

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters
(Also, Part I, §§ 401; 1.401(a)(9)-1.)

Rev. Proc. 2003-10

SECTION 1. PURPOSE

This revenue procedure modifies Rev. Proc. 2002-29, 2002-24 I.R.B. 1176, to postpone until the end of the EGTRRA remedial amendment period the time by which qualified defined benefit plans must be amended to comply with final and temporary regulations under § 401(a)(9) of the Internal Revenue Code, relating to required minimum distributions, which were published in the **Federal Register** on April 17, 2002, 67 FR 18987. The revenue procedure also provides that until further notice determination letters for defined benefit plans will not take into account the requirements of these regulations. These changes are being made in conjunction with Notice 2003-2, page [insert #], this bulletin.

SECTION 2. BACKGROUND

.01 Section 401(a)(9) provides rules for required minimum distributions from plans qualified under § 401(a) and § 403(a). The rules are incorporated by reference in §§ 408(a)(6) and (b)(3) for distributions from individual retirement accounts (IRAs) (including Roth IRAs with respect to distributions paid following the death of the Roth IRA owner), § 403(b)(10) for distributions from § 403(b) annuity contracts, and § 457(d) for distributions from eligible deferred compensation plans.

.02 The regulations under § 401(a)(9) that were published in the **Federal Register** on April 17, 2002 (the § 401(a)(9) Final and Temporary Regulations) provide guidance on the minimum distribution requirements under § 401(a)(9) for plans qualified under § 401(a) or 403(a) as well as for § 403(b) annuity contracts, § 408 IRAs, § 408A Roth IRAs, and § 457 eligible deferred compensation plans. See, for example, § 1.408-8. These regulations are final, with the exception of § 1.401(a)(9)-6T, a temporary and proposed regulation on required minimum distributions paid under a defined benefit plan or an annuity contract.

.03 A-2 of § 1.401(a)(9)-1 provides that the § 401(a)(9) Final and Temporary Regulations (including § 1.401(a)(9)-6T) apply for determining required minimum distributions for calendar years beginning on or after January 1, 2003. The preamble to the § 401(a)(9) Final and Temporary Regulations provides that, for determining required minimum distributions for calendar year 2002, taxpayers may rely on the § 401(a)(9) Final and Temporary Regulations, the § 401(a)(9) 2001 Proposed Regulations, or the § 401(a)(9) 1987 Proposed Regulations. (The § 401(a)(9) 1987 Proposed Regulations were

published in the **Federal Register** on July 27, 1987 (52 FR 28070) and the § 401(a)(9) 2001 Proposed Regulations were published in the **Federal Register** on January 17, 2001 (66 FR 3928).)

.04 Rev. Proc. 2002-29 provides that qualified plans must generally be amended by the last day of the first plan year beginning on or after January 1, 2003, to the extent necessary to comply with the requirements of the § 401(a)(9) Final and Temporary Regulations, and it contains model plan amendments that may be adopted to satisfy this requirement. Rev. Proc. 2002-29 also provides that pre-approved plans (i.e., master and prototype plans and volume submitter specimen plans) must be amended by December 31, 2003, to comply with the § 401(a)(9) Final and Temporary Regulations. Finally, Rev. Proc. 2002-29 provides that determination letter applications filed on or after the first day of the 2003 plan year, and opinion and advisory letter applications filed on or after January 1, 2003, will be reviewed with respect to whether the form of the plan satisfies the requirements of the § 401(a)(9) Final and Temporary Regulations.

.05 Rev. Proc. 2002-10, 2002-4 I.R.B. 401, requires all prototype sponsors with currently approved prototype IRAs, SEPs and SIMPLE IRA plans to amend these documents and submit applications for opinion letters on the amended documents by December 31, 2002. Among the amendments required are amendments to comply with the § 401(a)(9) Final and Temporary Regulations.

.06 Section 401(b) and the regulations thereunder provide a remedial amendment period during which an amendment to a disqualifying provision may be made retroactively effective, under certain circumstances, to comply with the requirements of § 401(a). Notice 2001-42, 2001-30 I.R.B. 70, provides a remedial amendment period under § 401(b) ending not prior to the last day of the first plan year beginning on or after January 1, 2005, in which any needed retroactive amendment with regard to the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107-16, (EGTRRA), may be adopted. This remedial amendment period is referred to as the “EGTRRA remedial amendment period.”

