

# THE Pension Digest

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Collin W. Fritz and  
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*"The Pension Specialists"*



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## Tax Extension Legislation, Including QCD's and CESAs Signed Into Law

President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization and Jobs Creation Act of 2010 on December 17, 2010. This new tax law is a political compromise. It extends for two years (2010 and 2011) many tax provisions which had expired as of December 31, 2009.

There are two articles in this newsletter discussing the rules applying to QCD's for 2010 and 2011. The CESA rules have also been extended. The CESA contribution limit remains at \$2,000 per child per year for 2010 and 2011. See our June 2010 Newsletter for a complete listing of those laws which would have changed had the extension not been adopted. In general, the CESA rules applying from 2002-2010 will continue to apply for 2011 and 2012. But for the tax extension, numerous CESA forms would have had to be revised. Existing CESA forms may continue to be used.

## April 18, 2011 is Tax Filing Deadline for 2010. October 17, is Extended Tax Filing Deadline

In News Release IR-2011-1 the IRS announced taxpayers will have until Monday, April 18 to file their 2010 federal income tax return. This also means traditional and Roth IRA accountholders, HSA owners and CESA accountholders have until April 18 to make their 2010 IRA, HSA, or CESA contribution. Why? Under tax rules, District of Columbia holidays impact tax deadlines the same way that federal holidays do. In the District of Columbia, Emancipation Day is a holiday and in 2011 it falls on a Friday. This means the tax deadline of April 15, is extended to the following Monday, April 18. Taxpayers requesting an extension will have until October 17 to file their 2010 tax returns. October 17, 2011 is the deadline for making certain SEP and SIMPLE IRA contributions for tax year 2010. October 17, 2011 is also the deadline for making recharacterizations for 2010 or correcting excess contributions for 2010.

## No Logos, Slogans and Advertising on 2010 IRS Information Forms

In prior years the IRS prohibition against including logos, slogans or advertising materials did not apply to IRA reporting forms. Commencing with reporting for 2010, the prohibition now also applies to IRA reporting forms.

## Extension of Qualified Charitable Distributions for 2010 and 2011 Plus a New Special Rule for 2010

### (1) Qualified Charitable Distributions (QCD) For 2010

Both the Senate and the House have now passed the new tax legislation, the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. Numerous tax provisions were extended for 2 years.

One of the provisions in this new tax bill is the extension of Qualified Charitable Distributions.

There is a special rule for QCD's for 2010. Any QCD made after December 31, 2010, and before February 1, 2011, shall be deemed to have been made on December 31, 2010. That is, a qualifying accountholder will still be able to do a QCD for 2010 during January of 2011. The QCD rules allow an eligible person to make a QCD of \$100,000 for 2010 and a QCD of \$100,000 for 2011. The IRA accountholder has the right to make this election at such time and manner as prescribed by the Secretary of the Treasury (i.e. the Internal Revenue Service).

The rules applying to QCD's and required distributions are two separate rules. Where they interrelate is that a person is allowed to use his or her QCD to satisfy his or her RMD. In general, a person is eligible under both sets of rules only if he or she is age 70½ or older. A person can still do a QCD for 2010 even though he or she has already withdrawn his or her RMD for 2010.

Your IRA accountholders who are age 70½ or older will appreciate it if you inform them of this last minute law change. Many charitable organizations may benefit from these "late" QCD's. We have revised our QCD brochure.

You could include an insert in an upcoming mailing or add a note to your 2011 RMD notices. The revised deadline for 2010 QCD's is January 31, 2010. The deadline for a 2011 QCD is December 31, 2011. The IRS has announced that a person who uses the special January QCD rule may also have such distribution count towards his or her RMD for 2010. The IRS recently issued the 2010 version of Form 5329, Additional Tax On Qualified Plans (Including IRAs) and Other Tax-Favored Accounts. The instructions for Form 5329 state

that a QCD taken by January 31 of 2011 will count towards a person's 2010 RMD. It is also unclear if the IRS could or will create a special rule for IRA accountholders who have already taken their 2010 RMD, but in a manner that did not qualify as a QCD, so that it would now qualify as a QCD. For example, an individual would be allowed to make a special rollover into his or her IRA of the previously distributed 2010 RMD, and then make a QCD.

