

Definition of Fiduciary Proposed by DOL

UNIVERSAL

On October 22, 2010, the Department of Labor (DOL) published proposed regulations regarding one of the three circumstances that results in an individual becoming a fiduciary of a plan subject to the Employee Retirement Income Security Act (ERISA). Specifically, these regulations address the requirements relating to individuals who render “investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so.” The regulations would generally replace the current five-part test for determining fiduciary status with a two-part test.

Because the current regulations were written over thirty-five years ago, the DOL feels that the changes made by the proposed rules are necessary to take into account changes in 1) expectations of employers and participants who receive advice and 2) practices of financial advisors and others providing advice. In addition, the proposed rules will better protect employers and participants. The following is a summary of the current and proposed rules for determining fiduciary status for individuals providing investment advice for a fee.

Current Regulations Test

The current regulations use a five-part test to determine if an individual is providing investment advice for fiduciary purposes. To be considered a fiduciary, an individual must provide advice

- ◆ regarding the value or the advisability of investing in, purchasing, or selling securities or other properties;
- ◆ on an ongoing basis; and
- ◆ pursuant to a mutual arrangement with a plan or a plan fiduciary

In addition, the advice must be the primary basis for the investment decision and individualized based on the needs of the plan

The proposed regulations modify these requirements to both simplify their application and to broaden their scope.

Proposed Regulations – Part I: Definition of Advice

The first part of the proposed regulations provides a new definition of investment advice. Under this new definition, individuals may be providing investment advice if they provide any of the following, for a fee or other direct or indirect compensation, to *not only* an employer or a plan fiduciary but also to a plan participant or a beneficiary. This information includes

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When snow falls, nature listens.

—Antoinette van Kleeff



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- ◆ advice, appraisals, or certain opinions concerning the value of securities or other property, including the valuation of closely held employer securities for an ESOP plan or other investments (e.g., real property);
- ◆ recommendations regarding the advisability of purchasing, holding, or selling securities or other property;
- ◆ advice or recommendations regarding the management of securities or other property. This advice may include recommendations regarding voting proxies for stock shares and the selection of plan investment managers.

Examples of fees and compensation include direct or indirect brokerage fees, fees from mutual fund sales, and insurance sales commissions, including fees and commissions based on multiple transactions involving different parties.

Proposed Regulations – Part II: Conditions

In addition to meeting the definition provided above, individuals must meet at least one of the following four conditions to be considered plan fiduciaries.

- ◆ Individuals must directly or indirectly represent or acknowledge that they are acting as a fiduciary under ERISA. Compared to the current regulations, this is a completely new provision. Currently, individuals that represent themselves as ERISA fiduciaries must still meet all of the requirements under the five-part test to be considered fiduciaries.
- ◆ Individuals must directly or indirectly have discretionary control over the plan. This is an expansion of a class included in the current regulations. Currently, only those with discretionary control with respect to purchasing or selling securities or other property for the plan would be considered fiduciaries for investment purposes.
- ◆ Individuals must be investment advisers under the Investment Advisers Act of 1940 (the Act). This is another completely new provision. Generally, under the Act, investment advisors include any individuals who engage in the business of advising on the value of, the advisability of investing in, or the purchasing or selling of securities, or who create analyses or reports on securities.
- ◆ Individuals must directly or indirectly have arrangements to provide individualized advice. This is an expansion of a requirement under the current five-part test. These arrangements, agreements or understandings do not have to be in writing and can be between the individuals and the plans, plan fiduciaries, plan participants, or beneficiaries.

The proposed regulations remove two major requirements under the current five-part test: the requirement that advice be given on a regular basis and the requirement that there be a mutual understanding that the advice will serve as the primary basis for plan investment decisions.

Exceptions to the Proposed Regulations

If the information that the individuals provide meets the definition of investment advice and the individuals meet one of the conditions listed above, they will be considered fiduciaries under ERISA unless they are able to claim one of the following exceptions. An individual will not be considered a fiduciary if

- ◆ the recipient of the information knew or reasonably should have known that the individuals were not providing impartial investment advice;
- ◆ the information provided was in the nature of investment education (This type of information includes general financial and investment information, asset allocation models and interactive materials.);
- ◆ the provider of the information is a service provider, such as a recordkeeper or third-party administrator (TPA), who offered a select “platform” of investments (This exception requires that there is written notice to the employer that the service provider is not intending to provide impartial individualized investment advice.);
- ◆ the provider of the information is a service provider, such as a recordkeeper or TPA, who has provided information that was required to comply with other reporting and disclosure requirements (e.g., quarterly statement requirements).

