

MEMO# 34057

March 3, 2022

Treasury and IRS Propose Amendments to Regulations Governing Required Minimum Distributions from Retirement Plans

[34057]

March 4, 2022

TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: Treasury and IRS Propose Amendments to Regulations Governing Required Minimum Distributions from Retirement Plans

The IRS and Treasury have released a long-awaited notice of proposed rulemaking^[1] that would amend the regulations governing required minimum distributions (RMDs) from retirement plans and IRAs to reflect changes made by the Setting Every Community Up for Retirement Enhancement Act (the SECURE Act) of 2019 and other legislation over the years.^[2] Public comments on the proposal are due by May 25, 2022. The notice also indicates that the IRS will hold a public hearing on the proposal on June 15, 2022.

Background

Section 401(a)(9) of the Internal Revenue Code (Code) provides rules for required distributions from tax-qualified retirement plans, both during the life of the employee and after the death of the employee. The rules prescribe a required beginning date for distributions and identify the period over which the interest in the retirement plan must be distributed. The RMD rules for qualified plans are adopted by reference in Code sections 408 (for IRAs), 408A (for Roth IRAs), 403(b) (for 403(b) plans), and 457(d) (for eligible deferred compensation plans).

Section 114 of the SECURE Act increased the age at which RMDs must begin, from age 70½ to age 72. The provision became effective for distributions required to be made after December 31, 2019, with respect to individuals who attain age 70½ after December 31, 2019.

Section 401 of the SECURE Act modified the RMD rules for post-death distributions from defined contribution plans and IRAs to beneficiaries. It generally requires the account to be

fully distributed within 10 years following the year of the participant's or IRA owner's death, unless the distribution is made to an "eligible designated beneficiary" (i.e., a surviving spouse, a disabled or chronically ill individual, an individual who is not more than ten years younger than the participant or IRA owner, or a child of the participant or IRA owner who has not reached the age of majority). Eligible designated beneficiaries can continue to "stretch" RMD payments over life expectancy. This section is generally effective for RMDs with respect to employees (or IRA owners) with a date of death after December 31, 2019, although there are special rules for certain situations and a delayed effective date for governmental and collectively bargained plans.

Proposal

In addition to updating the existing regulations under Code sections 401(a)(9), 402(c), 403(b), 457, and 4974 to reflect statutory amendments that have been made since those regulations were last issued, the proposal also clarifies certain issues that have been raised in public comments and private letter ruling requests. The proposed regulations also replace the question-and-answer format of the existing regulations under Code sections 401(a)(9), 402(c), 408, and 4974 with a standard format similar to more recent IRS/Treasury regulations. The proposal addresses several questions relating to the SECURE Act changes raised by ICI on behalf of our members.[\[3\]](#)

Section 401(a)(9) Regulation Amendments (RMDs)

The proposed regulations address the following issues, among others, under the Code section 401(a)(9) rules:

- Application of the January 1, 2020 effective date for the limitation on life expectancy distributions to beneficiaries. The proposal includes various scenarios illustrating the impact of the timing of the employee's or designated beneficiary's death on the application of the effective date.
- Special considerations for RMDs during the lifetime of the employee. The proposal confirms that the updated required beginning date (generally April 1 of the calendar year following the later of the calendar year in which the employee attains age 72 or the calendar year in which the employee retires) applies to employees born on or after July 1, 1949. Thus, the updated age 72 required beginning date would apply with respect to an individual who died prior to reaching age 70½, as long as the individual was born on or after July 1, 1949. For example, this allows a surviving spouse of an employee who dies in 2018 at age 66 to wait until the calendar year in which the employee would have attained age 72 (2024) to begin receiving distributions.
- Application of the new 10-year rule when the employee dies before the required beginning date. The proposal clarifies that, under the 10-year rule, the employee's entire interest in a defined contribution plan must be distributed by the end of the calendar year that includes the tenth anniversary of the employee's death (as opposed to 10 years from the date of death). The proposal also provides that for eligible designated beneficiaries of an employee who dies prior to the required beginning date, the plan may provide either that the 10-year rule applies or that the life expectancy payments rule applies. Alternatively, in this situation, the plan may provide the employee or the eligible designated beneficiary an election between the 10-year rule or the life expectancy payments rule. However, if a defined contribution plan does not include either of those optional provisions and the employee has an eligible designated beneficiary, the plan must provide for the life expectancy payments rule.

