The COMMITTEE of ANNUITY INSURERS

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August 12, 2020

VIA ELECTRONIC MAIL

Carol Weiser
Benefits Tax Counsel
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Catherine Jones
Acting Director, EP
Internal Revenue Service
999 N. Capitol Street, NE
Washington, DC 20002

Re: *Proposed Updates to LRMs for Individual Retirement Annuities*

Dear Ms. Weiser and Ms. Jones:

We are writing to follow up our recent request on behalf of the Committee of Annuity Insurers (the "Committee") for the prompt publication of updated Lists of Required Modifications ("LRMs"). Specifically, in our letter regarding the Priority Guidance Plan dated July 22, 2020, the Committee requested updated LRMs for annuity contracts that are issued as traditional, Roth, and SIMPLE IRAs, reflecting amendments that the SECURE Act made to various Code provisions affecting such arrangements.

To that end, we have attached for your consideration drafts of such updated LRMs for traditional and Roth individual retirement annuities. The attached drafts are redlined against the sections of the most recent LRMs (dated 6/2010) for traditional and Roth IRAs addressing annuity contracts. The drafts do not address the sections of the LRMs applicable to individual retirement *accounts*, although we believe that similar changes to those sections are warranted. The attached drafts also include several comments in the margins to provide background and to help explain the updates we are suggesting. Finally, we have attached a list of the Committee's member companies.

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We appreciate your consideration of our suggested updates to the LRMs for traditional and Roth IRAs. We would be happy to discuss with you any aspect of our proposed updates. In that regard, if you have any questions or if we can be of any assistance, please contact either of the undersigned by phone at 202-347-2230 or by e-mail at the addresses indicated below.

Sincerely,

Bryan W. Keene
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Mark E. Griffin
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Counsel to the Committee of Annuity Insurers
www.annuity-insurers.org

Attachments: List of member companies
Proposed Updates to LRMs for Traditional Individual Retirement Annuities
Proposed Updates to LRMs for Roth Individual Retirement Annuities

cc: William Evans, Treasury Department
Harlan Weller, Treasury Department
Stephen Tackney, IRS

The COMMITTEE of ANNUITY INSURERS

AIG Life & Retirement, Los Angeles, CA
Allianz Life Insurance Company, Minneapolis, MN
Allstate Financial, Northbrook, IL
Ameriprise Financial, Minneapolis, MN
Athene USA, Des Moines, IA
Brighthouse Financial, Inc., Charlotte, NC
Equitable, New York, NY
Fidelity Investments Life Insurance Company, Boston, MA
Genworth Financial, Richmond, VA
Global Atlantic Financial Group, Southborough, MA
Great American Life Insurance Co., Cincinnati, OH
Guardian Insurance & Annuity Co., Inc., New York, NY
Jackson National Life Insurance Company, Lansing, MI
John Hancock Life Insurance Company, Boston, MA
Lincoln Financial Group, Fort Wayne, IN
Massachusetts Mutual Life Insurance Company, Springfield, MA
Metropolitan Life Insurance Company, New York, NY
National Life Group®, Montpelier, VT
Nationwide Life Insurance Companies, Columbus, OH
New York Life Insurance Company, New York, NY
Northwestern Mutual Life Insurance Company, Milwaukee, WI
Ohio National Financial Services, Cincinnati, OH
Pacific Life Insurance Company, Newport Beach, CA
Protective Life Insurance Company, Birmingham, AL
Prudential Insurance Company of America, Newark, NJ
Sammons Financial Group, Chicago, IL
Security Benefit Life Insurance Company, Topeka, KS
Symetra Financial, Bellevue, WA
Talcott Resolution, Windsor, CT
TIAA, New York, NY
The Transamerica companies, Cedar Rapids, IA
USAA Life Insurance Company, San Antonio, TX

The Committee of Annuity Insurers was formed in 1981 to participate in the development of federal policies with respect to annuities.  The member companies of the Committee represent more than 80% of the annuity business in the United States.

**DRAFT (8-2020)~~(6-2010)~~**

**TRADITIONAL INDIVIDUAL RETIREMENT ARRANGEMENTS (Traditional IRAs)**

**List of Required Modifications and Information Package (LRMs)**
**(For use with prototype traditional IRAs intending to satisfy the requirements of Code § 408(a) or (b).)**
**Material added since the 6-2010~~3-2002~~ LRMs is underlined.**

**This information package contains samples of provisions that have been found to satisfy certain specific requirements of the Internal Revenue Code as amended through the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Pub. L. 116-136~~Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), Pub. L. 110-458~~. Such language may or may not be acceptable in specific IRAs, depending on the context.**

**We have prepared this package to assist sponsors who are drafting IRAs. To expedite the review process, sponsors are encouraged to use the language contained in this package.**

**Part A, provisions 1-12, applies to individual retirement accounts under Code § 408(a). Part B, provisions 13-22, applies to individual retirement annuities under § 408(b).**

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**PART A: ACCOUNTS - Trust or custodial accounts under Code § 408(a).**

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**PART B. ANNUITIES - Annuities under Code § 408(b).**

**(13) Statement of Requirements: The IRA is organized and operated for the exclusive benefit of the individual, Code § 408(b). Sample Language:**

The contract is established for the exclusive benefit of the individual ("Individual") or his or her beneficiaries. If this is an inherited IRA within the meaning of Internal Revenue Code ("Code") § 408(d)(3)(C) maintained for the benefit of a designated beneficiary of a deceased

**Commented [CAI1]:** The term "Individual" (capitalized) is used to refer to the owner or deceased owner of this IRA. The term "individual" (lower case) is used to refer to a designated beneficiary for whose benefit the IRA is maintained after the death of an IRA owner or an employee under an eligible retirement plan (collectively referred to as a "deceased individual").

individual, or is maintained for the benefit of a designated beneficiary who is the surviving spouse of a deceased individual and who has not elected to treat this IRA as the surviving spouse's own IRA, references in this document to the "~~i~~Individual" are to the deceased individual.

**(14) Statement of Requirement: Maximum permissible annual contribution and restrictions on kinds of contributions, Code §§ 72(t)(2)(G), 219(b), 408(b)(2), 408(d)(3)(C), 408(d)(3)(G), 408(p)(1)(B) and 408(p)(2)(A)(iv). Also, ~~§ 201 of the Gulf Opportunity Zone Act of 2005, Pub. L. 109-135; § 15345 of the Food, Conservation, and Energy Act of 2008, Pub. L. 110-246; and § 702 of Division C of the Emergency Economic Stabilization Act of 2008, Pub. L. 110-343~~§ 221 of the Tax Technical Corrections Act of 2014, Pub. L. 113-295; § 202 of Division Q and § 113 of Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94; and § 2202 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136. Sample Language:**

(a) Except in the case of a rollover contribution (as permitted by ~~Internal Revenue~~ Code §§ 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3) and 457(e)(16)), a nontaxable transfer from an individual retirement plan under Code § 7701(a)(37), or a contribution made in accordance with the terms of a Simplified Employee Pension (SEP) as described in Code § 408(k), no contributions will be accepted unless they are in cash, and the total of such contributions shall not exceed the limit under Code § 219(b)(1). ~~$5,000 f~~For any taxable year beginning in 2008 and years thereafter, the limit is $5,000.

After 2008, the limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code § 219(b)(5)(~~D~~C). Such adjustments will be in multiples of $500.

(b) In the case of an ~~i~~Individual who is 50 or older, the annual cash contribution limit is increased by $1,000 for any taxable year beginning in 2006 and years thereafter.

(c) In addition to the amounts described in paragraphs (a) and (b) above, an ~~i~~Individual may make additional contributions (if permitted under the contract) that are specifically authorized by statute – such as repayments of qualified reservist distributions, ~~repayments of~~ certain plan

**Commented [CAI2]:** An inherited IRA is defined in IRC § 408(d)(3)(C) as an IRA that is maintained for the benefit of a non-spouse beneficiary. This phrase is added to reflect that an IRA also can be maintained for the benefit of a spouse beneficiary who does not elect to treat the IRA as his or her own under Treas. Reg. § 1.408-8, Q&A-5.

