the calendar year that includes the fifth anniversary of the date of the employee's death. For example, if an employee dies on any day in 2022, then in order to satisfy the 5-year rule in section 401(a)(9)(B)(ii), the entire interest generally must be distributed by the end of 2027.

(3) *Annuity payments.* Distributions satisfy this paragraph (b)(3) if annuity payments that satisfy the requirements of § 1.401(a)(9)-6 commence no later than the end of the calendar year following the calendar year in which the employee died, except as provided

in paragraph (d) of this section (permitting a surviving spouse to delay the commencement of distributions).

(4) *Determination of which rule applies* —

(i) *No plan provision.* If a defined benefit plan does not provide for an optional provision described in paragraph (b)(4)(ii) or (b)(4)(iii) of this section specifying the method of distribution after the death of an employee, then distributions must be made as follows—

(A) If the employee has no designated beneficiary, as determined under § 1.401(a)(9)-4, distributions must satisfy paragraph (b)(2) of this section; and

(B) If the employee has a designated beneficiary, distributions must satisfy paragraph (b)(3) of this section.

(ii) *Optional plan provisions.* A defined benefit plan will not fail to satisfy section 401(a)(9) merely because it includes a provision specifying that the 5-year rule in paragraph (b)(2) of this section (rather than the annuity payment rule in paragraph (b)(3) of this section) will apply with respect to some or all of the employees who have a designated beneficiary. Further, a plan need not have the same method of distribution for the benefits of all employees in order to satisfy section 401(a)(9).

(iii) *Elections.* A defined benefit plan may include a provision, applicable to an employee who dies before the employee's required beginning date and who has a designated beneficiary, that permits the employee (or designated beneficiary) to elect whether the 5-year rule in paragraph (b)(2) of this section or the annuity payment rule in paragraph (b)(3) of this section applies. If a plan provides for this type of an election, then—

(A) The plan must specify the method of distribution that applies if neither the employee nor the designated beneficiary makes the election;

(B) The election must be made no later than the end of the earlier of the calendar year by which distributions must be made in order to satisfy paragraph (b)(2) of this section and the calendar year in which distributions would be required to begin in order to satisfy the requirements of paragraph (b)(3) of this section or, if applicable, paragraph (d) of this section; and

(C) As of the last date the election may be made, the election must be irrevocable with respect to the beneficiary (and all subsequent beneficiaries) and must apply to all subsequent calendar years.

(c) *Distributions in the case of a defined contribution plan* —

(1) *In general.* The requirements of this paragraph are satisfied if distributions are made in accordance with paragraph (c)(2), (3), or (4) of this section, whichever applies with

respect to the employee. The determination of whether paragraph (c)(2), (3), or (4) of this section applies is made in accordance with paragraph (c)(5) of this section.

(2) *5-year rule.* Distributions satisfy this paragraph (c)(2) if the employee's entire interest is distributed by the end of the calendar year that includes the fifth anniversary of the date of the employee's death. For example, if an employee dies on any day in 2022, the entire interest must be distributed by the end of 2027 in order to satisfy the 5-year rule in section 401(a)(9)(B)(ii). For purposes of this paragraph (c)(2), if an employee died before January 1, 2020, then the 2020 calendar year is disregarded when determining the calendar year that includes the fifth anniversary of the date of the employee's death.

(3) *10-year rule.* Distributions satisfy this paragraph (c)(3) if the employee's entire interest is distributed by the end of the calendar year that includes the tenth anniversary of the date of the employee's death. For example, if an employee dies on any day in 2021, the entire interest must be distributed by the end of 2031 in order to satisfy the 5-year rule in section 401(a)(9)(B)(ii), as extended to 10 years by section 401(a)(9)(H)(i).

(4) *Life expectancy payments.* Distributions satisfy this paragraph (c)(4) if distributions that satisfy the requirements of § 1.401(a)(9)-5 commence on or before the end of the calendar year following the calendar year in which the employee died, except as provided in paragraph (d) of this section (permitting a surviving spouse to delay the commencement of distributions).

(5) *Determination of which rule applies* —

(i) *No plan provision.* If a defined contribution plan does not include an optional provision described in paragraph (c)(5)(ii) or (c)(5)(iii) of this section specifying the method of distribution after the death of an employee, distributions must be made as follows—

(A) If the employee does not have a designated beneficiary, as determined under § 1.401(a)(9)-4, distributions must satisfy the 5-year rule described in paragraph (c)(2) of this section;

(B) If the employee dies on or after the effective date of section 401(a)(9)(H) (as determined in § 1.401(a)(9)-1(b)(2)(i) or (ii), whichever applies to the plan) and has a designated beneficiary who is not an eligible designated beneficiary, as determined under § 1.401(a)(9)-4(e), distributions must satisfy the 10-year rule described in paragraph (c)(3) of this section; and

(C) If the employee has an eligible designated beneficiary, distributions must satisfy the life expectancy rule described in paragraph (c)(4) of this section.

(ii) *Optional plan provisions.* A defined contribution plan will not fail to satisfy section 401(a)(9) merely because it includes a provision specifying that the 10-year rule described in paragraph (c)(3) of this section (rather than the life expectancy rule described in paragraph (c)(4) of this section) will apply with respect to some or all of the employees who have an eligible designated

beneficiary. Further, a plan need not have the same method of distribution for the benefits of all employees in order to satisfy section 401(a)(9).

(iii) *Elections.* A defined contribution plan may include a provision, applicable to an employee who dies before the employee's required beginning date and who has an eligible designated beneficiary, that permits the employee (or eligible designated beneficiary) to elect whether the 10-year rule in paragraph (c)(3) of this section or the life expectancy rule in paragraph (c)(4) of this section applies. If a plan provides for this type of election, then—

(A) The plan must specify the method of distribution that applies if neither the employee nor the designated beneficiary makes the election;

(B) The election must be made no later than end of the earlier of the calendar year by which distributions must be made in order to satisfy paragraph (c)(3) of this section and the calendar year in which distributions would be required to begin in order to satisfy the requirements of paragraph (c)(4) of this section or, if applicable, paragraph (d) of this section; and

(C) As of the last date the election may be made, the election must be irrevocable with respect to the beneficiary (and all subsequent beneficiaries) and must apply to all subsequent calendar years.

(d) *Permitted delay for surviving spouse beneficiaries.* If the employee's surviving spouse is the employee's sole beneficiary, then the commencement of distributions under paragraph (b)(3) or (c)(4) of this section may be delayed until the end of the calendar year in which the employee would have attained age 72 (or the calendar year in which the employee would have attained age 70 1/2 in the case of an employee born before July 1, 1949).

(e) *Distributions that commence after surviving spouse's death* —

(1) *In general.* If the employee's surviving spouse is the employee's sole beneficiary and dies after the employee, but before distributions have commenced under paragraph (d) of this section, then the5-year rule in paragraph (b)(2) or (c)(2) of this section, the 10-year rule in paragraph (c)(3) of this section, and the annuity payment rules in paragraph (b)(3) of this section or the life expectancy rules in paragraph (c)(4) of this section are to be applied as if the surviving spouse were the employee. For this purpose, the date of death of the surviving spouse is substituted for the date of death of the employee.

(2) *Remarriage of surviving spouse.* If the delayed commencement in paragraph (d) of this section applies to the surviving spouse of the employee and the surviving spouse remarries but dies before distributions have begun, then the rules in paragraph (d) of this section are not available to the surviving spouse of the deceased employee's surviving spouse.

(3) *When distributions are treated as having begun to surviving spouse.* For purposes of section 401(a)(9)(B)(iv)(II), distributions are considered to have begun to the surviving spouse of an employee on the date, determined in accordance with paragraph (d) of this section, on which distributions are required to commence to the surviving spouse without

regard to whether payments have actually been made before that date. However, see § 1.401(a)(9)-6(l) for an exception to this rule in the case of an annuity that commences early.

