

THE Pension Digest

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**Collin W. Fritz and
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DOL Re-Proposes Rule on Definition of a Fiduciary for IRAs and Pension Plans

On April 20, 2015 the DOL finally issued its long awaited revised definition of who is a fiduciary. The DOL in 1975 issued a regulation defining a fiduciary. The current DOL does not like this definition and wants to change it.

The DOL's proposal is very complicated and time will tell to what extent this proposal will be implemented. There is going to be substantial negative response to this proposal. One would hope Congress will take an active role in this matter because the DOL is essentially making new law without instruction from Congress to do so.

In October of 2010 the DOL proposed a new definition of who is a fiduciary for pension and IRA purposes. In September of 2011 after receiving substantial negative comments from powerful politicians from both parties the DOL stated it would be withdrawing the 2010 proposal.

The 2015 proposal would treat persons who provide investment advice or various recommendations to an IRA, the IRA owner, pension plan, plan fiduciary, the plan participant or a beneficiary as a fiduciary. The proposal contains certain exceptions when a person would not be considered to be a fiduciary, but these exception rules are murky at best.

One of the primary goals of the DOL is to make any one serving an IRA or pension plan a fiduciary and then require such person to act in the best interest of

the IRA owner or the pension plan participants. In theory this may seem very desirable, but it is unworkable in the real world. The DOL is well aware of the large amount of wealth being directly rolled over into IRAs from 401(k) plans and other retirement plans (\$2 trillion over the next 5 years). The DOL believes that individuals who are non-fiduciaries may give imprudent and disloyal advice and then direct IRA owners to invest their IRA funds in investments based on their own interests rather than the best interest of the IRA owners (i.e. their clients). The DOL also believes most individuals are incapable of managing their own IRAs. The powers that be within the DOL do not really like that fact that most 401(k) plans are written to allow for participants to invest their own account balances. The DOL believes that professional money managers would do a better job.

In October of 2010, the EBSA had published a proposed rule revising a 1975 regulation defining when a person is a “fiduciary” with respect to an IRA or pension plan by reason of giving investment advice for a fee. The 1975 regulation provided for a five-part test to determine if a person was a fiduciary. Under this rule, a person is a fiduciary only if he or she: (1) makes recommendations on investing in, purchasing or selling securities or other property, or gives advice as to their value; (2) on a regular basis; (3) pursuant to a mutual understanding that the advice; (4) will serve as a primary basis for investment decisions; and (5) will be individualized to the particular needs of the IRA or plan.

Continued on page 5

Transferring Inherited IRAs - Sometimes Not Business As Usual

IRS guidance is slim when it comes to administering inherited IRAs. Most IRA custodians are reasonable and are willing to work with an IRA beneficiary to transfer his or her inherited IRA to a successor IRA custodian. However, an IRA custodian will in some situations wish to use special procedures if it will participate in such a transfer.

CWF recently wrote a letter which discussed a special situation. Two beneficiaries wished to transfer their inherited IRAs because the successor custodian had told them they could stretch out distributions over their life expectancies rather than the life expectancy of their father. Their father had inherited this IRA from his mother. IRS rules are quite clear that the RMD schedule applying to the "first" beneficiary will continue to apply to a subsequent beneficiary. The current IRA custodian/trustee has the decision to make: does it not participate in the transfer or will it do the transfer, but the beneficiaries and the successor IRA custodian/trustee must expressly acknowledge that they accept full responsibility if the RMD schedule would be changed.

April , 2015

TO : (Child #1, age 22)
(Child #2, age 18)

Name of Successor Inherited IRA Custodian/Trustee

From: Ms Davis
State Bank

Subject: Possible Transfer of an Inherited IRA

We wish to provide you the following information with respect to the possible transfer of an inherited IRA. If you choose to go forward with the transfer we ask that each of you sign below and the successor IRA custodian/trustee must also sign. The IRA plan agreement provides that any transfer is at State Bank's discretion.

Statement of Facts. Your grandmother, ___ had designated her son (your father), _____ as the beneficiary of her

IRA. She died in 2011. Your dad was age 52 in 2012 as his date of birth was October 10, 1960. As a nonspouse beneficiary your father was required to take a required distribution in 2012 and each subsequent year. And he did so. The RMD divisor for 2012 was 32.3. This is based on his age in 2012. The divisor for subsequent years is determined by subtracting 1.0 from the initial divisor of 32.3. The divisor for 2014 was 30.3. The divisor for 2015 is 29.3 and next year it will be 28.3.

