Insights

Guidance on New RMD Rules in IRS Notice 2022-53; Final Regulations Forthcoming

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With the end of the 2022 calendar year quickly approaching, the Internal Revenue Service ("IRS") and Department of Treasury ("Treasury Department") have published Notice 2022-53, offering some insight on the forthcoming final regulations relating to the changes to Required Minimum Distributions ("RMDs") under the Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE Act"). The notice also addresses questions and comments brought up during a 90-day comment period for the proposed regulations, including provisional tax relief to plan sponsors and taxpayers who missed "certain" RMDs.

Effective Date of Final Regulations

In February 2022, the IRS published proposed regulations which surmised that they would go into effect and apply to RMDs due to be paid in 2022. However, the latest guidance confirms that the final regulations on RMDs are not effective for 2022 distributions and, at the earliest, they will be effective for RMDs that become due in 2023.

Old vs. New Rules for RMDs to Beneficiaries

Prior to December 31, 2019, the RMD rules for a beneficiary applied differently depending on if RMD payments had commenced at the time of the participant's death. If a participant died after RMDs commenced, any remaining balance in the retirement account had to continue being paid at least as rapidly as it was being paid at the time of the participant's death. If the participant died before RMDs had begun, the account had to be distributed over the beneficiary's lifetime or, in the absence of a beneficiary, within 5 years of the participant's death.

The proposed regulations, effective January 1, 2020, allow an Eligible Designated Beneficiary ("EDB") (see "Clarification on Rules for Eligible Designated Beneficiaries" below) to "stretch out" payments over a lifetime but impose a 10-year distribution rule on most other beneficiaries. The 10-year distribution rule requires a beneficiary who is not an EDB to withdraw the account within 10 years of the participant's death, regardless of whether or not RMDs had commenced at the time of the participant's death.

The IRS confirms in the Notice that, if a participant dies after he or she was required to start taking RMDs, the beneficiary will need to continue taking at least the RMDs each year but must fully withdraw the account by the 10th calendar year.

Clarification on Rules for Eligible Designated Beneficiaries

The only exception to the 10-year distribution rule is if the beneficiary is an Eligible Designated Beneficiary, a term defined under the SECURE Act as:

1. a surviving spouse of the participant,
2. a minor child of the participant[1]
3. a disabled individual or chronically ill individual (meeting certain requirements under the proposed regulations), or
4. an individual who is not more than 10 years younger than the employee.

If the beneficiary is an EDB, the EDB may opt to receive payments at the same rate as they were being made at the time of the employee's death, with no 10-year limitation.

The IRS goes on to clarify a couple of nuances regarding the payments to an EDB, as outlined below:

1. If an EDB dies before the account has been fully distributed, the beneficiary of the EDB is not given the same option to stretch out payments over the EDB's life expectancy; the beneficiary of the EDB would have to withdraw the account within a 10-year period following the EDB's death.

2. If the EDB is a minor and he or she reaches majority age, the EDB would have to withdraw the account within 10 years of the date that the he or she attains majority age.

Waiver of Tax Penalty on Missed RMDs

The IRS and Treasury Department acknowledged the ambiguity of key components of the timing and operation rules in the proposed regulations and, as a result, are waiving the tax penalty on certain RMDs that were not distributed in 2021 and/or 2022 and were payable to:

1. A beneficiary of a participant who died in 2020 or 2021 after reaching age 70½ (if not 70½ as of December 31, 2019, then age 72), as long as the beneficiary is not taking lifetime or life expectancy payments; or

2. A beneficiary of an EDB who died in 2020 or 2021 and the EDB was taking lifetime or life expectancy payments at the time of his or her death.

If the tax penalty otherwise applied, the individual taxpayer would be assessed a 50% tax penalty on the difference between the RMD amount that was due and the amount that was actually paid.

If you would like more information regarding the proposed regulations under the SECURE Act, please contact Lisa Durham or another member of Krieg DeVault's Employee Benefits & Executive Compensation Practice .

[1] While the SECURE Act does not define "majority age," a minor child would be a child who has not completed a specified course of education and is under the age of 26. See Q&A -15 under Treasury Regulation §401(a)(9)-6.