§ 1.401(a)(9)-4 . Determination of the designated beneficiary.

(a) *Beneficiary designated under the plan* —

(1) *In general.* This section provides rules for purposes of determining the designated beneficiary under section 401(a)(9). For this purpose, a designated beneficiary is an individual who is a beneficiary designated under the plan.

(2) *Entitlement to employee's interest in the plan.* A beneficiary designated under the plan is a person who is entitled to a portion of an employee's benefit, contingent on the employee's death or another specified event. The determination of whether a beneficiary designated under the plan is taken into account for purposes of section 401(a)(9) is made in accordance with paragraph (c) of this section or, if applicable, paragraph (d) of this section.

(3) *Specificity of beneficiary designation.* A beneficiary need not be specified by name in the plan or by the employee to the plan in order for the beneficiary to be designated under the plan, provided that the person who is to be the beneficiary is identifiable pursuant to the designation. For example, a designation of the employee's children as beneficiaries of equal shares of the employee's interest in the plan is treated as a designation of beneficiaries under the plan even if the children are not specified by name. The fact that an employee's interest under the plan passes to a certain person under a will or otherwise under applicable state law does not make that person a beneficiary designated under the plan absent a designation under the plan.

(4) *Affirmative and default elections of designated beneficiary.* A beneficiary designated under the plan may be designated by a default election under the terms of the plan or, if the plan so provides, by an affirmative election of the employee (or the employee's surviving spouse). The choice of beneficiary is subject to the requirements of sections 401(a)(11), 414(p), and 417. See §§ 1.401(a)(9)-8(d) and (e) for rules that apply to qualified domestic relations orders.

(b) *Designated beneficiary must be an individual.* A person that is not an individual, such as the employee's estate, is not a designated beneficiary. If a person other than an individual is a beneficiary designated under the plan, the employee will be treated as having no designated beneficiary, even if individuals are also designated as beneficiaries. However, see paragraph (f)(1) and (3) of this section for a rule under which certain beneficiaries of a see-through trust that is designated as the employee's beneficiary under the plan are treated as the employee's beneficiaries under the plan rather than the trust. In addition, the rules of this paragraph (b) do not apply to the extent separate account treatment applies in accordance with § 1.401(a)(9)-8(a).

(c) *Rules for determining beneficiaries* —

(1) *Time period for determining the beneficiary.* Except as provided in paragraphs (d) and (f) of this section and § 1.401(a)(9)-6(b)(2)(i), a person is a beneficiary taken into account for purposes of section 401(a)(9) if that person is a beneficiary designated under the plan as of the date of the employee's death and none of the events described in paragraph (c)(2) of this section has occurred with respect to that person by September 30 of the calendar year following the calendar year of the employee's death.

(2) *Circumstances under which a beneficiary is disregarded as a beneficiary of the employee.* With respect to a beneficiary who was designated as a beneficiary under the plan as of the date of the employee's death (including an individual who is treated as having been designated as a beneficiary pursuant to paragraph (f) of this section), if any of the following events occurs by September 30 of the calendar year following the calendar year of the employee's death, then that beneficiary is not treated as a beneficiary—

(i) The beneficiary predeceases the employee;

(ii) The beneficiary is treated as having predeceased the employee pursuant to a simultaneous death provision under applicable State law or pursuant to a qualified disclaimer satisfying section 2518 that applies to the entire interest to which the beneficiary is entitled; or

(iii) The beneficiary receives the entire benefit to which the beneficiary is entitled.

(3) *Examples.* The following examples illustrate the rules of this paragraph (c).

(i) *Example 1.* Employer M maintains a defined contribution plan, Plan X. Employee A dies in 2022 having designated A's three children—B, C, and D—as beneficiaries, each with a one-third share of A's interest in Plan X. B executes a disclaimer within 9 months of A's death and the disclaimer satisfies the other requirements of a qualified disclaimer under section 2518. Pursuant to the qualified disclaimer, B is disregarded as a beneficiary.

(ii) *Example 2.* The facts are the same as in *Example 1* in paragraph (c)(3)(i) of this section except that B does not execute a disclaimer until 10 months after A's death. Even if the disclaimer is executed by September 30 of the calendar year following the calendar year of A's death, the disclaimer is not a qualified disclaimer (because B does not meet the 9-month requirement of section 2518) and B remains a designated beneficiary of A.

(iii) *Example 3.* The facts are the same as in *Example 1* in paragraph (c)(3)(i) of this section except that, in exchange for B's disclaimer of the one-third share of A's interest in Plan X, C transfers C's interest in real property to B. Because B has received consideration for B's disclaimer of the one-third share, it is not a qualified disclaimer under section 2518 and B remains a designated beneficiary.

(iv) *Example 4.* The facts are the same as in *Example 1* in paragraph (c)(3)(i) of this section except that Charity E (an organization exempt from taxation under section 501(c)(3)) also is a beneficiary designated under the plan as of the date of

A's death, with B, C, D, and Charity E each having a one-fourth share of A's interest in Plan X. Plan X distributes Charity E's one-fourth share of A's interest in the plan by September 30 of the calendar year following the calendar year of A's death. Accordingly, Charity E is disregarded as A's beneficiary, and B, C, and D are treated as A's designated beneficiaries.

(v) *Example 5.* The facts are the same as in *Example 1* in paragraph (c)(3)(i) of this section except that A's spouse, F, also is a beneficiary designated under the plan. A and F were residents of State Z so that State Z law applies. The laws of State Z include a simultaneous death provision under which two individuals who die within a 120-hour period of one another are treated as predeceasing each other. F dies four hours after A and under the laws of State Z, F is treated as predeceasing A. Because, under applicable State law, F is treated as predeceasing A, F is disregarded as a beneficiary of A.

(vi) *Example 6.* The facts are the same as in *Example 1* in paragraph (c)(3)(i) of this section except that B, who was alive as of the date of A's death, dies before September 30 of the calendar year following the calendar year of A's death. Prior to B's death, none of the events described in paragraph (c)(2) of this section occurred with respect to B. Accordingly, B is still a beneficiary taken into account for purposes of section 401(a)(9) regardless of the identity of B's successor beneficiaries.

(d) *Application of beneficiary designation rules to surviving spouse.* This paragraph (d) applies in the case of distributions to which § 1.401(a)(9)-3(e) applies (because the employee's spouse is the employee's sole beneficiary as of September 30 of the calendar year following the calendar year of the employee's death, and the surviving spouse dies before distributions to the spouse have begun). If this paragraph (d) applies, then the determination of whether a person is a beneficiary of the surviving spouse is made using the rules of paragraph (c) of this section, except that the date of the surviving spouse's death is substituted for the date of the employee's death. Thus, a person is a beneficiary if that person is a beneficiary designated under the plan as of the date of the surviving spouse's death and remains a beneficiary as of September 30 of the calendar year following the calendar year of the surviving spouse's death.

(e) *Eligible designated beneficiaries* —

(1) *In general.* A designated beneficiary of the employee is an eligible designated beneficiary if, at the time of the employee's death, the designated beneficiary is—

(i) The surviving spouse of the employee;

(ii) A child of the employee who has not reached the age of majority within the meaning of paragraph (e)(3) of this section;

(iii) Disabled within the meaning of paragraph (e)(4) of this section;

(iv) Chronically ill within the meaning of paragraph (e)(5) of this section;

(v) Not more than 10 years younger than the employee as determined under paragraph (e)(6) of this section; or

(vi) A designated beneficiary of an employee if the employee died before the effective date of section 401(a)(9)(H) described in § 1.401(a)(9)-1(b)(2)(i) and (ii), whichever applies to the plan.