Your father's passing in 2014 does not mean that this RMD divisor for 2015 and subsequent years will now be based on your ages. The RMD schedule applying to your father will continue to apply to both of you. We do not understand the tax rules to authorize the RMDs to be paid to the two of you be based on your ages.

We suggest you discuss this topic with your legal and tax advisor. If you and a successor IRA custodian/trustee are convinced the tax rules permit you to make his change, you must acknowledge below that we have furnished you with our understanding. We understand the tax rules to be - basing any RMD calculation on your ages rather than your father would result in excess accumulations and the 50% excise tax would be owed for EACH year the excess amount remains in the inherited IRA. By signing below you and the successor IRA custodian/trustee agree that State Bank shall have no liability arising from any transfer of the inherited IRA or thereafter.

Currently we have not yet set up on our computer system an inherited IRA for each of you. The inherited IRA is still in your father's name as beneficiary of your grandmother's IRA. We are willing to transfer this inherited IRA to the successor IRA custodian/trustee as long as such custodian/trustee acknowledges the factual situation is as described. Or, we are willing to transfer such funds to inherited IRAs as established for each of you.

Each of you will need to sign below to acknowledge this information and that you want us to make the transfer to the successor IRA custodian/trustee of the inherited IRA. The fee for such transfer(s) shall be \$_____ and you authorize us to withdraw this amount from the inherited IRA prior to the transfer .

Name of Beneficiary #1 Date

Name of Beneficiary #2 Date

Authorized Signer for Successor IRA Custodian/Trustee

Understanding Ages 70, 70^{1/2}, 71 and RMDs and the Final IRA Contribution - Even the IRS Gets It Wrong

An IRA owner must take a required minimum distribution (RMD) for the year he or she attains age 70^{1/2}. There is no requirement to take an RMD for the year one attains age 70.

A traditional IRA owner is not allowed to make an IRA contribution for the year he or she attains age 70^{1/2} or any subsequent year. A person who attains age 70^{1/2} in 2015 may make a carryback contribution for 2014 since he or she is not age 70^{1/2} during 2014. The IRS has written an article on IRA Contribution Limits. For IRA contributions after age 70^{1/2}, the IRS writes, "You can't make regular contributions to a traditional IRA in the year you reach age 70^{1/2} and older." This is incorrect. To be correct, the sentence needs to be, "You can't make regular contributions to a traditional IRA "FOR" the year you reach age 70^{1/2} and older. "

A person born on June 30, 1945 must take an RMD for 2015 since he or she is age 70^{1/2} on December 30, 2015. This person's deadline for taking the 2015 RMD is April 1, 2016. This person may withdraw the distribution in 2015 or by April 1, 2016. His or her deadline for taking the 2016 RMD is December 31, 2016. The distribution is included in the person's income for the year the distribution is received. Thus, a person who takes both distributions in 2016 will include both amounts in income in 2016.

A person born on July 1, 1945 is not required to take an RMD for 2015 since he or she attains age 70^{1/2} in January of 2016. This person's deadline for taking the 2016 RMD is April 1, 2017. His or her deadline for taking the 2017 RMD is December 31, 2017.

Those individuals born between January 1, 2015 and June 30, 2015 are both age 70 and 70^{1/2} and so the RMD divisor is 27.4 for 2015 and is 26.5 for 2016.

Those individuals born between July 1, 2045 and December 31, 2045 are both age 70^{1/2} and 71 and so the RMD divisor is 26.5 for 2016 and is 25.6 for 2017.

If a person misses the deadline, he or she will owe the 50% tax. It is CWF's experience that some computer systems do the calculations incorrectly when a person

has June birthday. For example, Jane was born on June 28, 1944. The computer report incorrectly showed she did not have to take an RMD until 2015 and her deadline was 4-1-16. However, since she attained age 70^{1/2} in 2014 she had to take an RMD for 2014 and 2015.

It never hurts to double check the work of your computer system.

Understanding the Correct IRS Reporting for Recharacterizations and Conversions.

