May 25, 2022

Internal Revenue Service
Treasury Department
Submitted via www.regulations.gov

Re: IRS REG-105954-20

To Whom It May Concern:

The Securities Industry Financial Markets Association (SIFMA)[1] appreciates the opportunity to comment to the IRS regarding proposed regulations[2] implementing the required minimum distribution requirements for plans qualified under section Internal Revenue Code ("Code") Section 401(a) and individual retirement plans as defined under Code Section 7701(a)(37), as well as the update to the regulations to reflect the amendments made to Code Section 401(a)(9) by the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act).[3]

This letter is a follow-up to our letter submitted March 22, 2022 (see Appendix 1) where we highlighted our most timely concerns so the IRS could start working on addressing those issues immediately. We also joined with other trade associations to express the point regarding the necessity of the IRS moving quickly to address the time-sensitive issues.[4] This letter addresses our other comments about the proposed regulations.

I. IRS Relief for Time-Sensitive Issues and Additional Implementation

We remain particularly concerned about actions that our members' clients may have already taken in good faith, but without official guidance from the IRS. We hope the IRS will quickly address the time-

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.
[2] 87 Fed. Reg. 10504 (February 24, 2022)
[3] The SECURE Act was enacted on December 20, 2019, as Division O of the Further Consolidated Appropriates Act of 2019, Public Law 116-94, 133 Stat. 2534 (2019).
[4] March 25, 2022 Letter from American Benefits Council, American Council of Life Insurers, Committee of Annuity Insurers, Finseca, Insured Retirement Institute, Investment Company Institute, National Association of Insurance and Financial Advisors, National Association of Professional Employer Organizations, Retirement Industry Trust Association, Securities Industry Financial Markets Association, Small Business Council of America, and The SPAKR Institute, which can be found here: https://www.sifma.org/resources/submissions/joint-trades-request-for-immediate-guidance-needed-to-extend-rmd-and-secure-act-effective-dates/

sensitive issues raised in our previous letter. We also are concerned that if the IRS is unable to finalize the regulations in a timely manner, we will continue to need relief.

The IRS should plan on providing additional implementation time once the regulations are finalized. Relief should be provided for RMD decisions in prior years, based on good faith interpretations, so that individuals do not face costly excise tax penalties for distributions which were not taken prior to the compliance date of the final rule. In the longer term, then final rules should include a reasonable implementation period. We request the IRS grant 12-18 months of transition relief after the issuance of final regulations. This is needed to allow individuals to determine how the rules apply to them, gather the necessary documents, and allow plan administrators and financial institutions to make process and system enhancements to support the new requirements.

We raise a few other issues in our comments that we hope the IRS has been able to review. In particular we highlight those situations where one might not have anticipated these rules, as well as extending the excise tax waiver relief.[5]

II. The "at least as rapidly" (ALAR) rule should not apply if the 10-year rule applies

The SECURE Act Section 401 modified the Required Minimum Distribution (RMD) rules to (among other things) provide a special rule for defined contribution plans and IRAs. The special rule generally requires "designated beneficiaries" (as defined under Code section 401(a)(9)(E)(i)) to withdraw their entire interest in the plan or IRA within ten years after the death of the plan participant or IRA owner but provides an exception that allows "eligible designated beneficiaries" (as defined under Code section 401(a)(9)(E)(ii)) to receive distributions over their lifetime or a period not extending beyond their life expectancy. This special rule for defined contribution plans and IRAs is not an additional rule, but rather replaces the old rules for "designated beneficiaries".

The House Ways and Means Committee Report for the SECURE Act (H. Rep. 116-65, Part I) describes the special rule as follows:

> Under the provision, the five-year rule is expanded to become a 10-year period instead of five years (''10-year rule''), such that the 10-year rule is the general rule for distributions to designated beneficiaries after death (regardless of whether the employee (or IRA owner) dies before, on, or after the required beginning date) unless the designated beneficiary is an eligible beneficiary as defined in the provision. Thus, in the case of an ineligible beneficiary, distribution of the employee (or IRA owner's) entire benefit is required to be distributed by the end of the tenth calendar year following the year of the employee or IRA owner's death.

This language clearly indicates that the 10-year rule is intended to be the "general rule" that applies in all instances to "designated beneficiaries" of defined contribution plans and IRAs, unless the "designated beneficiary" qualifies as an "eligible designated beneficiary" and makes no mention of retaining the ALAR rule.

