

V. Section 829 of PPA '06

Under § 402(c)(11) of the Code, which was added by § 829 of PPA '06, if a direct trustee-to-trustee transfer of any portion of a distribution from an eligible retirement plan is made to an individual retirement plan described in § 408(a) or (b) (an "IRA") that is established for the purpose of receiving the distribution on behalf of a designated beneficiary who is a nonspouse beneficiary, the transfer is treated as a direct rollover of an eligible rollover distribution for purposes of § 402(c). The IRA of the nonspouse beneficiary is treated as an inherited IRA within the meaning of § 408(d)(3)(C). Section 402(c)(11) applies to distributions made after December 31, 2006.

Q-11. Can a qualified plan described in § 401(a) offer a direct rollover of a distribution to a nonspouse beneficiary?

A-11. Yes. Under § 402(c)(11), a qualified plan described in § 401(a) can offer a direct rollover of a distribution to a nonspouse beneficiary who is a designated beneficiary within the meaning of § 401(a)(9)(E), provided that the distributed amount satisfies all the requirements to be an eligible rollover distribution other than the requirement that the distribution be made to the participant or the participant's spouse. (See § 1.401(a)(9)-4 for rules regarding designated beneficiaries.) The direct rollover must be made to an IRA established on behalf of the designated beneficiary that will be treated as an inherited IRA pursuant to the provisions of § 402(c)(11). If a nonspouse beneficiary elects a direct rollover, the amount directly rolled over is not includible in gross income in the year of the distribution. See § 1.401(a)(31)-1, Q&A-3 and-4, for procedures for making a direct rollover.

Q-12. Can other types of plans offer a direct rollover of a distribution to a nonspouse beneficiary?

A-12. Yes. Section 402(c)(11) also applies to annuity plans described in § 403(a) or (b) and to eligible governmental plans under § 457(b).

Q-13. How must the IRA be established and titled?

A-13. The IRA must be established in a manner that identifies it as an IRA with respect to a deceased individual and also identifies the deceased individual and the beneficiary, for example, "Tom Smith as beneficiary of John Smith."

Q-14. Is a plan required to offer a direct rollover of a distribution to a nonspouse beneficiary pursuant to § 402(c)(11)?

A-14. No. A plan is not required to offer a direct rollover of a distribution to a nonspouse beneficiary. If a plan does offer direct rollovers to nonspouse beneficiaries of some, but not all, participants, such rollovers must be offered on a nondiscriminatory basis because the opportunity to make a direct rollover is a benefit, right, or feature that is subject to § 401(a)(4). In the case of distributions from a terminated defined contribution plan pursuant to 29 C.F.R. § 2550.404 a-3(d)(1)(ii), the plan will be considered to offer direct rollovers pursuant to § 402(c)(11) with respect to such distributions without regard to plan terms.

Q-15. For what purposes is the direct rollover of a distribution by a nonspouse beneficiary treated as a rollover of an eligible rollover distribution?

A-15. Section 402(c)(11) provides that a direct rollover of a distribution by a nonspouse beneficiary is a rollover of an eligible rollover distribution only for purposes of § 402(c). Accordingly, the distribution is not subject to the direct rollover requirements of § 401(a)(31), the notice requirements of § 402(f), or the mandatory withholding requirements of § 3405(c). If an amount distributed from a plan is received by a nonspouse beneficiary, the distribution is not eligible for rollover.

Q-16. If the named beneficiary of a decedent is a trust, is a plan permitted to make a direct rollover to an IRA established with the trust as beneficiary?

A-16. Yes. A plan may make a direct rollover to an IRA on behalf of a trust where the trust is the named beneficiary of a decedent, provided the beneficiaries of the trust meet the requirements to be designated beneficiaries within the meaning of § 401(a)(9)(E). The IRA must be established in accordance with the rules in Q&A-13 of this notice, with the trust identified as the beneficiary. In such a case, the beneficiaries of the trust are treated as having been designated as beneficiaries of the decedent for purposes of determining the distribution period under § 401(a)(9), if the trust meets the requirements set forth in § 1.401(a)(9)-4, Q&A-5, with respect to the IRA.

Q-17. How is the required minimum distribution (an amount not eligible for rollover) determined with respect to a nonspouse beneficiary if the employee dies before his or her required beginning date within the meaning of § 401(a)(9)(C)?

A-17.

