
“Is That Your ‘Final’ Answer?”: An Analysis of the Final 401(a)(9) Regulations*

By
Robert S. Keebler,
Michelle L. Ward
and
Matthew C. Zuengler

Robert Keebler, Michelle Ward and Matthew Zuengler analyze the final Code Sec. 401(a)(9) required distribution regulations.

On April 16, 2002, the IRS issued the long-awaited final Code Sec. 401(a)(9) regulations. For the most part, these regulations have significantly simplified lifetime distribution planning in comparison to the 1987 proposed regulations. However, these regulations have considerably complicated the issue of naming a trust as the beneficiary of an IRA. In fact, the law is more complex than was the case under either the 1987 or 2001 proposed regulations. This article explores lifetime distributions, post-mortem distributions and estate planning for IRAs payable to trusts.

Lifetime Distributions

Gone are the days (at least for now) of electing the nonrecalculation, recalculation and hybrid methods for determining required minimum distributions. Building upon the simplifications made in the 2001 proposed regulations, the final regulations have, for the most part, streamlined the calculation of the

annual required minimum distribution rules. In addition, as directed by the Economic Growth and Tax Relief Reconciliation Act of 2001,¹ the final regulations have updated the life expectancy tables to reflect current mortality. For the majority of taxpayers, these new life expectancy tables will produce slightly lower required minimum distributions. For most individuals, the required minimum distributions will be calculated based on Chart 1.²

Chart 1 is used for determining lifetime required minimum distributions for everyone except those individuals whose spouses are named as sole beneficiary and such spouse is more than 10 years younger than the IRA owner.³ If this is the case, the joint life expectancy under Reg.

Analysis of the Final 401(a)(9) Regulations

Chart 1

UNIFORM LIFETIME TABLE FOR DETERMINING FACTOR			
LIFETIME DISTRIBUTIONS			
Attained Age in Year of Distribution	Applicable Divisor Under Final Regulations	Attained Age in Year of Distribution	Applicable Divisor Under Final Regulations
70	27.4	93	9.6
71	26.5	94	9.1
72	25.6	95	8.6
73	24.7	96	8.1
74	23.8	97	7.6
75	22.9	98	7.1
76	22.0	99	6.7
77	21.2	100	6.3
78	20.3	101	5.9
79	19.5	102	5.5
80	18.7	103	5.2
81	17.9	104	4.9
82	17.1	105	4.5
83	16.3	106	4.2
84	15.5	107	3.9
85	14.8	108	3.7
86	14.1	109	3.4
87	13.4	110	3.1
88	12.7	111	2.9
89	12.0	112	2.6
90	11.4	113	2.4
91	10.8	114	2.1
92	10.2	115 and older	1.9

IRA balance is \$1 million. By referencing Chart 1, his applicable life expectancy is 20.3 under the final regulations. His required minimum distribution for 2003 is \$49,261.08 (\$1 million/20.3). Under the 2001 proposed regulations, his life expectancy would have been 19.2, resulting in a required minimum distribution of \$52,083.33 (\$1 million/19.2).

Chart 2 illustrates how the life expectancy tables under the final regulations will allow John (and most taxpayers) the greater opportunity for tax-deferred growth versus those under the prior proposed regulations.⁴

Chart 2

Age	UNDER FINAL REGULATIONS				UNDER PRIOR PROPOSED REGULATIONS			
	Beginning Balance	Life Exp.	Required Distribution	Ending Outside Balance Including IRA	Beginning Balance	Life Exp.	Required Distribution	Ending Outside Balance Including IRA
70	1,000,000	27.4	(36,496)	\$1,085,356	1,000,000	26.2	(38,168)	\$1,084,685
71	1,059,854	26.5	(39,994)	\$1,177,206	1,058,015	25.3	(41,819)	\$1,175,707
72	1,121,845	25.6	(43,822)	\$1,275,959	1,117,816	24.4	(45,812)	\$1,273,448
73	1,185,826	24.7	(48,009)	\$1,382,038	1,179,204	23.5	(50,179)	\$1,378,303
74	1,251,598	23.8	(52,588)	\$1,495,880	1,241,928	22.7	(54,710)	\$1,490,771
75	1,318,911	22.9	(57,594)	\$1,617,934	1,305,939	21.8	(59,905)	\$1,611,190
76	1,387,448	22.0	(63,066)	\$1,748,660	1,370,637	20.9	(65,581)	\$1,739,981
77	1,456,821	21.2	(68,718)	\$1,888,657	1,435,562	20.1	(71,421)	\$1,877,711
78	1,526,913	20.3	(75,217)	\$2,038,298	1,500,555	19.2	(78,154)	\$2,024,694
79	1,596,865	19.5	(81,891)	\$2,198,233	1,564,641	18.4	(85,035)	\$2,181,542
80	1,666,472	18.7	(89,116)	\$2,369,005	1,627,567	17.6	(92,475)	\$2,348,741
81	1,735,092	17.9	(96,932)	\$2,551,163	1,688,601	16.8	(100,512)	\$2,526,782
82	1,801,975	17.1	(105,379)	\$2,745,267	1,746,898	16.0	(109,181)	\$2,716,154
83	1,866,256	16.3	(114,494)	\$2,951,877	1,801,489	15.3	(117,744)	\$2,917,657
84	1,926,938	15.5	(124,319)	\$3,171,559	1,852,119	14.5	(127,732)	\$3,131,532
85	1,982,881	14.8	(133,978)	\$3,405,239	1,896,825	13.8	(137,451)	\$3,358,665
86	2,033,793	14.1	(144,241)	\$3,653,600	1,935,311	13.1	(147,734)	\$3,599,670
87	2,078,508	13.4	(155,113)	\$3,917,344	1,966,335	12.4	(158,575)	\$3,855,175
88	2,115,735	12.7	(166,593)	\$4,197,192	1,988,536	11.8	(168,520)	\$4,126,408
89	2,144,056	12.0	(178,671)	\$4,493,891	2,002,017	11.1	(180,362)	\$4,413,569
90	2,161,923	11.4	(189,642)	\$4,808,887	2,003,821	10.5	(190,840)	\$4,718,108
91	2,169,509	10.8	(200,880)	\$5,143,188	1,994,279	9.9	(201,442)	\$5,040,994
92	2,165,491	10.2	(212,303)	\$5,497,878	1,972,120	9.4	(209,800)	\$5,384,189
93	2,148,507	9.6	(223,803)	\$5,874,131	1,938,552	8.8	(220,290)	\$5,748,076
94	2,117,174	9.1	(232,657)	\$6,274,266	1,890,089	8.3	(227,722)	\$6,135,060
95	2,072,970	8.6	(241,043)	\$6,699,942	1,828,604	7.8	(234,436)	\$6,546,837

Example 2. Same facts as Example 1 except that John names a trust, which does not qualify as a designated beneficiary. The lifetime distributions are exactly the same as Example 1.