(2) *Multiple designated beneficiaries* —

(i) *In general.* Except as provided in paragraphs (e)(2)(ii) of this section (providing a special rule for children), (g)(3)(ii) of this section (relating to applicable multi-beneficiary trusts), and § 1.401(a)(9)-8(a) (relating to separate account treatment), if the employee has more than one designated beneficiary, and at least one of those beneficiaries is not an eligible designated beneficiary as determined in accordance with paragraph (e)(1) of this section, then the employee is treated as not having an eligible designated beneficiary.

(ii) *Special rule for children.* If any of the employee's designated beneficiaries is an eligible designated beneficiary because the beneficiary is the child of the employee who had not reached the age of majority at the time of the employee's death, then the employee is treated as having an eligible designated beneficiary even if the employee has other designated beneficiaries who are not eligible designated beneficiaries.

(3) *Determination of age of majority.* An individual reaches the age of majority on the individual's 21st birthday.

(4) *Disabled individual* —

(i) *In general.* Subject to the documentation requirements of paragraph (e)(7) of this section, an individual is disabled if, as of the date of the employee's death, the individual is described in paragraph (e)(4)(ii) or (iii) of this section, or paragraph (e)(4)(iv) of this section applies.

(ii) *Disability defined for individual who is age 18 or older.* An individual who, as of the date of the employee's death, is age 18 or older is disabled if, as of that date, the individual is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration.

(iii) *Disability defined for individual who is not age 18 or older.* An individual who, as of the date of the employee's death, is not age 18 or older is disabled if, as of that date, that individual has a medically determinable physical or mental impairment that results in marked and severe functional limitations and that can be expected to result in death or to be of long-continued and indefinite duration.

(iv) *Use of social security disability determination.* If the Commissioner of Social Security has determined that, as of the date of the employee's death, an individual is disabled within the meaning of 42 U.S.C. 1382c(a)(3), then that individual will be deemed to be disabled within the meaning of this paragraph (e)(4).

(5) *Chronically ill individual.* An individual is chronically ill if the individual is chronically ill within the definition of section 7702B(c)(2) and satisfies the documentation requirements of paragraph (e)(7) of this paragraph. However, for purposes of the preceding sentence, an individual will be treated as chronically ill under section 7702B(c)(2)(A)(i) only if there is a certification from a licensed health care practitioner (as that term is defined in section 7702B(c)(4)) that, as of the date of the certification, the individual is unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for an indefinite period which is reasonably expected to be lengthy in nature (and not merely for 90 days).

(6) *Individual not more than 10 years younger than the employee.* Whether a designated beneficiary is not more than 10 years younger than the employee is determined based on the dates of birth of the employee and the beneficiary. Thus, for example, if an employee's date of birth is October 1, 1953, then the employee's beneficiary is not more than 10 years younger than the employee if the beneficiary was born on or before October 1, 1963.

(7) *Documentation requirements for disabled or chronically ill individuals.* This paragraph (e)(7) is satisfied with respect to an individual described in paragraph (e)(1)(iii) or (iv) of this section if documentation of the disability or chronic illness described in paragraph (e)(4) or (5) of this section, respectively, is provided to the plan administrator no later than October 31 of the calendar year following the calendar year of the employee's death. For individuals described in paragraph (e)(1)(iv) of this section, the documentation must include a certification from a licensed health care practitioner (as that term is defined in section 7702B(c)(4)).

(8) *Applicability of definition of eligible designated beneficiary to beneficiary of surviving spouse.* In a case to which § 1.401(a)(9)-3(d) applies (generally involving distributions after a surviving spouse's death), a designated beneficiary of the employee's surviving spouse is an eligible designated beneficiary provided that designated beneficiary would be an eligible designated beneficiary described in paragraph (e)(1) of this section if that paragraph were to be applied by substituting the surviving spouse for the employee.

(9) *Examples.* The following examples illustrate the rules of this paragraph (e).

(i) *Example 1.* Employer M maintains a defined contribution plan, Plan X. Employee A designates A's child, B, as the sole beneficiary of A's interest in Plan X. B will not reach the age of majority until 2024. A dies in 2022, after A's required beginning date. As of the date of A's death, B is disabled within the meaning of paragraph (e)(4) of this section, and the documentation requirements of paragraph (e)(7) of this section are timely satisfied with respect to B. Due to B's disability, B remains an eligible designated beneficiary even after reaching the age of majority in 2024, and Plan X is not required to distribute A's remaining interest in the plan by the end of 2034 pursuant to the rules of § 1.401(a)(9)-5(e)(4), but instead may continue life expectancy payments to B during B's lifetime.

(ii) *Example 2.* The facts are the same as in *Example 1* in paragraph (e)(9)(i) of this section except that the documentation requirements of paragraph (e)(7) of

this section are not timely satisfied with respect to B. B ceases to be an eligible designated beneficiary upon reaching the age of majority in 2024, and Plan X is required to distribute A's remaining interest in the plan by the end of 2034 pursuant to the rules of § 1.401(a)(9)-5(e)(4).

(iii) *Example 3.* The facts are the same as in *Example 1* in paragraph (e)(9)(i) of this section except that B becomes disabled in 2023 (after A's death in 2022). Because B was not disabled as of the date of A's death, B ceases to be an eligible designated beneficiary upon reaching the age of majority in 2024, and Plan X is required to distribute A's remaining interest in the plan by the end of 2034 pursuant to the rules of § 1.401(a)(9)-5(e)(4).

(f) *Special rules for trusts* —

(1) *Look-through of trust to determine designated beneficiaries* —

(i) *In general.* If the requirements of paragraph (f)(2) of this section are met with respect to a trust that is designated as the beneficiary of an employee under a plan, then certain beneficiaries of the trust that are described in paragraph (f)(3) of this section (and not the trust itself) are treated as having been designated as beneficiaries of the employee under the plan, provided that those beneficiaries are not disregarded under paragraph (c)(2) of this section. A trust described in the preceding sentence is referred to as a see-through trust.

(ii) *Types of trusts.* The determination of which beneficiaries of a see-through trust are treated as having been designated as beneficiaries of the employee under the plan depends on whether the see-through trust is a conduit trust or an accumulation trust. For this purpose—

(A) The term *conduit trust* means a see-through trust, the terms of which provide that, with respect to the deceased employee's interest in the plan, all distributions will, upon receipt by the trustee, be paid directly to, or for the benefit of, specified beneficiaries; and

(B) The term *accumulation trust* means any see-through trust that is not a conduit trust.

(2) *Trust requirements.* The requirements of this paragraph (f)(2) are met if, during any period for which required minimum distributions are being determined by treating the beneficiaries of the trust as having been designated as beneficiaries of the employee under the plan, the following requirements are met—

(i) The trust is a valid trust under state law or would be but for the fact that there is no corpus.

(ii) The trust is irrevocable or will, by its terms, become irrevocable upon the death of the employee.

(iii) The beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's interest in the plan are identifiable (within the meaning of paragraph (f)(5) of this section) from the trust instrument.

(iv) The documentation requirements in paragraph (h) of this section have been satisfied.

(3) *Trust beneficiaries treated as beneficiaries of the employee* —

(i) *In general.* Subject to the rules of paragraphs (f)(3)(ii) and (iii) of this section, the following beneficiaries of a see-through trust are treated as having been designated as beneficiaries of the employee under the plan—

(A) Any beneficiary who could receive amounts in the trust representing the employee's interest in the plan that are neither contingent upon, nor delayed until, the death of another trust beneficiary who did not predecease (and is not treated as having predeceased) the employee; and

(B) Any beneficiary of an accumulation trust that could receive amounts in the trust representing the employee's interest in the plan that were not distributed to beneficiaries described in paragraph (f)(3)(i)(A) of this section.

