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IRS Issues Proposed Regulations Affecting Inherited Retirement Accounts Under the SECURE Act

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The IRS has proposed regulations interpreting significant changes made by the SECURE (Setting Every Community Up for Retirement Enhancement) Act to how inherited IRAs and other retirement accounts can be treated by their beneficiaries, mostly relating to rules governing required minimum distributions (RMDs).

These “Proposed Regs” both update and fill in some of the details of rules that went into effect in on Jan. 1, 2020, with the passage of the SECURE Act. The [Proposed Regs](#), issued in late February 2022, apply to qualified plans, section 403(b) annuity contracts, custodial accounts, retirement income accounts, individual retirement accounts and annuities, and eligible deferred compensation plans.

Before the SECURE Act, the beneficiary of an inherited retirement account could stretch the period to take distributions based on their normal life expectancy (as determined under IRS mortality tables). But, as we noted in our previous [article on the SECURE Act](#), the new law eliminated the ability to take distributions based on the beneficiary's life expectancy by requiring distributions to designated beneficiary who is not an eligible designated beneficiary (EDB) to be completed within 10 years after the death of the retirement account owner (account owner). EDBs generally include surviving spouses, minor children of the account owner, disabled beneficiaries¹ and beneficiaries less than 10 years younger than the account owner.

Highlights of the Proposed Regs include:

Required Beginning Date for Distributions

The Proposed Regs generally provide that the required beginning date for distributions is April 1 of the calendar year following the later of (1) the calendar year in which the account owner attains age 72² or (2) the calendar year in which the account owner retires from employment with the employer maintaining the plan.³

The SECURE Act amended the definition of required beginning date to apply with respect to account owners who attain age 70½ on or after January 1, 2020, which could be interpreted to require the account owner to live until age 70½ for the SECURE Act to apply.

The Proposed Regs clarify that if the account owner would have attained age 70½ on or after Jan. 1, 2020, but for the account owner's death, and the account owner's surviving spouse is the sole beneficiary, then distributions may be delayed until the end of the calendar year in which the account owner would have attained age 72.

Required Distributions to Beneficiaries of Account Owners Who Die After Jan. 1, 2020

The Proposed Regs provide that, if the account owner of a retirement account dies after Jan. 1, 2020, and before the account owner is required to begin taking distributions, then unless the beneficiary is an EDB (or is not a designated beneficiary), the account owner's entire interest in the plan is required to be distributed by the end of the calendar year that includes the 10th anniversary of

the account owner's death (10 Year Rule). Distributions are not required to be taken during each of those 10 years, and distributions may be delayed until the end of the 10th year. If the beneficiary is an EDB (or is not a designated beneficiary), then the rules in effect before the SECURE Act apply, which were life expectancy for an EDB, if longer than 10 years, and 5 years for a beneficiary that is not a designated beneficiary, such as a charity or certain trusts and estates (5 Year Rule).

If the account owner began taking distributions prior to their death, the Proposed Regs provide that the designated beneficiary may determine the required minimum distributions based on the designated beneficiary's life expectancy (rather than the account owner's shorter life expectancy). However, the designated beneficiary (unless they are an EDB) must receive distribution of the account owner's entire account balance by the end of the 10th year following the account owner's death.

If the surviving spouse of an account owner is waiting to take distributions until the end of the calendar year in which the account owner would have attained age 72, and the surviving spouse dies before that date, the required minimum distribution rules are applied as if the surviving spouse were the original account owner. However, that rule does not apply if the surviving spouse remarries but dies before the delayed distribution date (and accordingly, the delayed distribution rule is not available for a subsequent spouse of the account owner's surviving spouse).

Statutory Effective Date of the Limitation on Beneficiary Life Expectancy Distributions

As mentioned above, the SECURE Act eliminated the ability to take distributions based on the beneficiary's life expectancy, unless the beneficiary is an EDB. The Proposed Regs provide that generally the SECURE Act applies if the account owner dies on or after Jan. 1, 2020.