### IRS Issues Additional Guidance on QCD's

The IRS has issued additional guidance on QCD's on January 12, 2011. This guidance will allow IRA custodians to prepare their tax reporting forms for 2010 and 2011 and allow IRA accountholders to prepare their federal income tax forms for 2010 and 2011. This relief can be found at <http://irs.gov/retirement/article/0,,id=234258.00.html>.

The IRS has ruled that it will not be granting any special rollover relief to individuals who had taken their RMD's for 2010 prior to extension of the QCD's laws. IRA accountholders who had received their 2010 RMDs will not be able to re-contribute those distributions and then have them redistributed to a charity as the QCD's rules require.

The IRS does not discuss whether or not it had the authority to issue this special relief. It simply explains that any distributions, including any RMDs, which the IRA accountholder actually receives cannot qualify as QCDs. This rule also applies to amounts deemed paid to or on account of the IRA accountholder. Therefore, if an IRA account older had income tax withheld with respect to his or her RMD distribution, such amount is also ineligible to be rolled over.

### Form 1099-R Reporting by the IRA Custodian.

The IRA custodian is to use the standard procedures to prepare its Form 1099-Rs for 2010 and 2011. There

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**Guidance On QCD's,  
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is no special reporting for a QCD or RMD made in January of 2011 for 2010.

If the distribution occurs in 2010, it will be reported on the 2010 Form 1099-R.

If the distribution occurs in 2011, including any 2010 QCDs made on or before January 31, 2011, is reported on the 2011 Form 1099-R.

**Special Calculation For the 2011 RMD**

Although the IRS was unwilling to give the major relief of creating a special rollover rule for those who had already taken their 2010 RMD prior to the law change, it has created a special rule which provides some limited relief.

Somewhat surprisingly, the RMD calculation formula for 2011 is modified by the special QCD rule. The balance as of January 31, 2010, is reduced by the full amount of the 2010 QCD/RMD made in January of 2011. The IRS does not offer any explanation for making this special rule. The general RMD as set forth in the governing regulation does not provide for this special rule. Under the RMD calculation rule as set forth in the regulation, an IRA accountholder who attains age 70½ in 2010 who elects to take his or her 2010 RMD from January 1 to April 1, 2011, is not able to decrease the December 31, 2010 balance by the amount taken in 2011. This special rule now allows such an adjustment to be made. This special rule is restricted to the 2011 calculation.

**IRA Accountholder Reporting on 2010 Tax Return For QCDs Made in 2010**

The standard rules for an IRA accountholder to complete his or her tax return to properly reflect a 2010 QCD made in 2010 still apply. The IRA custodian prepares the Form 1099-R to show that the distribution is fully taxable. The individual has the task of completing his or her tax return to show the distribution is nontaxable since it was a QCD. If the distribution is a QCD, line 15a is to be completed with the total distribution, enter 0 on line 15b. There is no requirement in this situation to write QCD next to line 15b although it is a good idea to do so even if not required.

The individual is to attach a note of explanation if there is more than one reason why the IRA distribution

to be reported on lines 15a and 15b is not taxable (i.e. not includable in income). For example, the person has a QCD and also a rollover or a qualified HSA funding distribution: Line 25b: \$3,000 QCD, \$1,000 rollover and a HFD of \$6,150.

**IRA Accountholder Reporting on 2010 Tax Return For 2010 QCD Made In January of 2011.**

The individual must report on his or her Form 1040 as follows. Line 15a is to be completed with the full amount of his or her QCD as made in January of 2011 for 2010. This is so even if such QCD exceeds \$100,000. **Then the individual is to leave line 15b blank (i.e. do not include any amount), but he or she is to write QCD next to line 15b.** These IRS instructions will be set forth in the 2010 IRS Publication 590, Individual Retirement Arrangements (IRAs).

Certain individuals will need to prepare their 2010 Form 8606 in a special manner. If an individual has basis with respect to his or her traditional IRAs, and received a distribution on 2010, other than the January 2011 QCD for 2010, the individual will need to adjust the amount to be reported on Form 806, line 6, by any 2010 QCD made in January of 2011.

