

July 2024

IRS Issues Final Regulations on Required Minimum Distributions and Proposed Regulations on SECURE 2.0 Required Minimum Distribution Provisions

On July 19, 2024, the Internal Revenue Service (“IRS”) released final and proposed regulations regarding the required minimum distribution (“RMD”) rules. The regulations primarily address changes made by SECURE and updates related to SECURE 2.0, and clarify issues raised in public comments and in private letter ruling requests. The IRS is requesting comments on the proposed regulations no later than September 17, 2024 (60 days after the proposed regulations’ publication in the *Federal Register*).

Applicable Plans: The RMD guidance applies to 401(a), 401(k), 403(b), and 457(b) plans and to traditional and Roth IRAs.

Effective Date: The final regulations apply for purposes of determining RMDs for calendar years beginning on or after January 1, 2025. For prior calendar years, the previously issued final regulations apply and presume a reasonable, good faith interpretation of amendments issued under SECURE and SECURE 2.0.

Key Takeaways from the Final RMD Regulations

The final regulations address certain ambiguities regarding interpretation of the RMD provisions in SECURE and SECURE 2.0, including:

- RMD beneficiary rules set forth in SECURE apply to 457(b) plans sponsored by nongovernmental entities;
- When a participant or IRA owner dies on or after their Required Beginning Date (“RBD”), an individual who is a designated beneficiary must satisfy annual RMD requirements under the “at least as rapidly” rule in addition to taking a full distribution of the deceased’s account by December 31 of the 10th year following the year of the deceased’s death;
- The exclusion of Roth amounts under a 401(k), 403(b), or governmental 457(b) plan to satisfy RMD during the participant’s lifetime includes designated Roth amounts, in-plan Roth conversions, and in-plan Roth rollovers. For purposes of post-death RMDs, accounts in retirement plans that are solely made up of such Roth amounts will be treated as if the participant died pre-RBD; and
- Aggregation of 403(b) contracts to satisfy the RMD rules continues to be allowed, although the IRS specified the subject may be revisited in future guidance.

RMD Applicable Age: The IRS also created a new term: “Applicable Age,” which allows for an overarching definition of the age at which an RMD is required that is sensitive to the updates that have been made under SECURE and SECURE 2.0. Applicable Age is based on a participant or IRA owner’s year of birth and is defined as follows:

- Employees born before July 1, 1949: 70½
- Employees born on or after July 1, 1949 but before January 1, 1951: 72
- Employees born in 1951 through 1958: 73
- Employees born in 1959: 73*
- Employees born after 1959: 75

*SECURE 2.0 contained a drafting error regarding the effective date for commencing the applicable age at 75. In the absence of legislation technically correcting this issue and in light of the 2023 letter from Congress to the Treasury clarifying the intent was for individuals turning 73 after 2032 to have an increased applicable age of 75. The IRS has issued proposed regulations for an applicable age for individuals born in 1959 of 73.

Background on SECURE Modifications to RMD Rules

SECURE created the term Eligible Designated Beneficiary (“EDB”) and distinguished between EDBs and other individuals who are “designated beneficiaries” and entities (e.g., estates and certain trusts). Generally, SECURE provides that RMDs may be made to EDBs over the EDB’s life expectancy from a defined contribution 401(a), 401(k), 403(b), or 457(b) plan, or from a traditional or Roth IRA following the death of that plan participant or IRA owner. Under SECURE, these provisions became effective:

- Upon the death of an IRA owner or participant in a non-governmental defined contribution 401(a), 401(k), 403(b), or 457(b) plan after December 31, 2019; and
- Upon the death of a participant in a governmental defined contribution 401(a), 401(k), 403(b), or 457(b) plan after December 31, 2021.

