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# Current Developments 2020

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## Agenda

- Recent retirement plan legislation (and guidance)
  - SECURE Act
  - Miners Act
  - CARES Act
- Internal Revenue Service regulatory developments
  - Plan document update, including pre-approved plan interim amendments
  - User fee changes
  - IRS Snapshots on plan loan cure period, plan termination, safe harbor plan compensation and 457(b) plans
  - Uncashed distribution checks
- Department of Labor regulatory developments
  - Lifetime income payments
  - Final rule on Financial Factors in Selecting Plan Investments
  - Electronic disclosure safe harbor
  - Pooled Plan Provider registration
- Possible retirement plan legislation



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## Recent Legislation and Guidance

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### Recent Legislation and Guidance

- Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act)
  - Enacted December 20, 2019
- Bipartisan American Miners Act of 2019 (Miners Act)
  - Enacted December 20, 2019
- Coronavirus Aid, Relief, and Economic Security Act (CARES Act)
  - Enacted March 27, 2020



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## SECURE Act

- Pooled Employer Plans and Pooled Plan Providers
- Increased Cap for QACA Safe Harbor Plans
- Rules Relating to Election of Safe Harbor 401(k) Plan Status
- Increase in Credit Limit for Small Employer Startup Costs
- Small Employer Automatic Enrollment Credit
- Prohibition from Making Loans through Credit Cards
- Portability of Lifetime Income Options

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## SECURE Act

- Participation of Long-Term, Part-Time Employees
- Qualified Birth or Adoption Expenses
- Increased Age for Required Beginning Date
- Difficulty of Care Payments – Code §415
- Plan Adopted by Filing Due Date
- Change in After-Death Rules for DC Plans
- Increased Penalties for Failure to File Form 5500

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## What is a Pooled Employer Plan?

- SECURE Act §101 added new Code §413(e) and ERISA §3(2)(C), §3(43), §3(44) relating to Pooled Employer Plans (PEPs)
- Effective for plan years beginning after December 31, 2020
- In general, a PEP is a type of multiple employer plan (MEP):
  - An individual account plan
    - Does not include defined benefit/cash balance plans
  - Established or maintained by a “Pooled Plan Provider” for the purpose of providing benefits to employees of two or more employers
    - No commonality required
  - Described in Code §401(a) or Code §408
    - Does not include §§403(b) or 457(b) plans
  - That includes certain specified terms in its plan document

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## What is a Pooled Plan Provider?

- Pooled Plan Provider is a “person” who:
  - Is designated by the terms of the plan as a Named Fiduciary, as the Plan Administrator, and as the person responsible to perform administrative duties (including conducting proper testing)
  - Registers as a Pooled Plan Provider
    - DOL has issued proposed rule on registration
  - Acknowledges status as Named Fiduciary
  - Ensures fiduciaries and others handling assets are bonded as required under ERISA

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## PEPs – Special Rules

- IRS and DOL directed to provide guidance
- Good faith compliance with law allowed before guidance is issued
- IRS required to provide “model plan language” that meets the requirements of Code and ERISA

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## Increased Cap for QACA Safe Harbor Plans

- Section 102
- The 10-percent limitation on the default deferral rates under an automatic enrollment (QACA) safe harbor plan is increased to 15 percent after the first year that an employee’s deemed election applies
- Effective for plan years beginning after December 31, 2019
- Employer must make an election to apply this provision

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## Rules Relating to Election of Safe Harbor 401(k) Plan Status

- Section 103
- The safe harbor notice requirement is eliminated with respect to nonelective 401(k) safe harbor plans, including QACA safe harbor plans
- A plan can be amended to become a nonelective 401(k) safe harbor plan for a plan year at any time before the 30th day before the close of the plan year

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## Rules Relating to Election of Safe Harbor 401(k) Plan Status

- A plan may be amended after the 30th day before the close of the plan year to become a nonelective contribution 401(k) safe harbor plan for the plan year if:
  - the plan is amended to provide for a nonelective contribution of at least four percent of compensation (rather than at least three (3) percent) for all eligible employees for that plan year; and
  - the plan is amended no later than the last day for distributing excess contributions for the plan year (generally, by the close of following plan year)
- This provision is effective for Plan Years beginning after December 31, 2019

