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Date:  
January 14, 2021

Employee A =  
Decedent B =  
Child C =  
Child D =  
State S =  
Trust T =

Trust U =

Trust V =

Trust W =

IRA X =

IRA Y =

IRA Z =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Dear \_\_\_\_\_ :

This is in response to a request for a letter ruling under sections 401(a)(9) and 408 of the Internal Revenue Code (Code), submitted on behalf of Trust W by its authorized representative in correspondence dated June 15, 2020 and December 30, 2020.

The following facts and representations have been submitted under penalties of perjury in support of the rulings requested.

On Date 1, Employee A established an individual retirement account (IRA) to receive lump sum distributions from his employer's retirement plans. On Date 2, Employee A established Trust T. Employee A designated Trust T as beneficiary of Employee A's IRA. Employee A also executed a separate beneficiary designation. The designation provided for the remaining balance of Employee A's IRA following Employee A's death to be allocated among various subtrusts under Trust T, each for the benefit of one of Employee A's children and grandchildren. The designation also permitted the trustee of each subtrust to elect to treat the subtrust's respective share of Employee A's IRA as a separate IRA for purposes of the distribution requirements of section 408(a)(6) (then in effect).

Employee A died on Date 3 (a date before January 1, 1984). On Date 4, the trustee of Trust U, a subtrust under Trust T for the benefit of Decedent B (a grandchild of Employee A), elected to treat its entire share of Employee A's IRA as a separate IRA for the benefit of Decedent B. Trust U received a private letter ruling, dated Date 5, that concluded that the election met the election requirements under § 1.408-2(b)(7)(ii) of the Income Tax Regulations.

Under § 1.408-2(b)(7)(ii), a regulation under section 408(a)(7) as in effect at that time, a non-spouse beneficiary of an individual who died before January 1, 1984, was, in effect, permitted to treat the IRA as the beneficiary's own IRA for purposes of section 401(a)(9) and, therefore, was permitted to elect to defer distributions from the beneficiary's inherited IRA until the beneficiary attained age 70½. Accordingly, Trust U's election resulted in treatment of Decedent B's inherited IRA held by Trust U (IRA X) as Decedent B's own IRA for purposes of the distribution requirements under section 401(a)(9).

Trust T and all of its subtrusts (including Trust U, Trust V, and Trust W) are each subject to, and valid under, the laws of State S. Under their terms, Trust T became irrevocable upon Employee A's death, and all of Trust T's subtrusts were irrevocable upon formation.

As a subtrust of Trust T, Trust U is subject to the provisions of both Trust T and Trust U. Those provisions include various contingencies for appointing the successor beneficiaries of Trust U and IRA X. Both Trust T and Trust U provided a limited power

to the Trust T's trustee to appoint Trust U's successor beneficiaries from among Employee A's descendants.

You represent that IRA X is the only asset of Trust U.

On Date 6, the trustees of Trust U executed a beneficiary designation for Trust U and IRA X. The designation provided that (i) annual required minimum distributions from IRA X were to commence on April 1 after the calendar year in which Decedent B attained 70½ years of age, and (ii) Trust U was the beneficiary of IRA X upon Decedent B's death.

On Date 7 (a date prior to Decedent B's death), the trustee of Trust U executed a limited power of appointment over Trust U, which you represent complied with the requirements of Trust T and the laws of State S. The power provided that the descendants of Decedent B's sister would become beneficiaries (in equal shares) of Trust U and IRA X upon Decedent B's death, subject to several contingencies. The power also provided that each successor beneficiary's share would be transferred to a new separate subtrust of Trust T in the name and for the benefit of each beneficiary.

