

RMD Waiver, PPA Technical Corrections Legislation Enacted **UNIVERSAL**

As Congress was winding up its work for the 2008 session in early December, both the House and Senate used unanimous consent procedures to rapidly and unexpectedly pass H.R. 7327, the Worker, Retiree, and Employer Recovery Act of 2008 (the Act). President Bush signed this legislation into law on December 23, 2008.

This legislation contains a number of technical corrections to the Pension Protection Act of 2006 (PPA), waives 2009 tax year required minimum distributions (RMDs) from IRAs and employer-sponsored retirement plans, and provides funding relief to certain defined benefit pension plans. In response to an Ascensus inquiry, a high placed IRS official has stated that RMD statements to IRA holders and RMD reporting to the IRS on Form 5498, *IRA Contribution Information*, are not required for 2009. Following is a summary of key changes and their effective dates.

Temporary Waiver of RMD Rules

RMD requirements for the 2009 tax year will not apply to IRAs and defined contribution plans, such as 401(k) plans, 403(b) plans, and 457(b) governmental plans. The RMDs are waived for IRA holders, plan participants, and beneficiaries. Congress chose not to address the waiver of 2008 tax year RMDs with this legislation. Treasury Department officials stated early in December that the Department was considering suspension of RMDs from IRAs and retirement plans for 2008. Later in December, however, Treasury Department Assistant Secretary for Legislative Affairs Kevin Fromer stated in a letter to Rep. George Miller (D-Calif.) that the Department made the decision *not* to provide relief from 2008 RMD requirements.

Details of the 2009 RMD waiver are as follows.

- ◆ RMDs tied to the 2009 tax year, whether due by December 31, 2009, or by April 1, 2010 (for a taxpayer's first RMD), are waived. In the absence of additional relief, the next RMD for those taxpayers will be required not later than December 31, 2010. Note that the Act does not change a taxpayer's required beginning date for RMDs. In other words, the RMD deadline for taxpayers whose required beginning date is April 1, 2010, is *not* extended to April 1, 2011; rather, their first RMD will be required for 2010 and is due by December 31, 2010.
- ◆ For purposes of counting the five-year period for beneficiary distributions, 2009 is disregarded and an additional year is allowed. For example, for deaths occurring in 2008, the five-year period in which the inherited assets must be distributed ends on December 31, 2014, instead of December 31, 2013.

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"Winter, a lingering season, is a time to gather golden moments, embark upon a sentimental journey, and enjoy every idle hour."

—John Boswell


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- ◆ An employer plan distribution that is taken in 2009, but that is not treated as an RMD because of the waiver, may be rolled over to another eligible retirement plan or to an IRA within 60 days of the distribution. Though such distributions become eligible for rollover, they generally are not treated as “eligible rollover distributions” for other purposes. Employers are not required to offer a direct rollover of these assets, though they may do so. The distribution is not subject to the 20 percent withholding normally required for distributions of eligible rollover assets or the written explanation of tax and rollover options required by IRC Sec. 402(f).

Employer-sponsored retirement plans must be amended for this RMD waiver by the last day of the 2011 plan year (2012 for government employers).

RMD Reporting for 2009

IRA trustees, custodians, and issuers generally are required to send RMD statements by January 31 to IRA holders subject to RMDs (those aged 70½ and older). This can be done as a stand-alone notice, can be included with IRA fair market value statements that are also due by January 31, or may be included on the IRS Form 5498 if this form is provided to IRA holders by January 31.

The IRS has confirmed to Ascensus that because RMDs are not required for 2009, this notification with respect to 2009 RMDs should not be provided to IRA holders by any of these means. In addition, the checkbox in Box 11 (“Check if RMD due for 2009”) of the 2008 Forms 5498 should not be marked.

The IRS official suggests, however, that financial organizations inform their customers who turned age 70½ in 2008 and who elected to delay their RMDs to early 2009 (by the April 1, 2009, deadline) that they must still distribute their 2008 RMDs. Ascensus further advises that financial organizations contact IRA holders whose RMDs are set up to be distributed automatically, either in a single sum or in periodic payments throughout the year, to determine whether they wish to suspend or to receive 2009 distributions, considering that no distributions will be required for 2009.

