

Distribution Planning for Qualified Retirement Plans and IRAs

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Distribution Planning for Qualified Retirement Plans and IRAs

I. PENSION PROTECTION ACT OF 2006 (PPA) CHANGES AFFECTING DISTRIBUTIONS

A. Rollovers by nonspouse beneficiaries.

IRC §402(c)(11).

1. Effective for distributions after December 31, 2006.
2. The Worker, Retiree and Employer Recovery Act of 2008 (WRERA 2008) makes the nonspousal rollover provision mandatory for plan years beginning after December 31, 2009.
3. Benefits of a beneficiary other than a surviving spouse may be rolled over to an IRA.
4. The IRA is treated as an inherited IRA of the nonspouse beneficiary. Therefore, distributions from the IRA are subject to the distribution rules applicable to beneficiaries. The beneficiary cannot contribute additional funds to the rollover IRA.
5. This provision applies to distributions from a tax-qualified retirement plan, a section 403(b) plan, or a governmental section 457 plan.
6. To the extent provided by the Secretary of Treasury, the provision applies to benefits payable to a trust maintained for a designated beneficiary to the same extent that it applies to the beneficiary.
7. Nonspouse beneficiaries cannot rollover inherited IRA into a Roth IRA.

B. Direct rollovers from retirement plans to Roth IRAs. IRC §408A(e).

1. Effective for distributions made after December 31, 2007.
2. Distributions from the tax-qualified retirement plans, section 403(b) plans, and governmental 457 plans may be rolled over directly from such plan into a Roth IRA, subject to the rules that apply to rollovers from a traditional IRA into a Roth IRA.

3. For example, a rollover from a tax-qualified retirement plan into a Roth IRA is includible in gross income and the 10% early distribution tax under IRC §72(t) does not apply. Similarly, an individual with AGI of \$100,000 or more cannot roll over amounts from a tax-qualified retirement plan directly into a Roth IRA. The AGI limit on Roth rollovers is eliminated in 2010.
4. For rollovers in 2010, income is taxable ratably in 2011 and 2012 unless taxpayers elect to recognize all income in 2010.

C. Missing Participants. ERISA §4050.

1. The PBGC missing participant program provides that if the plan administrator of a terminating single employer defined benefit plan cannot locate a participant after a diligent search, the plan may satisfy the distribution requirement by purchasing an annuity from an insurer or transferring the missing participant's benefit to the PBGC.
2. PPA extends the missing participant program to terminating defined contribution plans, multiemployer plans, defined benefit plans not subject to PBGC coverage (plans maintained by professional service employers with 25 or fewer active participants) and assets in defined benefit plans based upon separate accounts of participants (treated as defined contribution plans under ERISA).
3. Effective for distributions made after final regulations implementing the provisions are prescribed.

D. Phased Retirement.

1. Defined benefit pension plans and defined contribution pension plans (e.g., money purchase pension plans) may provide in-service distributions to participants age 62 or older.
2. Effective for plan years commencing after December 31, 2006.

E. Extension of Notice and Election Period.

1. Under prior law, plans were required to notify participants of their benefit options no earlier than 90 days prior to the scheduled payment date. This time period is now extended to 180 days.
2. This change provides flexibility in processing plan benefit payments.
3. Effective for plan years commencing on or after January 1, 2007.

F. Expansion of Hardship Distribution Rules to Include Primary Beneficiaries.

1. The hardship distribution rules for 401(k) and 403(b) restricted distributions to the immediate and heavy financial need of the employee, the employee's spouse or the employee's dependant.
2. PPA expanded the hardship rules so that a participant's primary beneficiary is treated the same as the participant's spouse or dependant for purposes of determining whether the participant has a hardship. Therefore, a plan may now permit hardship distributions for medical, tuition or funeral expenses of a "primary beneficiary under the plan".
3. A primary beneficiary under the plan is an individual named as beneficiary under the plan who has an unconditional right to all or a portion of the participant's plan account upon the participant's death.

G. Distributions for Public Safety Employees.

PPA established two special rules for qualified public safety employees. A "qualified public safety employee" is a state or local government employee whose principal duties include police protection, firefighting services or emergency medical services.

1. Age 50 for Early Distributions (Distributions after August 17, 2006). IRC §72(t)(10) provides that distributions made to qualified public safety employees qualify for exemption from the 10% additional tax on premature distributions (pre-Age 59-1/2) if the employee separates from service after attainment of age 50. IRC §72(t)(2)(A)(v) applies this exception at age 55 to other employees. This exception does not apply to distributions from IRAs.
2. Retiree Health Premiums (distributions after December 31, 2006). IRC §402(l) provides for an exclusion from gross income for distributions up to \$3,000.00 per year from eligible government plans used to pay qualified health insurance premiums of an eligible retired public safety officer. IRS Notice 2007-7, Q&A 20-27.

H. Changes to Interest Rate Assumptions for Calculation of Lump Sum Distributions.

- a. The PPA changes the interest rate assumption under IRC §417(e) from the 30 year Treasury rate to a corporate based yield curve.

| Phase-In of New Interest Rate Assumptions | | |
|--|---|--------------------|
| Calendar Year | Interest Rate Components | Method |
| 2006 | 100% of 30-Year Treasury | 30-Year Treasury |
| 2007 | 100% of 30-Year Treasury | 30-Year Treasury |
| 2008 | 20% Corp Bond Yield Curve + 80% of 30-Year Treasury | Mixed Rate |
| 2009 | 40% Corp Bond Yield Curve + 60% of 30-Year Treasury | Mixed Rate |
| 2010 | 60% Corp Bond Yield Curve + 40% of 30-Year Treasury | Mixed Rate |
| 2011 | 80% Corp Bond Yield Curve + 20% of 30-Year Treasury | Mixed Rate |
| 2012 and after | 100% Corp Bond Yield Curve | Yield Curve Method |

- b. Defined benefit plans must use segmented interest rates (based on expected payment dates) similar to the rates used for funding purposes to convert annuity benefits to lump sums. Interest rates will be based on corporate bond yields and the determination of current liabilities based on three segments of 0-5, 5-15, and over 15 years. This new method is effective beginning in 2008, but with a phase in from 2008 to 2012.

I. 50% and 75% QJSA Options.

Effective for plan years after 2007 (with an extended effective date for collectively bargained plans), defined benefit and money purchase plans must offer a joint and 75% survivor annuity, as well as an option with a survivor benefit between 50% and 75% (e.g., generally plans must offer both 50% and 75% survivor annuity options).

II. DISTRIBUTIONS FROM QUALIFIED PLANS BEFORE SEPARATION FROM SERVICE

A. Taxation Treatment.

See the discussions pertaining to lump-sum distributions and IRA rollovers.

B. Distribution from a Plan During Employment.

1. Profit-Sharing Plans.

If a Profit-Sharing Plan allows for in-service distributions, amounts which have been in the trust for at least two years may be distributed before retirement or separation from service. Plan may also permit in-service

distributions if participants have at least sixty months of participation. Rev. Ruls. 68-24, 71-295 and 73-553.

2. Applicability to 401(k) plans.

There can be an in-service distribution from a 401(k) plan during employment only if the participant has attained age 59½ or if the following requirements are satisfied.

- a. The distribution qualifies as a hardship, described by proposed regulations as “immediate and heavy financial needs” for which the employee does not otherwise have the resources; and
- b. Hardship withdrawals do not exceed the principal portion of the participant’s elective deferrals to the plan.

3. Phased Retirement.

Effective for plan years commencing after December 31, 2006, pension plans may provide in-service distributions to participants age 62 or older.

Pension plans generally cannot have a Normal Retirement Age earlier than Age 62.

4. In-service distributions permitted:

- a. Profit sharing funds: amounts in plan for 2 years or participant for 5 years.
- b. 401(k) deferrals, safe harbor contributions, QNECs: Age 59½ or hardship (but hardship distributions cannot be rolled over).
- c. Pension funds or plans that have received merger of pension funds: Age 62.
- d. In-plan Roth conversions may be permitted for funds not otherwise eligible for in-service distributions.

III. DISTRIBUTION REQUIREMENTS

A. Timing of Distributions.

The plan must provide that, unless the participant otherwise elects, distributions under the plan will begin not later than the sixtieth day after the close of the plan year in which the latest of the following events occur.

1. The date on which the participant attains the earlier of age sixty-five or the normal retirement age specified under the plan;
2. The tenth anniversary of the year in which the participant commenced participation in the plan; or
3. The participant terminates his service with the employer. I.R.C. §401(a)(14).

B. Spousal Consent.

In some instances, it may be necessary to obtain the consent of the participant's spouse before a distribution may be made. I.R.C. §§401(a)(11) and 417. Spousal consent is required for all pension plans and for profit-sharing and 401(k) plans containing annuity forms of benefit. Spousal consent is not required for distributions from IRAs.

C. Involuntary Cash-Out Rule/Mandatory Distributions.

1. A mandatory distribution is a distribution made to a participant without the participant's consent before he or she reaches the later of age 62 or normal retirement age. A plan may provide for a mandatory distribution of a participant's benefit only if the present value of the vested total accrued benefit does not exceed the \$5,000 cash-out limit. IRC §§411(a)(11), 417(e). IRC §401(a)(31)(B) provides that mandatory distributions of more than \$1,000 from a qualified retirement plan to a plan participant (but not to a surviving spouse or alternate payee) must automatically be rolled over into an IRA unless the participant elects to have the distribution rolled over to another retirement plan or to take it in cash. The automatic rollover rules are effective March 28, 2005.
2. IRS Notice 2005-5 notes that the automatic rollover rules apply only to mandatory distributions. The rules do not apply to eligible rollover distributions made to a surviving spouse or a former spouse who is an alternate payee, nor do they apply to involuntary cash-outs made to a participant who has reached the later of age 62 or normal retirement age under the plan.
3. The plan administrator must notify the participant in writing that the distribution may automatically be rolled over into an IRA. The IRS guidance clarifies that this information must be included in the §402(f) tax notice that is provided to participants within 30 to 180 days of a distribution. If a participant receiving a mandatory distribution fails to elect a direct rollover or a cash payment, the plan administrator may execute the necessary documents to establish an individual retirement plan on the participant's behalf and select a financial institution.

Department of Labor final regulations establish a safe harbor for automatic rollovers. Information about the automatic rollover procedures must be provided in the distributing plan's summary plan description (SPD) or in a summary of material modifications (SMM). Such information must describe the investment product, indicate how fees and expenses will be allocated among the IRA, the distributing plan and the plan sponsor; and identify a plan contact. These disclosures must be made before the plan's first automatic rollover.

4. Compliance Alternatives.

There are three alternatives to complying with the automatic rollover rules:

- a. Provide mandatory distributions up to \$5,000 and implement the automatic rollover rules;
- b. Lower the mandatory distribution limit from \$5,000 to \$1,000; or
- c. Eliminate mandatory distributions altogether.

5. Rollover IRA Investment Product Requirements.

The DOL Regulations provide that the investment product for the rollover IRA for involuntary distributions must comply with the following requirements:

- a. The IRA must be designed to preserve principal, provide a reasonable rate of return, be liquid and minimize risk.
- b. The IRA must seek to maintain, on an on-going basis, the original principal amount rolled over into the IRA.
- c. The IRA must be established with a bank, savings association, credit union, insurance company, or mutual fund provider.
- d. Fees and expenses charged shall not exceed the fees and expenses charged by the individual retirement plan provider for comparable individual retirement plans established for reasons other than automatic rollovers; and

6. Prohibited Transaction Exemptions for Certain Employees.

DOL Prohibited Transaction Exemption 2004-16 creates a class exemption for employers (such as a bank, insurance company, or mutual

fund provider) that choose their own or an affiliate's investment product for the rollover IRA.

7. IRS Sample Amendment for Automatic Rollovers.

In the event of a mandatory distribution greater than \$1,000 in accordance with the provisions of section _____, if the participant does not elect to have such distribution paid directly to an eligible retirement plan specified by the participant in a direct rollover or to receive the distribution directly in accordance with section(s) _____, then the plan administrator will pay the distribution in a direct rollover to an individual retirement plan designated by the plan administrator.

