Using Roth Conversions of Legacy Retirement Plans to Fund Special Needs Planning

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ABSTRACT
Financial planners who engage in special needs planning (SNP) must be careful not to overlook legacy retirement plans (i.e., plans from previous employers) as possible sources of funding. While some research exists on the best practices for using Roth individual retirement account (IRA) conversions for general estate planning and wealth transfers, there is little guidance available on how to use Roth conversions of legacy retirement plans to fund SNP tools, such as special needs trusts (SNTs) and Achieving a Better Life Experience (ABLE or 529A) accounts. This article examines the strategy and reasoning for using Roth conversions of legacy retirement plans and suggests there are at least seven advantages of this strategy for clients with SNP issues: 1) access to funds at age 59½, rather than 70½; 2) no required minimum distribution (RMDs) in the lifetime of the account owner; 3) no future taxes; 4) reduced risk; 5) wealth transfer in perpetuity; 6) generally not subject to Medicaid recapture if properly structured (subject to certain conditions); and 7) no limitation on the amount of money that can be converted.

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Overview

There is an increasing need for special needs financial planning experts who can weigh a client's individualized needs for both long- and short-term funding. There are two groups contributing to the growth of this vulnerable population: new births of individuals with disabilities and special needs, but also people who will develop a disability later in life. For financial planners, the special needs market presents unique challenges. While it is possible to estimate the percentage of both the new births and aging populations in need of special needs planning (SNP), in the latter case it is much harder to identify who in the future will need those planning services in a timely manner such that SNP can be implemented on demand.[1]

Increasing longevity also raises demands for funding SNP. As Pokorski and Berg explain, "[L]onger lives—not disease—are driving current and projected increases in health care costs…"[2] According to the National Institute on Aging, there are about 35 million people who are aged 65 or older in the U.S. today, and the U.S. government expects this figure to double over the next 25 years.[3] People aged 85 or older constitute the fastest growing segment of the U.S. population—currently about 4 million people; this population could exceed 19 million by 2050.[4] The combination of these trends requires that financial advisors carefully analyze how clients with SNP issues can best fund their plans going forward.

Few households are able to save enough money from wages and other work-related compensation alone to adequately fund the short- and long-term expenses faced by many clients with special needs. According to the Academy of Special Needs Planners, the failure to properly fund a special needs plan or trust is one of 10 most common and costly mistakes made by professionals and nonprofessionals alike.[5] As such, planners and their clients with special needs issues are well advised to identify as many viable funding sources to pay for SNP as possible. While the foresight to have purchased a large, permanent life insurance policy at an early age may be one of the best sources for funding SNP, not everyone is able to take advantage of this option. Therefore, it can be prudent to create another source of funding for family members with special needs: tax-advantaged legacy retirement plans.[6]

Generally, legacy retirement plans are 401(k), 403(b), or IRA retirement contributions made with previous employers.[7] With some exceptions, these plans can be rolled over into one traditional pretax individual IRA, which then can be converted into a Roth IRA using either an all-at-once conversion strategy or a multiyear approach.[8] Regarding the latter, Slott recommends using a series of partial conversions for large IRAs to avoid higher tax brackets.[9] Converting money from a traditional, pretax IRA to a Roth IRA triggers both state and federal income tax requirements.[10] Roth IRA securities typically include stocks and bonds, though other investment options include certain types of derivative trading, certificates of deposit, and real estate.[11] Under U.S. law, a Roth IRA can also be characterized as an annuity or endowment contract issued by a life insurance company.[12] The principal difference between after-tax contributions to a Roth IRA and most other tax-advantaged retirement plans is that instead of granting a tax reduction for contributions to the retirement plan, the following is generally not taxed: qualified withdrawals from the plan and account growth over time.[13] See Tables 1 and 2 for an overview of the similarities and differences between traditional and Roth IRAs.[14]

According to the U.S. Census Bureau and a nationwide study by the Investment Company Institute (ICI), traditional IRAs are the most common type of IRA ownership, followed by Roth IRAs and employer-sponsored IRAs.[15] As a whole, IRAs represent 31 percent of U.S. total retirement market assets, compared with 19 percent two decades ago.[16] Nearly 25 million U.S. households (19.7 percent) own a Roth IRA.[17] Over 42 million (13.9 percent) of U.S. households own both traditional and Roth IRAs.[18]

