RIFT Project Update: How to Eliminate Delays When Requesting IRA Death Proceeds

Johni Hays, JD
2019 RIFT Project Update: Calming Troubled Waters – How to Eliminate Delays When Requesting IRA Death Proceeds

By Johni Hays, JD

I. Introduction and Overview:

Note, this presentation is an update to the 2018 NCGP presentation on the RIFT Project.

U.S. charities face alarming delays and problems when they apply as the beneficiary of a deceased donor’s IRA. In recent years many, but not all, IRA custodians (such as Fidelity, Schwab, Edward Jones, Vanguard, etc.) have caused tremendous delays in paying these death claims based on their company policies. It’s become a draconian process for charities with no sign of relief. For income (and estate) tax purposes, donors are often shown the exceptional tax benefits of naming a charity as the beneficiary of the IRA. Hence, this charitable gift planning strategy is quite common and will continue to become even more popular as more and more donors name a charity as a beneficiary of their IRAs -- necessitating the need to address this industry wide problem.

This presentation will cover the RIFT (Release IRA Funds Timely) Project:

- The problem defined
- Who, what, when and why this is happening?
- Steps your nonprofit can take today
- National work done toward a permanent solution

II. The Way IRA Death Claims Used to be Processed:

An IRA has an owner and a beneficiary. The owner is normally the person who made the IRA contributions (except established incident to a divorce). The beneficiary can be anyone: a person(s), trust, estate, charity, etc., or any combination thereof. In the old days the death benefit claim process was fairly straightforward. Death claims were paid with a single form—a beneficiary application form—furnished by the IRA administer. The charity obtained it and filled it out. This form requested basic information including the name and taxpayer identification number of the charity. The death certificate was also part of the requested information and sometimes a corporate resolution that the person signing the paperwork had authority to act on behalf of the charity. That was about it. A lump sum death benefit was typically paid to the charity within 60 days of receipt of the completed information.
III. Now Custodians Are Demanding an Inherited IRA:

What’s happening now is that some of the IRA custodians have removed the opportunity for a beneficiary to have a lump sum payment. You don’t get paid from the original IRA. Instead, all the beneficiaries are required to set up a second account – called an Inherited IRA – aka Stretch IRA or Beneficiary IRA – just so the custodian can transfer the money from the original IRA into this account, then the IRA beneficiary (now the owner of the second IRA account) has to ask to liquidate the 2nd account just to get their money. These IRA custodians are all over the board with how their internal policies and procedures work and what forms are necessary to set up the Inherited IRA. The lack of a nationwide standardized system makes it very frustrating for charities. This second account is either opened with the name of the deceased donor as the owner with a notation “for the benefit” of the charity using the charity’s tax id number or opened simply in the name of the charity.

To open this second account, the IRA custodian goes through the entire process of opening a brand new account for the charity as a “new customer.” In order to do so, the items the custodians request can be very private and confidential. For example, some custodians are asking for the following information from the charity’s officers, staff or board members:

- name,
- home address,
- home phone number,
- Social Security Number,
- driver’s license, and
- net worth statement

All this while ignoring or not understanding the fact that the charity is the IRA beneficiary (not the individual officers/staff/board members). The IRA custodian should be asking for the nonprofit’s tax identification number, not the Social Security Numbers of the officers or board members. It’s very uncomfortable for the charity’s officers and board members to have to share private information as Americans are constantly hearing about data breaches from large corporations and are constantly on guard against identity theft. Here’s how one charity described its experience.

“On multiple occasions, the president of the foundation (paid staff member) has been required to send personal information (social security numbers, home addresses, etc.) because the company that holds the donor's IRA is requiring our organization to open an account with them to transfer the funds into before sending them to us. Additionally, some companies have even asked for personal wealth information, knowledge of stock transactions, and other personal details that are not germane to the process of receiving the donor's gift. They have also asked for information about people who are on our board - which we've not given.”
What caused the change in processing death claims? Why would opening a second account make sense? Isn’t it more work for the IRA custodians when they know the charity will just liquidate it immediately? It’s important to realize that most IRA beneficiaries are individuals and not charities. The Internal Revenue Code allows individual beneficiaries to “stretch” out the receipt of their IRA death benefit over various periods of time (See Section IV). The benefit of the Stretch IRA is so individual beneficiaries can take a small percentage from the IRA each year (i.e., required minimum distributions for beneficiaries) and leave the rest in the account to grow tax deferred – and also accordingly pay income tax on only the small percentage withdrawn yearly. This mandate for all types of beneficiaries including charities to open an Inherited IRA gives the IRA custodians the chance to make more money by holding on to the IRA money longer, and we understand that’s the nature of their business.

