LEGISLATIVE ALERT

Prepared by
Conrad Teitell*

THE LEGACY IRA
• Charitable IRAs will include life-income gifts
• Empowers gifts by the middle class
• Help get this beautiful baby enacted

The Legacy IRA Act was introduced on May 6, 2016 by House Ways and Means Committee members Peter Roskam (R-IL), Earl Blumenauer (D-OR), Erik Paulsen (R-MN) and Pat Tiberi (R-OH). Kevin Cramer (R-ND), a long-time supporter of this legislation, is also a lead cosponsor.

The driving force behind the bill is the Charitable IRA Initiative (Rollover Rangers)—page 5.

Current law. Individuals age 70 1/2 or older can make direct (outright) gifts from an IRA of up to $100,000 per year to public charities (other than donor advised funds and supporting organizations) and to private operating and passthrough (conduit) foundations without having to report the IRA distributions as taxable income on their federal income tax returns. A charitable deduction isn’t allowable.

First enacted in 2006, this law was made permanent by the PATH Act of 2015. Direct IRA rollovers have helped American charities feed the hungry; and provide education, medical services, housing assistance, and myriad other services that Americans need.

The expansion in the Legacy IRA Act authorizes tax-free IRA rollovers for gifts that benefit charities and provide taxable retirement income—charitable life-income plans—for the donors. At the donor’s death, the assets in the plan are owned outright by the qualified charity. Charitable deductions aren’t allowable for amounts transferred to the life-income plans (charitable remainder trusts and charitable gift annuities).

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Qualified charities. The same donees authorized for direct outright transfers to charities (see first paragraph).

Annual ceiling on transfers from a donor’s IRA for a life-income plan: $400,000, for individuals 65 or older. For individuals 70½ or older, the combined ceiling for direct and life-income transfers from their IRAs is $400,000, with a $100,000 cap for direct transfers.

Satisfaction of Required Minimum Distributions. The types of life-income plans assure that the annual taxable payments will generally be equal to (or greater than) what individuals must receive under the required minimum distribution rules had they kept the funds in their IRAs instead of rolling them over for charitable life-income plans.

Minimal revenue cost to the government. Under the authorized life-income plans, the IRA owners will be taxable on income received at ordinary income tax rates. Because the payouts are 5 percent or more, there generally will be more income paid from the charitable life-income plans than under the normal minimum required distribution rules. The only authorized income beneficiaries of the life-income plans are the individual IRA owner, his or her spouse or both of them. At death, the assets in the plan go directly to the named qualified charity or charities and not to family members.

Why wouldn’t IRA owners just give outright to charity (direct gifts) from their IRAs as provided under the now permanent law? Many IRA owners want to make charitable gifts, but also need retirement income. The life-income IRA rollover is a way for donors of average resources to combine charitable gifts with retirement income. Many charities have donors “standing by” to make life-income charitable gifts from their IRAs.

This is a Middle Class Charitable IRA Rollover. It allows average Americans (who meet the minimum age requirement) not just wealthy taxpayers to benefit charities.

Four-year trial for Life-Income Charitable IRAs. The provision wouldn’t be permanent but be for a four-year trial period. That provides adequate time to determine the expansion’s efficacy.

Cost. The bill’s cost, according to the Joint Committee on Taxation, would be only $106 million over 10 years. This is a small fraction of the money that charities will receive as a result of enactment.

Legislation whose time has come
The expansion of the now-permanent direct Charitable IRA to include charitable life-income IRAs is not a new idea. Bipartisan bills providing for both direct IRA charitable gifts and life-income IRAs have been introduced from the beginning of this century.
The current chairman of the House Ways and Means Committee and the Senate Finance Committee have in the past cosponsored legislation that would have allowed both direct and life-income transfers from IRAs. Those bills had a broader class of qualified charities than those designated qualified charities under the permanent direct charitable IRA law. And those bills had no ceilings whatsoever on the amounts that could be transferred from IRAs. (See below, Charitable Rollover Incentive Act of 2001 (H.R. 774) and Care Act of 2002 (S. 1424)).

Ways and Means Committee Chairman Kevin Brady (R-TX) in a March 16, 2016 meeting with members of the Charitable IRA Initiative said that he favors the Legacy (life-income) IRA legislation.