(ii) *Certain trust beneficiaries disregarded* —

(A) *Entitlement conditioned on death of secondary beneficiary.* Any beneficiary of an accumulation trust who could receive amounts from the trust that represent the employee's interest in the plan solely because of the death of another beneficiary described in paragraph (f)(3)(i)(B) of this section is not treated as having been designated as a beneficiary of the employee under the plan. The preceding sentence does not apply if the other beneficiary described in paragraph (f)(3)(i)(B) of this section—

(*1*) Predeceased (or is treated as having predeceased) the employee; or

(*2*) Also is described in paragraph (f)(3)(i)(A) of this section.

(B) *Entitlement conditioned on death of young individual.* If any beneficiary of a see-through trust is an individual who is treated as a beneficiary of the employee under paragraph (f)(3)(i)(A) of this section, and the terms of the trust require full distribution of amounts in the trust representing the employee's interest in the plan to that individual by the later of the end of the calendar year following the calendar year of the employee's death and the end of the tenth calendar year following the calendar year in which that individual attains the age of majority (within the meaning of paragraph (e)(3) of this section), then any other beneficiary of the trust who could receive amounts in the trust representing the employee's interest in the plan if that individual dies before full distribution to that individual is made is not treated as having

been designated as a beneficiary of the employee under the plan. The preceding sentence does not apply if the beneficiary who could receive amounts in the trust conditioned on the death of that individual also is described in paragraph (f)(3)(i)(A) of this section.

(iii) *Certain accumulations disregarded.* For purposes of this paragraph (f)(3), a trust will not fail to be treated as a conduit trust merely because the trust terms requiring the direct payment of amounts received from the plan do not apply after the death of all of the beneficiaries described in paragraph (f)(3)(i)(A) of this section.

(4) *Multiple trust arrangements.* If a beneficiary of a see-through trust is another trust, the beneficiaries of the second trust will be treated as beneficiaries of the first trust, provided that the requirements of paragraph (f)(2) of this section are satisfied with respect to the second trust. In that case, the beneficiaries of the second trust are treated as having been designated as beneficiaries of the employee under the plan.

(5) *Identifiability of trust beneficiaries —*

(i) *In general.* Except as otherwise provided in this paragraph (f)(5), trust beneficiaries described in paragraph (f)(3) of this section are identifiable if it is possible to identify each person eligible to receive a portion of the employee's interest in the plan through the trust. For this purpose, the specificity requirements of paragraph (a)(3) of this section apply.

(ii) *Power of appointment —*

(A) *Exercise or release of power of appointment by September 30.* A trust does not fail to satisfy the identifiability requirements of this paragraph (f)(5) merely because an individual (powerholder) has the power to appoint a portion of the employee's interest to one or more beneficiaries that are not identifiable within the meaning of paragraph (f)(5)(i) of this section. If the power of appointment is exercised in favor of one or more identifiable beneficiaries by September 30 of the calendar year following the calendar year of the employee's death, then those identifiable beneficiaries are treated as beneficiaries designated under the plan. The preceding sentence also applies if, by that September 30, in lieu of exercising the power of appointment, the powerholder restricts it so that the power can be exercised at a later time in favor of only two or more identifiable beneficiaries (in which case, those identified beneficiaries are treated as beneficiaries designated under the plan). However, if, by that September 30, the power of appointment is not exercised (or restricted) in favor of one or more beneficiaries that are identifiable within the meaning of paragraph (f)(5)(i) of this section, then each taker in default (that is, any person that is entitled to the portion that represents the employee's interest in the plan subject to the power of appointment in the absence of the powerholder exercising the power) is treated as a beneficiary designated under the plan.

(B) *Exercise of power of appointment after September 30 of the calendar year following the calendar year of the employee's death.* If an individual has a power of appointment to appoint a portion of the employee's interest to one or more beneficiaries and the individual exercises the power of appointment after September 30 of the calendar year following the calendar year of the employee's death, then the rules of paragraph (f)(5)(iv) of this section apply with respect to any trust beneficiary that is added pursuant to the exercise of the power of appointment.

(iii) *Modification of trust terms* —

(A) *State law will not cause trust to fail to satisfy identifiability requirement.* A trust will not fail to satisfy the identifiability requirements of this paragraph (f)(5) merely because the trust is subject to state law that permits the trust terms to be modified after the death of the employee (such as through a court reformation or a permitted decanting) and thus, permits changing the beneficiaries of the trust.

(B) *Modification of trust to remove trust beneficiaries.* A trust beneficiary described in paragraph (f)(3) of this section may be removed pursuant to a modification of trust terms (such as through a court reformation or a permitted decanting) by September 30 of the calendar year following the calendar year of the employee's death, in which case that person is disregarded in determining the employee's designated beneficiary.

(C) *Modification of trust to add trust beneficiaries.* A trust beneficiary described in paragraph (f)(3) of this section may be added through a modification of trust terms (such as through a court reformation or a permitted decanting). If the beneficiary is added on or before September 30 of the calendar year following the calendar year of the employee's death, paragraph (c) of this section will apply taking into account the beneficiary that was added. If the beneficiary is added after that September 30, then the rules of paragraph (f)(5)(iv) of this section will apply with respect to the beneficiary that is added.

(iv) *Addition of beneficiary after September 30.* If, after September 30 of the calendar year following the calendar year of the employee's death, a trust beneficiary described in paragraph (f)(3) of this section is added as a trust beneficiary (whether through the exercise of a power of appointment, the modification of trust terms, or otherwise), then—

(A) The addition of the beneficiary will not cause the trust to fail to satisfy the identifiability requirements of this paragraph (f)(5);

(B) Beginning in the calendar year after the calendar year in which the new trust beneficiary was added, the rules of § 1.401(a)(9)-5(f)(1) will apply taking into account the new beneficiary and all of the beneficiaries

of the trust that were treated as beneficiaries of the employee before the addition of the new beneficiary; and

(C) Subject to paragraph (f)(5)(v) of this section, the rules of paragraphs (b) and (e)(2) of this section and § 1.401(a)(9)-5(f)(2) will apply taking into account the new beneficiary and all of the beneficiaries of the trust that were treated as beneficiaries of the employee before the addition of the new beneficiary.

(v) *Delay in full distribution requirement.* This paragraph (f)(5)(v) provides a special rule that applies if a full distribution of the employee's entire interest in the plan is not required in a calendar year pursuant to § 1.401(a)(9)-5(e), but a beneficiary is added in that calendar year. In that case, if, taking into account the added beneficiary pursuant to paragraph (f)(5)(iv)(C) of this section, a full distribution of the employee's entire interest in the plan would have been required in that calendar year or an earlier calendar year, then a full distribution of the employee's entire interest in the plan will not be required until the end of the calendar year after the calendar year in which the beneficiary is added. For example, if life expectancy payments are being made to an eligible designated beneficiary and, more than 10 years after the employee's death, a beneficiary is added who is not an eligible designated beneficiary as described in paragraph (e) of this section, then the employee is treated as not having an eligible designated beneficiary for purposes of § 1.401(a)(9)-5(e)(2) (so that a full distribution of the employee's entire interest in the plan would have been required within 10 years of the employee's death). However, pursuant to this paragraph (f)(5)(v), the full distribution of the employee's entire interest in the plan is not required until the end of the calendar year following the calendar year in which the new trust beneficiary was added.

(6) *Examples.* The following examples illustrate the see-through trust rules of this paragraph (f).

(i) *Example 1* —

(A) *Facts.* Employer L maintains a defined contribution plan, Plan W. Unmarried Employee C died in 2022 at age 30. Prior to C's death, C named a testamentary trust (Trust T) that satisfies the requirements of paragraph (f)(2) of this section, as the beneficiary of C's interest in Plan W. The terms of Trust T require that all distributions received from Plan W, upon receipt by the trustee, be paid directly to D, C's sibling, who is 5 years older than C. The terms of Trust T also provide that, if D dies before C's entire account balance has been distributed to D, E, will be the beneficiary of C's remaining account balance.