A taxpayer's first distribution is not required until his "required beginning date," which is April 1 following the year in which he/she turns 70 1/2.⁵ Under the final regulations, contributions after the end of the year (a prior year's IRA contribution made between January 1 and April 15 of the age 70 1/2 year), or a distribution after the end of the year (the first distribution taken between January 1 and April 1 of the year after the account holder reaches 70 1/2) will no longer be reflected in the computation of the following year's required minimum distribution.⁶

Rollovers and recharacterizations, however, will continue to be reflected.⁷

\$1.401(a)(9)-9 Q&A 3 of the IRA owner and the spouse is used.

Mechanically, to determine one's required minimum distribution, one simply takes the IRA balance on December 31 of the year preceding the distribution di-

vided by the applicable life expectancy factor.

Example 1. John is age 78 in 2003. He has named his son as his primary beneficiary. On December 31, 2002, his

Chart 3

	Death Before Required Beginning Date	Death on or After Required Beginning Date
Designated Beneficiary-Non Spouse	The first-year distribution (year after the year of death) is determined based upon corresponding life expectancy factor for the designated beneficiary's age in the year of the first distribution by reference to the single life table. For succeeding years, this factor is reduced by one.	An RMD must be taken for the year of the decedent's death based upon the decedent's age in the year of death only if not previously taken (the joint life expectancy may apply if the spouse is more than 10 years younger than the owner). The second-year distribution is determined based upon the corresponding life expectancy factor for the designated beneficiary's (or the owner's, if the owner is younger than the designated beneficiary) age in the year of the second distribution by reference to the single life table. For succeeding years, this factor is reduced by one.
No Designated Beneficiary	Entire balance must be distributed no later than December 31 of the fifth anniversary year of the decedent's death.	An RMD must be taken for the year of the decedent's death based upon the decedent's age in year of death based on the uniform lifetime table only if not previously taken. The second-year distribution is determined by referencing the owner's age in year of death in the single life table. The factor is then reduced by one for each succeeding year.
Spouse as Designated Beneficiary-No Rollover	<p>Spouse may defer required distributions until the year the owner would have reached age 70½. In this year, the RMD is calculated based upon the spouse's life expectancy by referencing her attained age for the year of distribution based on the single life table. For each succeeding year, the surviving spouse references his or her age under the single life table. (RECALC'D)</p> <p>Upon the death of the surviving spouse: (1) If the surviving spouse dies prior to the year in which the owner would have been age 70½, the spouse is deemed to be the owner/participant and a beneficiary is determined as of September 30 of the year following death. In this following year, such beneficiary must begin to receive RMDs based upon his or her corresponding life expectancy under the single life table. For each succeeding year, the factor is reduced by one.</p> <p>(2) If the surviving spouse dies on or after the date in which the owner would have reached age 70½, an RMD for the current year must be taken. Thereafter, RMDs are calculated based upon the now deceased surviving spouse's life expectancy by reference to his or her attained age in the year of death by reference to the single life table. For each succeeding year, the factor is reduced by one.</p>	<p>An RMD must be taken for the year of the decedent's death based upon the decedent's age in the year of death based on the uniform lifetime table only if not previously taken. Thereafter, the applicable distribution period is the longer of: (1) the surviving spouse's life expectancy based on the single life table using the surviving spouse's birthday for each distribution calendar year after the calendar year of the employee's death up through the calendar year of the spouse's death. For each succeeding year, this process is repeated (RECALC'D); or (2) the life expectancy of the deceased spouse under the single life table using the age of the deceased spouse as of his or her birthday in the year of death, whereby in subsequent years, this factor is reduced by one.</p> <p>Upon death of the surviving spouse, the RMD determined above must be withdrawn for the year of death. For subsequent years, the RMD factor is fixed based upon the method employed above; note, if surviving spouse's life expectancy is being used, his or her life expectancy is now fixed based upon the age of this spouse in the year of death by reference to the single life table. For each succeeding year, the factor is reduced by one.</p>
Spouse as Designated Beneficiary-Rollover	RMDs begin the year the spouse reaches age 70½ (subject to deferral to April 1 of year following). If the spouse is already age 70½, RMDs begin by December 31 of the year following the rollover. For such years, RMDs based upon the spouse's life expectancy factor are determined under the uniform lifetime table. (RECALC'D)	An RMD must be taken for the year of the decedent's death based upon the decedent's age in the year of death based on the uniform lifetime table only if not previously taken. Future year RMDs are based upon the surviving spouse's life expectancy factor by reference to the uniform lifetime table. (RECALC'D)

Chart 4

Single Life Table					
Age	Multiple	Age	Multiple	Age	Multiple
0	82.4	37	46.5	74	14.1
1	81.6	38	45.6	75	13.4
2	80.6	39	44.6	76	12.7
3	79.7	40	43.6	77	12.1
4	78.7	41	42.7	78	11.4
5	77.7	42	41.7	79	10.8
6	76.7	43	40.7	80	10.2
7	75.8	44	39.8	81	9.7
8	74.8	45	38.8	82	9.1
9	73.8	46	37.9	83	8.6
10	72.8	47	37.0	84	8.1
11	71.8	48	36.0	85	7.6
12	70.8	49	35.1	86	7.1
13	69.9	50	34.2	87	6.7
14	68.9	51	33.3	88	6.3
15	67.9	52	32.3	89	5.9
16	66.9	53	31.4	90	5.5
17	66.0	54	30.5	91	5.2
18	65.0	55	29.6	92	4.9
19	64.0	56	28.7	93	4.6
20	63.0	57	27.9	94	4.3
21	62.1	58	27.0	95	4.1
22	61.1	59	26.1	96	3.8
23	60.1	60	25.2	97	3.6
24	59.1	61	24.4	98	3.4
25	58.2	62	23.5	99	3.1
26	57.2	63	22.7	100	2.9
27	56.2	64	21.8	101	2.7
28	55.3	65	21.0	102	2.5
29	54.3	66	20.2	103	2.3
30	53.3	67	19.4	104	2.1
31	52.4	68	18.6	105	1.9
32	51.4	69	17.8	106	1.7
33	50.4	70	17.0	107	1.5
34	49.4	71	16.3	108	1.4
35	48.5	72	15.5	109	1.2
36	47.5	73	14.8	110	1.1
				110+	1.0

Example 3. Jane is age 73 in 2004. On December 30, 2003, she moved her \$1 million IRA from custodian A to custodian B via a distribution powered by a rollover transfer within 60 days. Accordingly, on December 31, 2003, Jane truly had no IRA balance in an individual

retirement account. However, within the next 60 days, the rollover occurred. In this instance, the rollover in transit must be reflected in Jane's required minimum distribution. Jane's 2004 required minimum distribution will therefore be \$40,485.83 (\$1 million/24.7).

