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Email Guidance – What is the Status of the Proposed RMD Regulation and the Proposed Rollover Changes?

Q-1. I went to the IRS Notice N-2022-53 ([irs.gov](https://www.irs.gov)) and found the RMD on inherited IRA for year 1-9 years referenced under the D Section 401(a)(9) proposed regulations (Page 5). To me this doesn't mean they have been implemented. Can you tell me if the RMD on inherited IRA has been approved and required by the IRS?

A-1. Here is my summary of where the IRS is at with respect to its proposed RMD regulation.

The IRS issued the proposed regulation in February of 2022, requested the submission of comments and held a public meeting in June. The IRS has not yet adopted the final regulation.

The IRS has issued minimal guidance since June of 2022. As you reference, Notice 2022-53 was issued in October of 2022. SECURE Act 2.0 was enacted on December 29, 2022 and it sets forth some new RMD laws.

I assume there will be some changes in the final regulation. There will certainly be some changes in the final regulation, The subject matter is complicated. Certainly, the RMD age has changed from age 72 to age 73. There may be some changes regarding the right of a spouse beneficiary to elect their deceased spouse's IRA as their own.

The 2021 and 2022 versions of IRS Pub-

lications 590-B set forth the IRS position on RMDs as set forth in the proposed regulation. The IRS has indicated its position is - if the IRA accountholder died after his or her required beginning date, then a beneficiary who is not an EDB will have an RMD for years 1-9 and must also close the inherited IRA in year 10. This beneficiary does not have the right to not take any distributions for years 1-9 as would be the case if the IRA accountholder had died before his or her required beginning date.

I read Notice 2022-53 as providing relief to non-EDB beneficiaries of an IRA accountholder who had died after 2019 after his or her required beginning date and such beneficiaries had not withdrawn their RMD for 2021 or 2022 because they did not understand the new law as the IRS understands it. The IRS has stated it will not impose the excess accumulation tax on such beneficiaries.

I understand this relief does not extend or apply to 2023. The IRS believes that such a beneficiary does have an RMD for 2023 and must close the inherited IRA under the 10-year rule. A beneficiary was not given two additional years to close the inherited IRA. For example, the IRA accountholder died in 2020. The inherited IRS must be closed by 12/31/2030.

I don't see the IRS changing its position in the final RMD regulation. A beneficiary wanting to adopt a different approach would have to be ready to litigate the subject with the IRS.

As a practical tax matter, I would expect most such beneficiaries will want to withdraw more than a given year's RMD in order to minimize the overall tax impact of withdrawing a large sum in year 10.

The IRS Discussion of the Many Exceptions to the 10% Tax of Code Section 72(t)

There will be times when an IRA accountholder or an IRA beneficiary owes a special tax related to an IRA or retirement plan and consequently must file Form, 5329 (Additional Taxes on Qualified Plans (including IRAs) and Other Tax-Favored Accounts). There is a 6% tax for certain excess contributions, a 25% or 10% tax for missed RMDs and a 10% tax for distributions to a person who is younger than age 59½.

Part I of IRS Form 5329 Covers the 10% Additional Tax on Early Distributions.

The general tax policy is - an individual should be discouraged from taking a distribution prior to being age 59½. In general an individual withdrawing funds from an IRA or retirement is subject to an additional 10% tax. However, over the course of many years since individuals first started making IRA contributions in 1975, the law now sets forth many exceptions to this 10% tax. That is, an individual withdraws funds from an IRA or retirement plan before being age 59½, but does not owe the 10% tax.

An individual completes Form 5329 to either inform the IRS that he or she owes the 10% tax or that she or he does not owe the 10% tax.

This article discusses those situations when an individual who has taken a distribution even though not yet age 59½ does not owe the 10% tax. The individual is to enter on line 2 the amount which is not subject to the 10% tax and in the space provided the individual inserts a code because he or she has met a certain exception or more than one exception. 99 is to be entered when more than one exception applies.

Set forth below are many of the exceptions to the 10% tax. Note that some exceptions apply to both IRA and pension distributions, some apply to just IRA distributions and some apply to just distributions from a qualified plan. The exceptions:

No. Exception

- 01 Qualified retirement plan distributions (doesn't apply to IRAs) you receive after separation from service when the separation from service occurs in or after the year you reach age 55 (age 50 for qualified public safety employees).