D. Terminated Plans.

1. Application of Automatic IRA Rollover Rules to Distribution From Terminated Plans.

- a. Department of Labor Field Advice Bulletin (FAB) 2004-02 is entitled: Fiduciary Duties and Missing Participants in terminated Defined Contribution Plans.
- b. The FAB provides that the circumstances giving rise to relief under the safe harbor regulations for involuntary IRA rollovers of amounts less than \$5,000 are similar to those confronting fiduciaries of terminated defined contribution plans.
- c. Therefore, the FAB states that rollovers to IRAs of amounts from terminated plans in accordance with the provisions of the safe harbor regulations will be deemed to be in satisfaction of the fiduciary duties for the Plan.

2. Missing Participants. ERISA §4050.

- a. The PBGC missing participant program provides that if the plan administrator of a terminating single employer defined benefit plan cannot locate a participant after a diligent search, the plan may satisfy the distribution requirement by purchasing an annuity from an insurer or transferring the missing participant's benefit to the PBGC.
- b. PPA extends the missing participant program to terminating defined contribution plans, multiemployer plans, defined benefit plans not subject to PBGC coverage (plans maintained by professional service employers with 25 or fewer active participants) and assets in defined benefit plans based upon

separate accounts of participants (treated as defined contribution plans under ERISA).

- c. Effective for distributions made after final regulations implementing the provision are prescribed.

E. Other Required Distribution Rules.

Distributions from a qualified plan must generally begin by April 1 of the calendar year following the calendar year in which the employee attains age 70½ or retires, whichever is later. Five percent or greater shareholders and IRA holders must receive distributions by April 1 of the calendar year following the calendar year in which the employee attains age 70½ (even if the employee has not yet retired). Special rules apply if a participant dies prior to receiving his or her benefit from the plan or dies after payments have begun. I.R.C. §401(a)(9).

F. Waiver of Benefit Not Permitted.

A reduction of an employee's accrued benefit by waiver violates the anticutback provisions of I.R.C. §411(d)(6), the impermissible forfeiture rules of §411(a) and the anti-assignment and nonalienation rules of §401(a)(13). PLR 9146005.

IV. SPECIAL TAX TREATMENT OF CERTAIN DISTRIBUTIONS.

A. Rollover Treatment.

1. In general.

An eligible rollover distribution from a qualified retirement plan, 403(b) annuity, or a governmental 457 plan generally may be rolled over to any such plan or arrangement, although these plans are not required to accept rollovers. Similarly, IRA distributions may also be rolled over to a qualified plan, 403(b) annuity, or governmental 457 plan that accepts rollovers. (IRC §§402(c)(8), 403(b)(8), and 457(e))

2. Special Rollover Rules.

a. Rollover of After-Tax Contributions.

Employee after-tax contributions may be rolled over into another qualified plan or a traditional IRA, so long as the qualified plan provides separate accounting for such contributions. However, after-tax contributions (including nondeductible IRA contributions) may not be rolled over from an IRA to a qualified plan, 403(b) annuity, or governmental 457 plan. Rollovers of after-tax contributions from one qualified plan to another qualified plan are permitted only through direct rollovers (IRC §402(c))

b. Expansion of Spousal Rollovers.

A surviving spouse may roll over distributions not only to an IRA, but also to a qualified retirement plan, 403(b) annuity, or governmental 457 plan in which he or she participates. (IRC §402(c)(9))

c. Rollovers by Nonspouse Beneficiaries (Pension Protection Act of 2006).

Effective for distributions after December 31, 2006, beneficiaries other than a surviving spouse may directly rollover benefits into an IRA. The IRA is treated as an inherited IRA of the nonspouse beneficiary. Therefore, distributions from the IRA are subject to the distribution rules applicable to beneficiaries.

d. Rollover Notice Requirements.

The rollover notice required to be provided by administrators of qualified retirement plans and 403(b) annuities must include an explanation of the distribution provisions under the eligible recipient plans that may be different from those applicable to distributions under the distributing plan. (IRC §402(f))

e. Sixty-Day Rollover Requirement.

i. Under the prior law, the IRS could only waive the 60-day requirement for rollovers during military service in a combat zone or by reason of a Presidentially declared disaster. EGTRRA allows a waiver of the 60-day rollover period if failure to waive the requirement would be against equity or good conscience.

ii. Rev. Proc. 2003-16 provides guidelines on applying to the IRS for a waiver of the 60-day rollover requirement contained in IRC §402(c)(3) and 408(d)(3).

iii. Automatic approval. No application to the Service is required if a financial institution receives funds on behalf of a taxpayer prior to the expiration of the 60-day rollover period, the taxpayer follows all procedures required by the financial institution for depositing the funds into an eligible retirement plan within the 60-day period (including giving instructions to deposit the funds into an eligible retirement plan) and, solely due to an error on the part of the financial

institution, the funds are not deposited into an eligible retirement plan within the 60-day rollover period. Automatic approval is granted only: (1) if the funds are deposited into an eligible retirement plan within 1 year from the beginning of the 60-day rollover period; and (2) if the financial institution had deposited the funds as instructed, it would have been a valid rollover. Rev. Proc. 2003-16.

- f. IRA Rollovers: *Bobrow v. Commissioner* (TC Memo 2014-21); IRS Announcement 2014-15.
 - i. The holder of an IRA can use the 60-day rollover rule only once in a rolling twelve-month period.
 - ii. Effective January 1, 2015, an individual who makes a rollover from an IRA cannot make another IRA rollover within the next 365 days.
 - iii. The restriction does not apply to direct trustee-to-trustee transfers between IRAs.

2. Requirements of distribution.

Distributions may be rolled over if such distributions are eligible rollover distributions. All or part of the distribution may be rolled over.

3. Rollover rulings and requirements.

- a. Distribution must be rolled over within sixty days after receipt by participant, a surviving spouse or a former spouse pursuant to a QDRO, who are the only individuals eligible to receive rollover treatment. PLR 9005071.
- b. Portion of distribution which is not rolled over is taxable as ordinary income in year received.
- c. Individual must rollover property distributed or proceeds from sale of property. Individual *cannot* retain property and rollover the fair market value of the distributed property. Rev. Rul. 87-77.
- d. The transfer to an IRA of a personal promissory note received as a distribution from a qualified plan is a prohibited transaction and can result in disqualification of the IRA. TAM 8849001.

4. Loan Offset Amount "Distribution" May Be Rolled to IRA Using Check from Participant's Personal Funds.

The taxpayer in PLR 200617037 was a participant in his company's Section 401(k) plan. He borrowed from his vested account. The plan's loan policy provided that any outstanding loan balance would be in default on a triggering event including the employee's termination of employment. The taxpayer terminated employment and the amount of the defaulted loan was a taxable distribution. The loan default distribution occurred when the borrowed amount was offset against the participant's account balance.

The taxpayer rolled over two checks to an IRA – the first, reflecting the balance paid from his Section 401(k) account and the second an amount from his personal checking account for the amount of the unpaid loan amount. The rollover was timely completed.

B. Tax Treatment of Net Unrealized Appreciation on Employer Securities Distributed from Qualified Plan.

1. Overview.

- a. The tax treatment of a lump-sum distribution made in the form of employer securities from a tax-qualified retirement plan is addressed in I.R.C. §402(e)(4) as follows:

(B) Amounts Attributable to Employer Contributions. For purposes of subsection (a) and §72, in the case of any lump-sum distribution which includes securities of the employer corporation, there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation. In accordance with rules prescribed by the Secretary, a taxpayer may elect, on the return of tax on which a lump-sum distribution is required to be included, not to have this subparagraph apply to such distribution.

- b. In summary, §402(e)(4) provides that the amount includible in income upon the distribution of employer securities from a tax-qualified retirement plan of the employer corporation is the value of such securities at the time that the securities were contributed to the employer-sponsored retirement plan and not the fair market value of the securities at the time of the distribution of such securities from the retirement plan to the plan participant. The gain on the securities while they were held by the qualified retirement

plan (the net unrealized appreciation) is not subject to tax until the securities are sold by the recipient, at which time the gain is eligible for capital gains treatment. As noted above, however, the basis of the securities (the value when contributed to the plan) is includible in income upon distribution from the plan. (I.R.C. §§402(d)(4)(D), 402(e)(4), 402(j); Reg. §1.402(a)-1(b)(1); Treas. Reg. §1.402(a)-1(b)(2).)

2. Amounts attributable to employee contributions. IRC §402(e)(4)(A).

In the case of a distribution other than a lump sum distribution under IRC §402(e)(4)(D), the amount actually distributed to any distributee from a tax qualified plan under IRC §401(a) shall not include any net unrealized appreciation in securities of the employer corporation attributable to amounts contributed by the employee.

3. Rollover of employer securities to IRA.

If the employer securities are rolled over from the employer plan into an Individual Retirement Account (IRA), the application of this rule will be lost. This is because the transfer to the IRA will be a non-taxable rollover and any subsequent distribution from the IRA will be fully taxable at ordinary income rates.

4. Receipt of employer securities by employee and rollover of balance of account to IRA.

An employee or beneficiary who receives appreciated employer securities and rolls over to an IRA the balance of his qualified retirement plan account can defer income tax on the net unrealized portion of the employer securities. The receipt of the employer securities and the rollover of the balance of the account constitutes a lump-sum distribution for this special rule. IRS Private Letter Ruling 9721036.

5. Application of tax under I.R.C. §72(t).

Although an employee receives appreciated employer securities and defers the income tax on the net unrealized appreciation, the employee may be subject to the additional ten percent tax under I.R.C. §72(t) for distributions prior to age 59½ unless an exception applies. (*Villanoel*, TCM 1998-247). One of the exceptions to the additional ten percent tax under §72(t) is the distribution of benefits from a tax-qualified plan to a beneficiary pursuant to the death of a plan participant.

6. No step-up in basis at death of recipient.

As a general rule, if the owner of appreciated securities dies, the basis of the securities is increased to the fair market value of the securities at the time of death. However, the step-up in basis rules do not apply to property that constitutes a right to receive an item of income in respect of a decedent, and net unrealized appreciation constitutes a right to receive income in respect of a decedent. Thus, upon the death of the owner of the appreciated employer securities, there is no step-up in basis and there will be a realization of capital gain upon the subsequent sale of the employer securities by the estate or a beneficiary of the estate. I.R.C. §§691, 1014; Rev. Rul. 75-125.

7. Rollover to another qualified plan of same employer.

The IRS has ruled that a rollover from a qualified plan to another qualified plan of the same employer preserves the net unrealized appreciation treatment of the employer stock involved in the rollover. PLR 200027058.

8. Impact of successor employer upon tax treatment of distribution of employer securities.

The IRS reviewed the situation where a selling corporation's employees become employed by an acquiring corporation and the selling corporation's stock is transferred from its qualified plan to that of the acquiring corporation. In this fact situation, IRS has ruled that the seller's stock distributed from the buyer's plan retains its status as securities of the employer corporation for NUA purposes.

The position of the IRS is summarized in Rev. Rul. 73-29 as follows:

The shares of stock in the seller corporation were held or acquired by the seller's exempt trust while the participant was an employee of the seller. Thus, these shares were securities of the employer corporation, within the meaning of §402(a)(2) of the Code, at that time and their subsequent transfer to the trust of the buyer corporation did not change their status.

Accordingly, it is held that, under the circumstances in this case, the shares of stock of the seller corporation distributed to the employee as part of the total distribution payable from the trust are securities of the employer corporation for purposes of §402(a)(2) of the Code.

More recently, Rev. Rul. 73-29 was cited as authority by the IRS in PLR 9643033 as follows:

The ruling (Rev. Rul. 73-29) concluded that shares of stock of the seller corporation distributed from the buyer's qualified trust to employees of the buyer corporation who are former employees of the seller corporation are securities of the employer corporation for purposes of excluding net unrealized appreciation from the distributee's gross income. The fact that the shares were transferred from one qualified trust to the qualified trust of an unrelated entity did not change their status as employer securities for this purpose.

