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ALSO IN THIS ISSUE –

The SECURE Act Becomes Law!

Radical Changes Are Adopted for Certain IRA and Pension Beneficiaries

President Trump signed into law the Further Consolidated Appropriations Act of 2020 on December 20, 2019. The SECURE Act was incorporated into this legislation. There are substantial changes impacting IRAs, 401(k) plans and other employer sponsored pension plans. This article is devoted to the IRA law changes. Most of the law changes are effective as of January 1, 2020. It will be interesting to see what guidance the IRS issues and to what degree the IRS will grant relief, if any, with the compliance deadlines.

There are some immediate administrative concerns.

2020 RMD notices must be furnished by January 31, 2020. With the change in the law from age 70½ to age 72, those IRA owners attaining age 70½ in 2020 no longer have to take a withdrawal for 2020. Their deadline was April 1, 2021. 2020 RMD Notices should be changed accordingly. The IRA owners who turn 70½ in 2020 and would have been required under the old law to take an RMD for 2020 now should be informed they no longer are required to take an RMD for 2020.

Furnishing 2019-2020 IRA Amendments. Some of the IRA law changes are historic. Certainly the changes with respect to inherited IRAs are historic and were obviously made to raise tax revenues for the federal government. The sooner IRA owners and inheriting IRA beneficiaries can be informed of these new laws the better. See the related article, Are IRA Amendments Required for 2019-2020? In general, a non-spouse beneficiary who is more than 10 years younger than an IRA owner who dies after December 31, 2019 will be required to close the inherited IRA within 10 years of the IRA owner's death. There are certain beneficiaries who are grandfathered and may continue to use the pre-2020 rules. The IRS will be required to revise its Model IRA plan agreement forms (Form 5305, 5305-A, 5305-R and 5305-RA) to set forth the new RMD rules both while the IRA owner is living and after his or her death.

Annual IRA Contribution Changes

There are three law changes regarding who is eligible to make a traditional IRA contribution and/or a Roth IRA contribution.

1. An individual with compensation regardless of age is eligible to makes a traditional IRA contribution. Being age 70½ or older no longer makes an individual ineligible to make a traditional IRA contribution.

Any person with qualifying compensation is eligible to make a traditional IRA contribution regardless of age. Example, Jane Doe age 76 is still practicing medicine and she would be able to make a traditional IRA contribution if she so desired.

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Collin W. Fritz and Associates, Inc.,
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This change is effective for contributions for tax year 2020 and subsequent tax years.

Because an IRA owner who is age 70½ or older is eligible to make a QCD and now may also eligible to make a traditional IRA contribution, there is a new rule to prevent a double tax benefit. The QCD exclusion amount for the current year must be reduced by an amount (but not below zero) equal to the excess of: the aggregate of all deductions allowed the individual for all tax years on or after the individual attains age 70½ over the aggregate amount of the QCD reductions for all tax years preceding the current tax year. This law change shall apply to QCDs made for tax years beginning after December 31, 2019. The IRS will need to provide guidance if this new rule requires the inclusion of SEP IRA contributions and SIMPLE IRA in addition to traditional IRA contributions.

2. The definition of compensation for purposes of being eligible to make an annual IRA contribution is clarified to make clear that compensation includes any amount included in a person's income and paid to such person to aid the person in pursuit of graduate or post-doctoral study.

3. The definition of compensation for purposes of being eligible to make an annual IRA contribution is clarified to make clear that compensation includes certain "difficulty of care payments." The general rule, in order to make an IRA contribution regardless if deductible or non-deductible, a person must have "taxable" income to support such contribution.

There would be a special rule for a person who excludes from gross income under code section 131 certain. The person will be eligible to make a traditional IRA contribution or a Roth IRA contribution. Such a person would be eligible to make a non-deductible contribution to the extent of the lesser of the amount excluded or the maximum IRA contribution amount as reduced by the amount of compensation which is includible in income.

For example, Jane Doe, age 39, receives compensation of $11,000 from certain "difficulty of care payments." Jane is able to exclude $9,000 under section 131 and she includes $2,000 in her taxable income. She is eligible to make a non-deductible contribution of $4,000 (the lesser of $9000 or $6,000 less $2,000).

This change is effective for tax years commencing after December 31, 2019.