**Commented [CAI3]:** This change is proposed to reflect that a contribution made in the form of a direct trustee-to-trustee transfer also is permissible without regard to the contribution limit. See, e.g., Rev. Rul. 78-406, 1978-2 C.B. 157; Rev. Rul. 67-213, 1967-2 C.B. 149.

**Commented [CAI4]:** This reference to IRC § 219(b)(1) is intended to incorporate the "compensation" component of the annual contribution limit. The existing LRMs do not explicitly do this, even though it is part of the applicable contribution limit.

**Commented [CAI5]:** Subparagraph (D) of IRC § 219(b)(5) was redesignated as subparagraph (C) under legislation passed in 2014.

**Commented [CAI6]:** This change is proposed to reflect that recontributions of certain amounts, while permitted under federal tax law, might not be permitted under the contract (e.g., in the case of a single premium annuity contract or a contract that limits the maximum amount of premiums that can be paid).

distributions made on account of a federally declared disaster, qualified birth or adoption distributions, and coronavirus-related distributions~~and certain amounts received in connection with the Exxon Valdez litigation~~.

~~(d) In addition to the amounts described in paragraphs (a) and (c) above, an individual who was a participant in a § 401(k) plan of a certain employer in bankruptcy described in Code § 219(b)(5)(C) may contribute up to $3,000 for taxable years beginning after 2006 and before 2010 only. An individual who makes contributions under this paragraph (d) may not also make contributions under paragraph (b).~~

**Commented [CAI7]:** This subsection can be deleted because it does not apply for taxable years beginning after 2009.

(~~e~~d) No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to Code § 408(p). Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is, an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the ~~i~~Individual first participated in that employer's SIMPLE IRA plan.

(e~~f~~) If this is an inherited IRA within the meaning of Code § 408(d)(3)(C), no contributions will be accepted other than a contribution that is in the form of a direct rollover from an eligible retirement plan of a deceased employee that is permitted under Code § 402(c)(11) or a nontaxable transfer from an individual retirement plan under Code § 7701(a)(37) of a deceased individual. If this IRA is maintained for the benefit of a designated beneficiary who is the surviving spouse of a deceased individual, and the surviving spouse beneficiary does not elect to treat this IRA as his or her own, the surviving spouse beneficiary will make no contribution other than a contribution that is in the form of a nontaxable rollover by the surviving spouse beneficiary from an eligible retirement plan of the deceased individual, or a nontaxable rollover or transfer by the surviving spouse beneficiary from an individual retirement plan under Code § 7701(a)(37) of the deceased individual.

**Commented [CAI8]:** This change is proposed to clarify the types of contributions that are permitted to be made to an inherited IRA.

**(15) Statement of Requirement: Distributions before death must commence no later than 72~~70½~~, Code § 408(b)(3) and Regs. § 1.408-8. Also § 114 of Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94; and § 2203 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136. Sample Language:**

(a) Notwithstanding any provision of this IRA to the contrary, the distribution of the ~~i~~Individual's interest in the IRA shall be made in accordance with the requirements of Code §§ 408(b)(3) and 401(a)(9) and the Income Tax ~~r~~Regulations thereunder, the provisions of which are herein incorporated by reference. To the extent provided in Code § 401(a)(9)(I), the requirements of Code § 401(a)(9) shall not apply for calendar year 2020.~~If distributions are not made in the form of an annuity on an irrevocable basis (except for acceleration), then distribution of the interest in the IRA (as determined under section --- ) must satisfy the requirements of Code § 408(a)(6) and the regulations thereunder, rather than paragraphs (b), (c) and (d) below and section --- .~~

~~(Note to reviewer: The first blank should contain a reference that corresponds to LRM #16(c) and the second blank should contain a reference that corresponds to LRM #16.)~~

**(Note to reviewer: The last sentence above, regarding Code § 401(a)(9)(I), is not required for qualification or for receipt of a favorable opinion letter.)**

(b) While ~~The entire interest of~~ the ~~i~~Individual for whose benefit the contract is maintained is alive, the entire interest of that Individual will commence to be distributed no later than the required beginning date ~~first day of April following the calendar year in which such individual attains age 70½ (the "required beginning date")~~ over (a) the life of such ~~i~~Individual or the lives of such ~~i~~Individual and his or her designated beneficiary or (b) a period ~~certain~~ not extending beyond the life expectancy of such ~~i~~Individual or the joint and last survivor expectancy of such ~~i~~Individual and his or her designated beneficiary. ~~Payments must be made in periodic payments at intervals of no longer than 1 year and must be either nonincreasing or they may increase only as provided in Q&As-1 and -4 of § 1.401(a)(9)-6 of the Income Tax Regulations. In addition, any distribution must satisfy the incidental benefit requirements specified in Q&A-2 of § 1.401(a)(9)-6. If~~

**Commented [CAI9]:** This sentence reflects the RMD waiver for 2020 under section 2202 of the CARES Act. A similar sentence was included in a prior version of the LRMs to reflect to the RMD waiver for 2009 in former IRC § 401(a(9)(H). We recommend making this sentence optional, as reflected in the new "Note to reviewer" in the text below.

**Commented [CAI10]:** See paragraph (d)(7) in new LRM #17.

**Commented [CAI11]:** Q&A-1 of Notice 2020-51 clarifies that IRAs do not need to be amended to reflect the RMD waiver for 2020.

**Commented [CAI12]:** See paragraph (a) in new LRM #17.

**Commented [CAI13]:** This deletion reflects the fact that RMDs could be paid under a non-annuitized contract in the form of withdrawals.

**Commented [CAI14]:** See paragraph (d)(2), (3), and (4) in new LRM #17.

~~this is an inherited IRA within the meaning of Code § 408(d)(3)(C), this paragraph and paragraphs (c) and (d) below do not apply.~~

(c) Prior to the date that distributions under the contract commence in the form of annuity payments, the amount to be distributed for each calendar year, beginning with the calendar year in which the Individual attains age 72 (or age 70½ if the Individual was born on or before June 30, 1949) and continuing through the calendar year of death, shall not be less than the quotient obtained by dividing the entire interest in the contract as of the end of the preceding year by the distribution period in the Uniform Lifetime Table in Q&A-2 of § 1.401(a)(9)-9 of the Income Tax Regulations, using the Individual's age as of his or her birthday in the year. However, if the Individual's sole designated beneficiary is his or her surviving spouse and such spouse is more than 10 years younger than the Individual, then the distribution period is determined under the Joint and Last Survivor Table in Q&A-3 of § 1.401(a)(9)-9, using the ages as of the Individual's and spouse's birthdays in the year.

(~~c~~d) If distributions are made in the form of annuity payments, ~~T~~the distribution periods described in paragraph (b) above cannot exceed the periods specified in § 1.401(a)(9)-6 of the Income Tax Regulations and the annuity payments must otherwise comply with the requirements of that section. (See paragraph (d) of section --- for other special rules for annuity payments.)

**(Note to reviewer: The blank should contain a reference that corresponds to LRM #17.)**

(e) An Individual may take a required minimum distribution with respect to this IRA contract (other than a distribution made under this contract in the form of an annuity payment) from any one or more IRAs that the Individual holds as the owner.
~~(d) The first required payment can be made as late as April 1 of the year following the year the individual attains age 70½ and must be the payment that is required for one payment interval. The second payment need not be made until the end of the next payment interval.~~

(f) If this IRA is issued to (or for the benefit of) a designated beneficiary of a deceased employee or individual

**Commented [CAI15]:** See new paragraph (f) in this LRM #15.

**Commented [CAI16]:** This paragraph is taken almost verbatim from the LRMs for individual retirement accounts. The current LRMs for individual retirement annuities do not specify the rules that apply before the contract is annuitized; rather, the current LRMs for individual retirement annuities simply refer to the applicable Code and regulation sections. It is very common for RMDs to commence from an individual retirement annuity before the contract is annuitized, so including the applicable rules in the LRMs is appropriate, helpful, and recommended.