Background on SECURE 2.0 Modifications to RMD Rules

In addition to modifying the RMD Applicable Age, SECURE 2.0 provided the following changes:

- The designated Roth account under an applicable plan is not subject to RMDs during the participant’s lifetime for tax years after December 31, 2023.
- The surviving spouse may elect to have RMD from applicable plans calculated using the spouse’s life expectancy under the Uniform Lifetime Expectancy Table for purposes of RMDs under certain circumstances (attributable to calendar years after December 31, 2023).

Summary of the Final RMD Regulations

Individuals Who are Eligible Designated Beneficiaries

The final regulations note that an EDB is defined as:

- The surviving spouse of the participant. An individual is considered the surviving spouse of a participant as of the date of the participant’s death.
- A child of the participant who has not reached the age of majority as of the date of the participant’s death. The definition of child includes a stepchild, an adopted child, and an eligible foster child. For these purposes, the age of majority to be utilized in conjunction with the definition of if a beneficiary is an EDB will be age 21.
- A disabled individual. A disabled individual is an EDB if, as of the date of the participant’s death, the individual has a medically determinable physical or mental impairment that results in marked and severe functional limitations and that can be expected to result in death or to be of long-continued and indefinite duration. The final regulations include a safe harbor definition of disability, where an individual considered disabled by the Social Security Administration as of the date of the participant’s death will be deemed to meet the disability criteria of an EDB. The regulations create simplified requirements for an individual under the age of 18 to be considered disabled.

- *A chronically ill individual.* A chronically ill individual is an EDB if, as of the date of the participant's death, that individual is unable to perform (without substantial assistance from another individual) at least two activities of daily living for a period that is indefinite and reasonably expected to be lengthy in nature as of the date of a certification, which is to be provided by a licensed health care practitioner.
- *An individual who is not more than 10 years younger than the participant.* The determination of whether an individual is 10 years younger is based on actual dates of birth, not based on attained ages at the end of the calendar year.

An individual who is an EDB because of disability or chronic illness must provide the plan administrator with acceptable documentation no later than October 31 of the calendar year following the calendar year of the participant's death.

Individuals who are EDBs satisfy RMD by taking distributions over the following periods:

- *If the participant died prior to RBD:* The account is paid over the life expectancy of the EDB, provided that the first RMD is distributed by December 31 of the calendar year following the calendar year in which the participant died.
- *If the participant died on or after RBD:* RMD must satisfy the "at least as rapidly" methodology (using the life expectancy of the participant or EDB, based on whoever was younger in the year of the participant's death).

The regulations include special rules for certain EDBs:

- *If the spouse is the sole EDB and the participant dies before RBD:* The spouse may defer taking RMD until the later of December 31 of the calendar year following the calendar year of the participant's death or December 31 of the calendar year in which the participant would have reached the applicable age.

If a participant dies before RBD and the spousal beneficiary's first RMD over life expectancy commences in or after 2024, a spousal beneficiary is deemed to have irrevocably elected to have RMDs calculated using the Uniform Lifetime Table, if permitted under the plan.

- *If a minor child is an EDB and reaches age 21:* The child is considered to have reached the age of majority in the year that that child reaches age 21. Once the child is no longer a minor, the entire account must be distributed to the child by December 31 of the 10th calendar year after the calendar year of the child's majority, unless the child satisfies other EDB criteria.

Individuals Who are Beneficiaries but Not EDBs

The final regulations retain the concept of a **designated beneficiary**, defined as an individual entitled to receive a portion of the participant's interest in the account. Since only an individual can be a designated beneficiary, a participant who names a non-living entity as beneficiary is treated as having **no designated beneficiary** for RMD purposes. Examples of beneficiaries that are not designated beneficiaries include the participant's estate, charities, or trusts that do not qualify as see-through trusts under the final regulations.

Individuals who are designated beneficiaries but are not EDBs satisfy RMD by taking distributions over the following periods:

- *If the participant died prior to RBD:* The entire account must be distributed by December 31 of the calendar year containing the 10th anniversary of the participant's death.
- *If the participant died on or after RBD:*
 - RMD must satisfy the "at least as rapidly" methodology of the RMD during the participant's lifetime (using the life expectancy of the participant or designated beneficiary, based on whoever was younger in the year of the participant's death); *and*
 - The entire account must be distributed by December 31 of the 10th calendar year after the calendar year of the participant's death.