**CWF Summary/Planning For 2012**

The IRS has chosen not to give any special relief to individuals who took their RMDs prior to the law change. This is unfortunate, but the IRS is not the blame when Congress left the law change until the last moment as it did.

The deadline for 2011 QCDs is December 31, 2011. It is certainly possible that a new tax law applying for 2012 and subsequent years will not be enacted by December 31, 2012 and again it will be unclear if QCD's will apply for 2012.

If 2010 RMD checks would have had the payee of the check be the charity rather than the individual, such distributions would have qualified as QCDs since all of the QCD requirements would have been met. Even if there were no special QCD rules, it is permissible for an IRA custodian to issue an individual's RMD check directly to a third party as long as the IRA custodian reports on the Form 1099-R that the distribution was made to the individual.

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Guidance On QCD's,  
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If this situation presents itself again in 2012, IRA custodians and IRA accountholders may wish to adopt the approach of having the payee of the check be the charity rather than the IRA accountholder.

## Who will Benefit and Not Benefit from the Special QCD/RMD Rules for January 2011?

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January 11, 2011

The new tax law expressly authorizes a person to make his or her QCD for 2010 by January 31, 2011. A special election must be made. Such QCD will count towards the person's RMD for 2010.

### Not Benefiting.

If a person had already taken his or her RMD for 2010, the IRS will not grant any special relief to those individuals who had already taken their 2010 RMDs by allowing them to return the RMD funds to the IRA and then they would do a QCD. RMDs are ineligible to be rolled over.

### Benefiting.

An individual attaining age 70½ in 2010 has a required beginning date of April 1, 2011. This is the person's deadline for taking his or her 2010 distribution. The deadline is not December 31, 2010. Although there will be some individuals who attain age 70½ in 2010 and who also take their RMD in 2010, there will be quite a few who wait to take their 2010 RMD in 2011. Such individuals who make a QCD and designate it for 2010 by January 31, 2011 will benefit.

There will also be living traditional IRA accountholders who attaining age 70½ in a year before 2010, but who failed to take his or her RMD by December 31, 2010. On a tentative basis, such accountholders will owe the 50% excise tax for an excess accumulation. However if these accountholders are willing to make a QCD for 2010 by January 31, 2011, such QCD will also count as his or her 2010 distribution.

## IRS Reporting When the Spouse Beneficiary is not the Sole Beneficiary

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The purpose of this article is to discuss the IRS reporting duties relating to a decedent's IRA and his or her surviving spouse when the surviving spouse is one of the beneficiaries. This is, he or she is not the sole beneficiary.

The IRS instructions for Forms 1099-R and 5498 contain the general statement that a transfer from one IRA to another IRA is not be reported. See page 5 of the instructions.

Also on page 5 is discussion of a transfer of an IRA to a spouse when there is a divorce or a separation instrument. Such a transfer is tax free under Code section 408(d)(6) and is not reported.

One would think there would be a similar provision within the IRS instructions for Forms 1099-R and 5498 for the transfer of a decedent's IRA into the IRA of the surviving spouse. However, there is no discussion whatsoever discussing the IRS reporting to be done with respect to a spouse beneficiary who elects to treat the deceased spouse's IRA as his or her own IRA. There is also no discussion of the subject of a surviving spouse rolling over into his or her own IRA the IRA funds of the deceased spouse.

Prior to 2002, any spouse beneficiary had the right to treat his or her deceased spouse's IRA as his or her own IRA. Technically, there is no "transfer" when a surviving spouse elects to treat the deceased spouse's IRA as his or her own IRA. By making the election to treat as own, the decedent's IRA becomes the IRA of the surviving spouse. The title or name on the account is changed. However, if one uses this approach of changing the name, problems may arise because any IRS reporting form will be prepared using the name of the surviving spouse. There will be problems if distributions had been made to the decedent prior to the surviving spouse's election because such distributions will be incorrectly reported using the name of the surviving spouse. Distributions made to the deceased spouse must be reported on a Form 1099-R using the deceased spouse's name and social security.

