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IRS Releases Final RMD Regulations

The Internal Revenue Service (IRS) has released [final regulations](#) that revise existing rules that apply to required minimum distributions (RMDs). The IRS has also issued concurrent [2024 proposed regulations](#) that address RMD-related provisions under the SECURE 2.0 Act, such as distributions from designated Roth accounts and the spousal election to be treated as the employee for RMD purposes. This article will focus on the noteworthy changes introduced by the final regulations and 2024 proposed regulations.

Background

In 2019, the Setting Every Community Up for Retirement Enhancement Act ([SECURE Act](#)) made several changes to the rules for retirement plans and individual retirement arrangements (IRAs). These changes included raising the applicable RMD age from 70½ to 72, adjusting the five-year beneficiary payout rule to 10 years (for most beneficiaries), and restricting certain beneficiaries from taking lifetime distributions. In February 2022, the IRS released [2022 proposed regulations](#) that revised long-standing RMD rules and provided guidance on certain SECURE Act provisions. In December 2022, Congress passed the SECURE 2.0 Act ([SECURE 2.0](#)), which also included several RMD-related provisions, such as raising the applicable RMD age to 73 and excluding designated Roth assets invested in a defined contribution plan from RMD calculations. Two years later, the IRS has released final regulations and 2024 proposed regulations to further clarify the RMD rules and address RMD provisions introduced by SECURE 2.0.

The final regulations apply to qualified 401(a) plans (including 401(k) plans), 403(a) annuity plans, 403(b) plans, governmental 457(b) plans, and IRAs. For purposes of determining RMDs, the final regulations apply for calendar years beginning on or after January 1, 2025. The final regulations that affect eligible rollovers apply for distributions on or after January 1, 2025, and final regulations related to the penalty tax on RMD failures apply for taxable years beginning on or after January 1, 2025.

For earlier years, individuals must apply the 2002 and 2004 regulations, taking into account a reasonable, good faith interpretation of the amendments made by the SECURE Act and SECURE 2.0.

General RMD Requirements

The final regulations confirm and clarify the application of the statutory effective date of Internal Revenue Code Section ([IRC Sec.](#)) [401\(a\)\(9\)\(H\)](#), which was added to the Internal Revenue Code as part of the SECURE Act, and applies different distribution rules to account owners who die on or after January 1, 2020. For union and governmental plans, the new rules apply to account owners who die on or after January 1, 2022.

Account owner dies before January 1, 2020

The final regulations clarify that the 10-year rule will apply in certain circumstances, including the following.

- If an account owner has assigned multiple designated beneficiaries the 10-year rule will be applied based on the oldest beneficiary's date of death if that individual is still alive on or after January 1, 2020.
- If an account owner dies before January 1, 2020, the designated beneficiary will be treated as an eligible designated beneficiary.

- If an account owner has only one designated beneficiary and that individual dies on or after January 1, 2020, that individual's beneficiary (i.e., the successor beneficiary) will be treated as a designated beneficiary and will be subject to the 10-year rule.

In response to comments, the IRS has confirmed that separate accounting may be used to determine whether IRC Sec. 401(a)(9)(H) applies to that beneficiary.

Increase in RMD Age

SECURE 2.0 included a drafting error indicating that individuals born in 1959 must take an RMD starting at two different times—when they reach age 73 and age 75. The 2024 proposed regulations confirm that individuals born in 1959 must start taking RMDs at age 73 (or the year of retirement, if later, for certain plan participants who are not five percent owners). In 2033, the RMD age will increase to age 75 (or the year of retirement, if later, for certain plan participants who are not five percent owners).

Date of Birth	RMD Age
Before July 1, 1949	70½
July 1, 1949 - December 31, 1950	72
January 1, 1951 - December 31, 1959	73
January 1, 1960, and later	75

Account Owner Dies Before Required Beginning Date

The final regulations generally retain the current RMD rules when an account owner dies before the required beginning date (RBD), but there are a few clarifications—including a special rule for designated Roth accounts of defined contribution plans and separate distribution rules for defined benefit plans and defined contribution plans.