4. There are special disaster related rules for use of IRA funds. Special tax relief was enacted within the Further Consolidated Appropriations Act of 2020 regarding qualified disasters for the time period commencing on January 1, 2018, and ending on the date which is 60 days after the enactment of this Act. Such disaster must be so declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act if the incident period of the disaster with respect to which such declaration is made begins on or before the date of enactment of this Act. In general such tax relief permits a victim who is an IRA owner to include a distribution in income over a three year time period rather than having to include it all in income for the year of withdrawal and allows the individual three years to repay a distribution. Similar relief was enacted for qualified disasters occurring in earlier time periods by the Tax Cuts and Jobs Act of 2017 and the Bipartisan Budget Act of 2018.

Automatic 60 Day Extension of IRA Contribution Deadline And Other Tax Acts For Certain Federally Declared Disasters.

The new law authorizes an automatic 60 day extension to file a tax return and certain other tax acts. With respect to IRAs and pension plans the 60 day extension shall apply to: annual IRA contributions which have a deadline of April 15 (with no extension), a withdrawal of an excess contribution made before the tax return due date (plus extensions), a recharacterizing of a contribution and making a rollover contribution.

This automatic extension shall be in addition to or concurrent with other IRS guidance issued pursuant to other subsections of Code section 7508A. Past practice of the IRS was to not allow extensions of the contribution deadline for annual contributions. The contribution deadline is now extended for a disaster victim.

The 60 day period ends on the date which is 60 days after the latest disaster incident date.

The 60 day extension is granted to a qualified taxpayer who was in or in some cases was impacted by the

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disaster area. This new rule applies to federally declared disasters declared after December 20, 201.9.

IRA Distribution Changes

There are four changes regarding IRA distributions. First, the age applying to when an IRA owner must commence required distributions is changing from age 70½ to age 72. The new rules apply to those IRA owners who did not attain age 70½ in 2019 or earlier.

An individual's required beginning date is changed to April 1 of the year following the year he or she attains age 72 rather than the year the individual attains age 70½. This change applies to distributions required to be made after December 31, 2019, for those individuals who attain age 70½ after December 31, 2019.

Those individuals who are already subject to the RMD rules remain subject to the old rules. That is, they will need to take RMDs for 2019 and subsequent years.

An RMD applies for 2021 for any person attaining age 72 in 2021. It appears those individuals attaining age 71 in 2020 would not have any RMD for 2020.

Second, the 10% additional of Code 72(t) is not owed with respect to a qualifying disaster Distribution as discussed previously.

Third, There would be special rules for a person who takes an IRA distribution to assist with the birth of a child or an adoption of a child.

The 10% pre-age 59½ tax would not apply to a person who takes an IRA distribution which qualifies as a "qualified birth or adoption distribution."

There is a $5,000 aggregate limit. The actual language is, "The aggregate amount which may be treated as qualified birth or adoption distributions by any individual with respect to any birth or adoption shall not exceed $5,000." We construe this limit as being a per person lifetime limit. Because this language is not totally clear we believe, the IRS or Congress should clarify.

Presumably, the individual will need to claim this exemption by completing and filing Form 5329.

A qualified birth or adoption distribution means any distribution from an IRA or other applicable retirement plan to an individual as long as the distribution is made during the 1-year period beginning on the date a child of the individual is born or on the date the legal adoption of an eligible adoptee child is finalized. An eligible adoptee is any person who has not attained age 18 or any person who is physically or mentally incapable of self-support. A child of a taxpayer's spouse is ineligible to be an eligible adoptee.

A taxpayer who has taken a qualified birth or adoption distribution may repay such distribution. This part of the law will also need to be clarified as the law does not define the repayment period. A qualified repayment of a qualified birth or adoption distribution means the distribution is not taxable.

The change applies to distributions occurring after December 31, 2019.

Changes in the RMD Rules applying to IRA beneficiaries

This is the fourth distribution change. Under existing law the beneficiary of an IRA owner who dies before his or her required beginning date is deemed to have elected to use the life distribution rule unless he or she elects to use the 5-year rule. The SECURE Act requires use of a 10-year rule rather than the 5-year rule for when an IRA owner dies. The life distribution rule would no longer be available to such a beneficiary. Under the proposed 10-year rule, the inherited IRA must be closed within 10 years of the date of death of the IRA owner. The IRS will need to decide if it will allow the inherited IRA to be closed by December 31 of the year containing the 10th anniversary of the IRA owner's death.