The ICI has pointed out that the balances of Roth IRAs (as well as traditional IRAs), tend to rise with length of ownership.[19] Advice on the use of Roth conversions

TABLE 1
Overview of Similar Features between Traditional IRA and Roth IRA*

Features	Traditional IRA/Roth IRA
How much can I contribute?	The most you can contribute to all of your traditional and Roth IRAs is the smaller of: (a) $5,500 (for 2015–2018), or $6,500 if you're aged 50 or older by the end of the year; or (b) your taxable compensation for the year.
What is the deadline to make contributions?	Your tax return filing deadline (not including extensions). For example, you can make 2017 IRA contributions until April 17, 2018.
When can I withdraw money?	Anytime.

*"Retirement Plans: IRAs: Traditional and Roth IRAs," endnote 14.

for retirement, estate, and wealth transfer is abundant; however, literature on the best practices for using Roth conversions to fund SNP is scant.[20] For example, Steiner notes that the advantages of placing retirement benefits in trusts provides increased protection against creditors, predators, and spouses.[21] Regarding the relatively high tax rate for trusts, Steiner states:

> Distributions from a Roth IRA are generally exempt from income tax, and are not included in the trust's DNI [distributable net income]. This allows the trustees to accumulate the distributions from a Roth IRA without having to pay tax on them at the trust's income tax rates. If the trust makes distributions, the Roth IRA benefits will retain their character as tax-free Roth IRA benefits.[22]

Trusts may also benefit from a look-through provision that allows, where required minimum distributions (RMDs) are required, to stretch the payments over a longer time period. As Jacobs notes, "When the trust meets certain requirements set by federal [law]…the IRS will 'look through' the trust and treat its beneficiary as if he or she were directly named the IRA's beneficiary.[23]

While relatively straightforward, such stretch strategies are subject to decision rules that can have

TABLE 2
Overview of Differing Features between Traditional IRA and Roth IRA*

Features	Traditional IRA	Roth IRA
Who can contribute?	You can contribute if you (or your spouse if filing jointly) have taxable compensation but not after you are age 70½ or older.	You can contribute at any age if you (or your spouse if filing jointly) have taxable compensation, and your modified adjusted gross income is below certain amounts (see Internal Revenue Service Code limits).
Are my contributions deductible?	You can deduct your contributions if you qualify under the Internal Revenue Service Code.	Your contributions are not deductible.
Do I have to take required minimum distributions?	You must start taking distributions by April 1 following the year in which you turn age 70½ and by December 31 of later years.	Not required if you are the original owner.
Are withdrawals and distributions taxable?	Any deductible contributions and earnings you withdraw or that are distributed from your traditional IRA are taxable. Also, if you are under age 59½ you may have to pay an additional 10 percent tax for early withdrawals unless you qualify for an exception under the Internal Revenue Service Code.	None if it is a qualified distribution (or a withdrawal that is a qualified distribution). Otherwise, part of the distribution or withdrawal may be taxable. If you are under age 59½, you may also have to pay an additional 10 percent tax for early withdrawals unless you qualify for an exception under the Internal Revenue Service Code. An important distinction is that all contributions may be withdrawn at anytime without penalty and withdrawals are always return of basis first.

*"Retirement Plans: IRAs: Traditional and Roth IRAs," endnote 14.

negative financial impact if not followed. This sentiment is well explained by the financial planners at Investopedia, LLC:

> The biggest problem with the Roth IRA required minimum distribution rules is that beneficiaries may not be aware of their requirement to take such distributions. Anyone who starts a Roth IRA would be well advised to inform their beneficiaries that they must take distributions after the death of the owner or be prepared to pay a 50 percent penalty on amounts that should have been distributed.[24]

If the beneficiary is a client with special needs who may not be capable of making such decisions, planners must be especially vigilant to ensure the wishes of the family are fully implemented. When combined with a trust, it is often prudent that such decisions be handled by a professional trustee.