(B) *Analysis.* Pursuant to paragraph (f)(1)(ii)(A) of this section, Trust T is a conduit trust. Because Trust T is a conduit trust (meaning the residual beneficiary rule in paragraph (f)(3)(i)(B) of this section does not apply) and because E is only entitled to any portion of C's account if D dies before the entire account has been distributed, E is disregarded in determining C's designated beneficiary. Because D is an eligible

designated beneficiary, D may use the life expectancy rule of § 1.401(a)(9)-3(c)(4). Accordingly, even if D dies before C's entire interest in Plan W is distributed to Trust T, D's life expectancy continues to be used to determine the applicable denominator. Note, however, that because § 1.401(a)(9)-5(e) applies in this situation, a distribution of C's entire interest in Plan W will be required no later than 10 years after the calendar year in which D dies.

(ii) *Example 2* —

(A) *Facts related to plan and beneficiary.* Employer M maintains a defined contribution plan, Plan X. Employee A, an employee of M, died in 2022 at the age of 55, survived by Spouse B, who was 50 years old. A's account balance in Plan X is invested only in productive assets and was includible in A's gross estate under section 2039. A named a testamentary trust (Trust P) as the beneficiary of all amounts payable from A's account in Plan X after A's death. Trust P satisfies the see-through trust requirements of paragraph (f)(2) of this section.

(B) *Facts related to trust.* Under the terms of Trust P, all trust income is payable annually to B, and no one has the power to appoint Trust P principal to any person other than B. A's sibling, who is less than 10 years younger than A (and thus is an eligible designated beneficiary) and is younger than B, is the sole residual beneficiary of Trust P. Also, under the terms of Trust P, if A's sibling predeceases B, then, upon B's death, all Trust P principal is distributed to Charity Z (an organization exempt from tax under section 501(c)(3)). No other person has a beneficial interest in Trust P. Under the terms of Trust P, B has the power, exercisable annually, to compel the trustee to withdraw from A's account balance in Plan X an amount equal to the income earned during the calendar year on the assets held in A's account in Plan X and to distribute that amount through Trust P to B. Plan X includes no prohibition on withdrawal from A's account of amounts in excess of the annual required minimum distributions under section 401(a)(9). In accordance with the terms of Plan X, the trustee of Trust P elects to take annual life expectancy payments pursuant to section 401(a)(9)(B)(iii). If B exercises the withdrawal power, the trustee must withdraw from A's account under Plan X the greater of the amount of income earned in the account during the calendar year or the required minimum distribution. However, under the terms of Trust P, and applicable state law, only the portion of the Plan X distribution received by the trustee equal to the income earned by A's account in Plan X is required to be distributed to B (along with any other trust income).

(C) *Analysis.* Because some amounts distributed from A's account in Plan X to Trust P may be accumulated in Trust P during B's lifetime, Trust P is an accumulation trust. Pursuant to paragraph (f)(3)(i)(B) of this section, A's sibling, as the residual beneficiary of Trust P, is treated as a beneficiary designated under Plan X (even though access to those amounts is delayed until after B's death). Pursuant to paragraph

(f)(2)(iii)(A) of this section, because Charity Z's entitlement to amounts in the trust is based on the death of a beneficiary described in paragraph (f)(3)(i)(B) of this section, Charity Z is disregarded as a beneficiary of A. Under § 1.401(a)(9)-5(f)(1), the designated beneficiary used to determine the applicable denominator is the oldest of the designated beneficiaries of Trust P's interest in Plan X. B is the oldest of the beneficiaries of Trust P's interest in Plan X (including residual beneficiaries). Thus, the applicable denominator for purposes of section 401(a)(9)(B)(iii) is B's life expectancy. Because A's sibling is a beneficiary of A's account in Plan X in addition to B, B is not the sole beneficiary of A's account and the special rule in section 401(a)(9)(B)(iv) and § 1.401(a)(9)-3(d) is not available. Accordingly, the annual required minimum distributions from the account to Trust P must begin no later than the end of the calendar year immediately following the calendar year of A's death.

(iii) *Example 3* —

(A) *Facts.* The facts are the same as in *Example 2* in paragraph (f)(6)(ii) of this section except that A's sibling is more than 10 years younger than A, meaning that at least one of the beneficiaries of Trust P's interest in Plan X is not an eligible designated beneficiary.

(B) *Analysis.* Pursuant to paragraph (e)(2)(i) of this section, A is treated as not having an eligible designated beneficiary. Pursuant to § 1.401(a)(9)-3(c)(5), the trustee of Trust P is not permitted to make an election to take annual life expectancy distributions and the 10-year rule of § 1.401(a)(9)-3(c)(3) applies.

(iv) *Example 4* —

(A) *Facts related to plan and beneficiary.* Employer N maintains a defined contribution plan, Plan Y. Employee F, an employee of N, died in 2022 at the age of 60. F named a testamentary trust (Trust Q), which was established under F's will, as the beneficiary of all amounts payable from F's account in Plan X after F's death. Trust Q satisfies the see-through trust requirements of paragraph (f)(2) of this section.

(B) *Facts related to trust.* Under the terms of Trust Q, all trust income is payable to F's surviving spouse, G, and G has a power of appointment to name the beneficiaries of the residual in Trust Q. The power of appointment provides that, if G does not exercise the power, then upon G's death, F's descendants are entitled to the remainder interest in Trust Q, per stirpes. As of the date of F's death, F has two children, K and L, who are not disabled or chronically ill and who are both older than age 21. Before September 30 of the calendar year following the calendar year in which F died, G irrevocably restricts G's power of appointment so that G may exercise the power to appoint the remainder beneficiaries of Trust Q only in favor of G's siblings (who all are less than 10 years younger than F and thus, are eligible designated beneficiaries).

(C) *Analysis.* Pursuant to paragraph (f)(5)(ii)(A) of this section, because G timely restricted the power of appointment so that G may exercise the power to appoint the residual interest in Trust Q only in favor of G's siblings, the designated beneficiaries are G and G's siblings. Because all of the designated beneficiaries are eligible designated beneficiaries, annual life expectancy payments are permitted under section 401(a)(9)(B)(iii). Note, however, that because § 1.401(a)(9)-5(e) applies, a distribution of the remaining interest is required by no later than 10 years after the calendar year in which the oldest of G and G's siblings dies.

(v) *Example 5* —

(A) *Facts.* The facts are the same as in *Example 4* in paragraph (f)(6)(iv) of this section except that G does not restrict the power by September 30 of the calendar year following the calendar year of F's death.

(B) *Analysis.* Pursuant to paragraph (f)(5)(ii)(A) of this section, G, K, and L are treated as F's beneficiaries. Pursuant to § 1.401(a)(9)-3(c)(5), because K and L are not eligible designated beneficiaries, the trustee of Trust Q is not permitted to make an election to take annual life expectancy distributions, and the 10-year rule of § 1.401(a)(9)-3(c)(3) applies.

(g) *Applicable multi-beneficiary trusts* —

(1) *General definition of an applicable multi-beneficiary trust.* An applicable multi-beneficiary trust is a see-through trust with more than one beneficiary and with respect to which—

(i) All of the trust beneficiaries are designated beneficiaries; and

(ii) At least one of the trust beneficiaries is an eligible designated beneficiary who is disabled (as defined in paragraph (e)(1)(iii) of this section) or chronically ill (as defined in paragraph (e)(1)(iv) of this section).

