**From the desk of**
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# IRS provides updated guidance on when a Qualified Retirement Distribution is a "substantially equal periodic payment"

*Notice 2022-6, 2022-5 IRB*

When there is an early distribution from a qualified retirement plan of any sort prior to the recipient reaching age 59 ½ there is a 10% penalty imposed by the IRS, and similar penalties by a number of states for an early withdrawal.

The IRS has provided updated guidance on when a distribution from a qualified retirement plan, IRA or a nonqualified annuity contract is a "substantially equal periodic payments" for purposes of avoiding the 10% additional tax on early distributions.

This guidance also provides alternative life expectancy and mortality tables and a 5% floor on the maximum interest rate that may be used to calculate annuity payments.

## Early distribution penalty

Internal Revenue Code (IRC) Section 72 imposes a 10% penalty tax on certain premature or early distributions from an annuity, qualified retirement plan or IRA, however, the tax is not imposed if the distribution is part of a series of substantially equal periodic payments (paid at least annually) calculated using the life expectancy of the taxpayer (individual life) or the joint life expectancy of a taxpayer and his designated beneficiary (joint lives).

## Substantially equal periodic payments

The IRS provides three methods for determining whether a distribution from an annuity, a qualified retirement plan or IRA is part of a series of substantially equal periodic payments:

1. The required minimum distribution (RMD) method;

2. The fixed amortization method; or
3. The fixed annuitization method. (Notice 89-25, 1989-1 CB 662, as modified by Rev Rul 2002-62, 2002-2 CB 710, and Notice 2004-15, 2004-1 CB 526)

Under the RMD method, the annual payment for each year is determined by dividing the account balance for that year by the number from the chosen life expectancy table for that year (individual life or joint lives).

Under this method, the account balance, the number from the chosen life expectancy table and the resulting annual payments are redetermined for each year.

Under the fixed amortization method, the annual payment for each year is determined by amortizing the account balance over a specified number of years determined using the chosen life expectancy table and the chosen interest rate.

Under the fixed annuitization method, the annual payment for each year is determined by dividing the account balance, by an annuity factor (which is derived using the published mortality table) and the chosen interest rate.

Under the fixed annuitization method, the account balance, the annuity factor, the chosen interest rate, and the resulting annual payment are determined once for the distribution year, and the annual payment is the same amount in each succeeding year. (Notice 89-25, as modified by Rev Rul 2002-62)

Rev Rul 2002-62 also modified:

- The fixed amortization and fixed annuitization methods by providing that the interest rate that may be used is any interest rate not greater than 120% of the federal mid-term rate, and
- The fixed annuitization method by specifying the mortality table that must be used to apply that method.

In 2020, the IRS provided new life expectancy tables for determining RMDs that apply for calendar years beginning on or after January 1, 2022. (Reg §1.401(a)(9)-9)

## Alternative life expectancy table

Notice 2022-6 provides the Uniform Lifetime Table (uniform life table), which can be used (as an alternative to the tables in Reg §1.401(a)(9)-9) to determine whether distribution amounts are substantially equal periodic payments under the RMD and fixed amortization methods.

## Interest rates

Notice 2022-6 also provides that the interest rate that may be used with the fixed amortization or fixed annuitization methods is any interest rate that is not more than the greater of (i) 5% or (ii) 120% of the federal mid-term rate for either of the two months immediately preceding the month in which the distribution begins.

## Additional guidance

Notice 2022-6 also provides guidance on how to determine an account balance, how to account for changes in the taxpayer's account balance (for example, the deposit of a rollover from another retirement account), special rules for distributions from an IRA and making a one-time change from the fixed amortization or fixed annuitization method to the RMD method.

## Effective dates

Notice 2022-6 replaces the guidance in Rev Rul 2022-62 and Notice 2004-15 for any series of payment beginning on or after January 1, 2023. The guidance in Notice 2022-6 may also be used for a series of payments beginning in 2022.

In the case of a series of payments using the RMD method beginning before 2023, if the payments in the series are calculated by substituting the single or joint life tables in the regulations or the uniform life table in the appendix of Notice 2022-6 for the corresponding table under Revenue Ruling 2002-62, then the substitution will not be a modification of the payment series for purposes of the 10% penalty.

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