Designated Roth Accounts

The final rule reflects changes made by Sec. 325 of SECURE 2.0, which stipulates that designated Roth assets are excluded from RMD calculations during an account owner's lifetime. At the actual time of an account owner's death, he will be treated as if he died before the RBD.

Defined Contribution Plan Distribution Methods

The final regulations clarify the rule for life expectancy payments; that an annual distribution must apply for all subsequent years until an account owner's interest is fully distributed. This rule also applies following the death of an eligible designated beneficiary. For example, an RMD will be required for the calendar year that an eligible designated beneficiary dies and that amount (to the extent it has not already been distributed) must be distributed during that same year to *any* beneficiary of the deceased eligible designated beneficiary.

Determination of Beneficiary Categories

Designated Beneficiaries

The final regulations generally follow the 2022 proposed regulations for the purpose of determining the designated beneficiary of an account owner. Individuals who do not meet the eligible designated beneficiary definition are simply referred to as designated beneficiaries and are normally subject to the 10-year rule (for deaths occurring in 2020 or later years).

- Beneficiaries that are not individuals—such as estates—are not considered designated beneficiaries.
- If an account owner has multiple designated beneficiaries and at least one designated beneficiary is *not* an eligible designated beneficiary, then each beneficiary will be considered a designated beneficiary who is subject to the 10-year rule unless an exception applies—such as the separate account rules, the special rule for children, or the special rule for applicable multi-beneficiary trusts.

Eligible Designated Beneficiaries

The final regulations also generally follow the 2022 proposed regulations for the purpose of determining who is an eligible designated beneficiary. The six categories that are used to determine if an individual is considered an eligible designated beneficiary include

- an account owner's surviving spouse;
- an account owner's minor child;
- an individual who is disabled;
- an individual who is chronically ill;
- an individual not more than 10 years younger than the account owner; and

- a designated beneficiary of an account owner who died before January 1, 2020.

Definition of Minor Child

The definition of a “child” includes a step child, an adopted child, and an eligible foster child as the final regulations clarify that the definition under [IRC Sec. 152\(f\)\(1\)](#) will apply when determining if a child is considered an eligible designated beneficiary.

Disabled Individuals

The final regulations stipulate different definitions of disability (the general standards) depending on the age of an individual. The definition of disability under [IRC Sec. 72\(m\)\(7\)](#) applies to individuals age 18 or older, while a comparable standard applies for an individual under the age of 18.

The final regulations continue to provide a safe harbor for determining if a beneficiary is disabled. The safe harbor will apply if, as of the date of the account owner’s death, the Commissioner of Social Security has determined that the beneficiary is disabled. This method is merely a safe harbor and a beneficiary may apply the general standards if she does not have a Social Security determination of disability.

The final regulations also confirm that disabled or chronically ill beneficiaries must provide documentation of their condition no later than October 31 of the calendar year following the calendar year of the account owner’s death. While the final regulations do not change the deadline for beneficiaries of retirement plan accounts to provide documentation, it does include a transition rule for account owners who died in 2020, 2021, 2022, and 2023, which permits beneficiaries to submit documentation of the disability or chronic illness until October 31, 2025. The documentation for determining whether a beneficiary is disabled or chronically ill is not required to be provided to an IRA trustee, custodian, or issuer.

Beneficiaries of a Surviving Spouse

The final regulations confirm that if a surviving spouse beneficiary was waiting to begin taking distributions until the year that the account owner attained RMD age and then dies before the end of that calendar year, the beneficiary determination is made by substituting the surviving spouse for the account owner.

The 2024 proposed regulations add a restriction to the existing rules for determining the category of a beneficiary of a surviving spouse. A surviving spouse’s beneficiary cannot be an eligible designated beneficiary if the original spouse beneficiary delayed taking distributions until the year that the account owner would have attained RMD age and then died after distributions would have been treated as having begun (regardless of whether they actually started). For example, if a surviving spouse died under these circumstances and the spouse’s beneficiary is otherwise considered an eligible designated beneficiary (such as an individual who is not more than 10 years younger than the account owner), the surviving spouse’s beneficiary will not be considered an eligible designated beneficiary and will be subject to the 10-year rule.

