New York Bankers Association

New IRA Distribution Rules:
Are You Ready?

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Introduction

Speaker Bio

Jake Cooper, CFP®, Senior Financial Advisor

Jake Cooper serves as a Vice President and Senior Financial Advisor at HPA. Jake utilizes a comprehensive financial planning approach to formulate holistic plans that assist both high net worth and institutional clients reach their financial objectives.

He brings a wealth of industry knowledge through his previous roles; most recently as a Senior Financial Consultant for Manning & Napier where he was responsible for advising as well as growing the client relationships in the Capital Region, New York City, and New England. Prior to this role, Jake also served in client facing roles as an Internal Regional Consultant as well as a Client Services Associate.

Jake graduated from Hartwick College with a B.A. in Economics and was also captain of the Men's Lacrosse team. Jake currently lives in Saratoga where he enjoys golfing and spending time in the Adirondacks.

HPA Background

High Probability Advisors

High Probability Advisors provides investment solutions to clients who need effective, efficient stewardship of their long-term assets and liabilities.

Experienced

- Executive Team averaging over 30 years in the investment industry:
  - Navigated through a wide range of market environments
  - Served a wide variety of retirement, institutional and high net worth clients

Innovative

- Advanced, evidence-based strategies
- Deep research and thought leadership on a broad range of investment topics
- The Logical Retirement Solution® – Pooled Employer Plan

Our business goal:

To employ academically-proven strategies and forward-looking services that provide each client with a high probability of successfully meeting their specific goals in asset and liability management.

Agenda

The complicated & evolving new IRA rules:

- Impact of SECURE Act 1.0 and (maybe) 2.0 on IRA distributions
- Rollover documentation and other requirements of PTE 2020-02
- Is your organization ready to be an ERISA Fiduciary to its IRA clients?

Time to teach the old dogs some new tricks!

New IRA Rules = New Approaches

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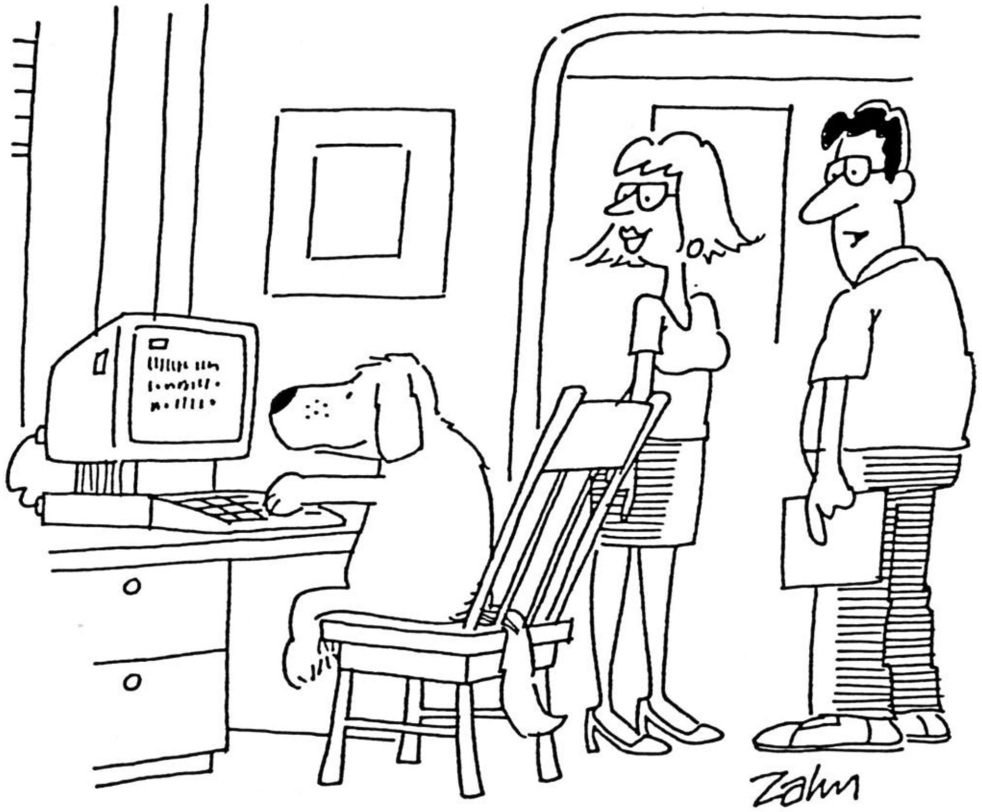

"I was wrong...you can teach an old dog new tricks."

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New IRA Distribution Rules

Legislative Changes to RMD

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Over the past 3 years, we have seen several changes to RMD rules:

- The CARES Act of 2020 suspended Required Minimum Distributions for 2020, but RMDs were restored for 2021
- The SECURE Act of 2019 extended the age of RMD from 70½ to 72, but required 10-year depletion for non-spouse beneficiaries (with certain exceptions) and updated life expectancy tables
- The impending SECURE 2.0 <u>may</u> extended the RMD age further (up to age 75 by 2032) and reduce the penalty for failing to take RMD

What are the retirement and estate planning implications?