**Commented [CAI17]:** See Q&A-9 of § 1.408-8 of the Income Tax Regulations.

**Commented [CAI18]:** See paragraph (d)(5) in new LRM #17.

**Commented [CAI19]:** This new paragraph replaces and expands the last sentence in paragraph (b) and clarifies that the lifetime distribution requirements do not apply to an IRA annuity contract that is issued to or for the benefit of (1) a non-spouse beneficiary, or (2) a spouse beneficiary who does not elect to treat the IRA as his or her own, and thus must take distributions as a beneficiary. This clarification is helpful because, prior to this change, the last sentence of paragraph (b) applied the after-death distribution rules in the case of an inherited IRA within the meaning of IRC § 408(d)(3)(C), which is limited to situations involving non-spouses.

under an eligible retirement plan (as defined in Code § 402(c)(8)(B)), this section --- does not apply unless (1) such designated beneficiary is the surviving spouse of the deceased employee or individual, and (2) for federal income tax purposes such spouse is treated as the owner of this IRA, rather than as the designated beneficiary of the deceased employee or individual.

**(Note to reviewer: The blank should contain a reference that corresponds to this LRM #15.)**

**(16) Statement of Requirement: Distribution upon death, Code § 408(b)(3) and ~~Regs.~~ § 1.408-8 of the Income Tax Regulations. Also, Code § 401(a)(9), as modified by Division O, § 401 of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94~~Notice 2007-7, Q&As 17- 19, 2007-1 C.B. 395~~. Sample Language:**

(a) If the Individual dies before the distribution of the ~~i~~Individual's entire interest and the beneficiary is a designated beneficiary –

(1) In general. Subject to the exception for an eligible designated beneficiary in paragraph (a)(2), the entire interest will be distributed as permitted by the Company and applicable federal tax law by the end of the calendar year containing the tenth anniversary of the Individual's death.

(2) Exception for eligible designated beneficiaries. If any portion of the Individual's interest is payable to (or for the benefit of) an eligible designated beneficiary, such portion will be distributed as permitted by the Company and applicable federal tax law –

(I) over the life of such eligible designated beneficiary, or over a period not extending beyond the life expectancy of such eligible designated beneficiary, starting no later than the end of the calendar year following the calendar year of the Individual's death (or the end of the calendar year in which the Individual would have attained age 72 (or age 70½ if the Individual was born on or before June 30, 1949), if later and the sole designated beneficiary is the surviving spouse of the Individual), or

(II) by the end of the calendar year containing the tenth anniversary of the Individual's death, subject to the terms of the contract or the Company requiring such portion to be distributed more rapidly.

**(Note to reviewer: Variations of this LRM #16(a)(2) are permitted that satisfy Code § 401(a)(9)(H), for example, that (1) do not offer eligible designated beneficiaries the ability to take distributions in the manner described in (I); limit the types of eligible designated beneficiaries who are permitted to take distributions in the manner described in (I); or express either (I) or (II) as the default method of distribution for an eligible designated beneficiary.**

(3) Rules upon death of an eligible designated beneficiary.

(I) If an eligible designated beneficiary dies before the portion of the Individual’s interest to which this paragraph (a) applies is entirely distributed, the exception under paragraph (a)(2)(I) shall not apply to any beneficiary of such eligible designated beneficiary and the remainder of such portion shall be distributed within 10 years after the death of such eligible designated beneficiary, subject to the terms of the contract or the Company requiring such portion to be distributed more rapidly.

(II) If the eligible designated beneficiary is the surviving spouse of the Individual and the surviving spouse dies before distributions to such spouse under paragraph (a)(2)(I) begin, this paragraph (a) shall be applied as if the surviving spouse were the Individual.

Commented [CAI20]: Compare to current LRM #16(b)(2).

For this purpose, distributions are considered to commence on the date distributions are required to begin to the surviving spouse under paragraph (a)(2)(I). However, if distributions start prior to the applicable date in the preceding sentence, on an irrevocable basis (except for acceleration) in the form of annuity payments meeting the requirements of § 1.401(a)(9)-6 of the Income Tax Regulations, then required distributions are considered to commence on the annuity starting date.

(4) After annuity payments commence to the Individual or a beneficiary, annuity payments may need to be modified as necessary to comply with this paragraph (a).

Commented [CAI21]: This provision is recommended in order to put IRA owners on notice that events that occur after annuitization could affect the permitted annuity payout, whether the annuitization commenced during the owner's life or after their death. For example, if an eligible designated beneficiary (EDB) pre-deceases the owner and the replacement beneficiary is not an EDB, the 10-year rule will apply upon the owner's death even though, at the point of annuitization, the owner expected that the "stretch" rule would be available to the beneficiary.

(5) Application. Except as otherwise provided under applicable federal tax law –

(I) this paragraph (a) applies to distributions with respect to an Individual who dies after December 31, 2019, and

(II) if the Individual dies before January 1, 2020, and such Individual's designated beneficiary dies after such date, the entire remaining interest in the contract shall be distributed by the end of the calendar year containing the tenth anniversary of such designated beneficiary's death.

(b) If the Individual and designated beneficiary both died before January 1, 2020, unless otherwise provided under applicable federal tax law, the remaining interest will be distributed as required by Code § 401(a)(9) and the Income Tax Regulations thereunder, as in effect prior to amendment by section 401 of Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, the provisions of which are incorporated herein by reference.

(c) If the Individual dies before the distribution of the Individual's entire interest and the beneficiary is not a designated beneficiary, unless otherwise provided under applicable federal tax law, the remaining interest will be distributed as follows –

(1) If the Individual dies on or after the required beginning date (or dies on or after the date annuity payments commence if distributions commence prior to the required beginning date in the form of annuity payments in accordance with the provisions of Q&A-1 of § 1.401(a)(9)-6 of the Income Tax Regulations), the remaining interest will be distributed in accordance with Code § 401(a)(9) and the Income Tax Regulations thereunder at least as rapidly as under the method of distributions being used as of the date of the Individual's death.

(2) If the Individual dies prior to the required beginning date (and prior to the date annuity payments commence) the remaining interest will be distributed by the end of the calendar year containing the fifth anniversary of the Individual's death, subject to the terms of the contract or the Company requiring such remaining interest to be distributed more rapidly.

(d) Life expectancy is determined using the Single Life Table in Q&A-1 of § 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole designated beneficiary, such spouse's remaining life expectancy for a calendar year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a calendar year is the number in the Single Life Table corresponding to the beneficiary's age as of his or her birthday in the calendar year following the calendar year of the Individual's death and reduced by 1 for each subsequent year. If distributions are being made in the form of annuity payments, life expectancy will not be recalculated.

(e) The required minimum distributions payable to a designated beneficiary with respect to this IRA contract (other than a distribution made under this contract in the form of annuity payments) may be withdrawn from another IRA the beneficiary holds from the same decedent in accordance with Q&A-9 of § 1.408-8 of the Income Tax Regulations.

(f) The surviving spouse of the Individual who is the sole beneficiary and has an unlimited right to withdraw amounts may elect to treat this contract as the spouse's own IRA. This election can be made by redesignating the contract in the name of the surviving spouse as the owner rather than as beneficiary. Alternatively, the surviving spouse who is eligible to make the election is deemed to have made the election if, at any time, such surviving spouse makes a contribution to the IRA (if permitted under the contract) or fails to take required distributions as a beneficiary.

**Commented [CAI22]:** See Q&A-5 of § 1.408-8 of the Income Tax Regulations.

**(17) Definitions and special rules: Code § 401(a)(9)(E) and (H)(v), as modified by Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94; Q&A-1(e) of § 1.401(a)(9)-5 of the Income Tax Regulations, Q&As-1 and -12 of 1.401(a)(9)-6 of the Income Tax Regulations. Sample Language:**

(a) Required beginning date. The term "required beginning date" means the first day of April following the calendar year in which the Individual for whose benefit the contract is maintained attains age 72 (or attains age 70½ in the case of an Individual who was born on or before June 30, 1949).

Commented [CAI23]: The references to age 70½ is modified to refer to age 72 pursuant to Div. O, § 114 of the SECURE Act. See Q&A-3 of § 1.401(a(9)-2 of the Income Tax Regulations.

