

## Your Speakers

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# Today's Agenda

- Overview of the New RMD Rules
- Updated Reporting for:
  - Child Birth and Adoption
  - Repayments of CRDs
- IRS Audits –what will they look like
- New Opportunities for all!

## Overview of the New RMD Rules

- Increase in Age for Required Beginning Date (RBD) for Required Minimum Distributions (RMDs) from Age 70 ½ to Age 72 for all plans beginning in 2020
- This means that:
  - if you were born after 6/30/49, age 72 applies to you
  - If you were born before 7/1/49, age 70 ½ applies to you

# Overview of the New RMD Rules

- Primarily the changes are in the death distribution rules
- Effective dates: Generally for death distributions required to be made after 12/31/2019 for individuals who attain age 70 ½/72 after 12/31/2019 (but see exceptions for certain plans below)
  - ✓ Individuals who attained age 70 ½ before 2020 continue to receive minimums as before – no changes in distribution rules!
  - ✓ For Collectively Bargained Plans the earlier of (1) the later of the date of the last CBA, or 12/31/2019, or (2) 12/31/2021
  - ✓ Special rules for existing qualified annuity contracts where the contract has been annuitized or the participant made an irrevocable election prior to Act Passing
  - ✓ ***For Governmental plans defined under 414(d) deaths after 12/31/2021***  
***- This includes 403(b), 457(b), and 401(a) governmental plans***

# Overview of Death Distribution Rules

Before we analyze the changes, let's go over some of the definitions (new and old)

## 1. *Eligible Designated Beneficiary (EDB)*

- Surviving Spouse
- Child under the age of majority\*
- Disabled under section 72(m)(7) of the IRC
- Chronically Ill Individuals (defined under section 7702B(c)(2))
- **An individual who is not more than 10 years younger\*\***

**\*Once the child reaches the age of majority, distributions must be made over 10 years**

**\*\*This one seems to be overlooked in many cases**

# Overview of Death Distribution Rules

2. ***Non-Designated Beneficiaries*** (not a person!) – Charities and Estates
3. ***Designated Beneficiaries*** (persons!) – Applies for deaths before the effective date – the old rule. Generally a living, breathing individual. Exceptions apply to a “look through” trust.
4. ***Subsequent Beneficiaries*** - A beneficiary’s beneficiary

# Overview of Death Distribution Rules

- ✓ Remember the Statute was changed under the SECURE ACT; Treasury will need to update all of the RMD regulations that relate to IRAs, QPs, and 403(b) plans.
- ✓ Maybe we'll even get 457 regs for RMDs! Current rule - they are "similar to QPs" which means since 2002 we have used the QP regs for 457 plans.
- ✓ The aggregation rules that currently apply to IRAs and 403(b)s is under the respective regulations. We assume those rules will still apply as well as the "look through" trust rules.
- ✓ We also now have the Joint Committee on Taxation recap (the blue book) which shows us some of the intent

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# Overview of Death Distribution Rules

## Participant Dies BEFORE the Effective Date

- Generally the old rules apply
- Designated Beneficiaries are treated as EDBs and can continue to stretch the payments

## Participant Dies AFTER the Effective Date

- Non-Designated Beneficiaries (charities/estates) will be required to take distribution within 5 years (they do not get the 10 year rule)
- EDBs can take distributions over their life expectancy
- DBs must take the distribution over 10 years
- Spousal exceptions remain:
  - Spouse can wait until the participant attains the age of 72 to begin RMDs
  - Looks like the “Stepping into the Shoes” Rule will no longer apply

**More to come when we get together in June!**

# Other SECURE Act Items

## Child Birth and Adoption Distributions

- Optional
- Must be taken within 1 year of event
- \$5,000 per child per parent
- Repayments permitted (open ended)
- Financial Institution does not report repayments unless it goes into an IRA
- Repayments for these are reported in Box 14 a & b with a Code "BA"

