following the year of death) without disclaiming, that beneficiary's actuarial life expectancy will continue to be used for the purpose of calculating required distributions (see the Example in Q 5:26). [Treas. Reg. § 1.401(a)(9)-4, Q&A 4(c)]

> **Example.** Sue dies in 2009 after naming her son, Fred, as beneficiary of her Roth IRA. Fred dies before September 30, 2010. Fred did not disclaim the Roth IRA. The Roth IRA is now payable to Fred's estate. Fred's life expectancy will still be used to determine RMD from the Roth IRA.

Q 7:17 If more than one person or trust is named as the beneficiary of a Roth IRA, how soon must separate shares or accounts be established to use each individual beneficiary's life as the measuring life for purposes of computing required distributions?

The Regulations allow until September 30 of the year following the year of the Roth IRA owner's death to determine beneficiaries, but allow until December 31 of that year to create separate shares [Treas. Reg. § 1.401(a)(9)-8, Q&A 2(a)(2)] and start distributions. Therefore, for the beneficiaries to utilize their individual life expectancies, separate shares or accounts must be created by December 31 of the year following the year of the account owner's death. Even if separate shares or accounts are not created until December 31 of the year following the year of the Roth IRA owner's death, the beneficiaries can utilize their individual life expectancies for that year. [*See* Treas. Reg. § 1.401(a)(9)-8, Q&A 2(a)] (See Q 5:42.) (See Q 7:18 regarding separate share treatment in relation to a single trust.)

> **Example.** Krista dies in 2009, after naming her children as beneficiaries of her Roth IRA. Krista's children have until December 31, 2010, to create separate shares if they wish to utilize each of their individual life expectancies.

Q 7:18 When a person wishes to create separate shares for each beneficiary of a single trust, what are the requirements that must be met so that each trust share may calculate required distributions over the life expectancy of that share's beneficiary?

Proposed Treasury Regulations Section 1.401(a)(9) that was issued in 2001 stated that "if the beneficiary of the trust named as beneficiary is another trust, the beneficiaries of the other trust will be treated as having been designated as beneficiaries . . . for purposes of determining the distribution period under Section 401(a)(9)(A)(ii) provided that all of the requirements of Proposed Treasury Regulations Section 1.401(a)(9)-4 Q&A 5(b) are satisfied (see Q 7:2).

This permitted a trust that was named as the beneficiary of an IRA to divide into subtrusts for the benefit of other individuals or groups of individuals, and, in some cases, still have the separate share rules apply to each subtrust. A number of letter rulings affirmed this position in situations where the account owner died before the required beginning date (RBD), including Letter Rulings

200234073 and 200234074 (rulings where the 1987 regulations applied). Other letter rulings held that the separate share rules did not apply if death occurred after the RBD. [*See, e.g.*, Ltr. Ruls. 200209058 and 200209059 (Dec. 4, 2001)]

When the final regulations were published, however, there was a significant change to Proposed Treasury Regulations Section 1.401(a)(9)-4, Q&A-5(c). The language that is quoted above was omitted. In its place is language that says that separate account rules are not available to beneficiaries of a trust with respect to the trust's interest in the employee's benefit.

On April 25, 2004, the IRS released three substantially identical rulings that disallowed separate share treatment in the context of a trust. Letter Rulings 200317041, 200317043, and 200317044 dealt with three different taxpayers who are beneficiaries of the same trust. The letter rulings tell us that the account owner died before his RBD. In addition, his beneficiary designation form provided that, at his death, the IRA was to be distributed to the trustee of a trust. The beneficiary designation form as well as the terms of the trust provided that the trust was to be divided into equal accounts for the three beneficiaries. The beneficiary designation form also stated that the trustee may establish separate IRAs in the name of the decedent for the benefit of the three beneficiaries.

The rulings concluded that the account could be divided into three accounts, one for each subtrust, but that distributions from each account must be paid over the life expectancy of the oldest of the three beneficiaries.

