



June 14, 2022

The Honorable Lily Batchelder
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Mr. William M. Paul
Principal Deputy Chief Counsel
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

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

RE: Individual Retirement Account (IRA) and Trust and Estate Issues with the Required Minimum Distribution (RMD) Requirements and SECURE Proposed Regulations ([REG-105954-20](#))

Dear Ms. Batchelder and Mr. Paul:

The American Institute of CPAs (AICPA) is submitting comments to the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) on trust and estate issues with the proposed regulations (REG-105954-20) regarding the required minimum distribution (RMD) requirements and provisions in the Setting Every Community Up for Retirement Enhancement Act, commonly referred to as the “SECURE Act,” contained in the Further Consolidated Appropriations Act, 2020 ([P.L. 116-94](#)). These comments are in addition to our [June 16, 2020 previously submitted pre-release comments](#) and our forthcoming more detailed comments regarding the proposed regulations and employee benefits in general.

Our comments focus on the following trust and estate related issues:

1. Age of majority
2. Trust as beneficiary definitions and provisions related to see-through trusts, conduit trusts and accumulation trusts
3. Disability definition
4. Required minimum distributions (RMDs)
5. Marital trust with surviving spouse as beneficiary
6. Eligible designated beneficiary (EDB) older than the decedent, and beginning date and ending date
7. 10-year rule, and an Individual Retirement Account (IRA) beneficiary trust receiving RMDs before 2020

Specific Comments

1. Age of Majority

AICPA supports and thanks IRS for following our [previously submitted suggestion](#) of clarifying that a specific age is the age of majority (that a child reaches majority on their 21st birthday) and clarifying the definition of age of majority for required minimum distribution (RMD) purposes (that the 10-year rule is applicable at the earlier of the minor child's 21st birthday or death).¹ We applaud the proposed regulations for not requiring an age change in specific plan documents that already provide for a different age and for providing a specific age of majority instead of relying on the defined benefit regulations. The clarity on age of majority in the proposed regulations is helpful to taxpayers and should be retained in the final regulations. In addition, we are pleased that the proposed regulations contain, and suggest the final regulations contain, language that the rule provided for defined benefit plans does not apply to defined contribution plans. The clarity is helpful to taxpayers.

2. Trust as Beneficiary Definitions and Provisions Related to See-Through Trusts, Conduit Trusts and Accumulation Trusts

The AICPA [previously suggested](#) that IRS should allow the ultimate beneficiaries of all estates and trusts treatment as designated beneficiaries for the 10-year rule, life expectancy, or rollover related to the IRA distributions.² We support and are pleased that proposed regulations include the definitions and provisions related to see-through trusts, conduit trusts and accumulation trusts. These definitions and provisions in the proposed regulations should be retained in the final regulations as they are helpful to taxpayers to have these clear definitions and guidance.

3. Disability Definition

We are pleased the proposed regulations Reg. §1.401(a)(9)-4(e)(1)(iii) and (e)(4)(iv)³ uses, and suggest IRS adopt in the final regulations, the Social Security determination and definition of “disabled” for an eligible designated beneficiary (EDB). It would be a welcome change for section 72(t) as well. There are many court cases related to the section 72(t) penalty that hinge on the definition of “disabled.”⁴ Currently, section 72(t) refers to section 72(m) for the

¹ See AICPA letter, “[Implementation Guidance Needed on Individual Retirement Account \(IRA\) and Trust Issues](#),” June 16, 2020.

² See AICPA letter, “[Implementation Guidance Needed on Individual Retirement Account \(IRA\) and Trust Issues](#),” June 16, 2020.

³ Unless otherwise indicated, references to a “section” are to a section of the Internal Revenue Code of 1986, as amended (the “Code”), and references to a “Reg. §” are to the Treasury regulations promulgated under the Code.

⁴ For example, see *Dart v. Comm.* (TC Summary Opinion 2008-158), in which taxpayer applied for Social Security disability in April 2005 and was approved in December of that year. The Court held that a distribution a few weeks before the approval qualified for the disability exception. PLR 201011036 held that taxpayer who qualified for Social Security disability was exempt from the 10% penalty on distributions although there are Court cases where Social

definition of “disabled,” and section 72(m) does not follow a Social Security determination and definition. The adoption of the Social Security determination and definition of “disabled” is helpful to taxpayers.

