

## Extended Relief for Required Minimum Distributions in 2024

Five years ago, the Setting Every Community Up for Retirement Enhancement Act of 2019 (the “SECURE Act”) made several significant changes to certain distributions required pursuant to Internal Revenue Code (“Code”) Section 401(a)(9) (“Required Minimum Distributions” or “RMDs”). The changes related to the RMD ‘10-Year Rule’ (summarized in greater detail below) have proven to be particularly difficult to interpret. Although these RMD rules became effective with respect to the plan accounts of participants who died after December 31, 2019, so far, the Internal Revenue Service has released only proposed regulations and a series of Notices alleviating some of the consequences associated with misapplication of certain of these changes. The latest IRS Notice, Notice 2024-35, which was released on April 16, 2024, extends the prior relief from excise tax penalties and plan disqualification for certain missed RMDs through 2024.

### 401(a)(9)(H) 10-Year Rule

A detailed analysis of the 10-Year Rule is beyond the scope of this alert, but for context, prior to the SECURE Act, if a participant died before RMDs had begun to be taken from a defined contribution plan account, generally speaking, the interest in that account would be required to be distributed either (i) within five years after the employee’s death (the ‘5-Year Rule’), or (ii) over the life expectancy of the designated beneficiary beginning no later than one year from the death of the participant. (Note that there were exceptions if the designated beneficiary was the participant’s spouse.) Different rules applied if a participant died after distributions had begun to be taken from the defined contribution plan.

The SECURE Act revised the 5-Year Rule to generally provide that if a participant in a defined contribution plan has a designated beneficiary, the period under the 5-Year Rule is increased to 10 years (the ‘10-Year Rule’), and the 10-Year Rule applies whether or not RMDs had begun prior to the employee’s death. The SECURE Act also generally limited the option of having the distributions paid over the beneficiary’s lifetime to ‘eligible designated beneficiaries’ (as that term is defined in the SECURE Act).<sup>1</sup>

### Guidance

The IRS issued proposed regulations regarding these changes in February of 2022 (the “Proposed Regulations”), and subsequently released Notice 2022-53, which provided relief for defined contribution plans that did not make Specified RMDs in 2021 and 2022. Notice 2022-53 also waived excise taxes for individuals who did not take a Specified RMD in 2021 or 2022. This relief was extended by Notice 2023-54 to include non-payment of Specified RMDs with respect to 2023 and has now been further extended by Notice 2024-35 to include Specified RMDs which were not made in 2024.

“Specified RMDs” (as defined in IRS Notice 2024-35) are those RMDs which, pursuant to the Proposed Regulations, would be required to be made from a defined contribution plan subject to Code Section 401(a)(9)(H) for the year in which the employee or designated beneficiary died to (a) a designated beneficiary if (i) the employee died in the years 2020 through 2023 on or after the employee’s required beginning date and (ii) the designated beneficiary is not using the lifetime or life expectancy exception (the “Stretch RMD Exception”), or (b) a beneficiary of an eligible designated beneficiary who died in 2020 through 2023 and who was using the Stretch RMD Exception.

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<sup>1</sup> Similar RMD rules apply to individual retirement accounts (IRAs). A discussion of IRAs is beyond the scope of this alert.

## Takeaways

Notably, in addition to extending the excise tax and plan disqualification relief described above through 2024, Notice 2024-35 also clarifies that once the Proposed Regulations are finalized, they are not anticipated to apply to RMDs prior to calendar years starting on or after January 1, 2025. Although 2025 is only months away, this clarification does provide some comfort that the regulations will not be applied retroactively. It is anticipated that the IRS will release revised regulations on the SECURE Act 10-Year Rule for RMDs in the near term.

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