- 02 Distributions made as part of a series of substantially equal periodic payments (made at least annually) for your life (or life expectancy) or the joint lives (or joint life expectancies) of you and your designated beneficiary (if from an employer plan, payments must begin after separation from service).
- 03 Distributions due to total and permanent disability. You are considered disabled if you can furnish proof that you can't do any substantial gainful activity because of your physical or mental condition. A medical determination that your condition can be expected to result in death or to be of long, continued, and indefinite duration must be made.
- 04 Distributions due to death (doesn't apply to modified endowment contracts).
- 05 Qualified retirement plan distributions up to the amount you paid for unreimbursed medical expenses during the year minus 7.5% of your adjusted gross income (AGI) for the year.
- 06 Qualified retirement plan distributions made to an alternate payee under a qualified domestic relations order (doesn't apply to IRAs).
- 07 IRA distributions made to certain unemployed individuals for health insurance premiums.
- 08 IRA distributions made for qualified higher education expenses.
- 09 IRA distributions made for the purchase of a first home, up to \$10,000.
- 10 Qualified retirement plan distributions made due to an IRS levy.
- 11 Qualified distributions to reservists while serving on active duty for at least 180 days.
- 12 Distributions incorrectly indicated as early distributions by code 1, J, or S in box 7 of Form 1099-R. Include on line 2 the amount you received when you were age 59 1/2 or older.
- 13 Distributions from a section 457 plan, which aren't from a rollover from a qualified retirement plan.
- 14 Distributions from a plan maintained by an employer if:
 1. You separated from service by March 1, 1986;
 2. As of March 1, 1986, your entire interest was in pay status under a written election that provides a specific schedule for the distribution of your entire interest; and
 3. The distribution is actually being made under the written election.
- 15 Distributions that are dividends paid with respect to stock described in section 404(k).
- 16 Distributions from annuity contracts to the extent that the distributions are allocable to the investment in the contract before August 14, 1982. For additional exceptions that apply to annuities, see Tax on Early Distributions under Special Additional Taxes in Pub. 575.
- 17 Distributions that are phased retirement annuity payments made to federal employees. See Pub. 721 for more information on the phased retirement program.
- 18 Permissible withdrawals under section 414(w).
- 19 Qualified birth or adoption distributions. Attach a statement that provides the name, age, and TIN of the child or eligible adoptee.
- 20 Enter this code if more than one exception applies.

Additional Distributions Not Subject to the 10% Tax.

The amount an individual rolls over from a qualified plan or an IRA to an IRA is not subject to the 10% additional tax. The amount not rolled over is subject to the

IRS Discussion,
Continued from page 2

10% additional tax unless the recipient is age 59½ or older or another exception applies. Remember, a rollover is a two step transaction. There is a distribution followed by a rollover contribution.

The amount an individual converts from a traditional IRA, SEP-IRA or SIMPLE-IRA to a Roth IRA is not subject to the 10% additional tax. Any amount not converted is subject to the 10% additional tax unless the recipient is age 59½ or older or another exception applies.

The amount an individual uses to make a qualified HSA funding distribution from an IRA to an HSA is not subject to the 10% additional Tax.

An IRA accountholder or beneficiary is not to file Form 5329 if he or she was furnished a Form 1099-R with a reason code 2, 3 or 4. The IRA custodian/trustee has made the determination an exception to the 10% tax has been met by the recipient. Code 2 is used to report any one of for types of distributions - IRS levy, a substantially equal periodic payment, a conversion or a disaster distribution. Code 3 reports a distribution to a person who is disabled. Reason Code 4 is used to describe any distribution to a beneficiary. Do not use Code 4 if a spouse has elected as own and then takes a distribution.

There are times the IRA accountholder who is not yet age 59½ is not to complete Form 5329 even though he or she owes the 10% tax. He or she is allowed to directly complete line 8 of Schedule 2 to indicate the 10% tax is owed without having to complete Form 5329.

In summary, an IRA custodian/trustee only in limited situations prepares the Form 1099-R to indicate that it has sufficient information to determine that a recipient of an IRA distribution who is under age 59½ does not owe the 10% additional tax. Many time the individual is required to prepare Part I of Form 5329 to explain whether or the 10% additional tax is owed or not owed.

Coming in 2024 – A Domestic Abuse Distribution to an IRA Accountholder Will Not be Assessed the 10% Additional Tax

In 2024 an IRA accountholder is permitted to withdraw funds if he or she has been a victim of domestic abuse. If the IRA accountholder is under age 59½, then the 10% additional tax is not owed. The statutory definition of when a person is a victim of domestic abuse is quite broad. A participant's distribution is on account of domestic abuse if it occurs within the one year period beginning on any date where a person is a victim of domestic abuse. A domestic abuse distribution is limited to the lesser of \$10,000 or 50% of a participant's vested account balance. The IRS will need to furnish additional guidance on how this limit applies to an IRA. An IRA accountholder is able to repay such withdrawal at any time during the 3-year period beginning on the day after the date on which the distribution was received.