(2) *Type I applicable multi-beneficiary trust.* An applicable multi-beneficiary trust is a type I applicable multi-beneficiary trust if the terms of the trust provide that it is to be divided immediately upon the death of the employee into separate trusts for each beneficiary.

(3) *Type II applicable multi-beneficiary trust* —

(i) *General definition.* An applicable multi-beneficiary trust is a type II applicable multi-beneficiary trust if—

(A) The trust terms identify one or more individuals, each of whom is disabled (as defined in paragraph (e)(1)(iii) of this section) or chronically ill (as defined in paragraph (e)(1)(iv) of this section), who are entitled to benefits during their lifetime; and

(B) The terms of the trust provide that no individual (other than an individual described in paragraph (g)(3)(i)(A) of this section) has any right to the employee's interest in the plan until the death of all of the eligible designated beneficiaries described in paragraph (g)(3)(i)(A) with respect to the trust.

(ii) *Special rule for type II applicable multi-beneficiary trusts.* If an employee's beneficiary is a type II applicable multi-beneficiary trust described in paragraph (g)(3)(i) of this section, then the beneficiaries of the trust described in paragraph (g)(3)(i)(A) of this section are treated as eligible designated beneficiaries without regard to whether any of the other trust beneficiaries are not eligible designated beneficiaries.

(h) *Documentation requirements for trusts* —

(1) *General rule.* The documentation requirements of this paragraph (h) are satisfied if—

(i) In the case of required minimum distributions while the employee is still alive, paragraph (h)(2) of this section is satisfied; or

(ii) In the case of required minimum distributions after the employee has died, or after the employee's surviving spouse has died in a case to which § 1.401(a)(9)-3(d) applies, paragraph (h)(3) of this section is satisfied.

(2) *Required minimum distributions while employee is still alive* —

(i) *In general.* If an employee designates a trust as the beneficiary of the employee's entire benefit and the employee's spouse is the only beneficiary of the trust treated as a beneficiary of the employee pursuant to the rules of paragraph (f) of this section, then, in order to satisfy the documentation requirements of this paragraph (h)(2) (so that the applicable denominator for a distribution calendar year may be determined under the rules of § 1.401(a)(9)-35(c)(2), assuming the other requirements of paragraph (f)(2) of this section are satisfied), before the first day of the distribution calendar year the employee must either satisfy the requirements of paragraph (h)(2)(ii) of this section (requiring the employee to provide a copy of the trust instrument) or the requirements of paragraph (h)(2)(iii) of this section (requiring the employee to provide a list of beneficiaries).

(ii) *Employee to provide copy of trust instrument.* An employee satisfies the requirements of this paragraph (h)(2)(ii) if the employee—

(A) Provides to the plan administrator a copy of the trust instrument; and

(B) Agrees that, if the trust instrument is amended at any time in the future, the employee will, within a reasonable time, provide to the plan administrator a copy of each amendment.

(iii) *Employee to provide list of beneficiaries.* An employee satisfies the requirements of this paragraph (h)(2)(iii) if the employee—

(A) Provides to the plan administrator a list of all of the beneficiaries of the trust (including contingent beneficiaries) with a description of the conditions on their entitlement sufficient to establish whether the spouse is the sole beneficiary;

(B) Certifies that, to the best of the employee's knowledge, the list described in paragraph (h)(2)(iii)(A) of this section is correct and complete and that the requirements of paragraph (f)(2)(i), (ii), and (iii) of this section are satisfied; and

(C) Agrees that, if the trust instrument is amended at any time in the future, the employee will, within a reasonable time, provide to the plan administrator corrected certifications to the extent that the amendment changes any information previously certified; and

(D) Agrees to provide a copy of the trust instrument to the plan administrator upon request.

(3) *Required minimum distributions after death* —

(i) *In general.* In order to satisfy the documentation requirement of this paragraph (h)(3) for required minimum distributions after the death of the employee (or after the death of the employee's surviving spouse in a case to which § 1.401(a)(9)-3(d) applies), by October 31 of the calendar year immediately following the calendar year in which the employee died or, in a case to which § 1.401(a)(9)-3(d) applies, the employee's surviving spouse died, the trustee of the trust must satisfy the requirements of either paragraph (h)(3)(ii) (requiring the trustee to provide a list of beneficiaries) or paragraph (h)(3)(iii) of this section (requiring the trustee to provide a copy of the trust instrument).

(ii) *Trustee to provide list of beneficiaries.* A trustee satisfies the requirements of this paragraph (h)(3)(ii) if the trustee—

(A) Provides the plan administrator with a final list of all beneficiaries of the trust as of September 30 of the calendar year following the calendar year of the death (including contingent beneficiaries) with a description of the conditions on their entitlement sufficient to establish who are the beneficiaries;

(B) Certifies that, to the best of the trustee's knowledge, this list is correct and complete and that the requirements of paragraph (f)(2)(i), (ii), and (iii) of this section are satisfied; and

(C) Agrees to provide a copy of the trust instrument to the plan administrator upon request.

(iii) *Trustee to provide copy of trust instrument.* A trustee satisfies the requirements of this paragraph (h)(3)(iii) if the trustee provides the plan administrator with a copy of the actual trust document for the trust that is named

as a beneficiary of the employee under the plan as of the employee's date of death.

(4) *Relief for discrepancy between trust instrument and employee certifications or earlier trust instruments* —

(i) *In general.* If required minimum distributions are determined based on the information provided to the plan administrator in certifications or trust instruments described in paragraph (h)(2) or (3) of this section, a plan will not fail to satisfy section 401(a)(9) merely because the actual terms of the trust instrument are inconsistent with the information in those certifications or trust instruments previously provided to the plan administrator, but only if—

(A) The plan administrator reasonably relied on the information provided; and

(B) The required minimum distributions for calendar years after the calendar year in which the discrepancy is discovered are determined based on the actual terms of the trust instrument.

(ii) *Excise tax.* For purposes of determining the amount of the excise tax under section 4974, the required minimum distribution is determined for any year based on the actual terms of the trust in effect during the year.

§ 1.401(a)(9)-5 . Required minimum distributions from defined contribution plans.

(a) *General rules* —

(1) *In general.* Subject to the rules of paragraph (e) of this section (requiring distribution of an employee's entire interest by a specified deadline in certain situations), if an employee's accrued benefit is in the form of an individual account under a defined contribution plan, the minimum amount required to be distributed for each distribution calendar year (as defined in paragraph (a)(2) of this section) is equal to the quotient obtained by dividing the account balance (determined under paragraph (b) of this section) by the applicable denominator (determined under paragraph (c) or (d) of this section, whichever is applicable). However, the required minimum distribution amount will never exceed the entire account balance on the date of the distribution. See paragraph (g) of this section for rules that apply if a portion of the employee's account is not vested.

(2) *Distribution calendar year* —

(i) *In general.* A calendar year for which a minimum distribution is required is a distribution calendar year.

(ii) *First distribution calendar year for employee.* If an employee's required beginning date is April 1 of the calendar year following the calendar year in which the employee attains age 72, then the employee's first distribution calendar year is the year the employee attains age 72. If an employee's required beginning date is April 1 of the calendar year following the calendar year in which the

employee retires, the employee’s first distribution calendar year is the calendar year in which the employee retires.

(iii) *First distribution calendar year for beneficiary.* In the case of an employee who dies before the required beginning date, if the life expectancy rule in § 1.401(a)(9)-3(c)(4) applies, then the first distribution calendar year for the designated beneficiary is the calendar year after the calendar year in which the employee died (or, if applicable, the calendar year described in § 1.401(a)(9)-3(d)). See § 1.401(a)(9)-3(c)(5) to determine whether the life expectancy rule in § 1.401(a)(9)-3(c)(4) applies.

