

## Retirement Plan Benefits

The Secure Act 2.0 was included in The Consolidated Appropriations Act of 2023 (H.R. 2617). It includes many changes that will enhance and facilitate retirement benefits.

Since passage of the original Secure Act in 2019, both House and Senate Members have been working on further changes to encourage saving for retirement. Secure Act 2.0 will increase the required minimum distribution age, allow a larger catch-up contribution limit, facilitate rolling some Section 529 plans into Roth IRAs and generally expand access to retirement plans for moderate and lower-income employees.

Sen. Ron Wyden (D-OR) is Chair of the Senate Finance Committee. He stated, "Americans deserve dignified retirements after decades of hard work and our bill is an important step forward."

Brian Graff of the American Retirement Association stated, "We are grateful to the many members of Congress and staff who worked tirelessly to get Secure 2.0 included in the omnibus legislation. This important legislation will enhance the retirement security of tens of millions of American workers."

- 1. Required Minimum Distribution Age** — Starting in 2023, the age for required minimum distributions (RMDs) will increase from 72 to 73. The RMD age will increase in 2033 to age 75 for individuals who attain age 74 that year. Individuals who are currently taking RMDs will continue to take a distribution each year based on their age. Individuals who are employees and not owners of 5% or more of their company may defer RMDs until retirement, even if that is after age 73 or 75.
- 2. Catch-Up Contributions** — Individuals who are age 50 and older are permitted to make an additional catch-up contribution. During 2023, the catch-up contribution for retirement plan participants over age 50 is \$7,500. However, starting in 2025 individuals who are 60, 61, 62 or 63 will be permitted to make a larger catch-up contribution to Sec. 401(k), 403(b) or 457 plans. The new amount will be the greater of \$10,000 or 150% of the catch-up limit for that year.
- 3. Matching Contributions for Student Loan Payments** — Many younger workers have substantial student loans and may not be able to make both their student loan payments and fund a retirement plan. Employers will be permitted to match the student loan payments with a contribution to a Section 401(k) or 403(b) retirement plan.
- 4. Roth 401(k) Plans Exempt From RMDs** — The Roth IRA is currently exempted from distributions even if the owner has reached the normal RMD age. Starting in 2024, Roth 401(k) plans also will be exempted from RMDs. With no required distributions, Roth IRA and 401(k) plans will be permitted to increase in value during the life of the owner.
- 5. Required Minimum Distribution Penalty Reduced** — The existing penalty for failing to take a required minimum distribution is 50%. Starting in 2023, this penalty will be reduced to 25%. If the plan participant corrects the failure in a timely manner, the excise tax on the penalty is further reduced to 10%.

6. **Section 529 Plans Rolled Over to Roth IRAs** — A Section 529 plan is frequently used for college savings. If the 529 plan has existed for 15 years and is no longer required because the beneficiary has completed his or her education, then up to \$35,000 of that plan may be rolled over into a Roth IRA for the benefit of that individual.
7. **Qualified Charitable Distributions Enhanced** — The IRA charitable rollover or qualified charitable distribution (QCD) limit of \$100,000 for 2023 will be indexed for inflation starting in 2024. Individuals age 70½ or older are permitted to make distributions from their IRA directly to charity and avoid recognition of income. The act expands the QCD by allowing a one-time transfer of up to \$50,000 to a charitable remainder annuity trust, standard charitable remainder unitrust or immediate charitable gift annuity.
8. **Roth Catch-Up Contributions** — Individuals age 50 and above are permitted to make a catch-up contribution to a retirement plan. Starting in 2024, individuals who have incomes over \$145,000 will be required to transfer their catch-up contribution to a Roth 401(k) or IRA. This will require them to pay tax on the catch-up contribution, but the future distributions from the Roth account will be tax-free.
9. **Charity as Remainder Beneficiary** — Individuals with a disability or chronic illness may take IRA distributions over their life expectancy, rather than ten years. If a qualified charity is the remainderman in a trust for the beneficiary who is disabled or chronically ill, the life expectancy stretch is still permitted.

### **IRA to Charitable Gift Annuity Rollover in 2023**

Section 307 of the Secure 2.0 Act allows a one-time rollover of \$50,000 from an IRA to a life income plan. This provision amends Internal Revenue Code Section 408(d)(8) and creates a limited one-time IRA rollover into certain qualified life income plans. This qualified charitable distribution (QCD) of up to \$50,000 is permitted on or after January 1, 2023.