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## Increase in Credit Limit for Small Employer Startup Costs

- Section 104
- A nonrefundable income tax credit is available for qualified startup costs of an eligible small employer that adopts a new qualified retirement plan, SIMPLE IRA plan, or SEP, provided that the plan covers at least one non-highly compensated employee
- Qualified startup costs are expenses connected with the establishment or administration of the plan or retirement-related education for employees with respect to the plan
- An eligible employer must have had no more than 100 employees who received \$5,000 or more of compensation from the employer for the preceding year

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## Increase in Credit Limit for Small Employer Startup Costs

- The credit is the lesser of (1) a flat dollar amount or (2) 50 percent of the qualified startup costs
  - As changed, the flat dollar amount for a taxable year is the greater of (1) \$500 or (2) the lesser of (a) \$250 multiplied by the number of non-highly compensated employees of the eligible employer who are eligible to participate in the plan or (b) \$5,000
- Effective for taxable years beginning after December 31, 2019

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## Small Employer Automatic Enrollment Credit

- Section 105
- Adds Code §45T, which provides a tax credit for eligible employers establishing eligible automatic contribution arrangements (EACAs) in their qualified plans
- The credit is \$500 for any taxable year of an eligible employer during a three-year credit period
- Applicable for taxable years beginning after December 31, 2019
- An eligible employer must have had no more than 100 employees who received \$5,000 or more of compensation from the employer for the preceding year

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## Small Employer Automatic Enrollment Credit

- Notice 2020-68 includes several clarifications relating to the Code §45T
  - An eligible employer may not receive a credit with respect to taxable years in more than one three-year credit period as the credit is only available during a single three-year credit period that begins when the employer first includes an EACA in any qualified plan.
  - An eligible employer must include the same EACA in the same plan for the second and third taxable years with the exception of a plan that is spun-off and continues the same EACA in its own plan
  - The credit applies separately to each eligible employer that participates in a multiple employer plan (MEP)

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## Prohibition from Making Loans through Credit Cards

- Section 108
- A plan may not make any Participant loan through any credit card or any other similar arrangement
- This provision is effective for Participant loans made after December 20, 2019



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## Portability of Lifetime Income Options

- Section 109
- If a lifetime income investment is no longer authorized to be held as an investment option under a qualified defined contribution plan, 403(b) plan, or governmental 457(b) plan, the plan does not fail to satisfy the Code requirements applicable to the plan solely by reason of allowing (1) “qualified distributions” of a “lifetime income investment,” or (2) distributions of a “lifetime income investment” in the form of a “qualified plan distribution annuity contract”
- Such a distribution must be made within the 90-day period ending on the date when the “lifetime income investment” is no longer authorized to be held as an investment option under the plan
- The provision applies to plan years beginning after December 31, 2019



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## Custodial Accounts from Terminated 403(b)(7) Plans

- Section 110
- If an employer terminates a Code §403(b)(7) custodial account plan, the plan may distribute an individual custodial account in-kind and the distributed custodial account shall be maintained by the custodian on a tax-deferred basis as a section 403(b)(7) custodial account
  - IRS guidance shall be retroactively effective for taxable years beginning after December 31, 2008
  - IRS issued Revenue Ruling 2020-23 - Distribution of Individual Custodial Accounts In-Kind upon Termination of a §403(b)(7) plan
  - IRS also issued Notice 2020-80 requesting comments on protection of annuity and spousal rights under ERISA §205

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## Clarification of Retirement Income Account Rules

- Section 111
- Clarified that both QCCOs and non-QCCOs may participate in Code §403(b)(9) retirement income account
- Retroactively effective
- Awaiting guidance from IRS of impact on pre-approved plan program

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## Participation of Long-Term, Part-Time Employees

- Section 112
- Under new Code §401(k)(2)(D), a 401(k) plan may not require employees to complete a period of service that extends beyond the close of the earlier of:
  - the later of attainment of age 21 or completion of a 12-month period during which the employee has completed at least 1,000 hours of service (consistent with the prior age and service eligibility rule); or
  - **the first period of three consecutive 12-month periods during each of which the employee has completed at least 500 hours of service**

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## Participation of Long-Term, Part-Time Employees