V. DISTRIBUTIONS TAXED AS ORDINARY INCOME. I.R.C. §72

A. Distributions Paid in Installments or Annuity Form.

Distributions Paid in Installments or Annuity Form Are Taxable as Ordinary Income in the Year Received.

B. Lump-Sum Distributions are Taxable as Ordinary Income.

Lump-sum distributions are taxable as ordinary income in the year received unless rollover treatment is elected.

C. Basis Recovery Rule for IRA Distributions.

Basis recovery rule for IRA distributions partially attributable to nondeductible contributions is the same as distributions from qualified plans (*i.e.*, use of "annuity exclusion ratio").

1. Amount excluded under the exclusion ratio is limited to amount of employee's basis in the contract.
2. Separate annuity exclusion ratio will be computed for employee contributions (*i.e.*, employee contribution account treated as a separate annuity contract).

D. Annuity Rules Apply to Distributions of Voluntary Nondeductible Contributions.

Annuity rules apply to distributions of voluntary nondeductible contributions contributed to a plan after December 31, 1986. Voluntary nondeductible contributions contributed to a plan prior to January 1, 1987 may be distributed under pre-1986 TRA principal first distribution rule if the plan provisions in effect on May 1, 1986 provided for in-service distributions of voluntary nondeductible contributions. I.R.C. §72(e)(8)(D).

E. If Annuitant Dies Before Full Recovery.

If annuitant dies before full recovery of basis, the unrecovered portion is allowed as a deduction for annuitant's last taxable year. However, if an annuity has a refund feature, the investment in the contract is reduced by the present value of the refund feature. I.R.C. §72(c)(2).

F. Simplified Method of Determining Basis.

I.R.C. §72(d) establishes a simplified method for determining the portion of an annuity distribution from a qualified plan, qualified annuity, or tax-sheltered annuity that represents non-taxable return of basis.

1. The portion of each annuity payment constituting non-taxable return of basis is equal to the participant's total investment in the contract as of the annuity starting date, divided by the number of anticipated payments determined by reference to the age of the participant based on the following table.

| Age of Primary Annuitant on Annuity Starting Date: | Number of Anticipated Payments: |
|---|--|
| 55 and under | 360 |
| 56-60 | 310 |
| 61-65 | 260 |
| 66-70 | 210 |
| 71 and over | 160 |

2. The investment in the contract is the amount of premiums and other consideration paid (*e.g.*, the after-tax contributions to the plan) minus the amount received before the annuity starting date that was excluded from gross income.
3. If the number of payments is fixed under the annuity, that number is used rather than the number of anticipated payments listed in the table.
4. The simplified method does not apply if the primary annuitant has attained age seventy-five on the annuity starting date unless there are less than five years of guaranteed payments under the annuity.
5. Example.

Stan, age sixty-one, receives a \$300 per month annuity from his retirement plan. His contributions to the plan totaled \$26,000. Under the simplified method, the nontaxable portion of his annuity payment is \$100 per monthly payment. This amount is determined by dividing \$26,000 (the investment in the contract) by the number of anticipated payments (260).

6. A second table at IRC §72(d)(1)(B)(iv) applies for annuity payments based on more than one life.

VI. MINIMUM DISTRIBUTION RULES. I.R.C. §§401(a)(9), 4974; TREAS. REG. §1.401(a)(9)

A. Overview.

Provides a uniform commencement date for benefits under all qualified plans, IRAs, 403(b) annuities, custodial accounts and 457 plans for governmental and tax exempt employers. The IRS published revised proposed Treas. Reg. §1.401(a)(9) on January 17, 2001 which substantially modified the prior minimum distribution rules. Final Regulations were issued April 17, 2002.

1. Required Beginning Date (RBD).

- a. Required beginning date for participants in qualified plans (other than five percent owners and IRA holders).

Distributions must begin by April 1 of the calendar year following the later of:

- (i) the calendar year in which the participant attains age 70½;
or
- (ii) the calendar year in which the participant retires. I.R.C. §401(a)(9)(C).

- b. Required beginning date for five percent owners and IRA holders.

No later than April 1 following the calendar year in which participant or owner attains age 70½ regardless of retirement date.

- i. Reg. 1.401(a)(9)-2: Q/A-2(c) defines 5% owner for RMD as one who is a 5% owner in the calendar year during which he turns 70½ or in a plan year ending in a calendar year in which the employee attains Age 70½.
- ii. IRC §318 attribution rules apply for purposes of determining 5% owners (spouse, children, parents).

2. Required minimum distribution (RMD): IRA or Defined Contribution Plan.

I.R.C. §§401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3) or 457(d)(2). Distributions must be sufficient to amortize a participant's benefits over:

- a. a time period based on a divisor from the Uniform Table; or
- b. if the participant's spouse is the sole beneficiary and the spouse is more than ten years younger than the participant, the joint life expectancy of the participant and spouse. For a defined contribution plan, the annual distribution must equal at least the quotient obtained by dividing the participant's account balance by the applicable life expectancy.

a. Required minimum distribution relief for 2009. WRERA 2008 provides some relief from the required minimum distribution (RMD) rules for distributions required from qualified plans and IRAs for calendar year 2009. The distribution that is required for calendar year 2009 can be waived. Also, the five-year period where the five-year rule applies is determined without regard to 2009. The 2009 relief rules apply to distributions from defined contribution plans, Section 403(a) and 403(b) defined contribution plans, government Section 457 defined contribution plans and IRAs.

b. Actuarial adjustments for distributions from defined benefit plan with beginning date later than age 70½.

If an employee (other than a five percent owner or IRA holder) retires in a calendar year after the year in which the employee attained age 70½ and defers distributions until such retirement, the employee's accrued benefit must be actuarially increased to reflect the value of the benefits that the employee would have received if benefits had commenced at age 70½.

c. Roth IRAs and Roth 401(k)s.

- i. RMD rules do not apply to pre-death (i.e., age 70½) distributions from a Roth IRA.
- ii. RMD rules do, however, apply to distributions from a Roth 401(k).

3. Multiple Plans or IRAs.

- a. An individual is required to receive an RMD from each separate qualified plan.
- b. IRAs can be aggregated and the RMD can be distributed from one of several IRAs.

B. Calculation of Life Expectancy.

Distributions during the lifetime of the participant must be made over a period no longer than the period determined under the Uniform Table reflecting the joint life expectancy of the participant and a beneficiary ten years younger than the participant. The table's factors are recomputed annually, so the divisor decreases by less than one year every year. For example, the factor is 27.4 years at age 70, 22.9 years at age 75, 12.0 years at age 89 and 1.9 years at age 115. The Uniform Table is reproduced at the end of this chapter.

1. Calculation of required minimum distribution.

To determine the minimum required distribution, first determine the participant's age on his or her birthday in the appropriate distribution year. Next, divide the prior year-end account balance by the divisor in the Uniform Table that corresponds to that age. The appropriate distribution must be made by December 31 of each year.

Example of Required Minimum Distribution.

Age 70½ on August 3, 2012.

Required Beginning Date is April 1, 2013

| <u>Balance on Date</u> | <u>Uniform Table Factor</u> | | <u>Distributed By</u> |
|------------------------|-----------------------------|----------|-----------------------|
| 12/31/2011 | 27.4 | (Age 70) | 04/01/2013 |
| 12/31/2012 | 26.5 | (Age 71) | 12/31/2013 |
| 12/31/2013 | 25.6 | (Age 72) | 12/31/2014 |
| 12/31/2014 | 24.7 | (Age 73) | 12/31/2015 |

2. Special rule if much younger spouse is sole beneficiary.

If the sole designated beneficiary of an employee is the employee's surviving spouse, for required minimum distributions during the employee's lifetime, the applicable distribution period is the longer of the distribution period determined in accordance with the Uniform Table or the joint life expectancy of the employee and spouse using the employee's and spouse's attained ages as of the employee's and the spouse's birthdays in the distribution calendar year. Reg. §1.401(a)(9)-5, A-4(b). This formula mandates recalculation of the employee's and the spouse's life

expectancies. The joint life expectancy table would be used when the spouse is 10 years younger than the participant.

- a. The spouse is the sole designated beneficiary for this purpose if the spouse is the sole beneficiary of the employee's entire interest at all times during the distribution calendar year. Reg. §1.401(a)(9)-5, A-4(b).
- b. The determination of whether the participant will use the Uniform Table or the true joint life expectancy of the participant and spouse is made annually. Thus, if the spouse predeceases the participant, or they are divorced, the participant goes back to using the Uniform Table. Similarly, if the participant marries a much younger spouse after the participant's required beginning date, the participant can switch, the next year, from the Uniform Table to the joint and survivor expectancy of the participant and the new spouse.

C. Determination of Beneficiary.

Practice Hint: Check your clients' (and your own) beneficiary designation forms to assure that they are proper and current.

1. Determination of beneficiary.

The final determination of the designated beneficiary will be determined based on the beneficiaries designated as of September 30 of the year following the calendar year of the participant's death. Consequently, any person who was a beneficiary as of the date of the employee's death, but is not a beneficiary as of a later date (*e.g.*, because the person disclaims entitlement to the benefit in favor of another beneficiary or because the person receives the entire benefit to which the person is entitled before that date) is not taken into account in determining the employee's designated beneficiary for purposes of determining the distribution period for required minimum distributions after the employee's death. Reg. §1.401(a)(9)-4, A-4(a).

2. Thus, under the 2002 final regulations, required minimum distributions after the death of the participant are based on the life expectancies of the beneficiaries who inherit the benefits.

- a. The prior rule basing such distributions on the beneficiary named on the participant's required beginning date is no longer applicable.

- b. Participants who have attained their required beginning dates should review their beneficiaries since the time period for distributions to such beneficiaries is no longer fixed as of the participant's required beginning date.
3. The participant's beneficiary selections are fixed at the time of the participant's death. New beneficiaries cannot be created after the death of the participant. It is possible, however, for some beneficiaries to disclaim their benefits in favor of other beneficiaries already named by the participant prior to his or her death. Alternatively, some beneficiaries may choose to receive their entire benefit prior to September 30 of the year following the year of the participant's death and thereby be removed from the group of beneficiaries for purposes of determining the distribution period.
4. Designated Beneficiaries.
 - a. An employee (or the employee's spouse) is not required to make an affirmative election specifying a beneficiary for a person to be a designated beneficiary under §401(a)(9)(E). A designated beneficiary is an individual who is designated as a beneficiary under the plan whether or not the designation under the plan was made by the employee. The choice of beneficiary is subject to the requirements of §§401(a)(11), 414(p), and 417. Reg. §1.401(a)(9)-4, A-2.
 - b. Only individuals may be designated beneficiaries. An entity that is not an individual, such as the employee's estate, may not be a designated beneficiary. If an entity other than an individual (i.e., human) is designated as a beneficiary of an employee's benefit, the employee will be treated as having no designated beneficiary for purposes of IRC §401(a)(9), even if there are also individuals designated as beneficiaries. Reg. §4.401(a)(9)-4, A-3.

5. Qualified Disclaimer by Beneficiary:

An individual may disclaim his or her interest as a beneficiary in an IRA or a qualified plan. The disclaimer must be made in accordance with the requirements of IRC §2518 as follows:

Under §2518(b), the term "disqualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property, but only if: (1) the refusal is in writing; (2) the writing is received by the transferor of the interest, his or her legal representative, or the holder of the legal title to the property to which the interest relates, not later than the date that is 9 months after the later of: (A) the date on which the transfer

creating the interest in the person is made, or (B) the day on which the person attains the age of 21; (3) the person has not accepted the interest or any of its benefits; and (4) as a result of the refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either: (A) to the spouse of the decedent, or (B) to a person other than the person making the disclaimer.