.07 Notice 2003-2 states that the Service and the Treasury Department intend to issue regulations that will provide further guidance on the minimum distribution requirements for defined benefit plans and annuity contracts. Notice 2003-2 describes three transition rules that are expected to be provided in the future regulations and that taxpayers may rely on in the meantime. The first transition rule is expected to provide that required minimum distributions under a defined benefit plan or an annuity contract (including an annuity described in § 408(b) or § 403(b)) will be deemed to satisfy the requirements in A-1 of § 1.401(a)(9)-6T, relating to restrictions on increases in annuity payments, if these distributions satisfy certain requirements set forth in proposed regulations under § 401(a)(9) issued prior to 2002. The second transition rule is expected to provide that, for purposes of A-12 of § 1.401(a)(9)-6T, the entire interest under an annuity contract (including an annuity described in § 408(b) or § 403(b)) will be permitted to be determined as the dollar amount credited to the employee or beneficiary under the annuity contract without regard to the actuarial value of any other benefits

(such as minimum survivor benefits) that will be provided under the contract. These two transitional rules are expected to apply at least through the end of the calendar year in which final regulations are published. It is also expected that future regulations will provide a special effective date for governmental plans for compliance with § 401(a)(9) as it applies to defined benefit plans and annuity contracts and a third transition rule for governmental plans for the period before the special effective date that will permit a governmental plan to rely on a reasonable good faith interpretation of § 401(a)(9) as it applies to defined benefit plans and annuity contracts.

SECTION 3. POSTPONEMENT OF TIME FOR AMENDING DEFINED BENEFIT PLANS

.01 The time by which qualified defined benefit plans must be amended to comply with the requirements of the § 401(a)(9) Final and Temporary Regulations is postponed until the end of the EGTRRA remedial amendment period. The requirement to amend pre-approved defined benefit plans by December 31, 2003, is postponed until further notice.

.02 The postponement described in section 3.01 does not apply to the time for amending defined contribution plans, including defined contribution plans described in § 403(a), to comply with the requirements of the § 401(a)(9) Final and Temporary Regulations. Such a postponement is unnecessary because § 1.401(a)(9)-6T applies to a defined contribution plan only if the plan distributes benefits by purchasing an annuity contract. The expected transition rules described in Notice 2003-2 will apply to purchased annuity contracts used to distribute participants' benefits under defined contribution plans, including defined contribution plans that have been amended to comply with the § 401(a)(9) Final and Temporary Regulations. The postponement described in section 3.01 also does not apply to the time by which IRAs, SEPs and SIMPLE IRA plans must be amended to comply with the requirements of the § 401(a)(9) Final and Temporary Regulations and submitted for new opinion letters. However, the expected transition rules described in Notice 2003-2 will apply to IRAs, SEPs and SIMPLE IRA plans. Thus, for example, the entire interest under an IRA annuity contract described in § 408(b) will be permitted to be determined as the dollar amount credited to the beneficiary under the annuity contract without regard to the actuarial value of other benefits provided under the contract, even though the IRA has been amended to provide that the entire interest under the contract includes the actuarial value of such other benefits.

.03 Until further notice, determination letters issued for defined benefit plan applications that are submitted on or after the first day of the first plan year beginning on or after January 1, 2003, will consider whether the plan contains the statutory rules of § 401(a)(9) but will not take into account the requirements of the § 401(a)(9) Final and Temporary Regulations. Likewise, opinion and advisory letter applications for defined benefit plans that are submitted on or after January 1, 2003, will consider the § 401(a)(9) statutory requirements but not the § 401(a)(9) Final and Temporary Regulations.

.04 Until the effective date of final regulations regarding required minimum distributions under a defined benefit plan or annuity contract, a nongovernmental plan must satisfy in operation the requirements of the § 401(a)(9) Final and Temporary Regulations, taking into account the expected transition rules described in Notice 2003-2, irrespective of whether the plan has been amended to comply with the § 401(a)(9) Final and Temporary Regulations (for example, by adoption of the model amendment in Rev. Proc. 2002-29). Until the effective date of such final regulations applicable to governmental plans, a governmental plan may rely on a reasonable good faith interpretation of § 401(a)(9) as it applies to defined benefit plans and annuity contracts, irrespective of whether the plan has been amended to comply with the § 401(a)(9) Final and Temporary Regulations. As provided in Notice 2003-2, compliance with § 1.401(a)(9)-6T, the § 401(a)(9) 2001 Proposed Regulations, or the § 401(a)(9) 1987 Proposed Regulations, as they relate to defined benefit plans and annuity contracts, will be deemed to meet this reasonable good faith standard.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2002-29 is modified.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective January 13, 2003.

DRAFTING INFORMATION

The principal author of this revenue procedure is James Flannery of Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the Employee Plans' taxpayer assistance telephone service at 1-877-829-5500 between the hours of 8:00 a.m. and 6:30 p.m. Eastern time, Monday through Friday (a toll-free number). Mr. Flannery may be reached at 1-202-283-9888 (not a toll-free call).