The special rule modifies Code section 401(a)(9)(B), which provides two sets of rules for after-death RMDs, with clause (i) applying when distributions have begun in accordance with subparagraph (A) (i.e., during the life of the participant or IRA owner) and clause (ii) applying when distributions have not begun in accordance with subparagraph (A). The statutory text of the special rule in Code section 401(a)(9)(H)(i)

[5] In addition to being attached as an appendix, the letter SIFMA submitted March 22, 2022 can be found here: https://www.sifma.org/resources/submissions/request-for-relief-on-secure-items/

provides in part that “[e]xcept in the case of a beneficiary who is not a designated beneficiary, subparagraph (B)(ii)—

(I) shall be applied by substituting “10 years” for “5 years”, and
(II) shall apply whether or not distributions of the employee’s interests have begun in accordance with subparagraph (A).”

Consistent with the legislative history, the statutory language clearly states that the new 10-year rule applies whether or not the employee’s interest have begun in accordance with subparagraph (A). Given the structure of subparagraph (B) where clause (i) only applies when distributions have begun in accordance with subparagraph (A) and clause (ii) only applies when distributions have not begun in accordance with subparagraph (A), it is clear that subparagraph (H) is replacing clause (i) when it states that clause (ii) (as modified by subparagraph (H)) applies “whether or not distributions. . . have begun in accordance with subparagraph (A).” The ALAR rule is the rule that applies under clause (i) and, because subparagraph (H) replaces clause (i) with the 10-year rule (i.e., clause (ii) as modified by subparagraph (H)), the ALAR rule does not apply when the 10-year rule applies.

Neither the legislative history, nor the statutory text indicates that the 10-year rule applies on top of the ALAR rule. Rather, as explained above, it clearly indicates that the 10-year rule replaces the ALAR rule. This interpretation of the 10-year rule is further supported by the fact that the 5-year rule (which is the same as the 10-year rule, but with a shorter period) does not require annual minimum distributions during the 5-year period, it simply requires the that the entire interest in the plan or IRA be distribution within five years after the death of the plan participant or IRA owner.

Notwithstanding the legislative history and the statutory language, which merely has an end point of ten years to withdraw the entire interest in the defined contribution plan or IRA, the IRS has proposed applying the ALAR rule to a “designated beneficiary’s” interest in the plan or IRA, in addition to the 10-year rule. This would mean that if the plan participant or IRA owner dies <u>on or after</u> distribution have begun, the designated beneficiary would have to take annual distributions during the 10-year period in accordance with the ALAR rule, with the balance required to be distributed by the end of the 10^{th} year.

We do not believe this is the correct interpretation. In addition, this adds significant and unnecessary complexity to the after-death RMD rules, which the SECURE Act was intended to simplify.

III. Documentation for Disabled or Ill Status

The proposed regulations require an “eligible designated beneficiary” who is disabled or chronically ill to provide certain documentation (e.g., physician’s certification) to the plan administrator or IRA custodian. The IRS should clarify that the documentation requirement can be satisfied by a reasonable representation from the beneficiary, indicating that he or she qualifies as disabled or chronically ill as defined by the regulations. Further, it should be clarified that any certification or other documentation (e.g., physician’s certification) required to substantiate the beneficiary’s disability or chronic illness should be retained by the beneficiary, so that it can be provide to the IRS upon request.

Further, the IRS appears to treat plan administrators and custodians as interchangeable in the proposed regulations. Plan administrators and custodians perform different roles with respect to plans and IRAs, and provide different services. A custodian’s role in determining an IRA owner’s or beneficiary’s status is limited. We ask that the IRS clarify that an IRA custodian is not expected or required to receive or retain from a beneficiary any documentation regarding his or her disabled or chronically ill status. We believe it would be inappropriate for IRA custodians to request and retain on file documentation concerning a beneficiary’s medical or health status.

The proposed regulations require an “eligible designated beneficiary” to provide certain documentation to the plan administrator or IRA custodian no later than October 31 of the calendar year following the calendar year of the plan participant's or IRA owner's death. We believe that this required documentation deadline may be a particularly harsh penalty for someone who is disabled or chronically ill. We believe that there should be some additional flexibility in these situations, possibly an IRS waiver of the deadline where the failure to waive such requirement would be against equity or good conscience (similar to the standard that applies for the IRS to waive the 60-day deadline for rollovers).

