WEST VIRGINIA CODE: §18-7B-12A

§18-7B-12a. Federal minimum required distributions.

The requirements of this section apply to any distribution of a member's or beneficiary's interest and take precedence over any inconsistent provisions of this defined contribution system. This section applies to plan years beginning after December 31, 1986. Notwithstanding anything in this system to the contrary, the payment of benefits under this article shall be determined and made in accordance with §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder as applicable to governmental plans, including without limitation the minimum distribution incidental benefit (MDIB) requirement of §401(a)(9)(G) and the regulations thereunder, and the incidental benefit rule of § 1.401-1(b)(1)(i) of the regulations. Any term used in this article has the same meaning as when used in a comparable context in §401(a)(9) of the Internal Revenue Code and the federal regulations promulgated thereunder unless a different meaning is clearly required by the context or definition in this article. The following provisions apply to payments of benefits required under this article:

(a) The payment of benefits under the defined contribution system to any member shall be distributed to him or her not later than the required beginning date, or be distributed to him or her commencing not later than the required beginning date, in accordance with regulations prescribed under §401(a)(9) of the Internal Revenue Code, over the life of the member or over the lives of the member and his or her beneficiary or over a period not extending beyond the life expectancy of the member and his or her beneficiary subject to the provisions of subsection (g) of this section: *Provided*, That the requirements of this section may not be construed to grant a right to a form of benefit which is not otherwise available to a particular member under this retirement system: *Provided, however*, That if the member elects an annuity option which provides survivor benefits to a beneficiary who is not the member's spouse, and the annuity option elected would provide survivor payments that exceed the applicable percentage permitted by the MDIB regulations under §401(a)(9) of the Internal Revenue Code, the member's annuity election shall be changed to the highest survivor annuity option offered under this retirement system which satisfies the MDIB regulations. Benefit payments under this section shall not be delayed pending, or contingent upon, receipt of an application for retirement from the member.

(b) If a member dies after distribution to him or her has commenced pursuant to this section but before his or her entire interest in the system has been distributed, then the remaining portion of that interest shall be distributed at least as rapidly as under the method of distribution being used at the date of his or her death (subject to the provisions of subsection (g) of this section).

(c) If a member dies before distribution to him or her has commenced, then his or her entire interest in the retirement system is to be distributed by December 31 of the calendar year containing the fifth anniversary of the member's death, unless the provisions of subsection

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(d) of this section apply.

(d) If a member dies before distribution to him or her has commenced, and the member's interest is eligible to be paid in the form of a survivor annuity to a designated beneficiary, distributions are to be made over the life of that beneficiary or over a period certain not greater than the life expectancy of that beneficiary (subject to the provisions of subsection (g) of this section), commencing on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, distributions are to commence on or before the later of:

(A) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required beginning date provided in §18-7B-2 of this code; or

(B) December 31 of the calendar year immediately following the calendar year in which the member died.

(e) If a member dies before distribution to him or her has commenced and the survivor annuity provisions of subsection (d) of this section are not applicable, any designated beneficiary who is eligible to receive a distribution pursuant to the provisions of subsection (c) of this section may elect to have life expectancy treatment apply to the distribution for purposes of determining whether any portion of the distribution is an eligible rollover distribution (subject to the provisions of subsection (g) of this section, if applicable): *Provided*, That any such election shall not delay the required distribution of the deceased member's entire interest in the retirement system beyond December 31 of the calendar year containing the fifth anniversary of the member's death as required by subsection (c) of this section: *Provided, however*, That the election is timely made in a form acceptable to the board on or before the following:

(1) December 31 of the calendar year immediately following the calendar year in which the member died; or

(2) If the member's sole designated beneficiary is either the surviving spouse or a former spouse who, as an alternate payee under a Qualified Domestic Relations Order, is receiving 100 percent of the survivor benefit, election of life expectancy treatment must be made on or before the earlier of:

(A) The later of: (i) December 31 of the calendar year immediately following the calendar year in which the member died; or (ii) December 31 of the calendar year in which the member would have attained the applicable age as set forth in the definition of required

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beginning date provided in §18-7B-2 of this code; or

(B) October 31 of the calendar year containing the fifth anniversary of the member's death.

(f) For purposes of this section, any amount paid to a child of a member will be treated as if it had been paid to the surviving spouse of the member if the remaining amount becomes payable to the surviving spouse when the child reaches the age of majority.

(g) The provisions of this subsection will apply to distributions with respect to members who die on or after January 1, 2022, and to the designated beneficiaries of members who die prior to January 1, 2022, as described in subdivision (2) of this subsection. This subsection will not apply to qualified annuities described in SECURE Act §401(b)(4)(B)[P.L. 116-94, Div. O].

(1) 10-Year Rule. — If the distributee of a deceased member's account is a designated beneficiary who is not an "Eligible Designated Beneficiary," then the system will distribute the member's vested account in full no later than December 31 of the 10th year following the year of the member's death.

(2) Beneficiary Death. — If an Eligible Designated Beneficiary dies before receiving distribution of the beneficiary's entire interest in the member's account, the system will distribute the remaining interest in full no later than December 31 of the 10th year following the year of the Eligible Designated Beneficiary's death. Similarly, if a member died before January 1, 2022, the limitations of this subsection (g) shall apply to distributions to the beneficiary of the member's designated beneficiary.

(3) Eligible Designated Beneficiary. — An individual is an "Eligible Designated Beneficiary" of a member if the individual qualifies as a designated beneficiary under § 401(a)(9)(E) of the Internal Revenue Code and is (1) the member's spouse, (2) the member's child who has not reached the age of majority, as defined for purposes of § 401(a)(9)(F) of the Internal Revenue Code, (3) an individual not more than 10 years younger than the member, (4) a disabled individual, as defined in § 72(m)(7) of the Internal Revenue Code, or (5) an individual who has been certified to be chronically ill, as defined in § 7702B(c)(2) of the Internal Revenue Code, for a reasonably lengthy period, or indefinitely. Certain trusts may be treated as Eligible Designated Beneficiaries pursuant to § 401(a)(9)(H)(iv) and (v) of the Internal Revenue Code. When a child of the member reaches the age of majority, the system will distribute the child's account in full no later than 10 years after that date.

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