RMD Rules Applying After the IRA Owner Dies

With the enactment of the SECURE Act within the Further Consolidations Act of 2020 there are now different rules depending upon whether the IRA owner died on or before December 31, 2019 or after December 31, 2019. The following discussion uses "you" and "your" to reference IRA owner.

Upon your death your beneficiaries must comply with certain required distribution rules.

There are special rules if your spouse is your beneficiary.

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What rules apply if the IRA owner died on or before December 31, 2019?

A surviving spouse beneficiary who is the sole primary beneficiary may elect to treat their deceased spouse's IRA as their own IRA. A surviving spouse beneficiary who is the sole primary beneficiary also retains the right to elect to treat their deceased spouse's IRA as their own IRA even though initially it is not elected.

A surviving spouse beneficiary who is not the sole primary beneficiary is deemed to have elected to use the life distribution rule unless, if applicable, use of the five year rule is elected. A surviving spouse beneficiary who is not the sole primary beneficiary can take a distribution and make a rollover contribution into his or her own IRA.

A non-spouse beneficiary is deemed to have elected to use the life distribution rule unless, if applicable, use of the five year rule is elected. A non-spouse beneficiary does not have the right to elect to treat the inherited IRA as his or her own IRA and he or she cannot take a distribution and then make a rollover contribution. A non-spouse beneficiary does have the right to transfer an inherited IRA to another IRA custodian/trustee unless you have imposed a restriction preventing such a transfer.

A qualified trust beneficiary is deemed to have elected to use the life distribution rule unless, if applicable, use of the five year rule is elected. The measuring life for the qualified trust is the oldest beneficiary.

A non-qualified trust, an estate, or any other non-living entity must use the five year if the IRA owner died before his or her required beginning date. If the IRA owner died on or after his or her required beginning, then the measuring life for the life distribution rule is the deceased IRA owner. Determine the divisor from the Single Life table using the age of the deceased IRA owner for the year of death. Determine the divisor for subsequent years by subtracting one from the initial divisor for each subsequent year.

Due to the grandfather rules, the death of the non-spouse beneficiary will not require his or her subsequent beneficiary to close such inherited within 10 years. The subsequent beneficiary is permitted to continue the schedule applying to the first beneficiary.

What rules apply if the IRA owner died on or after January 1, 2020?

The rules for a spouse beneficiary are the same. They do not change.

The rules, however, change for non-spouse beneficiaries. The general rule is, a non-spouse beneficiary must use the 10-year rule. The 10-year rule replaces the five year rule. The life distribution rule no longer may be used by a non-spouse beneficiary. This includes a beneficiary which is a qualified trust, a nonqualified trust, an estate on any other non-living entity such as a charity. The general tax rule is, your non-spouse beneficiary may structure distributions over this 10-year period as he or she chooses, and the beneficiary will include these distributions in their income except to extent that a portion of the distribution is the withdrawal of basis.

So, if you die on or after January 1, 2020, and your beneficiary is not your spouse, then your IRA must be closed by December 31 of the year containing the 10th anniversary of your death. The beneficiary is no longer eligible to stretch out distribution's over the beneficiaries life expectancy. A non-spouse beneficiary does not have the right to elect to treat your inherited IRA as his or her own IRA and he or she cannot take a distribution and then make a rollover contribution. A non-spouse beneficiary does have the right to transfer an inherited IRA to another IRA custodian/trustee unless you have imposed a restriction preventing such a transfer.

There are five exceptions to the non-spouse beneficiary general rule. That is, the pre-2020 rules continue to apply to the following non-spouse beneficiaries even when the IRA owner has died on or after January 1, 2020. Certain non-spouse beneficiaries are still able to use the life distribution rule.

1. A beneficiary who is disabled as defined for IRA and pension plan purposes.

2. A non-spouse beneficiary who is not more than 10 years younger than the deceased IRA. For example, Jane age 65 and designated her brother John age 58 as her primary beneficiary. Another example, Julie age 52 designates her brother Raul age 47 as her primary beneficiary.

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3. A beneficiary who is a child of the I RA owner who has not reached the age of majority. This exception is limited. Once the child attains the age of majority, she or will have 10 years in which to close the inherited IRA. In most states, the age of majority is age 18.

4. A beneficiary who is chronically ill. A certification must be provided showing a period of inability that is an indefinite one and which reasonably is expected to be lengthy.