Earlier bills

- **Neighbor-to-Neighbor Act of 2001 (H.R. 824).** Introduced by House Ways & Means Committee member Rep. Jennifer Dunn (R-WA). Would have allowed direct and life-income charitable rollovers from IRAs. **Co-sponsors:** Brian Baird (D-WA); Ander Crenshaw (R-FL); Nathan Deal (R-GA); John J. Duncan, Jr. (R-TN); Philip English (R-PA); James C. Greenwood (R-PA); Melissa Hart (R-PA); C.L. Otter (R-ID); Bill Pascrell, Jr. (D-NJ); John Peterson (R-PA); Bob Schaeffer (R-CO); Michael K. Simpson (R-ID); Mark Souder (R-IN); Charles H. Taylor (R-NC); J.C. Watts, Jr. (R-OK); and Ed Whitfield (R-KY).

- **Charitable Rollover Incentive Act of 2001 (H.R. 774).** Introduced by Ways & Means Committee member Philip Crane (R-IL). Would have allowed tax-free rollovers from IRAs for direct and life-income charitable gifts. (Mr. Crane introduced similar legislation in the 1990’s.) **Cosponsors:** Kevin Brady (R-TX); Wally Herger (R-CA); Richard Neal (D-MA); Ronald Paul (R-TX); John Peterson (R-PA); Mike Rogers (R-MI); Mark Souder (R-IN); Bart Stupak (R-OK); Thomas Tancredo (R-CO); and Wesley Watkins (R-OK).

- **The Savings Opportunity and Charitable Giving Act of 2001 (S. 592)** introduced by Senator Rick Santorum (R-PA) and Senator Joseph Lieberman (D-CT). Would have allowed tax-free IRA rollovers for outright and life-income charitable gifts.

- **Public Good IRA Rollover Act of 2001 (S. 1375)** introduced by Senator Byron L. Dorgan (D-ND) and Olympia Snowe (R-ME). Would have allow tax-free IRA rollovers for outright and life-income charitable gifts.

- **President George W. Bush in the wake of September 11, 2001.** Donations to charities not involved in disaster relief had declined. In a letter to Senate Majority leader Tom Daschle (D-SD) and Senate Minority leader Trent Lott (R-MS), the President urged Congress to enact an “Armies of Compassion” law that would help struggling charities by providing additional tax incentives including tax-free IRA
rollovers at age 59½ or older for both outright and life-income charitable gifts.

- Care Act of 2002 (S. 1924) introduced by Senators Joseph Lieberman (D-CT) and Rick Santorum (R-PA). Would allow individuals 67 and over to make tax-free distributions from IRAs for outright and life-income charitable gifts. Cosponsored by: Senator Orrin Hatch (R-UT); and Senators Sam Brownback (R-KS); Jean Carnahan (D-MO); Evan Bayh (D-IN); Thad Cochran (R-MS); Bill Nelson (D-FL); Richard Lugar (R-IN); and Hillary Clinton (D-NY).

| Care Act of 2003 passed by the Senate 96-6. Would allow tax-free direct transfers from IRAs at age 70½ or over and life-income transfers at age 59½ or older, broader qualified charities than current law for direct IRA transfers and no annual ceilings. |
| The Charitable Giving Act of 2003 passed the House 408-13. Would have allowed tax-free transfers from IRAs for direct and life-income charitable gifts. |
| Both the House and Senate bills were passed by overwhelming majorities. The bills provided a number of tax incentives for charitable gifts, including the charitable IRA rollover for direct and life-income gifts. But a few senators wouldn't consent to sending the Senate bill over to the House unless some unrelated provisions were added to the Senate bill. And those provisions weren't popular with the House majority. Result: The House's approval of the charitable IRA (408-13) and the Senate's approval (95-5) did not go to conference. |