Comments Requested by the DOL

The DOL has established a comment period ending on January 20, 2011. In addition to any general comments on the proposed regulations, the DOL has requested comments on several issues.

The DOL would like to know whether these regulations should be expanded to encompass recommendations relating to the advisability of taking plan distributions when the individuals making the recommendations are also providing advice on the investment of the assets following the distributions. The DOL would like comments on whether there is a significant possibility that individuals may recommend distributions that are against the plan participants' best interests to further their own interests.

The regulations are currently scheduled to become effective 180 days after the publication of the final regulation. The DOL is requesting comments on alternate effective dates. ❖

EGTRRA ESA Changes: Sunset or Sunrise?

ESA

Coverdell education savings account (ESA) rules were temporarily changed as a result of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). These enhanced provisions will, however, sunset on December 31, 2010, unless Congress passes a law to extend the effective date or make the enhancements permanent. Currently, Congress expects to be in session into December. Although it is considered unlikely, the hope is that some progress can be made in retaining these provisions. Meanwhile, until a law is passed to extend or make the EGTRRA changes permanent, ESA administrators should be prepared for the affected provisions to revert to pre-EGTRRA rules effective, January 1, 2011.

What Would ESAs Lose

Contribution Limit

The current maximum annual contribution of \$2,000 will revert to \$500.

MAGI Limits to Determine Eligibility to Contribute

The current modified adjusted gross income (MAGI) limits of \$190,000–\$220,000 that determine a married individual's eligibility to contribute (if filing a joint tax return) will revert to the pre-EGTRRA limits of \$150,000–\$160,000.

Entities Permitted to Contribute

EGTRRA clarified that corporations and other entities (including tax-exempt organizations) could contribute to the ESA of a designated beneficiary, regardless of the entity's income for the year. It is uncertain whether or not entities may continue to contribute to ESAs after the EGTRRA sunset.

Contribution Deadline

The current contribution deadline, set by EGTRRA, is the contributor's tax return due date, not including extensions (generally April 15). In addition, carryback contributions are allowed to be made between January 1 and April 15 for the previous year. The contribution deadline may revert to December 31 for years after 2010.

Excess Contribution Removal Deadline

With EGTRRA, the new deadline to remove an excess without penalty is before the first day of the sixth month (by May 31). It is expected that this provision will revert to pre-EGTRRA guidance in which the deadline depends on whether the designated beneficiary files a tax return.

Qualified Education Expenses

EGTRRA expanded the definition of "education expenses" to include qualified education expenses relating to any school that provides elementary or secondary education (kindergarten through grade 12) as determined under state law. For years after 2010, only eligible higher education expenses will be considered qualified.

EGTRRA ESA Changes*Continued on Page 4*

Special Needs Beneficiaries

EGTRRA allowed for contributions to be made to a designated beneficiary over age 18, with no age limit, if the designated beneficiary is considered an individual with special needs. Before EGTRRA, contributions were not permitted to be made on behalf of a designated beneficiary over the age of 18, and the ESA balance generally had to be distributed to the designated beneficiary within 30 days of his 30th birthday. With the EGTRRA change, however, there is no distribution deadline for an individual with special needs, nor does the age 30 limitation apply to a change in designated beneficiary if to a special needs individual. These considerations for special needs beneficiaries will not apply after 2010.

Coordination of ESA and Qualified Tuition Program

Individuals who contributed to a qualified tuition program (QTP) and an ESA on behalf of the same designated beneficiary in the same year were subject to a six percent penalty. EGTRRA removed this restriction by allowing individuals to contribute to both in the same year. After 2010, this would not be allowed.

Coordination of ESA and Hope or Lifetime Learning Credits

EGTRRA allowed Hope and Lifetime Learning credits to be claimed in the same year as tax-free distributions from ESAs and QTPs, provided that the ESA and QTP distributions were not used to cover the same educational expenses as the Hope and Lifetime Learning credits. This coordination with Hope and Lifetime Learning credits will revert to the pre-EGTRRA provisions after 2010: a designated beneficiary may not receive a tax-free ESA distribution in the same year that a Hope or Lifetime Learning credit is claimed.

Watch the News!

Ascensus is constantly monitoring the legislative status of the EGTRRA changes and the potential effects on ESA opening documents and ancillary forms. Get the most current news at www.ascensus.com. ❖

Announcing... a new [ascensus.com](http://www.ascensus.com) website coming soon!