This new exception to the 10% additional tax applies to distributions occurring on or after January 1, 2024. An IRA accountholder who is a victim of abuse in 2023 is authorized to take a distribution in 2024 and will not owe the 10% additional tax as long as the person meets the 1 year rule.

Most likely an IRA custodian/trustee will prepare box 7 of Form 1099-R by inserting a 1 which is used for when the IRS does not know that the person has met an exception or if the exception is one claimed by the person on the tax return.

A participant of a 401(k) plan or other employer plan is ineligible to directly rollover a domestic abuse distribution into an IRA.

Email Guidance – Valuing Hard to Value or Unique Assets

Q-1. Do you have any kind of resource that effectively explains the reasons that most IRA custodians don't allow unique assets to be held in an IRA?

A-1. I expect that many trustees are unwilling to take on the annual duty of having to determine the FMV of a hard to value or unique asset. Using the cost value is not permitted. The bank can ask the IRA accountholder to provide valuation info from their accountant but the ultimate duty falls on the IRA trustee. The bank must make the determination. Sometimes the bank would not need to use a special appraiser because it feels good about determining the value, but at times it probably should have input from a special appraiser.

Although the IRS only has the authority to assess a \$50 fine (times two) for an incorrect Form 5498, many IRA trustees still are hesitant. I am biased, but I don't think an IRA trustee needs to decline a new account for this reason. The IRA trustee under the CWF IRA plan agreement, has the right to be reimbursed if the IRS would assess a penalty. Having the correct FMV of unique assets is important to the IRS and the individual when withdrawals are being made from any one of the aggregated IRAs.

Special IRS Instruction Regarding Using Black and White Copies of Forms 5498-SA and Forms 1099-SA

Online fillable form. Due to the very low volume of paper Forms 1099-SA and 5498-SA received and processed by the IRS each year, these forms have been converted to an online fillable format. You may fill out the forms, found online at [IRS.gov/Form1099SA](https://www.irs.gov/Form1099SA) and [IRS.gov/Form5498SA](https://www.irs.gov/Form5498SA), and send Copy B to the recipient. For filing with the IRS, follow the applicable procedures for filing electronically if you are filing 250 or more forms. For Forms 1099-SA and 5498-SA only, if you are filling these forms on paper, you may send in the black and white Copy as with Form 1096 that you print from the IRS website.

Note – The IRS has not updated the form it created for 2018.

Statements to Participants. If you are required to file Form 5498-SA, you must provide a statement to the participant (generally Copy B) by May 31, 2019. You may, but you are not required to, provide the participant with a statement of the December 31, 2018 FMV of the participant's account by February 1, 2019. For more information about statements to participants, see part M in the 2018 General Instructions for Certain Information Returns.

If you furnished a statement of the FMV of the account to the participant by February 1, 2019, and no reportable contributions, including rollovers, were made for 2018, you need not furnish another statement (or Form 5498-SA) to the participant to report zero contributions. However, you must file Form 5498-SA with the IRS by May 31, 2019 to report the December 31, 2018, to report the December 31, 2018, FMV of the account.

Email Guidance – Adopting a Rollover and Transfer Policy for IRA and Pension Funds

An IRA custodian/trustee must adopt certain rules and procedures to comply with PTE 2020-02 and to gain the benefits of using PTE 2020-02. A financial institution is not required to use or adopt PTE 2020-02. It is optional. Some institutions want to do so and others don't. A sample policy is set forth below for those wanting to do so.

Name of Custodian/Trustee _____

Action: Formally Adopting Rollover and Transfer Policy For IRA and Pension Funds

It is important that our clients and prospective clients are encouraged and do make rollover contributions and transfer contributions to their IRA or IRAs. We want to service them well. We will make a prudent analysis of why a rollover or transfer recommendation is in our client's and prospective client's best interest. This policy is implemented so there will be excellent client service and we are in compliance with PTE 2020-02.

