

December 2021 RMD Webcast for ERISApedia.com

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The following are answers to selected questions sent to S. Derrin Watson during his December 14, 2021 webinar. They represent the opinions of Mr. Watson. They are given his general information and do not constitute formal advice for any particular situation.

How do you calculate RMD if only asset is an insurance policy?

You calculate it normally based on the value of the policy. The real problem is how you pay it. Policy loans are one possibility. The other is simply to distribute the policy or have the participant purchase the policy.

In a 401(k) plan: Father DOB 10/28/1924 deceased 11/14/2019 – took his 2019 RMD prior to death. Non-Spousal beneficiary #1 Son DOB 02/01/1957 Non-Spousal beneficiary #2 Granddaughter DOB 03/16/1987 2020 – RMD waived due to CARES 2021 – need to calculate the RMD amount to come out of each beneficiary account by 12/31/21. 1. What table is used to calculate the amounts for each of them? 2. Which date of birth do we use? Owner or beneficiary? 3. What happens for 2022 and beyond?

Inasmuch as the participant has died, you use the single life table. In each case, the beneficiary is younger than the Participant, so you use the beneficiary's life expectancy. Because the Participant died before 2020, the pre-SECURE rules are used. Let me illustrate those rules with the son. In the year 2020, the son turned 43. I choose 2020 because it is the year following the year of death. I go to the single life table and find that the life expectancy of a 43-year-old is 40.7. If CARES had not been in effect, the RMD for 2020 would have been the son's portion of the account in 2019 divided by 40.7. The life expectancy factor for 2021 is 39.7. The life expectancy factor for 2022 is 38.7. You subtract one each year. The 2021 RMD is the December 31, 2020 balance divided by 39.7.

I have heard mentioned in a webcast that a plan that is set up for an owner who is beyond their Required Beginning Date never has to pay RMDs until they actually retire. Is there any truth to this statement?

I believe that is an aggressive interpretation of the rules.

I meant the rank in file ee turned 70.5 in 2019 but did not terminate employment until 11/2020. Her RBD is 04/01/2021. She was rehired in February, 2021. We told the client to be aggressive and start her RMD's for 2021 as due to Cares she did not have to take her RBD RMD of 04.01.2021.

I think you gave good advice. I would treat the required beginning date as April 1, 2021.

What happens to HCE in pay status when the company is acquired?

I am assuming you are referring to the RMD rules. Once RMDs begin, they do not stop.

What happens if you are in the middle of a conversion at the end of the year and the plan is in black out and RMD may not be processed by 12/31/21. What are some options to handle properly distributing RMDs during a blackout?

Plan ahead. Distribute your RMDs before the blackout. You have an operational failure because you did not plan ahead on something totally within the control of the plan Administrator. The correction for the operational failure is to distribute the RMD as soon as practical once the blackout ends, plus earnings. However, you have left the employee in the position of facing a 50% penalty. The employer should consider filing under VCP and asking for waiver of the penalty, particularly if the amount is large. The participant can file a reasonable cause declaration with the Participant files his or her return and asked for waiver of the penalty.

When doing corrections for RMDs not taken for several years, does CARES waiver mean you can ignore 2020 and no penalties for not taking?

Yes. In this case, CARES means never having to say you're sorry.

If a non-owner former employee who has been receiving RMDs from a 401(k) retirement plan for a number of years is rehired by the sponsoring employer, are their future RMDs suspended until they retire again or become a 5% owner?

No. Once RMDs begin, they do not stop.

What should we do with RMD that's not cashed by the participant? Even after we resend the check to the participant's address that we found through an address search, it's still outstanding.

First, check the plan document to see if it addresses the situation. In addition, check out this comment from the IRS: <https://www.irs.gov/retirement-plans/minimum-distributions-for-missing-participants-and-beneficiaries-of-retirement-plans>.

I have always been confused. When I start my first RMD on 4-15, does that mean I must also take the second one on 12-31 of the first year?

The required beginning date is April 1, not April 15. The answer to your question is yes, and it is important to understand what is happening. Suppose I turned 72 this year. My required beginning date is April 1, 2022. That is the deadline for me to distribute my 2021 RMD. That RMD will be based on the December 31, 2020 balance and my life expectancy in 2021. The December 31, 2022 RMD is for the 2022 distribution calendar year. It is based on the December 31, 2021 balance in my life expectancy in 2022.

I have a person who turned 70 1/2 in 2017 (born before 1949) and was not a 5% owner at the time. He is now a 5% owner and still active. Can you confirm that he will not need an RMD until he terminates since he is essentially locked in as a non-owner due to his 0% ownership in 2017?

Confirmed. You are correct.

Not clear to me if the plan currently gives beneficiary the option to apply 5 year rule, is a CARE amendment needed?

Perhaps. It depends on the employer's wishes with regard to the application of CARES on the five year rule and the terms of the plan document without the amendment. It also depends on whether it matters to anyone. If nobody was eligible for RMDs, or would have received RMDs, in 2020, or April 1, 2021, and nobody was using the five year rule, a CARES amendment to deal with RMD issues is irrelevant and unnecessary.

EE is age 72 in 2020, terminates in 2020 due to Covid. RMD is waived in 2020 due to CARES. EE is rehired in 2021. Is the RBD date considered to

have started in 2020? Are they required to start/continue receiving RMD's in 2021 and future?

The required beginning date was April 1, 2021, and the first RMD is due December 31, 2021.

If the death benefit is more than the force-out limit, what do we do with it if it's never claimed by the beneficiary within the 5 or 10-year timeframe?