Nonspouse Beneficiary Rollovers Required

PPA made it possible for most employer-sponsored retirement plans to allow nonspouse beneficiaries to directly roll over inherited plan assets to IRAs, as long as the IRAs are established and maintained as “inherited” IRAs. IRS Notice 2007-7 specified that employers were not required to offer the direct rollover option to nonspouse beneficiaries. A technical correction *requires* employers to offer this option to nonspouse beneficiaries, and to provide them with the IRC Sec. 402(f) notice of tax and rollover options. These requirements take effect for 2010 and later plan years.

Roth 401(k)-to-Roth IRA Rollovers

PPA inadvertently created a statutory obstacle preventing Roth IRAs from accepting certain designated Roth account (401(k) and 403(b) plan) rollovers. The \$100,000 annual income limit and the joint income tax return filing requirement for married taxpayers—both of which are associated with Traditional IRA conversions to Roth IRAs—were unintentionally retained by PPA for rollovers from designated Roth accounts to Roth IRA. A technical correction removes these limitations for such transactions, retroactively effective on January 1, 2008.

Automatic Contribution Arrangements

The Act makes several changes to the rules governing eligible automatic contribution arrangements (EACAs). An EACA is a plan provision that automatically enrolls employees and initiates salary deferrals on their behalf. These changes are retroactively effective for 2008 and later plan years.

- ◆ A technical correction eliminates the requirement that an EACA provide a default investment option that meets the Department of Labor’s specifications as a qualified default investment alternative (QDIA).
- ◆ This legislation extends the EACA provisions, including the 90-day option for permissible withdrawals of amounts automatically deferred on behalf of employees, to SIMPLE IRA and salary reduction SEP (SAR-SEP) plans.
- ◆ Under the provisions of PPA, deferrals permissibly withdrawn from EACAs are disregarded for purposes of actual deferral percentage (ADP) testing in 401(k) plans. The legislation now allows permissible withdrawal amounts to be disregarded in applying the annual IRC Sec. 402(g) deferral limit, as well.

No Gap Period Income in Excess Correction

This legislation changes the calculation for determining an IRC Sec. 402(g) excess deferral amount, eliminating the requirement to include earnings after the end of the plan year, commonly referred to as the “gap period.” Gap period income is now uniformly excluded from the correction calculation for excess contributions (ADP test excesses), excess aggregate contributions (ACP test excesses), and excess deferrals. This change is effective for 2008 and later plan years.

Combined DB/DC Plan Deduction

Employers that offer both defined benefit (DB) and defined contribution (DC) plans and have at least one employee covered by both plans are generally subject to an overall deduction limit. The Act clarifies that these deduction rules will not reduce DB plan contributions if contributions to the DC plan are no more than six percent of compensation. If DC plan contributions exceed six percent of compensation, only the amount exceeding six percent will count toward the combined deduction limit. This provision is retroactively effective for 2006 and later tax years.

Termination of DB(k) Plans

PPA allows for combined defined benefit and 401(k) plans (DB(k) plans) beginning in 2010. Contributions to these DB(k) plans are made to a single trust, but for many purposes, the plans are considered separate from one another. A technical correction clarifies that for plan termination purposes, each component will be treated as a separate plan. This provision is effective for 2010 and later plan years.

Roth IRA Rollover of Airline Settlement Payments

Airline employees who receive qualifying settlement payments from certain airline bankruptcy proceedings may roll over such amounts to a Roth IRA. This applies to airline employees whose DB plans were terminated or frozen as a result of bankruptcy, and applies only to cases filed in federal bankruptcy court after September 11, 2001, and before January 1, 2007. The amount generally must be rolled over within 180 days of receipt, but for payments received before the date of enactment, the deadline is 180 days from the date of enactment.

Reports to Participants

PPA generally requires that benefit statements be given to retirement plan participants at least quarterly. A similar provision in the Employee Retirement Income Security Act (ERISA) requires plan sponsors to provide account balance and vesting information to participants who request them, upon termination of employment, or when a participant incurs a one-year break-in-service. A technical correction aligns the form and content requirements of these special-event reports with those of the PPA quarterly statements. This provision is effective for 2007 and later plan years.

Corrections for One-Participant Plans

PPA exempts one-participant retirement plans from the requirement that advance notice be given for certain periods when participants may be unable to change plan investments, access certain account information, etc. These periods are commonly referred to as “blackout periods.” A technical correction aligns the PPA definition of a one-participant plan with that under DOL regulations, and also allows such plans to use leased employees without losing the one-participant plan status. This provision is retroactively effective on January 26, 2003.