No Designated Beneficiary

Non-living entities that do not meet the see-through trust requirements are not designated beneficiaries satisfy RMD by taking distributions over the following periods:

- *If the participant died prior to RBD:* The entire account must be distributed by December 31 of the 5th calendar year after the calendar year of the participant's death.
- *If the participant died on or after RBD:* RMDs continue based on the life expectancy of the participant.

See-Through Trusts as Beneficiaries

The final regulations retain the concept of the see-through trust, which must meet the following requirements for such consideration:

- The trust is a valid trust under state law;
- The trust is irrevocable or will become irrevocable upon the death of the participant;
- The beneficiaries of the trust are identifiable from the trust instrument; and
- Appropriate documentation required under the RMD rules has been provided to the plan administrator.

The final regulations also provide that documentation, including a list of identifiable beneficiaries, be provided to the plan administrator.

Special Rules for Participant Deaths Before the SECURE Effective Date

If the participant died before the applicable SECURE effective date and:

- *There was only one designated beneficiary who was alive on the SECURE effective date:* Following the death of that designated beneficiary, the remaining account must be distributed by December 31 of the 10th calendar year following the calendar year of the death of that designated beneficiary.
- *There was more than one designated beneficiary who was alive on the SECURE effective date:* The remaining account must be distributed by December 31 of the 10th calendar year following the calendar year of the death of the oldest designated beneficiary unless separate accounting rules apply.

- *The spouse was the sole designated beneficiary, was alive on the SECURE effective date, and dies before the participant would have attained RBD:* The remaining account must be distributed to the spouse's designated beneficiary by December 31 of the 10th calendar year following the death of the spouse.

For these purposes, the distribution of the account within the 10-year period is determined in accordance with IRS Notice 2020-51, which provided guidance for the waiver of the 2020 RMD for certain beneficiaries in accordance with the Coronavirus Aid, Relief, and Economic Security ("CARES") Act.

Additional Automatic Waivers Available from IRS 25% Excise Tax

Under SECURE 2.0, the 50% excise tax on the amount that was not taken timely as an RMD was reduced to 25%. The excise tax is reduced to 10% for taxpayers who receive a corrective distribution and file a return reflecting the distribution by the earliest of:

- The date a notice of deficiency is mailed; or
- The date on which the excise tax is assessed; or
- The last day of the second taxable year that begins after the end of the taxable year in which the excise tax is imposed.

The final regulations provide for two new automatic waivers of that excise tax:

- *If the participant dies before RBD and that participant's EDB did not affirmatively elect to take RMD over life expectancy:* An EDB who has not satisfied the RMD requirements may elect the 10-year payout rule no later than December 31 of the 9th calendar year following the calendar year of the participant's death, provided that the entire account is distributed to the EDB by December 31 of the 10th calendar year following the year of the participant's death.
- *If the participant died on or after RBD and failed to satisfy the RMD in the calendar year of the participant's death:* The beneficiary must take the RMD attributable to the year of the participant's death no later than later of the beneficiary's federal individual income tax filing deadline (including extensions) for the tax year containing the calendar year of the participant's death or the end of the following calendar year.

Voya continues to monitor these and all regulatory developments impacting retirement plans.

Any tax discussion contained in this communication was not intended or written to be used and cannot be used by the recipient or any other person, for the purpose of avoiding any Internal Revenue Code penalties that may be imposed on such person. Any tax discussion contained in this communication was written to support the promotion or marketing of the transactions or matter discussed herein. Any taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

Neither Voya Financial® or its affiliated companies or representatives offer legal or tax advice. Please seek the advice of a tax attorney or tax advisor prior to making a tax-related insurance/investment decision.