

## **Notice 2022-53**

### **Certain Required Minimum Distributions for 2021 and 2022**

#### **I. Purpose**

This notice announces that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue final regulations related to required minimum distributions (RMDs) under section 401(a)(9) of the Internal Revenue Code (Code) that will apply no earlier than the 2023 distribution calendar year. In addition, this notice provides guidance related to certain provisions of section 401(a)(9) that apply for 2021 and 2022.

#### **II. Background**

##### *A. Section 401(a)(9)*

Section 401(a)(9) provides rules for RMDs from a qualified plan during the life of the employee in section 401(a)(9)(A) and after the death of the employee in section 401(a)(9)(B). The rules set forth a required beginning date for distributions and identify the period over which the employee's entire interest must be distributed.

Specifically, section 401(a)(9)(A)(ii) provides that the entire interest of an employee in a qualified plan must be distributed, beginning not later than the employee's required beginning date, in accordance with regulations, over the life of the employee or over the lives of the employee and a designated beneficiary (or over a period not extending beyond the life expectancy of the employee and a designated beneficiary).

Section 401(a)(9)(B)(i) provides that, if the employee dies after distributions have begun, the employee's remaining interest must be distributed at least as rapidly as

under the distribution method used by the employee as of the date of the employee's death. Section 401(a)(9)(B)(ii) and (iii) provides that, if the employee dies before required minimum distributions have begun, the employee's interest must either be: (1) distributed within 5 years after the death of the employee (5-year rule), or (2) distributed (in accordance with regulations) over the life or life expectancy of the designated beneficiary with the distributions beginning no later than 1 year after the date of the employee's death (subject to an exception in section 401(a)(9)(B)(iv) if the designated beneficiary is the employee's surviving spouse).

The rules of section 401(a)(9) are incorporated by reference in section 408(a)(6) and (b)(3) for individual retirement accounts and individual retirement annuities (collectively, IRAs), section 408A(c)(5) for Roth IRAs, section 403(b)(10) for annuity contracts, custodial accounts, and retirement income accounts described in section 403(b) (section 403(b) plans), and section 457(d) for eligible deferred compensation plans.

#### *B. Section 401(a)(9)(H) as added by the SECURE Act*

##### *1. New 10-year rule*

Section 401(a)(9) of the Code was amended by section 401 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), enacted on December 20, 2019, as Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, 133 Stat. 2534 (2019) to add section 401(a)(9)(H) to the Code. Generally, pursuant to section 401(a)(9)(H)(i), if an employee in a defined contribution plan has a designated beneficiary, the 5-year period under the 5-year rule is lengthened to 10 years (10-year rule) and the new 10-year rule applies regardless of whether the

employee dies before the required beginning date. In addition, pursuant to section 401(a)(9)(H)(ii), the section 401(a)(9)(B)(iii) exception to the 10-year rule (under which the 10-year rule is treated as satisfied if distributions are paid over the designated beneficiary's lifetime or life expectancy) applies only if the designated beneficiary is an eligible designated beneficiary, as that term is defined in the new section 401(a)(9)(E)(ii).

Section 401(a)(9)(H)(iii) provides that when an eligible designated beneficiary dies before that individual's portion of the employee's interest in the plan has been distributed, the beneficiary of the eligible designated beneficiary will be subject to a requirement that the remainder of that individual's portion be distributed within 10 years of the eligible designated beneficiary's death. In addition, section 401(a)(9)(E)(iii) provides that when a minor child reaches the age of majority, that child will no longer be considered an eligible designated beneficiary and the remainder of that child's portion of the employee's interest in the plan must be distributed within 10 years of that date.

## *2. Section 401(a)(9)(H) effective date*

Section 401(b)(1) of the SECURE Act provides that, generally, the amendments made to section 401(a)(9)(H) of the Code apply to distributions with respect to employees who die after December 31, 2019. Pursuant to section 401(b)(2) and (3) of the SECURE Act, later effective dates apply for certain collectively bargained plans and governmental plans (as defined in section 414(d) of the Code).

Section 401(b)(4) of the SECURE Act provides that section 401(a)(9)(H) of the Code does not apply to payments under certain annuity contracts under which payment commenced (or the manner of payments was fixed) before December 20, 2019.

Section 401(b)(5) of the SECURE Act provides that if an employee who participated in a plan died before section 401(a)(9)(H) of the Code became effective with respect to the plan, and the employee's designated beneficiary died after that effective date, then that designated beneficiary is treated as an eligible designated beneficiary and section 401(a)(9)(H) applies to any beneficiary of that designated beneficiary.

*C. Excise tax under section 4974(a)*

Section 4974(a) provides that if the amount distributed during the taxable year of a payee under any qualified retirement plan (as defined in section 4974(c)) or any eligible deferred compensation plan (as defined in section 457(b)) is less than that taxable year's minimum required distribution (as defined in section 4974(b)), then an excise tax is imposed on the payee equal to 50 percent of the amount by which the minimum required distribution for the taxable year exceeds the amount actually distributed in that taxable year.

