



March 25, 2022

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

Re: IRS REG-105954-20

To Whom It May Concern:

SIFMA¹ 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.

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,

A handwritten signature in cursive script that reads "Lisa Bleier".

Lisa Bleier