Our representatives will perform the following tasks:

1. Furnish the statement or form that we acknowledge we are a fiduciary;
2. We will perform the following services:
 - A. We will assist our client or prospective client with establishing an IRA, if applicable;
 - B. We have our client or prospective client complete Form 65 ID ,
 - C. We will complete our Form 65AD;
 - D. We will be furnished a copy of the section 402(f) notice which by the employer plan or the client or prospective client should complete Form 65B determining they are eligible to make the rollover or direct rollover;
 - D. We may or may not perform investment services . If we do perform investment service, we will investigate and evaluate investments, provide advice, and exercise sound judgment in the same way that knowledgeable and impartial professionals would so our recommendations are prudent.
3. Furnish the statement - We have no conflicts of interest in representing a client except as is indicated:

3. Furnish the statement - We have received no compensation from a third part except as is indicated:

4. Furnish the statement - We have not placed our interest ahead of the client's interest.
5. Furnish the statement We have not made any misleading statements either before we begin to service the client and we will not mislead the client once we begin to service the client;
6. We will furnish the client a summary of our services and fees and have him or her agree our compensation is reasonable.
7. We will have our staff certify that they have not placed their personal interest ahead of our client's interest.
8. Once each year in November or December a compliance review will be conducted to determine how well our institution has complied with this policy. We will retain the relevant information for 5 years.
9. This compliance review, including any recommended changes, will be furnished to _____ who is a senior executive officer. There must be a determination that there is compliance with PTE 2020-02.

This policy was adopted on _____ .

Authorized Officer _____ Date _____



Email Guidance – Special Rollover/Transfer Memorandum for PTE 2020-02

MEMORANDUM

To: _____

From: _____

SUBJECT: Analyzing Your Proposed Rollover or Transfer

We want to assist you with your rollover or transfer. We will make a prudent analysis of why a rollover or transfer recommendation is in your best interest.

We acknowledge that we are a fiduciary. We will perform the following services:

- A. We will assist you with establishing your IRA or other plan;
- B. We ask that you complete Form 65-ID;
- C. We will complete Form 65-AD;
- D. You furnish us a copy of the section 402(f) notice which the employer plan or IRA furnished you;
- E. We may or may not perform investment services . If we do perform investment service, we will investigate and evaluate investments, provide advice, and exercise sound judgment in the same way that knowledgeable and impartial professionals would so our recommendations are prudent.
- F. We have no conflicts of interest in representing you except as noted below:

- G. We have received no compensation from a third part except as noted below:

- H. We have not placed our interest ahead of your interest.
- I. We have not made any misleading statements either before we begin to service you and we will not mislead you once we begin to service you.

We have furnished you a summary of our services and fees and we ask that you agree our compensation, including any third party income, is reasonable and fair.

Acknowledgment and Agreement Section. You acknowledge by signing below that you and we have made the determination after a prudent analysis that it is in your best interest to make your rollover or transfer.

IRA Accountholder _____

Name of IRA Custodian/Trustee _____



Email Guidance – Resetting the Divisor of a Pre-2020 Beneficiary

Q-1. I have a new client, David, that inherited an inherited IRA from his wife, Mary, in 2017 (she died 03/09/2017). Nancy originally inherited it from her mom, Esther, in May 2014 (Janet died in 2013, after taking her RMD). Esther was the original owner.

We have everyone's date of death and year end balances going back to 12/31/2013. The client did not take their RMD yet for 2023 and asked us to confirm that he had taken the correct amount since he inherited this inherited IRA.

I am looking for some guidance or direction to be able to correctly determine the RMDs.

Does David (the inheritor of the inherited IRA) continue the same pattern as his deceased wife, minus 1 from the prior year's factor?

Or do different rules apply? Can you point me to information on this topic?

A-1. You are correct that David continues the RMD schedule which applied to his deceased wife Mary who was the original inheriting beneficiary. David is the successor beneficiary.

The IRS has issued guidance that because of its issuance of the new single life expectancy table that the initial divisor is to be reset using the new factor or divisor for 2014. This reset affects RMDs for 2022 and subsequent years.

The initial divisor is determined using Mary's age in 2014, the year after the year Esther died.

Since Mary died before 2020, the SECURE Act defines David (a successor beneficiary) as an eligible designated beneficiary who is entitled to continue the life distribution rule or schedule applying to Mary.

Jane Doe an IRA owner, died in 2012 at age 77. Her beneficiary was her son, Mark, whose date of birth is 2/17/70. He was age 43 in 2013. The divisor which applies for 2022 will be 33.9. The initial divisor of 40.7 for 2013 is replaced by 42.9 and the revised schedule applies to 2022 and subsequent years.