(b) Designated beneficiary. The term "designated beneficiary" means any individual designated as a beneficiary by the Individual. This term will be interpreted consistently with Code § 401(a)(9)(E) and the Income Tax Regulations.

(c) Eligible designated beneficiary.

(1) The term "eligible designated beneficiary" means, with respect to any Individual, any designated beneficiary who is –

(I) the surviving spouse of the Individual,

(II) subject to paragraph (c)(2), a child of the Individual who has not reached majority (within the meaning of Code § 401(a)(9)(F)),

(III) disabled (within the meaning of Code § 72(m)(7)),

(IV) a chronically ill individual (within the meaning of Code § 7702B(c)(2), except that the requirements of subparagraph (A)(i) thereof shall be treated as met only if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature), or

(V) an individual not described in any of the preceding clauses of this paragraph (c)(1) who is not more than 10 years younger than the Individual.

Except to the extent that applicable federal tax law permits otherwise, the determination of whether a designated beneficiary is an eligible designated beneficiary shall be made as of the date of death of the Individual.

(2) Special rule for children. Subject to Code § 401(a)(9)(F), an individual described in paragraph (c)(1)(II) shall cease to be an eligible designated beneficiary as of the date the individual reaches majority and any remainder of the portion of the Individual's interest to which paragraph (a)(2)(I) of section --- applies shall be distributed within 10 years after such date.

**(Note to reviewer: The blank should contain a reference that corresponds to LRM #16.)**

(d) Special rules for annuity payments. The options under which annuity payments are made may be limited. Unless otherwise provided under applicable federal tax law –

(1) Distributions in the form of annuity payments must satisfy the applicable requirements of § 1.401(a)(9)-6 of the Income Tax Regulations, the provisions of which are herein incorporated by reference.

(2) Distributions made in the form of annuity payments must be made in periodic payments and the interval between payments for the annuity must be uniform over the entire distribution period and must not exceed one year.

(3) Annuity payments must satisfy the minimum distribution incidental benefit requirements in Q&A-2 of § 1.401(a)(9)-6 of the Income Tax Regulations.

(4) Annuity payments must be nonincreasing or increase only as permitted by Q&A-14 of § 1.401(a)(9)-6 of the Income Tax Regulations.

(5) If distributions (including distributions commencing on or before the required beginning date while the Individual is alive) are made in the form of annuity payments, the first annuity payment must be the payment which is required for one payment interval. The second payment need not be made until the end of the next payment interval even if that payment interval ends in the next calendar year. Similarly, in the case of distributions commencing after death in accordance with Code § 401(a)(9)(B)(iii) and (iv), the first payment, which must be made on or before the date determined

**Commented [CAI24]:** After guidance is issued clarifying when a child reaches majority for purposes of IRC § 401(a)(9)(E)(ii), it would be helpful for this LRM #17(c)(2) to be updated to reflect this guidance, without requiring IRA endorsements to be amended to incorporate this clarification.

under A-3(a) or (b) (whichever is applicable) of § 1.401(a)(9)-3 of the Income Tax Regulations, must be the payment which is required for one payment interval. Payment intervals are the periods for which payments are received, e.g., bimonthly, monthly, semi-annually, or annually.

(6) If annuity payments commence after the date distributions are required to commence (the required beginning date in the case of distributions commencing before death, or the date determined under Q&A-3 of § 1.401(a)(9)-3 of the Income Tax Regulations in the case of distributions commencing after death), distributions must be made in accordance with Q&A-1(e) of § 1.401(a)(9)-5 of the Income Tax Regulations.

(7) Prior to the date annuity payments commence, the "entire interest" under an annuity contract is the dollar amount credited to the Individual or beneficiary under the contract plus the actuarial present value of any additional benefits (such as survivor benefits in excess of the dollar amount credited to the Individual or beneficiary) that will be provided under the contract.

~~(a) Death On or After Required Distributions Commence. If the individual dies on or after required distributions commence, the remaining portion of his or her interest will continue to be distributed under the contract option chosen.~~

~~(b) Death Before Required Distributions Commence. If the individual dies before required distributions commence, his or her entire interest will be distributed at least as rapidly as follows:~~

~~(1) If the designated beneficiary is someone other than the individual's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the individual's death, over the remaining life expectancy of the designated beneficiary, with such life expectancy determined using the age of the beneficiary as of his or her birthday in the year following the year of the individual's death, or, if elected, in accordance with paragraph (b)(3) below. If this is an inherited IRA within the meaning of Code § 408(d)(3)(C) established for the benefit of a nonspouse designated beneficiary by~~

~~a direct trustee-to-trustee transfer from a retirement plan of a deceased individual under § 402(c)(11), then, notwithstanding any election made by the deceased individual pursuant to the preceding sentence, the nonspouse designated beneficiary may elect to have distributions made under this paragraph (b)(1) if the transfer is made no later than the end of the year following the year of death.~~

~~(2) If the individual's sole designated beneficiary is the individual's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the individual's death (or by the end of the calendar year in which the individual would have attained age 70½, if later), over such spouse's life expectancy, or, if elected, in accordance with paragraph (b)(3) below. If the surviving spouse dies before required distributions commence to him or her, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's designated beneficiary's remaining life expectancy determined using such beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph (b)(3) below. If the surviving spouse dies after required distributions commence to him or her, any remaining interest will continue to be distributed under the contract option chosen.~~

~~(3) If there is no designated beneficiary, or if applicable by operation of paragraph (b)(1) or (b)(2) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the individual's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph (b)(2) above).~~
~~(4)~~

~~(5) Life expectancy is determined using the Single Life Table in Q&A-1 of § 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole designated beneficiary, such~~

~~spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the beneficiary's age in the year specified in paragraph (b)(1) or (2) and reduced by 1 for each subsequent year.~~

~~(c)~~
~~The "interest" in the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of § 1.408-8 of the Income Tax Regulations and the actuarial value of any other benefits provided under the IRA, such as guaranteed death benefits.~~

~~(d) For purposes of paragraphs (a) and (b) above, required distributions are considered to commence on the individual's required beginning date or, if applicable, on the date distributions are required to begin to the surviving spouse under paragraph (b)(2) above. However, if distributions start prior to the applicable date in the preceding sentence, on an irrevocable basis (except for acceleration) under an annuity contract meeting the requirements of § 1.401(a)(9)-6 of the Income Tax Regulations, then required distributions are considered to commence on the annuity starting date.~~

~~(e) If the sole designated beneficiary is the individual's surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a beneficiary.~~

~~(f) The required minimum distributions payable to a designated beneficiary from this IRA may be withdrawn from another IRA the beneficiary holds from the same decedent in accordance with Q&A-9 of § 1.408-8 of the Income Tax Regulations.~~

**(18~~7~~) Statement of Requirement: Participant's interest must be nonforfeitable, Code § 408(b)(4). Sample Language:**

The entire interest of the owner ~~individual~~ is nonforfeitable.

**(19~~8~~) Statement of Requirement: Contract is nontransferable by the owner, Code § 408(b)(1). Sample Language:**

**Commented [CAI25]:** We recommend using the statutory language here. Our edits above would define the capitalized word “Individual” to mean the person who originally established the IRA, including if they are deceased. In contrast, the word “owner” could mean a beneficiary in the case of contract issued as an inherited IRA. To avoid potential confusion, we suggest quoting directly from the statute.

This contract is not ~~non~~transferable by the owner. ~~individual.~~

Commented [CAI26]: Same comment as immediately above.

**(20~~19~~) Statement of Requirement: Application of refund premiums, Code § 408(b)(2). Sample Language:**

Any refund of premiums (other than those attributable to excess contributions) will be applied, before the close of the calendar year following the year of the refund, toward the payment of future premiums or the purchase of additional benefits.