4. Required Minimum Distributions (RMDs)

The regulations under section 401 regarding the 5-year rule remain unchanged. The 5-year rule only applies if the employee dies before the Required Beginning Date (RBD) and has no designated beneficiary. The 5-year rule states that, if applicable, no amount is required to be distributed until the end of the calendar year that contains the five-year anniversary of the employee’s death. The SECURE Act provided a 10-year rule to follow the 5-year rule in existing law. The proposed regulations state that the 10-year rule is similar to the 5-year rule in the existing regulations and permits distributions to be delayed until the end of the calendar year that contains the ten-year anniversary of the employee’s death, but only if the employee dies before the Required Beginning Date (RBD). The SECURE Act makes no mention of attainment of RBD.

The AICPA [previously commented](#) that many taxpayers lack appropriate planning and could easily have unexpected results.⁵ In addition, many taxpayers and heirs of retirement accounts are likely to have challenges in dealing with the technical aspects of the distribution rules under the SECURE Act and will need to consult with a retirement compliance specialist. The proposed regulations bring added complexity and challenges by including multiple RMD scenarios that are dependent on if the IRA owner died before or after the RBD; and if the beneficiary is an Eligible Designated Beneficiary (EDB), a Designated Beneficiary (DB), or a Non-Designated Beneficiary (NDB).

AICPA recommends that in the final regulations, Treasury and IRS treat the 10-year rule similar to the 5-year rule if the employee dies before, on, or after the IRA owner’s RBD. Accordingly, the final regulations should provide that the At Least As Rapidly (ALAR) rule under section 401(a)(9)(B)(i) would not be applicable. Minimizing and simplifying the RMD scenarios will assist taxpayers in complying with RMDs.

5. Marital Trust with Surviving Spouse as Beneficiary

Most qualified terminable interest property (QTIP) trusts provide income to the spouse for life with the remainder to the children. Under pre-SECURE regulations, such a trust was considered an accumulation trust, but the beneficiary could take RMDs based on the spouse’s life expectancy from the Single Life Table in the existing regulations (as updated).

Security’s determination was not followed. Also see *Kane v. Comm.*, TC Memo 1992-218, where taxpayers eligible for social security disability payments who lost custody of their child due to poor health were not disabled within the meaning of section 72(m)(7) because capability of substantial gainful employment was not addressed.

⁵ See AICPA letter, “[Implementation Guidance Needed on Individual Retirement Account \(IRA\) and Trust Issues](#),” June 16, 2020.

Under the proposed regulations, instead of life expectancy, the 10-year rule applies unless the trust agreement provides for a definition of income that is greater than the requirements under state law. That means every QTIP trust will need to specify that trust accounting income must include 100% of the RMD if that is greater than trust income. So, if the major trust asset is an IRA, it will be highly taxed in 10 years and leave much less for the next generation. Also, if it is a second marriage and the survivor can invade principal, there may be nothing remaining for the children of the first marriage.

We think it is likely every family will be worse off because the IRA owner used a trust to preserve benefits for children. That's why we are referring to it as the death of the QTIP.

Further, the proposed regulations state that both first- and second-tier beneficiaries must be considered when determining the RMD for a marital trust. For example, if a surviving spouse is the first-tier beneficiary and a non-designated beneficiary (i.e., charity) is the second-tier beneficiary, the 5-year rule applies if before the IRA owner's RBD and the At Least As Rapidly (ALAR) rule under section 401(a)(9)(B)(i) applies if on or after the IRA owner's RBD. If a surviving spouse is the first-tier beneficiary and a non-EDB (i.e., deceased IRA owner's 50-year-old nondisabled child) is the second-tier beneficiary, the 10-year rule applies. In addition, if a surviving spouse is the first-tier beneficiary and an EDB (i.e., individual not more than 10 years younger than the decedent) is the second-tier beneficiary, the lesser of the 10-year rule or At Least As Rapidly (ALAR) rule under section 401(a)(9)(B)(i) applies. The example in the proposed regulations indicates that a better solution is found if the surviving spouse disinherits the children in favor of a sibling.