Kitces notes that Roth conversions are effective tools for reducing long-term tax liabilities.[25] For SNP, lower taxes mean an increase in the funds available to fund other tools to provide the beneficiary with special needs more financial support, such as special needs trusts (SNTs) and/or Achieving a Better Life Experience (ABLE or 529A) accounts. Ideally, an SNT can be used in tandem with an ABLE account—the ABLE account should be spent down entirely to avoid estate recapture while the funds remaining in the SNT can be freely transferred as a nonprobate asset after death.[26]

Some advisors believe historically low tax rates passed for 2018 offer advantages to be taken now. For example, Slott believes Roth conversions in general are advantageous, because future tax rates are likely to be higher than current ones, making the tax-free growth of the Roth even more valuable.[27] Shilling too argues that even the taxes paid on Roth contributions are lower than the taxes due on distributions from a traditional IRA, as taxes are likely to increase in the future.[28]

Given the complexity of the Roth conversion strategy in relation to both financial planning in general and planning for special needs in particular, it is prudent to weigh the utility of a Roth conversion to fund other SNP tools.

When Roth Conversions for Funding Special Needs Planning Make Sense (and When They Do Not)

When considering Roth conversions for clients with special needs, financial planners must analyze four key factors: 1) the client's current age and life expectancy; 2) overall net worth; 3) whether the Roth conversion itself is used to pay taxes due; and 4) better contingency for one-time large expenses. Even if some or all of the above-named factors seem to benefit a client, situations can still arise where, all things considered, a Roth conversion is not advantageous.

Time-Value: Clients Who Are Younger and Have a High Life Expectancy

Clients with longer projected lifespans often stand to reap the most benefits from a Roth conversion. Cymbal and Barrett recommend both quantitative analysis of time-value use of money and qualitative considerations unique to each client's needs to determine if a Roth conversion is in the best interests of the client.[29] In the same article they offer an even more explicit endorsement of the conversion strategy: "If the client can pay the tax bill without tapping the retirement funds, switching to a Roth IRA may prove advantageous, assuming the client's tax bracket does not drop significantly at retirement…[t]he higher the expected rate of return on the IRAs and the younger the client, the greater the after-tax difference will be between the two alternatives."[30] While each client's situation should be carefully analyzed by their financial advisor, Roth conversions for retirement and estate planning share a common metric: a conversion is likely to provide the most advantages if the client is young in age.

Clients with High Net Worth

Cymbal and Barrett also note that high-net-worth clients may benefit from Roth conversions to increase the amount of wealth transfer to successive generations:

> The Roth IRA conversion should be considered one of the more attractive wealth transfer strategies for the high-net-worth individual…Funding the credit-shelter trust with a Roth IRA (as compared to a traditional IRA) can also have significant benefits in terms of wealth transfer. For example, if one assumes a 40 percent combined federal and state income tax rate and a federal estate tax exemption amount for 2016 of $5,450,000, then if the credit-shelter trust is funded with a traditional IRA, only $3,270,000 ($5,450,000 less the amount of income tax to be paid of $2,180,000 or $5,450,000 times 40 percent) passes to the trust's beneficiaries. On the other hand, if a Roth IRA is used to fund the trust, then the entire $5,450,000 would pass to the trust's beneficiaries, provided the qualified distribution requirements have been satisfied. Furthermore, with the Roth IRA, even more wealth would be transferred since the Roth IRA would be growing potentially income tax free after the taxpayer's death.…Viewed another way, high-net-worth individuals converting to a Roth IRA are effectively prepaying the future income tax for their heirs. This prepayment is tantamount to a gift; however, it does not count toward the annual gift tax exclusion or against the taxpayer's lifetime exemption amount.[31]

While this strategy is for funding an after-tax trust, high-net-worth individuals addressing SNP of one or more heirs might combine this approach with a combination of tax-advantaged approaches (e.g. SNTs, ABLE accounts), designed specifically for special needs clients.

Increased Flexibility for Clients Who Are Older

If over the age of 59½, clients can use conversion amounts to help pay taxes, and can typically wait until April 15 of the following year to take advantage of possible appreciation.[32] To guard against asset depreciation during that time, financial advisors can advocate the use of fixed-rate investments, such as bonds, on the converted amount to ensure funds for paying taxes from the conversion itself are available when taxes are due. While not an ideal strategy, depending upon the time frame and life expectancy of the account owner, this approach may yield more resources for special needs beneficiaries than if the strategy is not used.

Better Contingency for One-Time Large Expenses

Another aspect of the Roth conversion strategy is that clients with special needs may face, indeed may even anticipate, large-item expenses that are foreseeable but relatively infrequent. Examples include the replacement of durable medical equipment, such as a wheelchair, or a vehicle adaption to support handicap access and operation. A traditional IRA funding source must withdraw both the amount of the purchase and the taxes due on it, if no other funds are available. A Roth conversion, on the other hand, owes no taxes and so leaves a larger balance to continue to appreciate tax free. Planners can help clients with special needs by coordinating both an SNT and an ABLE account, but even here, funding of such coordinated support is facilitated by the use of Roth conversions.

