

# Notice of Proposed Rulemaking

## Required Distributions From Qualified Plans and Individual Retirement Plans

REG-209463-82

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This document contains amendments to the existing proposed regulations under section 401(a)(9) that make changes to the rules that apply if a trust is named as a beneficiary of an employee's benefit under a retirement plan. These proposed regulations will affect administrators of, participants in, and beneficiaries of qualified plans, institutions which sponsor and individuals who administer individual retirement plans, individuals who use individual retirement plans, simplified employee pensions and SIMPLE Savings Plans for retirement income and beneficiaries of individual retirement plans; and employees for whom amounts are contributed to section 403(b) annuity contracts, custodial accounts, or retirement income accounts and beneficiaries of such contracts and accounts.

**DATES:** Written comments and requests for a public hearing must be received by March 30, 1998.

**ADDRESSES:** Send submissions to CC:DOM:CORP:R (REG-209463-82), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG-209463-82), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html)

**FOR FURTHER INFORMATION CONTACT:** Thomas Foley at (202) 622-6030 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

### *Paperwork Reduction Act*

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224. Comments on the collection of information should be received by March 2, 1998. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the **Internal Revenue Service**, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in Question and Answer D-7 of §1.401(a)(9)-1. This information is required for a taxpayer who wants to name a trust and treat the underlying beneficiaries of the trust as designated beneficiaries of the taxpayer's benefit under a retirement plan or an individual retirement plan ("IRA"). The taxpayer must provide a copy of the trust instrument or IRA trustee, custodian, or issuer, or provide a list of all the beneficiaries of the trust, certify that, to the best of the taxpayer's knowledge, this list is correct and complete, and agree to pro-

vide a copy of the trust instrument upon demand. In addition, other related requirements for the beneficiaries of the trust to be treated as designated beneficiaries must be satisfied. If the trust instrument is amended at any time in the future, the taxpayer must, within a reasonable time, provide a copy of each such amendment, or provide corrected certifications to the extent that the amendment changes the information previously certified. In addition, by the end of the ninth month after the death of the taxpayer, the trustee of the trust must provide a copy of the trust to the plan administrator or IRA trustee, custodian, or issuer, or provide a list of all the beneficiaries of the trust, certify that, to the best of the taxpayer's knowledge, this list is correct and complete, and agrees to provide a copy of the trust instrument upon demand. The collection of information is required to obtain a benefit. The likely respondents are individuals or households.

Estimated total annual reporting hours is 333 hours.

The estimated average burden per respondent is 20 minutes.

The estimated total number of respondents is 1,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### *Background*

On July 27, 1987, Proposed Regulations (EE-113-82 [1987-2 C.B. 881]) under sections 401(a)(9), 403(b), 408, and 4974 of the Internal Revenue Code of 1986 were published in the **Federal Register** (52 FR 28070) Those proposed regulations provide guidance for complying with the rules relating to required distributions from qualified plans, individual retirement plans, and section 403(b) annuity contracts, custodial accounts, and retirement income accounts. This document

contains amendments to proposed § 1.401(a)(9)–1 (hereinafter referred to as the Existing Proposed Regulations) that was included in EE–113–82. Specifically this document contains amendments to Q&As D–5 and Q&A D–6 of the Existing Proposed Regulations which prescribe specific requirements that must be met when a trust is named as a beneficiary of an employee’s benefit under a plan, and adds a new Q&A D–7 to the Existing Proposed Regulations. Proposed § 1.408–8 and 1.403(b)–2 (also included in EE–113–82) provide that the provisions of proposed § 1.401(a)(9)–1 generally apply to individual retirement plans, and section 403(b) annuity contracts, custodial accounts, and retirement income accounts. Accordingly, these amendments and additions also generally apply to such plans, contracts, and accounts.

The amendments and additions to the Existing Proposed Regulations in these proposed regulations are issued in response to comments and questions received regarding the Existing Proposed Regulations with respect to section 401(a)(9). Treasury and the IRS continue to welcome additional comments concerning the Existing Proposed Regulations and the other sections of EE–113–82.

As in the case of the Existing Proposed Regulations and the other sections of EE–113–82, taxpayers may rely on these proposed regulations for guidance pending the issuance of final regulations. If, and to the extent, future guidance is more restrictive than the guidance in these proposed regulations, the future guidance will be applied without retroactive effect.

