

## Certain Required Minimum Distributions for 2024

Notice 2024-35

### I. PURPOSE

This notice provides guidance relating to certain specified required minimum distributions (RMDs) for 2024. In addition, this notice announces that the final regulations that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue related to RMDs will apply for purposes of determining RMDs for calendar years beginning on or after January 1, 2025.

### II. BACKGROUND

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

Section 401(a)(9) of the Code requires a stock bonus, pension, or profit-sharing plan described in § 401(a) (or an annuity contract described in § 403(a)) to make minimum distributions starting by the required beginning date (as well as minimum distributions to beneficiaries if the employee dies before the required beginning date). Individual retirement accounts and individual retirement annuities (IRAs) described in § 408(a) and (b), annuity contracts, custodial accounts, and retirement income accounts described in § 403(b) (§ 403(b) plans), and eligible deferred compensation plans under § 457(b) are also subject to the rules of § 401(a)(9) pursuant to §§ 408(a)(6) and (b)(3), 403(b)(10), and 457(d)(2), respectively, and the regulations under those sections.

#### B. *RMD Distribution Period*

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

Specifically, § 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 method of distributions being used by the employee under section 401(a)(9)(A)(ii) as of the date of the employee's death. Section 401(a)(9)(B)(ii) and (iii) provides that, if the employee dies before RMDs 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 § 401(a)(9)(B)(iv) if the designated beneficiary is the employee's surviving spouse).

The rules of § 401(a)(9) are incorporated by reference in § 408(a)(6) and (b)(3) for IRAs, § 403(b)(10) for § 403(b) plans, and § 457(d) for eligible deferred compensation plans.

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

### *1. Ten-year rule*

Section 401(a)(9) of the Code was amended by § 401(a)(1) 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 § 401(a)(9)(H) to the Code. Generally, pursuant to § 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 10-year rule applies regardless of whether the employee dies before the required beginning date. In addition, pursuant to § 401(a)(9)(H)(ii), the § 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 § 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 entirely 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, § 401(a)(9)(E)(iii) provides that when an eligible designated beneficiary who is a minor child of the employee 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 § 401(a)(9)(H) of the Code apply to distributions with respect to employees who die after December 31, 2019. Pursuant to § 401(b)(2) and (3) of the SECURE Act, later effective dates apply for certain collectively bargained plans and governmental plans (as defined in § 414(d) of the Code).

Section 401(b)(4) of the SECURE Act provides that § 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 § 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 § 401(a)(9)(H) applies to any beneficiary of that designated beneficiary.

*D. Excise tax under § 4974(a)*

Section 4974(a) provides that if the amount distributed during a year to a payee under any qualified retirement plan (as defined in § 4974(c)) or any eligible deferred compensation plan (as defined in § 457(b)) is less than that year's minimum required distribution (as defined in § 4974(b)), then an excise tax is imposed on the payee. Pursuant to § 302 of the SECURE 2.0 Act of 2022, enacted on December 29, 2022, as Division T of the Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4459 (2022), for taxable years beginning after December 29, 2022, this excise tax is equal to 25 percent of the amount by which the minimum required distribution for a year exceeds the amount actually distributed in that year. If a failure to take a minimum

required distribution is corrected by the end of the correction window (generally, the end of the second year that begins after the year of the missed minimum required distribution), the excise tax is reduced from 25 percent to 10 percent.

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

The Treasury Department and the IRS published proposed regulations regarding RMDs under § 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 calendar year. Along with other matters, the proposed regulations address issues relating to the 10-year rule in § 401(a)(9)(H). 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 § 401(a)(9)(B)(i). In addition, distributions to the employee's beneficiaries must also satisfy § 401(a)(9)(B)(ii) (or if applicable, § 401(a)(9)(B)(iii)), taking into account § 401(a)(9)(E)(iii), (H)(ii), and (H)(iii).

In order to satisfy § 401(a)(9)(B)(i), the beneficiary of an employee who died after the employee's required beginning date must take an annual RMD beginning in the first calendar year after the calendar year of the employee's death. In order to satisfy § 401(a)(9)(B)(ii) (applied by substituting "10 years" for "5 years"), 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 § 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 § 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 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 would be made to the beneficiary beginning in the year following the year of the employee's death, in accordance with § 401(a)(9)(B)(iii). 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) would need to continue to take annual RMDs after the death of the employee (with the employee's entire interest distributed by 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 that the employee's entire interest be distributed 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 reaching the age of majority).

#### *F. 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. Some individuals who are owners of inherited IRAs or are

beneficiaries under defined contribution plans submitted comments indicating that they thought the new 10-year rule would apply differently than it would under the proposed regulations. Specifically, these commenters expected that, regardless of when an employee died, the 10-year rule would operate like the 5-year rule, such that 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 who are heirs or beneficiaries of individuals who died in 2020 explained that they did not take an RMD in 2021 and were 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 § 401(a)(9)(H) in the case of the death of an employee (or designated beneficiary) in 2020 or 2021.

In response to the comments received on the proposed regulations, the Treasury Department and the IRS issued Notice 2022-53, 2022-45 IRB 437. Notice 2022-53 announced that the final regulations will apply no earlier than the 2023 distribution calendar year and provided guidance regarding certain amounts that were not paid in 2021 or 2022. Specifically, Notice 2022-53 provided that a defined contribution plan will not fail to be qualified for failing to make a specified RMD (as defined in section IV.C of that notice) in 2021 or 2022 and the taxpayer who did not take a specified RMD will not be subject to the excise tax under § 4974 for failing to take the specified RMD.

Subsequently, the Treasury Department and the IRS issued Notice 2023-54, 2023-31 IRB 382, which extended the relief in Notice 2022-53 to specified RMDs for 2023, and announced that the final regulations will apply no earlier than the 2024 distribution calendar year.

### III. APPLICABILITY DATE OF FINAL REGULATIONS

Final regulations regarding RMDs under § 401(a)(9) and related provisions are anticipated to apply for determining RMDs for calendar years beginning on or after January 1, 2025.

### IV. GUIDANCE FOR SPECIFIED RMDs FOR 2024

#### *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 § 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 § 4974.

*C. Definition of specified RMD.* For purposes of this notice, a specified RMD is any distribution that, under the interpretation included in the proposed regulations, would be required to be made pursuant to § 401(a)(9) in 2024 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, 2021, 2022, or 2023, and on or after the employee's (or IRA owner's) required beginning date, and (2) the designated beneficiary is not using the lifetime or life expectancy payments exception under § 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 § 401(b)(5) of the SECURE Act) if: (1) the eligible designated beneficiary died in 2020, 2021, 2022, or 2023, and (2) that eligible designated beneficiary was using the lifetime or life expectancy payments exception under § 401(a)(9)(B)(iii) of the Code.

#### V. DRAFTING INFORMATION

The principal author of this notice is Jessica Weinberger of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, contact Jessica Weinberger at (202) 317-6349 (not a toll-free number).