

Dated: August 31, 2009.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9459]

RIN 1545-BH53

Reasonable Good Faith Interpretation of Required Minimum Distribution Rules by Governmental Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under sections 401(a)(9) and 403(b) of the Internal Revenue Code (Code) to permit a governmental plan to comply with the required minimum distribution rules by using a reasonable and good faith interpretation of the statute. These regulations affect administrators of, employers maintaining, participants in, and beneficiaries of governmental plans.

DATES: *Effective Date:* These regulations are effective on September 8, 2009.

Applicability Date: These regulations apply to all plan years to which section 401(a)(9) applies to the plan.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Cathy V. Pastor or Michael P. Brewer at (202) 622-6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 401(a)(9) provides required minimum distribution rules for a qualified trust under section 401(a). In general, under these rules, distribution of each participant's entire interest must begin by April 1 of the calendar year following the later of (1) the calendar year in which the participant attains age 70½ or (2) the calendar year in which the participant retires ("the required beginning date"). If the entire interest of the participant is not distributed by the required beginning date, then section 401(a)(9)(A) provides that the entire interest of the participant must be distributed beginning not later than the required beginning date, in accordance with regulations, over the life of the participant or lives of the participant and a designated beneficiary (or over a

period not extending beyond the life expectancy of the participant or the life expectancy of the participant and a designated beneficiary). Section 401(a)(9)(B) provides the required minimum distribution rules after the death of the participant.

IRAs described in section 408, section 403(b) plans, and eligible deferred compensation plans under section 457(b), also are subject to the required minimum distribution rules of section 401(a)(9) pursuant to sections 408(a)(6) and (b)(3), 403(b)(10), and 457(d)(2), respectively, and the regulations under those sections. In 2002, the IRS and the Treasury Department published final regulations under sections 401(a)(9), 403(b), and 408 in the **Federal Register** (67 FR 18987). Section 1.401(a)(9)-1, A-2(a), provides that the final regulations apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003. The rules for defined benefit plans and annuities were included in a temporary regulation, § 1.401(a)(9)-6T, as well as in a proposed regulation (67 FR 18834) in order to allow taxpayers to comment on the rules.

In 2004, the IRS and the Treasury Department replaced the temporary regulations with final regulations under § 1.401(a)(9)-6 (69 FR 33288). The final regulations contain a "grandfather rule" in Q&A-16, which provides that annuity distribution options provided under the terms of a governmental plan (within the meaning section 414(d)) as in effect on April 17, 2002, are treated as satisfying the requirements of section 401(a)(9) if they satisfy a reasonable and good faith interpretation of the provisions of section 401(a)(9). In addition, Q&A-17 provides that, for distributions from any defined benefit plan or annuity contract during 2003, 2004, and 2005, the payments could satisfy a reasonable and good faith interpretation of section 401(a)(9) in lieu of § 1.401(a)(9)-6. For governmental plans, § 1.401(a)(9)-6, Q&A-17, extended this reasonable good faith standard to the end of the calendar year that contains the 90th day after the opening of the first legislative session of the legislative body with the authority to amend the plan that begins on or after June 15, 2004, if such 90th day is later than December 31, 2005.

In 2003, the IRS and the Treasury Department published final regulations under section 457(b) in the **Federal Register** (68 FR 41230). These regulations included § 1.457-6(d), which provides that a section 457(b) eligible plan must meet the

requirements of section 401(a)(9) and the regulations under that section.

In 2007, the IRS and the Treasury Department published final regulations under section 403(b) in the **Federal Register** (72 FR 41128). These regulations, which become effective for tax years beginning after December 31, 2008, included § 1.403(b)-6(e)(1), which provides that a section 403(b) contract must meet the requirements of section 401(a)(9). Section 1.403(b)-6(e)(2) provides, with certain exceptions, that section 403(b) contracts apply the section 401(a)(9) required minimum distribution rules in accordance with § 1.408-8.

Section 1.408-8, Q&A-1, provides, with certain exceptions, that in order to satisfy section 401(a)(9) for purposes of determining required minimum distributions, the rules of § 1.401(a)(9)-1 through 1.401(a)(9)-9 must be applied.

Section 823 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780) (PPA 06), instructs the Secretary of the Treasury to issue regulations under which, for all years to which section 401(a)(9) applies, a governmental plan, within the meaning of section 414(d), shall be treated as having complied with section 401(a)(9) if such plan complies with a reasonable good faith interpretation of section 401(a)(9).

