The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE
1401 H Street, NW, Washington, DC 20005 USA

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Internal Revenue Service
CC:PA:01:PR (REG–103529–23)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Notice of Proposed Rulemaking – Required Minimum Distributions

To Whom It May Concern:

The Investment Company Institute[1] appreciates the opportunity to provide our views to the Treasury Department ("Treasury") and Internal Revenue Service (IRS) on the proposed regulations relating to required minimum distributions (RMDs) from retirement plans and individual retirement accounts (IRAs) ("Proposal").[2] The Proposal would amend the regulations under section 401(a)(9) of the Internal Revenue Code ("Code"), and other related sections, to reflect changes to the RMD rules enacted under the SECURE 2.0 Act of 2022.

Background

On the same day that they issued the Proposal, Treasury and IRS also published final regulations relating to RMDs ("2024 Final Regulations"), finalizing the proposal issued in 2022 ("2022

[1] The Investment Company Institute (ICI) is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $36.4 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 100 million investors. Members manage an additional $8.7 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London.

[2] See 89 Fed. Reg. 58644 (July 19, 2024), available at https://www.govinfo.gov/content/pkg/FR-2024-07-19/pdf/2024-14543.pdf.

Proposal").[3] The 2024 Final Regulations amend the regulations under section 401(a)(9) of the Code, and other related sections, to reflect changes to the RMD rules enacted under the Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE Act") and other legislation over the years. The 2024 Final Regulations also reflect certain changes enacted under the SECURE 2.0 Act, which was enacted after the issuance of the 2022 Proposal.[4] The Proposal would address various provisions that were reserved in the 2024 Final Regulations, relating to changes made by the SECURE 2.0 Act and certain other issues.

Our comments relate primarily to the following SECURE 2.0 Act changes reflected in the Proposal:

- Surviving spouse election to use Uniform Lifetime Table. Section 327 of the SECURE 2.0 Act harmonizes the RMD rules applicable to surviving spouses under plans and IRAs by allowing a surviving spouse beneficiary under an employer-sponsored plan to elect to receive a similar distribution period for lifetime distributions as was already permitted in an IRA (i.e., by using the Uniform Lifetime Table, rather than the Single Life Table, as required under existing rules), effective for calendar years beginning after 2023.
- Roth plan distribution rules. Section 325 of the SECURE 2.0 Act harmonizes the RMD rules for Roth amounts in plans and IRAs by exempting Roth amounts in plans from RMD requirements during the life of the participant, generally effective for taxable years beginning after December 31, 2023.
- Eliminating a penalty on partial annuitization. Section 204 of the SECURE 2.0 Act directs Treasury to amend the regulations governing RMDs to provide that when an individual account plan participant uses a portion of their account to purchase an annuity, the plan may allow the employee to elect to have the RMD amount for a year calculated as the excess of (i) the total required amount for such year over (ii) the amount of annuity payments for such year, effective December 29, 2022.

Finally, the letter requests certain clarifications regarding provisions in the 2024 Final Regulations.

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[3] The 2024 Final Regulations were published at 89 Fed. Reg. 58886 (July 19, 2024), available at https://www.govinfo.gov/content/pkg/FR-2024-07-19/pdf/2024-14542.pdf. The 2022 Proposal was published at 87 Fed. Reg. 10504 (February 24, 2022), available at https://www.govinfo.gov/content/pkg/FR-2022-02-24/pdf/2022-02522.pdf.

[4] As explained in the preamble to the 2024 Final Regulations, "[s]ome of the rules in these final regulations that reflect provisions of the SECURE 2.0 Act are a clear application of statutory language for which it is unnecessary to solicit comments (see 5 U.S.C. 553(b)). Other rules in these final regulations are the logical outgrowth of rules in the proposed regulations that take into account both the comments received on those proposed rules and the subsequent enactment of the SECURE 2.0 Act." 89 Fed. Reg. at 58890.

