



Chapter 3

# Distribution Planning for Qualified Retirement Plans and IRAs

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**Ohio State  
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November 9, 2016

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Updated: 09/20/2016

## I. DISTRIBUTIONS FROM QUALIFIED PLANS BEFORE SEPARATION FROM SERVICE

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## 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.

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.



## II. 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.



### **III. TAX TREATMENT OF 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))



### **b. 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.**

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.

**I. Rev. Proc. 2016-47 waiver of 60 day rollover requirement in certain situations.**

IRC §§402(c)(3) and 408(d)(3) require that eligible rollover distributions from IRAs and tax-qualified retirement plans be rolled over into the same or another IRA or qualified plan within 60 days after the date of the distribution.



**Rev. Proc. 2016-47 provides for a "self-certification" procedure for waiver of the 60 day period in 11 specific situations.**

- 1)** An error was committed by the financial institution receiving the contribution or making the distribution.
- 2)** The distribution was in the form of a check and the check was misplaced and never cashed.

- 3)** The distribution was deposited into and remained in an account that the taxpayer mistakenly thought was an IRA or a retirement plan.
- 4)** The taxpayer's principal residence was severely damaged.
- 5)** A member of the taxpayer's family died.

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- 6) The taxpayer or a member of the taxpayer's family was seriously ill.
  - 7) The taxpayer was incarcerated.
  - 8) Restrictions were imposed by a foreign country.

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- 9) A postal error occurred.
  - 10) The distribution was made on account of an IRS levy and the proceeds of the levy were returned to the taxpayer.
  - 11) The party making the distribution delayed providing information that the receiving plan or IRA required to complete the rollover despite reasonable efforts by the taxpayer to obtain the information.



Rev. Proc. 2016-47 contains a "Certification for Late Rollover Contribution" that the taxpayer must complete and provide to the IRA custodian or plan administrator.

The IRA custodian or the plan administrator may rely on a taxpayer's self-certification unless the IRA custodian or plan administrator has actual knowledge that is contrary to the self-certification.



Rollover Contribution must be completed as soon as practicable after the reason listed no longer prevents the taxpayer from making the contribution. Thirty days is deemed to be a safe harbor for this requirement.



If a taxpayer fails to complete a rollover within 60 days for a reason other than the 11 listed in Rev. Proc. 2016-47, the taxpayer may file a private letter ruling request with the IRS to request a waiver.

Rev. Proc. 2003-16.



e. **IRA Rollovers: *Bobrow v. Commissioner*.**  
(TC Memo 2014-21.)

- i. Holder of IRA can use 60-day rollover rule only once in a rolling one-year period.
- ii. 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.



**B. Distributions are taxed as ordinary Income. IRC §72.**

1. Distributions Paid in Installments or Annuity Form Are Taxable as Ordinary Income in the Year Received.
2. Lump-sum distributions are taxable as ordinary income in the year received unless rollover treatment is elected.



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

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

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**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		

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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	41.8	41.8	41.8	41.8	41.8	41.8	41.8	41.8	41.8	41.8	41.8	41.7
43	41.3	41.2	41.1	41.1	41.1	41.0	41.0	40.9	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	38.1	38.1	38.1	38.1	38.0	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	37.2	37.2	37.2	37.2	37.1	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	35.3	35.3	35.3	35.3	35.3	35.2	35.2	35.2	35.2	35.2	35.2

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AGE	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90
50	35.1	35.0	34.9	34.8	34.8	34.7	34.6	34.6	34.5	34.5	34.4	34.4	34.4	34.3	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	33.7	33.6	33.6	33.5	33.5	33.5	33.5	33.4	33.4	33.4	33.4	33.4	33.4	33.4	33.3
52	33.4	33.3	33.2	33.1	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	32.5	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	31.7	31.7	31.7	31.6	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	30.9	30.9	30.8	30.8	30.8	30.7	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	28.6	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	21.6	21.5	21.4	21.4	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	20.7	20.6	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

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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.



### 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.

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

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.
- c. 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.



