

February 27, 2020

Victoria Judson
Associate Chief Counsel (CC:EEE)
Room 4302
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224
Submitted via email

Re: NPRM Regarding Updated Life Expectancy and Distribution Period Tables Used for Purposes of Determining Minimum Required Distributions. RIN 1545-BP11

Dear Ms. Judson,

The American Retirement Association (“ARA”) is responding to a request for an explanation following up on our testimony at the public hearing held January 23, 2020, on the Department of the Treasury’s and Internal Revenue Service’s (“IRS”) Notice of Proposed Rulemaking regarding updated life expectancy and distribution period tables used for purposes of determining required minimum distributions, published in the Federal Register on November 8, 2019, and referenced above (the “Proposed Rule”). In our testimony at the hearing, ARA recommended that changes in the Proposed Rule be synchronized as necessary with changes made under the SECURE Act¹ to the required minimum distribution rules of IRC section 401(a)(9). The panel requested that ARA follow up with an explanation of the impact of the SECURE Act on the Proposed Rule.

The ARA is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America’s private retirement system, the American Society of Pension Professionals and Actuaries (“ASPPA”), the National Association of Plan Advisors (“NAPA”), the National Tax-Deferred Savings Association (“NTSA”), the American Society of Enrolled Actuaries (“ASEA”), and the Plan Sponsor Council of America (“PSCA”). ARA’s members include organizations of all sizes and industries across the nation who sponsor and/or support retirement saving plans and are dedicated to expanding on the success of employer-sponsored plans. In addition, ARA has nearly 28,000 individual members who provide consulting and administrative services to sponsors of retirement plans. ARA’s members are diverse but united in their common dedication to the success of America’s private retirement system.

SUMMARY

In our letter dated January 6, 2020, ARA recommended that changes made under the SECURE Act be synchronized as necessary with the changes in the Proposed Rule, and explained that it was not clear whether the Proposed Rule could be finalized either by disregarding the SECURE Act or by incorporating the SECURE Act changes directly into final regulations without additional public comment. To address these concerns, ARA recommended that IRS and Treasury first issue proposed regulations on the SECURE Act changes, rather than incorporating the SECURE Act changes directly into final regulations in an expanded

¹ The Setting Every Community Up for Retirement (SECURE) Act, was enacted on December 20, 2019, as Public Law No. 116-94, Division O.

Proposed Rule. We believe that promulgating the regulations in this order is necessary to avoid unintended results.

The SECURE Act made two major changes to the rules governing required minimum distributions. First, in section 114 of the Act, there is an increase in the age for the required beginning date for mandatory distributions which moved from age 70 ½ to age 72 at IRC section 401(a)(9)(C)(i)(I) and at IRC 401(a)(9)(C)(ii). With the updated life expectancy and distribution period tables used in the Proposed Rule, this SECURE Act change has no impact; the updated distribution period table would merely be used for eligible individuals at the appropriate ages either before or after the effective date of section 114 of the SECURE Act. We do not believe these changes would impact section 1.401(a)(9)-9(a) through (e) of the Proposed Rule.

Second, section 401 of the SECURE Act makes changes to the designated beneficiary rules under section 401(a)(9)(E) and adds a new subparagraph at IRC 401(a)(9)(H). Generally, section 401 of the Act provides that distributions to all individuals are required to be distributed by the end of the 10th calendar year following the year of the employee or owner's death, except for the following individuals:

- Surviving spouses of employee or IRA owner
- Disabled or chronically ill individuals
- Individuals not more than 10 years younger than employee or IRA owner
- Child of employee or IRA owner who has not reached the age of majority

The excepted classes of individuals above are referred to as “eligible designated beneficiaries” under the SECURE Act, which generally allows distributions of life or lifetime expectancy beginning in the year following the year of death. These changes are generally effective for employees who die after December 31, 2019.²

Additionally, at 1.401(a)(9)-9(f)(1), the Proposed Rule is generally applicable for distribution calendar years beginning on or after January 1, 2021. At 1.401(a)(9)-9(f)(2), the rule provides that:

“if an employee died before January 1, 2021, and under the rules of section 1.401(a)(9)-5, the distribution period that applies for a calendar year following the calendar year of the employee's death is equal to a single life expectancy calculated as of the calendar year of the employee's death (or, if applicable, the following calendar year), reduced by 1 for each subsequent year, then that life expectancy is reset as provided in paragraph (f)(2)(ii) of this section.” (emphasis added)

The SECURE Act changes are effective for employees who die after December 31, 2019, and regulations will have to be proposed that update the rules under 1.401(a)(9)-5³, which will presumably be effective for deaths after 2019 as well. If the Proposed Rule is finalized as is, with a publication date that is after enactment of the SECURE Act, it will not be clear whether the reference to “the rules of 1.401(a)(9)-5” is to the existing regulations (prior to SECURE Act changes), future regulations that will incorporate SECURE Act changes, or perhaps more of a general reference to the statutory provisions for required minimum distributions.

² There are several additional effective date rules under section 401 of the SECURE Act involving collective bargaining agreements, governmental plans, and certain existing annuity contracts.

³ Section 1.401(a)(9)-5 provides rules for required minimum distributions for defined contribution plans that include rules at Q-5 for distribution periods for death on or after the employee's required beginning date and death before an employee's required beginning date that will need revisions to reflect section 401 of the SECURE Act which no longer distinguish between deaths before, on, or after the required beginning date. Q-5 also provides rules for life expectancy distribution periods of nonspouse designated beneficiaries that also will require revisions to reflect section 401 of the SECURE Act.

For example, if an employee died on February 1, 2020 at age 80, and the sole designated beneficiary is a child who is age 50, under the SECURE Act, the child would be subject to the new 10-year rule because the child is not an eligible designated beneficiary. But a literal reading of the Proposed Rule at 1.401(a)(9)-9(f)(2) would allow the distribution period to be determined as lifetime expectancy since that is the method in the currently effective rules of 1.401(a)(9)-5, given that the Proposed Rule is going to be finalized after the enactment date of the SECURE Act. This provision could be read as a transition rule relating to the SECURE Act even though clearly that was not the intent of the Proposed Rule.

The essential issue is that the SECURE Act changes are effective before the proposed effective date of the Proposed Rule, and that careful review is necessary to ensure that the final regulations under 1.401(a)(9)-9 will be compatible with not-yet-proposed regulations that will revise 1.401(a)(9)-5. The current rules of 1.401(a)(9)-5 will not be applicable in many cases for individuals who die after 2019 because of the SECURE Act changes under section 401 if beneficiaries cannot use lifetime expectancy periods and instead must use the 10-year payout rule, but if the Proposed Rule is finalized as is, it is unclear whether the current rules can nevertheless be used until there are new regulations issued under 1.401(a)(9)-5.

Thank you for your consideration of these comments. Please contact Martin L. Pippins, MSEA, Executive Director of ASEA and Director of Regulatory Policy (mpippins@usaretirement.org; 703.516.9300), if you have any comments or questions regarding the matters discussed above.

Sincerely,

/s/

Brian H. Graff, Esq., APM
Executive Director/CEO
American Retirement Association

/s/

Martin L. Pippins, MSPA, EA
Executive Director
American Society of Enrolled Actuaries

Cc: Stephen Tackney, Deputy Associate Chief Counsel, IRS

Harlan Weller, Office of Tax Policy, Department of the Treasury