- Under new Code §401(k)(15), the new LTPT employee rule will not apply unless an employee has attained age 21 by the close of the three consecutive 12-month periods.
- This new LTPT employee rule applies for plan years beginning after December 31, 2020
- However, 12-month periods of service beginning before January 1, 2021 are not considered in the new eligibility determination
- The exclusion of 12-month periods prior to January 1, 2021 does not extend to crediting service for vesting purposes
- Relief from nondiscrimination and top-heavy rule

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## Qualified Birth or Adoption Expenses

- Section 113
- Provides an exception to the 10% additional tax (i.e., the early distribution penalty when a participant takes a distribution prior to an otherwise distributable event) for qualified birth or adoption distributions (QBADs) up to \$5,000, from certain “applicable eligible retirement plans”
- Individuals are allowed to recontribute the QBADs they receive, subject to certain requirements
- Effective for plan years beginning after December 31, 2019
- Notice 2020-68 provides some clarifications

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## Increased Age for Required Beginning Date

- Section 114
- Changes the age on which the Required Beginning Date for required minimum distributions is based on from the calendar year in which an employee attains age 70½ to the calendar year in which an employee attains age 72
- Present law continues to apply to employees who attained age 70½ prior to January 1, 2020
- This provision is effective for distributions required to be made after December 31, 2019, with respect to Participants who attain age 70 ½ after such date.
- This provision is applicable to all defined contribution, defined benefit, 403(b) and 457(b) plans

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## Difficulty of Care Payments – Code §415

- Section 116
- Amends Code §415(c)(3) to include nontaxable “difficulty of care” payments as compensation for determining the Code §415 limits for an individual
- “Difficulty of care” payments are only made to certain qualified foster care providers
- This provision applies to both defined contribution and 403(b) plans and is applicable to contributions for plan years beginning after December 31, 2015
- Notice 2020-68 clarifies compensation under Code §415(c)(3) only includes that of the individual’s employer such that “difficulty of care” payments made by anyone, other than the employee’s employer, are not included in the definition of compensation under the employer’s plan

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## Plan Adopted by Filing Due Date

- Section 201
- If an employer adopts a qualified retirement plan after the close of a taxable year but before the time prescribed by law for filing its tax return for the taxable year (including extensions thereof), the employer may elect to treat the plan as having been adopted as of the last day of the taxable year
- The proposal does not override rules requiring certain plan provisions to be in effect during a plan year, such as the provision for elective deferrals under a qualified cash or deferral arrangement
- Applies to plans adopted for taxable years beginning after December 31, 2019

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## Change in After-Death Rules for DC Plans

- Section 401
- Changes the after-death required minimum distribution rules applicable to defined contribution plans (but not defined benefit plans) with respect to required minimum distributions to designated beneficiaries
- The current five-year rule is expanded to become a 10-year period instead of five years (“10-year rule”), such that the 10-year rule is now the general rule for distributions to designated beneficiaries after death (regardless of whether the employee dies before, on, or after the required beginning date) unless the designated beneficiary is an eligible beneficiary.
  - Thus, in the case of an ineligible beneficiary, distribution of the employee entire benefit must be distributed by the end of the tenth calendar year following the year of the employee’s death.

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## Change in After-Death Rules for DC Plans

- For eligible beneficiaries, an exception to the 10-year rule applies whether or not the employee dies before, on, or after the required beginning date
  - The exception (similar to present law) generally allows distributions over life or the life expectancy of an eligible beneficiary beginning in the year following the year of death.
  - Eligible beneficiaries include any beneficiary who, as of the date of death, is:
    - the surviving spouse of the employee,
    - is disabled,
    - is a chronically ill individual,
    - is an individual who is not more than 10 years younger than the employee or
    - is a child of the employee who has not reached the age of majority

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## Change in After-Death Rules for DC Plans

- Applies to distributions with respect to employees who die after December 31, 2019 (December 31, 2021 for governmental plans)
- Applicable to all defined contribution, 403(b) and 457(b) plans
- Not applicable to defined benefit plans

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## Increased Penalties for Failure to File Form 5500