AICPA recommends that in the final regulations, Treasury and IRS provide the option for a marital trust with a surviving spouse as the first-tier beneficiary to be treated similar to a conduit trust with a surviving spouse as the first-tier beneficiary. The trust would be treated as if the surviving spouse was the sole beneficiary, allowing the spouse to obtain RMDs using life expectancy with the 10-year rule beginning upon the survivor's death. Allowing this treatment will help taxpayers that have not planned appropriately and would treat surviving spouses similarly whether they are a sole beneficiary or a multiple beneficiary of a trust.

6. EDB Older than the Decedent, and Beginning Date and Ending Date

A punitive rule applies to an EDB who was older than the decedent. Reg. § 1.401(a)(9)-5(e)(5) provides that the EDB who qualifies for RMDs because they were less than 10 years younger than the decedent cannot take RMDs after the final year of the ghost life expectancy. We do not understand the rationale in the legislation for shortening the distribution period for those EDBs. If the ALAR rule remains applicable (see 4. above), we recommend that distributions continue until the earliest of the year that contains the 10th anniversary of the EDB's death or the final year of the EDB's life expectancy.

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7. 10-Year Rule, and an IRA Beneficiary Trust Receiving RMDs Before 2020

The proposed regulations state that an IRA beneficiary trust that was receiving RMDs before 2020 based upon the life expectancy of the oldest of multiple beneficiaries should apply the 10-year rule upon the death of the oldest beneficiary. The proposed regulations provide that all designated beneficiaries who were living at the death of the IRA owner before 2020 should be counted and considered prior to applying the 10-year rule.

As the AICPA [previously suggested](#), AICPA recommends that for an IRA beneficiary trust that was receiving RMDs before 2020 based upon the life expectancy of the oldest of multiple beneficiaries, Treasury and IRS should clarify in the final regulations that the 10-year rule does not apply until the death of the last beneficiary.⁶ A trust terminates when the trust agreement requires it to. The oldest beneficiary's life was just used to determine the time period over which RMDs are paid before the SECURE Act, it did not require that the retirement benefit be accelerated because of an untimely death.

We suggest that Treasury and the IRS should treat the death of the beneficiary that was used as the measuring life as not causing RMDs to cease. The 10-year rule should not begin because of the death of the oldest beneficiary, and Treasury and IRS should provide in the final regulations that the same treatment as for the death of any other beneficiary that occurs before the trust terminates based on its terms. Often when the last beneficiary dies, the trust terminates and, therefore, the RMDs end. The 10-year rule should not come into play at the death of any beneficiary. As an example, A, age 40, B, age 38, and C, age 20, are all beneficiaries of a trust. The RMDs should not end if C dies first. RMDs should end when the last beneficiary dies, and the trust terminates under its terms. Treasury and the IRS should not provide more importance to the age of the oldest beneficiary (A) than they do to the trust, and the trust should end when all of the beneficiaries are deceased.

The AICPA is the world's largest member association representing the CPA profession, with more than 428,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions or would like assistance with developing examples, please contact Irene Estrada, Chair, AICPA Trust, Estate, and Gift Tax Technical Resource Panel, at (703) 628-5243 or Irene.C.Estrada@pwc.com; Eileen Sherr, AICPA Senior Manager – Tax

⁶ See AICPA letter, "[Implementation Guidance Needed on Individual Retirement Account \(IRA\) and Trust Issues](#)," June 16, 2020.

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Policy & Advocacy, at (202) 434-9256 or Eileen.Sherr@aicpa-cima.com; or me at (601) 326-7119 or JanLewis@HaddoxReid.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Lewis". The signature is fluid and cursive, with a large initial "J" and "L".

Jan Lewis, CPA
Chair, AICPA Tax Executive Committee

cc: Mr. Thomas Barthold, Chief of Staff, Joint Committee on Taxation
Ms. Laura B. Warshawsky, Branch Chief, Qualified Plans Branch 1, Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), Internal Revenue Service
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