Sources: https://www.lordabbett.com/en-us/financial-advisor/insights/retirement-planning/more-rmd-changes-to-come-for-2022.html
https://www.usbank.com/retirement-planning/financial-perspectives/saving-for-retirement-secure-act.html

SECURE Act 1.0 Implications

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Some "gives" and "gets" for IRA owners, which provides more flexibility for retirement planning but the loss of an important estate planning tool

SECURE 1.0 Change	Planning Implication
Extending RMD Age from 70½ to 72	Lengthen period of tax-free growth
10-Year IRA depletion	Eliminates the Stretch IRA strategy (except for minor child or disabled/ill beneficiary)
Updated life expectancy tables	Reduces RMD amount at each age
Removal of age limit for IRA contributions	Allows continued tax deferral for clients working beyond 70½

A Closer Look at the 10-Year IRA Depletion Rule

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If an IRA or retirement plan balance passes to a beneficiary…

- **The beneficiary may use their life expectancy for RMD as long as the beneficiary is:**
  - The IRA owner's spouse
  - A minor child
  - Disabled or Chronically-Ill
  - Less than 10 years younger than the IRA owner
- **Otherwise, the beneficiary must deplete the IRA/plan balance within ten years of inheritance:**
  - IRS rulings imply that a minimum of the original RMD amount is required to be withdrawn each year, with the remainder taken by the end of year 10

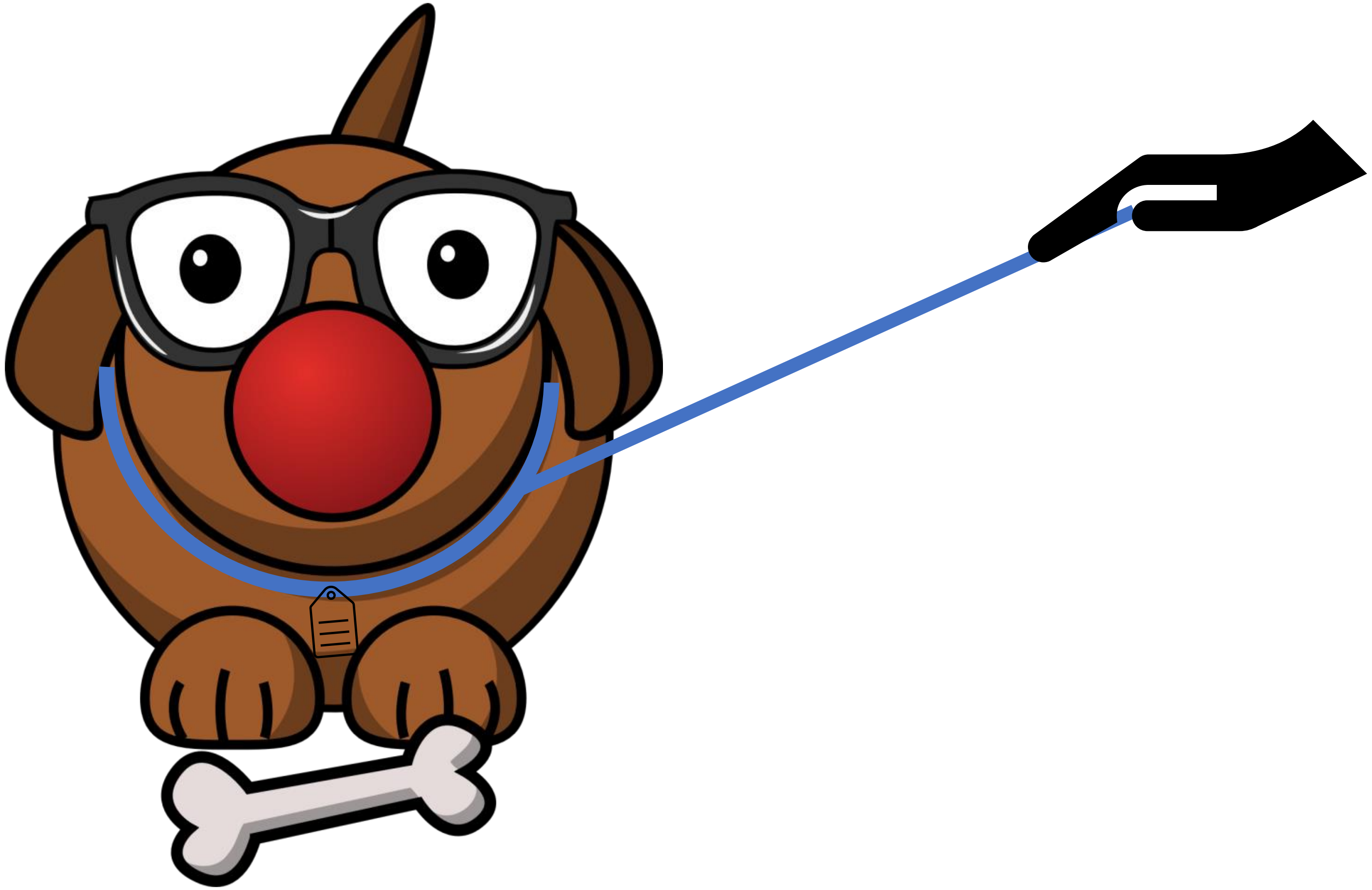
Source: https://www.lordabbett.com/en-us/financial-advisor/insights/retirement-planning/more-rmd-changes-to-come-for-2022.html

