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Dear readers:

Minimum required distributions have been “suspended” for the year 2009 by a new tax law, “WRERA.” This article (which was first published in Steve Leimberg’s *Employee Benefits Newsletter*, [www.leimbergservices.com](http://www.leimbergservices.com)) explains the new law and its effects on all retirement plan owners and beneficiaries, along with what we DON’T know (yet).

This posting can be treated as an update of the book *Life and Death Planning for Retirement Benefits*. Basically, almost everywhere that the book says something about taking a minimum required distribution, you should insert the phrase “except in 2009!”

Natalie Choate

### **Worker, Retiree, and Employer Recovery Act of 2008 (H.R. 7327) suspends RMDs for 2009, fixes beneficiary rollovers and Roth-rollover glitch**

On December 11, 2008, Congress passed the “Worker, Retiree, and Employer Recovery Act of 2008” (WRERA). President Bush signed it into law on December 23. Though most of the new law deals with how employers fund retirement plans, WRERA contains three provisions that directly affect participants and beneficiaries. I thank Mike Jones, CPA, and Barry Picker, CPA, for their input into this article.

#### **EXECUTIVE SUMMARY:**

Under WRERA,

- ✓ Minimum required distributions are suspended for 2009 for defined contribution plans, for both retirees and beneficiaries.
- ✓ Qualified plans will be required to allow beneficiary rollovers to inherited IRAs effective in 2010. Currently, offering such rollovers is optional for plans.
- ✓ The Pension Protection Act glitch that prohibited rollovers from Roth 401(k)s to Roth IRAs for high-income individuals has been fixed.

#### **DETAILS:**

##### **I. MINIMUM REQUIRED DISTRIBUTIONS SUSPENDED FOR 2009 (DEFINED CONTRIBUTION PLANS ONLY)**

§ 401(a)(9) of the Code contains the minimum distribution rules for qualified retirement plans. These rules are “imported” into other Code sections, so they also apply to 403(a) and 403(b)

plans, IRAs, and 457 plans. If you are not familiar with the minimum distribution rules, read Chapter 1 of my book *Life and Death Planning for Retirement Benefits* (6<sup>th</sup> ed. 2006; [www.ataxplan.com](http://www.ataxplan.com)), but at this point you might as well wait a year before you bother to learn the rules.

WRERA adds a new subparagraph (H) to § 401(a)(9), entitled “Temporary waiver of minimum required distribution.” The new subparagraph provides that “The requirements of this paragraph shall not apply for calendar year 2009 to” any defined contribution plan under § 401(a), § 403(a) or § 403(b); any governmental 457 plan; or “an individual retirement plan.”

Though § 401(a)(9)(H) does not cross-reference other Code sections, “defined contribution plan” is defined in § 414(i) as “a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant’s account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.” Thus, it includes 401(k) plans and profit-sharing plans. “The term ‘individual retirement plan’ means-- (A) an individual retirement account described in section 408(a), and (B) an individual retirement annuity described in section 408(b).” § 7701(a)(37). In other words, an IRA.

Thus, anyone who would otherwise be required to take a distribution from one of these types of plans in 2009—whether participant or beneficiary—is off the hook. He can skip a year! Here’s a look at how this change affects various clients, and some questions the suspension raises. The following paragraphs A–G deal only with defined contribution plans and IRAs that have not been annuitized. For defined benefit plans and IRAs that have been annuitized or that are annuitized in 2009, see paragraph H.

#### **A. Effect on over-age 70½ participants**

A retirement plan owner (“participant”) generally must start taking annual “minimum required distributions” (MRDs) from his traditional IRA or other retirement plan at age 70½ (or, in the case of 403(b) plans and some qualified retirement plans (QRPs) upon retirement if later).<sup>1</sup> Each year’s MRD is computed by dividing the prior year-end account balance by a factor from the IRS’s Uniform Lifetime Table (ULT) (or in certain cases by a factor based on the joint life expectancy of the participant and his or her spouse). Under WRERA, participants may simply skip the 2009 MRD; there is no MRD for 2009.

