

# **Timing of Certain Plan Amendments Relating to Section 401(a)(9)**

## **Announcement 97-24**

### **PURPOSE**

This announcement provides that an employer is not precluded from offering, to employees (other than 5-percent owners) who attain age 70½ after 1995 and have not retired, an option to defer commencement of benefit distributions under a qualified plan merely because the plan has not yet been amended to provide for the option.

### **BACKGROUND**

Section 1404(a) of the Small Business Job Protection Act of 1996 (SBJPA) amended section 401(a)(9) of the Internal Revenue Code to provide that, in the case of an employee who is not a 5-percent owner, the required beginning date for minimum distributions from a qualified plan is April 1 of the calendar year following the later of the calendar

year in which the employee attains age 70½ or the calendar year in which the employee retires. The amendment to section 401(a)(9) applies to years beginning after December 31, 1996.

Notice 96-67, 1996-53 I.R.B. 12, Q&A-2, provides that, under section 401(a)(9) as amended by the SBJPA, an employee (other than a 5-percent owner) who attained age 70½ in 1996, but who had not retired from employment with the employer maintaining the plan by the end of 1996, is not required to receive a minimum distribution by April 1, 1997.

Many qualified plans continue to contain provisions (consistent with section 401(a)(9) prior to its amendment by the SBJPA) requiring an employee who attains age 70½ in a calendar year to begin receiving distributions by April 1 of the following calendar year. Some employers wish to give employees (other than 5-percent owners) who have not retired the option to defer commencement of distributions beyond April 1 following the calendar year the employees attain age 70½ and have requested guidance as to whether such an option may be offered before their plans are amended to provide for the option.

This announcement responds to these requests concerning the addition of an option to defer commencement of distributions before plan amendment. It does not address the elimination of the option to receive in-service distributions after age 70½.

As noted in Notice 96-67, an amendment that eliminates the right to receive a distribution prior to retirement after age 70½ is precluded by section 411(d)(6) if the amendment applies to benefits accrued as of the later of the adoption date or the effective date of the

amendment. In Notice 96-67, the Service and Treasury requested comments concerning the extent to which a relaxation of section 411(d)(6) protection is appropriate for amendments that eliminate in-service distributions after age 70½, and the Service and Treasury are currently considering the comments received.

#### TIMING OF PLAN AMENDMENTS

Under a qualified plan, an employer is permitted to offer an employee (other than a 5-percent owner) who attains age 70½ in a calendar year after 1995 and has not retired by the end of that calendar year the option to delay commencement of benefit distributions until no later than April 1 following the calendar year in which the employee retires from employment with the employer maintaining the plan. A plan that continues to contain provisions requiring an employee to begin receiving distributions by April 1 following the calendar year in which the employee attains age 70½ will not fail to satisfy section 401(a) merely because the employer offers the option described in the preceding sentence prior to amending the plan to include this option. Thus, if employees (other than 5-percent owners) who attained age 70½ in 1996 and did not retire from employment with the employer maintaining the plan by the end of 1996 are offered the opportunity to make an election to defer commencement of benefits rather than to begin receiving benefits from the plan by April 1, 1997, the plan will not fail to satisfy section 401(a) merely because the plan has not yet been amended to provide for this election.

Future guidance will provide that an employer that offers this option under a

plan must amend the plan retroactively, no later than the date specified in that guidance, to provide for the option. The retroactive plan amendment will have to conform the plan to its pre-amendment operation regarding the option to defer commencement of benefits. The date by which a plan providing for this option must be retroactively amended will not be earlier than 90 days after the future guidance is published and in no event will be earlier than January 1, 1998.

This announcement also applies to an employer that has adopted a master or prototype or a regional prototype plan. Such an employer should note that if a conforming amendment is not an available option under the sponsor's prototype plan document, the required amendment may result in the loss of prototype status.

#### ELECTIONS TO STOP RECEIVING DISTRIBUTIONS

This announcement does not address the conditions under which employers may offer employees who have attained age 70½ and have begun to receive distributions under a plan an election to stop receiving distributions until a date no later than April 1 of the calendar year following retirement. Employers are cautioned that, under certain circumstances, an election to stop receiving distributions may violate the qualification requirements under section 401(a), such as sections 401(a)(11) and 417 (relating to participant and spousal consent, joint and survivor annuity requirements, and related matters). Future guidance will address the conditions under which these types of elections may be made and the permitted timing of related plan amendments.

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