Trust Beneficiaries

The final regulations retain the existing “see-through trust” rules that state that a trust is not considered an individual and therefore the trust would not be considered a designated beneficiary unless certain requirements are met. The final regulations confirm that the determination of which underlying beneficiaries of trusts are treated as designated beneficiaries is dependent upon whether the trust is a “conduit” trust or an “accumulation” trust. The documentation for determining whether a trust meets the see-through trust requirements is not required to be provided to an IRA trustee, custodian, or issuer.

Changes to RMD Rules

Partial Annuitization Rules

The final regulations update several items regarding the administration of RMDs from defined contribution plans, including the ability to aggregate RMDs from an annuity that is purchased with a portion of an account owner’s vested balance. The partial annuitization rule may also be used by an IRA owner who has multiple IRAs, one of which is an individual retirement annuity.

Interpretation of the 10-Year Rule

The final regulations confirm that the 10-year rule and the “at least as rapidly” rule apply simultaneously when an account owner dies on or after the RBD and has a designated beneficiary. As a result, a designated beneficiary must receive an RMD each year for the first nine years and the entire interest must be distributed by the end of the calendar year that includes the tenth anniversary of the date of the account owner’s death. A similar rule applies following the death of an eligible designated or after a minor child reaches the age of majority.

Under the 10-year rule, an account owner’s entire interest must be distributed by the end of the earliest of the calendar year that includes the tenth anniversary of the following.

- An account owner's death if the account owner's designated beneficiary is not an eligible designated beneficiary.
- A designated beneficiary's death if the account owner's designated beneficiary is an eligible designated beneficiary.
- The year in which a designated beneficiary attains age 21 if the designated beneficiary is an eligible designated beneficiary solely because the beneficiary is the child of an account owner who has not attained age 21 as of the account owner's date of death.

Distributions Not Treated as RMDs

The 2024 proposed regulations update several RMD-related items that apply to defined contribution plans, including identifying certain distributions that will not count toward meeting the annual RMD requirement. For example, if corrective distributions of missed RMDs are taken to reduce or waive the excise tax on excess accumulations under [IRC Sec. 4974](#), they do not count toward meeting the annual RMD requirement for the year they occur.

Election for Surviving Spouse to be Treated as Account Owner for Calculating RMDs

Sec. 327 of SECURE 2.0 allows a spouse beneficiary to be treated as the account owner for purposes of calculating life expectancy payments. When the account owner dies before the RBD and the sole beneficiary of the account is a surviving spouse subject to the life expectancy option, the new rule allows the spouse to use the uniform lifetime table instead of the single life expectancy table to calculate payments. A surviving spouse beneficiary will automatically be deemed to have elected the option to be treated as the account owner when the account owner dies before the RBD.

The final regulations also provide that a surviving spouse beneficiary may elect to be treated as the account owner when the account owner dies after the RBD. This new rule will not be automatically applied, but it may be used if permitted under the provisions of the plan document.

- The option for a surviving spouse to be treated as the account owner applies only if the first life expectancy payment is required to be made in 2024 or later.
- If the spouse is treated as the account owner, it is only for the purpose of calculating RMDs. For example, designated Roth assets are included in the life expectancy payment calculation (the standard rule in the final regulations does not apply) and the 10 percent early distribution penalty tax does not apply even if the surviving spouse beneficiary is under age 59½.

This provision applies to spouses who are sole beneficiaries of individuals with accounts in 401(a) defined contribution plans, 403(b) plans, governmental 457(b) plans, and IRAs.

Year-of-Death RMD for IRA Owner

The final regulations add a special rule that applies when an IRA owner has multiple IRAs with different beneficiaries and was using the aggregation rule to satisfy his RMD. If the total RMD for the year had not been taken by the IRA owner before he died, the beneficiaries of each IRA must remove a proportionate share of the remaining RMD, based on the fair market value of that IRA.

