

Publications

IRS Finalizes (and Proposes More) Required Minimum Distribution Rules

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At long last, the Treasury Department and the Internal Revenue Service (“IRS”) issued [final](#) (and new [proposed](#)) regulations that address the major changes to Code section 401(a)(9) under the Setting Every Community Up for Retirement Enhancement Act of 2019 (“SECURE Act 1.0”) and SECURE 2.0 and make other conforming changes to the eligible rollover rules. These regulations impact the calculation of required minimum distributions (“RMDs”) from qualified plans, IRAs, tax-deferred annuities under Code section 403(b) (“TDAs”), and 457(b) plans. The 2024 final regulations focus on the SECURE 1.0 changes covered in the 2022 proposed regulations, and certain SECURE 2.0 changes. The 2024 proposed regulations provide SECURE 2.0 guidance that will benefit from a notice and comment period.

The 260 pages of final regulations largely track the 2022 proposed regulations, but there are some notable clarifications and changes. As we have seen, compliance with these changes has posed challenges of every type – communications, system redesign and plan documentation to name the major ones – but at least now we have some final answers.

A. Executive Summary: Key Takeaways for Plan Sponsors

- **Final Regulations Largely Track 2022 Proposed Regulations.** Although the devil is in the details, the final regulations largely mirror the 2022 proposed regulations. Therefore, for lifetime payments to a participant, the key change is the applicable required beginning date for commencing payments (depending on the participant’s birthdate – age 70½, 72, 73, and 75). For post-death payments, defined contribution plans can no longer stretch payments for the lifetime of the beneficiary and must pay out within 10 years, unless the beneficiary is a spouse, minor child, disabled or chronically ill (and certain trusts for such individuals), or older (or not

more than 10 years younger) than the participant. Moreover, the new proposed regulations provide additional details about implementing a number of important SECURE 2.0 changes.

- **Effective Date.** Compliance with the final regulations is required beginning January 1, 2025, with a reasonable, good faith standard for prior years. Plan amendments are not required for most plans until December 31, 2026.
- **Lifetime Payments.** Plan sponsors that are interested in retaining the pre-SECURE age 70½ required beginning date, regardless of a participant's birth date, can continue to require commencement at age 70½. This question has been of interest for a number of defined benefit plan sponsors, as the rule for actuarial adjustments for individuals older than age 70½ was not changed by SECURE. For plans that have an optional in-service withdrawal at age 70½, the regulations remain silent on whether changes to those provisions can be made.
- **“At Least As Rapidly” and 10-Year Rule.** Under Code section 401(a)(9), if an employee dies after distributions have begun, the employee's remaining interest must be distributed at least as rapidly as under the distribution method used by the employee as of the date of death (this is referred to as the “at least as rapidly” rule). This controversial rule was retained, requiring beneficiaries subject to the new 10-year rule to receive annual payments during the 10-year payment period (i.e., both the 10-year rule and the “at least as rapidly” rule apply when the employee dies on or after their required beginning date). This rule will add significant complexity to the RMD process for defined contribution plans (and IRAs). The transition relief that has been granted each year will no longer apply starting in 2025.

The following summary highlights the key provisions of the 2022 proposed regulations, noting changes made in the final regulations and the new 2024 proposed regulations.

1. Changes Affecting All Plans/IRAs – Lifetime RMD Payments

2022 Proposed Regulations: SECURE Act 1.0 changed the definition of the “required beginning date” (“RBD”) age from age “70½” to age “72” for participants that were born on or after July 1, 1949, and the proposed regulations addressed this change. A few items to note from the proposed regulations:

- **RBD Can Be Based On Age Alone.** Plan sponsors may use a uniform RBD based solely on age (i.e., not impacted by when the participant retires), regardless of 5% owner status.
- **Age 70½ RBD.** No option to use an age 70½ RBD for all participants.
- **In-Service Distributions.** Did not address, for plans that allow in-service distributions at age 70½ (including plans with a required commencement at age 70½), whether the age 70½ in-service distribution option can be modified without violating the anti-cutback concerns.

Final Regulations: The final regulations largely track the 2022 proposed regulations, but make the following changes:

- **Increased RBD Age.** Add the SECURE 2.0 RBD age change to ages 73 and 75 (age 70½ for participants born before July 1, 1949; age 72 if born on/after July 1, 1949 and before January 1, 1951; age 73 if born on/after January 1, 1951 and before January 1, 1959; and age 75 if born on/after January 1, 1960).
- **Required Commencement.** The preamble confirms that plans are permitted to use age 70½ as the required commencement date for all participants, regardless of when they were born.
- **MEPs/PEPs.** For a plan maintained by more than one employer, an employee (not a 5% owner) who retires from one participating employer but continues to be employed by another participating employer in the plan is not “retired” for this purpose (i.e., no RMDs are required).
- **Excise Tax Waiver.** Reflect the SECURE 2.0 relief for a waiver of excise tax for certain missed RMDs.
- **Spousal Beneficiary Life Expectancy.** Clarify the applicable age used for the spousal beneficiary's life expectancy.

2024 Proposed Regulations: The new proposed regulations address the RBD for those born in 1959, providing that age 73 applies (which is consistent with SECURE 2.0 legislative history).

2. Changes Primarily Affecting Defined Contribution Plans/IRAs

2022 Proposed Regulations: The proposed regulations highlighted the additional complexity defined contribution plans and IRAs are experiencing in implementing the changes from Section 401 of the SECURE Act 1.0 designed to limit “stretch IRAs.” They included very detailed provisions for identifying the beneficiaries under trusts for RMD purposes, which was a departure from past IRS practice of addressing those issues in private letter rulings and comment letters.

While the 2022 proposed regulations generally carried over existing guidance, they also addressed SECURE Act 1.0 changes, including the new eligible designated beneficiary and how and when the new 10-year payment rule applies to various beneficiaries. These regulations were proposed to be effective for participants who die after December 31, 2019 (or participants who die on and after January 1, 2022, for governmental plans and plans subject to a collective bargaining agreement).

Beneficiaries – Under the proposed RMD framework, it is important to distinguish between a nondesignated beneficiary, designated beneficiary, and eligible designated beneficiary for two primary reasons. First, the RMD payment-timing rules for the three types of beneficiaries are different. Second, if the participant has a non-eligible designated beneficiary, it is possible that no other beneficiaries are treated as an eligible designated beneficiary, resulting in required distributions to beneficiaries faster than would otherwise have been required. Fortunately, the proposed regulations retained the ability to apply the RMD rules separately to the interests of beneficiaries whose benefits are accounted for separately.

A “designated beneficiary” must be an individual. If the participant has a beneficiary that is not an individual, such as a trust that is not a “see-through” trust, the beneficiary is a “nondesignated beneficiary.” An “eligible designated beneficiary” is defined by statute, and generally includes the surviving spouse, the participant’s child who has not reached the age of majority (as of the participant’s death), a disabled or chronically ill beneficiary, or a beneficiary who is not more than 10 years younger than the participant.

The proposed regulations defined the age of majority for RMD purposes as 21, and also defined chronically ill and disabled individuals for RMD purposes. To be considered disabled or chronically ill, beneficiaries must provide the plan with certain required documentation no later than October 31 of the year after the participant’s death.

Generally, in situations of multiple beneficiaries, all beneficiaries are treated in the least advantageous manner, although there are a few exceptions to this approach for beneficiaries who are minor children, disabled, or chronically ill. This treatment highlights the importance of providing for separate accounting of beneficiary interests to maximize the tax deferral opportunities.

New RMD Payment Timing – When a participant dies before their RBD, the timing of the RMD payments depends on the beneficiary classification:

- **Eligible Designated Beneficiary.** The beneficiary can elect to receive (a) payments beginning in the year after the participant’s death over the beneficiary’s lifetime, or (b) the entire amount by the end of the calendar year including the 10th anniversary of the participant’s death.
- **Designated Beneficiary.** The beneficiary must receive the entire amount by the end of the calendar year including the 10th anniversary of the participant’s death.
- **Nondesignated Beneficiary.** The beneficiary must receive the entire amount by the end of the calendar year including the 5th anniversary of the participant’s death.

When a participant dies after their RBD, the timing of the RMD payments again depends on the beneficiary classification. The RMD process becomes more complicated because of the overlay of the “at least as rapidly” rule. Post-death, RMDs must continue to be paid based on the longer of the participant’s life expectancy or the designated beneficiary’s life expectancy. Most eligible designated beneficiaries may continue to receive the RMDs based on the applicable life expectancy but the proposed regulations provided that in some cases the entire benefit would need to be paid out sooner:

- **Beneficiary of an Eligible Designated Beneficiary.** If an eligible designated beneficiary dies, their beneficiary must receive all remaining amounts by end of the calendar year including the 10th anniversary of the eligible designated beneficiary’s death.
- **Minor Child.** If the eligible designated beneficiary is a minor child, the participant’s entire benefit must be paid out by the end of the 10th calendar year following the year the child reaches age 21.
- **Older Beneficiary.** If the eligible designated beneficiary was older than the participant, the entire amount of the participant’s benefit must be paid out by the calendar year when the beneficiary’s remaining life expectancy is less than or equal to one.

Importantly, plan sponsors will need to update their plan documents to provide the complex applicable RMD rules. For participants who die prior to their RBD, the plan documents can provide eligible designated beneficiaries the ability to elect between the 10-year and life expectancy distribution rules. If the plan is silent on the RMD distribution rules, the proposed regulations provided for default rules, which would be the life expectancy rule for eligible designated beneficiaries (and if the spouse is the sole beneficiary, then payments commence when the participant would have reached their RBD).

In addition, defined contribution plans and IRAs that provide for Qualified Longevity Annuity Contracts (“QLACs”) generally must prohibit any commutation benefit, cash surrender value, or other similar feature. The proposed regulations modified this restriction so that it only applies after the RBD. This change was intended to allow target date funds to include QLACs, which fall within the “benefit, rights, and features” relief under Notice 2014-66.

Final Regulations: The final regulations closely track the 2022 proposed regulations, and confirm that the “at least as rapidly” rule continues to apply. However, the final regulations provide a number of helpful clarifications:

- **Final RMD Payment.** Additional relief for beneficiaries to take the participant’s final RMD payment, including allowing the payment to be made to “any” beneficiary (there is no longer a requirement to allocate a proportional share to each beneficiary), and allowing an automatic waiver if the final RMD for the participant is paid to any beneficiary by the later of (1) the tax filing deadline of the beneficiary (with extensions) for the year the participant died, or (2) the end of the calendar year following the year of the participant’s death.
- **Separate Accounts.** Clarifies that the separate account rules do not apply to RMDs in the year of the participant’s death, adds expenses to the list of items that must be allocated in a reasonable and consistent manner among the separate accounts, and provides the exception below for certain look-through trusts.
- **Payout Options.** Permits different rules for certain eligible designated beneficiaries (e.g., only spouse may elect between 10-year rule and life expectancy). If there is no default language in the plan, the default of life expectancy payments for all eligible designated beneficiaries will apply.
- **Minor Child.** Clarifies that a minor child must continue taking annual payments from age 21-31; that a minor child includes a stepchild, adopted child, and an eligible foster child; and if there are multiple minor children, a full distribution is not required until 10 years after the youngest of the participant’s children who are eligible designated beneficiaries attains age 21 (or, if earlier, 10 years after the death of the last of minor child).
- **Disability.** Explains the documentation requirements relating to disability and chronic illness (and provides additional relief for IRA custodians), which includes a SSA letter for disability as a safe harbor; bars self-certification as the sole support for disability/chronic illness; and retains the October 31 deadline for documentation. A new example shows that the documentation need not be overly detailed. A beneficiary must submit a certification from a licensed healthcare practitioner that, as of a specified date, the beneficiary is unable to engage in any substantial gainful activity by reason of a physical impairment that can be expected to be of long-lasting and indefinite duration. The regulations also provide a transition rule for a participant’s death in 2020-2024, requiring the documentation by October 31, 2025. Notably, documentation of disability or chronic illness is not required to be provided to an IRA custodian.
- **Trust Beneficiary.** Generally keeps the existing trust rules, including the see-through trust rules, despite a number of comments requesting changes. Notably, though, if a see-through trust is divided immediately on the participant’s death into separate trusts for each beneficiary, the RMD rules will apply separately to each separate trust. The regulations also reflect the new SECURE 2.0 rule allowing certain charities to be beneficiaries in a trust. Moreover, regarding the trust documentation, the regulations clarify that a plan administrator may choose which of the two alternative documentation methods will be accepted. Therefore, the plan administrator may require the trustee to provide a list of trust beneficiaries with a description of the conditions on their entitlement in lieu of the actual trust document. However, no trust documentation is required to be provided to an IRA custodian. Lastly, there is special relief for payments for the benefit of a trust beneficiary.
- **Older Beneficiary.** Eliminates the rule noted above requiring full distribution when the beneficiary’s remaining life expectancy is less than or equal to 1. Now, older beneficiaries can take over the younger participant’s remaining life expectancy, resulting in a longer distribution period.
- **QLAC.** Reflects SECURE 2.0 changes to QLACs, regarding a free-look period, the impact of divorce, and expanded premium limits.
- **IRAs.** Provides that the optional aggregation rule for partial annuities under SECURE 2.0 also applies to IRAs.

- **Multiple Beneficiaries.** Generally retains the same rules for multiple beneficiaries, so compliance with the separate accounting rules (which largely have remained unchanged) is important.

2024 Proposed Regulations: The new proposed regulations address RMD changes made by SECURE 2.0, including the following:

- **Spousal Election.** Provides details regarding the special spousal election under SECURE 2.0.
- **Partial Annuity.** Clarifies the calculation of the optional partial annuity aggregation rule.
- **Roth Accounts.** Addresses distributions from designated Roth accounts that are not subject to lifetime RMD payments.
- **Corrective Distributions.** Clarifies the treatment of corrective distributions of missed RMD payments.
- **QLAC.** Addresses divorce after the purchase of a QLAC.
- **Trust Beneficiary.** Provides relief for see-through trusts that are divided immediately upon death into separate interests for each beneficiary, to permit an outright distribution to the trust beneficiary.

3. Changes Primarily Affecting Defined Benefit Plans (and Annuities)

2022 Proposed Regulations: While the SECURE Act changed the age “70½” reference for RBD determinations, it did not change a similar age “70½” reference under Code section 401(a)(9)(C)(iii), which requires an actuarial increase from age 70½ until the participant retires, for those working past age 70½. (This provision does not apply to church and governmental plans.)

The proposed regulations also made technical changes to the existing rules for defined benefit plans, including: (1) adding a requirement that the annuity contract be issued by an insurance company licensed in the jurisdiction where the annuity is sold (not applicable to 403(b)(9) accounts which may self-insure in any event), (2) expanding the exceptions to the “non-increasing annuity payment” rule for resumption of benefits following certain suspensions (Code sections 411(a)(3)(B), 418E, 432(e)(9)), and (3) modifying the exceptions under which payments from annuity contracts from insurance companies may increase by (a) providing that the total value is calculated as of the date on which the contract is annuitized instead of when annuity payments commence, and (b) adding three examples of permissible increases: a final payment on death that does not exceed the excess of total value being annuitized over the total payments before the death of the participant, a short-term acceleration of payments of up to one year, and acceleration to meet these new RMD rules.

Lastly, the proposed regulations provided some helpful relief from RMD compliance where the RMD beneficiary payments are subject to distribution restrictions under Code section 436(d), relating to materially underfunded plans.

Final Regulations: The final regulations largely track the 2022 proposed regulations, while providing the following additional relief:

- **Actuarial Increase.** Benefits are not required to be actuarially increased until they become vested.
- **Ministers.** Specific church plan relief for self-employed ministers.
- **Annuity Distribution Periods.** Annuities purchased under a defined contribution plan are subject to the 10-year rule, but not annuities purchased under a defined benefit plan (even if purchased from rollover contributions from a defined contribution plan).
- **Impact of Divorce.** An eligible designated beneficiary is determined at the time of the annuity starting date, so a contingent annuitant that was a spouse and later divorces is still an eligible designated beneficiary, regardless of whether there is a QDRO (so a later divorce does not trigger the 10-year rule for an annuity).
- **Annuity Increases.** SECURE 2.0 changes that permit certain increases to an annuity (such as a constant percentage increase, applied at least annually, at a rate of less than 5%) are incorporated.

4. Changes Affecting Rollovers

2022 Proposed Regulations: The proposed regulations updated the rollover regulations under Code section 402(c) to reflect several amendments to the Code since the regulations were issued in 1995, including some notable changes. For example, the proposed regulations clarified rollover treatment for beneficiaries, providing that for participants who die before their RBD, if (1) the 5-year or 10-year payout rule applies, then any payment made prior the 5th year or 10th year, as applicable, is eligible for rollover treatment (unless otherwise excluded); and (2) the life expectancy rule applies, then the amount of the RMD payment is not eligible for rollover

treatment. For participants who die on or after their RBD, the amount calculated as the RMD payment is not eligible for rollover treatment.

The proposed regulations also addressed when rollovers to an IRA may come under the life expectancy rule, and provided a special catch-up rule for missed RMD payments to a spouse that will impact the rollover eligibility of distributed amounts. For payments to participants, the proposed regulations clarified that, generally, amounts paid before the year the participant attains age 72 (for participants who reach age 70½ after 2019), should be treated as eligible rollover amounts, if they otherwise meet the requirements.

The list of amounts not eligible for rollover was also updated to provide that deemed distributions with respect to “collectibles” pursuant to Code section 408(m) are not eligible for rollover treatment. In addition, the proposed regulations reflected the rules under the Code for property rollovers, providing that, while generally limited to the property distributed, the proceeds of a sale of such property (up to the fair market value of the property) may also be rolled over. The Treasury and IRS specifically requested comments regarding additional issues relating to the treatment of proceeds from a sale of property.

The proposed regulations followed prior IRS guidance that distributions to non-spousal distributees are not subject to 20% withholding, though that rule did not take into account the changes from Section 108(f) of The Worker, Retiree, and Employer Recovery Act of 2008 (“WRERA”).

Final Regulations: The final regulations generally follow the 2022 proposed regulations, with the following changes:

- **Rollover to IRA.** Eliminate the timeline for IRA rollover elections (e.g., spouse’s own IRA versus inherited IRA), but the rollover election is only available after the RMD payments have been distributed.
- **Hypothetical RMDs.** Apply the missed hypothetical RMD payments for a late rollover only to spouses that elect the 10-year rule under the plan (so not applicable to defined benefit plans).
- **Spousal Election.** Assume for the missed RMD payments that the spouse elected to be treated as the participant.
- **Spousal Rollovers.** Permit the plan administrator to make reasonable assumptions related to the distributions to the spouse (e.g., that the spouse will only roll over the portion of the distribution that is eligible for rollover to their own IRA, although it is permissible to rollover the entire amount to an inherited IRA).
- **Withholding.** Require 20% withholding for non-spouse distributions not rolled over.
- **Multiple IRAs.** For an IRA owner who has multiple IRAs and dies prior to taking their full RMD for that year, provide for distribution of a proportionate share of the RMD to a beneficiary of each IRA (a similar rule applies to a beneficiary death with multiple aggregated IRAs).

2024 Proposed Regulations: The new proposed regulations include an example of a late rollover election and the resulting calculation of missed hypothetical RMD payments that are not eligible for rollover.

5. Changes Affecting 403(b) and 457(b) Plans

2022 Proposed Regulations: The proposed TDA and 457(b) regulations continued to generally conform to the defined contribution plan rules (as modified). Notably, however, the IRS asked for comments on conforming the RMD requirements for TDAs to the qualified plan rules – consistent with the trend towards treating 403(b) arrangements more like 401(a) plans. Among other effects, this would require that each 403(b) contract distribute its RMD payment (like a qualified plan), rather than allowing a choice between multiple contracts to satisfy an aggregate RMD requirement.

Final Regulations: The final regulations track the 2022 proposed regulations, with the following minor clarifications:

- **General Rule.** The traditional IRA rules for RMD payments apply to TDAs.
- **Roth.** For Roth amounts, the SECURE 2.0 rules for qualified plans apply to TDAs (not the Roth IRA rules).
- **Effective Date.** These regulations apply beginning for the 2025 year.
- **Future Guidance.** Any additional conforming 403(b) changes to qualified plan rules are still being considered and will be set forth in separate guidance.

- **457(b) Plans.** The final regulations clarify that there is no special relief from the SECURE Act 1.0 and SECURE 2.0 for tax-exempt entities.

B. Effective Dates

The final (and proposed) regulations are effective for distributions for calendar years beginning on and after January 1, 2025. For prior distributions, plan sponsors must apply the existing final regulations, taking into account reasonable, good faith interpretations of the SECURE Act 1.0 and SECURE 2.0.

C. Plan Amendments

These regulations do not extend the deadline for plan amendments to reflect these changes, which are currently due by December 31, 2026 (for most plans). Notably, some [model amendment language](#) for defined contribution plans is available (item #49).

D. Next Steps

Plan sponsors should review the new final regulations with their recordkeeper and see what, if any, changes are necessary for 2025 to comply with these regulations, and consider next steps such as timing for updating RMD communications, distribution packages, plan document amendments, summary plan descriptions (or summary of material modifications), rollover procedures, etc. With 260 pages of final regulations, there is an awful lot to wade through. All of this is a tight timeframe for provisions that will impact 2025 RMD payments.

Comments on the 2024 proposed regulations should be submitted by September 17 (with a public hearing scheduled for September 25). If you have any questions, comments or concerns, please contact your Groom attorney.