For this reason, it is a standard administrative IRA practice that the funds within the decedent's IRA are transferred to the surviving spouse's IRA. This approach means the transactions occurring prior to the decedent's



death will be reported using the deceased spouse's name and those occurring after, will be reported using the surviving spouse's name.

When the IRS finalized the RMD regulations in 2002/2003, it narrowed a spouse's right to treat a deceased spouse's IRA as his or her own IRA. This right is now available only to a surviving spouse who is the sole beneficiary. A spouse beneficiary who is one of multiple beneficiaries lost the right to treat the deceased spouse's IRA as his or her IRA.

The determination whether or not a spouse beneficiary is the sole beneficiary is made as of the date of the distribution, but no later than September 30th of the year following the year of the death if there has been no election by September 30 of the following year.

In the explanation portion of the final RMD regulation, the IRS stated that any spouse (no need to be the sole beneficiary) has the right to use the standard rollover rules with respect to a distribution from the deceased spouse's IRA and roll the funds over into his or her personal IRA (i.e. not an inherited IRA). RMDs are ineligible to be rolled over.

Since there is no law or IRS procedure authorizing a spouse beneficiary who is not the sole beneficiary to treat the deceased spouse's IRA as his or her own IRA, the movement of the funds from the deceased spouse's IRA to the surviving spouse's IRA cannot be done as a nonreportable transfer. The only available administrative approach for such a spouse is the rollover approach. There will need to be reported a distribution to the surviving spouse on a Form 1099-R (reason code 4) and then a rollover contribution into a traditional IRA. The rollover contribution will be reported in box 2 of the Form 5498. In some situations, an RMD will be due and the spouse is not eligible to roll over this amount.

CWF will be writing the IRS to see if the IRS might adopt an approach where there would not need to be any IRS reporting when the surviving spouse beneficiary is not the sole beneficiary. We are not too hopeful that the IRS will adopt a no-reporting approach for a surviving spouse who was not the sole beneficiary.

CWF will also be suggesting to the IRS that the instructions for Forms 1099-R and 5498 and Pub. 590 be modified to include some discussion of reporting for spouse

beneficiaries who elect to treat the deceased spouse's IRA as his or her IRA.

## Correcting a Missed RMD

Some IRA personnel are apparently a little out of practice in handling RMDs. A number of IRA custodians have called CWF with the situation where an IRA custodian's error led to an IRA accountholder or inheriting IRA beneficiary not taking 100% of his or her 2010 RMD amount. For example, IRA accountholder #1 should have been distributed \$1,200 as her RMD, but she was only distributed \$500. She was short \$700. In another situation, IRA account-holder #2 should have been distributed \$2,500, but he was distributed only \$600. He was short \$1,900.

What must the individual do to correct his or her under-distribution?

What options does an IRA custodian have to correct for its error?

The IRS has the authority to waive the 50% excise tax if the IRA accountholder can show that any shortfall in the amount of distributions was due to reasonable error and he or she is taking or has taken reasonable steps to remedy the shortfall.

We recommend that an IRA custodian notify the IRA accountholder of the under-distribution as soon as possible. We believe it is best to inform the individual in writing of the error and what the individual may do to resolve the error. The IRA Custodian can assist the individual in resolving the error, but it is the individual who must resolve the error with the IRS, not the IRA custodian. The law imposes the 50% tax on the individual. The individual is responsible to pay this 50% tax.

However, an IRA custodian wishes to assist an IRA accountholder resolve the under-distribution, because this will lessen the chance that he or she will seek compensation from the IRA custodian for its error.

For example, IRA accountholder #2 as discussed above, will owe a 50% tax in the amount of \$950 unless the IRS would waive the tax. The IRA custodian wants to assist as much as possible so that the individual does not owe the 50% tax.

**Correcting,  
Continued from page 5**

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In order to obtain a waiver of the 50% tax from the IRS, the individual will want to follow the IRS instructions. When the individual files his or her 2010 federal income tax form, he or she will want to complete the 2010 Form 5329 to report the under distribution. He or she will also want to attach a statement or explanation of the RMD error and the steps taken to correct the under-distribution.