Our new look and easier navigation will enhance your online experience as you continue to go to the Ascensus website for up-to-the-minute information on industry topics, products, and training. Watch for further information highlighting the exciting new changes to [ascensus.com](http://www.ascensus.com).

<http://www.ascensus.com>

**Celebrate the Holiday Season**

The associates of Ascensus wish you a happy, safe holiday season. The Ascensus offices, including the 800 Consulting service, will be closed on Friday, December 24, 2010, in celebration of the holidays.

Prepare for the End!

IRA/ROTH

December 31, the typical end of the tax year, is approaching. For IRA administrators, this begins a flurry of activity as the departments prepare to meet end of the year deadlines. IRA owners and financial organizations all have responsibilities to meet on this last day. Some of the more significant deadlines are noted below.

Required Minimum Distributions

December 31 is the last day for an IRA owner to take the annual required minimum distribution (RMD) from her IRA (other than the first-year RMD). The RMD rules under Treas. Reg. 1.401(a)(9) require that an individual begin RMDs no later than the IRA owner's required beginning date (RBD). An IRA owner's RBD is April 1 of the year following the year in which the IRA owner attains age 70½. RMDs for subsequent distribution years must be taken by December 31 each year.

Typically, the RMD is calculated by dividing the retirement plan account balance by the applicable distribution period. For IRAs, the account balance is the fair market value of the IRA as of December 31 of the year before the distribution year. If the first year's RMD is taken between January 1 and April 1 of the year following the first distribution year (the second distribution year), the final RMD regulations do not require that the first year's RMD be subtracted from the December 31 balance when determining the RMD for the second distribution year.

During an IRA owner's lifetime, the RMD regulations provide that the distribution period for most RMDs is determined using the applicable distribution period from the Uniform Lifetime Table. The distribution period based on the Uniform Lifetime Table is equal to the joint life expectancy of an individual and a beneficiary exactly 10 years younger, regardless of whether a beneficiary is actually named. The result of using the Uniform Lifetime Table is a longer lifetime distribution period for most individuals than would be calculated using the individual's and the beneficiary's birthdates. A longer distribution period results in a smaller annual distribution amount.

The IRS provides an exception to applying the Uniform Lifetime Table if the sole primary beneficiary is a spouse who is more than 10 years younger than the IRA owner. In this case, to determine the true minimum amount that must be taken, the calculation must use a longer distribution period based on the recalculated joint life expectancy of the two individuals using their actual ages and the Joint Life Expectancy Table. The spouse is considered the sole designated beneficiary if he or she is the sole beneficiary at all times during the distribution year.

Annual RMD Notices

December 31 is the determination date for financial organizations to decide to whom they must send annual RMD statements (which must be sent by January 31 of the following year).

The IRS does not mandate a specific format for the RMD notice, but does require the notice information to satisfy one of two alternatives.

Alternative #1 – The RMD notice must communicate

- ◆ the amount of the RMD due for the year and
- ◆ the date by which the RMD must be satisfied.

Alternative #2 – The RMD notice must communicate

- ◆ that an RMD is due for the year,
- ◆ the date by which the RMD must be satisfied, and
- ◆ an offer to calculate the RMD amount at the IRA owner's request.

Under both alternatives, the financial organization must include a statement that it will report to the IRS that the IRA owner is required to receive an RMD for the year.

To satisfy the RMD notice requirement, the financial organization can create its own format, use a customized form offered by a forms provider such as Ascensus, or use Form 5498, *IRA Contribution Information*. The following are IRS-approved methods of reporting the RMD notice to the IRA owner.

- ◆ **Fair Market Value (FMV) Statement** – The RMD notice can be provided with the IRA owner's fair market value statement, which is also due to IRA owners by January 31 of each year.
- ◆ **Form 5498** – The IRS allows financial organizations to use Form 5498 to satisfy the RMD notice requirement if it is provided to IRA owners by January 31. In addition to checking Box 11, *Check if RMD for 2011*, on the 2010 Form 5498, the financial organization can enter the amount of the RMD and the date by which the RMD is due in the appropriate boxes. Boxes 12a and 12b are used if the financial organization is using Form 5498 to meet the requirements of the January 31 RMD notice.
 - Box 12a, *RMD date* – reports the deadline for taking the RMD
 - Box 12b, *RMD amount* – contains the RMD amount if using the form to meet Alternative #1 requirements

Keep in mind that a financial organization may need to submit a revised Form 5498 by the May 31 deadline if the IRA owner makes a prior-year contribution for 2010 (only possible for IRA owners who were not yet 70½ in 2010). If a financial organization chooses to not use Form 5498 to satisfy the RMD notice requirement, Box 11 still must be checked to let the IRS know that the IRA owner is required to take an RMD for the following year.