D. A Trust as the Beneficiary.

1. Pass Through Trusts as Beneficiaries of an IRA.

a. To be a "Pass Through Trust" or "conduit trust," all IRA distributions that will be received by the trust must annually be distributed to a person or persons who are the beneficiaries of the trust.

i. If the distributions will be distributed by the trust to one beneficiary, then that beneficiary will be the Designated Beneficiary and the beneficiary's age will be used to calculate the required distributions from the IRA.

ii. If the distributions will be distributed by the trust to more than one beneficiary, then the oldest beneficiary of the class will be the Designated Beneficiary whose life expectancy will be used to calculate the required distributions.

PLR 2004440333 permits separate IRAs to be established in the name of the IRA owner FBO the beneficiary. Distributions are based on the oldest beneficiary's life expectancy.

iii. All trust beneficiaries who may receive the IRA distributions must be individuals.

2. Non Pass Through Trusts as Beneficiary of an IRA.

a. A trust is not a "Pass Through Trust" if an IRA distribution will be received by the trust and the trust provides that any portion of the distribution may be accumulated rather than distributed to a beneficiary who is a person.

i. The trust provides for distributions of income only.

(a) Even through the entire IRA distribution may be subject to income tax, the entire IRA distribution may not be income for trust accounting purposes since some may be principal.

- (b) IRA distributions received by the trust will have the same character as income or principal as the distributing IRA. If the trust provides that only income will be distributed, then the trust will **NOT** be a pass through trust.
 - ii. If the trust allows accumulation of any amount received by the trust from the IRA, the trust will **NOT** be a Pass Through Trust.
 - b. If a trust is not a Pass Through Trust, then all trust beneficiaries, including contingent beneficiaries, will be used to determine the required minimum distributions. Reg. §1.401(a)(9)-5, A-7(c); Rev. Proc. 2006-26.
 - i. If all trust beneficiaries are individuals, then the age of the oldest beneficiary will be used to determine the required minimum distributions.
 - ii. If even one trust beneficiary is not an individual, then the IRA will have no Designated Beneficiary. The effect is that all of the assets must be distributed under the 5 year rule.
- E. Post-Death Distributions for Death Before the Required Beginning Date.
 - 1. The five-year rule. The five-year rule states that, unless an exception otherwise exists, the entire IRA or plan account must be distributed no later than December 31 of the fifth year following the year of the participant's death. I.R.C. §401(a)(9)(B)(ii).
 - 2. Life Expectancy Rule is Default Rule for Pre-RBD Death Payments to Designated Beneficiaries (i.e., Humans). In the absence of a plan provision requiring or permitting an election of the five year rule, the final regulations provide that the life expectancy rule is the default rule for pre-RBD Death Payments. If a participant dies before his RBD, his beneficiaries will receive benefit payments based on their life expectancies, unless the plan provides otherwise. Reg. §1.401(a)(9)-3, A-4(a)(1).
 - a. If the employee has a designated beneficiary, distributions are to be made in accordance with the life expectancy rule in IRC §401(a)(9)(B)(iii) and (iv) unless the plan either mandates the five-year rule or permits a beneficiary to elect the five-year plan.

3. No Designated Beneficiary (*i.e.*, Non-Human is Beneficiary). If the employee has no designated beneficiary, distributions are to be made in accordance with the five-year rule. Reg. §1.401(a)(9)-3, A-4(a)(2).
4. Summary of Distribution Periods for Death before the Required Beginning Date.
 - a. If the employee has a designated beneficiary, distributions are to be made in accordance with the life expectancy rule and the five-year rule is not an option (unless the plan either mandates the five-year rule or provides beneficiaries with the option of electing the five-year rule). Therefore, if distributions to the beneficiary do not commence by December 31 of the year following the death of the employee, the 50% excise tax under IRC §4974 will be applicable.
 - b. If the employee has no designated beneficiary, distributions are to be made in accordance with the five-year rule and the life expectancy rule is not an option.
5. Spouse as beneficiary. If the spouse is the sole individual beneficiary, the spouse must receive distributions over the spouse's life expectancy (calculated under the Single Life Table) beginning no later than the later of
 - i. December 31 of the year the participant would have attained age 70½, or
 - ii. December 31 of the year following the year in which the participant died. Reg. §1.401(a)(9)-3, A-3(b). I.R.C. §401(a)(9)(B)(iv).
 - a. The final regulations provide that, during the surviving spouse's lifetime, the spouse's life expectancy is recalculated annually beginning in the year the participant would have attained age 70½.
 - b. Upon the death of the spouse, however, any benefits remaining in the original participant's plan must be paid out over the remaining (fixed term) life expectancy of the surviving spouse, computed as of the age of the spouse on the birthday of the spouse in the year of the spouse's death.
 - c. Alternatively, the spouse can rollover the inherited plan or IRA benefits to the spouse's own IRA or qualified plan. For purposes of distributions from the spouse's rollover IRA, the spouse is treated as the participant and, therefore, can use the Uniform Table for distributions.

The Tax Court in *Gee v. Commissioner*, 127 T.C. No. 1 (7/24/06) held that funds rolled over from the taxpayer's deceased husband's IRA into her own IRA do not retain their character as funds from her deceased husband's IRA. Therefore, she is liable for the 10 percent early withdrawal penalty upon withdrawing those funds prior to turning 59½.

6. Nonspouse beneficiary.

If a nonspouse is the sole individual beneficiary, the beneficiary is required to receive distributions over the beneficiary's life expectancy (based on the age of the beneficiary on the birthday of the beneficiary in the year following the year of the participant's death) beginning no later than December 31 of the year following the year of the participant's death. Reg. §1.401(a)(9)-8, A-3(a). I.R.C. §401(a)(9)(B)(iii).

- a. The life expectancy of the beneficiary is calculated under the Single Life Table. The initial calculation of the beneficiary's life expectancy establishes a period certain which is then reduced by one for each year thereafter to determine the appropriate factor for such year.
- b. If the beneficiary is not an individual (i.e., under the Regulations, there is no designated beneficiary), benefits must be distributed in accordance with the five-year rule.
- c. Although the life expectancy rule has replaced the five year rule as the default rule, distributions under the life expectancy rule must commence by December 31 of the year following the year of the participant's death in order to avoid the 50% excise tax under IRC §4974.

7. Rollovers by Nonspouse Beneficiaries.

- a. PPA added §402(c)(11) to the Internal Revenue Code. Under §402(c)(11), if a participant in a tax-qualified retirement plan dies leaving his accrued benefit under the plan to a nonspouse designated beneficiary, the designated beneficiary may be able to roll over the inherited funds directly into an IRA.
- b. The Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) provides that, for plan years beginning after 2009, a rollover by a nonspousal beneficiary is generally treated like any other eligible rollover. Plans are required to permit such rollovers by nonspousal beneficiaries after 2009.

- c. The rollover **must** be accomplished by a direct trustee-to-trustee transfer (a "direct rollover") and the retirement plan must provide for this type of rollover.
- d. IRS Notice 2007-7 and the February 13, 2007 Special Edition of the IRS publication "Employee Plans News" provides that a nonspouse designated beneficiary is permitted to use the life expectancy rule for determining the required minimum distributions under the IRA (even if the plan provides for the five-year rule) only if the rollover is made prior to the end of the year following the year of the participant's death.
- e. The nonspouse rollover IRA is treated as an "inherited IRA" of the nonspouse beneficiary. Distributions from the IRA are subject to the distribution rules applicable to beneficiaries.
- f. The IRA must be identified as an IRA with respect to the deceased individual and must also identify the deceased individual and the beneficiary. For example, "Tom Smith as beneficiary of John Jones."
- g. Plans are required to provide a direct rollover option for nonspouse beneficiaries for plan years commencing after December 31, 2009.
- h. Nonspouse rollovers are **not** subject to the notice requirements of IRC §402(f) or to the mandatory 20% federal income tax withholding requirements of IRC §3405(c) which applies to eligible rollover distributions from a qualified plan.
- i. A Trust Designated Beneficiary may also rollover. A Trust Designated Beneficiary presumably means a trust that satisfies the requirements of Regulation 401(a)(9)-4, Q&A-5:
 - (i) trust is valid under state law;
 - (ii) trust is irrevocable;
 - (iii) trust beneficiaries are identifiable; and
 - (iv) trust documentation has been provided to the plan administrator.
- j. Effective for distributions beginning in 2007 and thereafter from qualified plans, §403(b) plans, and §457 plans.
- k. Nonspouse beneficiary cannot rollover into a Roth IRA.

8. Multiple beneficiaries.

- a. Where there is more than one beneficiary, all beneficiaries must be individuals or no beneficiary can use the life expectancy payout method, unless the shares of the various beneficiaries constitute *separate accounts* with separate accounting for profits and losses as of the “applicable date.”
 - i. Under the old rules, the applicable date for the establishment of separate accounts was the date of death (or the required beginning date, if earlier).
 - ii. The 2002 final regulations provide the applicable date for the establishment of separate accounts is December 31 of the year following the year of the participant’s death.
- b. Multiple beneficiaries who are individuals and who have not established separate accounts payable to the various beneficiaries by December 31 of the year following the year of the participant’s death must receive distributions over the oldest beneficiary’s life expectancy with distributions commencing no later than December 31 of the year following the year of the participant’s death. Reg. §1.401(a)(9)-3, A-3(a); and -5, A-7.
- c. If there are multiple beneficiaries who have not established separate accounts by December 31 of the year following the death of the participant (prior to the Required Beginning Date) and at least one of the beneficiaries is not an individual, the entire IRA or plan account must be distributed under the five-year rule.
- d. Example of language in beneficiary designation mandating separate accounts:

“I designate the following beneficiaries to receive all benefits payable upon my death under the terms of the Plan and Trust and to elect the form of such benefit to the extent permitted under the Plan and Trust:

My descendants, per stirpes.

I direct that a separate account within the meaning of Reg. 1.401(a)(9)-8, A-3 and 1.401(a)(9)-5 should be established and maintained for each beneficiary in proportion to his or her interest, by initially determining the benefits that are owing to such beneficiary under this designation. The separate accounts should be established on or before December 31 of the year following the

date of my death, or at such other time as required by Internal Revenue Code §401(a)(9) and the Treasury Regulations there under then in effect. From that time forward, each such separate account must bear its own prorata share of gains and losses and shall otherwise be separately accounted for.”

F. Post-Death Distributions for Death After the Required Beginning Date.

1. The required minimum distribution for the year during which the participant died is based on the participant’s required distribution schedule (e.g., the Uniform Table). Reg. §§1.401(a)(9)-5, A-4(a)(1).
2. Required minimum distributions for the year following the year of the participant’s death are based on the “applicable distribution period.” These rules are similar to the rules for post-death distributions for death prior to the Required Beginning Date except that the five-year rule and the special spousal distribution rules of I.R.C. §401(a)(9)(B)(iv) are not applicable.
3. Surviving spouse as sole beneficiary.

The applicable period for the distributions is the life expectancy of the surviving spouse. As noted above, the spouse’s life expectancy is recalculated annually while the spouse is alive but fixed at the spouse’s death for a specific term based on the spouse’s age on the spouse’s birthday in the year of the spouse’s death. Reg. §§1.401(a)(9)-5, A-5(a)(2); and A-5(c)(2). Thus, after the spouse’s death, any remaining benefits must be paid out over the remaining fixed-term life expectancy of the spouse. Alternatively, the spouse may rollover the benefits to an IRA or to another qualified plan.

4. Non-spouse beneficiary.

If a non-spouse is the sole individual beneficiary, the applicable distribution period is the beneficiary’s life expectancy. Thus, the minimum required distributions are based on the fixed-term life expectancy of the beneficiary and must commence no later than December 31 of the year following the year of the participant’s death. Reg. §§1.401(a)(9)-5, A-5(a)(1); and A-5(b)(c)(1).