Post-Mortem Distributions

Default Rule

The final regulations maintain the change made under the 2001 proposed regulations that, absent a plan provision or election of the five-year rule, the life expectancy rule applies in cases in which the IRA owner has a designated beneficiary. In cases in which the IRA owner dies without a designated beneficiary, the five-year rule applies if the IRA owner dies prior to his/her required beginning date. The remaining "theoretical" life expectancy rule is applicable where death occurs after an IRA owner's required beginning date.⁸

The final regulations also provide an "opt out" for some IRA beneficiaries who previously had to distribute an inherited IRA under the five-year rule. If a beneficiary of a previously deceased IRA owner fell under the five-year rule, either by affirmative election or default provisions, he/she may, if the plan so provides, switch to using the life expectancy rule of Code Sec. 401(a)(9)(b)(iii) as long as any amounts that would have been required to be distributed under the life expectancy rule for all distribution years before 2004 are distributed by the earlier of December 31, 2003, or the end of the five-year period.⁹ Such a rule, of course, will not help those taxpayers who fall under the five-year rule because the IRA owner died before his/her required beginning date without a designated beneficiary.

Distribution Period

Generally, if an individual has a designated beneficiary, distributions after the death of the IRA

Chart 5

Year	DISTRIBUTIONS OVER JOHN'S SISTER'S LIFE EXPECTANCY				DISTRIBUTIONS OVER JOHN'S LIFE EXPECTANCY			
	Beginning Balance	Life Exp.	Required Distribution	Ending Outside Balance Including IRA	Beginning Balance	Life Exp.	Required Distribution	Ending Outside Balance Including IRA
1	1,000,000	9.1	(109,890)	\$1,055,907	1,000,000	15.5	(64,516)	\$1,074,113
2	979,121	8.1	(120,879)	\$1,111,075	1,029,032	14.5	(70,968)	\$1,151,921
3	944,066	7.1	(132,967)	\$1,164,654	1,053,871	13.5	(78,065)	\$1,233,339
4	892,209	6.1	(146,264)	\$1,215,620	1,073,387	12.5	(85,871)	\$1,318,218
5	820,540	5.1	(160,890)	\$1,262,748	1,086,268	11.5	(94,458)	\$1,406,340
6	725,614	4.1	(176,979)	\$1,304,581	1,090,991	10.5	(103,904)	\$1,497,399
7	603,499	3.1	(194,677)	\$1,339,398	1,085,795	9.5	(114,294)	\$1,590,988
8	449,704	2.1	(214,145)	\$1,365,170	1,068,651	8.5	(125,724)	\$1,686,582
9	259,115	1.1	(235,559)	\$1,379,518	1,037,220	7.5	(138,296)	\$1,783,515
10	25,912	0.1	(25,912)	\$1,473,232	988,817	6.5	(152,126)	\$1,880,958
11	0		0	\$1,583,725	920,360	5.5	(167,338)	\$1,977,895
12	0		0	\$1,702,504	828,324	4.5	(184,072)	\$2,073,086
13	0		0	\$1,830,192	708,677	3.5	(202,479)	\$2,165,040
14	0		0	\$1,967,456	556,818	2.5	(222,727)	\$2,251,969
15	0		0	\$2,115,016	367,500	1.5	(245,000)	\$2,331,748
16	0		0	\$2,273,642	134,750	0.5	(134,750)	\$2,455,929
17	0		0	\$2,444,165	0		0	\$2,640,124
18	0		0	\$2,627,477	0		0	\$2,838,133
19	0		0	\$2,824,538	0		0	\$3,050,993
20	0		0	\$3,036,379	0		0	\$3,279,817
21	0		0	\$3,264,107	0		0	\$3,525,804
22	0		0	\$3,508,915	0		0	\$3,790,239
23	0		0	\$3,772,084	0		0	\$4,074,507
24	0		0	\$4,054,990	0		0	\$4,380,095
25	0		0	\$4,359,114	0		0	\$4,708,602
26	0		0	\$4,686,048	0		0	\$5,061,747

owner will be based on the life expectancy of such designated beneficiary using the updated life expectancy table, known as the "Single Life Table" (see Chart 4).

If an IRA owner dies without a designated beneficiary, the IRA must be taken out either within five years (if the IRA owner dies before his/her required beginning date) or over the "theoretical" life expectancy of the IRA owner (if the IRA owner dies after his/her required beginning date).¹⁰

Under the 2001 proposed regulations, when death occurred after the required beginning date, post-death distributions were made over the life expectancy of the designated beneficiary. The final regulations state that the distribution period will be the *longer* of the life expectancy of the designated beneficiary or the deceased IRA owner.¹¹ Thus, if the benefi-

ciary is older than the account holder, the final regulations actually provide a longer payout than the proposed regulations did.

Example 4. John names his sister, age 82, as primary beneficiary of his IRA. John dies at age 72. Under the prior rules, John's sister would have had to use her life expectancy of 9.1 years. However, under the final regulations, she would be allowed to use John's remaining "ghost" life expectancy of 15.5 years because his life expectancy is longer. Chart 5 shows this comparison.¹²

Determination of Designated Beneficiary

Whether a person actually *has* a designated beneficiary and *who* such beneficiary is, is now deter-

mined on September 30 of the year following the year of the IRA owner's death.¹³ This is a change from the December 31 deadline date set forth in the 2001 proposed regulations.¹⁴ This new, earlier, date will allow taxpayers time, after the designated beneficiary is determined, to take the proper required minimum distribution for the year following the year of death. By delaying the determination of the designated beneficiary until after an individual's death, post-mortem planning—such as disclaimers, separate shares and "cash outs"—becomes extremely important. However, in order to take advantage of these post-mortem planning opportunities, it is imperative that the beneficiary designation form establishes a well-thought-out succession of beneficiaries. For instance, the following example illustrates how qualified¹⁵ disclaimers can be utilized after an IRA owner's death to eliminate certain beneficiaries.