One-participant plans are also exempt from the PPA requirement that participants be permitted to diversify investments by divesting their accounts of employer securities. A technical correction aligns the PPA definition of one-participant plan with DOL regulations for this purpose as well. This provision is effective for 2007 and later plan years.

Ascensus Responds

Because of the significance of the changes and technical corrections in the Worker, Retiree, and Employer Recovery Act, existing documentation governing all types of affected plans (including IRAs) will likely have to be amended. Keep in touch with Ascensus through our website, www.ascensus.com, or the *Retirement Plans Bulletin* for forthcoming information on amendment requirements. All Ascensus seminars and webinars are updated to include this information. The webinar “RMD Waiver, Technical Corrections, and Other Legislative Changes” dealing specifically with these changes will be offered January 8, 2008, at 1:30 p.m. CST, and January 14, 2008, at 11:00 a.m. CST. Register at the Ascensus website or call 800-346-3860. ❖

Bits n' Pieces

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Nonprofits Eligible for IRA Qualified Charitable Distributions

IRA charitable distributions were made possible by the Pension Protection Act of 2006 (PPA), effective for 2006 and 2007 tax years. This allowed taxpayers age 70½ and older to withdraw up to \$100,000 of IRA assets tax free each year, if they donated the distribution to a qualifying charitable organization. This option was extended to 2008 and 2009 tax years by the Emergency Economic Stabilization Act of 2008. The IRS has published at its website, www.irs.gov, a listing of many qualifying organizations. This listing is not presented by the IRS as being exhaustive, and does not include church organizations, many of which also qualify.

DOL Issues FAB on Fidelity Bonds

The Department of Labor's Employee Benefits Security Administration (EBSA) has issued Field Assistance Bulletin (FAB) 2008-04, which is a question-and-answer explanation of the requirement that employee benefit plans purchase a fidelity bond for those persons who handle plan assets, to protect against fraud or theft.

FAB 2008-04 generally restates and explains the standard ERISA bond provisions. At the time a retirement plan subject to ERISA is established, the employer typically must purchase a fidelity bond to protect the plan from fraudulent or dishonest acts on the part of plan fiduciaries who handle plan assets. "Handling" plan assets includes physical access to and the authority to exercise control over or make decisions about plan assets. In the event of loss to the plan because of fraud or dishonesty, the bond is used to restore plan assets. As a general rule, under ERISA Sec. 412, any

Bits n' Pieces

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403(b) Written Document Reprieve

On December 13, 2008, the IRS announced a one-year delay in the written plan requirement for 403(b) plans covering employees of public schools, colleges and universities, and other tax-exempt organizations. The final 403(b) regulations mandated that such employers have a written plan in place by January 1, 2009. Following a protracted effort by industry groups to delay the written plan requirement, as well as the effective date of the final regulations themselves, the IRS has at least met these interests halfway. While the regulations' effective date of January 1, 2009, has not been delayed, the written plan deadline has been extended to December 31, 2009. This extension and additional guidance are contained in IRS Notice 2009-3, which states the following.

- ◆ A written plan intended to satisfy the requirements of IRC Sec. 403(b) and its regulations must be in place by December 31, 2009.
- ◆ The plan must be operated during 2009 in reasonable good faith compliance with IRC Sec. 403(b) and the final regulations.
- ◆ By the end of 2009, the employer sponsoring the plan must make a good faith effort to correct any 2009 failures to conform to the written plan that it establishes by December 31, 2009. Corrections are to be based on the principles of the IRS' Employee Plans Compliance Resolution System (EPCRS).

In addition, Notice 2009-3 affirms the IRS' intention to release additional guidance establishing a prototype program for 403(b) plans for eligible employers, and to issue sample drafting language. Notice 2009-3 also states that the IRS intends to establish a determination letter program for individually designed 403(b) plans, and will provide for retroactive remedial amendment of 403(b) plans for years after 2009. The EPCRS program will be modified to address additional 403(b) plan issues. ◆

fiduciary, administrator, or employee of a qualified retirement plan who handles plan assets must be bonded for at least 10 percent of the amount of plan assets that the individual handles. According to ERISA Sec. 412(a), the minimum amount of any bond required, regardless of plan asset value, is \$1,000, and the maximum is \$500,000. The Pension Protection Act of 2006 amended ERISA Sec. 412(a) to increase the maximum bonding amount to \$1,000,000 for a plan that holds employer securities (as opposed to the \$500,000 amount for plans not holding employer securities) for plan years beginning on or after January 1, 2007.