5. Rollovers by nonspouse beneficiaries.

Effective for distributions after December 31, 2006, benefits of a nonspouse beneficiary may be rolled over to an IRA. The IRA is treated as an inherited IRA of the nonspouse beneficiary. Distributions from the IRA are subject to the distribution rules applicable to beneficiaries. Please

see the discussion in G.7. above regarding IRA rollovers by nonspouse beneficiaries.

6. Multiple individual beneficiaries.

If there are multiple individual beneficiaries who have not established individual accounts, required minimum distributions are made on a fixed term basis over the life expectancy of the oldest beneficiary.

7. Multiple beneficiaries where one or more are not individuals.

If there are multiple beneficiaries who have not established individual accounts and at least one of them is not an individual (even if one of the beneficiaries is the surviving spouse), the applicable distribution period is based on the participant's life expectancy using the IRS single life expectancy table, based on the participant's age on his birthday in the year of his death and reduced by one year for each year thereafter. Reg. §§1.401(a)(9)-4, A-3; and -5, A-5(c)(3). This distribution method also applies to a single non-individual beneficiary.

- a. IRS PLR 201128036 — An IRA with an estate named as the beneficiary may be divided into sub-IRAs for the beneficiaries of the estate. Although the sub-accounts permit each beneficiary to separately invest his share of the IRA, the beneficiaries are still locked into a distribution period based on the life expectancy (under the IRS single life table) of the deceased IRA owner.

8. Separate accounts.

If the beneficiaries' accounts have been divided into separate accounts, the required minimum distribution rules are applied separately with respect to each separate account. Reg. §1.401(a)(9)-8, A-3.

G. Summary:

1. Uniform Table is only used by participants.
2. Single Life Table is only used by beneficiaries.
3. Joint and Last Survivor Table is only used by participants with spouse more than 10 years younger than the participant.
4. Year of Death:
 - a. Distribution pursuant to Uniform Table based on participant's age on birthday in year of death.

5. Year Following Year of Death:
 - a. September 30 — determine beneficiaries.
 - b. December 31:
 - i. Establish separate accounts.
 - ii. Commence distributions to beneficiaries.
6. Beneficiary RMDs.
 - a. Spouse:
 - i. Single Life Table.
 - ii. Recalculate life expectancy.
 - iii. Fixed term at death of spouse based on age of spouse at death.
 - iv. Spouse can also rollover to her/his own IRA and then use Uniform Table.
 - b. Non-Spouse:
 - i. Single Life Table.
 - ii. Fixed Term based on age of beneficiary in year following year of death of IRA owner/plan participant.
 - c. Non-Human:
 - i. 5 year rule (for death prior to Required Beginning Date).
 - ii. Deceased Participant's life expectancy (using single life table) based on age on birthday in year of death (for death after Required Beginning Date).

H. Qualifying Longevity Annuity Contract (QLACs).

1. IRS final regulations under Treasury Regulation §1.401(a)(9)-6, Q&A – 17 allow the value of QLACs to be excluded from a participant's account balance for purposes of determining Required Minimum Distributions (RMDs).

2. QLACs must begin distributions no later than the month after the participant's 85th birthday but could provide for an earlier starting date.
3. Final Regulations apply to contracts purchased or exchanged after July 1, 2014.
4. The premiums paid on QLACs are limited to the lesser of:
 - a. \$125,000 (adjusted for inflation); or
 - b. 25% of the participant's account balance on the date of payment.

\$125,000 limit applies to all accounts held by a participant — IRAs and retirement plans are combined.

5. Premiums exceeding these amounts cause the contracts to cease to be QLACs. Multiple contracts are added together.

Inadvertent premiums in excess of the limits can be corrected.

6. QLAC must be purchased from an insurance company.
7. QLAC **cannot** contain cash surrender rights or provide for a lump sum distribution.
8. Benefits paid from a QLAC following the participant's death are limited. A surviving spouse as a sole beneficiary is permitted to receive a life annuity with payments not exceeding 100% of the payments received by the participant (*i.e.*, Qualified Joint and 100% Survivor Annuity).

I. Sanction for Failure to Comply.

Excise tax is imposed equal to fifty percent of amount that should have been distributed. Tax is payable by person who should have received the non-distributed benefit. Sanction can be waived by IRS. I.R.C. §4974.

J. TEFRA §242(b) Grandfather Election.

TRA '86 amendments to I.R.C. §401(a)(9) do not apply to distribution arrangements under a "TEFRA grandfather designation"—TEFRA §242(b) election made by December 31, 1983. TEFRA §242(b) election also applies to assets transferred from a prior plan (under which the election was made) to a new plan, however, transferred election only applies to transferred assets not to the employees' other accounts in the new plan. PLR 9052058.

VII. INCOME IN RESPECT OF DECEDENT (IRD)

A. Gross income of a decedent.

Gross income of a decedent which was not includible in a Form 1040 of the decedent prior to his death because he is on the cash basis is income in respect of a decedent. This includes amounts of gross income in respect of a prior decedent if the decedent's right to receive such amount was acquired by reason of the death of a prior decedent or by bequest, devise or inheritance from the prior decedent. I.R.C. §691(a)(1).

1. Income in respect of a decedent is taxable in the year when received.
2. The character of the income is based upon the nature of the income that it would have had in the hands of the decedent if the decedent had lived and received such amount.
3. A person who includes an amount of income in respect of a decedent is allowed a deduction for the federal estate tax attributable to the income in respect of a decedent.
4. The federal estate tax attributable to IRD is based upon the decedent's highest marginal federal estate tax. It is computed by determining the federal estate tax with the IRD in the estate and determining the federal estate tax without the IRD. The difference is the federal estate tax attributable to the IRD.
5. The recipient of IRD has the same basis for income tax purposes that the decedent had prior to his death. No step up in basis is permitted even though the estate shows the value of IRD as an asset in the estate.

B. According to the IRS:

A person who is required to include in gross income for any taxable year an amount of income in respect of a decedent may deduct for the same taxable year that portion of the estate tax imposed upon the decedent's estate which is attributable to the inclusion in the decedent's estate of the right to receive such amount.

Treas. Reg. §1.691(c)-1(a).

1. Example.

George dies in 2001 with an IRA as part of his estate in the amount of \$1,000,000. If we assume that the federal estate tax attributable to the IRA is \$450,000, then the beneficiary of George's IRA may deduct a portion of the \$450,000 federal estate tax paid as the IRA proceeds withdrawn. If

Fred is the sole designated beneficiary of George's IRA, then Fred will be entitled to the benefit of deduction. If Fred withdraws \$100,000 from George's IRA in 2000 then Fred is entitled to an itemized deduction of forty-five percent of \$100,000 or \$45,000. This is the allocable portion of the federal estate tax attributable to the IRA in George's estate. This deduction is commonly referred to as a §691(c) deduction. The deduction is not subject to the two percent of adjusted gross income limitation but is subject to the three percent of adjusted gross income limitation.

2. According to the IRS:

If a person is required to include in gross income an amount of income in respect of a prior decedent, such person may deduct for the same taxable year that portion of the estate tax imposed upon the prior decedent's estate which is attributable to the inclusion in the prior decedent's estate of the value of the right to receive such amount.

Reg. §1.691(c)-1(b).

VIII. PREMATURE DISTRIBUTION RULES. I.R.C. §72(t)

A. Additional Tax Imposed on Premature Distributions from Qualified Plans, IRAs and 403(b) Annuities.

1. Additional Tax.

Additional ten percent income tax applied to any taxable distributions made before death, disability or attainment of age 59½.

- a. The ten percent tax on early distributions is payable on or before April 15 of the calendar year following the year of receipt; in other words, at the same time as regular income taxes are due.
- b. The IRS increasingly is assessing negligence and substantial understatement penalties relating to early distributions in addition to the ten percent additional tax itself. The Tax Court has generally upheld these penalties.
- c. No withholding obligation is imposed on the payor.
- d. The ten percent additional income tax is imposed on amounts included in income.
 - i. Amounts deemed distributed, such as failed loans, become subject to the tax.

- ii. Prohibited transactions in an IRA result in taxable distributions that are subject to the ten percent tax.
- iii. Any amount that is rolled over, or any return of non-taxable employee contributions (including non-deductible IRA contributions and qualifying distributions from Roth IRAs) is not subject to the tax.

2. Exceptions.

Additional tax does not apply to distributions:

- a. Which are part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of an individual or the joint lives of the individual and the individual's designated beneficiary; however, if the method of distributions is changed prior to the later of five years or attainment of age 59½, the ten percent premature distribution penalty will be assessed on all distributions previously made; I.R.C. §72(t)(2)(A)(iv). This exception does not apply to payments made from qualified plans or §§403(a) or 403(b) annuity contracts unless the payments begin after the employee separates from service; I.R.C. §72(t)(3)(B); *IRAs need not be aggregated for this exception*. An individual can take distributions from one of two or more IRAs under this method without triggering the §72(t) tax on premature distributions. PLR 9723035.

Modification of substantially equal payments will result in makeup penalties on prior distributions, but the exception is applied anew to payments made following the modification and the taxpayer is able to get a fresh start under the exception for future payments. PLR 199909059.

- b. To employees who separated from service after attainment of age fifty-five (this exception does not apply to IRA distributions); I.R.C. §72(t)(2)(A)(v). "Employee" is defined to include any participant, including self-employed individuals.

For qualified public safety employees, age 50 is substituted for age 55 for this exception. IRC §72(t)(10). A "qualified public safety employee" is a state or local government employee whose principal duties include police protection, firefighting services or emergency medical services.

- c. Which are dividends paid with respect to ESOP stock; I.R.C. §72(t)(2)(A)(vi).

- d. Used to pay deductible medical expenses.

The medical expense exception applies only to the extent the amounts distributed are allowable as a deduction under the regular deduction provisions of the Code §213 (whether or not the taxpayer itemizes deductions). I.R.C. §72(t)(2)(B).

- e. To an alternate payee under a qualified domestic relations order; I.R.C. §72(t)(2)(C).
- f. Distributions to unemployed individuals to pay health insurance premiums are exempted from the additional ten percent tax under certain circumstances. I.R.C. §72(t)(2)(D). Applies to IRAs only.
- g. Distributions for qualified higher education expenses furnished to the taxpayer, the taxpayer's spouse or a child or grandchild of the taxpayer are exempt from the §72(t) tax. I.R.C. §72(t)(2)(E). Applies to IRAs only.
- h. Distributions for qualified first-time homebuyers are exempt from the additional ten percent tax. I.R.C. §72(t)(2)(F). The exemption for qualified first-time homebuyer distributions is subject to a \$10,000 lifetime limitation. I.R.C. §72(t)(8)(B). Applies to IRAs only.
- i. The additional ten percent tax will not apply to distributions made on account of an IRS levy on a taxpayer's IRA or tax-qualified retirement plan. I.R.C. §72(t)(2)(A)(vii).

B. Rules Do Not Apply to Any Benefit Distribution Covered by a "TEFRA Grandfather Designation."

C. Determination of Substantially Equal Periodic Payments.

- 1. In private letter ruling 8921098, the IRS has listed three methods that may be used to calculate substantially equal periodic payments under I.R.C. §72(t)(2)(A)(iv) for purposes of avoiding the ten percent excise tax imposed on distributions made prior to age 59½. *See also* IRS Notice 89-25, Q & A 12; and PLR 9008073.
- 2. Payments made pursuant to any of the three alternative methods listed below will be considered substantially equal periodic payments.
 - a. Dividing the account balance by an annuity factor determined through the use of reasonable mortality tables and interest rates.

- b. Amortizing the taxpayer's account balance over a number of years equal to the life expectancy of the taxpayer or the joint life expectancies of the taxpayer and his designated beneficiary. For example, a fifty-year-old with a life expectancy of 33.1 years and an account balance of \$100,000 and assuming an interest rate of 5% could satisfy the requirements by receiving \$6241 annually. This figure is derived by amortizing \$100,000 over 33.1 years at 5% interest.
- c. Payments determined using a method that would be acceptable in calculating minimum distributions under I.R.C. §401(a)(9). The payment may be determined based on the life expectancy of the taxpayer and his or her designated beneficiary as determined by Tables V and VI of Regulation §1.72-9.