**(Note to reviewer: Language that meets the requirements of this provision must be included in annuities that provide for participation in dividends.)**

**(20) Statement of Requirement: Contract may not require fixed premiums; however, the sample language below does not violate this requirement, Code § 408(b)(2) and proposed regulation § 1.408-3(f). Sample Language:**

If the premium payments are interrupted, the contract will be reinstated at any date prior to maturity upon payment of a premium to the Company, and the minimum premium amount for reinstatement shall be --- (not to exceed $50), however, the Company may at its option either accept additional future payments or terminate the contract by payment in cash of the then present value of the paid up benefit if no premiums have been received for two full consecutive policy years and the paid up annuity benefit at maturity would be less than $20 per month.

**(22~~1~~) Statement of Requirement: Annual reports by trustees or issuers, Regs. §§ 1.408-5 and 1.408-8. Sample Language:**

The issuer of an individual retirement annuity shall furnish annual calendar year reports concerning the status of the annuity and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.

~~**(22) Statement of Requirement: Includible compensation, Code §§ 219(f)(1) and 219(f)(7) and Regs. § 1.219-1(c)(1). Sample Language:**~~

~~Compensation means wages, salaries, professional fees, or other amounts derived from or received for personal services~~

Commented [CAI27]: "Compensation" is not used elsewhere in the LRMs. Also, after our proposed edits, the contribution limits in LRM #14 would reference Code section 219(b)(1), which includes the compensation component of the contribution limit. As a result, and as reflected in the "Note to Reviewer" in the text below, this provision of the LRMs defining compensation is not needed for compliance purposes, and including this provision is potentially confusing.

If this paragraph is retained, it should be updated to reflect statutory changes since 2010, including the SECURE Act changes regarding certain amounts paid to aid in the pursuit of graduate or postdoctoral studies. See our proposed revisions to the Roth IRA LRMs for suggestions in that regard.

~~actually rendered (including, but not limited to commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and includes earned income, as defined in Code § 401(c)(2) (reduced by the deduction the self employed individual takes for contributions made to a self-employed retirement plan). For purposes of this definition, § 401(c)(2) shall be applied as if the term trade or business for purposes of § 1402 included service described in subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income (determined without regard to § 112). Compensation also does not include any amount received as a pension or annuity or as deferred compensation. The term "compensation" shall include any amount includible in the individual's gross income under § 71 with respect to a divorce or separation instrument described in subparagraph (A) of § 71(b)(2). The term "compensation" also includes any differential wage payments as defined in § 3401(h)(2).~~

**~~(Note to Reviewer: Code § 219(f)(1) as modified by § 219(f)(7), (above) provides the definition of compensation for use in computing deductible limits for individual retirement arrangements. Compliance with § 219(f)(1) is not required for qualification or for receipt of a favorable opinion letter.)~~**

**ROTH INDIVIDUAL RETIREMENT ARRANGEMENTS (Roth IRAs)**

**List of Required Modifications and Information Package (LRMs)**
**(For use with prototype Roth IRAs intending to satisfy the requirements of Code § 408A and § 408(a) or (b).)**
**Material added since the 6-2010~~5-2006~~ LRMs is underlined.**

**This information package contains samples of provisions that have been found to satisfy certain specific requirements of the Internal Revenue Code as amended through the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Pub. L. 116-136~~Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), Pub. L. 110-458~~.**

**Such language may or may not be acceptable in specific IRAs, depending on the context.**

**Part A, provisions 1-12, applies to Roth individual retirement accounts under Code §§ 408A and 408(a). Part B, provisions 13-2~~1~~2, applies to Roth individual retirement annuities under §§ 408A and 408(b).**

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**PART A: ACCOUNTS - Roth trust or custodial accounts under Code §§ 408A, 408(a) and 408(h).**

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**PART B. ANNUITIES - Roth annuities under Code §§ 408A and 408(b).**

**(13) Statement of Requirement:The Roth IRA is organized and operated for the exclusive benefit of the individual, Code §§ 408A and 408(b). Sample Language:**

The contract is established for the exclusive benefit of the individual ("Individual") or his or her beneficiaries. If this is an inherited IRA within the meaning of Internal Revenue Code ("Code") § 408(d)(3)(C) maintained for the benefit of a designated beneficiary of a deceased individual, or is maintained for the benefit of a designated beneficiary who is

**Commented [CAI1]:** The term "Individual" (capitalized) is used to refer to the owner or deceased owner of this IRA. The term "individual" (lower case) is used to refer to a designated beneficiary for whose benefit the IRA is maintained after the death of an IRA owner or an employee under an eligible retirement plan (collectively referred to as a "deceased individual").

the surviving spouse of a deceased individual and who has not elected to treat this Roth IRA as the surviving spouse's own Roth IRA, references in this document to the "~~i~~Individual" are to the deceased individual.

**(14) Statement of Requirement: Maximum permissible annual contribution and restrictions on kinds of contributions, Code §§ 72(t)(2)(G), 219(b), 219(f)(1), 408(d)(3)(G), 408(p)(1)(B), 408(p)(2)(A)(iv), 408A(c), 408A(d)(6) and 408A(e) and Income Tax Regulations §§ 1.219-1(c)(1) and 1.408A-3, -4 and -5. Also, § 221 of the Tax Technical Corrections Act of 2014, Pub. L. 113-295; § 202 of Division Q and § 113 of Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94; and § 2202 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136~~§ 201 of the Gulf Opportunity Zone Act of 2005, Pub. L. 109-135; § 15345 of the Food, Conservation, and Energy Act of 2008, Pub. L. 110-246; § 702 of Division C of the Emergency Economic Stabilization Act of 2008, Pub. L. 110-343; and § 125 of WRERA~~. Sample Language:**

(a) Maximum Permissible Amount. Except in the case of a qualified rollover contribution (as defined in (g) below), ~~or~~ a recharacterization (as defined in (f) below), or a non-taxable transfer from an individual retirement plan under Code § 7701(a)(37), no contribution will be accepted unless it is in cash and the total of such contributions to all the ~~i~~Individual's Roth IRAs for a taxable year does not exceed the applicable amount (as defined in (b) below), or the I~~i~~ndividual's compensation (as defined in (h) below), if less, for that taxable year. The contribution described in the previous sentence that may not exceed the lesser of the applicable amount or the ~~i~~Individual's compensation is referred to as a "regular contribution." However, notwithstanding the preceding limits on contributions, an ~~i~~Individual may make additional contributions (if permitted under the contract) that are specifically authorized by statute – such as repayments of qualified reservist distributions, ~~repayments of~~ certain plan distributions made on account of a federally declared disaster, qualified birth or adoption distributions, and coronavirus-related distributions~~and certain amounts received in connection with the Exxon Valdez litigation~~. Contributions may be limited under (c) through (e) below. No regular contribution will be accepted from a designated beneficiary under an inherited Roth IRA (other than a surviving spouse who has elected to treat this Roth IRA as his or her own).

(b) Applicable Amount. The applicable amount is determined below:

**Commented [CAI2]:** An inherited IRA is defined in IRC § 408(d)(3)(C) as an IRA that is maintained for the benefit of a non-spouse beneficiary. This phrase is added to reflect that an IRA also can be maintained for the benefit of a spouse beneficiary who does not elect to treat the IRA as his or her own under Treas. Reg. § 1.408-8, Q&A-5.

**Commented [CAI3]:** This change is proposed to reflect that a contribution made in the form of a direct trustee-to-trustee transfer also is permissible without regard to the contribution limit. See, e.g., Rev. Rul. 78-406, 1978-2 C.B. 157; Rev. Rul. 67-213, 1967-2 C.B. 149.

**Commented [CAI4]:** This change is proposed to reflect that recontributions of certain amounts, while permitted under federal tax law, might not be permitted under the contract (e.g., in the case of a single premium annuity contract or a contract that limits the maximum amount of premiums that can be paid).

(i) If the ~~i~~Individual is under age 50, the applicable amount is set forth in Code § 219(b)(1). ~~$5,000 f~~For any taxable year beginning in 2008 and years thereafter, the limit is $5,000. After 2008, the $5,000 amount will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code § 219(b)(5)(~~D~~C). Such adjustments will be in multiples of $500.

**Commented [CAI5]:** This reference to IRC § 219(b)(1) is intended to incorporate the "compensation" component of the annual contribution limit. The existing LRMs do not explicitly do this, even though it is part of the applicable contribution limit.