Example 5. In 2003, Jane, age 76, names her 76-year-old husband, John, as primary beneficiary of her \$1 million IRA, and their child, Bill, age 46, is named contingent beneficiary. Jane dies in 2004. If John were to perform a rollover, because he is past his required beginning date, he would be required to take lifetime distributions based on the Uniform Lifetime Table. If he is not in need of the IRA funds, a qualified disclaimer could be utilized. This would result in Bill being the designated beneficiary, thus allowing the IRA to be distributed over Bill's life expectancy of 37 years.

Chart 6

ENTIRELY OVER JANE'S LIFE EXPECTANCY				
Year	Beginning Balance	Life Exp.	Required Distribution	Ending Outside Balance Including IRA
1	1,000,000	20.3	(49,261)	\$1,080,234
2	1,045,813	12.1	(86,431)	\$1,152,716
3	1,055,320	11.1	(95,074)	\$1,227,405
4	1,056,271	10.1	(104,581)	\$1,303,904
5	1,046,859	9.1	(115,039)	\$1,381,708
10	759,616	4.1	(185,272)	\$1,762,410
14	27,126	0.1	(27,126)	\$2,072,044
15	0		0	\$2,227,447
20	0		0	\$3,197,789
25	0		0	\$4,590,840
30	0		0	\$6,590,744
35	0		0	\$9,461,865
40	0		0	\$13,583,731
45	0		0	\$19,501,203
50	0		0	\$27,996,499
55	0		0	\$40,192,595
60	0		0	\$57,701,668
65	0		0	\$82,838,207
66	0		0	\$89,051,072
67	0		0	\$95,729,903

Example 6. In 2003, John, age 65, names his daughter, Janie, and his favorite charity as equal primary beneficiaries of his \$1 million IRA. John dies in 2004 at age 66. Generally, because the charity is named as one of the primary beneficiaries, the IRA would have to be distributed under the five-year rule. However, if the charity can be cashed out by September 30, 2005 (the year after the year of death), Janie can take her share of the IRA out over her life expectancy.

The final regulations make an important change with respect to an unintended "glitch" under the 2001 proposed regulations. Under the 2001 proposed regulations, the death of a beneficiary between the IRA owner's death and the date of

determining the designated beneficiary resulted in the deceased beneficiary's estate becoming the beneficiary. This, of course, resulted in the IRA not having a "designated beneficiary." Under the final regulations, if an individual who is a beneficiary as of the date of the IRA owner's death dies prior to September 30 of the year following the year of the IRA owner's death (without disclaiming), that deceased beneficiary will continue to be treated as a beneficiary as of September 30 of the calendar year following the calendar year of the IRA owner's death for

determining the IRA owner's designated beneficiary without regard to the identity of the successor beneficiary who is entitled to the distributions due to the first beneficiary's death.¹⁶

Estate as Beneficiary

Under an interpretation of the 2001 proposed regulations, some thought that it was possible to "look through" an estate where an estate was named or defaulted as beneficiary to the individual estate beneficiaries, provided that the IRA assets were distributed out of the estate by the beneficiary determination date. Doing so would "fix" the problem of having no designated beneficiary and allow for use of the oldest estate beneficiary's life expectancy. The final regulations, however, have now made it clear that "looking through" an estate to use the estate beneficiaries' life ex-

pectancies will not be allowed. If an individual is to be considered a designated beneficiary, he/she must have been actually designated under the plan or named by the employee as of the date of his or her death.¹⁷ It does appear, however, that the IRA could be assigned to an estate beneficiary with the beneficiary taking required minimum distributions under the nondesignated beneficiary rules.

Separate Accounts

Individuals. In order for each individual designated beneficiary to use his or her life expectancy for determining required minimum distributions, the final regulations provide that separate accounts must be established no later than December 31 of the year following the year of the IRA owner's death.¹⁸ However, because a designated beneficiary is determined by September 30 of the year following the year of the IRA owner's death, prudence suggests that separate accounts should be established no later than that date in order for each individual designated beneficiary to be considered the sole designated beneficiary of such account.

Example 7. John, a widower, names his sister, Jane (age 77), his child, John, Jr. (age 47) and his grandchild, Janie (age 17), as equal primary beneficiaries of his IRA. John dies in 2004 at age 78. Because separate shares are created in the beneficiary designation form by September 30 of the year following the year of John's death, each beneficiary can use his/her individual life expectancy as opposed to the entire IRA being taken out over Jane's life expectancy as the oldest ben-

eficiary. Charts 6 and 7 illustrate the benefit of this separate share treatment.¹⁹

Trusts. In order for each individual trust beneficiary to use his or her life expectancy for determining required minimum distributions, separate accounts must be established in the IRA owner's designated beneficiary form and the trust document. If separate shares are created in the trust document, but not in the designated beneficiary form, it appears that separate share treatment will not be allowed.²⁰ Again, prudence would suggest that separate accounts should be established under the beneficiary designation no later than September 30 of the year following the year of the IRA owner's death.

Surviving Spouse Rollover Election

The surviving spouse of an IRA owner who is the sole beneficiary of the IRA may elect to treat the

IRA as his or her own *at any time* after the IRA owner's date of death.²¹ This differs from the 2001 proposed regulations in that the surviving spouse was only allowed to make this election *after* the required minimum distribution was made for the year of the IRA owner's death. In order to make this election, the surviving spouse must be the "sole beneficiary" of the IRA and have an unlimited right to withdraw amounts from the IRA.²²

Under the final regulations, if the surviving spouse rolls over the IRA in the year of the owner's death, the surviving spouse is not required to take his/her required minimum distribution as the IRA owner for that calendar year. The surviving spouse must, however, take a "lifetime" required minimum distribution for the year of death based on the deceased spouse's life expectancy using the lifetime distribution table (Chart 1).²³ A technical reading of the 2001 proposed regulations re-

quired two required distributions under this scenario.²⁴

These final regulations maintain the requirement that in order for a surviving spouse to make such an election, he or she must be the *sole beneficiary* of the account, and that this requirement is not satisfied if a trust is named as beneficiary of the IRA even if the spouse is the sole beneficiary of such trust.²⁵ Recall, however, that post-mortem planning may sometimes be employed to ultimately distribute an IRA free of trust to thereafter allow a spousal rollover.²⁶

Example 8. Surviving spouse is the trustee of a trust that is named as beneficiary of her deceased husband's IRA. Surviving spouse is also the sole beneficiary of the trust. Surviving spouse, as trustee, must distribute the entire trust corpus to the surviving spouse if the surviving spouse so demands. Surviving spouse, as beneficiary, demands a distri-