Additionally, the FAB defines terms used and examines the various types of arrangements and bonds used to satisfy the requirements. The FAB may be accessed at <http://www.dol.gov/ebsa/regs/fab2008-4.html>.

IRS Aid to Calculate Self-Employed Contribution Deduction

The IRS issued fact sheet FS-2008-24 to help self-employed individuals to calculate the tax deduction they may receive for contributions to a retirement plan. The determination process for the allowable business tax deduction for a self-employed person's retirement plan contribution differs from the determination process for a contribution made by a corporate business. FS-2008-24 discusses the determination of whether a deduction is allowable, income tax schedules to be used, timing of the deduction, etc. FS-2008-24 is available at the IRS website, www.irs.gov.

No Rollover Waiver When No Advice Given

The IRS has posted private letter ruling (PLR) 200847022 at its website. In this PLR, the taxpayer asked the IRS to waive the 60-day rollover limitation for IRA assets moved to another account and not deposited back into an IRA within 60 days. The taxpayer stated in his request that the financial advisor failed to tell him of the 60-day rollover limitation. The IRS cited Revenue Procedure 2003-16 and its requirements for granting waivers, noting that failure to inform a taxpayer does not rise to "financial institution error," and that "... the Code imposes no ... obligation on IRA custodians" to advise an IRA holder of tax and rollover options. The IRS is generally quite lenient in granting waivers if evidence is presented of financial institution or advisor failure to follow taxpayer instructions, or actions taken that contribute to failure to comply with the 60-day rule. This PLR appears to provide an important distinction.

IRS Form 5304-SIMPLE Contains Only Minor Changes

The IRS recently posted a September 2008 version of Form 5304-SIMPLE, *Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) – Not for Use with a Designated Financial Institution*. This IRS form, used by employers to establish a SIMPLE IRA plan with contributions made to a financial organization chosen by the employee, only updates several cost-of-living-adjusted numbers on the previous 2005-dated version, so there is no need to amend existing documents. It can be accessed at www.irs.gov.

IRS Issues 2009 Coverdell ESA Forms

The IRS has issued the 2009 tax year Form 1099-Q, *Payments From Qualified Education Programs (Under Sections 529 and 530)*, and its accompanying detailed instructions. Form 1099-Q is used by financial organizations and educational institutions to report distributions and transfers for Coverdell education savings accounts (ESAs) and state qualified tuition programs, also known as 529 plans.

The IRS also has issued the 2009 detailed instructions for Form 5498-ESA, *Coverdell ESA Contribution Information*. The form is used by custodians and trustees of Coverdell education savings accounts to record contributions and capture certain other information about these accounts. The 2009 form itself has not yet been issued. The instructions for the 2009 Form 5498-ESA and Form 1099-Q as well as the Form 1099-Q instructions can be found at www.irs.gov.

DOL Posts "Information Copies" of 2008 Form 5500 and Schedules

The Department of Labor (DOL) has posted "information copies" of the 2008 plan year Form 5500, *Annual Return/Report of Employee Benefit Plan*, its instructions, and various schedules. The forms are labeled "For information purposes only – do not use for filing." Please note that these forms are for 2008 plan years, the filing deadline for which is July 31, 2009 (for calendar year plans). These forms can be found at the DOL website: <http://www.dol.gov/ebsa>.

Midwestern Disaster Provisions in “Bailout Bill”

Provisions in the recent Emergency Economic Stabilization Act of 2008 (the financial “bailout” bill) may affect some IRA holders and participants in qualified retirement plans (QRPs) in several Midwestern states.

Retirement plan-related Midwestern disaster relief was not itemized in the bailout bill. Rather, the bill amended the Katrina Emergency Tax Relief Act of 2005 (KETRA) to provide current relief. It substituted “qualified disaster recovery assistance distribution” for “qualified hurricane distribution,” substituted “qualified storm damage distribution” for “qualified Katrina distribution,” substituted “Midwestern Disaster Area ...” for “Hurricane Katrina disaster area ...,” and altered dates to accommodate the timing of the Midwestern storms.