- 3. If a participant chooses one of the first two methods, he can make a one-time switch in the method to the third method where the amount changes from year to year based on the value of the account from which the distributions are being made. Rev. Proc. 2002-62.

D. Distributions Following Death of Participant.

Any distributions made by reason of the death of the participant (or IRA - holder) are not subject to the tax. IRC §72(t)(2)(A)(ii).

If a surviving spouse rolls over the decedent's assets into his or her own IRA, subsequent distributions from that IRA will be subject to the early distributions tax if the surviving spouse is under age 59½ at the time of the distribution and is not eligible for any other exception.

E. Distributions Pursuant to Disability of Participant.

A distribution made to a person after he or she has become disabled is not subject to the ten percent early distribution tax. IRC §72(t)(2)(A)(iii).

- 1. Distributions must be "attributable" to the employee's disability.
- 2. Disability is defined on Code §72(m)(7) as a physical or mental impairment that can be expected to result in death or be of long, continued and indefinite duration.

F. SIMPLE IRA or SIMPLE §401(k) Plan.

The tax is increased to twenty-five percent in the case of certain distributions from SIMPLE IRAs. IRS §72(t)(6).

The tax is increased to twenty-five percent for distributions within the two-year period after the person first participated in a salary reduction arrangement under IRC §408(p)(2).

IX. DIRECT ROLLOVER AND WITHHOLDING RULES. I.R.C. §§401(a)(31), 402, 522, 3405, REG. §1.401(a)(31)

A. Qualified Plan Distributions Are Eligible for Direct Transfer to IRAs or Other Qualified Plans.

1. Recipients of eligible rollover distributions from tax-qualified retirement plans must be permitted to transfer such distributions directly to eligible retirement plans or Individual Retirement Accounts designated by the participant.
2. “Eligible retirement plans” include IRAs and tax-qualified retirement plans under I.R.C. §501(a). I.R.C. §402(c)(8)(B).
3. The regulations provide for a \$200 *de minimus* exception. Thus, plans must provide for trustee-to-trustee transfers unless the distribution amount is less than \$200. Additionally, plans need not withhold federal income tax on distributions of less than \$200.

B. Definition of Eligible Rollover Distribution. I.R.C. §402(c)(4).

The term “eligible rollover distribution” means any distribution to an employee of all or any portion of the balance to the credit of an employee in a qualified trust; except that such term shall *not* include:

1. Any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made for:
 - a. The life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee’s designated beneficiary; or
 - b. A specified period of ten years or more.
2. Other Distributions and Transactions Not Eligible for Rollover:
 - a. Distribution of cash in an annual total amount of less than \$200.
 - b. Hardship distributions from 401(k) or 403(b) elective deferrals.
 - c. Distribution of only employer securities or only a participant loan distributed to the participant in kind is eligible for rollover, but not subject to withholding.

- d. Corrective distributions plus earnings:
 - excess annual additions,
 - excess deferrals,
 - excess contributions, and
 - excess aggregate contributions.
 - e. Deemed distribution of a participant loan, under IRC §72(p). However, plan loan offset amounts can be eligible rollover distributions, Treas. Reg. §1.402(c)-2, Q/A-9.
 - f. Cost of current life insurance protection (PS 58).
 - g. Section 404(k) dividends.
 - h. Nonspouse beneficiary rollover from qualified plan to inherited IRA:
 - Prior to 2007: this transaction not permitted,
 - 2007 to 2009: PPA permits, IRS Notice 2007-7: direct rollover transaction may be made, but not considered an eligible rollover distribution,
 - After 2009: WRERA changes nonspouse beneficiary rollovers into eligible rollover distributions as of 2010.
 - i. QDRO payment to an alternate payee who is not the employee, spouse or former spouse (i.e., the children).
 - j. A permissible withdrawal under IRC §414(w), *i.e.*, from an EACA.
 - k. Prohibited allocation of securities in an S Corporation that are treated as deemed distributions.
 - l. Distributions of premiums for accident or health insurance under Treas. Reg. 1.402(a)-1(e).
- C. Eligible Rollover Amounts Not Transferred Directly to IRA or Other Qualified Plans Subject to Twenty Percent Withholding Tax. I.R.C. §3405(c).
- 1. Federal income tax is required to be withheld at the rate of twenty percent on any distribution that is eligible to be rolled over but which is not transferred directly to an eligible plan.

2. Since hardship distributions from §401(k) or §403(b) elective deferrals are *not* eligible rollover distributions, such distributions are not subject to the twenty percent withholding requirement.
3. The withholding requirements do not apply to distributions from IRAs.
4. Although distributions not directly transferred to an IRA or another qualified plan are subject to withholding at a twenty percent rate, the recipients of such distributions still have sixty days after the date of the distribution to rollover all or any portion of such distribution to an IRA or other plan. Any amounts rolled over will not be subject to federal income tax.
5. Regulatory exceptions from twenty percent withholding.
 - a. Corrective distributions of excess contributions and excess deferrals under §§401(k) and 402(g) and corrective distributions of excess aggregate contributions under §401(m).
 - b. Loans treated as distributions under §72(p) and not excepted by §72(p)(2).
 - c. Loans in default that are deemed distributions.
 - d. Dividends paid on employer securities under §404(k).
 - e. "P.S. 58" costs on life insurance coverage.
6. Non-employee distributions.
 - a. Spousal distributee.

Distributions to spouse or former spouse under a QDRO are eligible rollover distributions, unless otherwise excepted. A surviving spouse can rollover to an IRA, or to a qualified plan. I.R.C. §402(c)(9). A spouse or former spouse alternate payee receiving a distribution pursuant to a QDRO can rollover to an IRA or to another qualified plan. I.R.C. §402(e)(1)(B).
 - b. Nonspousal distributee.

Distributions to distributee other than spouse, surviving spouse or former spouse are not eligible rollover distributions (prior to 2010).

7. Direct rollover requirement.

“Direct rollover” is an eligible rollover distribution paid directly to an eligible retirement plan or IRA. Direct rollover may be accomplished by reasonable means of direct payment, including:

- a. Payment by wire transfer.
- b. Mailing a check to the eligible retirement plan or IRA payable to the trustee or custodian.
- c. Mailing a check, payable to the trustee or custodian of the eligible retirement plan or IRA, to the distributee. Treas. Reg. §1.401(a)(31)-1; Q&A-4. For example, check can be made payable to “ABC Bank as Trustee of Individual Retirement Account of John Smith.”

8. A plan must permit a distributee to split an eligible rollover distribution in excess of \$500 so that a portion is paid to an eligible retirement plan in a direct rollover and the remainder is paid to the distributee. A plan may require that at least \$500 of such distribution be transferred as a direct rollover.

9. A plan is not required to allow the distributee to divide an eligible rollover distribution into separate distributions to be paid to two or more eligible retirement plans in direct rollovers.

10. A plan may treat a distributee’s election regarding a direct rollover for a series of periodic payments as applying to all subsequent payments in the series if the employee is permitted to change the previous election with respect to subsequent payments and the 402(f) notice explains that the election will apply to future payments.

11. All eligible rollover distributions must be reported on Form 1099-R even if directly rolled over. IRS Announcements 93-20, 93-31, 94-40.

D. Plan Administrator Must Provide Recipients with a Written Explanation of Rollover and Withholding Rules. I.R.C. §402(f). IRS Notice 2009-68.

1. The plan administrator is required, within a reasonable time before making an eligible rollover distribution, to provide a written explanation to the recipient of the provisions:

- a. Under which the recipient may have the distribution directly transferred to an IRA or to another eligible retirement plan;

- b. Which require the withholding of tax on the distribution if it is not directly transferred to an IRA or another eligible plan; and
 - c. Under which the distribution will not be subject to tax if transferred to an IRA or other eligible retirement plan within sixty days after the date on which the recipient received the distribution.
 - 2. For distributions from plans providing annuities (*i.e.*, all pension plans and some profit-sharing and 401(k) plans), the notice must be distributed not less than thirty days nor more than one hundred eight (180) days prior to the annuity starting date. A plan may permit a participant (and the participant's spouse) to elect to waive the thirty-day minimum waiting period after the §402(f) notice. A waiver is allowed only if the distribution commences more than seven days after the written explanation is provided. I.R.C. §417(a)(7)(A); ERISA §205(c)(8).
 - 3. For other distributions, the §402(f) notice must be distributed no less than thirty days nor more than one hundred eighty (180) days before the distribution is made. If after receiving the notice, however, the distributee (and the spouse, if applicable) specifically waive the thirty-day period, distributions may be made seven days after distribution of the notice.
 - 4. The plan administrator is not required to provide a notice for each distribution in a series of periodic payments if the notice is provided prior to the first payment in the series and annually thereafter.
 - 5. The IRS has developed a model explanation which a plan administrator may provide to a recipient in order to meet the notice requirements of I.R.C. §402(f). IRS Notice 2009-68 provides updated model §402(f) notices.
- E. Reporting and Deposit Requirements for Retirement Plan Distributions.
- 1. Form 945 replaces Form 941E for reporting of income taxes withheld on participant distributions made from qualified retirement plans. Form 945 is an annual reporting form, as opposed to a quarterly reporting form and is due January 31 following the calendar year in which the income tax was withheld.
 - 2. Although the reporting requirements are changed from a quarterly to an annual basis, *the present tax deposit rules remain the same*. Based on those rules, *withholdings from participant distributions accumulated within a calendar month must be deposited on or before the fifteenth day of the following month*. The IRS announced that *deposit coupon Form 8109-B has been revised to include a box for Form 945* which must

be marked when making your deposit of the income tax withheld. However, these revised coupon forms must be ordered from the IRS.

3. All distributions (including direct rollovers) must also be reported on Form 1099R.
4. Plan sponsors should obtain a separate taxpayer identification number for each retirement plan by filing Form SS-4 with the IRS. This separate identification number will prevent the non-payroll withholding tax deposits from being mixed with the employer's regular payroll deposits. In addition, the revised coupon Form 8109-B will be issued with the retirement plan name, address and taxpayer identification number preprinted on it.

The Uniform Table is used by plan participants and IRA owners to calculate lifetime distributions. The Uniform Table is used by all plan participants and IRA owners unless the sole beneficiary is a spouse who is more than 10 years younger than the participant.

UNIFORM DISTRIBUTION TABLE APPLICABLE DURING LIFETIME*

| Age of the Participant | Distribution Period |
|-------------------------------|----------------------------|
| 70 | 27.4 |
| 71 | 26.5 |
| 72 | 25.6 |
| 73 | 24.7 |
| 74 | 23.8 |
| 75 | 22.9 |
| 76 | 22.0 |
| 77 | 21.2 |
| 78 | 20.3 |
| 79 | 19.5 |
| 80 | 18.7 |
| 81 | 17.9 |
| 82 | 17.1 |
| 83 | 16.3 |
| 84 | 15.5 |
| 85 | 14.8 |
| 86 | 14.1 |
| 87 | 13.4 |
| 88 | 12.7 |
| 89 | 12.0 |
| 90 | 11.4 |
| 91 | 10.8 |
| 92 | 10.2 |
| 93 | 9.6 |
| 94 | 9.1 |
| 95 | 8.6 |
| 96 | 8.1 |
| 97 | 7.6 |
| 98 | 7.1 |
| 99 | 6.7 |
| 100 | 6.3 |
| 101 | 5.9 |
| 102 | 5.5 |
| 103 | 5.2 |
| 104 | 4.9 |
| 105 | 4.5 |
| 106 | 4.2 |
| 107 | 3.9 |
| 108 | 3.7 |
| 109 | 3.4 |
| 110 | 3.1 |
| 111 | 2.9 |
| 112 | 2.6 |
| 113 | 2.4 |
| 114 | 2.1 |
| 115 or Older | 1.9 |

The Single-Life Table is used to calculate post-death required minimum distributions for beneficiaries.