Chart 7

Year	1/3 OVER JANE'S LIFE EXPECTANCY				1/3 OVER JOHN, JR'S LIFE EXPECTANCY				1/3 OVER JANIE'S LIFE EXPECTANCY			
	Beginning Balance	Life Exp.	RMD	Ending Outside Balance Including IRA	Beginning Balance	Life Exp.	RMD	Ending Outside Balance Including IRA	Beginning Balance	Life Exp.	RMD	Ending Outside Balance Including IRA
1	333,333	20.3	(16,420)	\$360,078	333,333	20.3	(16,420)	\$360,078	333,333	20.3	(16,420)	\$360,078
2	348,604	12.1	(28,810)	\$384,238	348,604	37.0	(9,422)	\$392,018	348,604	66.0	(5,282)	\$393,679
3	351,773	11.1	(31,691)	\$409,135	373,100	36.0	(10,364)	\$426,588	377,654	65.0	(5,810)	\$430,315
4	352,090	10.1	(34,860)	\$434,634	399,010	35.0	(11,400)	\$463,983	409,029	64.0	(6,391)	\$470,250
5	348,953	9.1	(38,346)	\$460,569	426,371	34.0	(12,540)	\$504,410	442,901	63.0	(7,030)	\$513,771
10	253,205	4.1	(61,757)	\$587,470	585,693	29.0	(20,196)	\$760,099	656,686	58.0	(11,322)	\$796,959
14	9,042	0.1	(9,042)	\$690,681	739,235	25.0	(29,569)	\$1,044,870	895,147	54.0	(16,577)	\$1,127,468
15	0		0	\$742,482	780,633	24.0	(32,526)	\$1,129,699	966,427	53.0	(18,234)	\$1,228,872
20	0		0	\$1,065,929	995,297	19.0	(52,384)	\$1,652,514	1,409,607	48.0	(29,367)	\$1,883,132
25	0		0	\$1,530,278	1,181,110	14.0	(84,365)	\$2,371,431	2,033,708	43.0	(47,296)	\$2,866,766
30	0		0	\$2,196,912	1,222,836	9.0	(135,871)	\$3,321,793	2,894,457	38.0	(76,170)	\$4,333,096
35	0		0	\$3,153,952	875,284	4.0	(218,821)	\$4,504,982	4,048,190	33.0	(122,672)	\$6,497,715
38	0		0	\$3,918,145	291,251	1.0	(291,251)	\$5,296,214	4,898,310	30.0	(163,277)	\$8,250,853
40	0		0	\$4,527,906	0		0	\$6,120,437	5,531,825	28.0	(197,565)	\$9,656,423
45	0		0	\$6,500,395	0		0	\$8,786,680	7,318,155	23.0	(318,181)	\$14,201,444
50	0		0	\$9,332,157	0		0	\$12,614,415	9,223,797	18.0	(512,433)	\$20,626,968
55	0		0	\$13,397,518	0		0	\$18,109,624	10,728,623	13.0	(825,279)	\$29,504,644
60	0		0	\$19,233,870	0		0	\$25,998,707	10,632,957	8.0	(1,329,120)	\$41,389,949
65	0		0	\$27,612,708	0		0	\$37,324,506	6,421,681	3.0	(2,140,560)	\$56,583,596
66	0		0	\$29,683,661	0		0	\$40,123,844	4,709,233	2.0	(2,354,616)	\$60,000,306
67	0		0	\$31,909,936	0		0	\$43,133,133	2,590,078	1.0	(2,590,078)	\$63,525,812

Chart 8

OVER JOHN, JR'S LIFE EXPECTANCY					OVER JOHN, JR'S AUNT'S LIFE EXPECTANCY				
Year	Beginning Balance	Life Exp.	Required Distribution	Ending Outside Balance Including IRA	Year	Beginning Balance	Life Exp.	Required Distribution	Ending Outside Balance Including IRA
1	1,000,000	67.9	(14,728)	\$1,094,091	1	1,000,000	29.6	(33,784)	\$1,066,444
2	1,083,800	66.9	(16,200)	\$1,196,742	2	1,062,838	28.6	(37,162)	\$1,179,587
3	1,174,359	65.9	(17,820)	\$1,308,706	3	1,128,243	27.6	(40,878)	\$1,279,860
4	1,272,193	64.9	(19,602)	\$1,430,799	4	1,196,101	26.6	(44,966)	\$1,387,709
5	1,377,850	63.9	(21,563)	\$1,563,903	5	1,266,249	25.6	(49,463)	\$1,503,597
10	2,045,407	58.9	(34,727)	\$2,431,030	10	1,641,004	20.6	(79,660)	\$2,220,494
15	3,014,509	53.9	(55,928)	\$3,755,963	15	2,001,384	15.6	(128,294)	\$3,210,854
20	4,404,535	48.9	(90,072)	\$5,766,619	20	2,190,157	10.6	(206,619)	\$4,523,317
25	6,368,237	43.9	(145,062)	\$8,795,145	25	1,863,463	5.6	(332,761)	\$6,156,118
30	9,087,987	38.9	(233,624)	\$13,318,736	30	321,549	0.6	(321,549)	\$8,060,002
35	12,755,022	33.9	(376,254)	\$20,010,801	35	0	0	0	\$11,571,175
40	17,512,284	28.9	(605,961)	\$29,799,602	40	0	0	0	\$16,611,919
45	23,324,174	23.9	(975,907)	\$43,924,018	45	0	0	0	\$23,848,558
50	29,705,277	18.9	(1,571,708)	\$63,960,489	50	0	0	0	\$34,237,689
55	35,184,390	13.9	(2,531,251)	\$91,764,303	55	0	0	0	\$49,152,630
60	36,281,786	8.9	(4,076,605)	\$129,209,433	60	0	0	0	\$70,564,957
65	25,605,112	3.9	(6,565,413)	\$177,501,057	65	0	0	0	\$101,305,122
68	7,864,709	0.9	(7,864,709)	\$211,785,195	68	0	0	0	\$125,851,036

bution of the IRA assets and surviving spouse, as trustee, complies. Surviving spouse could then roll the IRA into an IRA in her own name.

Example 9. Bank X is the trustee of a trust that is named as beneficiary of an IRA. The deceased IRA owner's surviving spouse is the sole beneficiary of the trust. By terms of the trust, the trustee must distribute the entire trust corpus to the surviving spouse if the surviving spouse so demands. Surviving spouse demands a distribution of the IRA assets and Bank X, as trustee, complies. Surviving spouse could then roll the IRA into an IRA in her own name.

