AMERICAN BENEFITS COUNCIL

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Proposed Changes to the After-Death Distribution Requirements

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Employer-sponsored tax-favored retirement plans (including qualified 401(a), 403(a), 403(b) and 457(b) plans) and IRAs must begin distributions by a participant's or IRA owner's "required beginning date" (very generally determined by reference to the date the individual turns 70 ½). Under current law, if a participant or IRA owner dies prior to the required beginning date, and the designated beneficiary is not the spouse, the remaining assets in the plan or IRA must be distributed (1) within 5 years following the individual's death (the "five-year rule"), or (2) over the life, or a period not exceeding the life expectancy, of the designated beneficiary, generally commencing within one year of the death. If a participant or IRA owner dies on or after the required beginning date, the minimum distribution rules can be satisfied by distributing the remaining assets in the plan or IRA over the life expectancy of the designated beneficiary.

Under the proposal, the five-year rule would apply in all cases, regardless of whether the participant or IRA owner dies before the required beginning date, or dies on or after that date, unless the beneficiary is an "eligible beneficiary." In the case of an eligible beneficiary, the five-year rule would be delayed and would apply after the death of the beneficiary (rather than after the death of the participant or IRA owner). For this purpose, an "eligible beneficiary" includes any beneficiary who, as of the date of the death of the participant or IRA owner, is (1) the individual's surviving spouse; (2) disabled within the meaning of Code section 72(m)(7); (3) a chronically ill individual within the meaning of Code section 7702B(c)(2); (4) not more than 10 years younger than the participant or IRA owner; or (5) a child who has not reached the age of majority. If a child is an eligible beneficiary by virtue of having not reached the age of majority before the participant's or IRA owner's death, the five-year rule applies beginning with the date that the child reaches the age of majority.

This proposal would be effective generally for distributions with respect to participants and IRA owners who die after December 31, 2012. If a participant or IRA owner dies

before January 1, 2013, and the designated beneficiary dies after December 31, 2012, the five-year rule would apply after the death of the designated beneficiary. Thus, the five-year rule could apply in certain circumstances to designated beneficiaries who currently are taking after-death distributions.

> *Example:* Assume that an employee died in 2009 prior to the required beginning date. In 2010, the designated beneficiary commenced taking after-death distributions in accordance with current law for a period certain of 20 years (*i.e.*, through 2030). Under the proposal, if the designated beneficiary dies in 2013, the entire remaining interest would need to be distributed no later than 2018.

Also, the proposal provides limited relief from the five-year rule in certain cases for "qualified annuities" where employees and IRA owners die after December 31, 2012, and annuity payments have either irrevocably begun before January 1, 2013, or have been irrevocably elected before the date of enactment.

The proposal also includes a modification of the minimum distribution rules for employees who become five-percent owners of their employer after attaining age 70 ½.

This summary prepared based on the Joint Committee of Taxation description (February 7, 2012) http://www.jct.gov/publications.html?func=startdown&id=4393.