Alternative Planning: When a Roth Conversion May Not Be Advantageous

If clients can reasonably expect to have extraordinary home assistance needs or high medical expenses, the Roth conversion may not be in their best interest. Under current law, medical expenses that exceed 10 percent of the client's adjusted gross income (AGI) can be serviced tax free from a traditional IRA if the individual is under age 65 (otherwise such expenses greater than 7.5 percent AGI are tax free).[33] Cymbal and Barrett recommend that if such conditions persist over time that when, "…a relatively large IRA account during his or her last years on a tax-free basis, then converting to a Roth IRA and paying an upfront tax on the value of the IRA may not be a wise decision."[34] Such a strategy might be employed with other innovative funding practices. For example, Pepe suggests that planners look to a home equity conversion mortgage (HECM) to help fund long-term care needs, a funding vehicle that may complement the approach by Cymbal and Barrett.[35]

Summary

In conclusion, financial planners should weigh the strategic considerations discussed above when advising clients with SNP issues about whether to use Roth conversions of legacy retirement plans to fund those special needs plans. If the advice is to use the Roth conversion strategy, then at least seven advantages may be realized for clients with special needs.

Accessibility at Age 59½ versus Age 70½

If Roth conversions are the source of funding for SNP, then the entire balance of those funds can be accessed 10½ years sooner than funds from a traditional IRA or other legacy plans with current or former employers, as long as the Roth has been in existence for more than 5 years. Planners can work with clients with special needs in advance of age 59½ to set up a Roth with a minimum contribution in order to qualify for the 5-year minimum, then roll legacy plans from previous employers into the existing Roth as time and circumstance require. Ideally, the extra time where assets are available will not be necessary, but in the event that it is, the ability to access those assets without penalty or taxes is a distinct advantage of the Roth conversion.

No Required Minimum Distributions

For the original account owner, the Roth does not require minimum distributions at any age, so funds not currently needed can remain in the Roth indefinitely and continue to grow until needed. A traditional IRA has RMDs beginning at age 70½, and those distributions are taxed at the taxpayer's marginal rate as ordinary income. As more clients continue to remain in the workplace longer, an increasing percentage of them will remain in higher marginal taxes rates than those in full retirement. This contingency seems even more likely for working clients with dependents with special needs, who may be in guardianship throughout the dependent's lifetime. A Roth allows those funds to continue to grow tax-free, potentially providing much more funding for SNP in the future.

No Future Taxes

All contributions to a Roth, including the conversion amounts, are after tax and all growth is tax free. For special needs planners, this greatly simplifies planning, because withdrawals will not trigger additional taxes that, in turn, require funding. If it is more likely than not that a traditional IRA owner will be part of a higher tax bracket when he or she is of retirement age, they will save money by converting to a Roth IRA today.

Reduced Risk

With uncertainty about future levels of taxes, or the need to anticipate additional withdrawals above the cost of care removed, Roth conversions reduce the risk for funding SNP. Additionally, since Roth withdrawals need not fund taxes on the amount taken out, planners can use investment options that are potentially less aggressive and less volatile to obtain the same level of net return on tax-deferred plans.

Can Generally be Passed on in Perpetuity

Unlike ABLE accounts and certain SNTs, Roth accounts can generally be passed on through inheritance indefinitely, creating an intergenerational source of funding for SNP.[36] Under current federal law, ABLE accounts can only be inherited by a sibling with a qualified disability, thus limiting their usefulness to a single generation.[37] To ensure that an SNT passes on without additional taxation or Medicaid recapture, planners must be careful to structure the SNT to ensure the tax-free benefits of the Roth continue to the next beneficiary.[38]

Generally Not Subject to Medicaid Recapture if Properly Structured

Federal law requires state Medicaid programs to seek recovery from the estates of certain deceased beneficiaries who have received benefits from a state Medicaid program.[39] Pursuant to the estate recovery procedures set out in each state's probate and tax codes, state governments can recover assets that pass through probate.[40] Stated another way, under certain conditions, money remaining in trusts or other accounts after a Medicaid enrollee has passed away may be used to reimburse Medicaid. Under federal law, states cannot recover from the estate of a deceased Medicaid beneficiary who is survived by a spouse, child under age 21, or a child of any age who is blind or has a disability.[41] States are also required to establish procedures for waiving estate recovery when recovery would cause an undue hardship.