Trust As Designated Beneficiary

The final regulations maintain the same four requirements that must be met in order for a trust to be a designated beneficiary.²⁷ The documentation requirement of Reg. §1.401(a)(9)-4 Q&A 6 has been slightly modified, however.

For required minimum distributions after the death of the employee, the proper documentation must be provided by October 31 of the calendar year following the calendar year in which the employee died.²⁸ Under the 2001 proposed regulations, this date was December 31 of the year following the year of the employee's death. The actual documentation that is required under the final regulations remains unchanged from the 2001 proposed regulations.

The final regulations also provide amnesty where an otherwise qualified trust previously failed to meet the requirements of Reg. §1.401(a)(9)-4 Q&A 5 solely because the proper trust documentation was not provided to the plan administrator. In this case, if proper documentation is provided to the plan administrator by October 31, 2003, the beneficiaries of the trust will be treated as designated beneficiaries of the employee for purposes of determining required minimum distributions.²⁹

Significant issues have been raised by the final regulations, however, regarding the treatment of a trust as designated beneficiary.

The final regulations expand on which beneficiaries must be taken into account when determining who is the IRA owner's designated beneficiary. If a beneficiary's entitlement to an IRA owner's benefit after the IRA owner's death is a contingent right, such contingent beneficiary is nevertheless considered to be a beneficiary for purposes of determining whether a person other than an individual is designated as a beneficiary and which designated beneficiary has the shortest life expectancy.³⁰ The 2001 proposed regulations contained the following contingent beneficiary language:

(c) Death contingency. (1) If a beneficiary (subsequent beneficiary) is entitled to any portion of an employee's benefit only if another beneficiary dies before the entire benefit to which that other beneficiary is entitled has been distributed by the plan, the subsequent beneficiary will not be considered a beneficiary for purposes of determining who is the designated beneficiary with the shortest life expectancy under paragraph (a) of this A-7 or whether a beneficiary who is not an individual is a beneficiary. This rule does not apply if the other beneficiary dies prior to the applicable date for determining the designated beneficiary.³¹

In the final regulations, this language was eliminated and the following language was introduced:

Successor beneficiary—(1) A person will not be considered a beneficiary for purposes of determining who is the beneficiary with the shortest life expectancy under paragraph

Chart 9

Year	OVER BILL'S LIFE EXPECTANCY				UNDER FIVE-YEAR RULE			
	Beginning Balance	Life Exp.	Required Distribution	Ending Outside Balance including IRA	Beginning Balance	Life Exp.	Required Distribution	Ending Outside Balance including IRA
1	1,000,000	76.7	(13,038)	\$1,094,769	1,000,000		0	\$1,100,000
2	1,085,658	75.7	(14,342)	\$1,198,263	1,100,000		0	\$1,210,000
3	1,178,449	74.7	(15,776)	\$1,311,264	1,210,000		0	\$1,331,000
4	1,278,940	73.7	(17,353)	\$1,434,619	1,331,000		0	\$1,464,100
5	1,387,745	72.7	(19,089)	\$1,569,250	1,464,100	1.0	(1,464,100)	\$1,023,040
6	1,505,522	71.7	(20,998)	\$1,716,157	0		0	\$1,099,768
7	1,632,977	70.7	(23,097)	\$1,876,425	0		0	\$1,182,250
8	1,770,868	69.7	(25,407)	\$2,051,234	0		0	\$1,270,919
9	1,920,007	68.7	(27,948)	\$2,241,863	0		0	\$1,366,238
10	2,081,265	67.7	(30,742)	\$2,449,699	0		0	\$1,468,706
11	2,255,575	66.7	(33,817)	\$2,676,247	0		0	\$1,578,859
12	2,443,934	65.7	(37,198)	\$2,923,138	0		0	\$1,697,273
13	2,647,410	64.7	(40,918)	\$3,192,140	0		0	\$1,824,569
14	2,867,141	63.7	(45,010)	\$3,485,168	0		0	\$1,961,412
15	3,104,343	62.7	(49,511)	\$3,804,298	0		0	\$2,108,517
16	3,360,316	61.7	(54,462)	\$4,151,776	0		0	\$2,266,656
17	3,636,439	60.7	(59,908)	\$4,530,031	0		0	\$2,436,656
18	3,934,184	59.7	(65,899)	\$4,941,696	0		0	\$2,619,405
19	4,255,113	58.7	(72,489)	\$5,389,615	0		0	\$2,815,860
20	4,600,886	57.7	(79,738)	\$5,876,864	0		0	\$3,027,050
21	4,973,263	56.7	(87,712)	\$6,406,765	0		0	\$3,254,078
22	5,374,106	55.7	(96,483)	\$6,982,912	0		0	\$3,498,134
23	5,805,385	54.7	(106,131)	\$7,609,180	0		0	\$3,760,494
24	6,269,179	53.7	(116,744)	\$8,289,754	0		0	\$4,042,531
25	6,767,678	52.7	(128,419)	\$9,029,149	0		0	\$4,345,721
26	7,303,185	51.7	(141,261)	\$9,832,234	0		0	\$4,671,650

(a) of this A-7, or whether a person who is not an individual is a beneficiary, merely because the person could become the successor to the interest of one of the employee's beneficiaries after that beneficiary's death. However, the preceding sentence does not apply to a person who has any right (including a contingent right) to an employee's benefit beyond being a mere potential successor to the interest of one of the employee's beneficiaries upon that beneficiary's death. Thus, for example, if the first beneficiary has a right to all income with respect to an employee's individual account during that beneficiary's life and a second beneficiary has a right to the principal but only after the death of the first income beneficiary (any portion of the principal distributed during the life of the first income

beneficiary to be held in trust until that first beneficiary's death), both beneficiaries must be taken into account in determining the beneficiary with the shortest life expectancy and whether only individuals are beneficiaries.

A person will not be considered a beneficiary, however, merely because the person could become the successor to the interest of one of the IRA owner's beneficiaries after that beneficiary has died.³² This rule does not apply to a person who has any right (including contingent right) to an IRA owner's benefit beyond being a "mere potential successor" to the interest of one of the IRA owner's beneficiaries upon that beneficiary's death.³³ For example, if the primary beneficiary of a trust is only entitled to trust income during his or her lifetime, the contingent beneficiary would be taken into account in determining the IRA owner's designated beneficiary.³⁴

The prior regulations were read by many to allow contingent beneficiaries to be disregarded if a trust were to terminate within a beneficiary's life expectancy. For example, if the trust distributed outright to the primary beneficiary at age 35, the contingent beneficiaries could be ignored because the primary beneficiary would receive all of the IRA assets within the trust within his/her life expectancy.