### *Explanation of provisions*

#### *Overview*

Section 401(a)(9)(A) provides that, in order for a plan to be qualified under section 401(a), distributions of each employee’s interest in the plan must commence no later than the “required beginning date” for the employee and must be distributed over a period not to exceed the joint lives or joint life expectancy of the employee and the employee’s designated beneficiary. Section 401(a)(9)(B) provides that if distribution does not commence prior to death in accordance with section 401(a)(9)(A), distributions of the employee’s interest must

be made within 5 years of the employee’s death or, generally, commence within one year of the employee’s death and be made over the life or life expectancy of the designated beneficiary.

Section 401(a)(9)(E) defines the term “designated beneficiary” as an individual designated as a beneficiary by the employee. The Existing Proposed Regulations provide that, for purposes of section 401(a)(9), only individuals may be designated beneficiaries. A beneficiary who is not an individual, such as the employee’s estate, may not be a designated beneficiary for purposes of determining the minimum required distribution, but nevertheless may be designated as the employee’s beneficiary under the plan. If a beneficiary who is not an individual is designated to receive an employee’s benefit after death, the employee is treated as having no designated beneficiary when determining the required minimum distribution. In that case, under section 401(a)(9), distributions commencing before death must be made over the employee’s single life or life expectancy and distributions commencing after death must be made within 5 years of the employee’s death.

However, the Existing Proposed Regulations provide that if a trust is named as a beneficiary of an employee’s benefit under the plan, the underlying beneficiaries of the trust may be treated as designated beneficiaries for purposes of section 401(a)(9) if certain requirements are satisfied. In response to comments, these proposed regulations modify these trust beneficiary requirements as explained below by:

- Permitting the designated beneficiary of a revocable trust to be treated as the designated beneficiary for purposes of determining the minimum distribution under section 401(a)(9), provided that the trust becomes irrevocable upon the death of the employee.
- Providing relief from the requirement that the plan be provided with a copy of the trust document if certain certification requirements are met.

#### *Irrevocability of trust*

The Existing Proposed Regulations generally provide that a trust must be irrevocable as of the employee’s required beginning date in order for the beneficiaries of the trust to be treated as designated

beneficiaries under the plan for purposes of determining the distribution period under section 401(a)(9)(A). Commentators have indicated that most trusts established for estate planning purposes and designated as the beneficiary of an employee’s plan benefits are revocable instruments prior to the death of the employee. In response to those comments, these proposed regulations provide that a trust named as beneficiary of an employee’s interest in a retirement plan be permitted to be revocable while the employee is alive, provided that it becomes irrevocable, by its terms, upon the death of the employee. The requirements in the Existing Proposed Regulations that the trust be valid under state law (or would be but for the fact that there is no corpus) and that the beneficiaries be identifiable from the trust instrument are retained.

#### *Information to Plan Administrator*

In order to permit the plan administrator to substantiate that the requirements for treating the beneficiaries of the trust as designated beneficiaries under the plan are satisfied, the Existing Proposed Regulations require that a copy of the trust instrument be provided to the plan administrator by the earlier of the required beginning date or the date of the employee’s death. In response to comments, this proposed regulation permits an alternative method of substantiation.

As under the Existing Proposed Regulations, a copy of the trust instrument may be provided to the plan administrator. However, because the trust need not be irrevocable, under this method, the employee must also agree that if the trust instrument is amended at any time in the future, the employee will, within a reasonable time, provide a copy of each such amendment.

Alternatively, the employee may provide a list of all of the beneficiaries of the trust (including contingent beneficiaries) with a description of the portion to which they are entitled and any conditions on their entitlement, and certify that, to the best of the employee’s knowledge, this list is correct and complete and that the other requirements for the beneficiaries of the trust to be treated as designated beneficiaries are satisfied. Under the second method, the employee must also agree to provide corrected certifications to the ex-

tent that the amendment changes the information previously certified. Finally, the employee must agree to provide a copy of the trust instrument to the plan administrator upon demand.