- Section 403
- Increases penalties for failure to file certain retirement plan returns effective for returns, statements, and notifications required to be filed after Dec. 31, 2019
- The penalty for failure to file Form 5500 series and Form 5310-A required by IRC 6058 increased to \$250 per day, not to exceed \$150,000
- The penalty for failure to file a registration statement, Form 8955-SSA, required by IRC 6057(a), increased to \$10 for each participant with respect to whom there is a failure to file multiplied by the number of days the failure occurred, not to exceed \$50,000 with respect to any plan year
- The penalty for failure to file a notification of change of plan status required by IRC 6057(b) increased to \$10 for each day during which such failure occurs, not to exceed \$10,000

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## In-Service Distributions for Pension Plans – Miners Act

- Section 104 of the Miners Act
- Amended Code §401(a)(36) to reduce the minimum age for in-service distribution from pension plans (i.e., money purchase and defined benefit plans) from age 62 to age 59½ and, for governmental 457(b) plans, from age 70½ to age 59½
- Applies to plan years beginning after December 31, 2019
- An employer must make an election to apply this provision

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## Amendment Deadline – SECURE Act and Miners Act

- Section 601 of SECURE Act (as clarified by Notice 2020-68)
- For qualified plans, the deadline to amend a plan for the SECURE Act, the regulations thereunder or for the change in the permissible in-service distribution age under the **Miners Act** is the last day of the first plan year beginning on or after January 1, 2022
  - For collectively bargained plans and governmental plans, the amendment can be delayed until the last day of the first plan year beginning on or after January 1, 2024
- For 403(b) plans not maintained by public schools, the deadline to amend a plan for provisions of the SECURE Act or the regulations thereunder is the last day of the first plan year beginning on or after January 1, 2022
  - For 403(b) plans maintained by public schools, the amendment can be delayed until the last day of the first plan year beginning on or after January 1, 2024

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## CARES Act

- Coronavirus-related distributions (CRDs) and loans
- Waiver of 2020 required minimum distributions
- Defined benefit plan relief

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## Coronavirus-Related Distributions

- Waiver of the 10% early withdrawal tax for “coronavirus-related distributions” (CRDs)
- In-service distributions restrictions liberalized for 401(k), 403(b) and governmental 457(b) plans
- CRDs are available on or after January 1, 2020 and before December 31, 2020
- Aggregate CRD cannot exceed \$100,000 (including all plans maintained by members of the same controlled group)

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## Coronavirus-Related Distributions

- Definition of CRD - a distribution to an individual:
  - who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Centers for Disease Control and Prevention (CDC);
  - whose spouse or dependent is diagnosed with such virus or disease by a CDC-approved test; or
  - who experiences adverse financial consequences as a result of:
    - being quarantined, being furloughed or laid off or having work hours reduced due to such virus or disease,
    - being unable to work due to lack of childcare due to such virus or disease,
    - closing or reducing hours of a business owned or operated by the individual due to such virus or disease, or
    - other factors as determined by the Secretary of the Treasury
- A plan administrator may rely on a participant's certification that he/she qualifies for a CRD

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## Coronavirus-Related Distributions

- Under Notice 2020-50, in addition, a qualified individual for purposes of this notice is an individual who experiences adverse financial consequences as a result of:
  - the individual having a reduction in pay (or self-employment income) due to COVID-19 or having a job offer rescinded or start date for a job delayed due to COVID-19;
  - the individual's spouse or a member of the individual's household (as defined below) being quarantined, being furloughed or laid off, or having work hours reduced due to COVID-19, being unable to work due to lack of childcare due to COVID-19, having a reduction in pay (or self-employment income) due to COVID-19, or having a job offer rescinded or start date for a job delayed due to COVID-19; or
  - closing or reducing hours of a business owned or operated by the individual's spouse or a member of the individual's household due to COVID-19.