The \$50,000 IRA distribution may be to a non-assignable charitable remainder annuity trust (CRAT), standard payout charitable remainder unitrust (CRUT) or immediate charitable gift annuity (CGA). A net income plus makeup unitrust or a deferred payment gift annuity are not qualified charitable entities. The CRUT or CRAT must be funded with only QCDs. There can be no additions of other assets.

The distribution must be to a charitable remainder trust with the remainder interest distributed to an exempt nonprofit. For a charitable gift annuity, it must have a 5% or higher payout rate and be qualified under Section 501(m)(5)(B). Some two life gift annuities with the IRA owner over age 70½ and a spouse under age 62 may need to increase the payout from the ACGA recommended rate to 5% in order to qualify. If charities have filed the ACGA rates or a fixed rate schedule in New York, California or other regulated states, this selective increase in payout rate may not be permitted by the state insurance commissioner.

The CGA, CRUT or CRAT payouts must either benefit the IRA owner or the IRA owner and spouse. All payments from a charitable remainder trust will be ordinary income. Because there is no investment in the contract under Section 72(c), all payouts from a gift annuity will also be ordinary income.

The bill permits an inflation adjustment starting in 2024. The \$100,000 limit for current IRA rollover gifts (QCDs) and the \$50,000 one-time QCD limit for gifts to a life income plan will be adjusted for inflation. The new numbers will be rounded to the nearest thousand dollars. The outright QCD must be a transfer from the IRA custodian to a qualified nonprofit and may not be to a donor advised fund or supporting organization.

It is likely there will be an influx of QCD-funded charitable gift annuities. The American Council on Gift Annuities reports that the most popular age for funding an initial gift annuity is mid-70s, making this new provision very attractive for both charities and donors.

With many Baby Boomers reaching their mid-70s in the coming decade, charitable gift annuities are entering a golden age. With greatly increased numbers of potential gift annuitants, the coming decades present the possibility of steady growth in the size of the primary gift annuity market. Donors appreciate the fixed payments and generous fixed rates. Although the opportunity to fund a CGA with a QCD is a one-time provision, donors will enjoy the fixed lifetime payments at favorable fixed rates. First-time IRA rollover to CGA donors may become repeat CGA donors using other funding sources.

### **IRA to Gift Annuity or CRT Questions For JCT**

The Consolidated Appropriations Act of 2023 included Division T, the SECURE 2.0 Act of 2022. Section 307 of the SECURE 2.0 Act permits a one-time election for a qualified charitable distribution (QCD) from a traditional IRA to a gift annuity, standard charitable remainder unitrust (CRT) or charitable remainder annuity trust.

Following passage of major legislation, the Joint Committee on Taxation (JCT) publishes a guide that explains in detail the government position with respect to the provisions. The General Explanation of Tax Legislation is commonly called the JCT "Bluebook." Following the passage of the Consolidated Appropriations Act of 2023, JCT will eventually publish a Bluebook on the bill.

There are at least three significant Section 307 issues requiring guidance from JCT. These are whether the full \$50,000 rollover will qualify for the required minimum distribution (RMD), whether it is possible to take both the \$100,000 QCD for an outright gift and the one-time \$50,000 QCD to a gift annuity or CRT in the same year and whether two spouses are permitted to each transfer \$50,000 to a two-life unitrust or gift annuity.

**1. Required Minimum Distribution** — Is the full \$50,000 QCD an amount in fulfillment of the RMD or is just the charitable portion of that plan used to offset the RMD? There have been various drafts of the Legacy IRA Act, which was the basis for Section 307 (substantially reduced in scope from the Legacy IRA Act). At least one version of the Legacy IRA Act included a provision that the full value of the transfer would offset the RMD for that year. However, the

JCT statement following the initial IRA rollover passed in the Pension Protection Act of 2006 included the outright charitable component as fulfillment of the RMD. It will be important for JCT to explain whether or not the full \$50,000 amount or just the charitable portion will qualify for the RMD.