5. A beneficiary which is a trust which meets certain special rules. These rules are not the rules that must be met under pre-2020 rules to have a qualified trust. First, the trust must have multiple beneficiaries. Second, the trust must have at least one beneficiary who is either disabled or chronically ill. Third, all of the beneficiaries are treated as designated beneficiaries for purposes of determining the distribution period.

Two Types of Trusts Will Qualify

First, upon the death of the IRA owner, the trust is divided immediately into separate trusts for each beneficiary. There is to be a separate life distribution rule calculation for each beneficiary who is disabled or chronically. It is not clear what calculation is to be made for other beneficiaries.

Second, upon the death of the IRA owner, the trust must provide that only a beneficiary who is disabled or a beneficiary who is chronically is entitled to be distributed such trust funds. Other beneficiaries may be distributed such funds only after all such eligible designated beneficiaries have died. However, in that situation any remaining beneficiary (not an eligible designated beneficiary) shall be treated as a beneficiary of the eligible designated beneficiary.

Two Rollover or Repayment Changes

1. An IRA owner who withdraws a disaster distribution is allowed three years in which to repay it so it then will not be included in his or her income.

2. An IRA owner who withdraws a qualified birth or adoption distribution may repay such amount and then will not be required to include the distribution in his or her taxable income.

Other IRA Changes Impacting Employers and IRA Custodians/Trustees

1. Increase in tax credits for an employer to induce it to establish a new SEP-IRA or SIMPLE-IRA.

Under existing law an employer may qualify for a $500 tax credit.

The credit is authorized when an employer establishes a new SEP or a SIMPLE-IRA plan or a 401(k) plan or other employer sponsored plan.

Current law would be changed so the credit would apply to the year the plan is established and the subsequent two years.

The credit for each year is the greater of $500 or the lesser of $5,000 or $250 for each employee who is not a highly compensated employee and who is eligible to participate in such plan. For example, an employer with 5 non-owner employees would receive a $1,250 tax credit if it would set up a SEP or SIMPLE IRA plan. We expect this credit will induce many small business owners to do so.

This change would be effective for tax years commencing after December 31, 2019.

2. Increase in various IRS fines for an IRA Custodian/Trustee not complying with various IRS rules.

There would be an increase in the penalty amount for failing to file a required tax return. The amount would change from $330 as indexed to $435 as indexed.

There would be an increase in the penalty amounts for failing to file certain retirement plan returns as set forth in Code section 6652(d), (e) and (h).

Code section 6652(h) sets forth penalties for failing to furnish the proper withholding notice form. This is IRS Form W-4P or a qualifying substitute form.An IRA custodian has the duty to comply with the IRA withholding notice rules and the withholding rules.

The current penalty is $10 for each failure to furnish an IRA owner or beneficiary with the proper withholding notice, but the total amount imposed on the person for all such failures is $5,000. The penalty amounts would increase to $100 for each failure to furnish the proper notice, but the total amount imposed on the person during any calendar year for all such failures is $50,000.

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January 31, 2020 Deadline

January 31, 2020 is a Thursday and it is the deadline for furnishing three required IRA forms. An IRA custodian/trustee must furnish (i.e. mail, email, fax or personally deliver) the following to its IRA account holders and its inheriting IRA beneficiaries. If this deadline would be missed, the IRS may assess the fines discussed within the article.

2019 Form 1099-R

Any person (accountholder or beneficiary) who received a distribution(s) from an IRA totaling more than $10 for the year must be furnished a 2019 Form 1099-R.

This Form 1099-R must be prepared on a per plan agreement basis. That is, if a person would have two traditional IRAs and one Roth IRA and would have three withdrawals, then he or she must be furnished three Form 1099-Rs. In addition, there must be a Form 1099-R prepared for each applicable distribution code. For example, if a person has a traditional IRA and one distribution required the use of Code "1", one the use of code "3" and one the use of Code "7", then three Form 1099-Rs must be furnished.

When an individual receives more than one copy of the Form 1099-R, then it is mandatory for the IRA custodian/ trustee to insert a unique number in the account number box located in the lower left hand corner of the form. Even though there will be times when furnishing this account number is not required, the IRS encourages IRA custodians/ trustees to voluntarily furnish it. This account number allows the IRS to process the submissions of any corrected forms.

If the IRA custodian would fail to timely furnish a 2019 Form 1099-R or furnishes one prepared with errors, then the IRS may assess a fine of $270 per form (times two).