The coverage includes any county in Arkansas, Illinois, Iowa, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, and Wisconsin that was declared a disaster area by the Federal Emergency Management Agency (FEMA) on or after May 20, 2008, and before August 1, 2008.

The primary provisions for individuals in such areas include the following.

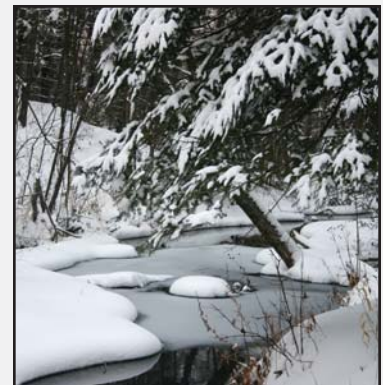
- 1** The 10 percent additional tax on early distributions from QRPs or IRAs is waived for qualifying distributions made on or after the date of the disaster declaration and before January 1, 2010. The amount is capped at \$100,000, withholding does not apply, taxation can be spread over three years, and amounts may be recontributed over three years.
- 2** Withdrawals from IRAs or QRPs for home purchases, made within the six-month period before the disaster declaration, and not used for that purpose due to the storm events, may be recontributed to the IRA or retirement plan as a rollover if done within five months of the bill’s enactment (October 3, 2008).
- 3** The QRP loan limits are doubled from the lesser of \$50,000 or 50 percent of vested account balance, to the lesser of \$100,000 or 100 percent of vested account balance, for loans made after the date of enactment (October 3, 2008) and before January 1, 2010. Loan payments that are due on or after the date of a disaster declaration and before January 1, 2010, may be deferred an additional 12 months, adjusted for interest.

A QRP may operationally comply with the provisions of this legislation now and amend for these provisions by the last day of its 2010 plan year, “or such later date as the Secretary may prescribe.”

Additionally, the 2008 IRS instructions to Form 1040, *U.S. Individual Income Tax Return*, have been changed from the 2007 version to include a “heads up” for taxpayers who may be eligible for special retirement arrangement-related benefits as a result of 2008 Midwestern storm and flood events and a 2007 Kansas storm event. ❖

Martin Luther King, Jr. Day

The offices of Ascensus, including the *800 Consulting* service, will be closed on Monday, January 19, 2009, in remembrance of Dr. Martin Luther King, Jr. Regular business hours, 8:00 a.m. to 5:00 p.m. CST, will resume on Tuesday, January 20, 2009.



Back to Basics: Distribution Options for Traditional IRA Beneficiaries

With all the new portability options available to retirement plan participants, financial organizations and IRA beneficiaries may get confused about the options available to the beneficiaries of Traditional IRAs. For IRA administrators to accurately process and explain beneficiary distribution options, they should fully understand the options available under IRS rules.

Note, however, that IRA plan agreements may offer fewer options than the IRS, so IRA administrators should always check their governing documents regarding permissible distribution options.

NOTE: *The term “IRA” in this article refers to Traditional IRAs.*

Distribution Options and the Required Beginning Date

When an IRA holder dies, his named beneficiary is entitled to the remaining IRA balance. If no beneficiary is listed, the deceased IRA holder's estate or spouse generally is considered the beneficiary based on the language in the opening documents or state law. An IRA beneficiary always has the option to take a lump sum distribution of the inherited IRA assets. If a lump sum distribution is not taken, a beneficiary's options depend on whether the beneficiary is a natural person (or an entity, such as an estate), whether the beneficiary is a spouse to the IRA holder, and the age of the IRA holder upon death.

The Required Beginning Date

A beneficiary's distribution options depend on whether the death of the Traditional IRA holder occurred before the required beginning date (RBD) for taking required minimum distributions, or on or after the RBD. The RBD is April 1 following the year in which the IRA holder attains age 70½.

Death Before the Required Beginning Date

When an IRA holder dies before the RBD, the distribution options may include taking payments under the five-year rule, taking life expectancy payments, treating the IRA as the beneficiary's own, or distributing and rolling over the assets. The five-year rule requires that the account balance be depleted by December 31 of the year containing the fifth anniversary of the IRA holder's death. The life expectancy payment option requires distributions to be taken over the life expectancy of the beneficiary, or over a period not extending beyond the life expectancy of the beneficiary. A spouse beneficiary may be allowed to treat an inherited IRA as her own. When the spouse beneficiary treats the IRA as her own, she essentially becomes the IRA holder, and the basic rules are applied as such.

