

15 FAQs on the "Legacy IRA"

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opportunities

- excluded from income
 - except to extent of contributions in years ending after age 70-1/2 for which deductions allowed (added in 2019)
 - in effect, an above the line deduction
- but counts toward minimum required distribution after required beginning date, now age 73



a brief history of section 408(d)(8)

- extensive lobbying effort by NACGP, ACGA
- enacted in 2006 as temporary measure
- extended multiple times for one or two years, sometimes retroactively
- made permanent in 2015
- lobbying for "Legacy IRA" continues



a brief history of the "Legacy IRA"

- concept first floated in 2009
- extend QCDs to life income gifts
 - minimum age 59-1/2
 - maximum contribution 400k per year
 - entire payout taxed as ordinary income
 - not assignable
- introduced multiple times over several sessions
 - always subject to four-year limited run
 - more recent iterations minimum age 65
- but never reported out of committee until incorporated into Secure 2.0



requirements, limitations

- direct distribution from IRA except "ongoing" SIMPLE, SEP
- to 170(b)(1)(A) public charity supporting orgs, donor advised funds excluded
- participant aged 70-1/2 or older unchanged despite increase in required beginning date to age 73
- 100k per year limit since 2024, indexed for inflation, now 108k



section 307 as enacted

- scaled back considerably from original concept
 - minimum age 70-1/2
 - 50k limit
 - "one and done"
- allows QCD to "split-interest entity"
 - defn. CRAT, CRUT, immediate CGA min. five pct
 - funded entirely from QCDs
- but only if
 - payable only to participant and/or spouse
 - not assignable
- entire payout taxed as ordinary income
- both 100k and 50k limitations subject to adjustment for inflation
 - for 2025, 108k and 54k



requirements, limitations, uncertainties

- election "to treat [distribution] as meeting requirement" of 408(d)(8)(B)(i)
 - election mechanism not specified, line 4b of 1040
 - implies 50k counts against 100k limit
- but does requirement of (B)(i) still apply?
i.e., must remainder charity or gift annuity issuer be a 170(b)(1)(A) public charity?
- "nonassignable" even to trust remainderman or gift annuity issuer?
 - cf. May 2016 T&E article by Conrad Teitell

<https://www.wealthmanagement.com/retirement-planning/house-bill-authorize-charitable-life-income-ira-rollovers>



a foot in the door?

- most recent iteration prior to inclusion in appropriations measure was S. 243
 - would have allowed QCDs up to 400k per year into "split-interest entity" at age 65
 - up to 130k per year outright at age 70-1/2
 - gift annuity to commence w/in year, but no minimum payout
 - no inflation adjustment
- per JCT, revenue estimates unacceptable
 - up to 400k excluded now
 - spread over twenty-plus years
 - half outside budget window



requirements, uncertainties, opportunities

- five pct minimum payout expressly applies only to gift annuity
 - depending on age of participant, per ACGA tables, could include younger spouse as young as age 60
- does not expressly preclude net income limitation in unitrust
 - nor qualified contingency, term of years
 - but expense of setting up and operating CRT likely prohibitive
- internal controls for gift annuity issuer
 - deviation from ACGA recommended rates?
 - express nonassignability language
 - 1099R reporting entire payout ordinary income



implementation problems and solutions

- remainder trust rarely feasible at 50k or 100k
- but large potential market for gift annuities
 - particularly among nonitemizers
 - effectively an above-the-line deduction
 - tax incidence of IRA payout shifted back
- institutional capacity, outsourcing



FAQs

- life income vehicle funded by QCDs only
 - cannot combine w/ other contributions
 - cannot add to existing vehicle
 - cannot later add to QCD funded vehicle
- participant and/or spouse only
 - separate contributions up to 50k each
 - no contingent beneficiary
 - term of years CRT can be only shorter of
- election to treat "as meeting requirement"
 - entire amount excluded from income
 - entire amount counts toward MRD



the fifteen



Q1. Is it \$50k in "legacy" QCDs plus \$100k in outright QCDs? or does the \$50k count toward the \$100k?

A1. The latter.

Q2. Can you make multiple, smaller "legacy" QCDs in the same year?

A2. Yes, provided they add to no more than \$50k.



Q5. Can the "legacy" QCD be used to add to an existing life income vehicle funded from other sources,

and/or can additional contributions be made later from other sources to add to a life income vehicle funded by a "legacy" QCD?

A5. No to both questions. A life income vehicle funded from "legacy" QCDs can include funding from no other sources.



Q3. Can both spouses make "legacy" QCDs to the same life income vehicle, a charitable remainder trust or a gift annuity?

and who all can be the income beneficiaries?