Original RMD Schedule		Reset RMD Schedule	
2013	40.7	42.9	
2014	39.7	41.9	
2015	38.7	40.9	
2016	37.7	39.9	
2017	36.7	38.9	
2018	35.7	37.9	
2019	34.7	36.9	
2020	33.7	35.9	
2021	32.7	34.9	
2022	31.7	33.9	X
2023	30.7	32.9	X

Basic Info to Acquire to Start Administration of an Inherited or Beneficiary IRA

Name of deceased IRA accountholder _____

DOB (date of birth) of IRA Accountholder _____

DOD (date of death) of IRA Accountholder _____

Type of IRA ☐ Traditional ☐ Roth

Name of inheriting IRA Beneficiary _____

Beneficiary's Relationship ☐ Spouse ☐ Nonspouse

Is the Beneficiary ☐ Non-EDB ☐ EDB

If an EDB ☐ Life Distribution Rule ☐ 10-Year Rule

DOB (date of birth) of beneficiary _____

Is an RMD required for year of death ☐ Yes ☐ No

Does the beneficiary need to take a remaining RMD portion for such year? ☐ Yes ☐ No

Beneficiary New Plan Agreement ☐ Yes ☐ No

Beneficiary Designated a Beneficiary ☐ Yes ☐ No

Other steps

1. Determine beneficiary is CIP eligible.
2. Obtain copy of the death certificate or an equivalent.
3. Furnish the beneficiary with a copy of the form where he or she will instruct how and when distributions will be withdrawn. Be furnished a completed form. See CWF forms 204 and 206.

The form will provide the beneficiary's name, address and social security number.

Comparing the Single Life Tables 2002-2021 Versus 2022-Onward

Age of IRA Beneficiary	Distribution Period (2002)	Final 2022	Age of IRA Beneficiary	Distribution Period (2002)	Final 2022	Age of IRA Beneficiary	Distribution Period (2002)	Final 2022
0	82.4	84.6	51	33.3	35.3	102	2.5	2.5
1	81.6	83.7	52	32.3	34.3	103	2.3	2.3
2	80.6	82.8	53	31.4	33.4	104	2.1	2.2
3	79.7	81.8	54	30.5	32.5	105	1.9	2.1
4	78.7	80.8	55	29.6	31.6	106	1.7	2.1
5	77.7	79.8	56	28.7	30.6	107	1.5	2.1
6	76.7	78.8	57	27.9	29.8	108	1.4	2.0
7	75.8	77.9	58	27.0	28.9	109	1.2	2.0
8	74.8	76.9	59	26.1	28.0	110	1.1	2.0
9	73.8	75.9	60	25.2	27.1	111	1.0	2.0
10	72.8	74.9	61	24.4	26.2	112		2.0
11	71.8	73.9	62	23.5	25.4	113		1.9
12	70.8	72.9	63	22.7	24.5	114		1.9
13	69.9	71.9	64	21.8	23.7	115		1.8
14	68.9	70.9	65	21.0	22.9	116		1.8
15	67.9	69.9	66	20.2	22.0	117		1.6
16	66.9	69.0	67	19.4	21.2	118		1.4
17	66.0	68.0	68	18.6	20.4	119		1.1
18	65.0	67.0	69	17.8	19.6	120		1.0
19	64.0	66.0	70	17.0	18.8			
20	63.0	65.0	71	16.3	18.0			
21	62.1	64.1	72	15.5	17.2			
22	61.1	63.1	73	14.8	16.4			
23	60.1	62.1	74	14.1	15.6			
24	59.1	61.1	75	13.4	14.8			
25	58.2	60.2	76	12.7	14.1			
26	57.2	59.2	77	12.1	13.3			
27	56.2	58.2	78	11.4	12.6			
28	55.3	57.3	79	10.8	11.9			
29	54.3	56.3	80	10.2	11.2			
30	53.3	55.3	81	9.7	10.5			
31	52.4	54.4	82	9.1	9.9			
32	51.4	53.4	83	8.6	9.3			
33	50.4	52.5	84	8.1	8.7			
34	49.4	51.5	85	7.6	8.1			
35	48.5	50.5	86	7.1	7.6			
36	47.5	49.6	87	6.7	7.1			
37	46.5	48.6	88	6.3	6.6			
38	45.6	47.7	89	5.9	6.1			
39	44.6	46.7	90	5.5	5.7			
40	43.6	45.7	91	5.2	5.3			
41	42.7	44.8	92	4.9	4.9			
42	41.7	43.8	93	4.6	4.6			
43	40.7	42.9	94	4.3	4.3			
44	39.8	41.9	95	4.1	4.0			
45	38.8	41.0	96	3.8	3.7			
46	37.9	40.0	97	3.6	3.4			
47	37.0	39.0	98	3.4	3.2			
48	36.0	38.1	99	3.1	3.0			
49	35.1	37.1	100	2.9	2.8			
50	34.2	36.2	101	2.7	2.6			