Once the financial organization has provided the RMD statement to all applicable IRA owners by January 31, it does not have to provide an additional RMD statement to IRA owners who have not taken their RMDs. See the 2009 December *Retirement Plans Bulletin* article “Getting Back to Normal: RMD Notices and Calculations” for more information on the RMD notices.

Separate Accounting

Financial organizations should, by December 31, establish separate beneficiary accounts under the IRAs of IRA owners who died in the prior year to enable the beneficiaries to calculate single life expectancy payments based on their individual ages. Remember that a separate account will allow a spouse beneficiary who is one of multiple beneficiaries to treat the inherited portion as his or her own IRA using a transfer.

A “separate account” is generally defined as a separate entry (e.g., computer entry) in a deceased IRA owner's account that tracks the assets that have been inherited by a beneficiary of the IRA. The separate account tracks all gains and losses on the beneficiary's assets and allows any distributions to be reported in the beneficiary's name and Social Security number.

Beneficiary Distribution

December 31 is the last day for IRA beneficiaries to take single life expectancy payments for the year. For beneficiaries who have chosen the five-year distribution option, it is the last day to deplete the IRA assets if it is the fifth year following the IRA owner's death.

Conversions

December 31, 2010, is the last day for an IRA owner to convert Traditional or SIMPLE IRA assets to a Roth IRA if he or she wishes to incur the tax burden applicable to the converted amount in the year just ending or, for 2010, to prorate the taxes between 2011 and 2012.

As of 2010, the IRS no longer has taxpayer income or tax-filing status restrictions that prevent individuals from converting Traditional (or SIMPLE) IRA assets to Roth IRAs. Lawmakers created an incentive for taxpayers to execute Traditional IRA conversions and employer plan rollovers to Roth IRAs in 2010 to meet tax revenue objectives of the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA). An IRA owner may choose to have the taxable portion of such 2010 events included in income equally in 2011 and 2012. This “ratable” (equal) taxation in 2011 and 2012 will be the automatic tax treatment, but taxpayers may affirmatively elect full taxation in 2010 on their individual tax return forms if they wish.

See the 2009 December *Retirement Plans Bulletin* article “2010 Roth Conversions and the “Acceleration” Rule” for more information on the 2010 conversion taxation changes. ◆

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Financial organizations are facing one of the toughest economic periods in our history. This economic shift is coupled with increasing regulations and disclosures that need to be developed and for consistent, effective delivery. This means two critical issues must be addressed for your organization to be successful.

- ✓ First, you need to ensure that your staff is up-to-date on all of the recent changes and critical procedures.
- ✓ Second, you need to provide training that is within your current budget for new and tenured staff.

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- ◆ Sixty minutes of live presentation and an additional thirty-minute Q&A session for immediate answers to your questions
- ◆ An attendee workbook and a copy of the online PowerPoint® presentation
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- ◆ One registration fee per phone connection allows for an unlimited number of participants at one location

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Mid-Winter Tour Schedule

Take a mid-winter IRA education break! Beginning in January, Ascensus is offering comprehensive IRA training seminars including *IRA Fundamentals* and *Advanced IRAs: Amendment and Reporting Issues*.

NOTE: Some of our seminar sites are co-sponsored with state banking associations and centers for financial training (CFT). Please be sure to check with your state banking association and CFT for registration information, fees, start times, and lunch provisions.



IRA Fundamentals

IRA Fundamentals is the perfect seminar for individuals who are just starting out in the retirement services industry or for those who simply need a refresher on IRAs. Attendees will learn key elements of Traditional and Roth IRAs—including the most up-to-date information on IRA contribution, portability, distribution, and IRS reporting requirements. By using hands-on training and real-life examples, Ascensus instructors create an ideal learning environment for attendees. Although the *IRA Fundamentals* seminar is an introductory course, our instructors will assist attendees with more advanced questions.

Advanced IRAs: Amendment and Reporting Issues

To run a profitable IRA program, IRA administrators must understand the importance of keeping their IRA documents in compliance. Failing to have current, up-to-date IRA documents can lead to severe IRS penalties that can cripple even the most successful IRA department. During this seminar, attendees will learn how to properly amend their IRA documents and how to retain proof that proper amendment procedures were followed.

This seminar also will focus on advanced IRA portability, beneficiary, and reporting issues. And attendees will learn how recent legislative changes, such as the increased penalty structure for failing to file IRS Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, will affect their daily operations.