A3. Yes, provided both are age 70-1/2 or older.

The only permitted beneficiaries are the IRA participant herself and/or her spouse,

but it is not required that they both be named even if both are funding the life income vehicle.



Q6. Can the "legacy" QCD be used to fund a contribution to a pooled income fund?

A6. No. Only a charitable remainder trust or a gift annuity can be funded from a "legacy" QCD.

Q7. What does it mean to say that the life income interest must be "nonassignable"?

A7. Outside the context of a "legacy" QCD, the income beneficiary may transfer part or all of her income interest in a charitable remainder trust or gift annuity to the remainder or issuing charity.

This is not permitted with a life income vehicle funded with a "legacy" QCD.



Q4. Could one spouse fund a charitable remainder trust from a "legacy" QCD in year one and the other spouse add to that trust from a "legacy" QCD in year two?

A4. Yes, the "one and done" limitation applies only to the individual who has made a "legacy" QCD in a prior year,

and the requirement that the life income vehicle not include funding from other sources does not preclude funding from a "legacy" QCD.



Q8. So a gift annuity funded from a "legacy" QCD must continue for the life or lives of the annuitant(s),

but could you limit a charitable remainder trust funded from a QCD to a term of years?

A8. The statute does not forbid this,

but the term would have to be limited to the "shorter of" the stated term of years or the life or lives of the beneficiaries,

because you cannot have any noncharitable beneficiaries other than the IRA participant and/or her spouse.



Q9. Can the beneficiary of an inherited IRA make a "legacy" QCD to a life income vehicle?

A9. Yes, provided she is age 70-1/2 or older.

[references elsewhere in these materials to the IRA "participant" are an inexact shorthand.]



Q12. Is the full amount of the "legacy" QCD excluded from income, or just the present value of the trust remainder or the gift annuity residuum,

i.e., the amount that would otherwise have been deductible?

A12. The full amount is excluded.

Q13. Relatedly, does the full amount of the "legacy" QCD count toward your minimum required distribution?

A13. If you are age 73 or older, yes.



Q10. Can a "legacy" QCD be used to fund a deferred gift annuity?

A10. No, the statute requires that the annuity must commence within one year of the "date of funding."

We await IRS guidance on the case in which both spouses fund a single gift annuity contract with "legacy" QCDs on different dates.



Q14. Since you cannot claim an income tax deduction for the present value of the trust remainder or the gift annuity residuum where the life income vehicle is funded from a "legacy" QCD,

and since the entire payout from either vehicle will be taxed as ordinary income,

what are the incentives for making these gifts?



Q11. But you could use a "legacy" QCD to fund a net income charitable remainder unitrust, and effectively delay distribution until a "makeup" or "flip" event?

A11. The statute does not expressly forbid this.

But these kinds of drafting and administrative complexities are rarely justified in a remainder trust holding only \$50k or \$100k.



A14.

- entire amount of "legacy" QCD excluded from income
 - effectively, an above the line deduction
- does not figure into calculation of
 - taxability of Social Security benefit or
 - amount of Medicare Part B premiums
- will not push donor into higher marginal rate bracket
 - or into income ranges where 3.8 pct surtax on net investment income might apply
- payout from IRA would have been ordinary income anyway, but here spread out over ten or more years



Q15. One of the requirements of the outright QCD is that the recipient org be a section 170(b)(1)(A) public charity, expressly excepting a supporting org or a donor advised fund.

Do these same exceptions also apply to a "legacy" QCD? In other words,

(a) could the charitable remainderman of a CRT funded with a "legacy" QCD be a supporting org or a donor advised fund, or even a private foundation?

(b) could a supporting org or a donor advised fund sponsor issue gift annuities funded with "legacy" QCDs?

(c) could the residuum of a gift annuity funded with a "legacy" QCD be paid over to a supporting org or a donor advised fund?



questions, comments



A15. Arguably, answers to all three of these questions ought to be "yes," in other words,

the exceptions for supporting orgs and donor advised funds should not apply to "legacy" QCDs.

While it is possible IRS may take a different view when it issues guidance on these questions, there is nothing in the language of the statute or in the existing legislative history to support that view.



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What the Legacy IRA statute literally says is that a taxpayer may elect to treat a distribution from an IRA into a life income vehicle as though it met the requirements of the existing provision for direct QCDs, although clearly it does not.

The only express requirements are

- that the life income vehicle qualify as a charitable remainder trust or a gift annuity for the benefit of the IRA participant and/or her spouse,
- that the income interest be nonassignable, and
- in the case of the gift annuity that the payout be at least five percent.