Executive Summary

Our comments and recommendations include the following:

- *Applicability Dates and Good Faith Compliance Standard.* Provide relief by delaying the applicability date of the Proposal and confirm good faith interpretation relief with respect to the Proposal. **(Section 1)**
- *Spousal Election to Use Uniform Lifetime Table for RMD Calculation – Optional Election.* Provide clarity on the automatic application of this optional provision. **(Section 2.1)**
- *Spousal Election to Use Uniform Lifetime Table for RMD Calculation – Eligibility.* Provide more flexibility on the applicability date for the spousal election (i.e., the election should be available for any elections made on or after January 1, 2024). **(Section 2.2)**
- *Spousal Election to Use Uniform Lifetime Table for RMD Calculation – IRA issues.* Confirm application of spousal election for inherited spousal IRAs and allow election when the surviving spouse is the sole beneficiary of a see-through trust. **(Section 2.3)**
- *Spousal Election to Use Uniform Lifetime Table for RMD Calculation – Additional Examples.* Provide additional examples addressing the spousal election under different fact scenarios. **(Section 2.4)**
- *Treatment of Designated Roth Accounts.* Address the treatment of participant accounts that include both Roth and pre-tax amounts, for distributions after the participant's death. **(Section 3)**
- *Partial Annuitization for IRAs and Plans.* Clarify that the optional aggregation rules extend to all partial annuity situations within a single IRA, and, for plans, that the aggregation rules extend to qualified plan distribution annuities. **(Section 4)**
- *Outright Distribution to Trust Beneficiary.* Confirm proper reporting for establishing an inherited IRA outright in the name of the beneficiary, in the case of a distribution from a see-through trust. **(Section 5)**
- *2024 Final Regulations – Final RMD in Year of Death.* Eliminate the overly complex rule addressing RMD shortfalls in the year of the participant's death, in the case of multiple IRAs with different beneficiaries. **(Section 6.1)**
- *2024 Final Regulations – Eligible Rollover Distributions for a Uniform Required Beginning Date.* Provide additional clarity on plan's ability to require benefits to commence on a uniform required beginning date (RBD), which is earlier than an individual's otherwise applicable RBD. **(Section 6.2)**
- *2024 Final Regulations – At Least As Rapidly Transition Relief.* Clarify the proper RMD calculations for beneficiaries that have taken advantage of the transition relief regarding the failure to take annual RMDs under the application of the "at least as rapidly" rule. **(Section 6.3)**

- *2024 Final Regulations – Repayment Rights.* Confirm treatment for RMD purposes of special repayments that are treated as rollover contributions (e.g., repayment of a qualified disaster recovery distribution). **(Section 6.4)**

Section 1: Applicability Date of Proposed Regulations and Good Faith Compliance Standard

The proposed regulatory amendments are proposed to apply beginning January 1, 2025. Specifically, under the Proposal, the changes to the rollover provisions are to be effective for distributions on or after January 1, 2025, and for purposes of calculating RMDs, the effective date applies for calendar years beginning on or after January 1, 2025.[5] In practice, a time period of less than six months for the industry to review and revise procedures and make the necessary systems changes, which typically would not be done prior to the issuance of final regulations, is not sufficient. Ideally, the applicability date of the final regulations would provide at least 12 to 18 months after issuance to make the necessary system changes.

The 2024 Final Regulations, also effective as of January 1, 2025, generally provide for a good faith interpretation for compliance with the requirements of the SECURE Act and the SECURE 2.0 Act (but excludes the surviving spouse election to be treated as the employee, under section 327 of the SECURE 2.0 Act) prior to such date.[6] The same good faith interpretation relief is needed for all of the provisions addressed in the Proposal, including amendments made by section 327 of the SECURE 2.0 Act (this should include the related provision in the 2024 Final Regulation). This is particularly important given the complexity of the changes, and the lack of prior guidance.

We strongly urge Treasury and IRS to extend the applicability date of the changes under the Proposal to the beginning of the calendar year at least 12 months following the issuance of final regulations, and, prior to such applicability date, apply reasonable, good faith interpretation relief for all the provisions addressed in the regulations (including section 327 of the SECURE 2.0 Act). Further, if possible, it would be helpful if Treasury and IRS could communicate this good faith relief sooner than the issuance of final regulations.