However, on March 29, 2005, the IRS released Letter Ruling 200537044, which added greater clarity to this situation. This ruling clarifies that if a beneficiary designation form names separate shares for each individual beneficiary of a trust, each trust beneficiary's life will be used for purposes of determining the measuring life under the required minimum distribution rules.

In Letter Ruling 200537044, the IRS allowed each individual beneficiary of each trust share to use his or her individual life expectancy to calculate required minimum distributions for his or her share of the IRA. Upon the death of the trustor, the trust created separate subtrusts for each beneficiary. Each separate trust that was created under the master trust instrument was named beneficiary of the IRA. The beneficiary designation form named the specific subtrusts as beneficiaries of the IRA. After the IRA owner's death, the IRA was divided into separate IRAs for each of the named beneficiaries.

This fact pattern in Letter Ruling 200537044 can be differentiated from Letter Rulings 200317041, 200317043, and 200317044 in that the IRA owner in Letter Ruling 200537044 expressly named each separate trust as a beneficiary of his IRA, with differing percentile interests. In Letter Rulings 200317041, 200317043, and 200317044, it appears that the taxpayer named the master trust as beneficiary of the IRA with direction that it then be divided into equal shares and payable to the separate subtrusts. The beneficiary designation form in Letter Ruling 200537044 named the separate subtrusts *directly*. The IRA does not pass through the master trust and then get divided. Instead, the IRA is divided at the beneficiary designation level and payable to the separate trusts that were created upon the trustor's death.

Letter Ruling 200537044 provides much needed guidance on how beneficiary designation forms need to be structured to obtain separate share treatment. Instead of simply naming the master trust as beneficiary of the IRA with directions to separate the trust and the IRA into separate shares, each separate subtrust should be specifically named as partial beneficiary in the beneficiary designation form. This should allow each trust beneficiary to utilize his or her individual life expectancy as opposed to using the life expectancy of the oldest primary beneficiary to calculate required minimum distributions.

Example. John Smith creates a trust for the benefit of his four children. Upon John's death, the trust is divided into separate shares for each of his children. John's IRA beneficiary designation form was worded as follows:

- 25% to the Child 1 Trust, as a separate share under the John Smith Trust dtd. 1-1-06
- 25% to the Child 2 Trust, as a separate share under the John Smith Trust dtd. 1-1-06
- 25% to the Child 3 Trust, as a separate share under the John Smith Trust dtd. 1-1-06
- 25% to the Child 4 Trust, as a separate share under the John Smith Trust dtd. 1-1-06

Because the separate subtrusts were named directly as beneficiaries of a separate IRA share, each child should be able to use his or her individual life expectancy to calculate required minimum distributions. Had John's beneficiary designation form instead stated "100% of the IRA to the John Smith Trust dtd. 1-1-06," separate share treatment would not be available.

Q 7:19 Does the age of the Roth IRA owner at the time of his or her death affect distributions to a trust?

No. A Roth IRA owner is always deemed to have died before his RBD (see Q 5:2). If the trust is a qualified trust (see Qs 7:2, 7:5), the trustee may look through the trust and make distributions over the oldest beneficiary's life expectancy. If the trust is not a qualified trust, distributions will be paid under the five-year rule. [Treas. Reg. § 1.401(a)(9)-3 Q&A 3] (See Q 5:11.)

Q 7:20 Does the 10 percent premature distribution penalty apply to distributions from an inherited Roth IRA to a trust?

No. The 10 percent premature distribution penalty never applies to distributions from an inherited Roth IRA—unless a spouse rolls over the inherited Roth IRA into his or her own Roth IRA. [I.R.C. §§ 72(t)(2)(A)(ii), 408A(d)(3)(F)]

Example 1. Tori inherits an IRA from her father. At the age of 21, Tori takes a distribution from her inherited IRA to go on a vacation. Because Tori inherited the IRA, the 10 percent premature distribution penalty does not apply.