**Roland Example:** Roland has an IRA. He computes his MRDs using the Uniform Lifetime Table. In 2008, he reached age 74. His 2008 factor from the ULT is 23.8. His 2008 MRD is the account balance as of 12/31/2007 divided by 23.8. This amount must be withdrawn from the IRA in 2008. In 2009, he turns age 75, so his ULT factor for 2009 is 22.9. If it were not for WRERA, he would be required to withdraw 1/22.9th of the 12/31/2008 account balance by the end of 2009. Because

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<sup>1</sup> Roth IRAs do not have any MRDs prior to the participant’s death. Certain participants may be exempted from all or part of the lifetime distribution requirements by certain “grandfather” rules. For full detail on the lifetime minimum distribution rules, see Chapter 1 of *Life and Death Planning for Retirement Benefits*.

of WRERA he can simply skip taking any distribution in 2009. He can take as much or as little as he wants to from the IRA in 2009. Any distribution he takes in 2009 will be includible in his gross income, to the same extent as in any other year; it just will not be considered a *required* distribution. In 2010, he'll pick up again with MRDs. He will attain age 76 on his 2010 birthday, so his factor that year will be 22.0. In 2010, he will have to withdraw 1/22nd of the 12/31/2009 account balance.

Note that qualified charitable distributions (direct transfers to a charity from an IRA) are still permitted for 2009 for IRA owners over age 70½. They just won't count towards the minimum required distribution because there IS no minimum required distribution!

## **B. Effect on participants turning age 70½**

§ 401(a)(9)(H) attempts to deal with the RBD, but its effects are unclear (to me) with respect to individuals who reach age 70½ in 2008 or 2009. The way I read it, and I must be wrong, a person who turned age 70½ in 2008 can skip two years' worth of MRDs, but a person who reaches age 70½ in 2009 cannot skip ANY year!

Here is what the new law says: "The required beginning date with respect to any individual shall be determined without regard to [new subparagraph § 401(a)(9)(H)] for purposes of applying [§ 401(a)(9)] for calendar years after 2009." § 401(a)(9)(H)(ii)(I).

Let's see how this applies to IRAs. (When dealing with a 403(b) plan, or a 401(a) plan where the participant is not a five-percent owner of the sponsoring employer, for "age-70½-year" read "age-70½-year (or year of retirement, if later).")

### 1. Person who reached age 70½ in 2008

An IRA owner who attained age 70½ in 2008 can be said to have "accrued" the obligation to take an MRD for the year 2008 (although if he dies before his required beginning date the 2008 MRD "disappears"; it is no longer required). Normally, the deadline for taking any particular year's MRD is December 31 of that year, but a special rule applies for the first year: The deadline for the age-70½-year MRD is April 1 of the following year. That deadline is called the required beginning date or RBD.

Minimum distributions must be distributed annually, beginning "not later than" the RBD, for the rest of the participant's life. § 401(a)(9)(A)(ii).

However, under WRERA, the minimum distribution requirements of § 401(a)(9) "shall not apply" for calendar 2009. Thus, *there is no such thing as an RBD in 2009*; § 401(a)(9)(A)(ii) simply does not exist. Can this mean that a person who postponed his 2008 age-70½-year MRD into 2009 is simply excused from taking the 2008 MRD—as well as the 2009 MRD?

**Matthew Example:** Matthew reached age 70½ in 2008. He did not take any distributions from his IRA in 2008. He planned to take the 2008 MRD from the IRA in the first three months of 2009, before his RBD (April 1, 2009). However, the requirement in § 401(a)(9)(A)(ii) that distributions to him must begin "not later than" his RBD simply does not exist for the year 2009. Similarly, the requirement that he take a second distribution by 12/31/2009 (the minimum distribution for his age-71½ year) also does not exist.