ARIZONA

Tempe

IRA Fundamentals Feb. 15
Advanced IRAs Feb. 16
 Embassy Suites Phoenix – Tempe
 4400 South Rural Road
 Tempe, AZ 85282
 480-897-7444

CALIFORNIA

Pasadena

IRA Fundamentals Mar. 29
Advanced IRAs Mar. 30
 Sheraton Pasadena Hotel
 303 Cordova Street
 Pasadena, CA 91101
 626-449-4000

Oakland

IRA Fundamentals Mar. 31
Advanced IRAs Apr. 1
 Hilton Oakland Airport
 One Hegenberger Road
 Oakland, CA 94621
 1-510-635-5000

COLORADO

Colorado Springs

IRA Fundamentals Mar. 8
 Embassy Suites Hotel
 7290 Commerce Center Drive
 Colorado Springs, CO 80919
 719-599-9100

Denver

IRA Fundamentals Mar. 10
Advanced IRAs Mar. 11

Stern Training Center
 1009 Grant Street
 Denver, CO 80203
 303-825-1590

Loveland

IRA Fundamentals Mar. 9
 Embassy Suites Hotel
 4705 Clydesdale Pkwy
 Loveland, CO 80538
 970-593-6200

CONNECTICUT

Cromwell

IRA Fundamentals Mar. 8
Advanced IRAs Mar. 9
 Crowne Plaza Cromwell
 100 Berlin Road
 Cromwell, CT 06416
 860-807-2459

DISTRICT OF COLUMBIA

Arlington, VA

IRA Fundamentals Feb. 10
Advanced IRAs Feb. 11
 Hilton Crystal City
 2399 Jefferson Davis Highway
 Arlington, VA 22202
 703-418-6800

Mid-Winter Tour Schedule

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FLORIDA**Miami**

Advanced IRAs Mar. 29
 Miami Dade College
 Wolfson Campus
 245 NE 4th Street
 Miami FL 33132
 305-237-3051

Bonita Springs

Advanced IRAs Mar. 30
 Bonita Springs
 Location to be announced at a later date.

Orlando

IRA Fundamentals Mar. 22
Advanced IRAs Mar. 23
 Hilton Garden Inn Orlando
 International Airport
 7300 Augusta National Drive
 Orlando, FL 32822
 407-581-4330

GEORGIA**Atlanta**

IRA Fundamentals Feb. 24
Advanced IRAs Feb. 25
 Hilton Atlanta Airport
 1031 Virginia Avenue
 Atlanta, GA 30354
 404-767-9000

ILLINOIS**Oak Brook**

IRA Fundamentals Mar. 24
Advanced IRAs Mar. 25
 Lewis University
 2122 York Road
 Oak Brook, IL 60523
 630-573-1740

Springfield

IRA Fundamentals Mar. 22
Advanced IRAs Mar. 23
 IBA Training Center
 524 South Second Street Ste 600
 Springfield, IL 62701
 217-789-9340

IOWA**Cedar Rapids**

IRA Fundamentals Feb. 24
Advanced IRAs Mar. 10
 Cedar Rapids Marriott
 1200 Collins Road, NE
 Cedar Rapids, IA 52402
 319-393-3721

Des Moines

IRA Fundamentals Feb. 23
Advanced IRAs Mar. 9
 Holiday Inn Northwest
 4800 Merle Hay Road
 Des Moines, IA 50322
 515-278-4755

Storm Lake

IRA Fundamentals Feb. 22
Advanced IRAs Mar. 8
 King's Pointe Resort
 1520 E Lakeshore Drive
 Storm Lake, IA 50588
 712-213-4500

KANSAS**Overland Park**

IRA Fundamentals Feb. 24
Advanced IRAs Feb. 25
 Marriott Kansas City Overland Park
 10800 Metcalf Avenue
 Overland Park, KS 66210
 913-451-8000

MARYLAND**Baltimore**

IRA Fundamentals Feb. 8
Advanced IRAs Feb. 9
 Hilton Baltimore BWI Airport
 1739 W Nursery Road
 Linthicum, MD 21090
 410-694-0808

MASSACHUSETTS**Boston (Newton)**

IRA Fundamentals Feb. 22
Advanced IRAs Feb. 23
 Boston Marriott Newton
 2345 Commonwealth Ave
 Newton, MA 02466
 617-969-1000

MICHIGAN**Escanaba**

IRA Fundamentals Feb. 17
 Bay de Noc College
 2001 North Lincoln Road
 Escanaba, MI 49829
 517-485-3600