*D. Section 401(a)(9) proposed regulations*

The Treasury Department and the IRS published proposed regulations regarding RMDs under section 401(a)(9) of the Code and related provisions in the Federal Register on February 24, 2022 (87 FR 10504), which provided that the regulations, when finalized, would apply beginning with the 2022 distribution calendar year. Along with other matters, the proposed regulations address issues relating to the new 10-year rule in section 401(a)(9)(H) of the Code. Specifically, Prop. Reg. § 1.401(a)(9)-5(d)(1)(i) requires that, in the case of an employee who dies on or after the employee's required beginning date, distributions to the employee's beneficiaries for calendar years after the calendar year of the employee's death must satisfy section 401(a)(9)(B)(i). In addition,

distributions to the employee's beneficiaries must also satisfy section 401(a)(9)(B)(ii) (or if applicable, section 401(a)(9)(B)(iii), taking into account section 401(a)(9)(E)(iii), (H)(ii), and (H)(iii)).

In order to satisfy section 401(a)(9)(B)(i), the beneficiary of an employee who died after the employee's required beginning date must take an annual required minimum distribution beginning in the first calendar year after the calendar year of the employee's death. In order to satisfy section 401(a)(9)(B)(ii), the remaining account balance must be distributed by the 10<sup>th</sup> calendar year after the calendar year of the employee's death (subject to an exception under section 401(a)(9)(B)(iii), if applicable). In order to satisfy both of those requirements, the proposed regulations generally provide that, in the case of an employee who dies after the employee's required beginning date with a designated beneficiary who is not an eligible designated beneficiary (and for whom the section 401(a)(9)(B)(iii) alternative to the 10-year rule is not applicable), annual RMDs must continue to be taken after the death of the employee, with a full distribution required by the end of the 10<sup>th</sup> calendar year following the calendar year of the employee's death.

In accordance with section 401(a)(9)(B)(iii), in the case of a designated beneficiary who is an eligible designated beneficiary, the proposed regulations include an alternative to the 10-year rule under which annual lifetime or life expectancy payments are made to the beneficiary beginning in the year following the year of the employee's death. Under the proposed regulations, if an eligible designated beneficiary of an employee is using the lifetime or life expectancy payment alternative to the 10-year rule, then the eligible designated beneficiary (and, after the death of the eligible

designated beneficiary, the beneficiary of the eligible designated beneficiary) must continue to take annual distributions after the death of the employee (with a full distribution made no later than the 10<sup>th</sup> year after the year of the eligible designated beneficiary's death). The proposed regulations provide for similar treatment (that is, continued annual RMDs with a requirement to take a full distribution no later than the 10<sup>th</sup> year after a specified event) in the case of a designated beneficiary who is a minor child of the employee (with the specified event being the child's reaching the age of majority).

*E. Comments received by the Treasury Department and the IRS*

The Treasury Department and the IRS provided a 90-day comment period for the proposed regulations. During that period, some individuals who are owners of inherited IRAs or are beneficiaries under qualified defined contribution plans or section 403(b) plans submitted comments indicating that they thought the new 10-year rule would apply differently than what was proposed in the proposed regulations. Specifically, commenters believed that, regardless of when an employee died, the 10-year rule would operate like the 5-year rule, under which there would not be any RMD due for a calendar year until the last year of the 5- or 10-year period following the specified event (the death of the employee, the death of the eligible designated beneficiary, or the attainment of the age of majority for the employee's child who is an eligible designated beneficiary). Commenters in those situations who are heirs or beneficiaries of individuals who died in 2020 explained that they did not take an RMD in 2021 and are unsure of whether they would be required to take an RMD in 2022. Commenters asserted that, if final regulations adopt the interpretation of the 10-year rule set forth in

the proposed regulations, the Treasury Department and the IRS should provide transition relief for failure to take distributions that are RMDs due in 2021 or 2022 pursuant to section 401(a)(9)(H) in the case of the death of an employee (or designated beneficiary) in 2020 or 2021.

### **III. Applicability Date of Final Regulations**

Final regulations regarding RMDs under section 401(a)(9) of the Code and related provisions will apply no earlier than the 2023 distribution calendar year.

### **IV. Guidance for Certain RMDs for 2021 and 2022**

#### *A. Guidance for defined contribution plans that did not make a specified RMD*

A defined contribution plan that failed to make a specified RMD (as defined in Section IV.C of this notice) will not be treated as having failed to satisfy section 401(a)(9) merely because it did not make that distribution.

#### *B. Guidance for certain taxpayers who did not take a specified RMD*

To the extent a taxpayer did not take a specified RMD (as defined in Section IV.C of this notice), the IRS will not assert that an excise tax is due under section 4974. If a taxpayer has already paid an excise tax for a missed RMD in 2021 that constitutes a specified RMD, that taxpayer may request a refund of that excise tax.

#### *C. Definition of specified RMD*

For purposes of this notice only, a specified RMD is any distribution that, under the interpretation included in the proposed regulations, would be required to be made pursuant to 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.

## **V. Drafting Information**

The principal author of this notice is Brandon Ford of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, contact Brandon Ford at (202) 317-4148 (not a toll-free number).