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[5] See 89 Fed. Reg. at 58648. The proposed amendments are proposed to have the same applicability dates as the corresponding provisions in the 2024 Final Regulations. Treasury and IRS do not explain why the good faith compliance provision does not apply with respect to section 327 of the SECURE 2.0 Act.

[6] See 89 Fed. Reg. at 58905.

Section 2: Spousal Election to Use Uniform Lifetime Table for RMD Calculation

Section 327 of the SECURE 2.0 Act harmonizes the RMD treatment applicable to surviving spouses under plans and IRAs by allowing a surviving spouse beneficiary under an employer-sponsored retirement plan to elect to receive a similar distribution period for lifetime distributions as is currently permitted in an IRA (i.e., allowing calculation of RMDs using the Uniform Lifetime Table).

The 2024 Final Regulations and the Proposal provide welcomed explanations on the scope of this rule, but additional clarification is necessary, along with some simplification of these rules (and sample plan amendment language). We urge Treasury and IRS to clarify the following items.

2.1 Optional Nature of Provision

The 2024 Final Regulations appear to permit, but not require, this feature (the spouse's ability to elect to use the Uniform Lifetime Table) at the election of the plan sponsor of a defined contribution plan.[7] However, the Proposal provides that for participant deaths prior to their required beginning date (RBD), in certain cases, the spouse would automatically be treated as making the election.[8] This automatic application of an optional provision is confusing. Since the provision is optional, is it permissible for defined contribution plan sponsors to provide that the election is automatic for deaths before the participant's RBD, but not allow an election for participant deaths on or after their RBD, to simplify plan administration?[9] In addition, it would be helpful if the final regulation confirmed that if an election is made (or deemed made), that election may be revoked, as well as the process for revoking it.[10]

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[7] § 1.401(a)(9)–5(g)(3)(i) provides that "[a] defined contribution plan ***may*** include a provision, applicable to an employee whose sole beneficiary is that employee's surviving spouse, under which the surviving spouse may elect to be treated as the employee for purposes of determining the required minimum distribution for a calendar year under this section" (emphasis added). The 2024 Final Regulations reserves subsection (ii) of this section to provide details for the rules relating to the election.

[8] Proposal at § 1.401(a)(9)–5(g)(3)(ii)(A). Under this provision, the spouse is automatically treated as having made the election if: (1) the employee dies before the employee's RBD, (2) the life expectancy payments option applies to the spouse, and (3) the spouse is eligible to make the election.

[9] For participant deaths on or after their RBD, the election is not automatic, but the election may be a default election under the terms of the plan. Proposal at § 1.401(a)(9)–5(g)(3)(ii)(B).

[10] Code section 401(a)(9)(B)(iv) provides that once made, the election "may not be revoked except with the consent of the Secretary."

2.2 Eligibility to Make the Election

The Proposal includes a separate applicability date for the spousal election. The election is available only if the first year for which RMDs to the surviving spouse must be made is 2024 or later.[11] This limitation seems unnecessary and would add complexity. To ease administration of the election, it should be permissible to extend the rule's application to any elections made on or after January 1, 2024. For example, if the notice of death (and RMDs) were delayed, for instance if the surviving spouse made the election in 2025 when starting RMDs, but the participant had died in 2022, that delay should not result in the spouse not being eligible to make the election. Allowing more flexibility in this way is consistent with the statutory effective date of section 327 of the SECURE 2.0 provision, which simply applies to calendar years beginning after December 31, 2023.

The 2024 Final Regulations specify that a former spouse to whom some or all of the participant's benefit is payable under a qualified domestic relations order (QDRO) is treated as a spouse (including a surviving spouse) of the participant for purposes of satisfying the RMD rules.[12] It would be helpful if the final regulations confirmed that spousal alternate payees are also eligible to make this optional election under section 327 of the SECURE 2.0 Act.

2.3 IRA Issues

Confirmation that the spousal election to use the Uniform Lifetime Table extends to inherited spousal IRAs (traditional and Roth) would be helpful, as a single footnote in the preamble to the Proposal suggests that it applies.[13] However, the discussion in the preamble is focused on defined contribution plans, and IRS Publication 590-B (relating to distributions from IRAs) does not address the election.