**2. Immediate and Life-Income QCDs** — Is it permitted to use both the Section 408(d)(8)(A) \$100,000 QCD and the Section 408(d)(8)(F) \$50,000 QCD to a gift annuity or CRT in the same year? The draft Legacy IRA Act included a larger limit and the language of that Act specifically covered the combination of the two gifts. Because Section 408(d)(8)(A) and Section 408(d)(8)(F) are separate provisions, it is possible that JCT may permit both to be used in one year. It will be important for JCT to clarify this question.

**3. Spousal Joint Unitrust** — Is it permitted for two spouses who are both over age 70½ to each contribute \$50,000 from separate IRAs to the same charitable remainder trust or to a two-life gift annuity? Subparagraph (F)(i) states that a taxpayer may make a QCD that is up to \$50,000. Subparagraph (F)(iii) states that the remainder in the CRT must be to a qualified exempt charitable organization. Subparagraph (F)(iv) states the charitable remainder trust must be non-assignable and only benefit the IRA owner and spouse. It is significant that (F)(ii) states the trust will be funded with "qualified charitable distributions." The language clearly contemplates that more than one QCD to a unitrust is permissible. Therefore, JCT should permit a spousal unitrust or a two-life gift annuity to be funded with a \$50,000 QCD from each spouse, provided they both are over age 70½ and the funding is simultaneous.

### **Syndicated Charitable Conservation Easement Limit**

Section 605 of the Secure 2.0 Act limits the charitable deductions for gifts of charitable easements by syndicated partnerships. Sen. Steve Daines (R-MT) has been the primary sponsor of bills that limit charitable conservation easement deductions for syndicated partnerships. Sen. Ron Wyden (D-OR) and Sen. Chuck Grassley (R-IA) have questioned the excessive amounts of certain charitable deductions by syndicated limited partnerships.

In numerous cases, the syndicated partnerships purchased property, obtained appraisals based on highly aggressive assumptions that the property could be fully developed for residential or commercial purposes and provided investors with extremely large charitable deductions. Sen. Grassley has opined that many appraisers have greatly overvalued the conservation easement charitable deductions.

Section 605 creates a limit of 2.5 times a partner's relevant basis for the deduction under Section 170. There are specific and technical provisions designed to clarify the amount of the basis. The "modified basis" is the basis before the contribution without regard to Section 752 and taking into account additional provisions as promulgated by the Secretary of the Treasury.

The 2.5 limit applies to gifts made within three years of the contribution by the partner to the partnerships. There are various technical provisions designed to reduce the ability of partnerships to avoid the three-year rule.

There are exceptions for family partnerships and certified historic structures. A partnership owned by an individual and spouse or by other members of the family under Section 152(d)(2) is excluded from the limit. Generally, the family may include parents, siblings, children, grandchildren and their spouses.

The limits also apply to Subchapter S Corporations and similar entities. The accuracy-related penalties under Section 6662(b) are amended. There is no reasonable cause exception for gross valuation misstatements.

These provisions limiting charitable deductions for syndicated partnerships will apply to contributions made after the date of enactment.

Editor's Note: Several land conservation nonprofits supported the new limits on charitable deductions by syndicated partnerships. Section 605 also requires the IRS to publish safe harbor text for extinguishment clauses and boundary line adjustments within 90 days of enactment.

## Conclusion

The Secure Act 2.0 includes many changes designed to encourage retirement savings. These changes may also have a positive impact for charities by expanding charitable giving vehicles for IRA owners. Secure Act 2.0 may also bring about positive changes by limiting abusive syndicated partnership schemes and protecting the generous benefits for gifts of conservation easements.

## IRA Rollover to CGA/CRT FAQs

Section 307 of the Secure 2.0 Act allows a one-time rollover of \$50,000 from an IRA to life income plans. This provision amends Internal Revenue Code Section 408(d)(8) and creates a limited one-time IRA rollover to certain qualified life income plans. The \$50,000 IRA distribution may be to a non-assignable charitable remainder annuity trust (CRAT), standard payout charitable remainder unitrust (CRUT) or immediate charitable gift annuity (CGA).

These frequently asked questions (FAQs) will be helpful to all development staff and professional advisors.