Lansing

IRA Fundamentals Feb. 15
Advanced IRAs Feb. 16
 Michigan Bankers Association
 507 South Grand Avenue
 Lansing, MI 48933
 517-485-3600

MINNESOTA**Brainerd/Baxter**

IRA Fundamentals Jan. 19
Advanced IRAs Jan. 20
 The Lodge
 6967 Lake Forest Drive
 Baxter, MN 56425
 218-822-5634

Minneapolis

IRA Fundamentals Jan. 26
Advanced IRAs Jan. 27
 Hilton Garden Inn
 1975 Rahn Cliff Court
 Eagan, MN 55122
 651-686-4605

MISSOURI**St. Louis (Clayton)**

IRA Fundamentals Feb. 24
Advanced IRAs Feb. 25
 Sheraton Clayton Plaza
 7730 Bonhomme Avenue
 Clayton, MO 63105
 314-863-0400

NEBRASKA**Lincoln**

IRA Fundamentals Feb. 9
Advanced IRAs Feb. 10
 Marriott Lincoln Cornhusker
 333 South 13th Street
 Lincoln, NE 68508
 402-474-7474

North Platte

IRA Fundamentals Feb. 7
Advanced IRAs Feb. 8
 North Platte Holiday Express
 300 Holiday Frontage Road
 North Platte, NE 69101
 866-538-6194

NEW YORK**Syracuse**

IRA Fundamentals Mar. 29
Advanced IRAs Mar. 30
 Location to be announced at a later date.

Tarrytown

Advanced IRAs Mar. 24
 Location to be announced at a later date.

NORTH DAKOTA**Bismarck**

IRA Fundamentals Mar. 22
Advanced IRAs Mar. 23
 Best Western Doublewood Inn
 1400 E Interchange Ave
 Bismarck, ND 58501
 701-258-7000

Fargo

IRA Fundamentals Mar. 24
Advanced IRAs Mar. 25
 Ramada Plaza Suites
 1635 42nd Street SW
 Fargo, ND 58103
 701-277-9000

OHIO**Cincinnati (Blue Ash)***IRA Fundamentals* Feb. 17*Advanced IRAs* Feb. 18

Crowne Plaza
5901 Pfeiffer Road
Cincinnati, OH 45242
513-621-8408

Cleveland*IRA Fundamentals* Feb. 24*Advanced IRAs* Feb. 25

Courtyard Cleveland Airport North
24901 Country Club Blvd.
North Olmsted, OH 44070
440-716-9977

OKLAHOMA**Tulsa***IRA Fundamentals* Feb. 22*Advanced IRAs* Feb. 23

Tulsa Marriott Southern Hills
1902 East 71st Street
Tulsa, OK 74136
918-493-7000

OREGON**Portland***IRA Fundamentals* Mar. 24*Advanced IRAs* Mar. 25

Hilton Garden Inn
12048 NE Airport Way
Portland, OR 97220
503-255-8600

PENNSYLVANIA**Pittsburgh***IRA Fundamentals* Mar. 10*Advanced IRAs* Mar. 11

Pittsburgh Airport Marriott
777 Aten Road
Corapolis, PA 15108
412-788-8800

TENNESSEE**Memphis***IRA Fundamentals* Feb. 15*Advanced IRAs* Feb. 16

Memphis Marriott East
2625 Thousand Oaks Blvd
Memphis, TN 38118
901-362-6200

TEXAS**Dallas (Arlington)***IRA Fundamentals* Feb. 17*Advanced IRAs* Feb. 18

Hilton Arlington
2401 East Lamar Blvd
Arlington, TX 76006
817-640-3322

San Antonio*IRA Fundamentals* Feb. 15*Advanced IRAs* Feb. 16

Hilton San Antonio Airport
611 NW Loop 410
San Antonio, TX 78216
210-340-6060

VIRGINIA**Norfolk***IRA Fundamentals* Mar. 8*Advanced IRAs* Mar. 9

TowneBank
Community Room
109 E Main St
Norfolk, VA 23510

WASHINGTON**Seattle***IRA Fundamentals* Mar. 22*Advanced IRAs* Mar. 23

Washington Bankers Association
1601 Fifth Avenue Ste 1120
Seattle, WA 98101
206-344-3475