Decedent B died on Date 8 (a date prior to January 1, 2020), before his "required beginning date," as that term is defined in section 401(a)(9)(C). Decedent B had not exercised any of his powers under the terms of Trust U to appoint a successor beneficiary. Trust U's trustee's execution of the limited power of appointment on Date 7 was therefore the last provision that applied to identification of successor beneficiaries as of the date of Decedent B's death. Decedent B's sister's descendants accordingly became successor beneficiaries of IRA X, with new separate subtrusts of Trust T created in the name and for the benefit of each descendant to accept the descendant's share of IRA X, on the date of Decedent B's death.

The only applicable descendants of Decedent B's sister as of the date of Decedent B's death are Child C and Child D, of whom Child C is the eldest. Child C is the beneficiary of Trust V (a subtrust of Trust T) and Child D is the beneficiary of Trust W (also a subtrust of Trust T). The terms of Trust V provide Child C with powers to appoint Trust V's successor beneficiaries upon Child C's death, and the terms of Trust W include identical terms with respect to Child D.

On Date 9 (a date after Decedent B's death and before September 30 of the year following the year in which Decedent B died), the trustee of Trust V and Trust W (who is also the trustee of Trust T and Trust U) executed identical limited powers of appointment over Trust V and Trust W to amend each trust, which you represent complied with the requirements of Trust T and the laws of State S. Each amendment provided that any and all amounts distributed from each trust's primary beneficiary's respective share of IRA X must be immediately distributed to or for the benefit of the primary beneficiary. The amendment also prohibits any further action, such as exercise of a power of appointment, amendment, modification, decanting, or termination that might otherwise cause any such distribution of retirement assets to be delayed, to not

be made, or to be made to anyone other than the trust's beneficiary during the primary beneficiary's lifetime. Accordingly, the amendments resulted in trust terms that require that required minimum and other distributions from Trust V's and Trust W's respective share of IRA X must be immediately and directly paid to Child C and Child D, with no accumulation of IRA distributions in Trust V or Trust W permitted during the respective primary beneficiary's lifetime.

As of September 30 of the year following the year in which Decedent B died, the trustee did not rescind the aforementioned amendments of Trust V and Trust W, and neither Child C nor Child D has disclaimed interest in IRA X.

Also on Date 9 (a date prior to October 31 of the year following the year in which Decedent B died), the trustee provided IRA X's custodian with information concerning the terms of Trust T, Trust U, Trust V, and Trust W and the identities of Trust U's beneficiaries.

In addition, on Date 9 the trustee delivered a letter of instruction to IRA X's custodian to separate the assets of IRA X in two equal shares by means of trustee-to-trustee transfers to two distinct IRAs, each held by IRA X's custodian for the separate benefit of the beneficiary of Trust V (IRA Y) and the beneficiary of Trust W (IRA Z). Each transferee IRA will be maintained in the name of Decedent B (deceased) for the benefit of the beneficiary's trust. For example, one transferee IRA, IRA Y, will be maintained in the name of Decedent B (deceased) for the benefit of Trust V. Distributions from each of these transferee IRAs will be made over the life expectancy of Child C, the eldest of Child C and Child D.

You have represented that, at all applicable times, IRA X, IRA Y, and IRA Z have been maintained in accordance with section 408(a) and applicable tax rules.

Based on the facts and representations, the following rulings were requested:

1. Each child beneficiary of Trust U is treated as having been designated as a beneficiary of IRA X in accordance with § 1.401(a)(9)-4, Q&A-5, for purposes of determining the distribution period under section 401(a)(9). Required minimum distributions from IRA X are calculated using the life expectancy of Child C, the oldest child beneficiary.
2. The trustee of Trust U may transfer the assets of IRA X by means of trustee-to-trustee transfers to IRAs titled IRA of "Decedent B (deceased) fbo (name of child beneficiary's trust)" in order to separate the interest of each child beneficiary in the assets of IRA X, without such transfers constituting taxable distributions under section 408(d)(1) or rollovers under section 408(d)(3).

Law

Under section 401(a)(9)(A), a trust will not be considered qualified unless the plan provides that the entire interest of each employee (1) will be distributed to such employee not later than the required beginning date; or (2) will be distributed, beginning no later than the required beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary.