What is disheartening is that the IRA custodians are not considering the obvious fact that nonprofits will never wish to “stretch” the receipt of their proceeds, but instead will always desire to receive the proceeds as soon as possible to use to fulfill their charitable purpose. That’s the nature of nonprofit work. Having all IRA beneficiaries—whether individuals or charities—fall into the same mandated process is a draconian burden on charities and is beyond frustrating.

IV. IRA Required Minimum Distribution Rules:
A. If the IRA owner died BEFORE the Required Beginning Date and named a Designated Beneficiary (DB), the minimum distribution options are:
   i. Over the life expectancy of the beneficiary starting in the year following the year of death using a single life expectancy table, or
   ii. The five-year rule (can wait and take it all in the 5th year)

   Without a DB, the minimum distribution period is the five-year rule.

B. If the owner died on or AFTER the Required Beginning Date and named a DB, the minimum distribution options are the longer of:
   i. life expectancy of the beneficiary, or
   ii. the deceased owner’s resurrected remaining life expectancy

   Without a DB, the minimum distribution is based on the deceased owner’s resurrected remaining life expectancy.

C. Any beneficiary can always take out more than the minimum at any time.

D. September 30th of the year following the year of the IRA owner’s death is when we determine if there is a DB or not.

E. Eliminate those who don’t want an Inherited IRA by paying them before September 30th of the year following the year of the IRA owner’s death.
F. Note how the Secure Act, if passed by the Senate and signed by the President, will affect RMD calculations and time frames.

V. **Is The Patriot Act the Problem?**

Now enter The Patriot Act signed into law in 2001 – a law implemented to combat terrorism. The custodians’ interpretation of the law is such that the beneficiary opening up the Inherited IRA is creating a “new” account and is a brand-new customer. They believe The Patriot Act requires them to ask for detailed information of “new” customers—all this under the guise of protecting against terrorism. Incidentally, not one of the custodians has been able to explain which particular section of the Patriot Act really requires this information – but instead they stand behind the non-specific and all too common response, “The Patriot Act requires it.” They’re steadfast in demanding this information from a charity – even when it’s a national charity that’s been around for decades and decades. It just doesn’t make any sense that in order for a charity to receive a deceased donor’s IRA, a new Inherited IRA must be established; nor does it make sense to require the charity to go through the invasive rules from The Patriot Act. Who really thinks charities like St. Jude Children’s Research Hospital, the Smithsonian Institution, or the United Way are on the terrorist watch list? This situation has become ridiculous.

The Financial Crimes Enforcement Network (FinCEN) is a federal government agency which monitors compliance with The Patriot Act. They stated in June of 2019 that a charity is not considered a “new customer” under the guise of The Patriot Act if the charity doesn’t maintain the account after the death of the donor. Two points make The Patriot Act inappropriately applied by the custodians:

1) Charities make it clear to the IRA custodian their wish for an immediate lump sum payment before any paperwork is ever completed—hence, clearly indicating their wish to NOT maintain the account, and

2) The only reason there would ever be a second account is because it is demanded by the IRA custodian, and it has never been the intention of the charity to continue the account nor to become a “new” customer.

VI. **Computer Systems Set Up Incorrectly:**

Another common excuse why these IRA custodians won’t cut a lump sum check from the original donor’s IRA is that their computer systems aren’t set up to capture an IRA beneficiary’s tax identification/social security number.

“Our computer system won’t allow an IRS 1099 to be created from the Donor’s IRA.