Based upon the final regulations, informal discussions with the IRS and public comments by IRS officials,³⁵ it now appears that the only kind of trust that would allow the successor beneficiaries to be disregarded is a conduit trust,³⁶ or a trust that pays outright to primary beneficiaries upon the death of the IRA owner. LTR 200228025 supports this interpretation.

In many cases, a share will be retained in trust until a beneficiary reaches a particular age. Further, and in this instance, many, if not most, trusts are drafted to prevent distribution of a trust share to a beneficiary who is younger than a particular age. Based upon the IRS's interpretation of the regulations in this letter ruling, it now appears we must inquire as to future and remote beneficiaries. If, for example, a trust is to be held for children, grandchildren and great-grandchildren, a problem exists if no grandchildren or great-grandchildren are yet born as of September 30 of the year following the year of death. In this regard, it would appear that the IRS would consider the potential for a failure of beneficiaries. A typical failure of the beneficiaries clause often will operate by tracking the laws of intestacy of an elected jurisdiction. Often, this will include the potential to include beneficiaries older than the initial trust beneficiary, but also

Chart 10

OVER JANE'S LIFE EXPECTANCY				
Year	Beginning Balance	Life Exp.	Required Distribution	Ending Outside Balance Including IRA
1	1,000,000	25.6	(39,063)	\$1,084,326
2	1,057,031	14.5	(72,899)	\$1,162,826
3	1,082,546	13.5	(80,189)	\$1,244,926
4	1,102,593	12.5	(88,207)	\$1,330,467
5	1,115,824	11.5	(97,028)	\$1,419,215
6	1,120,675	10.5	(106,731)	\$1,510,847
7	1,115,339	9.5	(117,404)	\$1,604,936
8	1,097,728	8.5	(129,145)	\$1,700,930
9	1,065,442	7.5	(142,059)	\$1,798,134
10	1,015,722	6.5	(156,265)	\$1,895,686
11	945,402	5.5	(171,891)	\$1,992,526
12	850,862	4.5	(189,080)	\$2,087,369
13	727,960	3.5	(207,989)	\$2,178,665
14	571,968	2.5	(228,787)	\$2,264,563
15	377,499	1.5	(251,666)	\$2,342,862
16	138,416	0.5	(138,416)	\$2,466,497
17	0		0	\$2,651,485
18	0		0	\$2,850,346
19	0		0	\$3,064,122
20	0		0	\$3,293,931
21	0		0	\$3,540,976
22	0		0	\$3,806,549
23	0		0	\$4,092,040
24	0		0	\$4,398,943
25	0		0	\$4,728,864
26	0		0	\$5,083,529

include the potential for escheat to a state. Based upon this interpretation, it is quite conceivable that many beneficiaries will now be penalized as their shares are held in a nonqualifying trust.

The following example illustrates a situation very similar to LTR 200228025.

Example 10. John dies in 2003, at age 45, after naming his trust as primary beneficiary of his IRA. The trust makes discretionary distributions to John's son, John, Jr., age 15. Upon John, Jr. reaching age 30, the trust pays outright to John, Jr. If John, Jr. dies before reaching

contingent beneficiaries upon the death of the IRA owner, it appears the test for identifiable beneficiaries can stop at that point.

Example 11. IRA owner has both children and grandchildren as of September 30 of the year following the year of his death. IRA is payable to a trust for the benefit of children. Upon the death of the last surviving child, the trust is distributed outright to grandchildren. If there are no surviving grandchildren, the trust is payable to a charity. In this scenario, there is no need to take the charity into account for determining designated beneficiary

age 30, the trust is distributed outright to John's sister, Jane, age 55. Jane's life expectancy will be the measuring life for determining required minimum distributions.

Chart 8 illustrates the tremendous amount of tax-deferred growth that is lost on a \$1 million IRA under this example.³⁷

If the trust is not a conduit trust or does not pay outright to primary beneficiaries upon the death of the IRA owner, it is important (for minimum distribution purposes) that contingent beneficiaries be identifiable individuals younger than the initial beneficiary. If the trust is a conduit trust or pays outright with regard to

status, as the charity is deemed to be a successor beneficiary to the grandchildren.

Example 12. IRA is payable to a trust for the benefit of Jane's son, John, Jr., age 35. The trust requires 100 percent of the IRA required minimum distributions to be paid to John, Jr. annually (*i.e.*, a conduit trust). In the event of John, Jr.'s death, the trust passes outright to Jane's 80-year-old mother. Because the trust is a conduit trust, John, Jr.'s life expectancy will be the measuring life.

Example 13. IRA is payable to a trust for the benefit of Jane's grandson, Bill, age 6. The trustee of the trust has discretion to make distributions to Bill. When Bill reaches age 30, the trust is paid outright to Bill. If Bill dies before age 30, the trust is paid to his estate. Jane dies before her required beginning date when Bill is 6. The trust is not a designated beneficiary because the estate must be taken into account in determining if all beneficiaries are individuals. Because Jane died before her required beginning date, the IRA will need to be distributed under the five-year rule.

Chart 9 illustrates the impact of having to distribute an IRA in five years.³⁸

Example 14. Same facts as previous example, except that Jane dies at age 72, after her required beginning date when Bill is age 10. The IRA will need to be distributed over Jane's remaining life expectancy.³⁹ An RMD must be taken for the

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year of Jane's death based upon her age in the year of death under the Uniform Lifetime Table. For succeeding years, determine the initial factor by referencing Jane's age in year of death in the single life table. The factor is then reduced by one for each succeeding year. Chart 10 illustrates the distributions required using Jane's life expectancy.⁴⁰

For purposes of flexibility, many planners recommend that powers of appointment be given, allowing the power-holder the ability to direct the disposition of a trust, often upon the death of a life beneficiary. Such powers, however, raise the question as to whether potential appointees must be taken into consideration in determining the "countable beneficiaries." If potential appointees must be considered, and such appointees may include nonindividuals or individuals older than the current beneficiary, the trust may not allow for designated beneficiary status. Note, however, that it is possible to draft restricted limited powers of appointment in such a fashion so as not to allow nonindividual beneficiaries or individual beneficiaries older than the then oldest beneficiary to be included with the class of potential appointees.