Fair Market Value (FMV) statements 12/31/2019

An IRA custodian must furnish a FMV statement to each IRA accountholder and each inheriting beneficiary having a balance as of December 31, 2019, to each IRA accountholder who died during 2019, and to any IRA accountholder who made a reportable contribution for 2019 during 2019. The deadline to furnish the FMV statement is January 31, 2020.

This FMV statement must be prepared on a per plan agreement basis. That is, if a person would have two traditional IRAs and one Roth IRA, then he or she would need to be furnished three FMV statements. These could be combined on one statement as long as there were three separate sections.

There must be a sentence on the statement informing the recipient that the FMV information (Balance as of December 31) will be furnished to the IRS when the 2019 Form 5498 will be filed with the IRS in May of 2020.

The IRA Custodian/trustee may, but is not required, to furnish contribution and earnings (including interest) information on the FMV statement for traditional IRAs, SEP-IRAs and Roth IRAs. However, a special rule applies for SIMPLE-IRAs. In the case of a SIMPLE-IRA, the IRA custodian must furnish a detailed statement listing all contributions (dates, and amounts) made by the employer on behalf of the SIMPLE-IRA accountholder.

Why is it required to furnish the FMV statement? A taxpayer who has basis within a traditional IRA, SEP-IRA or SIMPLE-IRA needs the FMV for purposes of completing the Form 8606 to determine the taxable portion of a distribution and the nontaxable portion.

The IRS may assess a penalty of $50 for each failure to furnish the FMV statement for traditional IRAs, SEP-IRAs, and Roth IRAs. The penalty is $100 PER DAY for failing to furnish the FMV statement for a SIMPLE-IRA.

RMD Notice for 2020

An IRA custodian/trustee must furnish each traditional/SEP/SIMPLE-IRA accountholder who was born on or before June 30, 1949 and who has a balance as of December 31, 2019 with an RMD Notice.

That is, the 2020 RMD notice must be sent to any person who was age $70^1/_2$ or older in 2019. The 2020 RMD Notice should not be sent to any person who attains age $70^1/_2$ in 2020. With respect to any person who is not age $70^1/_2$ as of December 31, 2019, the law has been changed to require that required distributions must commence for the year a person attains age 72 and not age $70^1/_2$.

There is no requirement and no need to furnish an RMD Notice to a Roth IRA accountholder since the

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RMD rules do not apply to a Roth IRA accountholder while he or she is alive.

3 items must be set forth in the required RMD Notice.

First, the deadline applying to the specific IRA accountholder must be set forth. This will be December 31, 2019, for an individual who is older than age 70½ in 2019. Second, there must a sentence informing the individual that the IRS will be told on the 2019 Form 5498 that he or she is subject to the RMD rules for 2020. Third, the individual must be informed of his or her RMD amount for 2020 or that such amount has not been calculated, but will be if the individual contacts the IRA custodian/trustee and requests that the calculation be made.

Although the RMD laws apply to an inheriting IRA beneficiary of all four types of IRAs, current IRS rules do not require the IRA custodian/trustee to furnish an RMD notice. CWF strongly suggests you do so. The model IRS IRA forms require that there be an RMD distribution made to an inheriting beneficiary. A beneficiary who fails to take an RMD will owe the 50% tax and may well argue that the custodian/trustee should pay some of this tax for its failure to notify or payout a RMD.

The IRS may assess a fine of $50.00 for each time an IRA custodian/trustee fails to furnish a complying RMD notice.

In summary, an IRA custodian/trustee must furnish the 2019 Form 1099-Rs, 2019 FMV statements, and 2020 RMD Notices by January 31, 2020 or it will be subject to being fined by the IRS.

These increased penalties apply for returns filed after December 31, 2019.

Email Guidance – Effect of the Age 72 RMD Rule Change on QCDs

Q. I'm sure you're inundated with questions about the change in the law. Do you have any information about how the Qualified Charitable Distributions will be affected by the change in RMD rules? We have a client who will be 70½ in mid-January 2020 and had instructed that we make a QCD shortly thereafter. Since he will no longer be required to take a distribution at this age, is he still permitted to make this charitable contribution from his IRA?

A. To a certain degree the QCD rules and the RMD rules are independent of each other.

There are four primary QCD rules. (1) The IRA owner or IRA beneficiary must be age 70½ or older; (2) the check must be made payable to the charity; (3) the charity must be an eligible charity and (4) the QCD amount must be $100,000 or less.