While both Roth and ABLE accounts can grow tax free, ABLE account balances are subject to Medicaid recapture upon the death of the beneficiary. Among other concerns, it is essential that the Roth account align with the minutia of controlling state probate and tax codes. To further shield against estate recovery concerns, the Roth should clearly state that the beneficiary child has a disability impairment that causes marked and severe functional limitations as recognized by the Social Security Administration or other U.S. government entity.[42] Roth accounts can continue without any Medicaid recapture and be retasked to service other special needs clients or passed on to other beneficiaries as the client has indicated.

No Conversion Limits

Both Roth accounts and ABLE accounts are subject to annual contribution limits. But Roth conversions are not subject to limits except insofar as the ability of the client to pay the taxes due on the conversion amount. Planners can use a multiple-year conversion strategy to reduce the total taxes paid on the converted amount, or to stay under the next marginal rate tax increase. In addition, for clients over 59½ years of age and a Roth account more than 5 years old, the converted amount can also be used to pay the taxes due, especially if the conversion occurs early in the year, and the taxes are not due until April 15 of the following year.[43] In such cases, planners may advise clients to invest in fixed rate of return securities—such as bonds—rather than expose the conversion to possible loss during the interim.[44] ■

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(1) For example, children with the most severe special needs conditions, such as cerebral palsy, Down syndrome, and autism account for about 3.4 percent of all children born in the United States. See Lewis Hershey, et al., "When to Stretch and When NOT to Stretch an Inherited IRA: The Special Case of the Special Needs Trust." *Journal of Financial Service Professionals* 69, No. 2 (2015): 59–66. Regarding disability after age 65, as many as two-thirds may require long-term care assistance of 3 years or more. See Mike McGlothin, "Retirement Planning in a Risker World." Webinar sponsored by the *Society of Financial Service Professionals,* accessed at: https://national.societyoffsp.org/page/webinar_archives (membership required), September 25, 2018. In the first case the identity of those needing special needs planning is known, and the length of that planning need and its lifelong costs can be estimated often years in advance. In the second case, both the nature and duration of the special needs planning is not known until after the onset of a new disability where none existed before, requiring both new immediate and future-looking special needs planning, often of an indeterminate nature.

(2) Robert Pokorski and Brett Berg, "Retirement Planning: Coping with Higher Health Care Costs." *Journal of Financial Service Professionals* 71, No. 3 (2017): 53–62.