And we can’t issue a manual 1099-R.”
These IRA custodians often argue their IRS form 1099-R would be generated to the estate of the donor if they cut a check on the original donor’s IRA. They claim the second account can only issue a 1099-R to the charity because it is the “owner” of the second account. So, what’s the answer? The custodians can manually prepare a 1099-R in the name of the charity based from the original donor’s IRA. It happens frequently and should be done in each of these cases until their systems work more accurately. Don’t accept their argument as a valid reason; it is an incredibly incorrect answer. Only communicate with the General Counsel of these IRA custodians; they typically have the authority to make these types of decisions and they know how to do this. We’ve not seen success asking for an exception from anyone else but the custodian’s legal counsel.

The following are some illustrative IRA custodian responses we’ve heard while trying to negotiate an exception. As you can see, it has not been easy:

“Every IRA custodian does it this way…….”
“We’ll never make an exception.”
“Just do as we say and you’ll get your money faster than complaining…..”
“No, we won’t tell you the dollar amount of your death claim.”
“We aren’t going to compromise.”
“Let the death claim sit with us until it goes to a statewide unclaimed property fund. Then try to get the money.”
“Go see a judge and get a court order if you don’t like how we do it.”

VII. How Fast Can a Nonprofit Liquidate an Inherited IRA?
The IRA custodian will encourage a charitable beneficiary to quickly open up the Inherited IRA. They may argue if the charity just opens the Inherited IRA, the charity can liquidate the account right away. But let’s see just quickly those accounts are actually being liquidated for charities? Read two different charity’s accounts:

“We've sent three different versions of paperwork, spent a number of phone calls, asked for specific help in fulfilling their requirements to send the gifted IRA proceeds, and they still have not sent the money. The gift itself is now in an account with our name and it is a modest amount. But, we've asked for that account to be liquidated but it still has not happened. The company’s process and the people have been the issue. I've had a representative apologize and admit that the entire process is difficult. This process has been going on for years for this one gift.”

“I’ve been working on this one since July, and that's quite a while for an IRA beneficiary distribution. They didn’t like our first submission because it had Lisa’s signature on the form and Mike’s signature on the W-9. Our second submission was incorrect because they forgot to list that there was cash in addition to securities. They didn’t like the third submission because they wanted Mike to initial by the cash number, and they called yesterday and said the fourth submission had white out on it so it was invalid.”
Charities realize this approach is costing them staff time and expenses to track down these benefits and monitor the labored process. One organization’s CFO said,

“I find this to be an annoying and frustrating step that is clearly designed to make it more difficult for beneficiaries to get their payments. The fact that we have to provide my (and sometimes others’) personal information to set up these accounts adds insult to injury. My sense is that all of this paperwork we need to complete takes time away from more productive things that we could be doing instead.”

VIII. **One Common Link Among all IRA Custodians:**

Many different industries offer IRAs to the public: banks, brokerages houses, and insurers can all offer IRAs. Unfortunately, each one of these industries has a different regulatory body. Therefore, suggestions to go to one industry regulator for help with this matter won’t help address any issues by the other two industries. But there is one area they all have in common: The Internal Revenue Code. Because IRAs must be administered according to the Internal Revenue Code, having some form of guidance like this from the IRS would alleviate the problem: upon the death of an IRA holder, when a public charity under IRC 170(b)(1)(a) is a beneficiary of an IRA, the public charity is prohibited from opening an Inherited IRA under IRC Section 408(d)(3)(C)(ii) and the beneficiary must be paid its proceeds within 60 days of death (provided the custodian has received a copy of the IRA holder’s death certificate and the charity’s tax-identification number). There would be no opening up an Inherited IRA, no invoking the Patriot Act, no asking for the personal information, and indeed, it would expedite the payment of the lump sum proceeds. However, a member of the Senate Finance Committee has indicated this solution will be difficult to achieve.

IX. **What Can Your Organization Do Now?**

Always remember that your organization can set up an Inherited IRA and provide whatever personal financial information you want. However, if your organization doesn’t want to, push back on a request to open an Inherited IRA. Write to the office of General Counsel at the IRA custodian and ask for an exception to their rule against payment of a lump sum. Use Charles Schultz’s Letter A on page 11 of this paper.

Jonathan Tidd, Esquire—a longtime national legal expert on charitable planning—states that only individuals can open an Inherited IRA. He cites IRC Section 408(d)(3)(C)(ii) of the Internal Revenue Code:

(ii) Inherited individual retirement account or annuity
An individual retirement account or individual retirement annuity shall be treated as inherited if—
(I) the individual for whose benefit the account or annuity is maintained acquired such account by reason of the death of another individual, and
(II) such individual was not the surviving spouse of such other individual.

