

MEMO# 34307

October 10, 2022

IRS Issues Interim Guidance Relating to Proposed RMD Regulations

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: IRS Issues Interim Guidance Relating to Proposed RMD Regulations

On October 7, 2022, the Internal Revenue Service (IRS) released Notice 2022-53,[\[1\]](#) providing limited interim guidance in advance of issuing final regulations on retirement plan required minimum distributions (RMDs) under Internal Revenue Code ("Code") section 401(a)(9).

As a reminder, the IRS issued proposed regulations in February 2022 amending the regulations governing 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[\[2\]](#) and other legislation.[\[3\]](#) The proposal indicated that the regulations, when finalized, would apply beginning with the 2022 distribution calendar year. The proposed regulations also included an interpretation that would apply the "at least as rapidly rule" simultaneous with the new 10-year rule for designated beneficiaries when the employee/account owner dies on or after the required beginning date.[\[4\]](#) Commenters on the proposed regulations (including ICI)[\[5\]](#) raised concerns about having to comply with the amended regulations in the 2022 distribution year (given that the regulations likely would not be finalized until late in 2022) and about application of the "at least as rapidly" rule to beneficiaries subject to the new 10-year payout rule. In addition to disagreeing with the interpretation itself, many commenters noted that beneficiaries subject to the new 10-year payout rule (which was effective with respect to deaths after 2019) may not have taken an annual distribution in 2021 or 2022 under a reasonable belief that the "at least as rapidly" rule would not apply.

Notice 2022-53 provides that the final RMD regulations will apply no earlier than the 2023 distribution calendar year (instead of 2022). The Notice also provides transition relief for 2021 and 2022, under which plans and IRAs will not be treated as violating the RMD rules because of missed annual distributions under certain circumstances. The transition relief applies to failures to have made a distribution under the interpretation in the proposed regulations, where the distribution would have been required to be made to:

- A designated beneficiary of an employee under the plan (or IRA owner) if: (1) the employee (or IRA owner) died in 2020 or 2021 and on or after the employee's (or IRA owner's) required beginning date, and (2) the designated beneficiary is not taking lifetime or life expectancy payments pursuant to Code section 401(a)(9)(B)(iii); or
- A beneficiary of an eligible designated beneficiary (including a designated beneficiary who is treated as an eligible designated beneficiary pursuant to section 401(b)(5) of the SECURE Act) if: (1) the eligible designated beneficiary died in 2020 or 2021, and (2) that eligible designated beneficiary was taking lifetime or life expectancy payments pursuant to Code section 401(a)(9)(B)(iii).

The Notice states that if a taxpayer has already paid an excise tax for a missed 2021 RMD that is subject to this transition relief, that taxpayer may request a refund of that excise tax.

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Notes

[1] Notice 2022-53 is available at <https://www.irs.gov/pub/irs-drop/n-22-53.pdf>.

[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] For background and a description of the proposal, see ICI Memorandum No. 34057, dated March 4, 2022, available at <https://www.ici.org/memo34057-0>.

[4] Under this interpretation in the proposed regulations, in the case of an employee/account owner who dies after his or her required beginning date with a designated beneficiary who is not an "eligible designated beneficiary" (and for whom the life expectancy distribution alternative to the 10-year rule is not applicable), annual RMDs must continue to be taken after the death of the employee/account owner, with a full distribution required by the end of the 10th calendar year following the calendar year of the employee's/account owner's death.

[5] For ICI's comment letter, see ICI Memorandum No. 34160, dated May 25, 2022, available at <https://www.ici.org/memo34160>.