- The Public Good IRA Rollover Act of 2007—(S. 819) and (H.R. 1419). Would make all charities eligible recipients; be available for life-income gifts at age 59½ or over and outright gifts at age 70½ or over; and had no dollar cap for outright and life-income rollovers. Introduced by Senator Byron Dorgan (D-ND). Cosponsors: Norm Coleman (R-MN); Dianne Feinstein (D-CA); Chuck Hagel (R-NE); John Kerry (D-MA); Carl Levin (D-MI); Joseph Lieberman (D-CT); Blanche Lincoln (D-AR); Charles Schumer (D-NY); Gordon Smith (R-OR); and Olympia Snowe (R-ME). Introduced in the House by Earl Pomeroy (D-ND). Co-sponsors: Neil Abercrombie (D-HI); Melissa Bean (D-IL); Shelley Berkley (D-NV), Earl Blumenauer (D-OR); Jo Bonner (R-AL); John Boozman (R-AR); Dan Burton (R-IN); Dave Camp (R-MI); Eric Cantor (R-VA); Shelley Moore Capito (R-WV); Lois Capps (D-CA); Joseph Crowley (D-NY); Rahm Emanuel (D-IL); Philip English (R-PA); Wally Herger (R-CA); David Hobson (R-OH); Michael Honda (D-CA); Stephanie Tubbs Jones (D-OH); March Kaptur (D-OH); Dale Kildee (D-MI); Ron Kind (D-WI); Ron Lewis (R-KY); Betty McCollum (D-MN);
Thaddeus McCotter (R-MI); Cathy McMorris Rodgers (R-WA); Jeff Miller (R-FL); James Moran (D-VA); Marilyn Musgrave (R-CO); Sue Wilkins Myrick (R-NC); Bill Pascrell, Jr. (D-NJ); Joseph Pitts (R-PA); David Price (D-NC); Jim Ramstad (R-MN); Adam Schiff (D-CA); Jean Schmidt (R-OH); Allyson Schwart (D-PA); Bart Stupak (D-MI); Ellen Tauscher (D-CA); Lee Terry (R-NE); Mark Udall (D-CO); Fred Upton (R-MI); Timothy Walberg (R-MI); and Jerry Weller (R-IL).

- **The Public Good IRA Rollover Act of 2013.** Would allow tax-free rollovers to all charities with no ceilings at age 59½ or over for life-income gifts and age 70½ or older for direct transfers. **Introduced by Charles Schumer (D-NY).** Co-sponsors: Senators Kirsten Gilliband (D-NY); Mark L. Pryor (D-AR); Carl Levin (D-MI); Tim Johnson (D-SD); and Susan M. Collins (R-ME). **Identical bills were introduced by Senator Schumer in two earlier Congresses.**

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**Who are the Rollover Rangers? Now the Charitable IRA Initiative.**
The Legacy IRA Act results from years of effort by a small informal group of volunteers, the Rollover Rangers. And they played no small part in the original enactment of the Direct IRA Charitable Gift (enacted as part of the Pension Protection Act of 2006 and made permanent by the PATH Act of 2015). The group, still all volunteers, and with additional volunteers, is now the **Charitable IRA Initiative.**

**Charitable IRA Initiative—Board of Directors:** Lindsay L. Lapole, President (National Director of Gift Planning, Youth for Christ USA); Michael Kenyon, Vice President (President and CEO, Partnership of Philanthropic Planning); Sr. Georgette Lehmuth, Treasurer (CEO, National Catholic Development Conference); John Pierce, Secretary (Senior Gift Planning Director, Concordia College); Charles Schultz (President, Crescendo Interactive, Inc.); Frank D. Minton (Frank D. Minton Consulting); Lon Dufek (Sr. Director, Office of Gift Planning, Providence Foundation—Oregon); Marc Littlecott (Director of Gift Planning, So. Dakota State University Foundation); and Jim Soft (President Emeritus, Yellowstone Boys & Girls Ranch Foundation).

**Legislative Consultant—Joe A. Satrom**

**Pro Bono Counsel—Conrad Teitell**

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**The Message in Three Bullet Points**

- **Not a revenue drainer.** The 10-year cost to the Treasury is only $106 million. Crucial to getting a tax bill enacted is knowing what it will cost. The Joint Committee on Taxation gets thousands of requests each year for the cost (score) of proposed legislation. Only about 200 are scored. The Legacy IRA got the JCT’s attention and a favorable score—only $106 million over 10 years.

- **In a separate container.** Individuals continue to benefit from their IRAs. Instead of the retirement assets being in IRA accounts, the assets are in life-income plans. Both ways, donors get retirement income and the government gets its taxes on required minimum distributions.
• A no brainer. The Legacy IRA benefits the people served by American charities on the termination of the life-income interests.

Steps to reach go:

1. The crucial first step has been accomplished with the introduction of the Legacy IRA Act with a favorable Joint Committee on Taxation score.

2. Obtain cosponsorship by many members of the W&M Committee and House members not on the Committee.

3. The bill will be reported out of the W&M Committee.

4. The bill will be approved by the House as a separate bill, or more likely included in bigger must-pass legislation and sent to the Senate.

