AMERICAN RETIREMENT ASSOCIATION

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Working for America's Retirement

January 6, 2020

CC:PA:LPD:PR (REG-132210-18)
Room 5203
Internal Revenue Service
P.O. Box 7604, Ben Franklin Station
Washington, DC 20044
Submitted via www.regulations.gov

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

The American Retirement Association ("ARA") appreciates this opportunity to comment 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"). ARA commends the IRS and the Department of the Treasury for updating these tables, which will allow participants to keep more assets in their retirement plans thus providing for a more secure retirement.

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 more than 26,000 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

The President's August 31, 2018, Executive Order 13847[1] directed the Secretary of the Treasury to examine the life expectancy and distribution period tables in the regulations on required minimum distributions from retirement plans and determine whether they should be updated to reflect current mortality data and whether such updates should be made annually or on another periodic basis. ARA supports the updating of life expectancy and distribution period tables for purposes of calculating required minimum distributions for participants in retirement plans. The current regulations in effect for this purpose were published in final form in 2002.

[1] 83 Fed. Reg. 45321 (Sept. 6, 2018).

The updated tables under the Proposed Rule reflect longer life expectancies resulting in somewhat smaller required minimum distribution amounts. Of course, larger distributions can always be taken by participants if needed. ARA supports this change which should result in greater benefit security for participants, as less would be required to be distributed each year than under the 2002 final regulations. We do, however, have some specific recommendations with respect to the implementation of the Proposed Rule.

Effective Date of Proposed Rule. The life expectancy tables under the Proposed Rule are proposed to be generally effective for distribution calendar years beginning on or after January 1, 2021. If the regulations are finalized and published early in 2020, this would not be a problem to implement. That being said, ***ARA recommends*** that final regulations be published at least six (6) months prior to the beginning of the calendar year for which they are effective. If this was followed, final regulations would need to published by July 1, 2020. Following are some specific reasons why publication of final regulations late in 2020 would cause issues for plan sponsors, third party administrators, financial institutions, and other firms in the retirement industry.

1. First, the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, Pub. L. 116-94, enacted on December 20, 2019, provides for an increase in the age for the required beginning date for mandatory distributions under IRC sections 401(a)(9) and 408(b), from age 70 ½ to age 72. This provision applies to distributions required to be made after December 31, 2019, with respect to individuals who attain age 70 ½ after such date.[2] The SECURE Act also modified the required minimum distribution rules with respect to defined contribution plans and IRA balances upon the death of the account owner.[3] Under the latter provision, distributions to individuals other than the surviving spouse of the employee or IRA owner, disabled or chronically ill individuals, individuals who are not more than 10 years younger than the employee or IRA owner, or a child of the employee or IRA owner who has not reached the age of majority are generally required to be distributed by the end of the tenth calendar year following the year of the employee or IRA owner's death. In the case of a child who has not reached the age of majority, calculation of the minimum required distribution is only allowed through the year that the child reaches the age of majority. This provision applies to distributions with respect to employees who die after December 31, 2019.

   The SECURE Act is making some fundamental changes to the rules for required minimum distributions. We think the changes made under the SECURE Act should be synchronized as necessary with the changes in the Proposed Rule. The SECURE Act has effective dates under both sections 114 and 401 that are earlier than the effective date that would apply under the Proposed Rule. It is not clear whether the Proposed Rule can be finalized either by disregarding the SECURE Act changes or by incorporating the SECURE Act changes directly into final regulations without additional public comment. As one example, we note that the Proposed Rule has a transition rule at section 1.401(a)(9)-9(f)(2) dealing with employees who died before January 1, 2021, which is

[2] Section 114 of SECURE Act.
[3] Section 401 of SECURE Act.

now after the effective date of the SECURE Act provisions (which is effective for employees who die after December 31, 2019). We also think there may be a technical glitch in section 114(a) of the SECURE Act.[4] We are also wondering if IRS and the Department of the Treasury will proceed with the January 23 public hearing on the Proposed Rule while some of these issues are sorted out (if so, ARA plans on providing testimony). Because the SECURE Act changes for required minimum distributions are immediately effective, ***ARA recommends*** 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 Proposed Rule. Public comment on regulations issued under the SECURE Act will be the most helpful path.

2. Second, software updates are critical, communications to participants need to be designed for ease of understanding, and financial institutions need to consider how the changes in the Proposed Rule can be implemented. For example, taking into account the SECURE Act changes, participants who turned age 70 ½, in 2010, say, will be subject to the new distribution period tables in the proposed regulations beginning in 2021. Other participants who turned age 70 ½ in 2019 will have a required beginning date of April 1, 2020, using the existing distribution period tables. And other participants who turned age 70 ½ early in 2020 will have a required beginning date of April 1, 2022, (the April 1 after the calendar year in which they turned age 72) before they are subject to the new distribution period tables. All communications regularly sent out to participants to illustrate these scenarios will have to be updated to explain both the new distribution tables and the SECURE Act changes. Communications to participants must be designed and pushed out well in advance of the end of 2020, and institutions must be ready to answer questions in their customer service functions once communications start flowing. Again, the more time available for this, the better.

   Moreover, financial institutions will need to update software to take into account the SECURE Act changes as well as the new distribution period tables. Individuals take required minimum distributions throughout the year, especially in the middle of the year, but a not insignificant portion take them in January and February each year. Having a system completely built and operational in order to push out required

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[4] Section 114(a) of the SECURE Act changes age 70 ½ to age 72 in section 401(a)(9)(C)(i)(I) but does not change age 70 ½ to age 72 in section 401(a)(9)(C)(iii). Section 401(a)(9)(C)(iii) provides: "In the case of an employee <u>to whom clause (i)(II) applies</u> who retires in a calendar year after the calendar year in which the employee attains age 70 ½ , the employee's accrued benefit shall be actuarially increased to take into account the period after age 70 ½ in which the employee was not receiving any benefits under the plan." (emphasis added). Clearly, the intent was to begin actuarial adjustments at age 70 ½, not at age 72: the JCT report on the Ways and Means markup of the SECURE Act (JCX-13-19, page 50) is clear that the present law requirement to actuarially adjust benefits beginning at age 70 ½ "is not changed". However, the untouched and lingering reference "to whom clause (i)(II) applies" combined with the change to age 72 in clause (i)(I) literally indicates that the employees to whom clause (i)(II) applies are those retiring after the attainment of age 72 (similar to under pre-SECURE Act law where it referred to employees who retire after age 70 ½). So it is not clear if those individuals who will be retiring at age 71 or 72 after this change is effective will get the benefit of the actuarial increase from age 70 ½ . It would have been clearer if the SECURE Act had struck the phrase "to whom clause (i)(II) applies".

minimum distributions in early January 2021 is essential, and the failure to do this may lead to excise tax penalties for individuals that the IRS must enforce, even with the reasonable cause penalty waivers on the Form 1040 series of tax returns. A minimum lead time of six months to accomplish this is important to ensure the highest level of compliance; more than six months would be desirable.

Thank you for your consideration of these comments. Please contact Martin L. Pippins, MSPA, 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/
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Executive Director/CEO
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/s/
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Executive Director
American Society of Enrolled Actuaries