NOTE: *See the article entitled “RMD Waiver, PPA Technical Corrections Legislation Enacted” for waivers of 2009 distributions and for determining the five years.*

Beneficiary Election

A beneficiary must elect whether the five-year rule or life expectancy payments will apply. The election must be made by the earlier of the date that life expectancy payments are required to begin or December 31 of the fifth year following the year of death. Life expectancy payments must begin by December 31 of the year following the year of death—except for payments to spouse beneficiaries, who may delay payments until December 31 of the year that the IRA holder would have turned age 70½.

Default

When the death of the IRA holder occurs before the RBD, the distribution default is life expectancy payments; therefore, life expectancy payments will apply in all cases when death occurs before the RBD unless

- ◆ plan language dictates otherwise,
- ◆ a lump sum distribution is taken,
- ◆ an election for the five-year rule applies,

- ◆ a spouse beneficiary treats as own, or
- ◆ no beneficiary is named.

EXAMPLE: IRA HOLDER DIES BEFORE THE RBD WITH SPOUSE BENEFICIARY

James, age 62, died in 2004. His wife, Jenny, age 55, is the sole beneficiary of James' IRA. She may choose to follow the five-year rule, take single life expectancy payments, distribute and roll over, or treat the IRA as her own. Jenny chooses life expectancy payments, and will delay the onset of her payments until the year James would have been age 70½ (e.g., 2012).

EXAMPLE: IRA HOLDER DIES BEFORE RBD WITH NONSPOUSE BENEFICIARY

Mary, age 56, died in 2008. Mary had named her son, Michael, age 30, as the beneficiary of her IRA. He may choose to follow the five-year rule or take single life expectancy payments based on his own age. Michael chooses single life expectancy payments, and his first distribution is due no later than December 31, 2009.

Death On or After the Required Beginning Date

When the IRA holder dies on or after the RBD, the only beneficiary options are lump sum distributions or life expectancy payments. If life expectancy payments are chosen, the distributions must continue using the *longer of*

- ◆ the remaining life expectancy of the designated beneficiary, or
- ◆ the remaining life expectancy of the IRA holder fixed in the year of death, and nonrecalculated in subsequent years.

In other words, the life expectancy of the younger of the two individuals is used, which allows for the longest payout period possible.

EXAMPLE: DEATH ON OR AFTER RBD WITH SPOUSE BENEFICIARY

Larry, age 86, died in 2008. His wife, Laura, age 64, is the sole beneficiary of Larry's IRA. If Laura does not choose to take a lump sum distribution, to treat the IRA as her own, or to distribute and roll, her minimum payout will be based on her single life expectancy, recalculated each year, because her remaining life expectancy is longer than Larry's single life expectancy, nonrecalculated. Laura must take the first distribution by December 31, 2009.

EXAMPLE: DEATH ON OR AFTER RBD WITH NONSPOUSE BENEFICIARY

George, age 75, died in 2008. George had named his brother Greg, age 84, as the beneficiary of his IRA. Greg's payout will be based on George's nonrecalculated single life expectancy because it is longer than Greg's nonrecalculated life expectancy. Greg must take the first distribution by December 31, 2009.

Spouse Beneficiary Treating as Own

For a spouse beneficiary to elect to treat an IRA as his own, the spouse beneficiary must be the sole, direct beneficiary of the IRA, with an unlimited right to withdraw amounts from the IRA. Under these circumstances, the spouse beneficiary may elect to treat the IRA as his own at any time after the IRA holder's death. If the spouse elects to treat the IRA as his own in the year of death, he still must satisfy the IRA holder's required minimum distribution for the year if the IRA holder had not already done so.

A surviving spouse beneficiary is deemed to have elected to treat an inherited IRA as his own if he

- ◆ redesignates the IRA as his own,
- ◆ fails to remove a required distribution, or
- ◆ makes a contribution to the deceased IRA holder's IRA.

Back to Basics
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QRP FOCUS

QRP FOCUS ON 403(b) PLAN SPECIMEN DOCUMENTS



Christine LeBlanc
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.

Q Our financial organization's 403(b) plan document cover page states that it is a specimen document. What is the difference between a specimen document and the more common prototype document?