SINGLE LIFE TABLE

| Age | Life Expectancy | Age | Life Expectancy | Age | Life Expectancy |
|-----|-----------------|-----|-----------------|------|-----------------|
| 0 | 82.4 | 38 | 45.6 | 76 | 12.7 |
| 1 | 81.6 | 39 | 44.6 | 77 | 12.1 |
| 2 | 80.6 | 40 | 43.6 | 78 | 11.4 |
| 3 | 79.7 | 41 | 42.7 | 79 | 10.8 |
| 4 | 78.7 | 42 | 41.7 | 80 | 10.2 |
| 5 | 77.7 | 43 | 40.7 | 81 | 9.7 |
| 6 | 76.7 | 44 | 39.8 | 82 | 9.1 |
| 7 | 75.8 | 45 | 38.8 | 83 | 8.6 |
| 8 | 74.8 | 46 | 37.9 | 84 | 8.1 |
| 9 | 73.8 | 47 | 37.0 | 85 | 7.6 |
| 10 | 72.8 | 48 | 36.0 | 86 | 7.1 |
| 11 | 71.8 | 49 | 35.1 | 87 | 6.7 |
| 12 | 70.8 | 50 | 34.2 | 88 | 6.3 |
| 13 | 69.9 | 51 | 33.3 | 89 | 5.9 |
| 14 | 68.9 | 52 | 32.3 | 90 | 5.5 |
| 15 | 67.9 | 53 | 31.4 | 91 | 5.2 |
| 16 | 66.9 | 54 | 30.5 | 92 | 4.9 |
| 17 | 66.0 | 55 | 29.6 | 93 | 4.6 |
| 18 | 65.0 | 56 | 28.7 | 94 | 4.3 |
| 19 | 64.0 | 57 | 27.9 | 95 | 4.1 |
| 20 | 63.0 | 58 | 27.0 | 96 | 3.8 |
| 21 | 62.1 | 59 | 26.1 | 97 | 3.6 |
| 22 | 61.1 | 60 | 25.2 | 98 | 3.4 |
| 23 | 60.1 | 61 | 24.4 | 99 | 3.1 |
| 24 | 59.1 | 62 | 23.5 | 100 | 2.9 |
| 25 | 58.2 | 63 | 22.7 | 101 | 2.7 |
| 26 | 57.2 | 64 | 21.8 | 102 | 2.5 |
| 27 | 56.2 | 65 | 21.0 | 103 | 2.3 |
| 28 | 55.3 | 66 | 20.2 | 104 | 2.1 |
| 29 | 54.3 | 67 | 19.4 | 105 | 1.9 |
| 30 | 53.3 | 68 | 18.6 | 106 | 1.7 |
| 31 | 52.4 | 69 | 17.8 | 107 | 1.5 |
| 32 | 51.4 | 70 | 17.0 | 108 | 1.4 |
| 33 | 50.4 | 71 | 16.3 | 109 | 1.2 |
| 34 | 49.4 | 72 | 15.5 | 110 | 1.1 |
| 35 | 48.5 | 73 | 14.8 | 111+ | 1.0 |
| 36 | 47.5 | 74 | 14.1 | | |
| 37 | 46.5 | 75 | 13.4 | | |

The Joint and Survivor Table is used only by a participant whose spouse is the sole beneficiary and is more than 10 years younger than the participant. This table is used only for distributions over the lifetime of the participant.

JOINT & LAST SURVIVOR TABLE
§1.401(a)(9)-9, A-3

| AGE | 70 | 71 | 72 | 73 | 74 | 75 | 76 | 77 | 78 | 79 | 80 | 81 | 82 | 83 | 84 | 85 | 86 | 87 | 88 | 89 | 90 |
|-----|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| 30 | 53.5 | 53.5 | 53.5 | 53.4 | 53.4 | 53.4 | 53.4 | 53.4 | 53.4 | 53.4 | 53.4 | 53.4 | 53.4 | 53.4 | 53.4 | 53.3 | 53.3 | 53.3 | 53.3 | 53.3 | 53.3 |
| 31 | 52.5 | 52.5 | 52.5 | 52.5 | 52.5 | 52.5 | 52.4 | 52.4 | 52.4 | 52.4 | 52.4 | 52.4 | 52.4 | 52.4 | 52.4 | 52.4 | 52.4 | 52.4 | 52.4 | 52.4 | 52.4 |
| 32 | 51.6 | 51.6 | 51.5 | 51.5 | 51.5 | 51.5 | 51.5 | 51.5 | 51.5 | 51.5 | 51.4 | 51.4 | 51.4 | 51.4 | 51.4 | 51.4 | 51.4 | 51.4 | 51.4 | 51.4 | 51.4 |
| 33 | 50.6 | 50.6 | 50.6 | 50.6 | 50.5 | 50.5 | 50.5 | 50.5 | 50.5 | 50.5 | 50.5 | 50.5 | 50.5 | 50.5 | 50.5 | 50.4 | 50.4 | 50.4 | 50.4 | 50.4 | 50.4 |
| 34 | 49.7 | 49.6 | 49.6 | 49.6 | 49.6 | 49.6 | 49.6 | 49.5 | 49.5 | 49.5 | 49.5 | 49.5 | 49.5 | 49.5 | 49.5 | 49.5 | 49.5 | 49.5 | 49.5 | 49.5 | 49.5 |
| 35 | 48.7 | 48.7 | 48.7 | 48.6 | 48.6 | 48.6 | 48.6 | 48.6 | 48.6 | 48.6 | 48.5 | 48.5 | 48.5 | 48.5 | 48.5 | 48.5 | 48.5 | 48.5 | 48.5 | 48.5 | 48.5 |
| 36 | 47.8 | 47.7 | 47.7 | 47.7 | 47.7 | 47.7 | 47.6 | 47.6 | 47.6 | 47.6 | 47.6 | 47.6 | 47.6 | 47.6 | 47.6 | 47.5 | 47.5 | 47.5 | 47.5 | 47.5 | 47.5 |
| 37 | 46.8 | 46.8 | 46.8 | 46.7 | 46.7 | 46.7 | 46.7 | 46.7 | 46.6 | 46.6 | 46.6 | 46.6 | 46.6 | 46.6 | 46.6 | 46.6 | 46.6 | 46.6 | 46.6 | 46.6 | 46.6 |
| 38 | 45.9 | 45.9 | 45.8 | 45.8 | 45.8 | 45.7 | 45.7 | 45.7 | 45.7 | 45.7 | 45.7 | 45.7 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 | 45.6 |
| 39 | 44.9 | 44.9 | 44.9 | 44.8 | 44.8 | 44.8 | 44.8 | 44.8 | 44.7 | 44.7 | 44.7 | 44.7 | 44.7 | 44.7 | 44.7 | 44.7 | 44.6 | 44.6 | 44.6 | 44.6 | 44.6 |
| 40 | 44.0 | 44.0 | 43.9 | 43.9 | 43.9 | 43.8 | 43.8 | 43.8 | 43.8 | 43.8 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 | 43.7 |
| 41 | 43.1 | 43.0 | 43.0 | 43.0 | 42.9 | 42.9 | 42.9 | 42.9 | 42.8 | 42.8 | 42.8 | 42.8 | 42.8 | 42.8 | 42.7 | 42.7 | 42.7 | 42.7 | 42.7 | 42.7 | 42.7 |
| 42 | 42.2 | 42.1 | 42.1 | 42.0 | 42.0 | 42.0 | 41.9 | 41.9 | 41.9 | 41.9 | 41.8 | 41.8 | 41.8 | 41.8 | 41.8 | 41.8 | 41.8 | 41.8 | 41.8 | 41.7 | 41.7 |
| 43 | 41.3 | 41.2 | 41.1 | 41.1 | 41.1 | 41.0 | 41.0 | 41.0 | 40.9 | 40.9 | 40.9 | 40.9 | 40.9 | 40.9 | 40.8 | 40.8 | 40.8 | 40.8 | 40.8 | 40.8 | 40.8 |
| 44 | 40.3 | 40.3 | 40.2 | 40.2 | 40.1 | 40.1 | 40.1 | 40.0 | 40.0 | 40.0 | 40.0 | 39.9 | 39.9 | 39.9 | 39.9 | 39.9 | 39.9 | 39.9 | 39.9 | 39.8 | 39.8 |
| 45 | 39.4 | 39.4 | 39.3 | 39.3 | 39.2 | 39.2 | 39.1 | 39.1 | 39.1 | 39.1 | 39.0 | 39.0 | 39.0 | 39.0 | 39.0 | 38.9 | 38.9 | 38.9 | 38.9 | 38.9 | 38.9 |
| 46 | 38.6 | 38.5 | 38.4 | 38.4 | 38.3 | 38.3 | 38.2 | 38.2 | 38.2 | 38.1 | 38.1 | 38.1 | 38.1 | 38.0 | 38.0 | 38.0 | 38.0 | 38.0 | 38.0 | 38.0 | 38.0 |
| 47 | 37.7 | 37.6 | 37.5 | 37.5 | 37.4 | 37.4 | 37.3 | 37.3 | 37.2 | 37.2 | 37.2 | 37.2 | 37.1 | 37.1 | 37.1 | 37.1 | 37.1 | 37.0 | 37.0 | 37.0 | 37.0 |
| 48 | 36.8 | 36.7 | 36.6 | 36.6 | 36.5 | 36.5 | 36.4 | 36.4 | 36.3 | 36.3 | 36.3 | 36.2 | 36.2 | 36.2 | 36.2 | 36.2 | 36.1 | 36.1 | 36.1 | 36.1 | 36.1 |
| 49 | 35.9 | 35.9 | 35.8 | 35.7 | 35.6 | 35.6 | 35.5 | 35.5 | 35.4 | 35.4 | 35.4 | 35.3 | 35.3 | 35.3 | 35.3 | 35.2 | 35.2 | 35.2 | 35.2 | 35.2 | 35.2 |
| 50 | 35.1 | 35.0 | 34.9 | 34.8 | 34.8 | 34.7 | 34.6 | 34.6 | 34.5 | 34.5 | 34.5 | 34.4 | 34.4 | 34.4 | 34.3 | 34.3 | 34.3 | 34.3 | 34.3 | 34.3 | 34.2 |
| 51 | 34.3 | 34.2 | 34.1 | 34.0 | 33.9 | 33.8 | 33.8 | 33.7 | 33.6 | 33.6 | 33.6 | 33.5 | 33.5 | 33.5 | 33.4 | 33.4 | 33.4 | 33.4 | 33.4 | 33.3 | 33.3 |
| 52 | 33.4 | 33.3 | 33.2 | 33.1 | 33.0 | 33.0 | 32.9 | 32.8 | 32.8 | 32.7 | 32.7 | 32.6 | 32.6 | 32.6 | 32.5 | 32.5 | 32.5 | 32.5 | 32.5 | 32.4 | 32.4 |
| 53 | 32.6 | 32.5 | 32.4 | 32.3 | 32.2 | 32.1 | 32.0 | 32.0 | 31.9 | 31.8 | 31.8 | 31.8 | 31.7 | 31.7 | 31.7 | 31.6 | 31.6 | 31.6 | 31.6 | 31.5 | 31.5 |
| 54 | 31.8 | 31.7 | 31.6 | 31.5 | 31.4 | 31.3 | 31.2 | 31.1 | 31.0 | 31.0 | 30.9 | 30.9 | 30.8 | 30.8 | 30.8 | 30.7 | 30.7 | 30.7 | 30.7 | 30.7 | 30.6 |
| 55 | 31.1 | 30.9 | 30.8 | 30.6 | 30.5 | 30.4 | 30.3 | 30.3 | 30.2 | 30.1 | 30.1 | 30.0 | 30.0 | 29.9 | 29.9 | 29.9 | 29.8 | 29.8 | 29.8 | 29.8 | 29.8 |
| 56 | 30.3 | 30.1 | 30.0 | 29.8 | 29.7 | 29.6 | 29.5 | 29.4 | 29.3 | 29.3 | 29.2 | 29.2 | 29.1 | 29.1 | 29.0 | 29.0 | 29.0 | 28.9 | 28.9 | 28.9 | 28.9 |
| 57 | 29.5 | 29.4 | 29.2 | 29.1 | 28.9 | 28.8 | 28.7 | 28.6 | 28.5 | 28.4 | 28.4 | 28.3 | 28.3 | 28.2 | 28.2 | 28.1 | 28.1 | 28.1 | 28.0 | 28.0 | 28.0 |
| 58 | 28.8 | 29.6 | 28.4 | 28.3 | 28.1 | 28.0 | 27.9 | 27.8 | 27.7 | 27.6 | 27.5 | 27.5 | 27.4 | 27.4 | 27.3 | 27.3 | 27.2 | 27.2 | 27.2 | 27.2 | 27.1 |
| 59 | 28.1 | 27.9 | 27.7 | 27.5 | 27.4 | 27.2 | 27.1 | 27.0 | 26.9 | 26.8 | 26.7 | 26.6 | 26.6 | 26.5 | 26.5 | 26.4 | 26.4 | 26.4 | 26.3 | 26.3 | 26.3 |
| 60 | 27.4 | 27.2 | 27.0 | 26.8 | 26.6 | 26.5 | 26.3 | 26.2 | 26.1 | 26.0 | 25.9 | 25.8 | 25.8 | 25.7 | 25.6 | 25.6 | 25.5 | 25.5 | 25.5 | 25.4 | 25.4 |
| 61 | 26.7 | 26.5 | 26.3 | 26.1 | 25.9 | 25.7 | 25.6 | 25.4 | 25.3 | 25.2 | 25.1 | 25.0 | 24.9 | 24.9 | 24.8 | 24.8 | 24.7 | 24.7 | 24.6 | 24.6 | 24.6 |
| 62 | 26.1 | 25.8 | 25.6 | 25.4 | 25.2 | 25.0 | 24.8 | 24.7 | 24.6 | 24.4 | 24.3 | 24.2 | 24.1 | 24.1 | 24.0 | 23.9 | 23.9 | 23.8 | 23.8 | 23.8 | 23.7 |
| 63 | 25.4 | 25.2 | 24.9 | 24.7 | 24.5 | 24.3 | 24.1 | 23.9 | 23.8 | 23.7 | 23.6 | 23.4 | 23.4 | 23.3 | 23.2 | 23.1 | 23.1 | 23.0 | 23.0 | 22.9 | 22.9 |
| 64 | 24.8 | 24.5 | 24.3 | 24.0 | 23.8 | 23.6 | 23.4 | 23.2 | 23.1 | 22.9 | 22.8 | 22.7 | 22.6 | 22.5 | 22.4 | 22.3 | 22.3 | 22.2 | 22.2 | 22.1 | 22.1 |
| 65 | 24.3 | 23.9 | 23.7 | 23.4 | 23.1 | 22.9 | 22.7 | 22.5 | 22.4 | 22.2 | 22.1 | 21.9 | 21.8 | 21.7 | 21.6 | 21.5 | 21.4 | 21.4 | 21.3 | 21.3 | 21.3 |
| 66 | 23.7 | 23.4 | 23.1 | 22.8 | 22.5 | 22.3 | 22.0 | 21.8 | 21.7 | 21.5 | 21.3 | 21.2 | 21.1 | 21.0 | 20.9 | 20.8 | 20.7 | 20.6 | 20.5 | 20.5 | 20.5 |
| 67 | 23.2 | 22.8 | 22.5 | 22.2 | 21.9 | 21.6 | 21.4 | 21.2 | 21.0 | 20.8 | 20.6 | 20.5 | 20.4 | 20.2 | 20.1 | 20.1 | 20.0 | 19.9 | 19.8 | 19.8 | 19.7 |
| 68 | 22.7 | 22.3 | 22.0 | 21.6 | 21.3 | 21.0 | 20.8 | 20.6 | 20.3 | 20.1 | 20.0 | 19.8 | 19.7 | 19.5 | 19.4 | 19.3 | 19.2 | 19.2 | 19.1 | 19.0 | 19.0 |
| 69 | 22.2 | 21.8 | 21.4 | 21.1 | 20.8 | 20.5 | 20.2 | 19.9 | 19.7 | 19.5 | 19.3 | 19.1 | 19.0 | 18.8 | 18.7 | 18.6 | 18.5 | 18.4 | 18.3 | 18.3 | 18.2 |
| 70 | 21.8 | 21.3 | 20.9 | 20.6 | 20.2 | 19.9 | 19.6 | 19.4 | 19.1 | 18.9 | 18.7 | 18.5 | 18.3 | 18.2 | 18.0 | 17.9 | 17.8 | 17.7 | 17.6 | 17.6 | 17.5 |
| 71 | 21.3 | 20.9 | 20.5 | 20.1 | 19.7 | 19.4 | 19.1 | 18.8 | 18.5 | 18.3 | 18.1 | 17.9 | 17.7 | 17.5 | 17.4 | 17.3 | 17.1 | 17.0 | 16.9 | 16.9 | 16.8 |
| 72 | 20.9 | 20.5 | 20.0 | 19.6 | 19.3 | 18.9 | 18.6 | 18.3 | 18.0 | 17.7 | 17.5 | 17.3 | 17.1 | 16.9 | 16.7 | 16.6 | 16.5 | 16.4 | 16.3 | 16.2 | 16.1 |
| 73 | 20.6 | 20.1 | 19.6 | 19.2 | 18.8 | 18.4 | 18.1 | 17.8 | 17.5 | 17.2 | 16.9 | 16.7 | 16.5 | 16.3 | 16.1 | 16.0 | 15.8 | 15.7 | 15.6 | 15.5 | 15.4 |
| 74 | 20.2 | 19.7 | 19.3 | 18.8 | 18.4 | 18.0 | 17.6 | 17.3 | 17.0 | 16.7 | 16.4 | 16.2 | 15.9 | 15.7 | 15.5 | 15.4 | 15.2 | 15.1 | 15.0 | 14.9 | 14.8 |
| 75 | 19.9 | 19.4 | 18.9 | 18.4 | 18.0 | 17.6 | 17.2 | 16.8 | 16.5 | 16.2 | 15.9 | 15.6 | 15.4 | 15.2 | 15.0 | 14.8 | 14.6 | 14.5 | 14.4 | 14.3 | 14.2 |
| 76 | 19.6 | 19.1 | 18.6 | 18.1 | 17.6 | 17.2 | 16.8 | 16.4 | 16.0 | 15.7 | 15.4 | 15.1 | 14.9 | 14.7 | 14.4 | 14.3 | 14.1 | 13.9 | 13.8 | 13.7 | 13.6 |
| 77 | 19.4 | 18.8 | 18.3 | 17.8 | 17.3 | 16.8 | 16.4 | 16.0 | 15.6 | 15.3 | 15.0 | 14.7 | 14.4 | 14.2 | 13.9 | 13.7 | 13.5 | 13.4 | 13.2 | 13.1 | 13.0 |
| 78 | 19.1 | 18.5 | 18.0 | 17.5 | 17.0 | 16.5 | 16.0 | 15.6 | 15.2 | 14.9 | 14.5 | 14.2 | 13.9 | 13.7 | 13.4 | 13.2 | 13.0 | 12.9 | 12.7 | 12.6 | 12.4 |
| 79 | 18.9 | 18.3 | 17.7 | 17.2 | 16.7 | 16.2 | 15.7 | 15.3 | 14.9 | 14.5 | 14.1 | 13.8 | 13.5 | 13.2 | 13.0 | 12.8 | 12.5 | 12.4 | 12.2 | 12.0 | 11.9 |
| 80 | 18.7 | 18.1 | 17.5 | 16.9 | 16.4 | 15.9 | 15.4 | 15.0 | 14.5 | 14.1 | 13.8 | 13.4 | 13.1 | 12.8 | 12.6 | 12.3 | 12.1 | 11.9 | 11.7 | 11.5 | 11.4 |

