M E M O R A N D U M

TO: Board of Trustees

FROM: Klausner, Kaufman, Jensen & Levinson

RE: Required Minimum Distributions (RMD) Final Regulations

DATE: October 2022

Executive Summary

On October 7, 2022, the Internal Revenue Service (IRS) issued a notice regarding the expected final regulations on the revised required minimum distribution (RMDs) rules bringing them into alignment with the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act. The guidelines raised the age for which retirees are required to start minimum distributions from age 70½ to 72, clarified the definition of "eligible designated beneficiaries," further defined the meaning of "disability" and "chronically ill," and clarified the timing of distributing RMDs. See page 2 for details of the expected final regulations.

The Notice provides:

- No final regulation will be effective before at least 2023.
- No excise tax will be imposed (and no plan will be treated as violating the qualification rules) merely for not making a distribution under the 10-year rule in 2021 or 2022.
    - Designated beneficiary of a participant if the participant (i) died in 2020 or 2021 on or after the participant's RBD and (ii) the designated beneficiary does not take lifetime or life expectancy payments.
    - The beneficiary of an eligible designated beneficiary (as defined by the SECURE Act) if the eligible designated beneficiary died in 2020 or 2021 and was taking lifetime or life expectancy payments

The expected final regulations incorporate changes made by the SECURE Act, including:

- Raising the age for which retirees are required to start minimum distributions from age 70½ to 72. The regulations use a birthdate rule to determine an individual's required beginning date.
    - If the participant's birthday is prior to July 1, 1949, the required beginning date remains April 1 of the calendar year following the later in which the participant attains age 70½ and the calendar year in which the participant retires from employment.
    - If a participant's birthdate is on or after July 1, 1949, the required beginning date is April 1 of the calendar year following the later of the calendar year in which the employee attains age 72 and the calendar year in which the participant retires.

- Clarifying the definition of "eligible designated beneficiaries." Under the SECURE Act, eligible designated beneficiaries included: a participant's surviving spouse, a participant's minor child, a beneficiary who is disabled or chronically ill, and a beneficiary who is less than 10 years younger than the participant. Under the regulations, a child reaches the age of majority upon reaching age 21. However, the regulations permit defined benefit plans that have used the prior definition of age of majority to retain that plan provision.

    - Additionally, the regulations further define "disability" and "chronically ill," and include substantial documentation requirements in order to be considered "disabled" or "chronically ill."

        - For those over age 18, the standard of disability is based on whether an individual is unable to engage in substantial gainful activity. If under age 18, the beneficiary is required to have a medically determinable physical or mental impairment that results in marked and severe functional limitations, and that can be expected to result in death or to be of long-continued and indefinite duration. The determination of whether the beneficiary is disabled is made at the time of the participant's death.

- Clarifying that for defined contribution plans if the plan participant dies before their required beginning date, the timing of the required minimum distributions depends on the classification of the beneficiary:

- An "designated beneficiary," is permitted to be paid within 10 years of the participant's death. An "eligible designated beneficiary" may take the distributions over the lifetime of the "eligible designated beneficiary."

- If an "eligible designated beneficiary" dies before their portion of the member's interest has been distributed, then the beneficiary of the "eligible designated beneficiary" must take the full distribution within 10 years of the "eligible designated beneficiary's" death.

- A "designated beneficiary" must receive all the distributions within 10 years of the participant's death.

- If there is no designated beneficiary, the distributions must be paid out within 5 years of the participant's death.

- Clarifying that if the plan participant dies after their required beginning date, the beneficiary's benefit must be calculated based on the beneficiary's life expectancy. Certain circumstances, however, require full distribution as provided below:
  - If the participant's beneficiary is not an "eligible designated beneficiary," the participant's benefit must be paid out by the end of the tenth calendar year following the calendar year in which the participant died.

  - If the participant's "eligible designated beneficiary" is a minor child, the participant's benefit must be paid out by the end of the tenth calendar year following the calendar year in which the minor reaches the age of majority.

  - If the participant's "eligible designated beneficiary" was older than the participant, the participant's benefit must be paid out by the end of the calendar year when the beneficiary's remaining life expectancy is less than or equal to one.

  - Required Minimum Distributions, if applicable, must be made for each year during the 10 year payout period.

As always, if you have questions, please reach out to our office.