

## IRS Clarifies New Minimum Distribution Rules Under SECURE 2.0 Act (Part 2)

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**PRACTICES** Employee Benefits and Executive Compensation

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As previously discussed in our newsletter [here](#), the IRS issued final and proposed regulations addressing changes to the required minimum distribution requirements under the SECURE 2.0 Act. In addition to issuing final rules that implement those changes, the IRS also issued proposed regulations to clarify certain administrative questions that were either unaddressed or ambiguous in the SECURE 2.0 Act with some of those provisions discussed [here](#). This week, we summarize the practical impact of the remaining proposed regulations in the event that the proposed regulations are finalized in their current form.

**Rules for Aggregating Annuity Contracts.** For an employee who elects to annuitize a portion of his or her account balance under a defined contribution plan, there are two methods for determining whether the required minimum distribution requirement is being satisfied: (i) the annuity contract and the remaining individual account can be analyzed separately or (ii) the annuity contract and the individual account can be aggregated with payments from the annuity contract being treated as distributions from the individual account. In the proposed regulations, the IRS addresses how to determine the fair market value under clause (ii) of the preceding sentence by indicating the following:

(i) fair market value of the annuity contract is determined as of December 31 of the calendar year preceding the distribution calendar year; and

(ii) starting with the determination used for the 2026 distribution calendar year, the determination must use the same method as is set forth in the IRS rules for determining the fair market value of an individual retirement annuity that is being converted into a Roth IRA.

**Direct Distributions to Beneficiaries from See-Through Trust.** Under the final rules issued by the IRS, when the designated beneficiary selected by the participant is a see-through trust, the minimum distribution rules may be applied separately to each beneficiary's separate interest in that see-through trust so long as several requirements are met. One requirement is that the trust must provide that it is to be divided immediately upon the death of the employee, with the separate interests to be held in separate see-through trusts. In the proposed regulations, the IRS modifies this requirement to also allow separate treatment if, upon the death of the participant, the beneficiary's separate interest in the trust is held directly by that beneficiary rather than by a separate see-through trust.

**Spousal Election to be Treated as the Participant.** A defined contribution plan may provide that, if a participant dies before the required beginning date, an eligible designated beneficiary of the employee may elect to receive the beneficiary's interest under the plan under either the 10-year rule or as annual payments over a period not extending beyond the beneficiary's life expectancy. Furthermore, if the designated beneficiary is the participant's surviving spouse, then the spouse may elect to:

- (i) be treated as if the surviving spouse were the participant for purposes of determining life expectancy when receiving annual payments over the beneficiary's life or life expectancy;
- (ii) delay commencement of required minimum distributions until the year the participant would have attained the applicable age (i.e., currently age 73); and
- (iii) be treated as the participant in the event the surviving spouse dies before distributions to the spouse begin.

Under the proposed regulations, if the participant dies before the required beginning date and the sole beneficiary of the participant is the surviving spouse who is subject to the life expectancy rule, then the spouse would automatically be treated as making the election described above. Furthermore, if the participant dies on or after the required beginning date, then this election does not apply automatically but may be designated as the default election under the terms of a plan (so that the surviving spouse need not take any action to have this election apply). Additionally, if this election is in effect for a surviving spouse, then, regardless of whether the employee died before, on, or after the required beginning date, the proposed regulations provide that the applicable denominator used for determining the required minimum distribution for each distribution calendar year up to and including the calendar year that includes the surviving spouse's date of death would be determined using the Uniform Lifetime Table (rather than the Single Life Table) for the surviving spouse's age as of the surviving spouse's birthday in the distribution calendar year.

The proposed regulations further clarify that:

- (i) If the above election is in effect for the surviving spouse and the spouse dies on or after the required date for distributions to begin to the spouse (i.e., the end of the calendar year in which the employee would have reached the applicable age), then annual distributions to the spouse's beneficiary must continue and must be determined using the spouse's remaining life expectancy for the spouse's age as of the spouse's birthday in the calendar year of the spouse's death from the Single Life Table, reduced by one for each subsequent calendar year. The spouse's beneficiary would not be an eligible designated beneficiary in this situation. As a result, the participant's benefit must be completely distributed by the end of the calendar year that includes the tenth anniversary of the spouse's death; and
- (ii) Although the above election results in the spouse being treated as the employee for purposes of the minimum distribution rules, that treatment does not extend to other purposes (e.g., a spouse who takes a distribution before attaining age 59½ would not be subject to the 10% additional tax under Code Section 72(t)(2)(A)(ii)).

The proposed regulations are available [here](#).