Barry Picker points out that the Committee Report of the Joint Committee on Taxation states that a participant who turns age 70½ in 2008 would be excused only from taking the 2009 MRD; since the minimum distribution rules *did* apply in 2008, the 2008 distribution must still be taken by its usual deadline of 4/1/2009. That may indeed be what Congress intended; I just don't see how you get that result from the language of § 401(a)(9)(H).

## 2. Person who reaches age 70½ in 2009

Under the new Code subsection, the RBD “with respect to any individual shall be determined without regard to this subparagraph for purposes of applying this paragraph for calendar years after 2009.” § 401(a)(9)(H)(ii)(I). From this it appears that a person who turns age 70½ in 2009 cannot skip taking ANY MRDs, even the one for 2009:

**Claire Example:** Claire has an IRA. She turns age 70½ in 2009. She does not have to take an MRD in 2009 for two reasons. First, § 401(a)(9) does not apply in 2009. Second, even under the “regular” MRD rules the deadline for the age 70½-year MRD was not until April 1 of the following calendar year. Next year, in 2010, we know from § 401(a)(9)(H)(ii)(I) that Claire’s RBD must be determined “without regard to” § 401(a)(9)(H). Accordingly it is determined under the “usual” rules, which means that Claire’s RBD is April 1, 2010. That in turn suggests that her account must begin to be distributed to her “not later than” that date...and in effect she will have to take the 2009 MRD by 4/1/2010 if she did not take it in calendar 2009!

## 3. IRS can fix these problems

I expect that the IRS will fix these problems by decreeing that a minimum distribution is still required for someone who turned age 70½ in 2008, and that the deadline for it is still April 2, 2009, WRERA or no WRERA; that no minimum distribution is required for 2009 for someone who reaches age 70½ in 2009, even though that person’s RBD is technically April 1, 2010.

### **C. MRDs suddenly become eligible rollover distributions**

Required distributions are not eligible rollover distributions. § 402(c)(4)(B), § 408(d)(3)(E). For 2009, since there will be no required distributions from IRAs and defined contribution plans, almost all distributions from such plans will suddenly become eligible rollover distributions. (For list of distributions that are NOT eligible rollover distributions, see ¶ 2.6.02 of *Life and Death Planning for Retirement Benefits*.)

When a qualified plan makes an “eligible rollover distribution” to a participant, the plan is generally required: to give the participant certain notices (§ 402(f)); to transfer the distribution directly to an IRA for the participant (direct rollover) unless the participant has elected *out* of direct rollover treatment (§ 401(a)(31)); and to withhold 20 percent federal income tax from the distribution if the participant elects to take the distribution outright (§ 3405(c)).

In an apparent effort to ease the burden on plan administrators, WRERA makes a special exception for 2009. Any 2009 distribution that WOULD have been a minimum required distribution

but for § 401(a)(9)(H) is NOT treated as an “eligible rollover distribution” for purposes of those three provisions. § 402(c)(4), as amended by WRERA.

This does not mean the participant cannot roll over the distribution. The distribution is still an eligible rollover distribution *for purposes of the participant’s ability to roll it over under § 402(c)(1)(A)*. It’s just that the employer does not have to withhold income taxes from the distribution, etc., if the distribution WOULD have been an MRD but for WRERA.

Query whether this will really make things easier for employers. They will now still have to figure out minimum required distributions for 2009. They don’t have to distribute these phantom MRDs...but if the participant requests a distribution, the employer now has to apply different requirements to that distribution depending on whether it would or would not have been an MRD but for WRERA. That seems *more complicated* than just treating all otherwise-qualifying payouts as eligible rollover distributions for all purposes!