(3) *Time for distributions.* The distribution required for the employee’s first distribution calendar year (as described in paragraph (a)(2)(ii) of this section) may be made on or before April 1 of the following calendar year. The required minimum distribution for any other distribution calendar year (including the required minimum distribution for the distribution calendar year in which the employee’s required beginning date occurs or the first distribution calendar year for the designated beneficiary) must be made on or before the end of that distribution calendar year.

(4) *Minimum distribution incidental benefit requirement.* If distributions of an employee’s account balance under a defined contribution plan are made in accordance with this section—

(i) With respect to the retirement benefits provided by that account balance, to the extent the incidental benefit requirement of § 1.401-1(b)(1)(i) requires distributions, that requirement is deemed satisfied; and

(ii) No additional distributions are required to satisfy section 401(a)(9)(G).

(5) *Annuity contracts* —

(i) *Purchase of annuity contract permitted.* A plan may satisfy section 401(a)(9) by the purchase of an annuity contract from an insurance company in accordance with § 1.401(a)(9)-6(d) with the employee’s entire individual account provided that the terms of the annuity satisfy § 1.401(a)(9)-6 and paragraph (e) of this section. However, a distribution of an annuity contract is not a distribution for purposes of this section.

(ii) *Transition from defined contribution rules to defined benefit rules.* If an annuity is purchased in accordance with paragraph (a)(5)(i) of this section after distributions are required to commence (the required beginning date, in the case of distributions commencing before death, or the calendar year determined under § 1.401(a)(9)-3(c)(4) or, if applicable, § 1.401(a)(9)-3(d), in the case of distributions commencing after death), then the plan will satisfy section 401(a)(9) only if, in the year of purchase, distributions from the individual account satisfy this section, and for calendar years following the year of purchase, payments under the annuity contract are made in accordance with § 1.401(a)(9)-6 and satisfy paragraph (e) of this section. Payments under the annuity contract during the year in which the annuity contract is purchased are treated as distributions

from the individual account for purposes of determining whether the distributions from the individual account satisfy this section in the calendar year of purchase.

(iii) *Purchase of annuity contract with portion of employee's account.* A portion of an employee's account balance under a defined contribution plan is permitted to be used to purchase an annuity contract while another portion remains in the account, provided that the requirements of paragraphs (a)(5)(i) and (ii) of this section are satisfied (other than the requirement that the contract be purchased with the employee's entire individual account). In that case, in order to satisfy section 401(a)(9) for calendar years after the calendar year of purchase, the remaining account balance under the plan must be distributed in accordance with this section.

(6) *Impact of additional distributions in prior years.* If, for any distribution calendar year, the amount distributed exceeds the required minimum distribution for that calendar year, no credit towards a required minimum distribution will be given in subsequent calendar years for the excess distribution.

(b) *Determination of account balance —*

(1) *General rule.* In the case of an individual account under a defined contribution plan, the benefit used in determining the required minimum distribution for a distribution calendar year is the account balance as of the last valuation date in the calendar year preceding that distribution calendar year (valuation calendar year) adjusted in accordance with this paragraph (b). For this purpose, except as provided in § 1.401(a)(9)-8(a), all of an employee's accounts under the plan are aggregated. Thus, all separate accounts, including a separate account for employee contributions under section 72(d)(2), are aggregated for purposes of this section.

(2) *Adjustment for subsequent allocations.* The account balance is increased by the amount of any contributions or forfeitures allocated to the account balance as of dates in the valuation calendar year after the valuation date. For this purpose, contributions that are allocated to the account balance as of dates in the valuation calendar year after the valuation date, but that are not actually made during the valuation calendar year, may be excluded.

(3) *Adjustment for subsequent distributions.* The account balance is decreased by distributions made in the valuation calendar year after the valuation date.

(4) *Exclusion for QLAC contract.* The account balance does not include the value of any qualifying longevity annuity contract (QLAC), defined in § 1.401(a)(9)-6(q), that is held under the plan.

(5) *Treatment of rollovers.* If an amount is distributed from a plan and rolled over to another plan (receiving plan), § 1.401(a)(9)-7(b) provides additional rules for determining the benefit and required minimum distribution under the receiving plan. If an amount is transferred from one plan (transferor plan) to another plan (transferee plan) in a transfer to which section 414(l) applies, § 1.401(a)(9)-7(c) and (d) provide additional rules for determining the amount of the benefit and required minimum distribution under both the transferor and transferee plans.

(c) *Determination of applicable denominator during employee's lifetime* —

(1) *General rule.* Except as provided in paragraph (c)(2) of this section (relating to a spouse beneficiary who is more than 10 years younger than the employee), the applicable denominator for required minimum distributions for each distribution calendar year beginning with the first distribution calendar year (as described in paragraph (a)(2)(ii) of this section) is determined using the Uniform Lifetime Table in § 1.401(a)(9)-9(c)(2) for the employee's age as of the employee's birthday in the relevant distribution calendar year. The requirement to take an annual distribution calculated in accordance with the preceding sentence applies for distribution calendar years up to and including the calendar year that includes the employee's date of death. Thus, a required minimum distribution is due for the calendar year of the employee's death, and that amount must be distributed during that year to the beneficiary to the extent it has not already been distributed to the employee.

(2) *Spouse is sole beneficiary* —

(i) *Determination of applicable denominator.* If the sole beneficiary of an employee is the employee's spouse who is more than 10 years younger than the employee, then the applicable denominator is the joint and last survivor life expectancy for the employee and spouse determined using the Joint and Last Survivor Life Expectancy Table in § 1.401(a)(9)-9(d) for the employee's and spouse's ages as of their birthdays in the relevant distribution calendar year (rather than the applicable denominator determined under paragraph (c)(1) of this section).

(ii) *Spouse must be sole beneficiary at all times.* Except as otherwise provided in paragraph (c)(2)(iii) of this section (relating to a death or divorce in a calendar year), the spouse is the sole beneficiary for purposes of determining the applicable denominator for a distribution calendar year during the employee's lifetime only if the spouse is the sole beneficiary of the employee's entire interest at all times during the distribution calendar year.

(iii) *Change in marital status.* If the employee and the employee's spouse are married on January 1 of a distribution calendar year, but do not remain married throughout that year (that is, the employee or the employee's spouse dies or they become divorced during that year), the employee will not fail to have a spouse as the employee's sole beneficiary for that year merely because they are not married throughout that year. However, the change in beneficiary due to the death or divorce of the spouse in a distribution calendar year will be effective for purposes of determining the applicable denominator under section 401(a)(9) and this paragraph (c) for the following calendar years.

(d) *Applicable denominator after employee's death* —

(1) *Death on or after the employee's required beginning date* —

(i) *In general.* If an employee dies after distribution has begun as determined under § 1.401(a)(9)-2(a)(3) (generally, on or after the employee's required beginning date), distributions must satisfy section 401(a)(9)(B)(i). In order to

satisfy this requirement, the applicable denominator after the employee's death is determined under the rules of this paragraph (d)(1). The requirement to take an annual distribution in accordance with the preceding sentence applies for distribution calendar years up to and including the calendar year that includes the beneficiary's date of death. Thus, a required minimum distribution is due for the calendar year of the beneficiary's death, and that amount must be distributed during that calendar year to a beneficiary of the deceased beneficiary to the extent it has not already been distributed to the deceased beneficiary. The distributions also must satisfy section 401(a)(9)(B)(ii) (or, if applicable, section 401(a)(9)(B)(iii), taking into account sections 401(a)(9)(E)(iii), and 401(a)(9)(H)(ii) and (iii)). In order to satisfy those requirements, in addition to determining the applicable denominator under the rules of this paragraph (d)(1), the distributions also must satisfy any applicable requirements under paragraph (e) of this section.