(3) "Introduction," U.S. Department of Health and Human Services

National Institutes of Health National Institute on Aging, accessed September 20, 2018 at: https://www.nia.nih.gov/living-long-well-21st-century-strategic-directions-research-aging/introduction.
(4) *Ibid.* (Note that some researchers predict that the 85+ age group will grow even faster than the current government projections based on the notion that death rates at older ages will decline more rapidly than anticipated by the U.S. Census Bureau).
(5) "10 Costly Mistakes to Avoid When Planning for a Loved One with Special Needs," *Academy of Special Needs Planners,* 2014; accessed at: https://specialneedsanswers.com.
(6) Legacy retirement plans are referred to herein as the umbrella term for plans located with former employers, consistent with Merriam Webster's 2d definition of the term as "…something transmitted by or received from an ancestor or predecessor or from the past" which can then be used for special needs financial planning to make transfers of wealth and assets after death. *Merriam-Webster.com,* https://www.merriam-webster.com/dictionary/legacy. Also, Robert M. Freedman and Alexis R. Gruttadauria, "Thirteen Estate Planning Tips for Beneficiaries with Special Needs." *Wealth Management,* accessed May 9, 2018 at: http://www.wealthmanagement.com/estate-planning/thirteen-estate-planning-tips-beneficiaries-special-needs.
(7) See generally, "Retirement Plans-Benefits & Savings: Types of Retirement Plans," U.S. Department of Labor, accessed September 21, 2018 at: https://www.dol.gov/general/topic/retirement/typesofplans. (Providing an overview of the following: defined-benefit plan, defined-contribution plan, simplified employee pension plan (SEP), profit-sharing plan, stock bonus plan, 401(k) plan, employee stock ownership plan (ESOP), money-purchase-pension plan, and cash-balance plan).
(8) "Instructions for Forms 1099-R and 5498 (2018): Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.," U.S. Internal Revenue Service, July 19, 2018, accessed at: https://www.irs.gov/instructions/i1099r. (Noting that a "conversion of a traditional IRA to a Roth IRA, and a rollover from any other eligible retirement plan to a Roth IRA, made after December 31, 2017, cannot be recharacterized as having been made to a traditional IRA").
(9) Ed Slott, "5 IRA Planning Strategies to Use Now." *Financial Planning,* June 12, 2018; accessed at: https://www.financial-planning.com/news/ira-tax-strategies-to-use-now.
(10) Scott Hanson, "Planning a Roth IRA Conversion? Check Your State Income Tax," *CNBC Financial Analyst Playbook,* January 15, 2014, accessed at: https://www.cnbc.com/2014/01/15/planning-a-Roth-ira-conversion-check-your-state-income-tax.html. (Noting that "[w]hen you convert a 401(k) plan account or traditional IRA to a Roth IRA, you're making the conscious decision to pay income taxes today for the promise of a tax-free income tomorrow. This can be a wise choice if you are fairly confident that…you'll be in a higher tax bracket during retirement.")
(11) 26 U.S. Code § 408 (defining individual retirement accounts); see also 26 U.S. Code § 408A (2018) (distinguishing Roth IRAs from traditional IRAs).
(12) *Ibid.*