An IRA supervisor wants to be sure that the financial institution is preparing its 1099-R forms and 5498 forms correctly when an IRA accountholder makes a recharacterization contribution or a conversion contribution. This article discusses one individual's IRA activities in 2014. The individual is Jane Shaw, age 42.

On Friday April 4, 2014, Jane Shaw contributed \$5500 for tax year 2013. On Monday April 14, 2014 she contributed \$5500 for tax year 2014. She had done so on the advice of her tax accountant.

On August 13, 2014, she is at your financial institution because she has been instructed by her tax accountant to recharacterize both of these contributions. Her income was sufficiently high she was ineligible to make a Roth IRA contributions for 2013 and for 2014.

She instructs to recharacterize both Roth IRA contributions and you do so. By doing so, they will become traditional IRA contributions. The \$5500 contribution made on April 4, 2014 for 2013 as adjusted for earnings has a value of \$5630 and the \$5500 contributed on April 14, 2014 as adjusted from earnings has a value of \$5580.

After completing these recharacterizations, she then instructs to convert the \$11,210 to her Roth IRA. And this is done.

Set forth on the next page is the correct tax reporting for these various transactions.

1. She contributed \$5500 to her Roth IRA for 2013. This annual contribution will be reported in box 10 of the 2013 Form 5498. In box 7, the Roth box is to be checked.
2. By recharacterizing the \$5630 within her Roth IRA she is deemed to have withdrawn \$5630 from her Roth IRA. This will be reported on the 2014 Form 1099-R. In box 7, the reason code is to be a "R" as the contribution was made in 20 14 for 20 13, but it was recharacterized in 20 14. Note the different tax years. Box 1 (gross amount) of the 2014 Form 1099-R is completed with the 5630.00 and box 2a (taxable amount) is completed with 0.00. Remember, that the legal result of a recharacterization is that the \$5630 is moved to the traditional IRA and she is for tax purposes treated as if she contributed \$5500 to her traditional IRA and the \$130 of earnings are considered to have been realized within the traditional IRA. The second box in box 7 is not be checked as the distribution is withdrawn from the Roth IRA.
3. Her recharacterization contribution of \$5630 will be reported in box 4 on a 2014 Form 5498 for her traditional RA. The FMV of this traditional IRA as of 1213 1/14 will be reported in box 5.
4. She contributed \$5500 to her Roth IRA for 2014. This annual contribution will be reported in box 10 of the 2014 Form 5498. In box 7, the Roth box is to be checked.
5. By recharacterizing the \$5580 within her Roth IRA she is deemed to have withdrawn \$5580 from her Roth IRA. This will be reported on the 2014 Form 1099-R. In box 7, the reason code is to be a "N" as the contribution was made in 2014 for 2014 and it was recharacterized in 2014. Note the same tax years. Box 1 (gross amount) of the 2014 Form 1099-R is completed with the 5580.00 and box 2a (taxable amount) is completed with 0.00. Remember, that the legal result of a recharacterization is that the \$5580 is moved to the traditional IRA and she is for tax purposes treated as if she contributed \$5500 to her traditional IRA and the \$80 of earnings are considered to have been realized within the traditional IRA. The second box in box 7 is not be

checked as the distribution is withdrawn from the Roth IRA.

6. Her recharacterization contribution of \$5580 will be reported in box 4 on a 2014 Form 5498 for her traditional RA. The FMV of this traditional IRA as of 1213 1/14 will be reported in box 5.
7. On she converts \$11,210 within her traditional IRA to her Roth IRA. There is a deemed distribution of \$11,210. Since Jane is age 42 her Form 1099-R will have a reason code "2" in box 7. The traditional/SEP1SIMPLE box is checked. Her conversion contribution of \$11,210 will be reported in box 3 on a 2014 Form 5498 for her Roth IRA. The FMV of this Roth IRA will be reported in box 5.

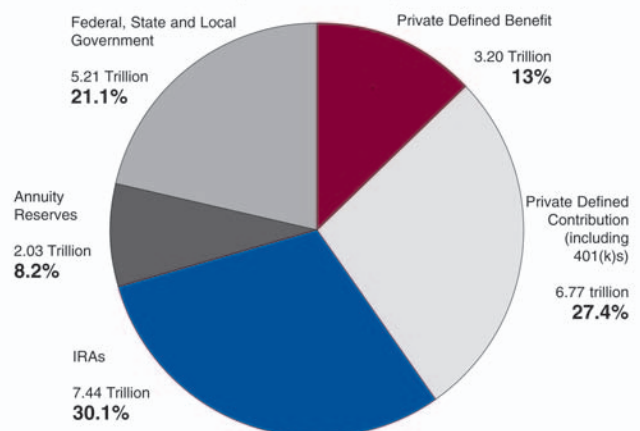
Note that when a conversion or a recharacterization takes place that there are two IRA transactions occurring, a distribution and a contribution.