On July 10, 2008, the IRS and Treasury Department published a notice of proposed rulemaking (REG-142040-07) in the **Federal Register** (73 FR 39630-01) proposing regulations that would implement section 823 of PPA 06 by amending the regulations under sections 401(a)(9) and 403(b) of the Code. The IRS and Treasury Department received no comments on the proposed regulations and no public hearing was requested or held. Accordingly, the provisions of these final regulations are identical to the proposed regulations.

Explanation of Provisions

The final regulations amend the regulations under section 401(a)(9) to treat a governmental plan, within the meaning of section 414(d), as having complied with the rules of section 401(a)(9) if the governmental plan applies a reasonable and good faith interpretation of section 401(a)(9). The same rule applies to an eligible 457(b) plan maintained by a government. In addition, this rule applies to a section 403(b) contract that is part of a governmental plan, and the regulations under section 403(b) are amended accordingly. The final regulations also make conforming amendments to the regulations under section 401(a)(9) that eliminate other special rules for

governmental plans which are rendered superfluous with this change.

Effective/Applicability Date

These regulations are effective on September 8, 2009 and apply to all plan years to which section 401(a)(9) applies.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because §§ 1.401(a)(9)–1 and 1.403(b)–6 do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Michael P. Brewer and Cathy V. Pastor, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is 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 is amended by adding a new paragraph (d) to A–2 as follows:

§ 1.401(a)(9)–1 Minimum distribution requirement in general.

* * * * *

A–2. * * *

(d) *Special rule for governmental plans.* Notwithstanding anything to the contrary in this A–2, a governmental plan (within the meaning of section 414(d)), or an eligible governmental

plan described in § 1.457–2(f), is treated as having complied with section 401(a)(9) for all years to which section 401(a)(9) applies to the plan if the plan complies with a reasonable and good faith interpretation of section 401(a)(9).

§ 1.401(a)(9)–6 [Amended]

■ **Par. 3.** Section 1.401(a)(9)–6 is amended by:

- 1. Removing Q&A–16.
- 2. Redesignating Q&A–17 as Q&A–16.
- 3. Removing the word “A–16” and adding “A–15” in the newly-designated A–16.
- 4. Removing the last sentence of the newly-designated A–16.

■ **Par. 4.** Section 1.403(b)–6 is amended by:

- 1. Revising the last sentence of paragraph (e)(2).
- 2. Adding a new paragraph (e)(8).

The revisions and addition are as follows:

§ 1.403(b)–6 Timing of distributions and benefits.

* * * * *

(e) *Minimum required distributions for eligible plans.*

* * * * *

(2) * * * Consequently, except as otherwise provided in this paragraph (e), the distribution rules in section 401(a)(9) are applied to section 403(b) contracts in accordance with the provisions in § 1.408–8 for purposes of determining required minimum distributions.

* * * * *

(8) *Special rule for governmental plans.* A section 403(b) contract that is part of a governmental plan (within the meaning of section 414(d)) is treated as having complied with section 401(a)(9) for all years to which section 401(a)(9) applies to the contract, if the contract complies with a reasonable and good faith interpretation of section 401(a)(9).

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Linda E. Stiff,
Deputy Commissioner for Services and Enforcement.

Approved: August 20, 2009.

Michael Mundaca,
Acting Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[TD 9457]

RIN 1545–BG71

Employer Comparable Contributions to Health Savings Accounts Under Section 4980G, and Requirement of Return for Filing of the Excise Tax Under Section 4980B, 4980D, 4980E or 4980G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance on employer comparable contributions to Health Savings Accounts (HSAs) under section 4980G of the Internal Revenue Code (Code) as amended by sections 302, 305 and 306 of the Tax Relief and Health Care Act of 2006 (the Act). The final regulations also provide guidance relating to the manner and method of reporting and paying the excise tax under sections 4980B, 4980D, 4980E, and 4980G of the Code. These final regulations would affect employers that contribute to employees' HSAs and Archer MSAs, employers or employee organizations that sponsor a group health plan, and certain third parties such as insurance companies or HMOs or third-party administrators who are responsible for providing benefits under the plan.

DATES: *Effective date.* These regulations are effective on September 8, 2009.

Applicability date. The sections of these regulations that provide guidance on employer comparable contributions to HSAs under section 4980G apply to employer contributions made on or after January 1, 2010. The sections of these regulations that provide guidance relating to the excise tax under sections 4980B, 4980D, 4980E and 4980G apply to any Form 8928 that is due on or after January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Concerning the final regulations as they relate to sections 4980E or 4980G, Mireille Khoury at (202) 622–6080; and concerning the final regulations as they relate to section 4980B or 4980D, Russ Weinheimer at (202) 622–6080 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of