We also recommend that Treasury and IRS reconsider the limitation under the 2024 Final Regulations preventing a spousal beneficiary from making the election if the spouse is a beneficiary of a trust that is named as beneficiary of the IRA. Section 1.408-8(c)(1)(ii) provides that, in order to make the election, the surviving spouse must be the sole beneficiary of the IRA and have an unlimited right to withdraw amounts from the IRA. The regulation specifies that if a trust is named as a beneficiary of the IRA, this requirement is not satisfied even if the surviving spouse is the sole beneficiary of the trust. The regulations under § 1.401(a)(9)-5 (RMD rules

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[11] Proposal at § 1.401(a)(9)–5(g)(3)(ii)(E).

[12] § 1.401(a)(9)–8(d)(1).

[13] Footnote 5 at 89 Fed. Reg. at 58647 provides that "if the spouse executes a spousal rollover to the spouse's own IRA in accordance with section 402(c)(9) after having made the election described in section 401(a)(9)(B)(iv), then the spouse will not be treated as a beneficiary with respect to any amounts in that IRA."

applicable to defined contribution plans) do not limit the surviving spouse, if the surviving spouse is the sole beneficiary of a trust. This creates an inconsistency between the rules for qualified plans and IRAs and appears unnecessary. In addition to eliminating this limitation, the rules should permit, similar to the look-through trust documentation, the spousal election to be made through a self-certification process.

2.4 Additional Examples

The preamble to the Proposal provided some examples.[14] It would be helpful to include an additional example in the final regulation to address the following facts: (i) a participant passed away in 2023 after already reaching their RBD, (ii) the participant had not taken the RMD for 2023, and (iii) the spousal beneficiary is permitted to use the Uniform Lifetime Table since the first annual RMD due to the surviving spouse is for 2024 (the 2023 RMD would be attributable to the participant using participant's age and life expectancy).

Section 3: Treatment of Designated Roth Accounts

Section 325 of the SECURE 2.0 Act harmonizes the RMD rules for Roth amounts in plans and IRAs by exempting Roth amounts in plans from RMD requirements during the life of the participant. The Proposal addresses this change by including provisions that clarify that (1) distributions from Roth accounts are not treated as meeting an RMD obligation when they are made in a calendar year for which the employee is required to take an RMD from a non-Roth account, and (2) that such Roth distributions are eligible for rollover.[15] The 2024 Final Regulations also address the change, and its effect on distributions after the death of the participant, indicating that if a participant's ***entire account*** consists of Roth amounts, the beneficiary shall be subject to the rules applicable for a participant who dies prior to their RBD.[16] However, as many participants have a combination of Roth and non-Roth amounts, additional clarification is needed on what rules apply in such situation on the death of the participant (where death is after the RBD for non-Roth amounts).

We urge Treasury and IRS to provide plan sponsors with flexibility to address the proper treatment of participant accounts that include both Roth and pre-tax amounts, for distributions after the participant's death. For example, the final rules should allow plan sponsors to determine whether the participant is treated as dying "prior to" or "on or after" their RBD separately by each source type or to apply a uniform rule. The final rules also should clarify treatment of spousal alternate payees under QDROs with Roth accounts, along with the treatment of Roth

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[14] See 89 Fed. Reg. at 58646-7.

[15] Proposal at § 1.401(a)(9)–5(g)(2)(iii).

[16] See § 1.401(a)(9)–3(a)(2) of the 2024 Final Regulations. Also see § 1.401(a)(9)–5(b)(3) of the 2024 Final Regulations.

rollover accounts, Roth employer contribution accounts, and in-plan Roth conversion accounts (and whether RMD amounts, which are not eligible for rollover, are eligible for an in-plan Roth conversion under Code section 402A(c)(4)(E)).