ROLLOVER CHART

| | | TO | | | | | | | |
|------------------|---|-----------------------|------------|--------|------------|----------------|-------------------|-------------------|-----------|
| | | Traditional IRA & SEP | SIMPLE IRA | 403(b) | Gov't. 457 | Qualified Plan | Roth 401(k) Acct. | Roth 403(b) Acct. | Roth IRA* |
| F R O M | Traditional IRA | Y | N | Y | Y | Y | N | N | Y |
| | SEP | Y | N | Y | Y | Y | N | N | Y |
| | SIMPLE IRA** | Y | Y | Y | Y | Y | N | N | Y |
| | 403(b) – Other Than Roth 403(b) | Y | N | Y | Y | Y | N | N | Y |
| | Governmental 457 | Y | N | Y | Y | Y | N | N | Y |
| | Qualified Plan – Other Than Roth 401(k) | Y | N | Y | Y | Y | N | N | Y |
| | Designated Roth 401(k) Account by Direct Rollover | N | N | N | N | N | Y | Y | Y |
| | Designated Roth 403(b) Account by Direct Rollover | N | N | N | N | N | Y | Y | Y |
| | Roth IRA | N | N | N | N | N | N | N | Y |

* Direct rollovers from qualified plans, 403(b) plans, and 457 plans into Roth IRAs are permitted for distributions made after December 31, 2007.

** SIMPLE IRAs may only be converted after the expiration of the two-year period under IRC §72(t)(6).

| Type of Distribution | Exception to 10% Additional Tax | | |
|--|---|--|---|
| | 401(k) and Other Qualified Retirement Plans | IRA / SEP, SIMPLE IRA and SARSEP Plans | Internal Revenue Code |
| After participant/IRA owner reaches Age 59½ | Yes | Yes | §72(t)(2)(A)(i) |
| After <u>death</u> of the participant/IRA owner | Yes | Yes | §72(t)(2)(A)(ii) |
| Total and permanent <u>disability</u> of the participant/IRA owner | Yes | Yes | §72(t)(2)(A)(iii) |
| <u>Series of substantially equal payments</u> | Yes | Yes | §72(t)(2)(A)(iv) |
| Separation from service during or after year employee reaches age 55 (age 50 for public safety employees) | Yes | No | §§72(t)(2)(A)(v) and §72(t)(10) |
| Dividend pass through from an ESOP | Yes | N/A | §72(t)(2)(A)(vi) |
| Because of an IRS levy of the plan | Yes | Yes | §72(t)(2)(A)(vii) |
| Amount of your <u>unreimbursed medical expenses</u> (>7.5% AGI) | Yes | Yes | §72(t)(2)(B) |
| To an alternate payee under a <u>Qualified Domestic Relations Order</u> | Yes | No | §72(t)(2)(C) |
| Payment of health insurance premiums paid while unemployed | No | Yes | §72(t)(2)(D) |
| <u>Qualified higher education expenses</u> | No | Yes | §72(t)(2)(E) |
| Qualified first-time homebuyers up to \$10,000 | No | Yes | §72(t)(2)(F) |
| Certain distributions to qualified military reservists called to active duty | Yes | Yes | §72(t)(2)(G) |
| <u>Corrective distributions</u> (and associated earnings) of excess deferrals, excess contributions and excess aggregate contributions made timely | Yes | N/A | §§401(k)(8)(D), 401(m)(7) and 402(g)(2)(C) |
| <u>Excess IRA contributions</u> if withdrawn by extended due date of return | N/A | Yes | §408(d)(4) |
| Earnings on <u>excess</u> IRA contributions | N/A | No | §408(d)(4) |
| Permissive <u>withdrawals</u> from a plan with auto enrollment features | Yes | Yes for SIMPLE IRAs and SARSEPs | §414(w)(1)(B) |
| <u>Rollovers</u> | Yes | Yes | §§402(c), 403(a)(4), 403(b)(8), 408(d)(3) and 408A(d)(3)(A) |
| <u>Governmental 457(b)</u> distributions are not subject to the 10% additional tax except for distributions attributable to rollovers from another type of plan or IRA | | | |