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## Coronavirus-Related Distributions

- May spread the income tax ratably over a 3-year period or may elect to have the entire amount included in income in the year of distribution
  - IRS Form 8915-E
- May repay the CRD (or a portion) back to the plan (or any plan the participant is eligible to roll money into) as a rollover at any time within 3-year period beginning on the date of the distribution
  - IRS Form 8915-E
- Notice 2020-50 provides further clarifications

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## Relaxation of Plan Loan Requirements

- For the 180-day period beginning on March 27, 2020, a participant who is eligible to receive a CRD may receive plan loans in an amount not to exceed the lesser of:
  - \$100,000 (rather than \$50,000) or
  - 100% (rather than 50%) of the participant's vested account balance (accrued benefit).
- A participant who is eligible to receive a CRD (i.e., a "qualified individual") who has an outstanding participant loan or obtains a loan may defer any loan payments due from March 27, 2020 through December 31, 2020 for one year
- Notice 2020-50 provides clarifications

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## Waiver of Required Minimum Distributions

- Required minimum distribution rules under Code §401(a)(9) are waived for the 2020 calendar year for certain plans
  - Defined contribution plans, including §401(a) plans, §403(a) plans and §403(b) plans, governmental Code §457(b) plans and IRAs
  - Waiver rules do not apply to defined benefit plans
- Temporary waiver may include distributions required to be made by April 1, 2020 for individuals that attained age 70 ½ in 2019
- Notice 2020-51 provides clarifications

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## Waiver of Required Minimum Distributions

- Notice 2020-51
  - Individuals have (had) until August 31, 2020 to rollover all previously distributed 2020 RMDs, including RMDs taken in January
  - The rollover or repayment of RMDs will not be treated as a rollover for purposes of the one rollover per 12-month period rule
  - Rollover of non-spousal beneficiary RMDs is allowed
  - Plan amendments
    - Sample plan amendment provided
    - Mandatory signature by adopting employer?

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## Plan Amendment Deadlines

- Statutory deadline - last day of the 2022 plan year
  - Applies to CRDs, loan rules and waiver of minimum distributions
  - Not specific for benefit restriction rules for defined benefit plans
- Timing of interim amendments
  - Coordination with Cycle 3 defined contribution plan restatements?
- Plan sponsors should document operational decisions
  - Operational checklist
- Terminating plans
  - Must be amended for all laws in effect as of the date of termination

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## IRS Regulatory Developments

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## Plan Document Update

- Defined contribution pre-approved plans
  - Most Cycle 3 opinion letters issued June 30, 2020
  - Cycle 3 restatement period ends July 31, 2022
    - Deadline for Form 5307 filings also July 31, 2022
  - Interim amendment deadline for final hardship distribution regulations – December 31, 2021
- Defined contribution individually-designed plans
  - Notice 2019-64 (RAL) – Final hardship distribution regulations
    - Amendment deadline – December 31, 2021

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## Plan Document Update

- 403(b) individually-designed plans
  - Notice 2019-64 (RAL) – Final regulations hardship distribution regulations
    - Amendment deadline – December 31, 2021

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## Plan Document Update

- 403(b) pre-approved plans
  - Cycle 1 restatement deadline – June 30, 2020
  - Self-correction under EPCRS – Revenue Procedure 2019-19
  - Revenue Procedure 2019-39
    - Remedial Amendment Periods for individually designed plans and pre-approved plans
    - Pre-approved plan amendments for changes to Code §403(b) requirements
      - No earlier than Cycle 2, provided an “interim amendment” is adopted by the end of the calendar year after the calendar year in which the change is effective
  - Pre-approved plans – 6-year cycle
    - Submissions for next cycle in 2023

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## Plan Document Update

- 403(b) pre-approved plans
  - Notice 2019-64 (RAL) – Final hardship distribution regulations
    - Amendment deadline – December 31, 2021

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## User Fee Changes

Type of User Fee	Current Fee	New Fee Effective January 4, 2021
Form 5300	\$2,500	\$2,700
Form 5307	\$800	\$1,000
Form 5310	\$3,000	\$3,500

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## IRS Issue Snapshots

- IRS Tax Exempt and Government Entities (TE/GE) Knowledge Management team periodically issues research summaries called “Issue Snapshots” on tax-related issues for practitioners
  - 457(b) Plan of Tax-Exempt Entity - Tax Consequences of Noncompliance
  - 457(b) Plans - Correction of Excess Deferrals
  - Section 457(b) Plan of Governmental and Tax-Exempt Employers - Catch-Up Contributions
  - IRS Procedures Regarding Missing Participants and Beneficiaries
  - 403(b) Plans - Catch-Up Contributions
  - Design-based Safe Harbor Plan Compensation
  - Plan Loan Cure Period
  - Plan Termination - Failure to Timely Distribute Assets

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## 457(b) Plan of Tax-Exempt Entity - Noncompliance