(13) *Ibid.* (Financial planners must take care to ensure that all eligibility and filing status requirements are continuously satisfied.) Under the Tax Cut and Jobs Act of 2017 (TCJA), Roth conversions can trigger higher Medicare premiums, depending on a client's age and income streams. *See* 26 USC §408A (2017) (PL 115–97 amending the Internal Revenue Code of 1986). Note also that at the time of this publication, decreased income tax rates under the TCJA are scheduled to revert to higher levels in 2026. *Id.* This may provide a further incentive for Roth conversions to fund special needs planning in the interim. Financial planners should explain to affected clients that the TCJA's lower income tax rates went into effect in 2018 and that Medicare premiums are calculated using the modified adjusted gross income (MAGI) reported on their IRS tax return from 2 years ago. *See generally* "Part B costs," US Centers for Medicare & Medicaid Services, accessed Feb. 15, 2019, at: https://www.medicare.gov/your-medicare-costs/part-b-costs. In the event a Roth conversion client receives a short-term increase in Medicare premium costs, s/he will still be able to take advantage of lower required minimum distributions (RMDs) and taxes over the long term. See, Mary Beth Franklin, "Roth Conversions Can Boost Medicare Premiums: But One Year of Higher Health Care Costs May Be Worth It to Lower RMDs and Taxes in the Future," InvestmentNews, LLC, accessed May 22, 2018, at: https://www.investmentnews.com/article/20180522/BLOG05/180529986/roth-conversions-can-boost-medicare-premiums. For clients reaching 65 in a given conversion year but covered under an employer's plan or a spouse's health plan, s/he can simply decline Medicare Parts B and D until such time as their conversion strategy is complete and their MAGI lower and enroll later without penalty if they qualify for the special enrollment period. See, https://www.mymedicarematters.org/enrollment/penalties-and-risks/.
(14) "Retirement Plans: IRAs: Traditional and Roth IRAs," U.S. Internal Revenue Service, accessed July 10, 2018, at: https://www.irs.gov/retirement-plans/traditional-and-Roth-iras; see also 26 US Code § 408A (2018) (distinguishing Roth IRAs from traditional IRAs).
(15) Sarah Holden, Daniel Schrass. 2017. "The Role of IRAs in US Households' Saving for Retirement, 2017." *ICI Research Perspective* 23, No. 10 (December 2017), accessed at www.ici.org/pdf/per23-10.pdf; see also Sarah Holden, Daniel Schrass, "Appendix: Additional Data on IRA Ownership in 2017." *ICI Research Perspective* 23, No. 10A (December 2017) accessed at: www.ici.org/pdf/per23-10a.pdf.
(16) Sarah Holden, Daniel Schrass. 2017. "The Role of IRAs in US Households' Saving for Retirement, 2017." *ICI Research Perspective* 23, No. 10 (December 2017) accessed at: www.ici.org/pdf/per23-10.pdf; see also Sarah Holden, Daniel Schrass, "Appendix: Additional Data on IRA Ownership in 2017." *ICI Research Perspective* 23, No. 10A (December 2017) accessed at: www.ici.org/pdf/per23-10a.pdf.
(17) *Ibid.* (Noting that Roth IRAs were first made available in 1998.)
(18) *Ibid.* (Noting that only 12 percent of U.S. households contributed to traditional or Roth IRAs in Tax Year 2017, and very few eligible households made catch-up contributions to traditional IRAs or Roth IRAs.)
(19) *Ibid.* (Stating that in 2017, households owning "traditional or Roth IRAs for less than 10 years had median IRA holdings of $23,000, while households owning traditional or Roth IRAs for 20 years or more had median traditional and Roth IRA holdings of $150,000. Mean traditional and Roth IRA holdings, though considerably higher than the median values, display a similar pattern.")
(20) See e.g., "Roth conversions: Would converting from a traditional IRA to a Roth IRA be a smart move for you? Understand the tax implications before you decide." *The Vanguard Group, Inc.,* accessed September 20, 2018, at: https://investor.vanguard.com/ira/Roth-conversion); Roth IRA conversion: 7 things to know, *Fidelity Investments,* accessed May 24, 2018, at: https://www.fidelity.com/viewpoints/retirement/Roth-ira-conversion-after-50; Arielle O'Shea,