- Determination of designated beneficiaries, including eligible designated beneficiaries. For purposes of identifying an eligible designated beneficiary who is a minor child of the employee, the proposal defines "age of majority" as the child's 21st birthday.^[4] The proposal also includes a definition of "disability" and provides that the determination of whether a beneficiary is disabled is made as of the date of the employee's death. With respect to a beneficiary who is disabled or chronically ill as of the date of the employee's death, the proposal would require documentation^[5] of the disability or chronic illness to be provided to the plan administrator no later than October 31 of the calendar year following the calendar year of the employee's death.
- Special considerations for trust beneficiaries. The proposal contains detailed rules relating to trusts as beneficiaries, including rules for "see-through trusts" (such as determining which beneficiaries of see-through trusts will be treated as the employee's beneficiary and meeting the identifiability requirements for see-through trusts). The proposal also fleshes out the requirements for "applicable multi-beneficiary trusts" (as created by the SECURE Act provision) benefitting disabled or chronically-ill individuals.
- Other rules for designated beneficiaries and eligible designated beneficiaries. If an employee has more than one designated beneficiary and at least one of them is not an eligible designated beneficiary, the proposal indicates that the employee generally is treated as not having an eligible designated beneficiary. The proposal provides special exceptions to this general rule, however, when either (1) one of the designated beneficiaries is a minor child of the employee or (2) the beneficiary is an applicable multi-beneficiary trust benefitting disabled or chronically-ill individuals and meeting certain requirements. For purposes of identifying designated beneficiaries, the proposal provides an exclusive list of events that (if occurring within a specified time period) permit disregard of a beneficiary who was a beneficiary as of the employee's date of death (such as the beneficiary making a qualified disclaimer).
- Special rules applicable to RMDs from defined contribution plans. The proposal includes guidance for calculating RMDs under the life expectancy rule. In addition, this section includes a somewhat controversial interpretation of the SECURE Act that would require annual distributions in certain circumstances when the new 10-year rule applies. Specifically, the proposal provides that when an employee dies after the required beginning date with a designated beneficiary who is not an eligible designated beneficiary, then the designated beneficiary would continue to have annual RMDs calculated using the beneficiary's life expectancy as under the existing regulations for up to nine calendar years after the employee's death.^[6] In the tenth year following the calendar year of the employee's death, a full distribution of the employee's remaining interest would be required. The same annual payout rule would apply to the designated beneficiary of an eligible designated beneficiary who dies before the entire interest is distributed.

For employees with multiple designated beneficiaries, the proposal generally would require use of the life expectancy of the oldest designated beneficiary (rather than the beneficiary with the shortest life expectancy, as provided in the existing regulation), subject to certain exceptions.

- RMDs from defined benefit plans. The proposal updates the rules for defined benefit plans relating to the required beginning date, actuarial increases for employees retiring after age 70½ (the proposal retains age 70½ as the trigger for actuarial increases in this context), and other items including RMDs from annuity contracts.
- Other miscellaneous rules. The proposal includes updates to the separate accounting

requirements for beneficiary interests and an updated definition of "spouse."

Section 402(c) Regulation Amendments (Rollovers)

The proposal amends the Code section 402(c) regulation to reflect various statutory changes made since 1995, such as changes made by the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Pension Protection Act of 2006.[\[7\]](#) The proposed amendments also include changes to reflect the new SECURE Act RMD rules for distributions to beneficiaries, which are relevant in determining amounts eligible for rollover. For example, the proposal provides that when the 10-year rule applies with respect to an employee who dies before the required beginning date, no amount distributed before the tenth calendar year after the calendar year of the employee's death is treated as an RMD. In that situation, in the tenth calendar year after the calendar year of the employee's death, the entire amount distributed in that year is treated as an RMD (and thus is not an eligible rollover distribution). In situations where the employee dies on or after the required beginning date and annual distributions are required (either ongoing or in years one through nine), the amount of the RMD is calculated pursuant to the rules described earlier and would not be an eligible rollover distribution.

Section 403(b) Regulation Amendments

Because 403(b) plans must satisfy RMD rules similar to the requirements of Code section 401(a)(9), the proposal makes conforming changes to the 403(b) regulations to reflect the SECURE Act changes. The proposal notes that specific RMD requirements applicable to 403(b) plans in some instances track the RMD rules for IRAs, and in other instances track the rules for qualified plans (such as 401(k) plans). For example, like in the IRA context, an RMD owed from one 403(b) plan account may be satisfied through a distribution from another 403(b) account of the taxpayer. However, the required beginning date applicable to a 403(b) plan account is determined in the same manner as a qualified plan required beginning date.

In this regard, the proposal notes that the "Treasury Department and the IRS are considering additional changes to the required minimum distribution rules for section 403(b) plans so that they more closely follow the required minimum distribution rules for qualified plans. For example, under this approach, each section 403(b) plan (like each qualified plan) would be required to make required minimum distributions calculated with respect to that plan (rather than rely on the employee to request distributions from another plan in an amount that satisfies the requirement). These changes would treat similar employer-sponsored plans consistently and may facilitate compliance with the required minimum distribution rules."[\[8\]](#)

Accordingly, the proposal requests "comments on these possible changes to the required minimum distribution rules for section 403(b) plans, including: (1) Any administrative concerns; (2) any differences between the structure or administration of section 403(b) plans and of qualified plans that should be taken into account in applying the required minimum distribution rules for qualified plans to section 403(b) plans; and (3) any transition rules that would ease the implementation of these possible changes."[\[9\]](#)

Section 408 Regulation Amendments (IRAs)