Section 401(a)(9)(B)(i) provides that a trust shall not constitute a qualified trust under the Code unless the plan provides that if the distribution of the employee's interest has begun in accordance with section 401(a)(9)(A)(ii), and the employee dies before his entire interest has been distributed to him, the remaining portion will be distributed at least as rapidly as under the method being used under section 401(a)(9)(A)(ii) as of the date of death.

Section 401(a)(9)(C) provides, in relevant part, that the term "required beginning date" means April 1 of the calendar year following the calendar year in which the employee attains age 70½.

Section 401(a)(9)(E) provides that "designated beneficiary" means any individual designated as a beneficiary by the employee.

Section 1.401(a)(9)-4, Q&A-1, provides, in relevant part, that a designated beneficiary is an individual who is designated as a beneficiary under the plan. An individual may be designated as a beneficiary under the plan either by the terms of the plan or, if the plan so provides, by an affirmative election by the employee (or the employee's surviving spouse) specifying the beneficiary. A designated beneficiary need not be specified by name in the plan in order to be a designated beneficiary so long as the individual who is to be the beneficiary is identifiable under the plan. The member of a class of beneficiaries capable of contraction or expansion will be treated as being identifiable if it is possible to identify the class member with the shortest life expectancy.

Section 1.401(a)(9)-4, Q&A-3, provides that only individuals may be designated beneficiaries for purposes of section 401(a)(9). A person who is not an individual, such as the employee's estate or a charitable organization, may not be a designated beneficiary. If a person other than an individual is designated as a beneficiary of an employee's benefit, the employee will be treated as having no designated beneficiary for purposes of section 401(a)(9), even if there are also individuals designated as beneficiaries.

Section 1.401(a)(9)-4, Q&A-4, provides in relevant part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of the employee's death. Generally, an employee's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of the date of death.

Section 1.401(a)(9)-4, Q&A-5, provides that where a trust is named as a beneficiary of an employee, the trust is not a designated beneficiary; however, beneficiaries of the trust with respect to the trust's interest in the employee's benefit will be treated as having been designated as beneficiaries for purposes of determining the distribution period under section 401(a)(9) if the following requirements are met: (1) the trust is valid under state law, or would be but for the fact there is no corpus; (2) the trust is irrevocable or will, by its terms, become irrevocable upon the death of the employee; (3) the beneficiaries of the trust who are beneficiaries with respect to the trust's interest in the employee's benefit are identifiable within the meaning of § 1.401(a)(9)-4, Q&A-1, from the trust instrument; and (4) relevant documentation has been timely provided to the plan administrator.

Section 1.401(a)(9)-4, Q&A-5(c), provides that, in the case of a trust having more than one individual beneficiary, § 1.401(a)(9)-5, Q&A-7, applies in determining the designated beneficiary whose life expectancy will be used to determine the distribution period. The subsection further provides that the separate account rules under § 1.401(a)(9)-8, Q&A-2, are not available to the beneficiaries of a trust with respect to the trust's benefit in the employee's benefit.

Section 1.401(a)(9)-4, Q&A-6(b), provides, in relevant part, with respect to required minimum distributions after the death of an employee, that documentation sufficient to enable the plan administrator to identify beneficiaries of the plan must be provided by the trustee of the trust to the plan administrator by October 31 of the calendar year immediately following the calendar year in which the employee died.

Section 1.401(a)(9)-5, Q&A-5(b), provides that if an employee dies before distribution has begun, the applicable distribution period for calendar years after the calendar year containing the employee's date of death and if the employee has a designated beneficiary, generally the applicable distribution period for minimum distributions for distribution calendar years after the distribution calendar year containing the employee's date of death is the life expectancy (determined in accordance with § 1.401(a)(9)-5, Q&A-5(c)) of the designated beneficiary.