A The difference between these two documents is IRS approval. The IRS currently has different approval processes for prototype documents and volume submitter documents. Prototype and volume submitter documents generally consist of an adoption agreement and a basic plan document that have gone through an approval process with the IRS. At the end of the prototype process, the IRS provides an opinion letter stating that the plan language is approved and the plan has guaranteed reliance. At the end of the volume submitter process, the IRS provides an advisory letter that gives the same guaranteed reliance as an opinion letter. The plan administrator can rely on these letters to show that the form of the plan is compliant as long as the language is not changed. The letters do not cover plan operations.

A specimen document is drafted by a document provider to comply with all applicable laws, and often includes an adoption agreement and a basic plan document. This document, however, does not go through an approval process with the IRS. If an employer wants to have an IRS statement that the plan is compliant in form, it would have to file for a private letter ruling.

The one exception to this is a governmental employer who adopts a model plan released by the IRS. This employer has the same reliance on compliance as to form as a plan that has obtained a private letter ruling.

Q If prototype and volume submitter documents have approval from the IRS and the specimen document does not, why would a plan administrator choose to use a specimen document and not on a prototype or volume submitter document?

A The IRS approval process is very specific as to which types of documents will be approved using these processes. Currently, the IRS does not have a prototype program in place for 403(b) plans. Because there is no program, 403(b) plans must use either a specimen document or an individually-designed document. A specimen document generally is drafted with an adoption agreement that contains various options and a basic plan document that contains the nonelective provisions of the plan. This allows the specimen document to be used by a wide variety of employers. This differs from an individually-designed document, which generally is drafted as one self-contained document containing all of the provisions for a specific employer.

Q Will there ever be a prototype program for the 403(b) document?

A The IRS has indicated that it intends to open a prototype program for 403(b) plans in 2009. While the process of drafting and obtaining IRS approval on a document can be lengthy, prototype 403(b) documents should be available in 2009 so that employers may use a prototype plan to satisfy the plan document requirement by the extended deadline of December 31, 2009. ♦

IRA Advisor



Nicole Loosbrock

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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 Our client just realized that she was ineligible to make a 2008 HSA contribution, but she already made the contribution. How does she fix this?

A The health savings account (HSA) owner has an excess contribution. An excess contribution occurs when an HSA owner either exceeds the annual contribution limit or is an ineligible individual. The HSA owner may not deduct the excess contribution on her tax return. The HSA owner is subject to a six percent excise tax for each tax year an excess contribution remains in the account. But if the HSA owner withdraws the excess contribution and the net income attributable (NIA) by her tax return deadline plus extensions, the excise tax does not apply. The excess contribution is not taxed when distributed, but the HSA owner must include the NIA as taxable income for the year *in which* the excess and the NIA are withdrawn.

Q Are financial organizations responsible for monitoring excess contributions?

A According to Article III of IRS Form 5305-B, *Health Savings Trust Account*, and Form 5305-C, *Health Savings Custodial Account*, and Notice 2004-50, Q&A 74, the HSA owner is responsible for determining whether contributions exceed his annual contribution limit. Financial organizations are responsible for not accepting more than the maximum contribution amount in effect for the year (\$5,800 for 2008 and \$5,950 for 2009) including catch-up contributions, if applicable. The HSA owner is responsible for not contributing (or receiving contributions on his behalf) of more than his maximum contribution amount.

Q An HSA owner took a distribution from her HSA. She later discovered that she did not have a qualified medical expense. What are her options?

A If an HSA owner reasonably believes that a distribution is a qualified distribution and then realizes that it is not qualified, the HSA owner may redeposit the "mistaken distribution" into the HSA. The IRS provides an example of a mistaken distribution in Notice 2004-50, Q&A 37. In the example, the HSA owner reasonably, but mistakenly, believed that an expense was a qualified medical expense and withdrew assets from an HSA to pay for the medical expense. Based on the facts of this scenario, the HSA owner may repay the mistaken distribution no later than April 15 following the first year the HSA owner knew or should have known that the distribution was a mistake.

Q Are financial organizations required to accept mistaken distributions?