(a) *General rule.* If the employee dies before his or her required beginning date, the required minimum distributions for purposes of determining the amount eligible for rollover with respect to a nonspouse beneficiary are determined under either the 5-year rule described in § 401(a)(9)(B)(ii) or the life expectancy rule described in § 401(a)(9)(B)(iii). See Q&A-4 of § 1.401(a)(9)-3 to determine which rule applies to a particular designated beneficiary. Under either rule, no amount is a required minimum distribution for the year in which the employee dies. The rule in Q&A-7(b) of § 1.402(c)-2 (relating to distributions before an employee has attained age 70½) does not apply to nonspouse beneficiaries.

(b) *Five-year rule.* Under the 5-year rule described in § 401(a)(9)(B)(ii), no amount is required to be distributed until the fifth calendar year following the year of the employee's death. In that year, the entire amount to which the beneficiary is entitled under the plan must be distributed. Thus, if the 5-year rule applies with respect to a nonspouse beneficiary who is a designated beneficiary within the meaning of § 401(a)(9)(E), for the first 4 years after the year the employee dies, no amount payable to the beneficiary is ineligible for direct rollover as a required minimum distribution. Accordingly, the beneficiary is permitted to directly roll over the beneficiary's entire benefit until the end of the fourth year (but, as described in Q&A-19 of this notice, the 5-year rule must also apply to the IRA to which the rollover contribution is made). On or after January 1 of the fifth year following the year in which the employee died, no amount payable to the beneficiary is eligible for rollover.

(c) *Life expectancy rule.*

(1) *General rule.* If the life expectancy rule described in § 401(a)(9)(B)(iii) applies, in the year following the year of death and each subsequent year, there is a required minimum distribution. See Q&A-5(c)(1) of § 1.401(a)(9)-5 to determine the applicable distribution period for the nonspouse beneficiary. The amount not eligible for rollover includes all undistributed required minimum distributions for the year in which the direct rollover occurs and any prior year (even if the excise tax under § 4974 has been paid with respect to the failure in the prior years). See the last sentence of § 1.402(c)-2, Q&A-7(a).

(2) *Special rule.* If, under paragraph (b) or (c) of Q&A-4 of § 1.401(a)(9)-3, the 5-year rule applies, the nonspouse designated beneficiary may determine the required minimum distribution under the plan using the life expectancy rule in the case of a distribution made prior to the end of the year following the year of death. However, in order to use this rule, the required minimum distributions under the IRA to which the direct rollover is made must be determined under the life expectancy rule using the same designated beneficiary.

Q-18. How is the required minimum distribution with respect to a nonspouse beneficiary determined if the employee dies on or after his or her required beginning date?

A-18. If an employee dies on or after his or her required beginning date, within the meaning of § 401(a)(9)(C), for the year of the employee's death, the required minimum distribution not eligible for rollover is the same as the amount that would have applied if the employee were still alive and elected the direct rollover. For the year after the year of the employee's death and subsequent years, see Q&A-5 of § 1.401(a)(9)-5 to determine the applicable distribution period to use in calculating the required minimum distribution. As in the case of death before the employee's required beginning date, the amount not eligible for rollover includes all undistributed required minimum distributions for the year in which the direct rollover occurs and any prior year, including years before the employee's death.

Q-19. After a direct rollover by a nonspouse designated beneficiary, how is the required minimum distribution determined with respect to the IRA to which the rollover contribution is made?

A-19. Under § 402(c)(11), an IRA established to receive a direct rollover on behalf of a nonspouse designated beneficiary is treated as an inherited IRA within the meaning of § 408(d)(3)(C). The required minimum distribution requirements set forth in § 401(a)(9)(B) and the regulations thereunder apply to the inherited IRA. The rules for determining the required minimum distributions under the plan with respect to the nonspouse beneficiary also apply under the IRA. Thus, if the employee dies before his or her required beginning date and the 5-year rule in § 401(a)(9)(B)(ii) applied to the nonspouse designated beneficiary under the plan making the direct rollover, the 5-year rule applies for purposes of determining required minimum distributions under the IRA. If the life expectancy rule applied to the nonspouse designated beneficiary under the plan, the required minimum distribution under the IRA must be determined using the same applicable distribution period as would have been used under the plan if the direct rollover had not occurred. Similarly, if the employee dies on or after his or her required beginning date, the required minimum distribution under the IRA for any year after the year of death must be determined using the same applicable distribution period as would have been used under the plan if the direct rollover had not occurred.