LTR 200235038 through LTR 200235041 illustrate this point. In these letter rulings, the power-holder was given a narrowly drafted limited power of appointment. The power of appointment could not be exercised in favor of "Disqualified Appointees," which included (1) any individual born in a calendar year prior to the calendar year of birth of the decedent's oldest living

issue at the time of the decedent's death, (2) any person other than a trust or an individual, or (3) any trust that may have as a beneficiary an individual born in a calendar year prior to the calendar year of birth of the decedent's oldest living issue at the time of the decedent's death. In this case, the IRS ruled that the trust was a valid "see-through" trust and that RMDs could be based on the oldest child's (beneficiary/powerholder) life expectancy.

Assuming that potential appointees under a power of appointment must be considered, these letter rulings provide a guide to exclude certain potential appointees who may be cause for a loss of designated beneficiary status.

Time will tell how the IRS will interpret and apply these new ambiguous provisions. Obviously, the IRS is concerned with tax-motivated planning in the context of utilizing a trust, ignoring the many nontax reasons for establishing a trust in the first place (e.g., minor child, spendthrift, divorce and creditor protection).

This new treatment of trusts by the IRS makes drafting and careful design of IRA trusts more important than ever. If the trust is not properly drafted, upon the death of the IRA owner, the IRA will have to be distributed either under the five-year rule or over the remaining life expectancy of the IRA owner, resulting in a potentially significant loss of tax-deferred growth.

Conclusion

While the final regulations greatly simplify the lifetime required minimum distribution rules in comparison to the 1987 regulations, there are many critical subtleties of which practitioners need to be acutely

aware. The complex treatment of trusts under these rules highlights the importance of sophisticated planning, drafting and careful review of trusts.

ENDNOTES

* An earlier version of this article first appeared in the July 5, 2002, issue of the *Tax Management Compensation Planning Journal*.

¹ Act Sec. 634 of the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16).

² Reg. §1.401(a)(9)-9.

³ Reg. §1.401(a)(9)-8 Q&A 6(b)(1) and Reg. §1.401(a)(9)-9 Q&A 2. Note that the final regulations make clear that for a spouse to be the sole beneficiary, such spouse must be the sole designated primary beneficiary for the entire year. Reg. §1.401(a)(9)-5 Q&A 4(b)(1). Further, the regulations make clear that the determination of "spouse" is made as of January 1 of the distribution year and is not affected by subsequent divorce or death during the distribution year.

⁴ Table assumes a 10-percent growth, a 35-percent tax on distributions and a 25-percent tax on growth.

⁵ If one defers the age 70 1/2 first-year distribution until the following year (no later than April 1), he/she will be required to take two distributions in the year following the year he/she turns 70 1/2. The first distribution is due on or before April 1 and the second distribution is required by year-end.

⁶ Reg. §1.401(a)(9)-8 Q&A 6.

⁷ Reg. §1.401(a)(9)-8 Q&A 7 and 8(b).

⁸ For further analysis of required minimum distributions when a spouse is the beneficiary, see Chart 3.

⁹ Reg. §1.401(a)(9)-1 Q&A 2(b)(2).

¹⁰ Reg. §1.401(a)(9)-3 Q&A 1(a).

¹¹ Reg. §1.401(a)(9)-5 Q&A 5(a)(1).

¹² Table assumes a 10-percent growth, a 35-percent tax on distributions and a 25-percent tax on growth.

¹³ Reg. §1.401(a)(9)-4 Q&A 4(a).

¹⁴ Proposed Reg. §1.401(a)(9)-4 Q&A 4(a).

¹⁵ The final regulations have clarified that, in order to eliminate a beneficiary by utilizing a disclaimer, such disclaimer must be qualified under Code Sec. 2518. Reg. §1.401(a)(9)-4 Q&A 4(a).

¹⁶ Reg. §1.401(a)(9)-4 Q&A 4(c).

¹⁷ Preamble to the final Code Sec. 401(a)(9) regulations. Reg. §1.401(a)(9)-4 Q&A 3.

¹⁸ Reg. §1.401(a)(9)-8 Q&A 2.

¹⁹ Table assumes a 10-percent growth, a 35-percent tax on distributions and a 25-percent tax on growth.

²⁰ See Reg. §1.401(a)(9)-4 Q&A 5(c) ("... the separate account rules under A-2 of §1.401(a)(9)-8 are not available to beneficiaries of a trust with respect to the trust's interest in the employee's benefit") and Reg.

§1.401(a)(9)-5 Q&A 7(a)(2) (“See A-3 of §1.401(a)(9)-4 for rules that apply if a person other than an individual is designated as a beneficiary and see A-2 and A-3 of §1.401(a)(9)-8 for special rules that apply if an employee’s benefit under a plan is divided into separate accounts and the beneficiaries with respect to a separate account differ from the beneficiaries of another separate account”).

²¹ Reg. §1.408(a)(9)-8 Q&A 5(a).

²² *Id.*

²³ *Id.*

²⁴ Proposed Reg. §1.408(a)(9)-8 Q&A 5(a).

²⁵ *Supra* note 21.

²⁶ See LTR 200128056 (Apr. 16, 2001), LTR 200130056 (May 3, 2001), LTR 200136030 (June 12, 2001), LTR 200136031 (June 12, 2001), LTR 200208031 (Nov. 26, 2001), LTR 200212036 (Dec. 28, 2001) and LTR 200245055 (Aug. 12, 2002).

²⁷ These rules are as follows: (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; and (4) the required documentation has been provided to the plan administrator. Reg. §1.401(a)(9)-4 Q&A 5.

²⁸ Reg. §1.401(a)(9)-4 Q&A 6.

²⁹ Reg. §1.401(a)(9)-1 Q&A 2(c).

³⁰ Reg. §1.401(a)(9)-5 Q&A 7(b).

³¹ Proposed Reg. §1.401(a)(9)-5 Q&A 7(c).

³² Reg. §1.401(a)(9)-5 Q&A 7(c).

³³ *Id.*

³⁴ See example in Reg. §1.401(a)(9)-5 Q&A 7(c).

³⁵ These comments were made during the May

23, 2002, satellite teleconference, *Estate Planning for Distributions from Qualified Plans & IRAs*, sponsored by the ALI-ABA.

³⁶ A “conduit trust” is a trust in which all distributions from the IRA would flow directly to the trust beneficiary.

³⁷ Table assumes a 10-percent growth, a 35-percent tax on distributions and a 25-percent tax on growth.

³⁸ Table assumes a 10-percent growth, a 35-percent tax on distributions and a 25-percent tax on growth.

³⁹ Had Bill reached age 30 prior to Jane’s death, he would have been entitled to the entire interest under the trust and therefore be able to use his life expectancy to calculate his required minimum distribution.

⁴⁰ Table assumes a 10-percent growth, a 35-percent tax on distributions and a 25-percent tax on growth.