(ii) *Employee with designated beneficiary.* If the employee has a designated beneficiary as of the date determined under § 1.401(a)(9)-4(c), the applicable denominator is the greater of—

(A) The designated beneficiary's remaining life expectancy; and

(B) The employee's remaining life expectancy.

(iii) *Employee with no designated beneficiary.* If the employee does not have a designated beneficiary as of the date determined under § 1.401(a)(9)-4(c), the applicable denominator is the employee's remaining life expectancy.

(2) *Death before an employee's required beginning date.* If an employee dies before distributions have begun (as determined under § 1.401(a)(9)-2(a)(3)) and the life expectancy rule described in § 1.401(a)(9)-3(c)(4) applies, then the applicable denominator for distribution calendar years beginning with the first distribution calendar year (as described in paragraph (a)(2)(iii) of this section) is the designated beneficiary's remaining life expectancy.

(3) *Remaining life expectancy* —

(i) *Life expectancy table.* For purposes of this paragraph (d), all life expectancies are determined using the Single Life Table in § 1.401(a)(9)-9(c)(1).

(ii) *Employee's life expectancy.* The employee's remaining life expectancy is determined initially using the employee's age as of the employee's birthday in the calendar year of the employee's death. In subsequent calendar years, the remaining life expectancy is determined by reducing that initial life expectancy by one for each calendar year that has elapsed after that first calendar year.

(iii) *Nonspouse designated beneficiary.* If the designated beneficiary is not the employee's surviving spouse, then the designated beneficiary's remaining life expectancy is determined initially using the beneficiary's age as of the beneficiary's birthday in the calendar year following the calendar year of the employee's death. Except as otherwise provided in paragraph (d)(3)(iv) of this

section, for subsequent calendar years, the designated beneficiary's remaining life expectancy is determined by reducing that initial life expectancy by one for each calendar year that has elapsed after that first calendar year.

(iv) *Spouse as designated beneficiary.* If the surviving spouse of the employee is the employee's sole beneficiary, then the surviving spouse's remaining life expectancy is redetermined each distribution calendar year using the surviving spouse's age as of the surviving spouse's birthday in that calendar year.

(e) *Distribution of employee's entire interest required—*

(1) *In general.* Except as provided in paragraph (f) of this section, if an employee's accrued benefit is in the form of an individual account under a defined contribution plan, then the entire interest of the employee must be distributed by the end of the earliest of the calendar years described in paragraph (e)(2), (3), (4), or (5) of this section. However, the preceding sentence does not apply if section 401(a)(9)(H) does not apply with respect to the employee (for example, if both the employee and the employee's designated beneficiary died before January 1, 2020). See § 1.401(a)(9)-1(b) for rules relating to the section 401(a)(9)(H) effective date.

(2) *10-year limit for designated beneficiary who is not an eligible designated beneficiary.* If the employee's designated beneficiary is not an eligible designated beneficiary (as determined in accordance with § 1.401(a)(9)-4(e)), then the calendar year described in this paragraph (e)(2) is the tenth calendar year following the calendar year of the employee's death.

(3) *10-year limit following death of eligible designated beneficiary.* If the employee's designated beneficiary is an eligible designated beneficiary (as determined in accordance with § 1.401(a)(9)-4(e)), then the calendar year described in this paragraph (e)(3) is the tenth calendar year following the calendar year of the designated beneficiary's death.

(4) *10-year limit after minor child of the employee reaches age of majority.* If the employee's designated beneficiary is an eligible designated beneficiary only because the beneficiary is the child of the employee who has not reached the age of majority at the time of the employee's death, then the calendar year described in this paragraph (e)(4) is the tenth calendar year following the calendar year in which the designated beneficiary reaches the age of majority.

(5) *Life expectancy limit for older eligible designated beneficiaries.* If the employee's designated beneficiary is an eligible designated beneficiary (as determined in accordance with § 1.401(a)(9)-4(e)) and the applicable denominator is determined in accordance with paragraph (d)(1)(ii)(B) of this section (the employee's remaining life expectancy), then the calendar year described in this paragraph (e)(5) is the calendar year in which the applicable denominator would have been less than or equal to one if it were determined in accordance with paragraph (d)(1)(ii)(A) of this section (the designated beneficiary's remaining life expectancy).

(f) *Rules for multiple designated beneficiaries —*

(1) *Determination of applicable denominator —*

(i) *General rule.* Except as otherwise provided in paragraph (f)(1)(ii) of this section and § 1.401(a)(9)-8(a), if the employee has more than one designated beneficiary, then the determination of the applicable denominator under paragraph (d) of this section is made using the oldest designated beneficiary of the employee.

(ii) *Applicable multi-beneficiary trusts.* If an employee's beneficiary is a type II applicable multi-beneficiary trust described in § 1.401(a)(9)-4(g)(3)(i), then only the trust beneficiaries described in § 1.401(a)(9)-4(g)(3)(i)(A) are taken into account in determining the oldest designated beneficiary for purposes of paragraph (f)(1)(i) of this section.

(2) *Determination of when entire interest is required to be distributed* —

(i) *General rule.* Except as otherwise provided in paragraphs (f)(2)(ii) and (iii) of this section and § 1.401(a)(9)-8(a), if an employee has more than one designated beneficiary, then paragraph (e)(1) of this section is applied with respect to the oldest of the employee's designated beneficiaries.

(ii) *Special rule for minor child.* If any of the employee's designated beneficiaries is an eligible designated beneficiary because that designated beneficiary is described in § 1.401(a)(9)-4(e)(1)(ii) (relating to the child of the employee who has not reached the age of majority at the time of the employee's death), then—

(A) Paragraphs (e)(3) and (4) of this section are applied using the oldest of the designated beneficiaries who are described in § 1.401(a)(9)-4(e)(1)(ii); and

(B) Paragraphs (e)(2) and (5) of this section do not apply.

(iii) *Applicable multi-beneficiary trust* s. If an employee's beneficiary is a type II applicable multi-beneficiary trust described in § 1.401(a)(9)-4(g)(3)(i), then—

(A) Paragraph (e)(3) of this section applies as if the death of the employee's eligible designated beneficiary does not occur until the death of the last trust beneficiary who is described in § 1.401(a)(9)-4(g)(3)(i)(A); and

(B) Paragraph (e)(5) of this section does not apply.

(g) *Treatment of nonvested amounts.* If the employee's benefit is in the form of an individual account under a defined contribution plan, the benefit used to determine the required minimum distribution for any distribution calendar year will be determined in accordance with paragraph (a) of this section without regard to whether or not all of the employee's benefit is vested. If, as of the end of a distribution calendar year (or as of the employee's required beginning date, in the case of the employee's first distribution calendar year), the total amount of the employee's vested benefit is less than the required minimum distribution for the calendar year, only the vested portion, if any, of the employee's benefit is required to be distributed by the end of the calendar year (or, if applicable, by the employee's required beginning date). However, the required

minimum distribution for the subsequent calendar year must be increased by the sum of amounts not distributed in prior calendar years because the employee's vested benefit was less than the required minimum distribution determined in accordance with paragraph (a) of this section.

(h) *Distributions taken into account.* Except as provided in this paragraph (h), all amounts distributed from an individual account under a defined contribution plan are distributions that are taken into account in determining whether this section is satisfied, regardless of whether the amount is includible in income. Thus, for example, amounts that are excluded from income as recovery of investment in the contract under section 72 are taken into account for purposes of determining whether this section is satisfied for a calendar year. Similarly, amounts excluded from income as net unrealized appreciation on employer securities also are taken into account for purposes of satisfying this section. However, an amount is not taken into account in determining whether the required minimum distribution has been made for a distribution calendar year if that amount is described in § 1.402(c)-2(c)(3) (relating to amounts that are not treated as eligible rollover distributions).

[REMAINDER OF PROPOSED REGULATIONS OMITTED]