March 25, 2022

DELIVERED ELECTRONICALLY

Internal Revenue Service
Attn: CC:PA:LPD:PR (REG-105954-20)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Immediate Guidance Needed to Extend RMD and SECURE Act Effective Dates

We are writing on behalf of the undersigned organizations to urge the Treasury Department and IRS to promptly issue guidance that (1) extends the deadline for amending qualified plan and IRA documents to reflect the SECURE Act's changes to the required minimum distribution (RMD) rules, and (2) delays the effective date of the new proposed regulations on RMDs.[1]

(1) ***The deadline for amending plans and IRAs to reflect the SECURE Act should be delayed at least one full plan year (calendar year for IRAs) from the later of (1) the effective date of final RMD regulations or (2) the date the IRS publishes updated Listings of Required Modifications (LRMs).***

The SECURE Act provides that qualified plans and IRAs must amend their governing documents to reflect the SECURE Act by the last day of the first plan year beginning on or after January 1, 2022, "or such later date as the Secretary of the Treasury may prescribe."[2] We urge the Treasury Department and IRS to exercise their delegated authority to extend this deadline to the last day of the first plan year (calendar year for IRAs) that begins after the later of (1) the effective date of final RMD regulations or (2) the date the IRS publishes updated LRMs. Note that while employers using individually-designed plans generally can wait to amend the plan until a change in the law is published on the Required Amendments List, those employers using calendar year pre-approved plans – which is the overwhelming majority of plans – would need to be amended by the end of 2022.

Revising plan and IRA governing documents is no small task. It requires extensive legal review and vetting, which is difficult in the absence of final rules. In addition, insurance companies that issue annuity contracts affected by the SECURE Act, such as 408(b) individual retirement annuities and 403(b) tax-sheltered annuities, typically must obtain approval from state insurance regulators to amend their forms, which takes time. We respectfully submit that it is not reasonable to expect any plan or financial institution to even start the process of amending their

[1] The SECURE Act means sections 114 and 401 of the Setting Every Community Up for Retirement Enhancement Act of 2019, enacted on December 20, 2019, as part of Public Law No. 116-94.

[2] SECURE Act § 601. The deadline for certain collectively-bargained and governmental plans is two years later. *See also* Notice 2020-68 § G-1 (confirming that the first deadline applies to IRAs).

governing documents until final regulations are available. Otherwise, they may need to revise the documents again to reflect any changes in the final rules.

Further, many (if not most) plans and financial institutions rely on IRS model language (LRMs) to make any necessary amendments to their documents. We understand that the Treasury Department and IRS are working on updated LRMs, but the updates are not yet available and the IRS has suspended its prototype approval program for IRAs in the meantime. We can certainly empathize with the need for more time to develop appropriate language. We ask the Treasury Department and IRS to also provide such additional time for the private sector to prepare language and utilize the IRS prototype approval program once it reopens.

(2) *The RMD regulations should not be effective until the first calendar year beginning at least nine months after final regulations are issued, and relief for reasonable, good faith interpretations should apply until then.*

On February 24th, the Treasury Department and IRS issued proposed regulations to incorporate the SECURE Act's changes to the RMD rules. The proposed regulations state that they apply to RMDs for 2022. They also state that new rules regarding rollovers (including required tax withholding) apply *retroactively* to distributions made after 2021. These effective dates should be delayed until the first calendar year beginning at least nine months after final regulations are issued, and relief for reasonable, good faith interpretations should apply until then.

The SECURE Act made significant changes to the RMD rules for certain qualified plans and IRAs, generally starting in 2020.[3] There has been little guidance on these changes until the proposed regulations, which are voluminous and complex. They contain many new concepts and present administrative challenges, which will take individuals, their advisers, and the organizations that administer retirement benefits substantial time to understand and address. Also, the final regulations could make further changes, which could require financial institutions to undo or modify steps they took (or attempted) to implement the proposed regulations.

Given these circumstances, we urge the Treasury Department and IRS to promptly issue guidance that (1) delays the effective date of any new RMD regulations until the first calendar year beginning at least nine months after final regulations are published, in order to give taxpayers and service providers adequate time to implement the regulations, and (2) until that date, provides taxpayers relief for their reasonable, good faith interpretations of the underlying statutory rules. For purposes of the latter relief, the guidance should be clear that although compliance with the proposed regulations will be deemed to satisfy the reasonable, good faith standard, such compliance is not the sole means of satisfying that standard. We further note that the proposed regulations already extend similar relief with respect to the 2021 tax year.

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We appreciate your consideration of our requests above. Collectively, the members of our organizations are involved in the administration of retirement benefits for millions of individuals.

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[3] The statutory changes generally are effective with respect to individuals who die after 2019 (2021 for collectively bargained and governmental plans), although the CARES Act waived RMDs for 2020.

Our members and the individuals whose benefits they administer have an urgent need for the relief outlined above to ensure an orderly and appropriate implementation of the SECURE Act. Finally, please note that some or all of our organizations also plan to submit more extensive comments on the proposed regulations by May 25th, but we wanted to submit this initial letter as soon as possible in light of the urgent need for immediate guidance on the effective dates.

Respectfully submitted,

American Benefits Council
American Council of Life Insurers
Committee of Annuity Insurers
Finseca
Insured Retirement Institute
Investment Company Institute
National Association of Insurance and Financial Advisors
National Association of Professional Employer Organizations
Retirement Industry Trust Association
Securities Industry and Financial Markets Association
Small Business Council of America
The SPARK Institute