Page 6 of Form 5329 contains the following discussion on the procedures to be used by the individual with respect to the IRS procedures for waiving of the 50% tax:

Waiver of tax. The IRS can waive part or all of this tax if you can show that any shortfall in the amount of distributions was due to reasonable error and you are taking reasonable steps to remedy the shortfall. If you believe you qualify for this relief, attach a statement of explanation and file Form 5329 as follows.

- (1) Complete lines 50 and 51 as instructed.
- (2) Enter "RC" and the amount you want waived in parentheses on the dotted line next to line 52. Subtract this amount from the total shortfall you figured without regard to the waiver, and enter the result on line 52.
- (3) Complete line 53 as instructed. You must pay any tax due that is reported on line 53. The IRS will review the information you provide and decide whether to grant your request for a waiver. For more details, see Pub. 590.

We have also enclosed a specimen letter which the individual may send to the IRS. It may be modified as needed.

Some IRA custodians ask us, can't they just report to the IRS and to the individual that the correct RMD was made in 2010. We could never recommend this approach. For an IRA custodian to adopt this approach, the institution would be participating in a tax fraud. The distribution did not occur in 2010. The 50% tax is owed unless the IRS waives such tax. If discovered by the IRS or a regulator, the IRA custodian could expect to be fined very heavily.

An IRA custodian should be able to prepare the necessary paper work to resolve its error relatively easily. The IRS procedure must be used. Set forth are some sample letters.

**Letter to IRA Accountholder From IRA Custodian**

Dear \_\_\_\_\_(IRA accountholder):

We are writing to inform you that we noticed that you did not take 100% of your RMD for 2010. Your RMD for 2010 was \$\_\_\_\_\_. During 2010 you were paid the amount of \$\_\_\_\_\_. You failed to take the amount of \$\_\_\_\_\_. Unless the IRS would waive the 50% tax, you will need to complete and file Form 5329 and pay the 50% tax on the amount of your under-distribution.

We admit to making a mistake in calculating or distributing your RMD for 2010. We made the following mistake(s): \_\_\_\_\_.

The IRS has the authority to waive the 50% excise tax if an IRA accountholder can show that any shortfall in the amount of required distribution was due to reasonable error and you are taking or have taken reasonable steps to remedy the shortfall. We have sent you a check in the amount of \$\_\_\_\_\_ to remedy the shortfall.

In order to obtain a waiver of the 50% tax from the IRS, you will want to follow the IRS instructions for completing Form 5329. When you file your 2010 federal income tax form, you will want to complete the 2010 Form 5329 to report the under distribution. You will also want to attach a statement or explanation of the RMD error and the steps taken to correct the under-distribution. You may attach a copy of this letter along with own letter. A sample letter is enclosed. You and your tax advisor may modify it as you deem appropriate.

Page 6 of Form 5329 contains the following discussion on the procedures to be used by the individual with respect to the IRS procedures for waiving of the 50% tax:

Waiver of tax. The IRS can waive part or all of this tax if you can show that any shortfall in the amount of distributions was due to reasonable error and you are taking reasonable steps to remedy the shortfall. If you believe you qualify for this relief, attach a statement of explanation and file Form 5329 as follows.

**Correcting,  
Continued from page 6**

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- (1) Complete lines 50 and 51 as instructed.
- (2) Enter "RC" and the amount you want waived in parentheses on the dotted line next to line 52. Subtract this amount from the total shortfall you figured without regard to the waiver, and enter the result on line 52.
- (3) Complete line 53 as instructed. You must pay any tax due that is reported on line 53. The IRS will review the information you provide and decide whether to grant your request for a waiver. For more details, see Pub. 590.

We have now enclosed check for \$\_\_\_\_\_. You will need to include this amount in your income for 2011 as that is the year you received this amount. You should not include it in your income for 2011.

We suggest you include a copy of our letter in your written communications to the IRS. Since your failure to take your full RMD was due to our error, we believe the IRS should be willing to waive the assessment of the 50% tax.

You should contact us if you have any questions of concerns. We will do what we can help you resolve this RMD matter with the IRS.

