

THOUGHT LEADERSHIP

LEGAL UPDATES

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Planning for Retirement Benefits Post-Secure Act

On July 18, 2024, the Internal Revenue Service (IRS) issued final regulations updating the required minimum distribution (RMD) rules. The final regulations reflect changes made by the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) and the SECURE 2.0 Act impacting retirement plan participants, individual retirement account (IRA) owners, and their beneficiaries. At the same time, the Treasury and IRS issued proposed regulations, addressing additional RMD issues under the SECURE 2.0 Act. Below is a high-level summary of notable changes made by the final regulations and proposed regulations.

Background

In 2019, the SECURE Act made changes to the distribution of retirement benefits of account owners who die after 2019. The significant changes include:

Raised the applicable RMD age from 70.5 to 72; and

Replaced the life expectancy payout of post-death retirement benefits with a maximum 10-year payout for most beneficiaries.

In early 2022, the IRS issued proposed regulations interpreting the new minimum distribution rules under the SECURE Act. Later that same year, the IRS enacted the SECURE 2.0 Act, which included a variety of changes aimed at expanding participation in retirement plans and increasing retirement savings. The newly released regulations incorporate both the SECURE Act and SECURE 2.0 Act, while also introducing some new requirements.

2024 final regulation highlights

Post-death distribution rules for designated beneficiaries

The SECURE Act provides for different RMDs, depending on whether the beneficiary of an IRA or other qualified retirement account is a designated beneficiary, an eligible designated beneficiary, or a non-designated beneficiary. The final regulations define a designated beneficiary as any individual designated as a beneficiary by the account owner. While the SECURE Act requires that a designated beneficiary withdraw the account no later than the end of the calendar year that includes the tenth anniversary of the owner's death, the final regulations clarify that the annual distribution requirements for a designated beneficiary depend on whether the owner dies before or after his/her required beginning date (RBD).

Account owner dies on or after required beginning date

The IRS confirmed the controversial requirement from the proposed regulations that a designated beneficiary must take annual RMDs under the 10-year rule when the owner of a retirement account dies on or after his/her RBD. However, the IRS waived the RMD requirements that would have otherwise applied to any 10-year beneficiaries who did not take annual distributions for 2021, 2022, 2023, and 2024.

Account owner dies before required beginning date

By contrast, where the owner dies before his/her RBD, the designated beneficiary is not required to take annual RMDs. The only requirement is that the designated beneficiary fully withdraw the account by the end of the tenth year after the year of the owner's death.

Post-death distribution rules for eligible designated beneficiaries

Another point of interest in the final regulations relates to the RMD requirements for eligible designated beneficiaries. The SECURE Act permits an eligible designated beneficiary to receive annual RMDs over his/her life expectancy. The final regulations confirm a plan may give an eligible designated beneficiary the option to elect to take distributions under the 10-year rule if the account owner dies before his/her RBD.

The SECURE Act defines an "eligible designated beneficiary" as a designated beneficiary who, as of the account owner's death, is the account owner's surviving spouse, the account owner's minor child, a disabled or chronically ill individual, or a beneficiary that is not more than 10 years younger than the account owner. The final regulations provide definitions and guidance to determine if a beneficiary qualifies as an eligible designated beneficiary.

No change in post-death distribution rules for non-designated beneficiaries

Where a beneficiary is a non-person (e.g., a trust) and does not qualify as a designated beneficiary, if the owner died before his RBD, the account must be fully distributed by the end of the fifth calendar

year following the owner's death. If the owner died after his RBD, the beneficiary must take annual RMDs over the owner's remaining life expectancy. These rules remain unchanged by the SECURE Act and the final regulations.

Increase in RMD age

Both the SECURE Act and SECURE 2.0 amended the ages an account owner must begin taking RMDs from his/her IRA or employer plan account. The final regulations replace references to age 72 with references to the owner's applicable age, which is determined based on the owner's date of birth as follows:

Date of birth	RMD age
Before July 1, 1949	70.5
On or after July 1, 1949, but before January 1, 1951	72
On or after January 1, 1951, but before January 1, 1959	73
On or after January 1, 1960	75

To correct an error in the SECURE 2.0 Act which provided an RMD age of both 73 and 75 for individuals born in 1959, the final RMD regulations reserve a paragraph that defines the applicable age for employees born in 1959, to be addressed in a notice of proposed rulemaking. Under the proposed regulations for SECURE 2.0, the applicable age for an account owner born in 1959 is 73.

Special rules where surviving spouse is the beneficiary

The regulations confirm that if a surviving spouse beneficiary postpones taking annual distributions until the year that the account owner attains RMD age and dies before the end of that calendar year, the beneficiary determination is made by substituting the surviving spouse for the account owner. The final regulations also retained a provision from the proposed regulations intended to close a loophole a surviving spouse could use to avoid taking RMDs. The regulations provide that where an account owner dies before his/her RBD, a surviving spouse who is the beneficiary of an account is precluded from electing to use the 10-year rule to defer RMDs and then doing a spousal rollover before the end of the 10-year period. In this scenario, the surviving spouse is not permitted to rollover any RMDs he/she would have been required to take from the account at his/her RBD.

Trust beneficiaries

The regulations retained that a trust is not considered a designated beneficiary unless it satisfies the “see-through trust” rules. To be a “see-through trust,” the trust must: (i) be valid under state law; (ii) be irrevocable; (iii) have identifiable beneficiaries; and (iv) satisfy certain documentation requirements by October 31 of the calendar year following the calendar year of the account owner’s death. The determination of which underlying beneficiaries of trusts are treated as designated beneficiaries is dependent upon whether the trust is a “conduit” or an “accumulation” trust.

A conduit trust is where all distributions from the retirement account are required to be distributed, upon receipt by the trustee, directly to or for the benefit of one or more specified trust beneficiaries. Only the beneficiaries designated to receive the distributions are treated as the account beneficiaries for purposes of determining RMDs, and all other beneficiaries are disregarded.

An accumulation trust is where distributions from the retirement account are allowed to accumulate within the trust. In determining whether an accumulation trust qualifies as a see-through trust, both the primary and residual beneficiaries are treated as retirement account beneficiaries, subject to certain exceptions.

An important new feature in the regulations is for see-through trusts that divide into separate sub-trusts for each beneficiary immediately upon the account owner’s death. The new regulations ensure the fact that there may be designated beneficiaries among the trust beneficiaries would not cause any eligible designated beneficiaries to lose their ability to take RMDs over their life expectancies. To receive this treatment, the trust agreement must specify how distributions from the retirement account are allocated to each individual sub-trust and there must be no discretion in how shares will be funded.

Contact us

Understanding the new regulations can be daunting and nuanced. If you have questions or would like to discuss next steps, please contact a member of the Husch Blackwell Private Wealth team or your Husch Blackwell attorney.