**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.

### 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.



### **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 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).

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.

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. §1.401(a)(9)-4, A-3.

#### 1. Pass Through Trusts as Beneficiaries of an IRA.

- a. To be a "Pass Through Trust" or "conduit trust," the trust language must provide that 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.

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- 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 200444033 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.

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



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

- a. 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.



### **3. Accumulation Trust.**

No beneficiary is older than the primary beneficiary and all beneficiaries are humans.



## 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 rule.

- 
- 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.



## 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).

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- 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.

Plans are required to permit such rollovers by nonspousal beneficiaries after 2009.

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- c. The rollover **must** be accomplished by a **direct trustee-to-trustee transfer (a "direct rollover")**.

- 
- 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."

- 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.
- 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."**
  - 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**.



## **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. 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.

## 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.



## **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).

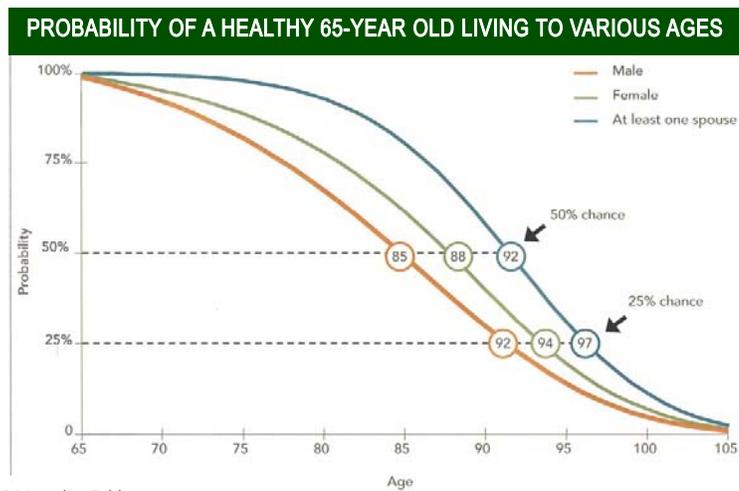
**H. Sanction for Failure to Comply.**

**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.

# V. LONGEVITY RISK AND LONGEVITY ANNUITIES

## Longevity "Risk"

The most significant risk that retirees face is longevity risk — the risk of outliving their assets.





### **A. Longevity Annuity —**

A type of fixed income annuity (FIA) providing deferred lifetime income typically beginning at age 80-85.



With a Longevity Annuity providing lifetime income commencing at age 85, retirement investment planning is simplified. A 65 year old would only need to plan for retirement income until age 85 knowing that at 85 a new lifetime income stream will commence.



**Estimated Annuity Benefit.** A male retiree who is 65 and pays \$100,000 in a single payment for a Longevity Annuity beginning at age 85 could receive annual lifetime payments of \$55,000 - \$65,000.



The benefits paid under the Longevity Annuity reflect mortality gains estimated to be 35%. Thus, the individual may have a monthly income at age 85 that is 35% greater than would be provided by conservatively investing the premium amount.



## **Qualifying Longevity Annuity Contract (QLACs).**

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).



QLACs must begin distributions no later than the month after the participant's 85<sup>th</sup> birthday but could provide for an earlier stating date.

Final Regulations apply to contracts purchased or exchanged after July 1, 2014.



The premiums paid on QLACs are limited to the lesser of:

- \$125,000 (adjusted for inflation); or
- 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.



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.



QLAC must be purchased from an insurance company.

QLAC **cannot** contain cash surrender rights or provide for a lump sum distribution.



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).



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

- 
2. The ten percent additional income tax is imposed on amounts included in income.
    - a. Amounts deemed distributed, such as failed loans, become subject to the tax.
    - b. 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.



### **3. 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). **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.

- 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).

For qualified public safety employees, age 50 is substituted for age 55 for this exception. IRC §72(t)(10).

- 
- 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.

- 
- 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).

### **C. 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.

### **D. 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).

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.



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



### **A. Overview.**

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.

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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.**

**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.

**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*
<b>F R O M</b>	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