Separate Accounting

The concept of separate accounting for beneficiaries generally remains intact. The final regulations continue to permit beneficiaries to be treated as the sole beneficiary of the account for the purpose of determining distribution options (including the calculation of life expectancy payments), as long as separate accounting is established by December 31 of the year following the year of an account owner's death. Generally, for separate accounting to be established

- distributions must be allocated to the separate account of the beneficiary who receives the distributions; and
- investment gains or losses, contributions, forfeitures, and expenses must be allocated pro rata among the separate accounts.

The conditions for separate accounting did not previously indicate that expenses should be allocated pro rata, but the final regulations now add this additional point of clarification.

If separate accounting is not established by December 31 of the year following the account owner's death, certain distribution options may be limited in the following ways, depending on the type of beneficiary.

- If one of the beneficiaries is not a designated beneficiary (because the beneficiary is an entity, like an estate), the account owner is considered to have no designated beneficiaries and all beneficiaries will be restricted to taking distributions under the same options available to an estate (the five-year rule if death is before the RBD, or life expectancy payments based on the account owner's age if death is on or after the RBD).
- If one of the designated beneficiaries is not an eligible designated beneficiary, there is considered to be no eligible designated beneficiaries (all beneficiaries would have to take distributions based on the 10-year rule).
- If an account owner has multiple designated beneficiaries the oldest designated beneficiary determines when the 10-year rule applies.

- Life expectancy payments must be calculated based on the oldest designated beneficiary's age.
- A spouse beneficiary of an IRA could not transfer the funds to her own IRA and would instead have to take a distribution and roll it over.

While separate accounting is not generally available to trust beneficiaries, the final regulations have now extended the ability of separate accounting to certain trust beneficiaries. This exception applies to applicable multi-beneficiary trusts for disabled and chronically ill individuals and certain see-through trusts. For beneficiaries of a see-through trust to apply separate accounting of their shares, the following requirements must be met.

- The trust is a see-through trust with specific terms that provide it is to be divided immediately upon the account owner's death.
- The trust terminates on the account owner's date of death, the separate shares of the trust beneficiaries are held in separate see-through trusts, and there is no discretion as to the extent to which the separate trusts will be entitled to receive post-death distributions.

The 2024 proposed regulations also permit this separate account treatment to apply to trust beneficiaries in the case of an outright distribution.

Eligible Rollover Distributions

Determining Eligible Rollovers

Existing regulations allow an IRA owner to use aggregation when removing RMDs from more than one IRA—meaning that if an individual has more than one IRA, he could take an RMD from any of his IRAs as long as he calculated the amount of the RMD separately. In this situation, existing regulations require an IRA owner to satisfy the RMD for a specific IRA before being able to roll over a distribution from it. The final regulations require that an IRA owner satisfy the RMDs for all of his IRAs before being able to roll over any IRA distribution.

Hypothetical RMD Rule

Assume that an IRA owner dies before the RBD and has a spouse beneficiary who elects the 10-year rule. The spouse beneficiary then rolls over the inherited assets to her own IRA before the last year of the 10-year rule but in the year that she attains the applicable RMD age (or older). In this situation, the final regulations require the use of the Uniform Lifetime Table for determining the spouse beneficiary's life expectancy to calculate a hypothetical RMD—an amount that would have been required to be distributed had the life expectancy rule applied to the spouse beneficiary—and treat that amount as ineligible for rollover. The final regulations provide that the hypothetical RMD rule does not apply to a surviving spouse who is subject to the five-year rule.

Nonspouse Beneficiary Distribution Withholding Requirements

While the 2022 proposed regulations stated that distributions from a retirement plan to a nonspouse beneficiary do not qualify as an eligible rollover distribution and were therefore not subject to the 20 percent withholding requirement, the final regulations correct this error. Under the final regulations, the IRS now recognizes that distributions to a nonspouse beneficiary do qualify as an eligible rollover distribution. As such, these nonspouse beneficiary distributions are subject to the 20 percent withholding requirement that applies to all eligible rollover distributions.