A Financial organizations are not required to accept returned mistaken distributions. If the financial organization's HSA trust or custodial agreement allows for the return of mistaken distributions, the financial organization may rely on the HSA owner's representation that the distribution was a mistake. According to the 2008 *Instructions for Forms 1099-SA and 5498-SA*, financial organizations should not report the mistaken distribution on IRS Form 1099-SA, *Distributions from an HSA, Archer MSA, or Medicare Advantage MSA*. ♦

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Pricing Survey

Rates as of week ended 12/19/08 for a \$2,000 deposit (Stated in annual percentage yield when available)

Banks and Savings and Loan Associations

	6-mo. Fixed	1-yr. Fixed	18-mo. Var.	3-yr. Fixed	5-yr. Fixed
Bank of America (Atlanta)	1.60	2.75	2.00	2.25	2.61
Bank of America (Charlotte, NC)	1.60	2.75	2.00	2.25	2.61
Bank of America (San Francisco)	1.60	2.75	2.00	2.25	2.60
Bank of America (Seattle, WA)	NA	2.50	NA	2.00	2.35
Bank One (Chicago)	1.25	1.25	NA	2.75	NA
Banknorth Connecticut (Connecticut)	2.00	3.00	3.00	NA	NA
Chase Manhattan Bank NA (NYC)	1.25	1.25	NA	2.75	NA
Citibank (NYC)	3.00	2.75	2.00	2.25	3.50
Citizens Bank (Philadelphia, PA)	3.00	2.75	NA	NA	3.25
First Union Wachovia (Charlotte, NC)	1.15	1.35	1.45	1.75	2.25
Guaranty Federal Bank (Dallas)	3.00	3.50	NA	3.50	4.00
KeyBank National Association (Cleveland)	1.60	1.58	1.58	2.35	3.90
MBNA America (Newark, DE)	1.60	2.75	2.00	2.25	2.61
Regions Bank (Birmingham, AL)	NA	2.40	.55	2.70	2.90
Washington Mutual (Los Angeles)	1.25	1.25	2.25	3.51	5.00
Wells Fargo Bank (San Francisco)	1.10	1.45	NA	NA	NA

NA = This specific term is not available.

MMDA for IRAs

Bank of America (Atlanta)	1.50
Bank of America (Charlotte)	1.50
Bank of America (San Francisco)	1.50
Bank of America (Seattle)	1.50
Chase Manhattan (NYC)	.15
Citibank (NYC) ¹	NA
Citizens Bank (Philadelphia)	NA
First Union Wachovia (Charlotte)	.04
KeyBank National Association (Cleveland)	.10
MBNA America (Newark, DE)	1.50
Washington Mutual (Los Angeles)	.35
Wells Fargo Bank (San Francisco)	.35

¹ New York Yield

Credit Unions

	Yield
Alliant Credit Union	2.35 ¹
Citizens Equity FCU	3.25 ^{2*}
Dearborn Federal CU	3.45 ^{3*}
Navy Federal CU	3.55 ⁴
Pentagon FCU	4.88 ⁵

* Rate, not yield

¹ Current quarter

² 1-year, \$1,000 min.

³ Variable acct. is .50%; 1-year fixed rate, \$1,000 min. is 4.91%;

2-year fixed rate, \$1,000 min. is 4.18%

⁴ 3-year certificate

⁵ 2-year is 4.76%; 3-year is 5.31%; share is 1.25%

STRIPS

(Separate Trading of Registered Interest and Principal of Securities)

Maturities	Wholesale Yield ¹
5 Year	NA
10 Year	NA
15 Year	NA
20 Year	NA
25 Year	NA

¹ Suggested yields provided by A. G. Edwards, St. Louis, MO

Money Market Mutual Funds

	7-Day Avg. Yield	30-Day Avg. Yield
American Century Investments – Fund I	.47	NA
Dreyfus Worldwide Dollar Money Market Fund	1.39	1.60
Federated Municipal Securities	NA	NA
Hartford Mutual	.06	.15
Merrill Lynch Retirement Reserves	NA	NA
Scudder Investments – Zurich Money Market Fund	NA	NA

Insurance Companies

	Single Premium Deferred Annuity	Flexible Premium Deferred Annuity
Beneficial Standard Life Ins. Co.	NA	NA ¹
Equitable Life Assurance	NA	NA
Hartford Life Insurance Company	4.85	NA
John Hancock Mutual	NA	NA
Massachusetts Financial	NA	5.85 ²
New York Life (NYLIAC)	3.00	3.15
Prudential Ins. Co.	NA	NA
Transamerica Life	2.00 ³	NA
Travelers Ins. Co.	NA	NA

¹ 3% interest rate bonus if initial deposit

² 5-year fixed rate, Focus 5

³ Trans 6, \$5,000 min., includes 2% bonus