WISCONSIN**Eau Claire***IRA Fundamentals* Mar. 17*Advanced IRAs* Mar. 18

Holiday Inn – Campus Area
2703 Craig Road
Eau Claire, WI 54701
715-835-2211

LaCrosse*IRA Fundamentals* Mar. 15*Advanced IRAs* Mar. 16

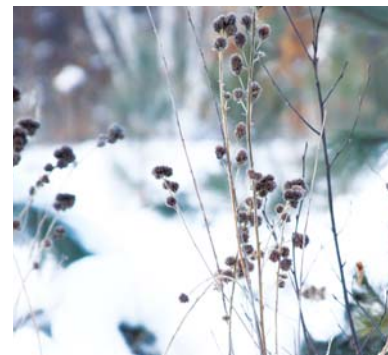
Radisson Hotel LaCrosse
200 Harborview Plaza
LaCrosse, WI 54601
608-784-6680

Madison*IRA Fundamentals* Mar. 31*Advanced IRAs* April 1

Marriott Madison West
1313 John Q Hammons Drive
Madison, WI 53562
608-831-1800

Milwaukee (Brookfield)*IRA Fundamentals* Mar. 29*Advanced IRAs* Mar. 30

DoubleTree Hotel Milwaukee/Brookfield
18155 Bluemound Road
Brookfield, WI 53045
262-792-2323



Ascensus also offers credit union training sponsored by state leagues and associations. To check out upcoming dates and locations, please go to www.simplerira.com and choose **IRA Training**, where you will find the League Training Calendar.



To register for a seminar or for more information, call 800-346-3860, option 2, or visit the Ascensus website at www.ascensus.com.

QRP FOCUS



Tricia Held, CISP
FEATURED CONSULTANT

Please send topics for Ascensus' QRP Focus column to the following address: Editor, *Retirement Plans Bulletin*, Ascensus, Inc., P.O. Box 979, Brainerd, MN 56401. The editor does not guarantee that questions will appear in the column and regrets that no personal responses can be sent.

QRP FOCUS ON THE 402(f) NOTICE

Q What is a 402(f) notice?

A There are many distribution options available to participants and beneficiaries in employer-sponsored retirement plans. In an effort to ensure that participants and beneficiaries have the information needed to make informed decisions, employers are required to provide a notice to recipients of eligible rollover distributions. Under IRC Sec. 402(f), employers must provide an easily understood written explanation of the distribution options available. Specifically, the notice must describe the direct rollover rules, the mandatory federal income tax withholding rules, the 60-day rollover rules, the tax implications of these distributions, and when distributions may be subject to different restrictions and tax consequences after being rolled over, such as with net unrealized appreciation.

Q When must the 402(f) notice be provided?

A An employer must provide the 402(f) notice to the participant or beneficiary of an eligible rollover distribution no less than 30 days and no more than 180 days before the date of the distribution. (This was extended from 30–90 days by the Pension Protection Act of 2006.) If, after receiving the 402(f) notice, a recipient does not wish to wait the 30 days before receiving the distribution, he or she may affirmatively elect the distribution and waive the 30-day requirement. Note, however, that the following two requirements must be met by the plan before allowing the waiver: (1) the recipient of an eligible rollover distribution must be given the option to consider whether to elect a direct rollover for a period of at least 30 days after the notice is provided and (2) the plan administrator must provide the information to the recipient that clearly identifies the recipient's right to the 30-day period before making the decision. This information may be provided within the 402(f) notice itself, or in another form as long as it is easily noticeable by the recipient and received at the same time as the notice.

Q Must an employer provide a separate 402(f) notice for each distribution in a series of periodic payments that are eligible rollover distributions?

A No. An employer may satisfy the 402(f) notice requirement for each distribution in a series by providing the notice within the allowed time frame before the first payment begins. The employer must then follow up with an annual notice for as long as the payments continue.

Q May the 402(f) notice be posted in a common area as a means of providing the information to recipients?

A No. The notice requirement for a plan administrator to provide a written notice to a recipient of an eligible rollover distribution will not be satisfied by posting the notice in a common area. The information must be provided directly to each recipient within the reasonable time period allowed. Providing the notice through the use of an electronic medium in lieu of a written paper document will, however, continue to satisfy the 402(f) notice requirements if the electronic method complies with the requirements of Treas. Reg 1.401(a)-21. ♦

Answer Key: 1. T, 2. F, 3. F, 4. T, 5. T, 6. T, 7. F, 8. T, 9. F, 10. F

Puzzle Answers

IRA Advisor



Erin Liebold

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Please send questions for Ascensus' IRA Advisor column to the following address: Editor, *Retirement Plans Bulletin*, Ascensus, Inc., P.O. Box 979, Brainerd, MN 56401. The editor does not guarantee that questions will appear in the column and regrets that no personal responses can be sent.