**Commented [CAI6]:** Subparagraph (D) of IRC § 219(b)(5) was redesignated as subparagraph (C) under legislation passed in 2014.

(ii) If the ~~i~~Individual is 50 or older, the applicable amount under paragraph (i) above is increased by $1,000 for any taxable year beginning in 2006 and years thereafter.

~~(iii) If the individual was a participant in a § 401(k) plan of a certain employer in bankruptcy described in Code § 219(b)(5)(C), then the applicable amount under paragraph (i) above is increased by $3,000 for taxable years beginning after 2006 and before 2010 only. An individual who makes contributions under this paragraph (iii) may not also make contributions under paragraph (ii).~~

**Commented [CAI7]:** This subsection can be deleted because it does not apply for taxable years beginning after 2009.

(c) Regular Contribution Limit. The maximum regular contribution that can be made to all the ~~i~~Individual's Roth IRAs for a taxable year is the smaller amount determined under (i) or (ii) below.

(i) The maximum regular contribution is phased out ratably between certain levels of modified adjusted gross income ("modified AGI," as defined below) in accordance with the following table:

| Filing Status | Full Contribution | Phase-out Range | No Contribution |
|---|---|---|---|
| | Modified AGI | | |
| Single or Head of Household | $95,000 or less | Between $95,000 and $110,000 | $110,000 or more |
| Joint Return or Qualifying Widow(er) | $150,000 or less | Between $150,000 and $160,000 | $160,000 or more |
| Married-Separate Return | $0 | Between $0 and $10,000 | $10,000 or more |

An ~~i~~Individual's ~~modified adjusted gross income ("~~modified AGI~~")~~ for a taxable year is defined in Code § 408A(c)(3) and does not include any amount included in adjusted gross income as a result of a qualified rollover contribution. If the ~~i~~Individual's modified AGI for a taxable year is in the phase-out range, the maximum regular contribution determined under this table for that taxable year is rounded up to the next multiple of $10 and is not reduced below $200. After 2006, the dollar amounts above will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code § 408A(c)(3). Such adjustments will be in multiples of $1,000.

(ii) If the ~~i~~Individual makes regular contributions to both Roth and nonRoth IRAs for a taxable year, the maximum regular contribution that can be made to all the ~~i~~Individual's Roth IRAs for that taxable year is reduced by the regular contributions made to the ~~i~~Individual's nonRoth IRAs for the taxable year.

(d) SIMPLE IRA Limits. No contributions will be accepted under a SIMPLE IRA plan established by any employer pursuant to Code § 408(p). Also, no transfer or rollover of funds attributable to contributions made by a particular employer under its SIMPLE IRA plan will be accepted from a SIMPLE IRA, that is, an IRA used in conjunction with a SIMPLE IRA plan, prior to the expiration of the 2-year period beginning on the date the ~~i~~Individual first participated in that employer's SIMPLE IRA plan.

(e) Inherited IRA. If this is an inherited IRA within the meaning of Code § 408(d)(3)(C), no contributions will be accepted other than a contribution that is in the form of a direct rollover from an eligible retirement plan of a deceased employee that is permitted under Code § 402(c)(11) or a nontaxable transfer from an individual retirement plan under Code § 7701(a)(37) of a deceased individual. If this Roth IRA is maintained for the benefit of a designated beneficiary who is the surviving spouse of a deceased individual, and the surviving spouse beneficiary does not elect to treat the Roth IRA and his or her own, the surviving spouse beneficiary will make no contribution other than a contribution that is in the form of a nontaxable rollover by the surviving spouse beneficiary from an eligible retirement plan of the deceased individual, or a nontaxable rollover or transfer by the surviving spouse beneficiary from an individual retirement plan under Code § 7701(a)(37) of the deceased individual.

**Commented [CAI8]:** This change is proposed to clarify the types of contributions that are permitted to be made to an inherited IRA.

(f) Recharacterization. A regular contribution to a nonRoth IRA may be recharacterized pursuant to the rules in § 1.408A-5 of the Income Tax ~~r~~Regulations as a regular contribution to this Roth IRA, subject to the limits in (c) above.

(g) Qualified Rollover Contribution. A "qualified rollover contribution" is a rollover contribution of a distribution from an eligible retirement plan described in Code § 402(c)(8)(B). If the distribution is from an IRA, the rollover must meet the requirements of Code § 408(d)(3), except the one-rollover-per-year rule of Code § 408(d)(3)(B) does not apply if the distribution is from a nonRoth IRA. If the distribution is from an eligible retirement plan other than an IRA, the rollover must meet the requirements of Code § 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3) or 457(e)(16), as applicable. A qualified rollover contribution also includes (i) and (ii) below.

(i)All or part of a military death gratuity or servicemembers' group life insurance ("SGLI") payment may be contributed if the contribution is made within 1 year of receiving the gratuity or payment. Such contributions are disregarded for purposes of the one-rollover-per-year rule under Code § 408(d)(3)(B).

(ii) All or part of an airline payment (as defined in § 125 of the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA"), Pub. L. 110-458) received by certain airline employees may be contributed if the contribution is made within 180 days of receiving the payment.

(h) Compensation. For purposes of (a) above, compensation is defined as wages, salaries, professional fees, or other amounts derived from or received for personal services actually rendered(including, but not limited to commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and includes earned income, as defined in Code § 401(c)(2) (reduced by the deduction the self-employed ~~i~~Individual takes for contributions made to a self-employed retirement plan). For purposes of this definition, Code § 401(c)(2) shall be applied as if the term trade or business for purposes of Code § 1402 included service described in subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including but not limited to interest and dividends) or amounts not includible in gross income (determined without regard to Code § 112). Compensation also does not include any amount received as a pension or annuity or as deferred compensation. The term "compensation" shall include any amount includible in the ~~i~~Individual's gross income under Code § 71 with respect to a divorce or separation instrument described in subparagraph (A) of Code § 71(b)(2) if executed on or before December 31, 2018 and not modified after that date to provide otherwise. In the case of a married ~~i~~Individual filing a joint return, the greater compensation of his or her spouse is treated as his or her own compensation, but only to the extent that such spouse's compensation is not being used for purposes of the spouse making an IRA contribution. The term "compensation" also includes any differential wage payments as defined in Code § 3401(h)(2) and any amount which is included in income and paid to the Individual to aid the Individual in the pursuit of graduate or postdoctoral study as described in Code § 219(f)(1).

**(15) Statement of Requirement: Distributions before death are not required, Code § 408A(c)(5). Sample Language:**

No amount is required to be distributed prior to the death of the I~~i~~ndividual for whose benefit the contract was originally established. If this is an inherited IRA within the meaning of Code § 408(d)(3)(C), or if this contract is maintained for the benefit of a designated beneficiary who is the surviving spouse of a deceased Individual and who has not elected to treat this Roth IRA as the surviving spouse's own Roth IRA, this paragraph does not apply.

**(16) Statement of Requirement: Distribution upon death, Code §§ 408(b)(3) and 408A(c)(5) and ~~Regulations~~ §§ 1.408-8 and 1.408A-6 of the Income Tax Regulations. Also, Code § 401(a)(9), as modified by Div. O, § 401 of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94; and § 2203 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136~~Notice 2007-7, Q&As 17-19, 2007-1 C.B.395~~. Sample Language:**

(a) Notwithstanding any provision of this Roth IRA to the contrary, the distribution of the ~~i~~Individual's interest in the Roth IRA shall be made in accordance with the requirements of Code § 408(b)(3), as modified by Code § 408A(c)(4~~5~~), and the Income Tax ~~r~~Regulations thereunder, the provisions of which are herein incorporated by reference. To the extent provided in Code § 401(a)(9)(I), the requirements of Code § 401(a)(9) shall not apply for calendar year 2020.