In addition, these proposed regulations provide that, if the minimum required distributions after death are determined by treating the beneficiaries of the trust as designated beneficiaries, a final certification as to the beneficiaries of the trust instrument must be provided to the plan administrator by the end of the ninth month after the death of the employee. This rule applies even if a copy of the trust instrument were provided to the plan administrator before the employee's death. Alternatively, an updated trust instrument may be provided.

The proposed regulations also provide that a plan will not fail to satisfy section 401(a)(9) merely because the terms of the actual trust instrument are inconsistent with the information in the certifications or trust instruments previously provided to the plan administrator if the plan administrator reasonably relies on the information provided in the certifications or trust instruments. However, the minimum required distributions for years after the year in which the discrepancy is discovered must be determined based on the actual terms of the trust instrument. For those years, the minimum required distribution will be determined by treating the beneficiaries of the employee as having been changed in the year in which the year the discrepancy was discovered to conform to the corrected information and by applying the change in beneficiary provisions found under the Existing Proposed Regulations. However, for purposes of determining the amount of the excise tax under section 4974 (including application of a waiver, if any, for reasonable error under section 4974), the minimum required distribution is determined for any year based on the actual terms of the trust in effect during the year.

*Special Analyses*

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been de-

termined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Moreover, it hereby certified that the regulations in this document will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the reporting burden is primarily on the plan participant to supply the information rather than on the entity maintaining the retirement plan and the fact that the number of participants per plan to whom the burden applies is insignificant. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

*Comments and Requests for a Public Hearing*

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) or comments transmitted via Internet that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

*Drafting Information*

The principal author of these regulations is Cheryl Press, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

*Amendments to the Previously Proposed Regulations*

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.401(a)(9)-1, as proposed to be added at 52 FR 28075, July 27, 1987, is amended by:

- 1. Revising Q&A D-5
- 2. Revising Q&A D-6.
- 3. Adding Q&A D-7

The additions and revisions read as follows:

*§ 1.401(a)(9)-1 Required distributions from trust and plans.*

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*D. Determination of the Designated Beneficiary.*

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D-5. Q. If a trust is named as a beneficiary of an employee, will the beneficiaries of the trust with respect to the trust's interest in the employee's benefit be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)-(A)(ii)?

A. (a) Pursuant to D-2A of this section, only an individual may be a designated beneficiary for purposes of determining the distribution period under section 401(a)(9)(A)(ii). Consequently, a trust itself may not be the designated beneficiary even though the trust is named as a beneficiary. However, if the requirements of paragraph (b) of this D-5 are met, distributions made to the trust will be treated as paid to the beneficiaries of the trust with respect to the trust's interest in the employee's benefit, and the beneficiaries of the trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(A)(ii). If, as of any date on or after the employee's required beginning date, a trust is named as a beneficiary of the employee and the requirements in paragraph (b) of this D-5A are not met, the employee will be treated as not having a designated beneficiary under the plan for purposes of section 401(a)(9)(A)(ii). Consequently, for cal-

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endar years beginning after that date, distribution must be made over the employee's life (or over the period which would have been the employee's remaining life expectancy determined as if no beneficiary had been designated as of the employee's required beginning date).

(b) The requirements of this paragraph (b) are met if, as of the later of the date on which the trust is named as a beneficiary of the employee, or the employee's required beginning date, and as of all subsequent periods during which the trust is named as a beneficiary, the following requirements are met:

(1) The trust is a valid trust under state law, or would be 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 from the trust instrument within the meaning of D-2 of this section.

(4) The documentation described in D-7 of this section has been provided to the plan administrator.

(c) In the case of payments to a trust having more than one beneficiary, see E-5 of this section for the rules for determining the designated beneficiary whose life expectancy will be used to determine the distribution period. If the beneficiary of the trust named as beneficiary is another trust, the beneficiaries of the other trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)-(A)(ii), provided that the requirements of paragraph (b) of this D-5A are satisfied with respect to such other trust in addition to the trust named as beneficiary.

D-6. Q. If a trust is named as a beneficiary of an employee, will the beneficiaries of the trust with respect to the trust's interest in the employee's benefit be treated as designated beneficiaries under the plan with respect to the employee for purposes of determining the distribution period under section 401(a)(9)(B)(iii) and (iv)?

