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IRS Issues Long-Awaited Final RMD Regulations

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On July 18, 2024, the IRS finalized changes to the regulations governing required minimum distributions ("RMDs") to reflect changes made by the Setting Every Community Up for Retirement Act of 2019 ("SECURE Act") and SECURE 2.0 Act of 2022 ("SECURE 2.0").

In February 2022, the IRS released proposed regulations that made comprehensive changes to the existing RMD regulations to implement certain SECURE Act changes (see our prior legal update for more details). In the time since the Proposed Regulations were issued, the IRS has extended temporary relief for certain distribution requirements through 2024 (see our prior legal update for further information).

The Final Regulations go into effect on September 17, 2024, and will generally apply to distributions made for years beginning on or after January 1, 2025. For earlier calendar years, plans must take into account reasonable, good faith interpretations of the requirements of the SECURE Act and SECURE 2.0.

The Final Regulations largely follow the 2022 proposed regulations, with certain revisions being made to reflect the changes implemented in SECURE 2.0, including increasing the age for required beginning dates, exempting Roth accounts from lifetime distributions, reducing RMD excise taxes, and expanding lifetime income availability (see our prior legal update).

Post-Death Distributions for Certain Non-Eligible Designated Beneficiaries

The 2022 proposed regulations surprised practitioners with respect to its interpretation of the new "10-Year Rule" implemented in the SECURE Act. The 10-Year Rule provides that Non-Eligible Designated Beneficiaries (certain trusts and non-spouse beneficiaries) must distribute the remainder of their portion of a retirement account within 10 years after the account owner's death. Many practitioners thought the 10-Year Rule would replace the "at least as rapidly" rule that previously applied to such distributions. Under the "at-least as rapidly" rule, beneficiaries must continue taking annual RMDs. The 2022 proposed regulations took the position that the new 10-Year Rule applied in addition to the "at least as rapidly" rule. The IRS previously issued interim guidance providing relief for individuals who thought that RMDs would not be required until the end of the 10-year period and had not taken RMDs beginning in 2020. This relief was extended from 2020 through 2024.

The Final Regulations retain the interpretation from the 2022 proposed regulations. Non-Eligible Designated Beneficiaries who inherit a retirement account from a participant who died on or after their required beginning date are subject to both the 10-Year Rule and the "at least as rapidly" rule. As a result, annual RMDs must be taken "at least as rapidly" for the first nine years following the participant's death, and any outstanding amounts in the account must be distributed by the end of the tenth year after death.

As noted above, the IRS previously issued interim guidance providing relief from the "at least as rapidly" rule for individuals subject to the 10-Year Rule for distributions required through 2024. The Final Regulations incorporate this relief, and the "at least as rapidly" requirements under the Final Regulations will apply beginning for distributions required on or after January 1, 2025.

Proposed Regulations Clarify RMDs for Participants Born in 1959

On the same day the Final Regulations were released, the IRS issued proposed regulations ("Proposed Regulations") clarifying certain changes made by SECURE 2.0. One of these changes concerns in the increase in the age for beginning RMDs from 73 to 75 beginning in 2033. SECURE 2.0 included a drafting error that suggested that individuals born in 1959 could begin RMDs at either age 73 or age 75. The Proposed Regulations clarify that individuals born in 1959 will be required to begin RMDs upon reaching age 73.

Additional Changes in Proposed Regulations

The new Proposed Regulations also include the following clarifications not addressed in the Final Regulations.

Distributions from Roth Accounts. The Final Regulations provide that any portion of an employee's account held in a designated Roth account will not be included in the account balance used to calculate the RMD for a particular year. The Proposed Regulations further clarify that any amounts distributed from a designated Roth account also will not count towards fulfilling an individual's RMD requirement for the year.

Spousal Election to be Treated as Employee. SECURE 2.0 permits surviving spouses to elect to be treated as the deceased participant and delay RMDs until the year the participant would have been required to begin RMDs. The Proposed Regulations provide new guidance regarding this election:

- Under the Proposed Regulations, the election is available to surviving spouses that are the sole beneficiaries of participants who would have been required to start taking RMDs in 2024 or later.
- The election will be deemed to have been made automatically if the participant died prior to reaching his or her required beginning date. The election would not apply automatically if the participant died after reaching his or her required beginning date, but the terms of the plan can specify that the election will be deemed to have been made as a default rule.
- If the surviving spouse dies after RMDs begin to be paid to the spouse, the spouse's beneficiaries will be treated as Non-Eligible Designated Beneficiaries. As a result, a final distribution of the participant's original interest must be made by the end of the 10th calendar year after the death of the surviving spouse.

The Proposed Regulations, if adopted, would apply for determining distributions required for calendar years beginning on or after January 1, 2025. Comments on the Proposed Regulations are requested by September 17, 2024.