Distributions from Designated Roth Accounts

The 2024 proposed regulations state that distributions from designated Roth accounts are eligible for rollover because they are not considered RMDs.

Distributions as a Result of the Purchase of a Collectible Asset

The final regulations clarified that any amounts treated as a distribution as a result of a purchase of a collectible are not considered an eligible rollover distribution. These amounts are also not counted toward satisfying the RMD for the year.

Defined Benefit Plan and Annuity Provisions

Generally, the existing rules for defined benefit plan distributions used to satisfy RMD requirements and the associated rules regarding the purchase of annuities in defined benefit plans did not change. The most significant changes include the following.

Annuity Payments Under Defined Contribution Plans Subject to 10-Year Rule

The final regulations updated the 2022 proposed regulations to make clear that annuity contract payments under a defined contribution plan, a contract subject to IRC Sec. 401(a)(9)(H), or certain IRAs are subject to the 10-year rule in certain circumstances.

The final regulations also state that the date used to determine if a beneficiary is an eligible designated beneficiary is the annuity starting date. And, the final regulations confirm that a subsequent divorce does not change the determination of an eligible designated beneficiary as of the annuity starting date for purposes of applying IRC Sec. 401(a)(9)(H).

Nonapplication of Actuarial Increases to Church Plans

Generally, a beneficiary must incur an actuarial increase for the period that benefits are not received after an account owner of an annuity that funds a defined benefit delays her RBD due to retirement beyond April 1 of the calendar year that she attains age 70½. This increase is usually calculated as of the start date of April 1 and ends on the date benefits commence following the account owner's retirement. The final regulations clarified that the nonapplication of an actuarial increase will not apply to IRC Sec. 3121(w)(3) church plans or qualified church-controlled organizations (QCCO) with at least 85 percent of covered individuals in the plan who are employed by the church or QCCO. The definition of a church or QCCO employee for this purpose is determined under IRC Sec. 414(e)(4)(B)(i). The final regulations also state that actuarial increases will not apply to benefits accrued that are attributed to service performed as an employee of a church or QCCO. In addition, the final regulations also clarified that nonvested accrued benefits do not require an actuarial increase until the accrued benefit becomes vested.

Exceptions to Nonincreasing Annuity Payments

The final regulations substantially changed the exceptions that apply regarding nonincreasing annuity payment amounts to comply with IRC Sec. 401(a)(9)(J). The final regulations

- permit a constant percentage increase of annuity payments at a rate that is less than five percent per year;
- remove the Minimum Income Threshold Test (MITT) for annuities from insurers, exempting contracts from the MITT condition requiring that total future expected payments need to exceed the total interest being annuitized; and
- minimize the distinctions between permissible increases for annuity payments from defined benefit trusts (self-insurers) and annuity contract payments from an insurer if the purchased contract provides the same benefits that would have been payable under the plan if an insurer was not involved.

Qualifying Longevity Annuity Contract Provisions

The final regulations made the following modifications regarding QLACs, in part, to comply with Sec. 202 of SECURE 2.0.

- The QLAC definition is updated to include annuity contracts that do not permit a commutation (exchange) or cash surrender right after the contract's required beginning date, other than the right to rescind the contract within 90 days from the date of purchase.
- The 25 percent limitation on QLAC premiums is removed.
- The fair market value of an annuity contract that is exchanged for a QLAC is now treated as paid premium.
- The QLAC dollar limitation is increased to \$200,000 (previously \$125,000).
- A QLAC will not fail to meet requirements when a divorce occurs after a QLAC is purchased and provides survivor benefits to a former spouse when a qualified domestic relations order is issued.

Next Steps

Both the final and proposed regulations were published in the Federal Register on July 19, 2024. The final regulations will be effective September 17, 2024. The IRS is accepting written comments regarding the proposed regulations until September 17, 2024. A public hearing on the proposed regulations is scheduled for September 25, 2024. Futureplan will continue to follow any new guidance as it is released. Visit futureplan.com for the latest developments.