Jonathan adds that the language of this section indicates that the term “inherited individual retirement account” is an IRA acquired by an “individual” and that is defined in the Code as a human. Since as charity is not a human, how can a charity establish an Inherited IRA?
X. National Efforts:

A. Senate Finance Committee - The Senate Finance Committee Chair, Senator Chuck Grassley, has been contacted for help and has been briefed on the situation. Several real-life scenarios were shared with him and well as the onerous requests concerning the personal information of the nonprofit’s officers and board members. The Senate Finance Committee assigned an investigator in the spring of 2019 who is working on a solution.

B. IRS Private Letter Ruling Request – Attorney Jonathan Tidd has submitted a request for a private letter ruling to the IRS and received their final ruling in August 2019. This PLR request was based on one of the major financial institutions in the U.S. – one that has policies to name the charity as the owner of the new IRA. Jonathan will provide the results of the IRS private letter ruling at this conference.

C. IRA Custodian progress - Our industry has already made great progress:
   
i. Wells Fargo has changed their policies as of September 2019 and will no longer require charities to open up Inherited IRAs to receive their death proceeds.
   
ii. In addition, several of these custodians (e.g., Schwab, Edward Jones, Vanguard) have approved exceptions to their procedures in favor of charities. These three have been asked exactly what specific documentation is needed to obtain the exception. Until we have their answer, see Section v, vi and vii below for each one.
   
iii. For all other IRA custodians that require an Inherited IRA in order to receive your share of the proceeds, use Charles Schultz Letter A (see page 11).
   
iv. Morgan Stanley:
   
   1. They do not require a separate Inherited IRA account be established.
   2. They need the following forms:
      
      a. Affidavit of Domicile form*
      b. Copy of the death certificate, and an
      c. IRA distribution form*.
      d. They don’t need a corporate resolution.
      e. They can typically process this in 10 days or so once they’ve received the appropriate paperwork.
      f. *The RIFT database has these forms.

v. Charles Schwab:

   1. They will -- on an exception basis -- allow a charity to receive the IRA death proceeds without setting up an Inherited IRA Account.
   2. Send the Charles Schultz Letter B (see page 12) to ask for the exception to:
      The Charles Schwab Corporation
      Attn: David R. Garfield
      General Counsel, Executive Vice President & Corporate Secretary
      211 Main Street
      San Francisco, CA 94105
In addition, send a copy of the above letter to the following two people:

Jerri L. Gibbs
Managing Director
Sales & Service Client Solutions
Schwab Advisor Services
1958 Summit Park Dr.
Orlando, FL 32810
Office: 407-806-6551
Cell: 407-865-2692

Tim Majewski
Sr. Specialist, Risk Analysis
Operational Services Estate Distribution Services
8332 Woodfield Crossing
Indianapolis, IN 46240
Phone: 888-297-0244 Ext. 70197

vi. **Vanguard:**
Vanguard will – on an exception basis – allow a charity to receive the IRA death proceeds without setting up an Inherited IRA Account.

Use Charles Schultz Letter B (see page 12) to ask for the exception.

Send the letter to:
Anne R. Robinson, General Counsel of The Vanguard Group, Inc.
Managing Director of the office of General Counsel
100 Vanguard Blvd,
Malvern PA 19355

In addition to the Charles Schultz Letter B, Vanguard requires:

a. A letter of instruction signed by an officer requesting a direct distribution, (the letter must include: decedent’s account number, last four of decedent’s SSN, identification of the specific assets to be sold, how the check should be made payable and where it should be sent, a confirmation that the officer signing the letter of instruction has authority to request securities transactions, and

b. A recently certified internal document that identifies the authority of the signing officer.

We’ve also been given this person’s name as a helpful individual if you run into issues with them:
Mark Holman, his direct line is 1-800-379-1727 x20334.

vii. **Edward Jones:**
Edward Jones will – on an exception basis – allow a charity to receive the IRA death proceeds without setting up an Inherited IRA Account.

Use Charles Schultz Letter B (see page 12) to ask for the exception.

