

IRS Clarifies New Minimum Distribution Rules Under SECURE 2.0 Act

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PRACTICES Employee Benefits and Executive Compensation

As previously discussed in our newsletter [here](#), the IRS issued 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. We have summarized the practical impact of several of those proposed regulations below in the event that the proposed regulations are finalized in their current form.

Roth Accounts. Under the SECURE 2.0 Act, the portion of a participant's account comprised of Roth contributions is not taken into account when determining the required minimum distribution amount.

The proposed regulations clarify that, as a result of this change, distributions of Roth amounts no longer count towards satisfying the minimum distribution requirement. The impact for participants would be that any distribution of Roth amounts may be rolled over into a Roth IRA if it otherwise meets the requirements to be an eligible rollover distribution.

Required Minimum Distribution Corrections. The SECURE 2.0 Act provides relief for missed required minimum distributions in certain situations. Specifically, the excise tax is reduced from 25% to 10% for participants who receive a corrective distribution within the correction period, and the excise tax is waived for the beneficiary of an individual who missed a required distribution in the year of his or her death if a corrective distribution is made within the correction period.

The proposed regulations clarify that a corrective distribution that is applied toward the minimum distribution requirement in a prior year would not also count toward satisfying the minimum distribution requirement in the year it is distributed.

Qualifying Longevity Annuity Contract. The SECURE 2.0 Act provides that a divorce occurring after the purchase of a qualified longevity annuity contract ("**QLAC**") but before the date the annuity payments begin under the contract will not impact the permissibility of the joint and survivor benefits if certain conditions relating to a QDRO (or in the case of a retirement plan not subject to the QDRO requirements, a "divorce or separation instrument") are satisfied.

The proposed regulations clarify that the "divorce or separation instrument" alternative is available only if the plan is not subject to both Code Section 414(p) and ERISA Section 206(d), such as a governmental plan. The proposed regulations further clarify what constitutes a "divorce or separation instrument", defining it as (i) a decree of divorce or separate maintenance or a written instrument incident to such a decree; (ii) a written separation agreement; or (iii) any other decree requiring an individual to make payments for the support or maintenance of the individual's former spouse.

Individuals Born in 1959. For purposes of required minimum distributions, the SECURE 2.0 Act increases the applicable age to 73 for individuals who were born in the years 1951 through 1959, and to 75 for participants who were born in 1959 or later. This presents an ambiguity for persons born in 1959 who, due to a drafting error, are included in both categories. On May 23, 2023, joint committees of Congress issued a letter clarifying that their intent was for the applicable age to be 73 for individuals born in 1959.

The proposed regulations clarify that the applicable age for a person born in 1959 would be age 73.

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