#### **D. Effect on beneficiaries: life expectancy payouts**

If a participant dies before his RBD his benefits must be paid out either (i) in annual instalments over the life expectancy of his designated beneficiary, or (ii) by the end of the calendar year that contains the fifth anniversary of his date of death (5-year rule), or (iii) more rapidly. If he dies on or after his RBD, benefits must be paid out over the life expectancy of the designated beneficiary or of the participant; the life expectancy of the participant applies if there is no designated beneficiary or if the participant’s life expectancy is longer than that of the beneficiary.<sup>2</sup>

For ongoing life expectancy payouts to beneficiaries (regardless whether the payout is over the life expectancy of the beneficiary or of the participant), the effect of the suspension of MRDs is, presumably, simply that the beneficiary can just skip one year’s MRD:

**Phoebe Example:** Phoebe inherited an IRA as designated beneficiary of her father who died in 2002. She is withdrawing the benefits in annual instalments over her life expectancy. She reached age 58 on her birthday in 2003 (the year after the year of her father’s death), so her life expectancy in that year (using the IRS’s single life table) was 27.0 years. Thus, her required distribution for 2009 (the seventh year of the payout) would normally be 1/21st of the 12/31/2008 account balance. She can skip taking any distribution in 2009 if she wishes. In 2010, she’ll resume taking required distributions just as if nothing had happened. In 2010, her MRD will be 1/20th of the 12/31/2009 account balance.

But there is at least one other possible interpretation, namely, that the year 2009 simply disappears out of the entire calculation (similar to the treatment of the 5-year rule; see “E” below), and the beneficiary in effect gets to extend her life expectancy by one year. Under this alternative interpretation, “Phoebe’s” MRD for the year 2010 would be the MRD she missed in 2009 (1/21st of the prior year-end account balance), not the 1/20th it would have been under the prior rules.

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<sup>2</sup> For explanation of the required beginning date, and definitions of designated beneficiary and see-through trust, see, respectively, ¶ 1.4, ¶ 1.7, and ¶ 6.2 of *Life and Death Planning for Retirement Benefits*.

Which method is right? We won't know until the IRS speaks; and they may come up with some other method altogether! The IRS has until 2010 to decide.

Most commentators I've talked to believe that the method described in the "Phoebe" paragraph is the correct one; and that if 2009 happens to be the final year of a fixed-term life expectancy payout, then the final distribution of 100 percent of the account balance that otherwise would have been due in 2009 will instead be due in 2010.

#### **E. Effect on beneficiaries: the 5-year rule.**

The "5-year rule" always applies if the participant died before his RBD and did not leave his benefits to a "designated beneficiary" (generally an individual or qualifying "see-through trust"), or sometimes even when benefits ARE left to a designated beneficiary.<sup>3</sup>

WRERA specifies how the 2009 suspension affects payouts under the 5-year rule: The 5-year period "shall be determined without regard to calendar year 2009." § 401(a)(9)(H)(ii)(II). Effectively, the "5-year rule" becomes the "6-year rule" for beneficiaries of decedents who die in the years 2004–2009. So, the new deadline for such beneficiaries is the end of the year that contains the sixth anniversary of the participant's death.

**Claude Example:** Claude died in 2004, before his required beginning date, leaving his traditional IRA to his estate. Because an estate is not a designated beneficiary, the 5-year rule applied, meaning that (but for WRERA) all amounts would have had to be distributed out of the IRA no later than 12/31/2009. Because of WRERA, that deadline is extended to 12/31/2010.

#### **F. Effect on beneficiaries: Other issues**

For other beneficiary situations, the effect is not quite as obvious. Thanks to Mike Jones for pointing out these examples:

- ✓ Post-death MRDs are determined differently depending on whether the participant died before or after his RBD. What if a participant who turned 70½ in 2008 dies in May 2009? In a "normal" year, he obviously would have died "after" his RBD (because his RBD would have been April 1, 2009). But in 2009 there is no "RBD" because § 401(a)(9) doesn't exist. This situation is apparently covered by § 401(a)(9)H(ii)(I), which provides that the RBD will be determined under the "regular" rules (e.g., April 1 of the year following the year the participant attained age 70½) in post-2009 years, even if the RBD fell in 2009. Thus, the participant in this example would be deemed to have died "after" his RBD, for purposes of computing MRDs in 2010 or later.
- ✓ There are other post-mortem deadlines. For example, if benefits are left to multiple beneficiaries, the beneficiaries have until December 31 of the year after the year of the