## Amendment Deadline

- K-14 403(b) Plan
  - 12/31/2024
- 501(c)(3) 403(b) Plan
  - 12/31/2022

# CARES Act Items

## Coronavirus Related Distributions

- Repayments may be made over 3 years
- Taxpayer reports this on a Form 8915E
- Financial Institution does not report repayments unless it goes into an IRA
- IRA repayments for CRDs reported in Box 14 a & b with a Code "DD" on the Form 5498

## CARES Act Loans in 2021

- Loan payments restart 1/1/2021
- Loans re-amortized
  - For payment delays in 2021
  - Maturity date extension
- Notice 2020-50 provides guidance

### **Amendment Deadline**

- K-14 403(b) Plan
  - 12/31/2024
- 501(c)(3) 403(b) Plan
  - 12/31/2022

# Hardship Distribution Amendment

Amendment Deadline: 12/31/2021

- 403(b) Plans must operate under new hardship regulations beginning 1/1/2020 (and may optionally implement as of 1/1/2019).
- Amendment retroactively authorizes the operation of plan according to new regulations.

Key changes under final regulations issued 9/23/2020 for Hardship Distributions

- No longer a requirement to suspend employee deferrals for 6 months after hardship distribution.
- No longer a requirement to take all available plan loans prior to a hardship distribution.
- Employee must represent that they have insufficient cash or liquid assets “reasonably available” to satisfy the financial need.

# Working With Employee Plan (EP) Auditors in COVID-19 Environment



# Challenges for the IRS to Overcome

- All auditors are working remotely
  - Coming into office to process mail
- Communication with taxpayers and representatives
- Retirement – Loss of institutional knowledge
- New Hires – How to train

# FY2021 Program Letter

- Compliance platform
  - Compliance Strategies
  - Data-Driven Approaches
  - Referrals, Claims and Other Casework
  - Compliance Contacts – EPCU
  - Determinations, VC, Other Technical Programs
  - <https://www.irs.gov/government-entities/tax-exempt-government-entities-compliance-program-and-priorities#cs>

## Compliance Contacts EPCU FY 2021

- Asset Mismatched Form 5500
- Final 5500 Filing with Assets
- Non-governmental 457(b) Excess Deferral
- Data Analysis Verification Project
- 5500 EZ First Filer
- Deductions Exceed 25% of Participant Compensation



# EP Compliance Strategies

- RMD in one participant plans
- 403(b) Plans
- 457(b) Plans
- Participant Loans
- ESOPs

## EP Compliance Strategies (cont.)

- Exam Closing Agreement Follow-up
- Fully Insured Defined benefit Plans
- IRC 404(a)(7) Deduction Violations
- Required minimum Distributions – all plans

## How EP is Increasing Their Audits

- Trained Cincinnati Determination agents
- VC agents are being told they will have dual inventory (VC submissions and audits)
- New hiring
  - Yes, you will have inexperienced auditors again
- EP is trying to have a flexible workforce
- EP no longer likes to use the limited scope term for audits

# Audit Activity

- Generally, no in-person audits until June 2021
- Auditor may deviate from IDR procedures until June 2021
  - May Deviate-Standard IDR Follow-up and IDR Enforcement
  - Managers have discretion to not follow this deviation
- <https://www.irs.gov/pub/foia/ig/tege/tege-04-1220-0031.pdf>

# EP Examination Communication

- First contact will still be by letter
- Telephone calls are VOIP to the auditor's computer
- Responses to IDR and IDR Communication
  - Auditors may still ask for files to be sent on USB drive
  - Auditors may request everything be faxed (efax)
  - Auditors may communicate by email with encrypted files
  - <https://www.irs.gov/pub/irs-utl/approval-to-accept-images-of-signatures-and-digital-signatures.pdf>
- EP is trying to be establishing “Taxpayer Digital Communication”

## Current EP Audit Error Trends

- Not following plan formula
- Late deposits employee contributions
- Improper exclusion of eligible employees
- Excess amounts
- Missing Amendments
- Top-heavy minimum contributions
- Unallocated forfeiture accounts

## VCP Good news

- Generally, the average turnaround has been 360 days
- VC inventory now is approximately 1/2 what it was in 2020