The IRS (Bush Administration) without any express authority from Congress created the additional tax benefit that a person could use their QCD to satisfy all or a portion of their RMD for such year. See IRS Notice 2007-7.

A person who is age 70½ is eligible to make a QCD regardless if she or he will use it to satisfy his or her RMD. The recent law change does not change any of the QCD rules, including the age 70½ requirement.

It may be your client will no longer wish to make the QCD gift for 2020 as he does not have an RMD for 2020 because of the recent law change.

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Code section 6652(e) sets forth penalties for failing to file certain returns required by code sections 6047 and 6058. The current penalty is $25 for each day during which such failure continues but the total amount with respect to any return is limited to $15,000. The penalty amounts would be increased to $250 for each day during which such failure continues but the total amount with respect to any return is limited to $150,000.

Code section 6652(d) sets forth penalties for failing to file certain returns required by code sections (a). This section requires a sponsor of a retirement plan (but is inapplicable to IRAs) where there are terminated participants with deferred vested benefits to file Form 8855 and provide certain information regarding such terminated participants.

These new limits apply to returns filed after December 31, 2019. That is, immediately.

Are IRA Amendments Required For 2019-2020?

Yes, IRA amendments are required from a customer service viewpoint and also from an IRS compliance viewpoint. The law changes made by the Further Consolidated Appropriations Act of 2020 are not minor changes. They are major changes. Some would call them historic changes. Certainly, the change in the required distribution rules applying to inheriting beneficiaries are historic. In general, a non-spouse beneficiary who is more than 10 years younger than the IRA owner will be required to close an inherited IRA under the 10-year rule and no longer can stretch out distributions over his or her life expectancy.

The governing IRA regulation requires an IRA custodian/trustee to furnish an IRA amendment when the IRA plan agreement provisions are changed or when one or more of the topics discussed in the IRA disclosure statement is no longer correct and it needs to be revised or amended to set forth a current and correct explanation. Regulation 1.408-6(4)(ii)(C) requires that an IRA amendment be furnished no later than the 30th day after the amendment is adopted or becomes effective.

A cardinal rule of IRA and pension law is, the terms of the IRA plan agreement control and in order for a person to benefit from a law change the plan document must be revised to set forth the new law. Individuals have the right to be informed and understand current laws and the particulars of the specific IRA plan agreement. Many individuals and possibly many IRA custodians might wish the law to be, since federal tax law authorizes a certain tax benefit, then a person should be able to realize a tax benefit regardless of what the IRA plan agreement provides. The law does not adopt this approach. For example, in order for a person age 74 to make an IRA contribution in 2020 or subsequent years to his or her traditional IRA, the IRA plan agreement must be revised to authorize the person to make such a contribution. A person who wants to make an IRA contribution after April 15th under the special disaster contribution rules must be authorized to do so by the IRA plan agreement. In order for an IRA owner who attains age 70½ in 2020 to not take a required distribution for 2020, the IRA plan agreement must be amended.

When is it necessary for an IRA custodian/trustee to furnish an IRA amendment? Is it necessary or required to furnish one in 2020?

Each institution must make its own determination because one needs to understand when was the IRA agreement last amended and how is it being amended. A primary question is, "when is the last time the financial institution furnished an amendment?" What do the current IRA plan agreements provide? Are there some IRAs set up with one certain plan agreement and others with a different plan agreement?

One may learn a tax lesson the hard way, if he or she adopts the position that an amendment is not required because the IRS has not said one is required.

A long time ago (1986/1987) the IRS acknowledged that there are times that even though the IRA plan agreement has not been changed, a disclosure statement amendment must still be furnished. Example, when the deductible/nondeductible rules were first authorized in 1986/1987, such rules did not require the IRA form to be rewritten because the IRA form discusses the maximum contribution amount limit, but does not discuss the deductible/nondeductible rules. The IRS stated there needed to be a disclosure statement amendment discussing or explaining the deductible/nondeductible rules.

In summary, answering a question whether or not an amendment is required is not simple. Each financial institution will need to make its own decision to furnish one or both amendments.

It is true that the IRS has not been very active in auditing whether or not IRA custodian/trustees are furnishing IRA amendments as required by the IRA regulation. We at CWF believe it is in the best interest of a financial institution to furnish the amendments. The governing IRA regulation provides that a $50 fine may be assessed an institution for each time it fails to furnish the IRA plan agreement and $50 each time it fails to furnish the IRA disclosure amendment.