Section 1.401(a)(9)-5, Q&A-5(c)(1), provides that, with respect to minimum distributions in any case in which the surviving spouse is not the sole beneficiary, the applicable distribution period measured by the beneficiary's remaining life expectancy is determined using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the employee's death. In subsequent calendar years, the applicable distribution period is reduced by one for each calendar year that has elapsed after the calendar year immediately following the calendar year of the employee's death.

Section 1.401(a)(9)-5, Q&A-7, provides, in general, that if more than one beneficiary is designated as a beneficiary with respect to an employee as of the applicable date for determining the designated beneficiary under A-4 of § 1.401(a)(9)-4, the designated

beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining the applicable distribution period.

Section 1.401(a)(9)-5, Q&A-7(c), Example 2, provides, in general, that if all amounts distributed to from a decedent's retirement account to the trustee of decedent's trust while the trust's primary beneficiary is alive is paid directly to the primary beneficiary upon receipt by the trustee, the residual beneficiaries of the trust are mere potential successors to the primary beneficiary's interest in the retirement account. In such case, the primary beneficiary is the sole designated beneficiary of the account for purposes of determining the applicable distribution period under section 401(a)(9), and no amounts distributed from the account to the trust are accumulated in the trust during the primary beneficiary's lifetime for the benefit of any other beneficiary.

Section 1.401(a)(9)-8, Q&A-2(a)(1), provides that, except as otherwise provided in Q&A-2, if an employee's benefit under a defined contribution plan is divided into separate accounts under the plan, the separate accounts will be aggregated for purposes of satisfying the rules in section 401(a)(9).

Section 1.401(a)(9)-8, Q&A-2(a)(2), provides that, if the employee's benefit in a defined contribution plan is divided into separate accounts and the beneficiaries with respect to one separate account differ from the beneficiaries with respect to the other separate accounts of the employee under the plan, for years subsequent to the calendar year containing the date as of which the separate accounts were established, or date of death if later, such separate account under the plan is not aggregated with the other separate accounts under the plan in order to determine whether the distributions from such separate account under the plan satisfy section 401(a)(9). Instead, the rules in section 401(a)(9) separately apply to such separate account under the plan. However, the applicable distribution period for such separate account is determined disregarding the other beneficiaries of the employee's benefit only if the separate account is established on a date no later than the last day of the year following the calendar year of the employee's death.

Section 1.401(a)(9)-8, Q&A-3, provides that, for purposes of section 401(a)(9), separate accounts in an employee's account are separate portions of an employee's benefit reflecting the separate interests of the employee's beneficiaries under the plan as of the date of the employee's death for which separate accounting is maintained. The separate accounting must allocate all post-death investment gains and losses, contributions, and forfeitures, for the period prior to the establishment of the separate accounts, on a pro-rata basis in a consistent and reasonable manner among the separate accounts.

Section 408(a)(6) provides that, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) shall apply to the distribution of the entire interest of an individual for whose benefit an IRA is maintained.

Section 408(d)(1) provides, generally, that in accordance with the rules of section 72, amounts paid or distributed from an IRA are included in gross income by the payee or distributee.

Section 408(d)(3) provides an exception to income inclusion under section 408(d)(1) for certain distributions from an IRA to the individual for whose benefit the IRA is maintained that are rolled over within 60 days to another IRA for the benefit of that individual.

Section 408(d)(3)(C) provides that amounts from an inherited IRA cannot be rolled over into another IRA. Under section 408(d)(3)(C)(ii), an IRA is treated as an inherited IRA if the individual for whose benefit the IRA is maintained acquired the IRA by reason of the death of another individual, and such individual is not the surviving spouse of the other individual.

Section 1.408-2(b)(8) provides that the term beneficiaries on whose behalf an IRA is established includes (except where the context indicates otherwise) the estate of the individual, dependents of the individual, and any person designated by the individual to share in the benefits after the death of the individual.

