



the plan to an employee who attained age 70 1/2 in 1996 and who did not retire in 1996. This relief is conditioned upon the employer meeting specified requirements with respect to such an employee.

Background

Section 401(a)(9) of the Internal Revenue Code (“Code”) provides that, in order for a plan to be qualified under section 401(a), distributions from the plan must commence no later than the “required beginning date.” Prior to 1997, section 401(a)(9)(C) generally provided that the required beginning date is April 1 following the calendar year in which the employee attains age 70 1/2.

Section 1404(a) of the Small Business Job Protection Act of 1996 (“SBJPA”) amended section 401(a)(9) of the 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 70 1/2 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, December 30, 1996, 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 70 1/2 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. Such an employee’s required beginning date is determined under amended section 401(a)(9), which requires distributions to commence by April 1 of the calendar year following the calendar year in which the employee retires from employment with the employer maintaining the plan.

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 70 1/2 in a calendar year to begin receiving distributions by April 1 of the following calendar year.

Announcement 97-24, 1997-11 I.R.B. 24, March 13, 1997, provides that, prior to amending its plan, an employer maintaining a plan is permitted

to offer an employee (other than a 5-percent owner) who attains age 70 1/2 in a calendar year after 1995, e.g. 1996, and who does not retire by the end of that calendar year, the option to delay commencement of distributions until no later than April 1 following the calendar year in which the employee retires from employment with the employer. Announcement 97-24 notes that future guidance will provide that an employer that offers this option under a plan must amend the plan retroactively to provide for the option. The retroactive plan amendment must conform the plan to its pre-amendment operation regarding this option to defer distributions until after retirement.

Announcement 97-24 states that it also applies to an employer that has adopted a master or prototype or a regional prototype plan. Announcement 97-24 notes 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.

Transition Relief

Under this announcement, if the requirements described below are satisfied, a plan will not be treated as failing to satisfy the requirements of section 401(a) of the Code merely because the plan fails to make certain distributions required under the terms of the plan to an employee (other than a 5-percent owner) who attained age 70 1/2 in 1996 and who did not retire from employment with the employer maintaining the plan by the end of 1996. The relief in this announcement applies to a plan with respect to distributions required under the terms of the plan to be made to such an employee between August 20, 1996 (the date of enactment of the SBJPA) and December 31, 1997.

This relief is available only if: (1) the employee is offered an option to defer the distribution and elects to defer, or a make-up distribution is paid to such employee, and (2) the employee option or the make-up distribution meets the qualification requirements under section 401(a) of the Code (other than the requirement that a plan operate in accordance with its terms). For example, the employee option or the make-up distribution must satisfy the requirements of sec-

Announcement 97-20

Transition Relief for Failures To Make Plan Distributions to Certain Employees or Offer Options To Defer Distributions by April 1, 1997

Purpose

This announcement provides transition relief for qualified plans that fail to make distributions required under the terms of

tions 401(a)(11) and 417 (relating to joint and survivor annuities).

If the employer chooses to offer an election to defer, the election to defer must be made by the employee by December 31, 1997. If an employee chooses not to defer, the plan must pay a make-up distribution to the employee in a manner that satisfies the rules set out below.

Whether a make-up distribution from the plan is paid to all employees (other than 5-percent owners) who attained age 70 1/2 in 1996 and who did not retire from employment with the employer maintaining the plan by the end of 1996 or only to any such employee who is offered an election to defer but chooses not to defer, the make-up distribution must be made by December 31, 1997 and must include all of the employee's distributions required under the plan terms up to that date. The make-up distribution must restore to the employee the benefits that the employee would have had if the plan terms had been followed. For example, in the case of a defined benefit plan, the make-up distribution for an employee must be increased to take into account the delayed payment consistent with the plan's actuarial adjustments.

Further, future guidance will provide that an employer who offers the option to defer described above 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 must conform the plan to its preamendment operation regarding the option to defer commencement of benefits. However, a plan will not fail to satisfy this operational requirement merely because the amendment provides for an employee to have the option to either commence distribution by April 1, 1997 or to defer distribution beyond that date but, in operation, the plan provided for an election to defer or make-up distributions in accordance with this announcement.

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.
