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To be qualified, a plan must meet the statutory rules of IRC Section 401(a)(9), including the incidental death benefit requirement in IRC Section 401(a)(9)(G). The plan must also provide that distributions will be made in accordance with the minimum distribution requirements set forth in IRS regulations, as explained below. In addition, a qualified plan must provide that the minimum distribution rules override any distribution options offered under the plan that are inconsistent with these requirements.[[1]](#footnote-1)

Regulations govern all issues except annuity distributions from defined benefit plans, which were addressed by regulations finalized in 2004.[[2]](#footnote-2) Regulations make governmental plans subject only to a “reasonable, good faith interpretation” of the minimum distribution requirements.[[3]](#footnote-3)

Unless otherwise noted, the questions that follow explain the rules set forth in the final regulations. The regulations themselves are complex, and should be reviewed carefully with respect to any specific case, including with respect to the required beginning date (Q 3803), the minimum distribution requirements from individual accounts during the employee’s lifetime, annuity payouts from defined benefit plans (Q 3805), after-death distribution requirements, designated beneficiaries, and the effect of a qualified domestic relations order on required distributions.

*Failure to make minimum distributions.* Although a plan that fails to meet the minimum distribution requirements with respect to all required distributions is technically subject to disqualification, the preamble to the 2001 proposed regulations state that such failures can be corrected through the Employee Plans Compliance Resolution System (“EPCRS”).[[4]](#footnote-4)

In addition to the qualification implications, if an amount distributed from a plan is less than the required minimum distribution (RMD), an excise tax equal to 50 percent of the shortfall generally is levied against the individual.[[5]](#footnote-5) The tax may be waived if the payee establishes to the satisfaction of the IRS that the shortfall is due to reasonable error and

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automatically if the beneficiary is an individual whose minimum distribution amount is determined under the life expectancy rule for after-death distributions, and the entire benefit to which that beneficiary is entitled is distributed under the five year rule.[[6]](#footnote-6)

**Planning Point: WRERA 2008 provided that RMDs from defined contribution plans and IRAs for calendar year 2009 are waived. Also, the five year rule is determined without regard to 2009. A person who received an RMD for 2009, including a distribution for 2009 made as late as April 1, 2010, had until the later of sixty days of receiving the RMD or November 30, 2009, to roll over the RMD to an IRA or other retirement plan (assuming the rollover would otherwise qualify).[[7]](#footnote-7)**

The minimum distribution requirements will not be treated as violated and, thus, the 50 percent excise tax will not apply where a shortfall occurs because assets are invested in a contract issued by an insurance company in state insurer delinquency proceedings. To the extent that a distribution otherwise required under IRC Section 401(a)(9) is not made during the state insurer delinquency proceedings, this amount and any additional amount accrued during this period will be treated as though it is not vested.[[8]](#footnote-8)

1. IRC Sec. 401(a)(9); Treas. Reg. §1.401(a)(9)-1, A-3(a). [↑](#footnote-ref-1)
2. Treas. Reg. §1.401(a)(9)-6. [↑](#footnote-ref-2)
3. Treas. Reg. §1.401(a)(9)-1, A-2(d). [↑](#footnote-ref-3)
4. See Rev. Proc. 2006-27, 2006-22 IRB 945, modified and superseded by Rev. Proc. 2008-50, 2008-35 IRB and Rev. Rul. 2013-12, 2013-1 CB 313. [↑](#footnote-ref-4)
5. IRC Sec. 4974. [↑](#footnote-ref-5)
6. Treas. Reg. §54.4974-2, A-7(b). [↑](#footnote-ref-6)
7. Notice 2009-82, 2009-41 IRB 491. [↑](#footnote-ref-7)
8. Treas. Reg. §1.401(a)(9)-8, A-8. [↑](#footnote-ref-8)