Sincerely,  
IRA Custodian

**Letter to IRS From IRA Accountholder**

January 20, 2011

Subject: Request for Waiver of 50% Tax  
Attachment for 2010 Form 5329  
Name: \_\_\_\_\_  
SSN: \_\_\_\_\_

Dear IRS official:

I am writing to request that you waive an RMD amount which was under-distributed for 2010. I have completed the 2010 Form 5329.

I have also attached a letter from my IRA custodian admitting its oversight. That is, it made a mistake in calculating or distributing my RMD for 2010.

The under-distributed amount was corrected when it was distributed to me on \_\_\_\_\_. The IRA custodian distributed my missed RMD as soon as the mistake was discovered.

Thank you in advance for considering my request to waive the 50% tax.

Sincerely,  
IRA Accountholder

## Miscellaneous IRA and HSA Consulting Questions

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### Question/Situation #1

We have several customers who have HDHP's that were established in 2010, our question is can they open an HSA now and make contributions for 2010?

### CWF Answer #1

Yes, they may establish the HSA for 2010 as long as it is done by April 18, 2011, since the 15th is a holiday in Washington, D.C. They can contribute their maximum contribution amount by such date also. A distribution qualifies as a "qualified medical expense" only if the expense is incurred on or after the HSA is established.

### Question/Situation #2

We have a client that just rolled a 403(b) into a traditional IRA. Are there any restrictions for converting the traditional IRA into a Roth IRA in the same year?

### CWF Answer #2

This person is eligible to convert these funds (formerly 403(b) funds) immediately. The rule limiting IRA rollovers to once per year does not apply to any conversion rollovers. The tax laws now would have permitted this person to convert directly from the 403(b) to the Roth IRA, but what is being done is permissible.

In November 2010 the IRS issued the following revised rollover chart.

## IRS ROLLOVER CHART

		Roll To							
		Roth IRA	IRA (traditional)	SIMPLE IRA	SEP- IRA	457(b) (government)	Qualified Plan <sup>1</sup> (pre-tax)	403(b) (pre-tax)	Designated Roth Account (401(k), 403(b) or 457(b) <sup>2</sup> )
Roll From	<u>Roth IRA</u>	YES	NO	NO	NO	NO	NO	NO	NO
	<u>IRA</u> (traditional)	YES <sup>3</sup>	YES	NO	YES	YES	YES	YES	NO
	<u>SIMPLE IRA</u>	YES, <sup>3</sup> after two years	YES, after two years	YES	YES, after two years	YES, <sup>4</sup> after two years	YES, after two years	YES, after two years	NO
	<u>SEP-IRA</u>	YES <sup>3</sup>	YES	NO	YES	YES <sup>4</sup>	YES	YES	NO
	<u>457(b)</u> (government)	YES <sup>3</sup>	YES	NO	YES	YES	YES	YES	YES, <sup>3,5</sup> after 12/31/10
	<u>Qualified Plan</u> <sup>1</sup> (pre-tax)	YES <sup>3</sup>	YES	NO	YES	YES <sup>4</sup>	YES	YES	YES, <sup>3,5</sup> after 9/27/10
	<u>403(b)</u> (pre-tax)	YES <sup>3</sup>	YES	NO	YES	YES <sup>4</sup>	YES	YES	YES, <sup>3,5</sup> after 9/27/10
<u>Designated Roth Account</u> (401(k), 403(b) or 457(b) <sup>2</sup> )	YES	NO	NO	NO	NO	NO	NO	Yes, if a direct trustee to trustee transfer	

1-Qualified Plans include, for example, Profit-Sharing, 401(k), Money Purchase, and Defined Benefit plans

2-Governmental 457(b) plans, after December 31, 2010

3-Must include in income

4-Must have separate accounts

5-Must be an in-plan rollover

For more information regarding retirement plans and rollovers, visit [Tax Information for Retirement Plans Community](#).

## CWF Modifies the IRS Rollover Chart

CWF has modified the IRS Rollover Chart to reflect the fact that non-spouse beneficiaries of employer sponsored plans may now directly rollover funds into either an inherited traditional IRA or an inherited Roth IRA.

## CWF's ROLLOVER CHART

[illegible]