**(Note to reviewer: The last sentence above, regarding Code § 401(a)(9)(I), is not required for qualification or for receipt of a favorable opinion letter.)**

~~If distributions are not made in the form of an annuity on an irrevocable basis (except for acceleration), then distribution~~
~~of the interest in the IRA (as determined under section --- ) must satisfy the requirements of Code § 408(a)(6), as modified~~

**Commented [CAI9]:** The SECURE Act re-designated Code § 408A(c)(5) to become Code § 408(c)(4).

**Commented [CAI10]:** This sentence reflects the RMD waiver for 2020 under section 2202 of the CARES Act. A similar sentence was included in a prior version of the LRMs to reflect to the RMD waiver for 2009 in former IRC § 401(a(9)(H). We recommend making this sentence optional, as reflected in the new "Note to reviewer" in the text below.

**Commented [CAI11]:** Q&A-1 of Notice 2020-51 clarifies that IRAs do not need to be amended to reflect the RMD waiver for 2020.

~~by § 408A(c)(5), and the regulations thereunder, rather than the distribution rules in paragraphs (b), (c), (d) and (e) below.~~

~~**(Note to reviewer: The blank should contain a reference that corresponds to LRM #16(c).)**~~

~~(a)~~(b) Upon the death of the ~~i~~Individual, his or her entire interest will be distributed ~~at least as rapidly~~ as follows:

**Commented [CAI12]:** This phrase is confusing because it suggests that the at-least-as-rapidly rule of Code § 401(a)(9)(B)(i) applies in cases where it does not. We recommend deleting it.

(1) If the Individual dies before the distribution of the Individual's entire interest and the beneficiary is a designated beneficiary –

(I) In general. Subject to the exception for an eligible designated beneficiary in paragraph (b)(1)(II), the entire interest will be distributed as permitted by the Company and applicable federal tax law by the end of the calendar year containing the tenth anniversary of the Individual's death.

(II) Exception for eligible designated beneficiaries. If any portion of the Individual's interest is payable to (or for the benefit of) an eligible designated beneficiary, such portion will be distributed as permitted by the Company and applicable federal tax law –

(i) over the life of such eligible designated beneficiary, or over a period not extending beyond the life expectancy of such eligible designated beneficiary, starting no later than the end of the calendar year following the calendar year of the Individual's death (or the end of the calendar year in which the Individual would have attained age 72 (or age 70½ if the Individual was born on or before June 30, 1949), if later and the sole designated beneficiary is the surviving spouse of the Individual), or

(ii) by the end of the calendar year containing the tenth anniversary of the Individual's death, subject to the terms of the contract or the Company requiring such portion to be distributed more rapidly.

**(Note to reviewer: Variations of this LRM #16(b)(1)(II) are permitted that satisfy Code § 401(a)(9)(H), for example, that (1) do not offer eligible designated beneficiaries the ability to take distributions in the manner described in (i); limit the types of eligible designated beneficiaries who are permitted to take distributions in the manner**

**described in (i); or express either (i) or (ii) as the default method of distribution for an eligible designated beneficiary.**

(III) Rules upon death of an eligible designated beneficiary.

(i) If an eligible designated beneficiary dies before the portion of the Individual's interest to which this paragraph (b) applies is entirely distributed, the exception under paragraph (b)(1)(II)(i) shall not apply to any beneficiary of such eligible designated beneficiary and the remainder of such portion shall be distributed within 10 years after the death of such eligible designated beneficiary, subject to the terms of the contract or the Company requiring such portion to be distributed more rapidly.

(ii) If the eligible designated beneficiary is the surviving spouse of the Individual and the surviving spouse dies before distributions to such spouse under paragraph (b)(1)(II)(i) begin, this paragraph (b) shall be applied as if the surviving spouse were the Individual.

For this purpose, distributions are considered to commence on the date distributions are required to begin to the surviving spouse under paragraph (b)(1)(II)(i). However, if distributions start prior to the applicable date in the preceding sentence, on an irrevocable basis (except for acceleration) in the form of annuity payments meeting the requirements of section 1.401(a)(9)-6 of the Income Tax Regulations, then required distributions are considered to commence on the annuity starting date.

(2) After annuity payments commence to the Individual or a beneficiary, annuity payments may need to be modified as necessary to comply with this paragraph (b).

(3) Application. Except as otherwise provided under applicable federal tax law –

(I) paragraph (b) applies to distributions with respect to an Individual who dies after December 31, 2019, and

(II) if the Individual dies before January 1, 2020, and such Individual's designated beneficiary dies after such date, the entire remaining interest in the contract shall be distributed by the end of the calendar year containing the tenth anniversary of such designated beneficiary's death.

(c) If the Individual and designated beneficiary both died before

**Commented [CAI13]:** Compare to current LRM #16(c)(2).

**Commented [CAI14]:** This provision is recommended in order to put IRA owners on notice that events that occur after annuitization could affect the permitted annuity payout, whether the annuitization commenced during the owner's life or after their death. For example, if an eligible designated beneficiary (EDB) pre-deceases the owner and the replacement beneficiary is not an EDB, the 10-year rule will apply upon the owner's death even though, at the point of annuitization, the owner expected that the "stretch" rule would be available to the beneficiary.

January 1, 2020, unless otherwise provided under applicable federal tax law, the remaining interest will be distributed as required by Code § 401(a)(9) and the Income Tax Regulations thereunder, as in effect prior to amendment by section 401 of Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, the provisions of which are incorporated herein by reference.

(d) If the Individual dies before the distribution of the Individual's entire interest and the beneficiary is not a designated beneficiary, the remaining interest will be distributed by the end of the calendar year containing the fifth anniversary of the Individual's death, subject to the terms of the contract or the Company requiring such remaining interest to be distributed more rapidly.

(e) Life expectancy is determined using the Single Life Table in Q&A-1 of § 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole designated beneficiary, such spouse's remaining life expectancy for a calendar year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a calendar year is the number in the Single Life Table corresponding to the beneficiary's age as of his or her birthday in the calendar year following the calendar year of the Individual's death and reduced by 1 for each subsequent year. If distributions are being made in the form of annuity payments, life expectancy will not be recalculated.

(f) The required minimum distributions payable to a designated beneficiary with respect to this Roth IRA (other than a distribution made under this contract in the form of an annuity payment) may be withdrawn from another Roth IRA the beneficiary holds from the same decedent in accordance with Q&A-9 of § 1.408-8 of the Income Tax Regulations.

(g) The surviving spouse of the Individual who is the sole beneficiary and has an unlimited right to withdraw amounts may elect to treat this contract as the spouse's own Roth IRA. This election can be made by redesignating the contract in the name of the surviving spouse as the owner rather than as beneficiary. Alternatively, the surviving spouse who is eligible to make the election is deemed to have made the election if, at any time, such surviving spouse makes a contribution to the Roth IRA (if permitted under the contract) or fails to take required distributions as a beneficiary.

**Commented [CAI15]:** See Q&A-5 of § 1.408-8 of the Income Tax Regulations.

**(17) Definitions and special rules: Code § 401(a)(9)(E) and (H)(v), as modified by Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94; Q&A-1(e) of § 1.401(a)(9)-5 of the Income Tax Regulations, Q&As-1 and -12 of 1.401(a)(9)-6 of the Income Tax Regulations. Sample Language:**

(a) Designated beneficiary. The term "designated beneficiary" means any individual designated as a beneficiary by the Individual. This term will be interpreted consistently with Code § 401(a)(9)(E) and the Income Tax Regulations.

(b) Eligible designated beneficiary.

(1) The term "eligible designated beneficiary" means, with respect to any Individual, any designated beneficiary who is —

(I) the surviving spouse of the Individual,

(II) subject to paragraph (b)(2), a child of the Individual who has not reached majority (within the meaning of Code § 401(a)(9)(F)),

(III) disabled (within the meaning of Code § 72(m)(7)),

(IV) a chronically ill individual (within the meaning of Code § 7702B(c)(2), except that the requirements of subparagraph (A)(i) thereof shall be treated as met only if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature), or

(V) an individual not described in any of the preceding clauses of this paragraph (b)(1) who is not more than 10 years younger than the Individual.

Except to the extent that applicable federal tax law permits otherwise, the determination of whether a designated beneficiary is an eligible designated beneficiary shall be made as of the date of death of the Individual.