The Senate. While Steps 2 through 4 are taken in the House, seek companion legislation in the Senate.

Unfortunately, this can’t be left to “the other fellow.” That fellow is counting on you. Join the ranks, of the Rollover Rangers to promote this legislation in all 50 states. Meet with legislators and their aides in their home districts and in Washington.

114th Congress House Ways and Means Committee

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<th>Democrats</th>
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Answers to questions about the Legacy IRA Act:

Q. Why is the minimum payout of the life-income plans 5 percent?

A. The minimum 5 percent payout for unitrusts and annuity trusts in the bill has nothing directly to do with the bill. The 5 percent minimum has been required by law since 1969 when unitrusts and annuity trusts were first authorized.
The minimum payout for gift annuities in the bill is 5 percent and that isn’t required by gift annuity laws. It is important, however, that the 5 percent minimum in the Legacy IRA Act be for gift annuities as well as unitrusts and annuity trusts.

Reason. The bill was favorably scored (the cost to the Treasury) by the Joint Committee on Taxation based on a 5 percent minimum payout for all three life-income plans. That generally is at least as much as would be required under the required minimum distribution rules for IRAs. Thus the government won’t lose tax dollars if payments are made from the charitable IRA rather than the original IRA.

Caution for life-income IRA gift annuities. A charity should follow the rates that it offers for the usual gift annuities. If 5 percent is greater than the usual rate, the charity should not enter into an IRA life-income charitable rollover.

Q. Why aren’t Pooled Income Funds included in the bill?

A. Many pooled income funds earn less than 5 percent. Those funds are allowed to only pay income (and cannot pay out principal to make a 5 percent payment).

Q. Why can’t a Legacy IRA be assigned to the named charitable remainder organization?

A. Policy. In dealings with Congress over many years on the Life-Income Charitable IRA, strong concerns have been expressed on the issue of assignability. If a donor can assign his or her charitable IRA, the possibility exists the donor won’t have sufficient retirement income; and might have to turn to the government.

A. Fiscal. The payments from the charitable life-income rollover will be fully taxable as ordinary income. If the donor assigns his or her income interest in a life-income charitable rollover to a charity, the government wouldn’t get taxable income from the charity as it would if the donor continues to receive the life-income rollover payments. And the donor could, in effect, increase the current $100,000 ceiling for direct rollovers to $400,000 each year.

These issues have come up over the years and most recently in meetings with the staff of the Joint Committee on Taxation.

A favorable score (cost to the government) of the bill of only $106 million over 10 years wouldn’t have been obtained if the life-income IRA beneficiaries could assign their interests to charities. If so assigned, the government would lose taxes on the income because charities are tax exempt. The score could have been in the billions, rather than $106 million over 10 years.
114TH CONGRESS
2D SESSION
H. R. 5171

To amend the Internal Revenue Code of 1986 to expand tax-free distributions from individual retirement accounts to include rollovers for charitable life-income plans for charitable purposes.

May 6, 2016

IN THE HOUSE OF REPRESENTATIVES

Mr. Roskam (for himself, Mr. Blumenauer, Mr. Cramer, Mr. Paulsen and Mr. Tiberi) introduced the following bill; which was referred to the Committee on Ways & Means.

A BILL

To amend the Internal Revenue Code of 1986 to expand tax-free distributions from individual retirement accounts to include rollovers for charitable life-income plans for charitable purposes.

1 Be it enacted by the Senate and House of Representa-

2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Legacy IRA Act”.
SEC. 2. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT ACCOUNTS FOR CHARITABLE PURPOSES.

(a) IN GENERAL.—Paragraph (8) of section 408(d) of the Internal Revenue Code of 1986 (relating to tax treatment of distributions) is amended to read as follows:

"(8) DISTRIBUTIONS FOR CHARITABLE PURPOSES.—

"(A) IN GENERAL.—No amount shall be includible in gross income by reason of a qualified charitable distribution.

"(B) LIMITATIONS.—

"(i) IN GENERAL.—The aggregate amount excluded from gross income by subparagraph (A) for a taxable year shall not exceed $400,000.