In a conversion, the individual is deemed to have taken a distribution from his or her traditional IRA, SEP-IRA or SIMPLE IRA. Such funds are then contributed to the Roth IRA via a Roth conversion contribution.

In a recharacterization, the individual is again deemed to have taken a distribution from a Roth IRA or a traditional IRA. Such funds are then contributed to the other type of IRA via a recharacterization contribution.

Sources of Estimated Total U.S. Retirement Plan Assets, December 2014

(Total 24.7 trillion)



Data are estimated. Sources: Investment Company Institute, Federal Reserve Board, Department of Labor, National Association of Government Defined Contribution Administrators, American Council of Life Insurers, and Internal Revenue Service Statistics of Income Division

What to Do – A Person Wants to Make a Charitable IRA Distribution in 2015

Unless the law is extended, in 2015 a distribution cannot qualify as a charitable IRA distribution. IRA accountholders should be informed of this fact. The laws authorizing a charitable IRA distribution expire on 12/31/14, a person age 70½ or older will be able to direct his or her IRA custodian to withdraw an amount of up to \$100,000 from his or her IRA and have such proceeds sent directly to a qualifying charitable organization. The distribution is tax-free if certain rules were met.

What makes this so attractive?

The majority of tax filers over age 70½ use the standard deduction when filing their taxes, making them unable to claim a deduction for their charitable contributions. Individuals were allowed to withdraw funds from their IRA and contribute them to the eligible charity of their choice. These contributions were then excluded from their income. This exclusion, in effect, was the equivalent of claiming a tax deduction. Needless to say, this provision was also a great benefit for many charities. Since the maximum contribution/deduction amount was \$100,000, this benefit was substantial. These contributions were also considered part of the taxpayer's required minimum distribution for the year — another benefit.

What's the outlook for 2015?

It is uncertain that there will be new legislation authorizing charitable IRA distributions for 2015. Tax revenues are needed and this provision reduces revenues.

Congress is considering legislation to extend for two more years or make this law change permanent. The charitable industry has a strong lobby.

Congressman Schock of Illinois introduced in February H.R. 637 which uses the title, "Permanent IRA Charitable Contributions Act of 2015." Mr. Schock has since resigned his seat. H.R. 637 has been discharged from the Budget Committee and is now in the Committee of the Whole House. This bill, if enacted, would make permanent the rule allowing for tax-free distributions from IRAs for charitable purposes. Code section 408(d)(8)

would be amended by deleted the subparagraph (F) which currently states this paragraph does not apply to distributions occurring after December 31, 2014.

The most conservative approach is for a person to wait until a new tax law is enacted authorizing such distributions again. For those individuals over age 70½ and who are willing to assume the risk of a new law being enacted, they could instruct their IRA custodian to send their distribution amount directly to a qualifying charitable organization. The payee of the check must be the charitable organization. If the law would be enacted on a retroactive basis (i.e. for tax year 2015), then it would qualify as a qualified charitable IRA distribution. These individuals must act on the advice of their tax advisers.

DOL Re-Proposes Fiduciary Rule, Continued from page 1

A person who did not meet all five conditions was and is not a fiduciary. The current EBSA believes there are situations where a person should be a fiduciary even though they are not one under existing law. One example, an investment representative selling an investment product to an IRA owner making a rollover contribution is not a fiduciary since he or she most likely is not performing services on a "regular basis". So, the new rule has been proposed with the goal to make many more individuals fiduciaries.

The DOL's proposal, if adopted, will radically change the definition of whom would be a fiduciary for IRA and pension purposes. We will keep you informed. We expect Congress will furnish a response to the DOL's proposal within the next 2-6 weeks.

We would suggest a bank serving as an IRA custodian/trustee will wish to inform its congressional representatives that this proposed regulation is too complicated and the DOL should be informed it should not be adopted and implemented.