Kevin Voigt, "How to Do a Roth IRA Conversion in 3 Steps," *Nerd Wallet,* accessed September 24, 2018, at: https://www.nerdwallet.com/blog/investing/Roth-ira-conversion; Robert Celluci. "When is the Roth Conversion Optimal?" *Journal of Financial Service Professionals* 68, No. 5 (2014): 94–99; and Lewis Coppersmith and Alan Sumutka, "The Impact of Rates of Return on Roth Conversion Decisions and Retiree Savings Wealth," *Journal of Personal Finance* 16, No. 1 (2017): 29–39.
(21) Bruce Steiner, "Trusts as Beneficiaries of Retirement Benefits," Webinar presented by The American Cancer Society and the Society of Financial Service Professionals, October 17, 2017, accessed at: https://vimeo.com/238637220/a274cb683a (membership required).
(22) *Ibid.*
(23) Deborah Jacobs, "IRAs and Trusts: What You Need to Know," *Forbes,* September 4, 2014.
(24) "The Pros and Cons of a Roth IRA Conversion," *RothIRA.com* (2018).
(25) Michael Kitces, "2018 Roth Conversion Planning after the Tax Cuts and Jobs Act," *Nerd's Eye View,* April 11, 2018, accessed at: https://www.kitces.com/blog/2018-roth-ira-conversion-planning-tcja-conversion-cost-averaging-barbell/?utm_source=Nerd%E2%80%99s+Eye+View+%7C+Kitces.com&utm_campaign=f8d20fb6cc-NEV_MAILCHIMP_LIST&utm_medium=email&utm_term=0_4c81298299-f8d20fb6cc-57071701.
(26) Boris Abbey and Lewis Hershey, "Does the ABLE Act Enable the Wealthy and Disable the Poor?" *Journal of Financial Service Professionals* 70, No. 2 (2016): 46–52; Annemarie Kelly and Lewis Hershey, "A 50-State Review of ABLE Act 529A Accounts," *Journal of Financial Service Professionals* 72, No. 2 (2018): 69–84; Lewis Hershey, Annemarie Kelly, and Boris Abbey, "Enabling ABLE: Five Potential Positives for Implementing the ABLE Act," *Journal of Financial Service Professionals* 71, No. 2 (2017): 60–68; and Lewis Hershey, Annemarie Kelly, and Boris Abbey,"Disabling ABLE: Five Possible Pitfalls When Implementing the ABLE Act," *Journal of Financial Service Professionals* 71, No. 2 (2017): 70–78.
(27) Ed Slott, "How the New Tax Law Changes Roth IRA Conversions," *FinancialPlanning.com,* January 23 2018; accessed at: https://www.financial-planning.com/news/Roth-ira-conversions-the-new-tax-law-changes-conversions.
(28) Andrew Shilling, "How the New Tax Law Makes Roth Accounts More Attractive. Tax Strategy Scan," *FinancialPlanning.com,* March 20, 2018; accessed at: https://www.financial-planning.com/news/how-the-new-tax-law-makes-roth-accounts-more-attractive-to-clients?utm_campaign=Mar%2022%202018-portfolio&utm_medium=email&utm_source=newslette%E2%80%A6.
(29) Kenneth Cymbal and Tom Barrett, "Increasing the Odds of Making a Successful Roth IRA Conversion." *Journal of Financial Service Professionals* 70, No. 3 (2016): 49–63.
(30) *Ibid.* at 57.
(31) *Ibid.* at 59.
(32) Note: Assuming the account is already over 5 years old.
(33) Cymbal and Barrett (2016), endnote 29, at 58; see also Internal Revenue Code § 72(t)(2)(B) (2018) and "Retirement Topics - Exceptions to Tax on Early Distributions," Internal Revenue Service, accessed at: https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-tax-on-early-distributions (December 13, 2018).
(34) *Ibid.* at 58.
(35) Stephen Pepe, "The Home Equity Conversion Mortgage as a Long-Term Care Insurance Alternative for Financing in-Home Care," *Journal of Financial Service Professionals* 71, No. 4 (2017): 53–66.
(36) See generally, Smart ways of leaving your IRA to your heirs, Merrill Edge Bank of America Company, accessed at: https://www.merrilledge.com/article/3-smart-ways-pass-ira-assets-your-heirs (accessed October 13, 2018). (Noting that you can maintain greater control of your assets during your lifetime and beyond with a multigenerational approach.)
(37) The Stephen Beck, Jr., Achieving a Better Life Experience Act (ABLE Act) of 2014, 26 U.S.C. § 529A (2014); see also 26 U.S.C. § 529A note regarding Treatment of ABLE Accounts under Certain Federal Programs (as amended by Pub. L. 113–295, div. B, title I, § 103, Dec. 19, 2014, 128 Stat. 4063).
(38) See for example, Jason Neufeld, "Qualifying for Medicaid with an IRA or 401k," *Elder Law,* February 8, 2018; accessed at: https://www.elderneedslaw.com/blog/qualifying-for-medicaid-with-an-ira-or-401k.
(39) USC § 1396p (discussing liens, adjustments, and recoveries, and transfers of assets).
(40) See generally "Medicaid Estate Recovery," U.S. Department of Health and Human Services (April 2005); available at https://aspe.hhs.gov/basic-report/medicaid-estate-recovery.
(41) Estate Recovery and Liens, Centers for Medicare and Medicaid Services, accessed at: https://www.medicaid.gov/medicaid/eligibility/estate-recovery/index.html (accessed October 14, 2018).
(42) See "Listing Of Impairments," U.S. Social Security Administration, accessed at: https://www.ssa.gov/disability/professionals/bluebook/listing-impairments.htm (accessed on October 14, 2018) (noting the listing of adult and childhood disability impairments recognized by the SSA).
(43) "Topic No. 557 Additional Tax on Early Distributions from Traditional and Roth IRAs," U.S. Internal Revenue Service, accessed at: https://www.irs.gov/taxtopics/tc557 (June 26, 2018). Changes in tax law between 2017 and 2018 have complicated the tax on Roth conversion amounts in some cases. Clients who already pay quarterly and/or pay Roth conversion taxes at conversion are mostly unaffected. For clients currently working and paying payroll taxes in lieu of quarterly estimates, these changes warrant careful re-examination of when and how to pay the tax on conversion amounts. For example, a client whose payroll taxes were sufficient to show "good faith" on the tax due on conversions in 2017, might be deficient per good faith in 2018 because the payroll taxes are lower than in 2017. Additionally, the marginal rates for conversions have also changed, allowing clients to convert a higher amount of their IRA to a Roth without incurring the next marginal rate increase. Both these factors may influence the amount of the conversion and the balance due for taxes owed. Financial planners should work with tax professionals to ensure the client using the conversion is aware of these potential changes that may increase their tax liability from 2017 to 2018 to avoid possible penalties and interest on conversion amounts, even using the same conversion strategy in both years. See for example, Michael Cohn, "New Tax Relief for Clients Who Underwithheld," *Financial Planning,* March 26, 2019; https://www.financial-planning.com/news/irs-expands-underpayment-and-underwithholding-relief-to-80-percent-threshold-following-tax-cuts-and-jobs-act.
(44) *Ibid.*