Q One of our clients is over age 70½ and would like to convert his IRA assets before taking his required minimum distribution (RMD). Is this allowed and, if not, what are the repercussions?

A According to Treasury Regulation 1.408A-4, Q&A 6, an individual cannot convert assets to a Roth IRA before taking his RMD. The first money that comes out of a Traditional IRA is considered the RMD amount until the total RMD is taken. Only then are the other assets eligible for distribution. If the IRA owner incorrectly converts his RMD, that amount becomes a regular Roth IRA contribution. The financial organization must correct Form 5498, *IRA Contribution Information*, reporting by removing the RMD amount from Box 3, *Roth IRA conversion amount*, and placing it in Box 10, *Roth IRA contributions*. If the IRA owner meets the eligibility requirements for a Roth contribution, the money may remain in the IRA. If the IRA owner is ineligible to make a regular contribution to a Roth IRA, that amount becomes an excess contribution. If the excess is not removed timely, it is subject to a six percent penalty each year that it remains in the IRA.

Q A client wants to convert her Traditional IRA with us to her Roth IRA at another financial organization. She is single and her MAGI is \$166,000. Is she eligible to convert? If so, how is this completed and what reporting is required?

A Starting January 1, 2010, the Tax Increase Prevention and Reconciliation Act of 2005 permanently eliminated the \$100,000 modified adjusted gross income (MAGI) limitation for conversion eligibility and also eliminated the requirement that married individuals had to file a joint tax return. The IRA owner can complete a conversion either directly or indirectly. When completing a direct conversion, the check should be made payable to the receiving financial organization. The distribution code on Form 1099-R will be a code 2, *Early distribution, exception applies*, or code 7, *Normal distribution*, depending on the IRA owner's age. The receiving organization will code the contribution as a conversion and it will be entered in Box 3, *Roth IRA conversion amount*, on Form 5498. In an indirect conversion, the check is made payable to the IRA owner, who then has 60 days to complete the conversion. The distribution code will either be a code 1, *Early distributions, no known exception*, or code 7, *Normal distribution*. The same coding applies for Form 5498 as it did with the direct conversion.

Q I have a client that came in on January 8 to convert Traditional IRA assets to a Roth IRA. He then came in on May 23 and wanted that money back in the Traditional IRA. Acting on his request, we completed a recharacterization back to the Traditional IRA. Now on June 3, he is back in our office and wants to convert that amount back into the Traditional IRA. Is this possible?

A According to IRC Sec. 1.408A-5, Q&A 9, the IRA owner must wait until the later of January 1 of the tax year following the conversion, or 30 days after the recharacterization to reconvert those assets. In this particular case, the IRA owner has to wait until January 1, 2011, to do the reconversion. If the reconversion is done before the waiting period has expired, it becomes a failed conversion. The failed conversion becomes a regular contribution and may have to be removed as an excess contribution. ❖

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Test Your Knowledge

Test your knowledge of this month's edition of the *Retirement Plans Bulletin*.

Choose whether each statement below is true or false.

The answer key is on page 11.

True or False

- _____ 1. An employer must provide the 402(f) notice to the participant or beneficiary of an eligible rollover distribution no less than 30 days and no more than 180 days before the date of the distribution.
- _____ 2. An employer must provide a separate 402(f) notice for each distribution in a series of periodic payments that is eligible to be rolled over.
- _____ 3. An individual may convert his Traditional IRA to a Roth IRA before taking his RMD.
- _____ 4. An IRA owner may convert a SIMPLE IRA to a Roth after she has met the two-year waiting period.
- _____ 5. Under the DOL's proposed regulations regarding the new definition of fiduciary, investment advice may include recommendations regarding the advisability of purchasing, holding, or selling securities or other property.
- _____ 6. Under the DOL's proposed regulations, one reason that an individual will not be considered a fiduciary is if the information he provided was in the nature of investment education.
- _____ 7. Upon sunset of the Coverdell ESA EGTRRA provisions, the current annual contribution limit of \$2,000 will revert to \$1,000.
- _____ 8. Unless a law is passed to extend or make permanent the Coverdell ESA EGTRRA provisions, only eligible higher education expenses will be considered qualified for years after 2010.
- _____ 9. Annual RMD notices must be sent to IRA holders by December 31 each year.
- _____ 10. An IRA owner may choose to have the taxable portion of a 2010 conversion divided equally and included in her income in 2010 and 2011.