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<sup>3</sup> See ¶ 1.5.07 of *Life and Death Planning for Retirement Benefits* regarding when the 5-year rule applies.

participant's death to divide the inherited account into separate accounts, in order to be treated as inheriting separate accounts for minimum distribution purposes; to qualify as a "see-through trust," the trustee must give a copy of the trust to the plan administrator by October 31 of the year after the year of the participant's death; and a beneficiary who is a beneficiary as of the date of death, but who ceases to be such by September 30 of the year after the year of death, does not count as a beneficiary for MRD purposes. It appears advisable to assume that *nothing in the new law extends these deadlines*. Thus, beneficiaries of decedents who died in 2008 should still complete these actions by the applicable deadline in 2009, even though, when all is said and done, they will not have to take any MRD in 2009.

#### **G. Effect on Roth conversion eligibility**

For one more year (2009), the ability to convert a traditional plan or IRA to a "Roth" IRA is limited to individuals whose adjusted gross income (AGI) does not exceed \$100,000 (and whose filing status is not "married filing separately"). See § 408A(c)(3)(B), as in effect for years prior to 2010. AGI for this purpose excludes the gross income resulting from the conversion itself and (for the years 2005–2009) also excludes minimum required distributions from an IRA. See § 408A(c)(3)(C) as in effect for years prior to 2010 and Reg. § 1.408A-3, A-6.

However, in 2009 there will be no "required distributions" from the taxpayer's IRA. Thus, this element of the determination of "AGI" for Roth conversion purposes is nugatory for 2009 (except possibly for an IRA that has been annuitized; see paragraph H, below).

Does this create a hardship for someone who was planning to convert in 2009 but still needs to take those (formerly) required IRA distributions for living expenses? No, because the problem is easily avoided:

**Ruth Example:** Ruth's AGI in 2009, before she does a Roth IRA conversion and before taking any distributions from her IRA, will be \$90,000. Her minimum required IRA distribution in 2009 would normally be \$30,000. She needs that \$30,000 IRA distribution, because she's planning to live on that plus her \$90,000 of other income. She also wants to convert \$500,000 of her \$2 million IRA to a Roth IRA in 2009.

In a "normal" year, she could take the \$30,000 MRD and her AGI (for Roth conversion purposes) would still be only \$90,000, because the \$30,000 IRA MRD would be disregarded. But this year if she takes \$30,000 out of the traditional IRA it is NOT going to be "disregarded" for Roth conversion purposes because it is no longer a REQUIRED distribution. So what she should do instead is this: Convert \$530,000 of her IRA to a Roth. That generates \$530,000 of gross income, but that income is disregarded for purposes of determining her Roth-conversion eligibility. Then she can take \$30,000 out of the Roth IRA tax-free for her living expenses.

#### **H. Effect on defined benefit plans**

The new temporary Code section, § 401(a)(9)(H), does not apply to qualified plans that are defined benefit plans. Thus a defined benefit plan is *not* authorized to suspend paying minimum required distributions. Any participant or beneficiary who is receiving required distributions from

a defined benefit plan is not authorized to stop taking them, or to roll over any such distributions received.

This distinction makes sense. The purpose of the WRERA provision is to provide relief to investors whose plan values collapsed in the market crash of 2008. The participant in a defined benefit plan does not need this relief because he/she does not take any investment risk. The investment risk falls only on the plan, and obviously Congress is not going to authorize pension plans to suspend payments to retirees and beneficiaries to give the plan relief!