Section 4: Partial Annuitization for IRAs and Plans

Section 204 of the SECURE 2.0 Act directs Treasury to amend the regulations governing RMDs applicable to individual account plan participants who use a portion of their account to purchase an annuity.[17] Both the Proposal and the 2024 Final Regulations include language to incorporate this change.[18] They provide a special aggregation rule for participants in defined contribution plans who have purchased an annuity contract with a portion of their account balance, allowing the participant to elect to apply the account balance rules (under § 1.401(a)(9)–5 of the regulations) to the entire account and to calculate the RMD by offsetting the amount of the annuity paid out. The 2024 Final Regulations provide similar relief for IRAs to allow an owner of a Code section 408(a) custodial IRA and a 408(b) annuity IRA to, in general, aggregate the RMD calculation under the account balance rules, and permit the offset of the RMD amount by the annuity payment.[19] However, the 2024 Final Regulations do not expressly permit the same approach for a partial annuity held within a single IRA (e.g., where a portion of a 408(a) IRA is used to purchase an annuity within that IRA).[20] We see no reason (policy or otherwise) to justify a different result.

We recommend that Treasury and IRS clarify that the optional aggregation rules under § 1.401(a)(9)–5(a)(5)(iv) extend to all partial annuity situations within a single IRA, and, for plans, that the aggregation rules extend to qualified plan distribution annuities, as defined in Code section 401(a)(38)(B)(iv) and § 1.402(c)-2(h). Further, regarding the RMD calculation, Treasury and IRS should permit self-certification regarding the value of the annuity value and adjustments[21] (at least for IRA providers). Plan administrators and IRA providers should be able to reasonably rely on a participant's self-certification, unless the administrator has actual

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[17] Under section 204, the plan may allow the employee to elect to have the RMD amount for a year calculated as the excess of (i) the total required amount for such year (i.e., treating the account balance as of the last valuation date in the immediately preceding calendar year as including the value on that date of all annuity contracts which were purchased with a portion of the account) over (ii) the total amount distributed in the year from all such annuity contracts.

[18] See the optional aggregation rule included at § 1.401(a)(9)–5(a)(5)(iv) of the 2024 Final Regulation, and Rules of operation for aggregation option added by § 1.401(a)(9)–5(a)(5)(v) of the Proposal.

[19] See § 1.408–8(e)(1)(ii).

[20] We understand from our members that while this is a relatively uncommon circumstance, it does occur.

[21] § 1.401(a)(9)–5(a)(5)(v) of the Proposal provides rules for how the fair market value of the annuity contract must be determined.

knowledge to the contrary. This approach is similar to § 1.401(a)(9)-6(q)(4)(i)(A) (relating to certification of qualifying longevity annuity contract (QLAC) premiums).

Section 5: Outright Distribution to Trust Beneficiary

The 2024 Final Regulations allow the RMD rules to be applied separately to multiple beneficiaries of a see-through trust.[22] One requirement for this treatment is that the trust must be divided immediately upon the employee's death with the beneficiaries' separate interests to be held in separate see-through trusts.[23] The Proposal provides an exception to this requirement, providing that, upon the division of the trust, distributions may be made outright to the trust beneficiary (and held directly by that beneficiary), rather than held by a separate see-through trust.[24]

To qualify for the separate application of the RMD rules to multiple beneficiaries of a see-through trust (whether the amounts are ultimately held in separate see-through trusts or held directly by beneficiaries), the Proposal provides that certain requirements must be met, including that the trust be immediately divided upon the death of the employee, with no discretion on the allocation of post-death distributions.[25] Historically, this type of outright payment was permitted through a bypass trust private letter ruling, under which the transfer, if permissible under the trust document and state law, could be made outright to a beneficiary (but with the same RMD rules, e.g., calculating RMDs using the remaining life expectancy of the oldest beneficiary).[26]

This is a helpful rule, but we recommend that Treasury and IRS confirm the proper Form 1099-R reporting for establishing an inherited IRA outright in the name of the beneficiary, rather than a trust or sub-trust (that is, reporting to the beneficiary using their name and social security number and not the trust's name and EIN).

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[22] See § 1.401(a)(9)–8(a). Note that section 401 of the SECURE Act included a provision applying special rules to an applicable multi-beneficiary trust (a trust with at least one disabled or chronically ill beneficiary that provides that it is to be immediately divided upon the death of the employee into separate trusts for each beneficiary), allowing separate application of section 401(a)(9) to those separate trusts. Expanding on a provision in the 2022 Proposal, the 2024 Final Regulations permit separate application of section 401(a)(9) to the separate interests of beneficiaries of certain see-through trusts (without regard to whether any of the beneficiaries are disabled or chronically ill) if certain requirements are met.