Congratulations!
You’re An ERISA Fiduciary!

Our primary source is Charles Schwab’s Compliance Review from May 2022, which is an excellent summary of PTE 2020-02.

IRA Sales – The "Good" Old Days

IRA Advice Today – Being a Fiduciary



IRA Advice Today: PTE 2020-02

Prohibited Transaction Exemption (PTE) 2020-02 provides the rules and procedures for investment advisors and broker-dealers to receive compensation from IRAs that would be prohibited otherwise.

What? A Prohibited Transaction?

We’ve been getting paid by IRA clients for years, right?

What happened?

Fiduciary Investment Advice

The DOL defines an Investment Advice Fiduciary as someone who:

1. Renders advice to the plan, plan fiduciary, or IRA owner as to the value of securities or other property, or make recommendations as to the advisability of investing in, purchasing, or selling securities or other property,
2. On a regular basis,
3. Pursuant to a mutual agreement, arrangement, or understanding with the plan, plan fiduciary, or IRA owner, that
4. The advice will serve as a primary basis for investment decisions with respect to plan or IRA assets, and that
5. The advice will be individualized based on the particular needs of the plan or IRA.

Remember: Fiduciary Investment Advice is about actions, not how you are registered

Source: https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/new-fiduciary-advice-exemption

Fiduciary Investment Advice & PTE 2020-02

In a nod to Jeff Foxworthy:

- **You may be a Fiduciary if you…**
  - Recommend rolling out of a retirement plan to an IRA
  - Recommend consolidating or moving from one IRA to another IRA
  - Recommend moving from one type of fee structure to another

Congratulations! You're now an ERISA Fiduciary to your IRA clients!

The Impartial Conduct Standards for a Fiduciary are a) provide prudent advice, b) charge reasonable fees, and c) avoid misleading statements. Importantly, a fiduciary is not allowed to take an action that increases their own compensation. PTE 2020-02 provides an exemption for IRA-related recommendations that may increase their compensation.

Source: Charles Schwab's Compliance Review, May 2022

Case Studies/Fiduciary Horror Stories

Fiduciary Horror Story #1: The Rollover Recommendation

- A client has $250,000 in their company's retirement plan, which has an industry best practices investment menu (straightforward, low-cost, two-tier menu) and relatively low administrative costs.
- Your advisor/rep is recommending that the client rolls out of the plan into an IRA that she will manage using higher cost mutual funds.

Fiduciary Horror Story #2: The Change in Fee Structure

- A client has $500,000 in their IRA with your organization that is invested in the A shares of various funds. The sales load was paid upon several years ago, and ongoing rep compensation comes from a 0.25% 12b-1 fee.
- Your rep is recommending that the client sells the A share class and move to a no 12b-1 share class with an advisory fee of 0.50% charged on top.

What is Required Under PTE 2020-02?

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PTE 2020-02 Requirements

- Written acknowledgement that you are a fiduciary under ERISA
- Provide written disclosure of your services and all material conflicts of interest
- Comply with the Impartial Conduct Standards (prudent recommendations, reasonable compensation, no misleading statements)
- Provide the client with the reasons that the recommendation is in their best interest <u>in writing</u>
- As an organization, keep documentation of the reasons why each IRA recommendation was in the best interest of that client given their specific circumstances
- Conduct a compliance review of your organization's compliance with PTE 2020-02, to be signed off on by a "Senior Executive Officer"

Source: Charles Schwab's Compliance Review, May 2022

PTE 2020-02 Tips

While every organization that works with IRAs will have their own procedures, here are a few tips to keep in mind:

- The message to your Advisors/Reps: ***Do the Right Thing***
- ***Don't Just Check the Box***
- ***Document, Document, Document***

There is no carrot, but the DOL/IRS certainly have sticks:

- **Imposition of a 10-year ineligibility period for either/both the individuals and the financial institution**
- **A 15% tax on disqualified persons participating in a prohibited transaction**

Source: "Failure to Fulfill PTE 2020-02's Requirements", Retirement Learning Center, 3/2/2022

Questions?