"(ii) ORGANIZATION AND ENTITY SPECIFIC LIMITATIONS.—The amount excluded from gross income by subparagraph (A) for a taxable year shall not exceed—

"(I) $100,000, in the case of any distribution described in subparagraph (C)(i)(I), and

"(II) $400,000, in the case of any distribution described in subparagraph (C)(i)(II).
“(C) QUALIFIED CHARITABLE DISTRIBUTION.—For purposes of this paragraph, the term ‘qualified charitable distribution’ means any distribution from an individual retirement account—

“(i) which is made directly by the trustee—

“(I) to a specified charitable organization, or

“(II) to a split-interest entity, and

“(ii) which is made on or after the date that the individual for whose benefit the account is maintained has attained—

“(I) in the case of any distribution described in clause (i)(I), age 70½, and

“(II) in the case of any distribution described in clause (i)(II), age 65.

“(D) SPECIAL RULES RELATING TO DISTRIBUTIONS.—For purposes of this paragraph—

“(i) DISTRIBUTION MUST BE OTHERWISE INCLUDIBLE.—A distribution from
an individual retirement account shall be
treated as a qualified charitable distribu-
tion only to the extent that the distribution
would be includible in gross income with-
out regard to subparagraph (A).

“(ii) LIMITATION ON INCOME INTER-
ESTS.—A distribution from an individual
retirement account to a split-interest entity
may only be treated as a qualified chari-
table distribution if—

“(I) no person holds an income
interest in the split-interest entity
other than the individual for whose
benefit such account is maintained,
the spouse of such individual, or both,
and

“(II) the income interest in the
split-interest entity is nonassignable.

“(iii) CONTRIBUTIONS MUST BE OTH-
ERWISE DEDUCTIBLE.—A distribution
from an individual retirement account to a
specified charitable organization may be
treated as a qualified charitable distribu-
tion only if—
“(I) in the case of a distribution to a charitable remainder annuity trust or a charitable remainder unitrust, a deduction for the entire value of the remainder interest in the distribution for the benefit of a specified charitable organization would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph), and

“(II) in the case of a charitable gift annuity, a deduction in an amount equal to the amount of the distribution reduced by the value of the annuity described in section 501(m)(5)(B) would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

“(E) SPECIFIED CHARITABLE ORGANIZATION DEFINED.—For purposes of this paragraph, the term ‘specified charitable organization’ means an organization described in section 170(b)(1)(A) (other than any organization de-
scribed in section 509(a)(3) or any fund or account described in section 4966(d)(2)).

"(F) SPLIT-INTEREST ENTITY DEFINED.—

For purposes of this paragraph, the term 'split-interest entity' means—

"(i) a charitable remainder annuity trust (as defined in section 664(d)(1)), but only if such trust is funded exclusively by a qualified charitable distribution,

"(ii) a charitable remainder unitrust (as defined in section 664(d)(2)), but only if such unitrust is funded exclusively by one or more qualified charitable distributions, or

"(iii) a charitable gift annuity (as defined in section 501(m)(5)), but only if such annuity is funded exclusively by a qualified charitable distribution and commences fixed payments of 5 percent or greater not later than one year from date of funding.

"(G) SPECIAL RULES.—

"(i) CHARITABLE REMAINDER TRUSTS.—Notwithstanding section 664(b), distributions made from a trust described
in clause (i) or (ii) of subparagraph (F) shall be treated as ordinary income in the hands of the beneficiary to whom is paid the annuity described in section 664(d)(1)(A) or the payment described in section 664(d)(2)(A).

“(ii) CHARITABLE GIFT ANNUITIES.— Qualified charitable distributions made for a charitable gift annuity shall not be treated as an investment in the contract for purposes of section 72(c).

“(iii) APPLICATION OF SECTION 72.— Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts in all individual retirement plans of the individual were distributed during the taxable year and all such plans were treated as 1 contract for purposes of determining under section 72
the aggregate amount which would have
been so includible. Proper adjustments
shall be made in applying section 72 to
other distributions in such taxable year
and subsequent taxable years.

"(iv) Determining Deduction
Under Section 170.—Qualified charitable
distributions shall not be taken into ac-
count in determining the deduction under
section 170.

"(v) Required Minimum Distribu-
tions.—The entire amount of a qualified
charitable distribution shall be taken into
account for purposes of section 401(a)(9).

"(H) Termination with Respect to
Split-Entities.—Subparagraph (A) shall not
apply to a distribution to a split-interest entity
after December 31, 2020.”.

(b) Effective Date.—The amendment made by
this section shall apply to distributions made in taxable
years ending after the date of the enactment of this Act.