[23] § 1.401(a)(9)–8(a)(1)(iii)(B).

[24] Proposal § 1.401(a)(9)–8(a)(1)(iii)(D). ("The separate interests of the beneficiaries in a see-through trust will not fail to be eligible for the exception under paragraph (a)(1)(iii)(B) of this section merely because, upon termination of the trust, a beneficiary's separate interest in the trust is to be held directly by that beneficiary rather than being held by a separate see-through trust.")

[25] Proposal § 1.401(a)(9)–8(a)(1)(iii)(C).

[26] See e.g., PLR 201038019, dated June 28, 2010, available at https://www.irs.gov/pub/irs-wd/1038019.pdf; and PLR 200317041, dated December 9, 2002, available at https://www.irs.gov/pub/irs-wd/0317041.pdf.

Section 6: Other Areas to be Clarified

Lastly, our members have identified several questions relating to the 2024 Final Regulations where clarification or confirmation would be helpful.

6.1 Final RMD in Year of Death

For defined contribution plans, the 2024 Final Regulations provide helpful relief when a participant who is required to take a distribution in a calendar year dies before taking that distribution (i.e., an RMD shortfall in the year of the participant's death). In that circumstance, any beneficiary of the participant may take a distribution to satisfy the RMD shortfall (the regulations do not require that a pro rata portion of the unpaid amount be distributed to each beneficiary).[27]

For multiple IRAs with different beneficiaries, the 2024 Final Regulations include a different rule for an RMD shortfall in the year of the IRA owner's death. This special rule first mandates a pro rata allocation of the RMD amount to each of the IRA owner's multiple IRAs before any beneficiary of the IRA can take the distribution.[28] This extra level of complexity is unwarranted, particularly because (1) IRA providers do not have the data required to administer this rule (as all IRAs may not be with the same financial institution), (2) the long standing regulations permit the RMD to be calculated for each IRA independently, and (3) this approach results in a loss of confidentiality of the bequest where the multiple beneficiaries need to coordinate on the value of the IRAs.

Although this issue relates entirely to the 2024 Final Regulation, and is outside the Proposal, as this is a new provision that was not the subject of notice and comment, we recommend Treasury and IRS reconsider the need for this special IRA rule and eliminate it (or otherwise clarify that the IRA custodian is not responsible for compliance[29]).

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[27] 2024 Final Regulation § 1.401(a)(9)–5(c)(1); also see preamble discussion at 89 Fed. Reg. at 58901 ("The final regulations also restore flexibility from § 1.401(a)(9)–5 in the 2002 final regulations relating to the required minimum distribution for the calendar year of the employee's death by providing that a required minimum distribution must be paid to "any beneficiary" in the year of death rather than to "the beneficiary.").

[28] See § 1.408–8(e)(4)(i) ("In that case, each of the owner's IRAs is subject to a requirement to distribute a proportionate share of the shortfall for the calendar year to a beneficiary of that IRA, with the proportions based on the account balances determined under paragraph (b)(2) of this section.").

[29] § 1.408-8(e)(4)(i) implies responsibility on the IRA custodian by stating that "each of the owner's IRAs is subject to a requirement to distribute a proportionate share of the shortfall for the calendar year to a beneficiary of that IRA . . ."

6.2 Eligible Rollover Distributions for a Uniform Required Beginning Date

In response to a commenter's question, the preamble to the 2024 Final Regulations states that a plan could require benefits to commence on a uniform RBD (e.g., April 1 of the calendar year following the year the employee attains age 70 ½), which is earlier than an individual's otherwise applicable RBD (which is based on birthdate).[30] This statement is helpful, particularly for defined benefit plan sponsors that wish to avoid the post age 70 ½ actuarial adjustment for delayed commencements. However, a plan's use of a uniform RBD would appear to raise added complexity regarding the rollover and tax withholding treatment for the distribution, because absent guidance to the contrary, any distributions before the individual's applicable RBD under Code section 401(a)(9) would not be treated as RMDs.