(2) Special rule for children. Subject to Code § 401(a)(9)(F), an individual described in paragraph (b)(1)(II) shall cease to be an eligible designated beneficiary as of the date the individual reaches majority and any remainder of the portion of the Individual's interest to which paragraph (b)(1)(II)(i) of section --- applies shall be distributed within 10 years after such date.

**Commented [CAI16]:** After guidance is issued clarifying when a child reaches majority for purposes of IRC § 401(a)(9)(E)(ii), it would be helpful for this LRM #17(c)(2) to be updated to reflect this guidance, without requiring IRA endorsements to be amended to incorporate this clarification.

**(Note to reviewer: The blank should contain a reference that corresponds to LRM #16.)**

(c) Special rules for annuity payments. The options under which annuity payments are made may be limited. Unless otherwise provided under applicable federal tax law –

(1) Distributions in the form of annuity payments that are made after the death of the Individual must:

(I) satisfy the applicable requirements of § 1.401(a)(9)-6 of the Income Tax Regulations, the provisions of which are herein incorporated by reference;

(II) be made in periodic payments and the interval between payments for the annuity must be uniform over the entire distribution period and must not exceed one year; and

(III) be nonincreasing or increase only as permitted by Q&A-14 of § 1.401(a)(9)-6 of the Income Tax Regulations.

(2) If distributions commence after death in the form of annuity payments in accordance with Code § 401(a)(9)(B)(iii) and (iv), the first payment, which must be made on or before the date determined under A-3(a) or (b) (whichever is applicable) of §1.401(a)(9)-3 of the Income Tax Regulations, must be the payment which is required for one payment interval. Payment intervals are the periods for which payments are received, e.g., bimonthly, monthly, semi-annually, or annually.

(3) If all or a portion of an individual account (including a deferred annuity contract prior to the date the contract is annuitized) is used to purchase an annuity after distributions are required to commence (the date determined under Q&A-3 of § 1.401(a)(9)-3 of the Income Tax Regulations), payments under the annuity, and distributions of any remaining account, must be made in accordance with Q&A-1(e) of § 1.401(a)(9)-5 of the Income Tax Regulations.

(4) Prior to the date annuity payments commence, the "entire interest" under an annuity contract is the dollar amount credited to the Individual or beneficiary under the contract plus the actuarial present value of any additional benefits (such as survivor benefits in excess of the dollar amount credited to the Individual or beneficiary) that will be provided under the contract.

~~If the designated beneficiary is someone other than the individual's surviving spouse, the entire interest will be~~

~~distributed, starting by the end of the calendar year following the calendar year of the individual's death, over the remaining life expectancy of the designated beneficiary, with such life expectancy determined using the age of the beneficiary as of his or her birthday in the year following the year of the individual's death, or, if elected, in accordance with paragraph (b)(iii) below. If this is an inherited IRA within the meaning of Code~~

~~§ 408(d)(3)(C) established for the benefit of a nonspouse designated beneficiary by a direct trustee-to-trustee transfer from a retirement plan of a deceased individual under § 402(c)(11), then, notwithstanding any election made by the deceased individual pursuant to the preceding sentence, the nonspouse designated beneficiary may elect to have distributions made under this paragraph (b)(i) if the transfer is made no later than the end of the year following the year of death.~~

~~(1) If the individual's sole designated beneficiary is the individual's surviving spouse, the entire interest will be distributed, starting by the end of the calendar year following the calendar year of the individual's death (or by the end of the calendar year in which the individual would have attained age 70½, if later), over such spouse's life expectancy, or, if elected, in accordance with paragraph (b)(iii) below. If the surviving spouse dies before required distributions commence to him or her, the remaining interest will be distributed, starting by the end of the calendar year following the calendar year of the spouse's death, over the spouse's designated beneficiary's remaining life expectancy determined using such beneficiary's age as of his or her birthday in the year following the death of the spouse, or, if elected, will be distributed in accordance with paragraph (b)(iii) below.~~

~~If the surviving spouse dies after required distributions commence to him or her, any remaining interest will continue to be distributed under the contract option chosen.~~

~~(2) If there is no designated beneficiary, or if applicable by operation of paragraph (b)(i) or (b)(ii) above, the entire interest will be distributed by the end of the calendar year containing the fifth anniversary of the individual's death (or of the spouse's death in the case of the surviving spouse's death before distributions are required to begin under paragraph (b)(ii) above).~~

~~(3) Life expectancy is determined using the Single Life Table in Q&A-1 of § 1.401(a)(9)-9 of the Income Tax Regulations. If distributions are being made to a surviving spouse as the sole designated beneficiary, such spouse's remaining life expectancy for a year is the number in the Single Life Table corresponding to such spouse's age in the year. In all other cases, remaining life expectancy for a year is the number in the Single Life Table corresponding to the beneficiary's age in the year specified in paragraph (b)(i) or (ii) and reduced by 1 for each subsequent year.~~

~~(b) The "interest" in the IRA includes the amount of any outstanding rollover, transfer and recharacterization under Q&As-7 and -8 of § 1.408-8 of the Income Tax Regulations and the actuarial value of any other benefits provided under the IRA, such as guaranteed death benefits.~~

~~(c) For purposes of paragraph (b)(ii) above, required distributions are considered to commence on the date distributions are required to begin to the surviving spouse under such paragraph. However, if distributions start prior to the applicable date in the preceding sentence, on an irrevocable basis (except for acceleration) under an annuity contract meeting the requirements of § 1.401(a)(9)-6 of the Income Tax Regulations, then required distributions are considered to commence on the annuity starting date.~~

~~(d) If the sole designated beneficiary is the individual's surviving spouse, the spouse may elect to treat the IRA as his or her own IRA. This election will be deemed to have been made if such surviving spouse makes a contribution to the IRA or fails to take required distributions as a beneficiary.~~

~~(e) The required minimum distributions payable to a designated beneficiary from this IRA may be withdrawn from another IRA the beneficiary holds from the same decedent in accordance with Q&A-9 of § 1.408-8 of the Income Tax Regulations.~~

**(1~~7~~8) Statement of Requirement: Participant's interest must be nonforfeitable, Code § 408(b)(4). Sample Language:**

The entire interest of the owner ~~individual~~ is nonforfeitable.

Commented [CAI17]: We recommend using the statutory language here. Our edits above would define the capitalized word "Individual" to mean the person who originally established the IRA, including if they are deceased. In contrast, the word "owner" could mean a beneficiary in the case of contract issued as an inherited IRA. To avoid potential confusion, we suggest quoting directly from the statute.

**(1~~8~~9) Statement of Requirement: Contract is nontransferable by the owner, Code § 408(b)(1). Sample Language:**

This contract is not ~~non~~transferable by the owner. ~~individual.~~

Commented [CAI18]: Same comment as immediately above.

**(20~~19~~) Statement of Requirement: Application of refund premiums, Code § 408(b)(2). Sample Language:**

Any refund of premiums (other than those attributable to excess contributions) will be applied, before the close of the calendar year following the year of the refund, toward the payment of future premiums or the purchase of additional benefits.

**(Note to reviewer: Language that meets the requirements of this provision must be included in annuities that provide for participation in dividends.)**

**(21~~0~~) Statement of Requirement: Contract may not require fixed premiums; however, the sample language below does not violate this requirement, Code § 408(b)(2) and Proposed Regulations § 1.408-3(f). Sample Language:**

If the premium payments are interrupted, the contract will be reinstated at any date prior to maturity upon payment of a premium to the insurance company, and the minimum premium amount for reinstatement shall be --- (not to exceed $50), however, the insurance company may at its option either accept additional future payments or terminate the contract by payment in cash of the then present value of the paid up benefit if no premiums have been received for two full consecutive policy years and the paid up annuity benefit at maturity would be less than $20 per month.

**(22~~1~~) Statement of Requirement: Annual reports by issuers, §§ 408(i) and 408A(d)(3)(D) and Regulations §§ 1.408-5 and 1.408-8. Sample Language:**

The issuer of a Roth individual retirement annuity shall furnish annual calendar year reports concerning the status of the annuity and such information concerning required minimum distributions as is prescribed by the Commissioner of Internal Revenue.