IV. Deadline for Spouses Adds Complexity

The proposed regulations introduce two new limitations for spouse beneficiaries. First, a new deadline is established for a spouse beneficiary to elect to treat an IRA as the spouse's own, which is the later of the calendar year following the year of the IRA owner's death or the calendar year in which the surviving spouse reaches age 72. Second, the amount eligible for rollover to the spouse beneficiary's own IRA or retirement plan is reduced by "hypothetical RMDs" if (a) the spouse beneficiary is subject to either the 5-year or 10-year rule and (b) the rollover occurs in or after the year in which the spouse beneficiary reaches age 72. There is nothing in the legislative history or the statutory language to suggest that Congress intended to impose such limitations on a spouse beneficiary, nor is there anything to support the concept of "hypothetical RMDs". These new limitations on spouse beneficiaries create significant and unnecessary complexity to an already complex set of rules, which the SECURE Act was intended to simplify.

V. Use calendar years rather than actual age

We request that the "10 years younger" rule be based on calendar years rather than the actual numerical age so that it will be consistent with other calculations. In effect, the attained age in that year would be used to determine whether a designated beneficiary is more than 10 years younger than the plan participant or IRA owner.

VI. Successor beneficiary provision

We believe the IRS got it right with regard to treating a successor beneficiary of an "eligible designated beneficiary" the same as a "designated beneficiary" – i.e. the successor beneficiary is subject to the 10-year rule at the death of the "eligible designated beneficiary". However, as indicated above, we do not believe the ALAR rule should apply if the 10-year rule applies; instead, only the 10-year rule should apply, regardless of the age of the EDB.

This would help simplify the process for taxpayers. We recommend that the IRS consider adding simple examples to Publication 590-B to address this scenario.

VII. Request more Successor Inherited IRA scenarios

We request that the IRS provide guidance concerning trust and estate bypass scenarios for inherited IRAs. These are situations where a trust's or estate's ownership interest in an inherited IRA is assigned/transferred to the beneficiary(ies) of the trust or estate, so that the trust or estate can dissolve/terminate. The inherited IRA assets are then typically transferred to an inherited IRA established for the benefit of the beneficiary(ies) of the trust or estate. While these situations have been addressed in a number of Private Letter Rulings issued by the IRS, it has not been addressed in any regulations or other formal IRS guidance that can be relied on by our member firms (e.g., Notice or Revenue Ruling). Guidance addressing these scenarios would greatly ease the administrative burden on impacted trusts or estates, as well as our member firms, and can help reduce the number of Private Letter Ruling requests submitted to the IRS.

Our members' clients frequently submit trust or estate bypass requests to our member firms. These generally cover two concepts. The first is where, for example, a spouse, Jane, died in 2019 with an IRA that named her estate (or a trust) as the sole beneficiary. Jane's husband, John, is the sole beneficiary and executor of her estate (or the sole beneficiary and trustee of the trust). The Private Letter Rulings addressing these scenarios have generally allowed John to treat the IRA as his own, even though it passed through Jane's estate (or a trust). We believe guidance addressing this concept should be included in the final regulations.

The second is where, for example, Jane dies after her RBD and named her estate (or a trust) as the sole beneficiary of her IRA. Her estate (or the trust) is entitled to take payments over Jane's remaining life expectancy but doing so would require the executor of her estate to keep her estate open for several years (or prevent the trustee of the trust from terminating the trust as permitted under the terms of the trust). The Private Letter Rulings addressing these scenarios have generally determined that the assignment/transfer of the trust's or estate's ownership interest in the inherited IRA to the beneficiary(ies) of the trust or estate is neither a taxable distribution under Code section 408(d), nor a taxable transfer under Code section 691. We believe guidance addressing this concept should be included in the final regulations.

VIII. Conclusion

Thank you for taking the time to consider our comments. First and foremost is to address the concerns with the timing relating to 2021 deaths. Further, if the IRS does not finalize the regulations soon, we will also need relief regarding 2022 distribution requirements as well.

We would like to request a meeting with the IRS to discuss these issues and scenarios. Please contact me at lbleier@sifma.org or 202-962-7329.

Sincerely,

Lisa J. Bleier

Lisa J. Bleier
Managing Director and Associate General Counsel

Appendix 1

March 25, 2022

Internal Revenue Service
Treasury Department
Submitted via www.regulations.gov

Re: IRS REG-105954-20

To Whom It May Concern:

SIFMA[1] appreciates the opportunity to provide comments to the IRS regarding proposed regulations to address the required minimum distribution requirements for plans qualified under section 401(a), as well as the update to the regulations to reflect the amendments made to section 401(a)(9) by the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act).[2] We are submitting this first letter specifically focused on those issues that are problematic for 2021. We will be submitting a second, more extensive letter covering the other issues and thoughts we have regarding these proposed regulations.