Distribute it if you can locate the beneficiary. The beneficiary does not have the option to leave it in the plan after the applicable deadline. If you cannot locate the beneficiary, see <https://www.irs.gov/retirement-plans/minimum-distributions-for-missing-participants-and-beneficiaries-of-retirement-plans> and the plan document.

With the "other DB" as the recipient, does it matter if the P died before or after RBD as to whether any distributions must be taken before the 10th year?

That is a matter of debate which I hope the IRS will clarify further.

Can a plan elect to retain the 5-year rule for all beneficiaries? When does election have to made?

This would need to be a plan amendment, probably executed in connection with your SECURE amendment. You can always act faster than the RMD rules require. So while the RMD rules may permit a plan for 10 years, a plan could choose to force it out in five. However, it is questionable whether that election to an eligible designated beneficiary of a Participant who died after the required beginning date, inasmuch as the life expectancy rule applies without exception or election in such a case.

What is the time frame for distribution of a designated beneficiary of an inherited IRA? 10 years or 5 years?

Inherited IRAs follow the same RMD rules as qualified plans. For example, the spouse has the ability to take it out over his or her life expectancy, without regard to either the five year rule or the 10 year rule.

If the beneficiary is the spouse and the participant died after the participant's RBD and they died in 2019 (pre-SERCURE) and the doc allows the choice between 5 year or Life expectancy, would the Bene (spouse) have the option to wait until 2025 OR life expectancy? There's no requirement for the bene to take RMDs each year? I just want to be sure I am understanding this correctly. I have this exact situation.

The 5-year rule does not apply in any situation to a Participant who died after the RBD. It never has.

What are consequences of not complying with the RMD rules, including those rules which relate to distributions to beneficiaries?

There are two consequences. The first is that the plan has an operational failure, which frequently is self-corrected but can also be corrected under VCP. The second is that the recipient is subject to a penalty tax of 50% of the amount that should have been distributed. If the plan files under VCP, that penalty is usually waived. The participant or beneficiary can request a waiver for reasonable cause on their own return. These consequences apply even if the plan is unaware of who the beneficiaries are, although it is virtually certain that the IRS will waive the distribution penalties assuming the plan has made reasonable efforts.

What happens when the plan participant dies after RBD and doesn't have a designated beneficiary on file? There is a surviving spouse. Does the RMD get paid to the surviving spouse?

That depends on the terms the plan. Frequently, the answer to your question is yes, it does get paid to the surviving spouse, but you need to check the plan document.

What does it mean "subtract 1 every year". Subtract the 1 from what?

Subtract one from the life expectancy. Suppose Jack is the beneficiary of his aunt's 401(k) plan. He consults the SLT for the year following the year of her death, and finds that his life expectancy is 35.2. That is the life expectancy to use for his first distribution. Next year, you will subtract one, and the life expectancy is 34.2. Next year, you will subtract one, and the life expectancy is 33.2.

If a person is receiving a death RMD (reduction by 1) and the RMD waived in 2020 - do we reduce by 2 in 2021?

If it helps you to think of it that way, be my guest. I prefer to think of it as subtracting one every year, including 2020, the year for which the RMD was waived.

Can spouse delay RMD by rolling to their employer plan and working for same employer past age 72?

Yes. The spouse's the only beneficiary who has that capability.

What occurs if DB doesn't make an election between the life expectancy rule and the 10 year rule?

Check the terms of your SECURE amendment. That should provide for a default. If you don't yet have a SECURE amendment, which is not at all surprising, choose a default and then reflected in your SECURE amendment. Be consistent.

We had a participant was age 72 but was actively employed before dying this past summer (in 2021). Did she pass before her RBD? Or since she died and terminated, is her RBD this coming 4/1/22?

She died before her required beginning date. No RMD is due to her.

If a missing participant dies before reaching the RBD and there is no designated beneficiary, and then a surviving non-spouse relative is located 15 years later, is there an RMD payable to the surviving relative?

That depends on what you have done with the money. If the plan escheated it to the state, no. If it is still in the plan, yes, assuming the relative qualifies as the beneficiary. You may wish to consult with counsel.

In your examples Dan was born in 1954 - he is only in his 60's so why is the RMD required?

It is required because he died. In the first four examples, Dan died before his RBD, and I was illustrating what happens in those situations.

If someone dies in 2020 and took RMD in 2020 and the remaining funds are distributed to an adult child who puts it in an inherited IRA, does this mean that the child must take 100% by ten years from date of death?

Yes.

To confirm, if a participant has a RMD due where part is due to pre-tax balance and part due to Roth balance, can they take both of those amounts from just their pre-tax account?

Yes.

Roth IRA account holder over 72 dies in 2021. Left to children over 26 but under 70. Is a Roth RMD due? Does the Roth IRA need to be fully distributed within 10 years?

Yes.

If an RMD eligible employee is scheduled to retire on 12/31, could they take an RMD beforehand or do they have to be formally retired and thus wait until 2022 with an RBD of 4/1/2022?

Let us assume that the participant actually retires December 31, 2021 as planned. The first distribution calendar year is 2021. The first distributions between January 1, 2021 and April 1, 2022 are used to satisfy the RMD. They are not eligible rollover distributions that presents a complicated situation where a participant has made an in-service withdrawal prior to retirement, but those are the rules.

Does the IRS Employee Plan News article emailed on December 21 address your concerns about “limited guidance” from IRS?

No. It restates things previously known.