

## IRS Required Minimum Distribution (“RMD”) Relief for Beneficiaries for 2021 and 2022

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The IRS provided welcome relief from Code section 401(a)(9) RMD compliance for 2021 and 2022 for post-death distributions to beneficiaries under IRAs and defined contribution plans. [IRS Notice 2022-53](#) (“Notice”). In short –

- the pending RMD regulations (for all plan types) will not be effective before the 2023 distribution calendar year,
- no correction needs to be made for missed 2021 “specified RMD” payments, and
- no 2022 RMD payments need to be made for beneficiaries receiving “specified RMD” payments.

### Background

The SECURE Act made material changes to the post-death required minimum distribution rules for IRAs and defined contribution plans effective beginning in 2020. Most notably, it added a new 10-year rule that generally requires that, unless you are an “eligible designated beneficiary,” IRA or plan benefits must be paid out by the end of the 10<sup>th</sup> anniversary following the death of the participant/IRA owner. This change was designed to eliminate the “stretch IRA.”

Many in the industry interpreted (or otherwise hoped) the SECURE Act language to mean that the new 10-year rule would work the same way as the existing 5-year rule works – so that no payments were due until the end of the 10-year period, whether or not RMDs had begun to be paid. But, as a surprise to many, the proposed regulations retained the “at least as rapidly” rule under the existing regulations where a participant or IRA owner died on or after their required beginning date. As a result, the

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proposed regulations require that RMD payments continue to be paid out each of the 10 years following the death of the participant/IRA owner. But as the proposed regulations were not issued until February 2022, long after the 2021 RMD payments were due, and as the regulations are still proposed, many were struggling over what to do for those potential missed 2021 RMD payments, and what to do by year-end for 2022 RMD payments.

Two concerns are at play: (1) to avoid plan qualification failures, plan sponsors must comply with the Code section 401(a)(9) RMD rules, and (2) there is a 50% excise tax on any missed RMD payment on the participant/beneficiary. Thankfully, the IRS addresses both concerns.

## The Notice

First, the Notice provides for a delayed effective date of the forthcoming final regulations. Specifically, the Notice states that the final RMD regulations and related provisions will apply no earlier than the 2023 distribution calendar year instead of the previously announced 2022 plan year. This perhaps implies that the final regulations will not deviate from the IRS position in the proposed regulations, unless the IRS changes direction.

Second, the Notice provides the following relief for a “specified RMD”:

- Defined Contribution Plans that Did Not Make Specified RMDs for 2021 or 2022. A defined contribution plan that failed to make a “specified RMD” will not be treated as having failed to satisfy Code section 401(a)(9) merely because it did not make that distribution. Therefore, there is no qualification failure, and no need for plan sponsors to make VCP filings or otherwise provide participants with an explanation to assist with “reasonable cause” relief from the 50% excise tax penalty via Form 5329.
- Participant/Beneficiary Relief from 50% Excise Tax for 2021 and 2022. The Notice expressly states that to the extent a taxpayer did not take a specified RMD for 2021 or 2022, the IRS will not assert that an excise tax is due under Code section 4974. (Unlike the 2020 RMD waiver relief, there is no provision for return of these amounts to the plan/IRA.) Importantly, those that paid an excise tax for a missed RMD in 2021 for a specified RMD may request a refund of that excise tax.

The Notice defines a “specified RMD” as follows: Any distribution that, under the proposed regulations, would be required to be made pursuant to Code section 401(a)(9) in 2021 or 2022 under a defined contribution plan or IRA that is subject to the rules of 401(a)(9)(H) for the year in which the employee (or designated beneficiary) died if that payment would be 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 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 section 401(a)(9)(B)(iii) of the Code.

Therefore, the relief covers the main concern raised by the proposed regulations, which was non-eligible designated beneficiaries having to take payments over 10 years, but who had not taken any for 2021 (or yet for 2022) even though the participant or IRA owner died on or after reaching their required beginning date (generally, age 72). This relief also covers a beneficiary of an eligible designated beneficiary who died in 2020 or 2021 while taking lifetime payments, and who did not take a 2021 or 2022 RMD payment, thinking that the new 10-year rule following the death of such beneficiary similarly did not require taking annual payments.

## Next Steps

This is welcome relief for plan and IRA sponsors, and their recordkeepers, who were struggling with how to program for these new changes, and what to tell participants and beneficiaries. It is always challenging to expend resources on compliance with proposed regulations, knowing further changes may be required. And as plan amendments were already postponed (generally until 2025), these key operational issues were causing the most uncertainty. Now we have the needed flexibility to operate these provisions, and not trigger an unexpected excise tax for participants/beneficiaries. Well done IRS!

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