Due to the lack of guidance in place to implement SECURE Act once it became effective December 31, 2019, we were left to rely on a good faith reasonable interpretation of the SECURE Act. While a spokesperson for the IRS was quoted as saying that a good faith reasonable interpretation was an acceptable approach for 2020 and 2021, we are concerned that the direction these proposed regulations are headed is not consistent with the way many of our members interpreted certain provisions. As a result, there are a few issues that could harm some investors that we would like the IRS to clarify in official sub-regulatory guidance as quickly as possible.

1. To that end, many of our members' clients, who are not Eligible Designated Beneficiaries (EDBs), did not take a distribution for 2021 in instances where the deceased participant or IRA owner died on or after the required beginning date because of the understanding that one would have ten years to withdraw the assets and would not be required to take annual distributions during the 10-year period. As a result, these clients now find themselves in 2022, and unable to take a 2021 distribution. While we disagree with the interpretation that a designated beneficiary in this instance must take annual distributions during the 10-year period, we believe the IRS should provide relief for all beneficiaries from having not taken a distribution in 2021. Further, we do not believe there should be an expectation to take a make-up payment in 2022, since it was a good faith interpretation of the law to not take a distribution in 2021.

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] The SECURE Act was enacted on December 20, 2019, as Division O of the Further Consolidated Appropriations Act of 2019, Public Law 116-94, 133 Stat. 2534 (2019).

2. For Eligible Designated Beneficiaries (EDBs) who must satisfy a documentation requirement by October 31 of the year following death benefit from EDB treatment, we believe it should be clarified that, for deaths that occurred in 2020, we only need to receive the required documentation by October 31, 2022, since we are unlikely to have received such documentation by October 31, 2021. Further, the IRS should clarify that the documentation requirement can be satisfied by a reasonable representation from the client, indicating that he or she qualifies as disabled or chronically ill as defined by the regulations, and that any certification or other documentation (e.g., physician's certification) required to substantiate the client's disability or chronic illness should be retained by the client, so it can be provided to the IRS upon request.

3. For minor beneficiaries of a deceased participant or IRA owner who assumed the 10-year rule applied and did not take a distribution in 2021 because they reside in a state where the age of majority is younger than age 21 and, therefore, did not believe they qualified as EDBs, we believe the IRS should provide relief by waiving the penalty for not having taken a distribution in 2021. Further, these minor beneficiaries should not be required to take a make-up distribution in 2022 and should be allowed to switch to life expectancy payments since it was a good faith interpretation that they were not EDBs in 2021.

4. The look-through trust rules in the proposed regulations include scenarios where a beneficiary of the trust can be disregarded, along with scenarios where a beneficiary of trust can be added for RMD purposes by September 30 of the year following death. Since these new scenarios could not have been anticipated by sponsors or beneficiaries, the October 31, 2021 deadline for deaths in 2020 is not reasonable. Indeed, the steps necessary to disregard or add a trust beneficiary or satisfy the documentation requirement by October 31 of the year following death very likely may not have been completed in 2021 for deaths that occurred in 2020. We believe the IRS should provide relief, allowing additional time to take the steps necessary to disregard or add a trust beneficiary or satisfy documentation requirement through October 31, 2022, for deaths that occurred in 2020.

5. Treasury should extend the deadline to amend (a) qualified retirement plan documents to at least the last day of the first plan year beginning on or after January 1, 2023, and (b) IRA documents to at least December 31, 2023. Since the proposed regulations have just been issued, and there is no model language or updated model forms, firms should have 12 months from the date that Treasury issues model language and updated model forms.

6. Lastly, we appreciate that the IRS is providing that the 50% excise tax is waived for year of death distributions that beneficiaries missed taking by December 31, 2021. The rule only provides the penalty waiver relief if the beneficiary takes the distribution by their tax filing due date (including extensions) in 2022. We respectfully submit that it is already too far into the 2021 tax season for the waiver to be useful. We believe the IRS should extend the remedial period to April 15, 2023 (or the tax filing extension period if taken).

Thank you for taking the time to consider these issues. We would be happy to meet with you to discuss these further. I can be reached at 202-962-7329 or lbleier@sifma.org.

Sincerely,

Lisa Bleier

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