

# employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

## Direct Rollovers to Nonspouse Beneficiaries - Clarification of Notice 2007-7

The Service has learned there is some confusion over the nonspouse rollover rules recently published in [Notice 2007-7](#). Specifically, questions have been raised about the interaction of a special rule in Q&A-17 and a general rule in Q&A-19.

According to Marty Pippins, Manager, EP Technical Guidance and Quality Assurance: "One goal in issuing published guidance is to be as clear and accurate as possible. Nevertheless, questions are raised on occasion about the intent of guidance issued by IRS and Treasury. With respect to Notice 2007-7, questions were raised about the interaction of a general rule in Q&A-19 and a special rule in Q&A-17. The general rule of Q&A-19 was not intended to override the special rule in Q&A-17."

The Pension Protection Act of 2006 added § 402(c)(11) to the Code. Under § 402(c)(11), beginning in 2007, if a participant in a retirement plan dies leaving his or her accrued benefit under the plan to a nonspouse designated beneficiary, the designated beneficiary may be able to roll over the inherited funds into an IRA set up to receive such funds. The rollover must be accomplished by a direct trustee-to-trustee transfer (a "direct rollover") and the retirement plan must provide for this type of rollover. Also, the distribution must otherwise be eligible for rollover, meaning, for example, that required minimum distributions under § 401(a)(9) cannot be rolled over. See § 402(c)(4).

Notice 2007-7, Q&A-19, describes the general rule for determining required minimum distributions in the case of a nonspouse beneficiary rollover. It provides that the rules for determining required minimum distributions under a plan with respect to a nonspouse designated beneficiary also apply to an IRA. If a participant dies before his or her required beginning date, the required minimum distributions for purposes of determining the amount eligible for rollover with respect to a nonspouse designated beneficiary are determined under either the 5-year rule described in § 401(a)(9)(B)(ii) or the life expectancy rule described in § 401(a)(9)(B)(iii).

Notice 2007-7, Q&A-17(c)(2), describes a special rule that is an exception to the general rule in Q&A-19. If, under a plan, the 5-year rule applies for determining required minimum distributions, a nonspouse designated beneficiary may, nevertheless, treat the plan as using the life expectancy rule provided the rollover into the IRA is made prior to the end of the year following the year of the participant's death. Thus, despite a plan provision for the 5-year rule, the nonspouse designated beneficiary is permitted to treat the plan as using the life expectancy rule both for determining the amount eligible for rollover and for determining the required minimum distributions under the IRA, but only if the rollover is made prior to the end of the year following the year of the participant's death.

For example, if a participant in a § 401(k) plan dies in 2007 before his required beginning date and under the plan the 5-year rule applies for determining required minimum distributions, the participant's nonspouse designated beneficiary is permitted to roll over the deceased participant's entire account balance into an IRA in 2007 and take required minimum distributions from the IRA under the life expectancy rule. If the account balance is rolled over in 2008, the amount eligible for rollover must be reduced by the amount of the required minimum distribution for 2008, determined using the life expectancy rule. After 2008, the nonspouse designated beneficiary may still roll over funds from the § 401(k) plan, but would have to take required minimum distributions from the IRA under the 5-year rule. No amount can be rolled over after 2011.

There has also been a question whether a plan is required to offer a direct rollover of a distribution to a nonspouse designated beneficiary. Pursuant to § 402(c)(11) of the Code and Notice 2007-7 Q&A-14, a plan may, but is not required to, offer a direct rollover of a distribution to a nonspouse designated beneficiary. ■

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