Send the letter to:
Christopher Lewis
Edward Jones General Counsel
12555 Manchester Road
St. Louis, MO 63131

The RIFT Project is grateful that these custodians have made provisions to allow nonprofits to receive a lump sum payment on the original IRA.
D. **RIFT Database** - the RIFT project database of various IRA custodians and their requirements and contact information is a fluid project as their policies and procedures change frequently. As such, the entire database will soon be available on the National Association of Charitable Gift Planner’s website. This database is available to the entire planned giving industry. The RIFT Project’s goal is to have one central depository accessible on a complimentary basis for all nonprofits to help expedite their claims.

*As information can change rapidly, for the most up-to-date information,*

*consult the RIFT database in each case.*

E. **What’s getting worse?** In other respects, however, the problems are getting worse. Some of the custodians won’t even inform the charity they are even a beneficiary in the first place. We know as an industry about one-third of all donors will tell the charity before they die that they’ve left something for the charity in their estate plans. Well, if the donor wants it to be a secret surprise until their death and the IRA custodians won’t tell the charity – then how will this money ever be distributed to the rightful charitable beneficiary? Clearly this is an area that needs nationwide attention as well.

Further, some custodians will not inform the charity of the dollar amount of the charity’s share until the check is actually processed. Why they won’t do that remains a mystery. One New York charity, after completing all the intrusive paperwork, received a check for $.10. That’s not a typo. All this work and the eventual proceeds were 10 cents! Nationwide mandates need to be implemented for charities to have knowledge of the dollar amount of their share *before* applying for the death proceeds.

XI. **Take Action!**

- Contact Senator Chuck Grassley – Chair Senate Finance Committee – let him know you appreciate his work to help the charitable community. Tell him more work needs done with several of these custodians. We need to keep this issue in front of him. [https://www.grassley.senate.gov/constituents/questions-and-comments](https://www.grassley.senate.gov/constituents/questions-and-comments)
- Contact your own U.S. senator asking them to get involved and help support the charitable community [https://www.senate.gov/senators/How_to_correspond_senators.htm](https://www.senate.gov/senators/How_to_correspond_senators.htm)
- Use Charles Schultz’ letters – they work!
- Read the articles referenced in Section XII below
- Share those articles with your own legal counsel, your CFO and other leadership
- Provide a written testimonial RIFT can share with the Senate Finance Committee
- Got results? Good or bad -- either way, let RIFT know ([johni@ceplan.com](mailto:johni@ceplan.com))
Charities nationwide have been experiencing extreme roadblocks for far too long. If your organization would rather have a single lump-sum then push back against opening a “new” Inherited IRA. It is the opening of a “new” account that could throw your charity into the realm of a “new” customer requiring personal and confidential information about staff in order to open the new account. Stay tuned for further updates with efforts to take action industry-wide to prevent these roadblocks from continuing.

XII. Additional Resources:

A. Charles Schultz/Crescendo, Letter A and Letter B (see pages 11 and 12)

B. Jonathan Tidd, “Giving or Leaving IRA Assets to Charity...Some Issues and Problems,” Trust and Estates magazine, September 21, 2018

C. Jeff Comfort’s articles, “Charity IRA Beneficiaries Navigate Stormy Seas to Safe Harbors (Part I and Part II),” Planned Giving Today, June and August 2016 issues


January 1, 2019

Favorite Charity  
123 Oak Street  
Chicago, IL 00000

Dear General Counsel:

We have been informed that Favorite Charity is a beneficiary of the IRA of Jane Doe. The IRA account number is 123-45-678. We request that you liquidate the funds held for our benefit in the trust account and deliver them by check within 30 days to our organization at this address: Favorite Charity, Bequest Administrator, 123 Oak Street, Chicago, IL 00000.

Favorite Charity is not required to open an IRA account with a custodian to receive an IRA distribution. Under Reg. 1.408-2(b), an IRA account must be created “for the exclusive benefit of an individual or his beneficiaries.” A charity is a nonprofit corporation and is defined as a “Person” under the IRC, but a charity clearly is not an individual and therefore not permitted to set up a Sec. 408 IRA account. In addition, as custodian you are trustee of an IRA trust under Reg. 1.408-2(b) and required by federal and state law to comply with trustee fiduciary responsibilities. If you fail to make the distribution as required in your contract with the IRA owner, you are potentially in breach of your duty of fiduciary responsibility.