Under the minimum distribution rules as they apply to defined benefit plans, once the annuity payout begins to the retiree or beneficiary, *all* distributions under the annuity payout are considered minimum required distributions. Reg. § 1.401(a)(9)-6, A-1(a).<sup>4</sup> Thus, such distributions are not eligible rollover distributions.

### **I. Effect on annuitized IRAs and DC plans**

A participant can purchase an immediate annuity contract “inside” a defined contribution plan account or individual retirement account, as long as the contract requires distributions that comply with the minimum distribution rules.<sup>5</sup> Once an IRA or other defined contribution plan is thus “annuitized,” the defined contribution minimum distribution rules cease to apply, and the defined benefit rules apply instead. All distributions under the annuity contract are considered nonrollable minimum required distributions, just like distributions from a defined benefit plan, even if the participant could have elected a slower annuity payout. Reg. § 1.401(a)(9)-6, A-1(a).

When a defined contribution plan is “annuitized,” the participant’s benefit is converted to an annuity through purchase of an insurance company annuity contract, and the investment risk is shifted from the participant to the insurance company. Logically, therefore, the suspension of minimum distribution rules that applies only to defined contribution plans should NOT apply to a defined contribution plan or IRA that has been annuitized. Annuitized defined contribution plans should be treated the same as qualified defined benefit plans. Possibly WRERA would be interpreted that way. However, it would be helpful if the IRS would clarify this point.

The answer (does it or doesn’t it apply?) may not make much difference to most participants who have annuitized their IRAs. If a participant is receiving annuity payments from an immediate annuity contract purchased inside his IRA, he will not want to suspend those payments; doing so would require renegotiating the annuity contract, which typically is not even possible. Furthermore, if the annuity payments extend for life or for 10 or more years, the annuity distributions cannot be rolled over tax-free to another plan regardless of whether WRERA applies: “[A]ny distribution which is one of a series of substantially equal periodic payments” made annually or more often (1) over the life or life expectancy of the participant, (2) over the joint life or life expectancy of the participant and a designated beneficiary, or (3) over a “specified period of 10 years or more” is not

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<sup>4</sup> See complete explanation of the defined benefit minimum distribution rules in Chapter 10 (¶ 10.2) of *Life and Death Planning for Retirement Benefits*.

<sup>5</sup> See Reg. § 1.401(a)(9)-6, A-1(a), and ¶ 10.2.03 of *Life and Death Planning for Retirement Benefits*.

an eligible rollover distribution *regardless* of whether it is a required distribution. § 402(c)(4)(A). Reg. § 1.402(c)-2, A-5.

However, it would be in the IRS's best interest to promptly clarify that the minimum distribution rules still apply to IRAs that have become subject to the defined benefit plan MRD rules, AND to the purchase of an immediate annuity inside an IRA in 2009. Otherwise, someone might attempt to use the 2009 suspension of the MRD rules to purchase an immediate annuity, using IRA funds, that (in a "normal" year) would violate the "incidental death benefit" rule:

**Alex Example:** Alex turns age 78 in 2009. She wants to minimize distributions from her \$1 million IRA during her lifetime and pass as much of the value as possible to her daughter Ginger, age 55. In 2009, she purchases an annuity contract, inside the IRA, that pays her \$100/year for her life, and after her death will pay \$50,000 a year to Ginger for life. In a "normal" year this would violate the minimum distribution "incidental death benefit" rule. In a normal year, Alex could not legally purchase inside an IRA an annuity contract that would shift almost all the benefits into the survivor annuity for a much younger beneficiary. However, in 2009 there are no minimum distribution rules for IRAs, so Alex says she can buy whatever type of annuity she wants. After 2009, the rules come back into existence but by then the annuity contract has already been bought and it is in payout phase, so Alex doesn't care.

To head off game-playing by Alex and her ilk, the IRS should swiftly make it clear that the defined benefit plan minimum distribution rules DO apply in 2009 to the process of "annuitizing" a defined contribution plan. The WRERA suspension should be ONLY for individual account plans that STAY as such throughout 2009.