Section 1.408-8, Q&A-1(a), provides that an IRA is subject to the required minimum distribution rules provided in section 401(a)(9). In order to satisfy section 401(a)(9), the rules of §§ 1.401(a)(9)-1 through 1.401(a)(9)-9 must be applied, except as otherwise provided.

Section 1.408-8, Q&A-1(b), provides, as relevant, that for purposes of applying the required minimum distribution rules in §§ 1.401(a)(9)-1 through 1.401(a)(9)-9, the IRA trustee, custodian or issuer is treated as the plan administrator, and the IRA owner is substituted for the employee.

Section 1.408-8, Q&A-3, provides that in the case of distributions from an IRA, the term “required beginning date” means April 1 of the calendar year following the calendar year in which the individual attains age 70½.

Revenue Ruling 78-406, 1978-2 C.B. 157, provides that the trustee-to-trustee transfer of funds from one IRA maintained by an individual to another IRA maintained by the same individual, even at the direction of that individual, does not constitute a payment or distribution includible in gross income.

The Further Consolidated Appropriations Act, 2020, P. L. 116-94 (the Act), was enacted on December 20, 2019. Division O of the Act, titled “Setting Every Community Up for Retirement Enhancement Act of 2019” (SECURE Act), amended section 401(a)(9) with respect to individuals who die after December 31, 2019. The amended provisions do not apply in this case because Decedent B died before the applicability date of the SECURE Act amendments.



## Analysis

With respect to your first ruling request, § 1.401(a)(9)-4, Q&A-5(c), specifically precludes the separate account treatment described in § 1.401(a)(9)-8, Q&A-2(a), for purposes of determining the distribution period under section 401(a)(9), for beneficiaries of a trust with respect to a trust's interest as beneficiary of an IRA after the death of the IRA owner. Accordingly, the child beneficiaries of Trust U with respect to Trust U's interest in IRA X must all be taken into account for purposes of determining the applicable distribution period that applies to each transferee IRA for purposes of section 401(a)(9).

However, because § 1.401(a)(9)-4, Q&A-5(c), is specifically applicable only to the determination of the distribution period under section 401(a)(9), § 1.401(a)(9)-4, Q&A-5(c), does not otherwise preclude the creation of separate accounts as described in § 1.401(a)(9)-8, Q&A-2(a)(2), for beneficiaries of a trust with respect to a trust's interest as beneficiary of an IRA after the death of the IRA owner. Accordingly, each transferee IRA may be maintained separately for purposes of section 401(a)(9) except for purposes of determining the applicable distribution period.

Accordingly, the child beneficiaries of Trust U will be considered to be designated as beneficiaries of IRA X for determination of the distribution period under section 401(a)(9) if Trust U satisfies the requirements of § 1.401(a)(9)-4, Q&A-5(b).

Under the facts, Trust U is the named beneficiary of IRA X. Trust U was established under Trust T, was valid under the laws of State S, and was irrevocable prior to the death of Decedent B. In addition, relevant documentation relating to Trust U's status as beneficiary of Decedent B's interest in IRA X was given to IRA X's custodian by the date required under § 1.401(a)(9)-4, Q&A-6(b). Further, the beneficiaries of Trust U who are beneficiaries with respect to Trust U's interest in IRA X are identifiable, within the meaning of § 1.401(a)(9)-4, Q&A-1, because these beneficiaries are the only descendants of Decedent B's sister named as beneficiaries in Trust U's trustee's limited power of appointment executed before Decedent B's death on Date 7.

Furthermore, the trustee of Trust V and Trust W executed identical limited powers of appointment over Trust V and Trust W, amending the trusts, after Decedent B died and before September 30 of the year following the year in which Decedent B died. The amendments provided that all distributions from IRA X to or for the benefit of Child C and Child D must be immediately paid directly to them during their lifetimes. Under § 1.401(a)(9)-5, Q&A-7(c), Example 2, any beneficiaries that may be appointed under the terms of Trust U, Trust W, and Trust V to assume Child C's or Child D's interest in IRA X following the primary beneficiary's death are treated as mere potential successor beneficiaries, and Child C and Child D are treated as the designated beneficiaries for purposes of determining the applicable distribution period under section 401(a)(9).