Favorite Charity is not subject to the USA Patriot Act (Pub. L. 107-56). Sec. 326 of the USA Patriot Act requires banks and other custodians to determine that a person opening an account is not on the suspected terrorist list. First, IRC Sec. 408 does not permit a nonprofit to open an IRA account. Therefore, the Patriot Act does not apply to an IRA distribution to charity. Second, we are a U.S. recognized tax-exempt charity and not on a suspected terrorist list.

Finally, IRA custodians may withhold 10% of a distribution to individuals and remit that amount to the Internal Revenue Service. We are tax exempt and elect under IRS Form W-4P to not have tax withheld. Because we are tax exempt, there is no income tax on our IRA distribution and no requirement for withholding on your part. Enclosed is a copy of our IRS tax exemption letter. Our IRS identification number is 00-1234567. If you are not able to issue a computer-generated IRS Form 1099, we will accept one that is manually produced.

Because we are not permitted to open an IRA account, the USA Patriot Act does not apply to a qualified exempt U.S. charity and withholding is not required, we request that you remit within 30 days the full distribution to the above address. If we are a partial beneficiary of the IRA, we waive and release all rights to divided future interests or odd shares earned after the date of death and request prompt distribution of our IRA proceeds prior to completion of actions by other beneficiaries. If you are unable to distribute our vested IRA funds within 30 days, then, in a manner similar to Sec. 6662(a), we request remittance of the IRA funds and a 20% penalty amount. After the 30-day period, because you are in obvious breach of contract and breach of trustee fiduciary responsibility due to noncompliance with the IRA agreement, we are willing to settle for the IRA funds plus the 20% penalty.

If you feel you are unable to make this prompt distribution as requested, please have your Legal or Compliance Department provide us with your legal basis for holding these funds and not distributing them to us. We remind you again that this is a trust and you are potentially subject to a breach of fiduciary responsibility claim.

Sincerely,

Susan Officer  
Vice President, Favorite Charity

Shared with permission from Crescendo Interactive, Inc.
January 1, 2019

Favorite Charity
123 Oak Street
Chicago, IL 00000

Dear General Counsel:

We have been informed that Favorite Charity is a beneficiary of the IRA of Jane Doe. Your financial institution serves as the IRA custodian. Under Reg. 1.408-2(b), an IRA account must be created “for the exclusive benefit of an individual or his beneficiaries.” A charity is a nonprofit corporation and is defined as a “Person” under the IRC, but a charity clearly is not an individual and therefore not permitted to set up a Sec. 408 IRA account. Therefore, we appreciate your organization’s decision that our charitable organization will receive our share of the deceased’s IRA without the need to open an Inherited IRA.

The IRA account number is 123-45-678. We request that you liquidate the funds held for our benefit in the trust account and deliver them by check within 30 days to our organization at this address: Favorite Charity, Bequest Administrator, 123 Oak Street, Chicago, IL 00000.

While IRA custodians often withhold tax on a distribution to individuals, as a nonprofit we are tax exempt and elect under IRS Form W-4P to not have tax withheld. Because we are tax exempt, there is no income tax on our IRA distribution and no requirement for withholding on your part. Enclosed is a copy of our IRS tax exemption letter. Our IRS identification number is 00-1234567. If you are not able to issue a computer-generated IRS Form 1099, we will accept one that is a manually produced. If we are a partial beneficiary of the IRA, we waive and release all rights to divided future interests or odd shares earned after the date of death and request prompt distribution of our IRA proceeds prior to completion of actions by other beneficiaries.

If you feel you are unable to make this prompt distribution as requested, please have your Legal or Compliance Department provide us with your legal basis for holding these funds and not distributing them to us. We remind you that this is a trust and you are potentially subject to a breach of fiduciary responsibility claim if you do not comply with the terms of the IRA agreement.

Sincerely,

Susan Officer
Vice President, Favorite Charity
Johni Hays, JD  
Senior Vice President  
Thompson & Associates  
7308 Eagle Pointe Drive  
Johnston, IA 50131  
Phone: (515) 988-8817  
Email: johni@ceplan.com