## **II. PLANS MUST OFFER BENEFICIARY ROLLOVERS STARTING IN 2010; NOTICE 2007-7 REVERSED**

The Pension Protection Act of 2006 added § 402(c)(11) to the Code, thereby for the first time allowing any designated beneficiary to have qualified retirement plan benefits he had inherited transferred, via plan-to-plan transfer (direct rollover), to an "inherited IRA" (an IRA opened after the participant's death, in the name of the deceased participant payable to the beneficiary). This long-awaited reform finally enabled designated beneficiaries to benefit from the "life expectancy payout method" even though the qualified plan they had actually inherited did not permit that form of distribution.

To the consternation of the estate planning community, the IRS decreed (in IRS Notice 2007-7) that qualified plans were not required to allow such nonspouse beneficiary rollovers. Beneficiary rollovers were strictly optional with the plan, according to the IRS! This position eviscerated beneficiary rollovers, as many plans decided not to bother offering beneficiary rollovers, or to offer them only under certain circumstances.

In WRERA, Congress has now made it clear that plans MUST offer nonspouse beneficiary rollovers to designated beneficiaries; unfortunately (to give plans time to gear up for this change, presumably) the "fix" is not effective until 2010. Here is the change WRERA made:

§ 401(a)(31) is the section that imposes on qualified plans the obligation, if "the distributee of any eligible rollover distribution" so elects, to transfer such distribution directly to an eligible

retirement plan selected by the distributee. For purposes of § 401(a)(31), “eligible rollover distribution” “has the meaning given such term by section 402(f)(2)(A).” Prior to WRERA, § 402(f)(2)(A) did not explicitly mention *beneficiary* rollovers. WRERA amends § 402(f)(2)(A) to add “Such term [i.e., eligible rollover distribution] shall include any distribution to a designated beneficiary which would be treated as an eligible rollover distribution by reason of” § 402(c)(11), if the requirements of § 402(c)(11) were satisfied, effective for years after 2009.

### **III. DRAC-TO-ROTH-IRA ROLLOVERS ALLOWED FOR HIGH-INCOME EMPLOYEES**

Prior to 2008, only IRAs, and not other kinds of retirement plans, could be “converted” (rolled over) into Roth IRAs. So, to “convert” money in a qualified plan to Roth status, the participant first had to move the money from the QRP into a traditional IRA, because direct transfers to a Roth IRA from a QRP were not permitted.

Beginning in 2008, that changed, and direct rollovers from a qualified plan to a Roth IRA were permitted under § 408A(e)(1)(B). In order to make clear that the income and filing status limitations on Roth IRA conversions also applied to these direct plan-to-Roth-IRA conversions, Congress provided that no rollover to a Roth IRA from any eligible plan (other than a Roth IRA) was allowed if the taxpayer’s adjusted gross income exceeded \$100,000 (or if the taxpayer was “married filing separately”). See § 408A(c)(3)(B), as originally enacted to be effective for the years 2008–2009. Unfortunately Congress failed to notice that the way it had worded this section, NO money could be rolled from a QRP to a Roth IRA by an individual who exceeded the income limit (or was married filing separately)...not even from a designated Roth account (DRAC; also called “Roth 401(k)”)! This made no sense...a rollover from a DRAC to a Roth IRA would not be a “conversion” of the rolled funds since they were ALREADY in a Roth-type account prior to the rollover.

WRERA fixed this glitch by adding the following sentence to § 408A(c)(3)(B), effective for the years 2008 and 2009: “this subparagraph shall not apply to a qualified rollover contribution from a Roth IRA or to a qualified rollover contribution from a designated Roth account which is a rollover contribution described in” § 402A(c)(3)(A). Accordingly, a participant in a designated Roth account can now roll that money directly to a Roth IRA regardless of his or her income level or filing status.