



**Via Electronic Delivery**

May 11, 2022

CC:PA:LPD:PR (REG – 105954-20)  
Room 5203  
Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

**Re: [REG -105954-20] RIN 1545-BP82: Notice of Proposed Rulemaking: Required Minimum Distributions**

To Whom It May Concern:

On February 24, 2022, the Department of the Treasury, Internal Revenue Service (IRS) issued the Notice of Proposed Rulemaking on Required Minimum Distributions (Proposed Regulations), which implements the Required Minimum Distribution (RMD) provisions of the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) and also consolidates prior guidance. Our comments are below.

**Background**

Among other changes, the SECURE Act added new RMD rules for participants in defined contribution plans and IRA owners who die after December 31, 2019, including limiting the time for full distribution to an individual who is not an eligible designated beneficiary by the end of the 10<sup>th</sup> calendar year following the employee or IRA owner's death.<sup>1</sup> Unlike prior law, the 10-year period applies regardless of whether the employee or IRA owner died before that individual's required minimum distribution began.<sup>2</sup>

Special rules apply to eligible designated beneficiaries, who are:

1. The employee's surviving spouse;
2. The employee's child who has not yet reached the age of majority;
3. A disabled beneficiary;
4. A chronically ill individual; or
5. An individual who is not more than 10 years younger than the employee.<sup>3</sup>

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<sup>1</sup> 26 U.S.C. § 401(a)(9)(H)(i)(I).

<sup>2</sup> 26 U.S.C. § 401(a)(9)(H)(i)(II).

<sup>3</sup> 26 U.S.C. § 401(a)(9)(E)(ii).

Except for a minor child, the distribution may be extended over the eligible designated beneficiary's lifetime.<sup>4</sup> With respect to a child, the distribution must be made within 10 years of the date the child reaches majority.<sup>5</sup>

### **Analysis**

#### 1.401(a)(9)-2(c) and (d): Required and optional plan provisions and effective date

Paragraph (c) lays out the provisions that must be included in the plan document for qualification purposes and what provisions are optional. Paragraph (d) provides that the regulations are effective for plan years on and after January 1, 2022. Given the timing of the Proposed Regulations, the delay in any final regulations, and the lack of model plan language, the IRS should allow plans to be amended up to 12 months after any final regulations are published in the Federal Register.

#### § 1.401(a)(9)-4 Determination of the designated beneficiary: definition of child

Neither Code section 401(a)(9)(E)(ii)(II) nor the regulations define child other than for purposes of when the child reaches majority under Section 1.401(a)(9)-4(e)(3) of the Proposed Regulations. The final regulations should clarify that child also includes a stepchild.

#### 1.401(a)(9)-(5)(d) Applicable denominator after employee's death

In this paragraph, the IRS states that if an employee dies after RMDs have begun, distributions must satisfy section 401(a)(9)(B)(i), which requires that the remaining portion of the account must be distributed at least as rapidly as over the life of the employee or the life of the employee and the employee's designated beneficiary. This paragraph further states that the distribution must also satisfy section 401(a)(9)(B)(ii) or (iii) if applicable (the 5-year rule and the exceptions to the 5 year rule), taking into account sections 401(a)(9)(E)(iii) and 401(a)(9)(H)(ii) and (iii), which were added under the SECURE Act to provide an exception to the 10 year rule in 401(a)(9)(H)(i) for eligible designated beneficiaries and rules for designated beneficiaries, respectively. Finally, in this section the IRS notes that the rules in paragraph (e) of this section also must be applied.

Effectively, the above interpretation requires that where an employee or IRA owner dies after RMDs have begun, a designated beneficiary who is not an eligible designated beneficiary must begin taking RMDs in years one through nine after the employee or IRA owner's death based on the designated beneficiary's life expectancy, and, subject to paragraph (e) must then take full distribution in year 10. This interpretation ignores the plain reading of 401(a)(9)(H)(i) that provides that for designated beneficiaries, 10 replaces 5 in section 401(a)(9)(B)(ii) and this section will apply regardless of whether RMDs began under subparagraph (A), (i.e., 401(a)(9)(B)(i) will not apply). Subparagraph (B)(ii) merely requires that "the entire interest of the employee will be distributed within 5 years after the death of such employee," and nothing

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<sup>4</sup> 26 U.S.C. § 401(a)(9)(H)(ii).

<sup>5</sup> 26 U.S.C. § 401(a)(9)(E)(iii).

in that or the SECURE Act amendments requires that RMDs must be made in years 1 through 9 under the life expectancy rules. As such, any final regulation should provide that with respect to designated beneficiaries who are not eligible designated beneficiaries, the entire account must be distributed within 10 years of the employee or IRA owner's death, but no distributions are required before that date and the life expectancy rule does not apply.

#### 1.401(a)(9)-4(a) Specificity of beneficiary designation

Under this paragraph, the IRS states that a person does not need to be specifically named in the plan or by the employee to be a designated beneficiary if the person is identifiable by the designation, for example if the employee designated her children as beneficiaries in equal share. However, the Proposed Regulations provide that the fact that the employee's interest will pass to certain persons under a will or by state law does not make that person a designated beneficiary. This distinction may create unintended consequences for individuals, especially IRA owners, who may not have the benefit of estate planning services, and assume that an IRA, similar to any other bank account, will pass to their heirs without undue tax consequences. However, in this case, this interpretation will have a very different tax consequence because they are not "designated beneficiaries". The IRS should consider a way to simplify this rule to ensure that those without estate and tax counselling are not unintentionally harmed.

#### 1.401(a)(9)-4(b): Designated beneficiary must be an individual

Under this paragraph, a "person who is not an individual, is not a designated beneficiary." Furthermore, "if a person other than an individual is a beneficiary designated under the plan, the employee will be treated as having no designated beneficiary, even if individuals are also designated as beneficiaries." It would not be uncommon for an employee or IRA owner to name a spouse or children as a designated beneficiary and the estate as a contingent beneficiary. However, under this rule, the individual would have unknowingly changed the distribution timing from over the spouse's lifetime or ten years, to five years. The IRS should consider revising this rule so that if an estate is a contingent beneficiary, such designation will not override any primary designation, such as a spouse or children, if the primary beneficiary is alive at the time of the employee or IRA owner's death.

### Conclusion

We appreciate IRS's efforts to clarify the existing rules and the SECURE Act provisions. We look forward to working with the IRS to ensure that any final rules are both administratively feasible and as simple as possible.

Sincerely,

*Chantel Sheaks*

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Vice President, Retirement Policy, U.S. Chamber of Commerce