



UNITED PHILANTHROPY FORUM
DISTRICT to D.C.
Advocacy Network

Legacy IRA Legislation Summary

On December 29, 2022, President Biden signed into law the [Consolidated Appropriations Act](#) (P.L. 117-328), which included Division T (SECURE 2.0 Act of 2022). The new law includes a modified version of the Legacy IRA Act to enhance and expand the IRA Charitable Rollover. The specific section that makes this change is entitled “One-time election for qualified charitable distribution to split-interest entity; increase in qualified charitable distribution limitation.”

It permanently indexes the annual IRA Charitable Rollover cap to inflation and allow seniors to make a one-time IRA rollover gift to a charity to fund a life-income plan.

Below, please find a high-level summary of this change in law, some key messages/talking points, and general FAQs.

Summary of Legacy IRA Act Changes

Enhance IRA Charitable Rollover: The law permanently indexes the existing IRA Charitable Rollover amount (currently at \$100,000) starting in 2024. This will be the first increase in nearly 20 years.

Expand IRA Charitable Rollover: The change in law allows seniors starting at 70½ to contribute up to \$50,000 from their traditional IRA account to charities to fund a charitable gift annuity, a charitable remainder annuity trust, or charitable remainder unitrust. The \$50,000 cap can only be used in one calendar year, but within this one-year period seniors can make gifts to multiple charities. The life-income provision takes effect in January 2023 and will be permanent.

Key Messages/Talking Points

What does the change in law do?

- The current IRA Charitable Rollover in law allows taxpayers age 70½ or older to transfer up to \$100,000 annually from their IRA directly to a public charity without first having to recognize the distribution as income. It is the fastest growing area of philanthropy.
- The Legacy IRA Act will expand the IRA Charitable Rollover by incentivizing seniors to make donations from traditional IRAs through life-income plans, such as charitable gift annuities or charitable remainder trusts. It will also increase current Charitable Rollover cap above \$100,000 to permanently reflect inflation, the first increase since it was enacted in 2006.
- The Legacy IRA Act is a win-win as it will encourage increased giving to charities by seniors now from their IRAs, while also helping those seniors who need a lifetime income.

Why does the law matter to seniors?

- The law will **help middle-income seniors** who need a lifetime income and want to help a charity.
- It helps seniors who cannot afford to give away their retirement income during their lifetimes.
- Because these types of gifts allow seniors to exclude the charitable distributions from income, seniors regardless of itemizing status will benefit from this important charitable giving incentive.

Why does the law matter to charities?

- The law will **help charities** receive more irrevocable planned gifts now.
- Many nonprofits are reliant on giving from seniors as 70- to 80-year-olds are the fastest growing age bracket in the US. It is expected that 10,000 Baby Boomers will turn 65 every day through 2030, and those over 65 now represent 15 percent of the total population.
- Seniors are the largest share of the donor base for many charities, and many nonprofits will continue to be reliant on giving from seniors.
- According to the Blackbaud Institute’s [2021 Charitable Giving Report](#), the average age of a U.S. donor is 65, and according to Blackbaud Institute’s [2018 The Next Generation of American Giving Report](#), Baby Boomers account for 41% of all current charitable donations.

FAQs

What is the IRA Charitable Rollover?

Currently, individuals aged 72 and above must take required minimum distributions (RMDs) from their individual retirement accounts (IRAs). These distributions are fully taxed as income. Since 2006, taxpayers 70 ½ or older in age can transfer up to \$100,000 annually from their IRA directly to a public charity without first having to recognize the distribution as income. The law also uses the term “qualified charitable distribution” (RMD) to describe an IRA Charitable Rollover. This has been appealing to seniors as individuals may exclude the amount distributed directly to an eligible charity from their gross income and meet their RMD. Over the past few years, these IRA rollover gifts to charities increased approximately 70% due to demographic and tax changes.

How does the Legacy IRA Act expand and improve the IRA Charitable Rollover (also known as QCDs)?

The Legacy IRA Act expands the IRA Charitable Rollover by allowing individuals to make qualified charitable distribution for split-interest gifts, known as “life-income gifts” and make the distribution eligible for tax-free treatment.

The change in law allows seniors to contribute up to \$50,000 from their IRA to charities to fund a charitable gift annuity, a charitable remainder annuity trust, or charitable remainder unitrust. The \$50,000 cap can only be used in one calendar year, but within this one-year seniors can make gifts to multiple charities. The life-income provision takes effect in January 2023 and will be permanent.