The trustee of Trust V and Trust W did not rescind the amendments, and neither Child C nor Child D disclaimed the child's respective interest in Trust U and IRA X, before

September 30 of the year following the year in which Decedent B died. Accordingly, as of that September 30, the beneficiaries of Trust U and IRA X for purposes of determining the applicable distribution period under section 401(a)(9) remained the same as on the date of Decedent B's death.

The facts indicate that Trust U satisfies the four requirements of § 1.401(a)(9)-4, Q&A-5(b), to be treated as a "see-through" trust. Therefore, the two child beneficiaries of Trust U are treated as having been designated as beneficiaries of IRA X for purposes of section 401(a)(9).

In this case, under § 1.401(a)(9)-5, Q&A-7, because more than one beneficiary is designated as a beneficiary, the beneficiary with the shortest life expectancy is the designated beneficiary for purposes of determining the applicable distribution period under § 1.401(a)(9)-4, Q&A-4. In addition, because Decedent B's surviving spouse is not the sole beneficiary, the rule of § 1.401(a)(9)-5, Q&A-5(c)(1), applies.

With respect to your second ruling request, the facts indicate that the Trustee of Trust U intends to accomplish a trustee-to-trustee transfer on behalf of each beneficiary to separate the beneficiaries' interests in IRA X. Such transfers will be into two separate IRAs established and maintained in the name of "Decedent B (deceased) fbo (name of child beneficiary's trust)."

In this case, consistent with Rev. Rul. 78-406, the portion of IRA X that is maintained in the name of Decedent B (deceased) for the benefit of Child C's trust (i.e., Trust V) is being separated from the portions maintained for the benefit of the other child beneficiary and is being transferred to another IRA maintained in the name of Decedent B (deceased) for the benefit of Child D's trust (i.e., Trust W), with no other change in title from the transferor IRA to the transferee IRA. The fact that each child beneficiary's inherited IRA will be held by the child beneficiary's respective trust does not affect this conclusion, because the terms of the trust require that all distributions from the inherited IRA are immediately and directly made to the child beneficiary.

## Rulings

Thus, with respect to your ruling requests, we conclude as follows:

1. Each child beneficiary of Trust U is treated as having been designated as a beneficiary of IRA X in accordance with § 1.401(a)(9)-4, Q&A-5, for purposes of determining the distribution period under section 401(a)(9). Required minimum distributions from IRA X are calculated using the life expectancy of Child C, the oldest child beneficiary.
2. The trustee of Trust U may transfer the assets of IRA X by means of trustee-to-trustee transfers to IRAs titled IRA of "Decedent B (deceased) fbo (name of child beneficiary's trust)" in order to separate the interest of each child beneficiary in the

assets of IRA X, without such transfers constituting taxable distributions under section 408(d)(1) or rollovers under section 408(d)(3).

This letter ruling assumes that IRA X satisfied the requirements of section 408 at all times relevant thereto. It also assumes that the transferee IRAs to be set up for the benefit of the child beneficiaries will also meet the requirements of section 408 at all times relevant thereto.

The rulings contained in this letter ruling are based upon information and representations submitted by Trust U, Trust V, and Trust W and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2021-1, 2021-1 I.R.B. 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2021-1, § 11.05.

Except as expressly provided above, no opinion is expressed or implied concerning the federal income tax consequences of any other aspects of any transaction or item of income described in this letter ruling.

This letter ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

/s/ Neil Sandhu

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Neil Sandhu  
Senior Technician Reviewer  
Qualified Plans Branch 1  
Office of the Associate Chief Counsel  
(Employee Benefits, Exempt Organizations,  
and Employment Taxes)

cc: