

Final and Proposed RMD Regulations Provide Much Needed Guidance for SECURE 2.0 and SECURE 1.0 Provisions



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On July 18, 2024, the Internal Revenue Service (the “IRS”) simultaneously issued final regulations (“Final RMD Regulations”) and proposed regulations (the “Proposed RMD Regulations”) under Section 401(a)(9) of the Internal Revenue Code (the “Code”) addressing the required minimum distribution (“RMD” or “RMDs”) rules. The Final RMD Regulations largely reflect changes made to the RMD rules under proposed regulations issued on February 24, 2022 (the “2022 Proposed RMD Regulations”) following the enactment of the Setting Every Community Up for Retirement Enhancement Act of 2019 (“SECURE 1.0”). The Final RMD Regulations also provide guidance on several RMD provisions from the SECURE 2.0 Act of 2022 (“SECURE 2.0”), while other provisions were reserved for industry comment by including them in the Proposed RMD Regulations.

The Final RMD Regulations are effective for distribution calendar years beginning on or after January 1, 2025. For distribution calendar years before January 1, 2025, a good faith, reasonable interpretation of statutory provisions standard applies.

The key provisions from the Final RMD Regulations that clarify or expand on the 2022 Proposed Regulations and the Proposed RMD Regulations are discussed below.

Changes Impacting Defined Contribution Plans

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Post-Death RMDs

SECURE 1.0 made significant changes to the rules governing post-death RMDs for defined contribution plans (“DC plans”). Under the Final RMD Regulations, beneficiaries are generally categorized into three different types of beneficiaries: (1) eligible designated beneficiaries,^[1] (2) designated beneficiaries who are not eligible designated beneficiaries, and (3) non-designated beneficiaries.

Similar to the post-death RMD rules prior to the enactment of SECURE 1.0, RMD payment timing depends on whether the participant dies before or after the participant’s required beginning date (“RBD”). If the participant dies prior to their RBD, the following rules apply:

- Eligible Designated Beneficiary: Beneficiaries may elect to: (1) receive RMDs over the life expectancy of the beneficiary, with the first RMD commencing by December 31 of the calendar year following the calendar year in which the participant died, or (2) receive a distribution of the entire account by December 31 of the tenth calendar year following the participant's death (the "ten-year rule").
- Designated Beneficiary Who is not an Eligible Designated Beneficiary: The entire account must be distributed by December 31 of the tenth calendar year following the participant's death.
- Non-designated Beneficiary: The entire account must be distributed by December 31 of the fifth calendar year following the year of the participant's death.

If the participant deceases after commencing RMDs:

- Eligible Designated Beneficiary: Generally, RMDs must be paid over the life expectancy of the participant or the beneficiary, whichever is longer.
- Designated Beneficiary Who is not an Eligible Designated Beneficiary: RMDs must continue to be paid over the life expectancy of the participant or beneficiary, whichever is longer; however, the participant's entire account must be distributed by December 31 of the tenth calendar year following the death of the participant.
- Non-designated Beneficiary: RMDs must continue based on the life expectancy of the participant.

The Final RMD Regulations and the Proposed RMD Regulations provide the following additional clarifications on the post-death RMD payment rules.

Compliance With "At Least as Rapidly Rule" and "10-Year Rule"

As noted in the preamble to the Final RMD Regulations, several commenters requested that the IRS eliminate the requirement that the distributions comply with both the "at least as rapidly rule" and the "ten-year rule" in situations where the participant dies prior to their RBD for designated beneficiaries who are not eligible designated beneficiaries, and instead provide that such distributions be subject only to the ten-year rule.

Under the "at least as rapidly rule," the participant's entire interest must be distributed to the beneficiary at least as rapidly as it would have been distributed under the distribution method being used for the participant as of the date of the participant's death. Under the "ten-year rule", the participant's remaining account balance must be fully distributed to the beneficiary by December 31 of the tenth calendar year following the year of the participant's death.

In addition, the IRS noted that it is retaining the rule that requires RMD payments following (1) the death of an eligible designated beneficiary receiving payments under the life expectancy methodology, and (2) the attainment of the age of majority in the case of an eligible designated beneficiary who is a minor child, to comply with both the "at least as rapidly" rule and the "ten-year rule".

In providing a rationale as to why plans will need to comply with both rules, the IRS stated that the overarching policy of Section 401(a)(9) of the Code and the amendments made by SECURE 1.0 support an interpretation requiring compliance with both rules. Commenters suggested that requiring continued annual distributions

adds complexity to the administration of RMDs because the beneficiary would have to know whether the participant died before or after the participant's RBD to apply this rule. However, the IRS seems to readily dismiss this concern as the requirement to continue annual distributions predates the changes under SECURE 1.0.

Surviving Spouse Election to be Treated as Participant

Generally, if a participant dies before their RBD, an eligible designated beneficiary can elect to receive payments, beginning in the year after the participant's death, over the beneficiary's lifetime or elect to receive the entire amount by December 31 of the tenth calendar year following the participant's death. However, Section 327 of SECURE 2.0, provides that, if the participant dies prior to their RBD and the participant's surviving spouse is the sole designated beneficiary of the participant, then the spouse may elect to: (1) be treated as if the surviving spouse were the participant for purposes of the regulations referred to in section 401(a)(9)(B)(iii)(II) of the Code (providing for annual payments over the beneficiary's life or life expectancy), (2) delay commencement of RMDs until the year the participant would have attained the applicable age for their RBD, and (3) be treated as the participant in the event the surviving spouse dies before distributions to the spouse begin.

Spousal Election: The Final RMD Regulations clarify that the election to be treated as the participant will automatically apply (i.e., a separate election would not be required) if: (1) the participant dies before their RBD, (2) the surviving spouse is the sole beneficiary of the participant, and (3) the surviving spouse is subject to the life expectancy rule (i.e., did not elect the "ten-year rule"). The Final RMD Regulations also provide that in the event the participant dies after their RBD and the surviving spouse is the participant's sole beneficiary, then the surviving spouse may elect to extend the RMD payments by using the Uniform Table (as opposed to the Single Life Table) in calculating the applicable RMD payments. The Proposed RMD Regulations clarify that unlike the situation in which the participant dies before their RBD, the election for the spouse to be treated as the participant is not automatic; however, the plan document may provide that such election is the default.

Applicable RBD Age: The Proposed RMD Regulations clarify that the attainment of RBD age is determined by reference to the participant's attainment of the applicable age (rather than by reference to the spouse's attainment of the applicable age). Prior to this guidance provided under the Proposed RMD Regulations, practitioners questioned whether the spouse's election to be treated as the participant provided under SECURE 2.0 would allow the spouse to use their own age in determining commencement of RMDs, to further align the RMD rules under employer-sponsored retirement plans (e.g., 401(k) plans) with the RMD rules applicable to individual retirement accounts ("IRAs"). Accordingly, because surviving spouses will not have the flexibility to potentially delay commencement of RMDs based on their own age, surviving spouses may still be incentivized in certain circumstances to roll over the participant's account to an IRA prior to commencement of RMDs.

Distribution to Beneficiary of Surviving Spouse: The Proposed RMD Regulations also provide that if the spousal election is in effect and the spouse dies on or after distribution begun, then payments to the beneficiary of the surviving spouse must continue and such payments will be determined using the Single Life Table (and not the Uniform Life Table) and a final distribution of the account balance must be made by the December 31 of the tenth calendar year following the spouse's death (i.e., the spouse's beneficiary will not be treated as an eligible designated beneficiary).

Availability of Spousal Election: The Proposed RMD Regulations specify that the spouse's election to be treated as the participant is only available if the participant would have reached their RBD age in 2024 or later. For example, if a participant died in 2017 and the participant would have attained their RBD age in 2024, then the first year for which an annual required minimum distribution is due would be 2024, and the spousal election would apply.

Limitations of Treatment as Participant: The Proposed RMD Regulations clarify that the spouse's election to be treated as the participant is specific to the application of the RMD rules and does not extend to other applications. For example, the spouse would not be subject to the 10 percent early distribution penalty for receiving distributions prior to age 59 ½.

Roth Accounts: Although section 325 of SECURE 2.0 provides that the calculation of a participant's RMD for an applicable distribution calendar year does not include amounts from designated Roth accounts, the Proposed RMD Regulations specify that amounts in designated Roth accounts should be included in calculating RMDs for a surviving spouse.

Classification of Child who has not Reached Age of Majority and Payment Timing

For purposes of determining whether a child satisfies the definition of an eligible designated beneficiary, the definition in Section 152(f)(1) of the Code applies; therefore, a stepchild, an adopted child, or an eligible foster child would satisfy this definition. The Final RMD Regulations also clarify that if the participant has multiple designated beneficiaries who are minor children, the determination of whether the RMD rules have been satisfied is based on the youngest of the participant's children.

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Certification for Disabled and Chronically Ill Individuals

The Final RMD Regulations retain the requirement that beneficiaries provide documentation certifying their disabled or chronically ill status by the deadline of October 31 of the calendar year following the year in which the participant died, but modify the example from the 2022 Proposed RMD Regulations to lessen the burden for documentation used to certify the disability need. Specifically, under the modified example, the licensed health care practitioner can merely certify that, as of a specified date, the designated beneficiary is unable to engage in any substantial gainful activity by reason of a physical impairment that can be expected to be of a long-continued and indefinite duration. However, the Final RMD Regulations state that for IRAs, there is no requirement to provide documentation of a designated beneficiary's disability or chronic illness to an IRA custodian.

Changes Impacting Trust Beneficiaries

The Final RMD Regulations generally retain the see-through trust requirements under which beneficiaries of a trust are treated as beneficiaries of the participant if the trust meets specified requirements. In addition, the Final RMD Regulations clarify that for purposes of determining whether the trust-documentation requirements have been satisfied, a plan administrator may choose to require trustees to provide a list of trust beneficiaries

with a description of the conditions on their entitlement to plan benefits instead of the actual trust document. The Final RMD Regulations also specify that no trust documentation is required to be provided to an IRA custodian.

The 2022 Proposed RMD Regulations generally retain the separate account rules applicable to beneficiaries after the death of the participant, including the rule that prohibits separate application of Code section 401(a) (9) to separate interests in a trust. However, the 2022 Proposed RMD Regulations provided an exception that would not prohibit separate application of the RMD rules to a trust with at least one disabled or chronically ill beneficiary, if the trust provides that it is to be immediately divided upon the participant's death into separate trusts for each beneficiary. The Final RMD Regulations expanded on this exception to permit separate application of the RMD rules to the separate interests of beneficiaries of a see-through trust if certain requirements are met, regardless of whether one of the beneficiaries of the see-through trust is a disabled or chronically ill beneficiary.

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Full Distribution

The Final RMD Regulations generally retain the rules under the Proposed RMD Regulations but clarify that for an eligible designated beneficiary younger than the participant who is taking distributions over the participant's remaining life expectancy, a full distribution is not required until the calendar year in which the applicable denominator is less than or equal to one.

Multiple Designated Beneficiaries

The Final RMD Regulations generally reflect the 2022 Proposed RMD Regulations' treatment of multiple designated beneficiaries. Specifically, if the participant has more than one designated beneficiary, then the applicable denominator and determination of whether a full distribution is required is determined using the life expectancy of the oldest designated beneficiary. However, if the participant's beneficiary is an applicable multi-beneficiary trust, then only the disabled and chronically ill beneficiaries of the trust are taken into account in determining the oldest designated beneficiary.

In addition, if any of the participant's designated beneficiaries was a child of the participant who had not yet reached the age of majority as of the date of the participant's death, then in applying the requirement to make a full distribution by the tenth year following the death of the oldest eligible designated beneficiary, only the participant's children who are designated beneficiaries and who are under the age of majority as of the participant's date of death were taken into account. The Final RMD Regulations clarify that in a situation where the participant had two eligible designated beneficiaries who had not yet reached the age of majority, then a full distribution would not be required until ten years after the youngest of the children reaches the age of majority.

Designated Roth Accounts

The Final RMD Regulations reflect the changes made under Section 325 of SECURE 2.0, which amended the RMD requirements to provide that the RMDs do not apply to designated Roth accounts, including the distribution calendar year of the participant's death. Furthermore, the Proposed RMD Regulations clarify that

distributions from Roth accounts do not count toward satisfying the RMD requirement for an applicable distribution calendar year and are not treated as RMDs for rollover purposes (i.e., are eligible for rollover).

Changes Impacting Defined Benefit Plans and Annuity Contracts

Actuarial Increases

Although SECURE 1.0 increased the RBD age from 70 ½ to age 72, the 2022 Proposed RMD Regulations kept intact the requirement to actuarially increase benefits for defined benefit plan (“DB plan”) participants who work beyond age 70 ½ (as opposed to increasing the age to coincide with the increased RBD age). The Final RMD Regulations reflect the age 70 ½ actuarial increase. The Final RMD Regulations also clarify that benefits that are not vested are not required to be actuarially increased until they become vested.

Increasing Annuity Payments

The 2022 Proposed RMD Regulations generally retained the requirement that that all payments under a DB plan or annuity contract issued by insurance carriers must be nonincreasing, subject to certain exceptions. Under the 2022 Proposed RMD Regulations, the permitted increases in annuity payments were different for DB plans and annuity contracts issued by insurance carriers as the exceptions to the non increasing rule in the 2022 Proposed RMD Regulations applied only if the total future expected payments under the contract exceed the total value being annuitized (i.e., the value of the participant’s entire interest being annuitized). The Final RMD Regulations modified this exception so that the exception for increasing annuity payments is in-line with the exception for DB plans, and thus removed the requirement that the total future expected payments under the contract exceed the total value being annuitized. Accordingly, the permitted increases in annuity payments under an annuity contract are expanded to allow increases by a constant percentage, applied not less frequently than annually, at a rate that is less than five percent per year.

Qualifying Longevity Annuity Contracts

The Final RMD Regulations reflect the changes made to qualifying longevity annuity contracts (“QLACs”) under SECURE 2.0, including the increase of the maximum value of the annuity contract to \$200,000 (adjusted for inflation), the elimination of the 25% limit on premiums, and the “short-free look period” in which the participant is permitted to rescind the contract within a period not exceeding 90 days after purchase. The Final RMD Regulations also reflect the SECURE 2.0 provision providing that a QLAC with joint and survivor annuity benefits will not lose its qualified status in the event the participant and spouse beneficiary divorce after the purchase of the annuity but before the annuity starting date, provided that a qualified domestic relations order (“QDRO”) satisfying certain requirements has been issued in connection with the divorce, or for a plan not subject to the QDRO requirements under Section 414(p) of the Code or Section 206(d) of ERISA, a divorce or separation alternative meeting certain enumerated requirements set forth under SECURE 2.0.

The Proposed RMD Regulations further clarify that for a plan not subject to Section 414(p) of the Code or Section 206(d) of ERISA, a divorce or separation alternative is: (1) a decree of divorce or separate maintenance or a written instrument incident to such a decree; (2) a written separation agreement; or (3) any other decree

requiring an individual to make payments for the support or maintenance of the individual's former spouse.

Aggregation of Annuity and Non-Annuity Payments for RMD Calculation

The Final RMD Regulations reflect the change under Section 204 of SECURE 2.0, which provides that if a participant's benefit in a DC plan is partially in the form of an annuity contract, then the participant is permitted to aggregate the distributions attributable to both the annuity and the non-annuity portions of the distribution, which oftentimes result in smaller RMD amounts than if the annuity and non-annuity distributions were required to be bifurcated.

The Proposed RMD Regulations clarify that the fair market value of the annuity contract would be determined as of December 31 of the calendar year preceding the distribution calendar year. In addition, beginning with the determination used for the 2026 distribution calendar year, the determination would have to be made using the applicable method set forth in Treasury Regulation Section 1.408A-4, Q&A-14(b)(2) (i.e., the gift tax method, which is usually based on a comparable contract issued by the annuity provider, or the annuity itself if the determination is made shortly after the issuance of the annuity).

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Changes Impacting Both DC Plans and DB Plans

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Clarifications Regarding RBD

Increase in RBD Age: SECURE 1.0 increased the RBD age from age 70 ½ to age 72 for participants born on or after July 1, 1949, but before January 1, 1951, and SECURE 2.0 further increased the RBD age to 73 for participants born on or after January 1, 1951, but before January 1, 1959, and then age 75 for participants born on or after January 1, 1960. These increases in the RBD age are reflected in the Final RMD Regulations. However, as noted in the preamble to the Final RMD Regulations, there was an ambiguity in the text of SECURE 2.0 as to whether individuals born in 1959 had an RBD age of 73 or 75. The Proposed RMD Regulations confirm that the RBD age for a participant who was born in 1959 would be age 73.

Age 70 ½ RBD: In the preamble to the Final RMD Regulations, the IRS specifies that plans may elect to retain an RBD age of 70 ½. This may be attractive for plan sponsors who do not have computer systems readily able to be reprogrammed to reflect the changed RBD. In addition, the Final RMD Regulations provide that for a DB plan, if distributions commence prior to the RBD in the form of an annuity, then the annuity starting date will generally be treated as the RBD.

Multiple Employer Plan Treatment: The Final RMD Regulations clarify that a participant who is not a five-percent owner retires from employment with one employer and commences employment with a different employer, then the participant is not treated as having retired for RMD purposes.

RMD Excise Tax Relief

The Final RMD Regulations reflect the RMD excise relief tax provided under SECURE 2.0, which lowered the excise tax for the failure to take an RMD in an applicable distribution calendar year from 50% to 25% of the missed RMD amount. The excise tax may be further reduced to 10% if the individual (1) receives a corrective distribution from the plan equal to the missed RMD amount and (2) submits a tax return reflecting the reduced excise tax, within the applicable correction window. The Final RMD Regulations also provide that if a participant deceases before receiving an RMD for an applicable distribution calendar year, then the beneficiary will automatically qualify for a waiver of the RMD excise tax if the beneficiary receives the applicable RMD by the tax filing deadline of the taxable year that the participant deceased (or the last day of the calendar year following that calendar year, whichever is later).

The 2024 Proposed RMD Regulations further clarify that any RMD taken as a corrective distribution to reduce or waive an excise tax for a missed RMD payment from a previous year would not count toward satisfying the RMD requirement for the year in which the corrective distribution was made and would not be eligible for rollover.

Action Items

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The effective date for compliance with the Final RMD Regulations applies to distributions on or after January 1, 2025. Accordingly, it is imperative that plan sponsors begin working with their recordkeeper/third-party administrator as soon as possible to ensure that the plan will be able to administer the applicable changes to the RMD rules.

Plan sponsors should also be aware that plans will generally need to be amended for certain SECURE 2.0 provisions by the deadline of December 31, 2026. Plan sponsors should continue to monitor any subsequent IRS guidance relating to RMDs, including finalization of the Proposed RMD Regulations.

If you have any questions regarding compliance with the Final RMD Regulations and/or the Proposed RMD Regulations, please contact us.

[1] An eligible designated beneficiary is a designated beneficiary who is: (1) the participant's surviving spouse; (2) a child of the participant who has not reached the age of majority as of the date of the participant's death; (3) a chronically ill individual; (4) a disabled individual; or (5) an individual who is not more than ten years younger than the participant.

PUBLICATION INFO:

The Trucker Huss Benefits Report is published monthly to provide our clients and friends with information on recent legal developments and other current issues in employee benefits. Back issues of the Benefits Report are posted on the Trucker Huss website (www.truckerhuss.com (<https://www.truckerhuss.com>))

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