1. Question: What is the effective date for the IRA rollover to CGA or CRT? Answer: The IRA rollover to CGA/CRT in the Secure 2.0 Act is effective on January 1, 2023.
2. Question: May an IRA owner fund a qualified charitable distribution (QCD) for a \$25,000 gift annuity this year, and a second QCD for a \$25,000 gift annuity in 2024? Answer: No. Subparagraph (F)(i) states that the QCD is permitted only if "an election is not in effect under this subparagraph for a preceding tax year." Therefore, the IRA to CGA rollover may be used within only one taxable year. If a donor desires to fund multiple gift annuities with up to \$50,000, it must be done in one year.
3. Question: May a mother use an IRA rollover to CGA for a gift annuity payable to herself and her daughter? Answer: No. Subparagraph (F)(iv) states that the CGA must be only for "the individual for whose benefit such account is maintained, the spouse of such individual, or both."

Therefore, only a spouse may be the second beneficiary. If the IRA owner desires a higher rate for the gift annuity for a spouse, it is possible to create a one life gift annuity for the spouse.

4. Question: Is it possible to do both a \$100,000 QCD to a current gift and a \$50,000 QCD to a CGA? Answer: It is uncertain until there is guidance from the Joint Committee on Taxation (JCT). Because Section 408(d)(8)(A) for the \$100,000 QCD and Section 408(d)(8)(F) for the \$50,000 QCD are separate provisions, it is possible that JCT may permit both to be used in one year. Alternatively, Section 408(d)(8)(F)(i) states the \$50,000 QCD is governed by subparagraph (B)(i), which refers to the "qualified charitable distribution" provision of the \$100,000 limit of subparagraph (A). Under this rationale, JCT could determine the subparagraph (F) \$50,000 limit is part of the subparagraph (A) \$100,000 amount. It will be important for JCT to clarify this question.

5. Question: Will a \$50,000 one-time rollover from a traditional IRA to a CGA fulfill the required minimum distribution (RMD)? Answer: After the Pension Protection Act of 2006 authorized the \$100,000 outright QCD, the JCT "Bluebook" indicated the charitable value of the outright gift would qualify for the RMD. Therefore, the charitable gift present value of the CGA residuum or CRT remainder should qualify for the RMD. It is uncertain whether JCT will approve the full \$50,000 QCD as counting toward the RMD.

6. Question: If both spouses are over age 70½ and have traditional IRAs, may they contribute \$50,000 each to a two life CGA or CRT? Answer: Subparagraph (F)(i) states that a taxpayer may make a QCD that is up to \$50,000. It is significant that (F)(ii) states the trust will be funded with "qualified charitable distributions." The language clearly contemplates that more than one QCD to a unitrust is permissible. Therefore, JCT guidance should permit a spousal unitrust or a two-life gift annuity to be funded with a \$50,000 QCD from each spouse, provided they both are over age 70½ and the funding is simultaneous.

7. Question: May an IRA owner make a QCD to a net income plus makeup CRT? Answer: No. Only a standard charitable remainder unitrust under Section 664(d)(2) is permitted. The CRUT may not be a net income only, a net income with makeup or a FLIP unitrust.

8. Question: May an IRA owner make a QCD transfer to a CGA or CRT and later assign that gift plan to the charity? Answer: No. Subparagraph (F)(iv) states the charitable remainder split-interest gift must be non-assignable and only benefit the IRA owner and spouse.

9. Question: Can there be an addition of a QCD to an existing CRUT? Answer: No. The CRT must be funded exclusively by QCD's. See Subparagraph (F)(ii).

10. Question: Will the Subparagraph (A) \$100,000 limit or the Subparagraph (F) \$50,000 limit change in the future? Answer: Yes. Starting in 2024, the limits will be adjusted (based upon inflation) to the nearest thousand dollars.

11. Question: If the ACGA rate for an IRA owner over age 70 1/2 with a younger spouse is under 5%, will that lower payout be permitted? Answer: No. The immediate gift annuity must pay 5% or more. In some regulated states, the insurance commissioner may not permit a



selective payment of a gift annuity at a rate higher than the rates previously filed by the issuing charity. In this case, the donor and spouse will need to wait to fund the CGA in a future year.

12. Question: Will all CGA and CRT payments be ordinary income? Answer: Yes. Subparagraph (F)(v) states CRT income will be ordinary income and the gift annuity has no investment in the contract. Therefore, the CGA income will also be ordinary income.

Editor's Note: This FAQ is informational and educational in nature. It is not offering professional tax, legal or accounting advice.

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