IRA Test and Quizzes

We at CWF have developed a number of IRA tests and Quizzes. We define a quiz as being comprised of 20 questions or less. A test involves more than 20 questions.

CWF Quiz #501 is set forth on pages 6-8 of this newsletter. Answers will be furnished in the May newsletter or they may be found by going to CWF's website, www.pension-specialists.com and clicking on the link for IRA Tests at the top. You will need to take the test. There is no charge for taking IRA Quiz #501.

The purpose of these tests is so that IRA personnel and IRA accountholders may determine their IRA knowledge level and learn in what areas they may need to strengthen their IRA knowledge. We have two IRA test webinars – one with 60 questions and one with 80 questions. We also have 4 general tests of 50 questions.

CWF IRA Quiz #501

1. As of April 1, 2015, is a person able to make a qualified charitable distribution for 2015?

- A. True
- B. False

2. A transfer contribution between 2 Roth IRAs is reported in what box on the Form 5498?

- A. Box 2
- B. Box 4
- C. No box as a the transfer amount is not reported on the Form 5498
- D. Box 10

3. John took a distribution from IRA #1 on 8/13/14 and rolls it over on 8/28/14 into IRA #2. He has not had another IRA distribution which he rolled over. He is allowed to take a distribution from IRA #2 on June 10, 2015 and roll it over.

- A. True
- B. False

4. Anne is permitted to make a 2014 SEP-IRA contribution on 9/30/2015 as long as she had a valid tax extension and she has not yet filed her 2014 tax return?

- A. True
- B. False

5. What was the first year some individuals (active participants) lost the right to claim a tax deduction for their IRA contributions?

- A. 1982
- B. 1984
- C. 1987
- D. 1998

6. The IRS now has been given by Federal statute the legal authority to waive the 60-day rollover requirement?

- A. True
 - B. False
-

7. The IRS has been given by Federal statute the legal authority to waive the once per year rollover requirement?

- A. True
- B. False

8. Which code is reported on the Form 1099-R if an IRA owner is disabled:

- A. 1
- B. 7
- C. 3
- D. 5

9. Which code is reported on the Form 1099-R if an IRA owner is age 61?

- A. 1
- B. 7
- C. 4
- D. 5

10. Which code is reported on the Form 1099-R if an IRA owner age 51 converts her traditional IRA to a Roth IRA ?

- A. 1
- B. 7
- C. 2
- D. 5

11. The IRS now has the legal authority to waive the rule stating a required distribution is ineligible to be rolled over?

- A. True
- B. False

12. The IRS now has the legal authority to waive the rule stating a nonspouse is always ineligible to roll over a distribution from an inherited IRA?

- A. True
- B. False

13. A person made a traditional IRA contribution in 2014 for 2014, and she timely recharacterized it to be a Roth IRA contribution in 2015. What code will be reported on the 2015 Form 1099-R to report the recharacterized distribution from the traditional IRA?

- A. N
 - B. P
 - C. Q
 - D. R
-

14. Using the facts of question 13, how is box2(a) of the 2015 Form 1099-R taxable amount to be completed?

- A. Same as box 1
- B. Box is left blank
- C. 0.00

15. Code G is used to report a distribution sent directly by the IRA custodian to a 401(k) plan or other pension plan

- A. True
- B. False

16. Which code is used to report a Roth IRA distribution to Mary, age 28, beneficiary of her dad's Roth IRA. She withdrew \$700 in 2014. Her dad had opened his Roth IRA in 2011. He died in 2013.

- A. S
- B. J
- C. T
- D. Q

17. A Form 1099-INT is to be prepared for which type of IRA or IRAs?

- A. Roth IRAs
- B. Traditional IRAs
- C. Both A and B
- D. No IRA type

18. An IRA custodian uses code H to report when Roth IRA funds are sent to a designated Roth account within a 401 (k) plan.

- A. True
- B. False

19. Which code is used to report a Roth IRA distribution to Mary, age 28, beneficiary of her mom's Roth IRA. She withdrew \$550 in 2014. Her mom had opened her Roth IRA in 2008. She died in 2013.

- A. S
- B. J
- C. T
- D. Q

20. The Roth IRA is named after a former

- A. U.S. Representative
 - B. U.S. Senator
 - C. Secretary of the Treasury
 - D. Governor, State of Texas
-