- General rule - In the case of an eligible plan maintained by a tax-exempt entity, annual deferrals are excluded from the gross income of a participant in the year deferred and are not includible in gross income until paid or made available to the participant
- When an eligible 457(b) plan of a tax-exempt organization fails to meet the requirements of IRC Section 457(b), amounts deferred under the plan become subject to IRC Section 457(f) and Reg. Section 1.457-11 beginning on the first day of the failure
  - Such amounts are includible in the participant's or beneficiary's gross income in the first taxable year in which there is no substantial risk of forfeiture
  - Earnings on the deferred amounts are includible in gross income in the first taxable year in which there is no substantial risk of forfeiture and determined as of that date

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## 457(b) Plans - Correction of Excess Deferrals

- Correction of Excess Deferrals Due to Plan Limitation
  - Tax-Exempt 457(b) Plans - Annual deferrals must be corrected by April 15 of the taxable year following the close of the taxable year of the excess
    - If the plan deferrals are not corrected by such a distribution, the plan will be considered an ineligible plan under IRC Section 457(f)
  - Governmental 457(b) Plans - Excess deferrals arising from application of the plan limitation must be distributed, along with allocable net income, as soon as administratively practicable after the plan determines there is an excess deferral
    - Failure to correct the excess deferral as soon as administratively practicable causes the plan to become an ineligible plan and benefits under the plan are taxable as required under Reg. Section 1.457-11
- Excess Deferrals Due to Individual Limitation
  - All excess deferrals are includible in gross income in the taxable year of the excess deferral

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## 457(b) Plans – Catch-Up Contributions

- Special 457(b) catch-up limit applies to both governmental and tax exempt 457(b) plans
- Age 50 catch-up limit only applies to governmental 457(b) plans
- Snapshot cautions about importance of accurate bookkeeping and provides numerous issue indicators and audit tips for examiners

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## Missing Participants and Beneficiaries

- Required minimum distributions - The IRS will not treat an IRC 401(a) plan or an IRC 403(b) plan as failing to make a required minimum distribution to a missing participant or beneficiary if the plan has done a diligent search
- Corrective distributions under EPCRS - Reasonable actions must be taken to find all current and former participants and beneficiaries to whom additional benefits are due, but who have not been located after a mailing to their last known address

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## Design-based Safe Harbor Plan Compensation

- A design-based safe harbor plan that bases allocations on compensation must use a definition of compensation that is nondiscriminatory under Reg. Section 1.414(s)-1
- The requirement to use a nondiscriminatory definition of compensation also applies to ADP and ACP testing and safe harbor plans
- Reviewer Tips
  - Review the plan document to determine if the plan's compensation definition automatically satisfies IRC Section 414(s)
  - If it does not, on a determination case, secure either an amendment to the plan, or a revised Form 5300 changing this election request
  - If it does not, on an examination where nondiscrimination in the amount of employer-provided benefit is being evaluated, secure and review a compensation inclusion (ratio) test

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## 403(b) Plans - Catch-Up Contributions

- All 403(b) plans can provide for age 50 catch-up contributions
- Only a 403(b) plan maintained by a “qualified organization” may allow increased elective deferrals under the special 403(b) catch-up
  - If the plan permits both the age 50 catch-up and the special 403(b) catch-ups, you must consider the special 403(b) catch-up first to apply the annual limit
- Snapshot provides audit tips
  - Review the Forms W-2 to determine if any employee has exceeded the basic IRC Section 402(g) limit
  - For plans that permit both types of catch-up contributions, make sure the contributions are applied to the limits in the proper order.
  - Verify that the qualified organization keeps the records necessary to calculate the special 403(b) catch-up and that the calculations are accurate

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## Plan Loan Cure Period

- A plan administrator may, but is not required to, allow a cure period during which a delinquent participant loan may be brought back into compliance without triggering a deemed distribution
  - The cure period must be specifically provided for in the written plan document
- The maximum allowable cure period would extend to the last day of the calendar quarter following the calendar quarter in which the required installment payment was due
  - The plan administrator may also adopt a shorter cure period, or none
- Snapshot provides helpful examples
  - Timely payments shifted to cover late payments
  - Shifted payments too late to cure
  - Refinance of outstanding balance