The proposal amends the IRA regulations under Code section 408 to reflect the SECURE Act changes (such as the updated required beginning date) and other prior guidance. As part of

these updates, when a beneficiary transfers amounts from a plan to an inherited IRA in the name of the decedent, the proposed regulation would provide for comparable treatment between non-spouse beneficiaries and spousal beneficiaries in terms of carry-over of the elected distribution method. For example, if an employee dies before the required beginning date after designating the employee's spouse as a beneficiary, and the surviving spouse rolls over a distribution from the qualified plan to an IRA in the name of the decedent, then any distribution method that was elected under the qualified plan also will apply to the IRA that receives the rollover. The same rule applies where the distributing plan is an IRA. The proposal also describes comparable rules for spouse and non-spouse beneficiaries in applying the deadline for making an election between the 10-year rule and life expectancy rule. The proposal, however, would allow a surviving spouse making a transfer to an inherited IRA to elect to use the life expectancy rule even if the distributing plan would have required distributions under the 10-year rule (or 5-year rule as applicable).

With respect to the ability of a surviving spouse to instead elect to treat a decedent's IRA as the spouse's own IRA, the proposal provides that the deadline for making such an election is the later of (1) the end of the calendar year in which the surviving spouse reaches age 72, and (2) the end of the calendar year following the calendar year of the IRA owner's death.

Section 4974 Regulation Amendments (Excise Tax)

The proposal updates the excise tax provisions for the SECURE Act changes, including the new 10-year rule. In addition, the proposal provides for two situations in which an automatic waiver of the excise tax will apply (one of which is based on the existing regulation). The two situations involve: (1) an employee or IRA owner who dies prior to the required beginning date with an eligible designated beneficiary who is subject to the life expectancy rule (pursuant to the plan document or regulatory default) but who elects instead to use the 10-year rule; and (2) an individual who had an RMD due in a calendar year but who dies in that calendar year prior to taking the distribution, with a beneficiary who also does not take the RMD in that calendar year as required (but who does take the distribution by the beneficiary's tax filing deadline, including extensions). An automatic waiver will apply in these situations if the applicable conditions are met.

Applicability Dates and Reliance

The amendments to the regulations providing RMD requirements for plans and IRAs are proposed to apply for purposes of determining RMDs for calendar years beginning on or after January 1, 2022. Likewise, the amendments to the rollover rules are proposed to apply for distributions on or after January 1, 2022, and the amendments relating to the RMD excise tax provisions are proposed to apply for taxable years beginning on or after January 1, 2022. For 2021, the proposal states that the existing regulations apply, along with a reasonable, good faith interpretation of the amendments made by sections 114 and 401 of the SECURE Act. Compliance with the proposed regulations will satisfy the reasonable, good faith interpretation requirement.

The proposal does not change the current deadline for making plan amendments to reflect the SECURE Act changes (generally the end of 2022 for private-sector plans) and does not include any model amendment language.

endnotes

[1] The proposed regulations are available here: <https://www.govinfo.gov/content/pkg/FR-2022-02-24/pdf/2022-02522.pdf>. See 87 Fed. Reg. 10504 (February 24, 2022).

[2] For more background on the SECURE Act, see ICI Memorandum No. 32118, dated December 20, 2019, available at <https://www.ici.org/memo32118>.

[3] See, e.g., ICI Memorandum No. 33560, dated June 1, 2021, available at <https://www.ici.org/memo33560>.

[4] The proposal would allow defined benefit plans that have used the regulation's prior definition of age of majority (which refers to whether the child has completed a specified course of education and is under age 26) to retain that definition.

[5] The proposal includes details around the required documentation.

[6] This interpretation is contrary to common expectations that beneficiaries subject to the new 10-year rule would not have annual distributions required during the 10-year period. It also appears to conflict with Publication 590-B (as revised February 28, 2022), which states on page 11: "The 10-year rule requires the IRA beneficiaries who are not taking life expectancy payments to withdraw the entire balance of the IRA by December 31 of the year containing the 10th anniversary of the owner's death. For example, if the owner died in 2021, the beneficiary would have to fully distribute the IRA by December 31, 2031. The beneficiary is allowed, but not required, to take distributions prior to that date. The 10-year rule applies if (1) the beneficiary is an eligible designated beneficiary who elects the 10-year rule, if the owner died before reaching his or her required beginning date; or (2) the beneficiary is a designated beneficiary who is not an eligible designated beneficiary, regardless of whether the owner died before reaching his or her required beginning date." (Emphasis added.) Publication 590-B is available here: <https://www.irs.gov/pub/irs-pdf/p590b.pdf>. As a reminder, taxpayers may not rely on IRS publications as binding precedent.

[7] Examples of these changes include: the ability to roll over after-tax amounts (basis) to an IRA or plan (if the plan separately accounts for the after-tax amounts); the rule that if only a portion of an eligible rollover distribution is rolled over, the amount rolled over is treated as consisting first of pre-tax amounts; the rule allowing waiver of the 60-day rollover deadline in certain circumstances; and the exclusion of hardship distributions from the definition of an eligible rollover distribution.

[8] 87 Fed. Reg. 10520.

[9] Id.