We recommend Treasury and IRS clarify the impact on the rollover (and withholding) treatment of such payments made in lump sums (and confirm that no plan amendment for the changes to the RBD are needed if the plan simply retains the age 70 ½ RBD). Ideally, a plan could opt to simply treat these amounts as RMDs and not eligible for rollover (and subject to 10% withholding). Otherwise, it will be administratively burdensome to take this uniform RBD approach, as plan sponsors will still need to ascertain the otherwise applicable RBD to confirm the proper rollover (and withholding) treatment for lump sum distributions.

6.3 At Least As Rapidly Transition Relief

The 2024 Final Regulations, like the 2022 Proposal, provide that the "at least as rapidly" rule continues to apply to designated beneficiaries who are subject to the 10-year rule when the participant or IRA owner dies on or after their RBD. Under this provision, beneficiaries must continue to receive annual RMDs (calculated using the beneficiary's life expectancy, as under the existing regulations) for up to nine calendar years after the participant's death. In the tenth year following the calendar year of the participant's death, a full distribution of the remaining interest is required.

Following the 2022 Proposal, in recognition of the wide-spread comments indicating surprise at the continued application of the "at least as rapidly" rule, IRS provided transition relief regarding the failure to take annual RMDs.[31] The relief was extended to apply to missed annual RMDs through 2024. The regulated community greatly appreciated this transition relief.

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[30] 89 Fed. Reg. at 58891. As a matter of plan design, plans are permitted to require distributions as early as the plan's normal retirement age, or age 62, if later. Therefore, a plan could set a requirement that distributions must begin by age 71 ½.

[31] IRS Notice 2022–53, Notice 2023–54, and Notice 2024–35.

The preamble to the 2024 Final Regulation indicates that the transition relief does not require a taxpayer to make up the missed annual RMD payments and that the 10-year period cannot be extended.[32] However, additional clarification is needed on how the beneficiary's annual RMD is calculated in later years if they took advantage of the relief. For example, it is unclear whether the first annual RMD is calculated using the factor that would have been used for the beneficiary in the year after death, reducing by one in each subsequent year, or calculated using their life expectancy in 2025, using the year-end 2024 balance for the 2025 distribution.[33]

We recommend that Treasury and IRS clarify the proper RMD calculations for individuals that have taken advantage of the transition relief.

6.4 Repayment Rights

The 2024 Final Regulations provide that certain repayments (e.g., repayment of a qualified disaster recovery distribution) may be treated as a rollover, if that treatment is prescribed under another statutory provision.[34] Treasury and IRS should confirm the treatment for RMD purposes of special repayments that are treated as rollover contributions (e.g., they should be treated as part of the receiving plan in the year the rollover is received, rather than the year in which the amount being repaid was first distributed[35]).

Conclusion

ICI and its members appreciate the opportunity to comment on the Proposal and other items for clarification. We are committed to working with Treasury and the IRS to implement the SECURE 2.0 Act changes, as well as RMD issues more generally, in an effective manner. If you have any questions, please contact Elena Chism at 202/326-5821 (elena.chism@ici.org) or Shannon Salinas at 202/326-5809 (shannon.salinas@ici.org).

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[32] See footnote ll at 89 Fed. Reg. at 58897.

[33] "The beneficiary's remaining life expectancy generally is calculated using the age of the beneficiary in the year following the calendar year of the employee's death, reduced by one for each subsequent calendar year." 89 Fed. Reg. at 58897.

[34] § 1.402(c)-2(a)(l)(vi). .

[35] § 1.402(c)-2 (b) provides that if the amount of a rollover is received in a different calendar year from the calendar year in which its distributed, the amount rolled over is deemed to have been received by the receiving plan on the last day of the calendar year in which it was distributed. Although repayments are treated as rollovers, many of the repayment provisions allow repayment within a three-year period after the distribution, therefore, the general rule of § 1.402(c)-2 (b) should not apply in the case of repayments.

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Sincerely,

/s/ Elena Chism	/s/ Shannon Salinas
Elena Chism Deputy General Counsel Retirement Policy	Shannon Salinas Associate General Counsel Retirement Policy