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## Plan Termination - Failure to Timely Distribute Assets

- A plan is not considered terminated until it distributes all assets to the participants
- A qualified plan under which benefit accruals have ceased is not terminated if plan assets remain in the plan's related trust rather than being distributed as soon as administratively feasible
  - Under Rev. Rul. 89-87, generally, a distribution which is not completed within one year after the employer-specified date of plan termination is presumed not to have been made as soon as administratively feasible
- A plan under which all assets are not distributed as soon as administratively feasible is an ongoing plan and must:
  - Meet the requirements of §401(a) to continue its qualified status (which may require plan amendments and changes in plan operations if the law requires)
  - Meet the minimum funding requirements of IRC Sections 412 and 430, where applicable
  - Comply with the Form 5500 reporting requirements

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## Uncashed Distribution Checks

- Revenue Ruling 2019-19 - How to handle amounts that result when participants are paid out and do not cash the distribution checks
- FACTS - Employer M is the plan administrator of Plan X. A distribution of \$900 is required to be made from Plan X to Individual A in 2019. Individual A has no basis under the Plan. Individual A has never made a withholding election with respect to her Plan X benefit. Employer M makes the required \$900 distribution, by withholding tax and mailing a check for the remainder to Individual A. Although Individual A receives the check and could cash it in 2019, she does not do so. Individual A does not make a rollover contribution with respect to any portion of the designated distribution.

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## Uncashed Distribution Checks

- Issues
  - (1) Under the facts presented, does Individual A's failure to cash the distribution check she received in 2019 permit her to exclude the amount of the designated distribution from her gross income in that year under § 402(a) of the Internal Revenue Code?
  - (2) Does Individual A's failure to cash the distribution check she received alter Employer M's obligations with respect to withholding under § 3405?
  - (3) Does Individual A's failure to cash the distribution check she received alter Employer M's obligations with respect to reporting under § 6047(d)?

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## Uncashed Distribution Checks

- Holdings

(1) Individual A's failure to cash the distribution check she received in 2019 does not permit her to exclude the amount of the designated distribution from her gross income in that year under § 402(a)

(2) Individual A's failure to cash the distribution check she received does not alter Employer M's obligations with respect to withholding under §3405

(3) Individual A's failure to cash the distribution check she received does not alter Employer M's obligations with respect to reporting under §6047(d)

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Department of Labor  
Regulatory Developments

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## Interim Final Rule on Lifetime Monthly Payments

- SECURE Act 203
- Interim Final Rule amends the pension benefit statement requirements to require a participant's accrued benefits to be included on his or her pension benefit statement as a current account balance, and as an estimated lifetime stream of payments.
  - Using assumptions set forth in the rule, plan administrators will show participants equivalents of their retirement savings as monthly income under two potential scenarios
    - As a single life income stream
    - As an income stream that factors in a survivor benefit

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## Interim Final Rule on Lifetime Monthly Payments

- To help ease the administrative burdens on plan administrators, the interim final rule includes model language that may be used for these explanations
- Plan fiduciaries that use the regulatory assumptions and the model language prescribed by the rule will qualify for liability relief and will not be held liable in the event participants are unable to purchase equivalent monthly payments
- The interim final rule will be effective 12 months after the date of its publication in the Federal Register
  - The actual effective date is September 18, 2021

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## Financial Factors in Selecting Plan Investments

- Final rule issued on October 30, 2020
- The final rule includes the following core additions to the current investment duties regulation at 29 CFR 2550.404a-1

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## Financial Factors in Selecting Plan Investments

- Adopts the addition of a general restatement of the loyalty duty under ERISA section 404(a)(1)(A)
- Continues to treat the original 1979 regulation's provisions on the fiduciary duty of prudence as a safe harbor
- Sets out a new provision regarding a fiduciary's duty of loyalty under ERISA section 404(a)(1)(A) as minimum requirements for meeting the statutory standard of loyalty

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## Financial Factors in Selecting Plan Investments

- Adds a specific provision to confirm that ERISA fiduciaries must evaluate investments and investment courses of action based solely on pecuniary factors
  - Provision also states that the duty of loyalty prohibits fiduciaries from subordinating the interests of participants to unrelated objectives and bars them from sacrificing investment return or taking on additional investment risk to promote non-pecuniary goals
- Explicitly requires fiduciaries to consider reasonably available alternatives to meet their prudence duties under ERISA