A. (a) If a trust is named as a beneficiary of an employee and the requirements of paragraph (b) of D-5A of this section are satisfied as of the date of the

employee's death or, in the case of the documentation described in D-7 of this section, by the end of the ninth month beginning after the employee's date of death, then distributions to the trust for purposes of section 401(a)(9) will be treated as being paid to the appropriate beneficiary of the trust with respect to the trust's interest in the employee's benefit, and all beneficiaries of the trust with respect to the trust's interest in the employee's benefit will be treated as designated beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)(B)(iii) and (iv). If the beneficiary of the trust named as beneficiary is another trust, the beneficiaries of the other trust will be treated as having been designated as beneficiaries of the employee under the plan for purposes of determining the distribution period under section 401(a)(9)-(B)(iii) and (iv), provided that the requirements of paragraph (b) of D-5A of this section are satisfied with respect to such other trust in addition to the trust named as beneficiary. If a trust is named as a beneficiary of an employee and if the requirements of paragraph (b) of D-5A of this section are not satisfied as of the dates specified in the first sentence of this paragraph, the employee will be treated as not having a designated beneficiary under the plan. Consequently, distribution must be made in accordance with the five-year rule in section 401(a)(9)(B)(ii).

(b) The rules of D-5 of this section and this D-6 also apply for purposes of applying the provisions of section 401(a)(9)-(B)(iv)(II) if a trust is named as a beneficiary of the employee's surviving spouse. In the case of payments to a trust having more than one beneficiary, see E-5 of this section for the rules for determining the designated beneficiary whose life expectancy will be used to determine the distribution period.

D-7. Q. If a trust is named as a beneficiary of an employee, what documentation must be provided to the plan administrator so that the beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable to the plan administrator?

A. (a) *Required distributions commencing before death.* In order to satisfy the requirement of paragraph (b)(4) of D-5A of

this section for distributions required under section 401(a)(9) to commence before the death of an employee, the employee must comply with either paragraph (a)(1) or (2) of this D-7A:

(1) The employee provides to the plan administrator a copy of the trust instrument and 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 such amendment.

(2) The employee—

(i) Provides to the plan administrator a list of all of the beneficiaries of the trust (including contingent and remainderman beneficiaries with a description of the conditions on their entitlement);

(ii) Certifies that, to the best of the employee's knowledge, this list is correct and complete and that the requirements of paragraphs (b)(1), (2), and (3) of D-5A of this section are satisfied;

(iii) Agrees to provide corrected certifications to the extent that an amendment changes any information previously certified; and

(iv) Agrees to provide a copy of the trust instrument to the plan administrator upon demand.

(b) *Required distributions after death.* In order to satisfy the documentation requirement of this D-7 for required distributions after death, by the end of the ninth month beginning after the death of the employee, the trustee of the trust must either

(1) Provide the plan administrator with a final list of all of the beneficiaries of the trust (including contingent and remainderman beneficiaries with a description of the conditions on their entitlement) as of the date of death; certify that, to the best of the trustee's knowledge, this list is correct and complete and that the requirements of paragraph (b)(1), (2), and (3) of D-5A of this section are satisfied as of the date of death; and agree to provide a copy of the trust instrument to the plan administrator upon demand; or

(2) Provide 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.

(c) *Relief for discrepancy between trust instrument and employee certifications or earlier trust instruments.* (1) If required

distributions are determined based on the information provided to the plan administrator in certifications or trust instruments described in paragraph (a)(1), (a)(2) or (b) of this D-7A, 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 the plan administrator reasonably relied on the information provided and the minimum required 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. For purposes of determining whether the plan satisfies section 401(a)(9) for calendar years after the calendar year in which the discrepancy is discovered, if the actual beneficiaries under the trust instrument are different from the beneficiaries previously certified or listed in the trust instrument previously provided to the plan administrator, or the trust instrument specifying the actual beneficiaries does not satisfy the other requirements of paragraph (b) of D-5A of this section, the minimum required distribution will be determined by treating the beneficiaries of the employee as having been changed in the calendar year in which the discrepancy was discovered to conform to the corrected information and by applying the change in beneficiary provisions of E-5 of this section.

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

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Michael P. Dolan,  
*Deputy Commissioner of  
Internal Revenue.*

(Filed by the Office of the Federal Register on December 29, 1997, 8:45 a.m., and published in the issue of the Federal Register for December 30, 1997, 62 F.R. 67780)