This allows the senior donor to meet their RMD and receive payments based on the agreement with the chosen charity. It is a win-win for donors and charities as donors receive lifetime payments and the charity receives any remainder when the donor passes away.

The law also permanently indexes the existing IRA Charitable Rollover amount (currently at \$100,000) starting in 2024.

What are the effective dates of this provision?

- Starting in January 2023, seniors can make a one-time IRA rollover gift to a charity to fund a life-income plan.

- Starting in 2024, the IRA Charitable Rollover cap of \$100,000 and the one-time life-income plan rollover cap of \$50,000 will be indexed for inflation.

Both of these changes are permanent.

Is a donor limited to one life-income gift per year, or can a donor request multiple transfers?

Donors aged 70 ½ or older are limited to a maximum of \$50,000 in one calendar year in their lifetime as qualified distribution. However, within that one year, there is no requirement that the entire amount be made in one transfer or that the entire amount go to a single qualified charitable organization.

Separate from the existing IRA Charitable Rollover provision with its \$100,000 cap, what if donors want to contribute more than \$50,000 to a life-income vehicle, such as a charitable gift annuity from their IRA?

The law limits the amount that donors are able to exclude from their income to \$50,000 in one calendar year in their life. If donors wish to take funds from their IRA to contribute more than \$50,000 to charity with a life-income gift, they cannot exclude the additional amount from their gross income. Rather, they must follow the general rules pertaining to percentage limitations and itemized contribution reductions.

Why focus on increasing charitable giving from seniors?

70- to 80-year-olds are the fastest growing age bracket in the US. It is expected that 10,000 Baby Boomers will turn 65 every day through 2030, and those over 65 now represent 15 percent of the total population.

Seniors are the largest share of the donor base for many charities, and many nonprofits will continue to be reliant on giving from seniors. According to the Blackbaud Institute's [2021 Charitable Giving Report](#), the average age of a U.S. donor is 65, and according to Blackbaud Institute's [2018 The Next Generation of American Giving Report](#), Baby Boomers account for 41% of all current charitable donations

Does a donor also receive a charitable deduction when they rollover assets to a charity under this expansion of the IRA Charitable Rollover?

No. Like the existing IRA Charitable Rollover, donors benefit by not having to recognize as income the amount contributed directly from their IRA to a qualifying charity. However, because donors exclude this contribution from their gross income, they cannot take a charitable contribution deduction for the contribution.

Which charities may donors support with these life-income plans?

The provision adds split-interest trusts (charitable remainder annuity trusts and charitable remainder unitrusts) but otherwise makes no change to the type of eligible charity from the existing IRA Charitable Rollover provision. That means public charities—other than supporting organizations—qualify, but distributions from IRA accounts to donor advised funds held by public charities are not considered qualified charitable distributions under this provision.

Similarly, individuals can make qualified charitable distributions to a private operating foundation or to a private foundation that elects to meet the conduit rules in the year of the distribution, but private non- operating foundations are not eligible for special treatment.

Will a contribution to a fund held by a community foundation qualify for this special treatment?

Yes, the current distributions to almost all types of funds typically held by community foundations—such as scholarship, field-of-interest, and designated funds—qualify. The exception to this general statement is that a distribution to a donor advised fund will not qualify for this special treatment.

Can donors contribute IRA assets to a donor advised fund?

Yes, but since such distributions do not count as qualified distributions from IRAs under these special rules, donors will have to first recognize those distributions as income. They then must calculate their charitable deduction according to the general rules pertaining to percentage limitations and itemized contribution reductions.

How do individuals make a qualified charitable distribution to support a life-income gift?

For charitable gift annuities, individuals should first contact the charity to communicate they wish to fund a life income gift from their IRA. The charity will provide the necessary transfer details and the individual may then instruct the custodian of their IRA to make the contribution directly to the eligible charitable organization. Once funds are received, the charity will issue an acknowledgment letter for the individuals' tax purposes.

For charitable remainder annuity trusts or charitable remainder unitrusts, individuals should work with the trustee of the trust to properly transfer and fund the trust. If an eligible charity is the trustee, then the same steps as noted for the gift annuity would apply. If the trustee is a commercial entity such as a bank, donors should contact the trust officer handling the matter for instructions before making any transfers.

DISCLAIMER

This information is based on a continuing analysis of the relevant legislation and regulations as of January 12, 2023. While the author made every effort to ensure accuracy of this document, the information is not a substitute for expert legal, tax, or other professional advice. The Forum would strongly encourage donors to work with counsel to determine the impact of this legislation on their particular situations. This information may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code.

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