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## Financial Factors in Selecting Plan Investments

- The final rule states that the prudence and loyalty standards set forth in ERISA apply to a fiduciary's selection of a designated investment alternative to be offered to plan participants and beneficiaries in an individual account plan
- No specific references to ESG or ESG-themed funds

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## Electronic Disclosure Safe Harbor

- On May 21, 2020, DOL announced a final rule on electronic disclosures
- Establishes a new, voluntary safe harbor for retirement plan administrators who want to use electronic media, as a default, to furnish covered documents to covered individuals using the following optional methods:
  - Website posting - Plan administrators may post covered documents on a website if appropriate notification of internet availability is furnished to the electronic addresses of covered individuals
  - Email delivery - Alternatively, plan administrators may send covered documents directly to the electronic addresses of covered individuals, with the covered documents either in the body of the email or as an attachment to the email

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## Electronic Disclosure Safe Harbor

- Protections for covered individuals
  - Right to Paper - Covered individuals can request paper copies of specific documents, or globally opt out of electronic delivery entirely, at any time, free of charge
  - Initial Notification - Covered individuals must be furnished an initial notification, on paper, that the way they currently receive retirement plan disclosures (e.g., paper delivery in the US mail) is changing
  - Notifications of Internet Availability - Covered individuals generally must be furnished a notice of internet availability (NOIA) each time a new covered document is made available for review on the internet website

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## Electronic Disclosure Safe Harbor

- Protections for covered individuals
  - Website Retention - Covered documents must remain on an internet website until superseded by a subsequent version, but in no event for less than one year
  - System Check for Invalid Electronic Addresses - Plan administrators must ensure that the electronic delivery system is designed to alert them if a participant's electronic address is invalid or inoperable
  - System Check at Termination of Employment - When someone leaves their job, the plan administrator must take steps to ensure the continued accuracy and operability of the person's employer-provided electronic address

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## Pooled Plan Provider Registration

- On August 20, 2020, DOL announced a notice of proposed rulemaking (NPRM) on Pooled Plan Provider registration, including a proposed EBSA Form PR
- The registration process would involve an initial registration, supplemental filings regarding specific reportable events, and a final filing after the Pooled Plan Provider's last PEP has been terminated and ceased operations
- The initial registration would have to be filed no sooner than 90 days before and no later than 30 days before it begins operating (defined as marketing or publicly offering a PEP) as a Pooled Plan Provider
- EBSA Form PR would be the required vehicle for Pooled Plan Provider registration filings

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## Possible Retirement Plan Legislation

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## Possible Retirement Plan Legislation

- Stimulus legislation
  - Extension of coronavirus-related distributions and loans
    - CRDs for money purchase plans
  - Defined contribution plan funding relief
  - Partial plan termination relief
  - Retroactive change to the required minimum distribution rules for 2019 distributions
  - Other items



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## Possible Retirement Plan Legislation

- The Securing a Strong Retirement Act of 2020
  - Expanding automatic enrollment plans
  - Modification of credit for small employer pension startup costs
  - Simplification and increase of Saver's Credit
  - Enhancement of 403(b) plans

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## Possible Retirement Plan Legislation

- The Securing a Strong Retirement Act of 2020
  - Increase required beginning date for RMDs to age 75
  - Higher catch-up contribution at age 60
  - Multiple employer 403(b) plans
  - Treatment of student loan payments for matching contribution purposes
  - Small immediate financial incentives for elective deferrals

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## Possible Retirement Plan Legislation

- The Securing a Strong Retirement Act of 2020
  - One-year reduction in period of service for LTPT employees
  - Modification of RMD rules for life annuities and QLACs
  - Recovery of plan overpayments
  - Reduction in RMD excise tax
  - Elimination of unnecessary plan requirements for unenrolled participants

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## Possible Retirement Plan Legislation

- The Securing a Strong Retirement Act of 2020
  - Retirement savings “lost and found”
  - Exemption from RMD rules if account balance not more than \$100,000
  - Expansion of EPCRS
  - Requirement to provide paper statements
  - Plan amendment delay to 2022

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Thank you for attending!

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