However, if the account owner dies before Jan. 1, 2020, the Proposed Regs treat such account owner's designated beneficiary as an EDB and following such designated beneficiary's death, the SECURE Act applies as follows:

- If there is only one designated beneficiary and that sole designated beneficiary died on or after Jan. 1, 2020, the SECURE Act will apply to the successor beneficiary of the deceased designated beneficiary (i.e., the 10 Year Rule will apply to the successor beneficiary because under the Proposed Regs, the 10 Year Rule applies to a beneficiary of an EDB even if that beneficiary would otherwise qualify as an EDB).
- If there are multiple designated beneficiaries, then whether the SECURE Act will apply depends on the date of death of the oldest of the multiple beneficiaries.
- If the account owner died before Jan. 1, 2020, and the surviving spouse of the account owner is waiting to take distributions until the account owner would have been required to take distributions, then the surviving spouse is treated as the account owner and the rules in this Section 3 regarding the effective date of the SECURE Act apply to the surviving spouse as if the surviving spouse was the account owner.

Clarifications Pertaining to Certain Categories of Eligible Designated Beneficiaries

The Proposed Regs clarify the following terms:

- **Minor Child:** As noted above, an EDB includes a minor child of the account owner. The current regulations do not specify a particular age as a generally applicable age of majority, but they do provide that a child has not reached the age of majority if the child is under age 26 and has not completed a specified course of education. For ease of administration, the Proposed Regs provide that a child reaches the age of majority on that child's 21st birthday.
- **Determination of Disability:** Currently, disability is determined by whether, as of the date of the account owner's death, an individual is unable to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration. For an individual under age 18, this can be difficult to determine.

Thus, the Proposed Regs provide that if on the date of the account owner's death, a beneficiary who is younger than age 18 has a medically determinable physical or mental impairment that results in marked and severe functional limitations that can be expected to result in death or to be of long-continued and indefinite duration, such beneficiary is considered to be disabled. In

addition, the Proposed Regs provide a safe harbor that if, as of the date of the account owner's death, the Commissioner of Social Security has determined that an individual is disabled for Social Security Disability purposes, then that individual will be considered disabled for purposes of the SECURE Act.

- **Documentation Requirements for Disabled Status:** The Proposed Regs lay out the documentation requirements for a disabled designated beneficiary (e.g., a certification by a licensed health care practitioner) and provide that such documentation must be provided to the plan administrator no later than October 31 of the calendar year following the calendar year of the account owner's death.

Trust as Beneficiary: The Proposed Regs retain the current requirements to be considered a "see-through trust." There are two different types of see-through trusts: (1) conduit trusts and (2) accumulation trusts. The Proposed Regs define a conduit trust as a trust the terms of which provide that all plan distributions will, upon receipt by the trustee, be paid directly to, or for the benefit of, specified beneficiaries. An accumulation trust is defined as a see-through trust that is not a conduit trust. The Proposed Regs also provide additional guidance for determining which beneficiaries of a see-through trust are treated as beneficiaries of the account owner.

- **Conduit Trust:** A beneficiary of a conduit trust is considered a beneficiary of the account owner if the beneficiary (1) could receive distributions the trust receives from the account owner's retirement account that are neither contingent upon nor delayed until the death of another trust beneficiary (a primary beneficiary) and (2) does not predecease (and is not treated as having predeceased⁴) the account owner.
- **Accumulation Trust:** A beneficiary of an accumulation trust is considered a beneficiary of the account owner if the beneficiary is a primary beneficiary or has a residual interest in distributions that the trust receives from the account owner's retirement account that were not distributed to a primary beneficiary (secondary beneficiary).
- **Disregarded Beneficiaries Due to Minimal or Remote Interest:** Under the Proposed Regs, certain beneficiaries may be disregarded because their interests are minimal or remote. A beneficiary is disregarded if that beneficiary's interest is contingent on the death of a secondary beneficiary who did not predecease (and is not treated as having predeceased) the account owner. For example, a charity that will only receive distributions that are contingent upon the death of a secondary beneficiary who did not predecease (and is not treated as having predeceased) the account owner is disregarded as a beneficiary. In addition, if the see-through trust requires a full distribution of amounts in the trust to the primary beneficiary by the later of (1) the end of the calendar year following the calendar year of the account owner's death, and (2) the end of the 10th calendar year following the calendar year in which the primary beneficiary attains the age of majority, then the secondary beneficiaries are disregarded because their interests are only minimal or remote, as the secondary beneficiaries could only receive distributions that the trust receives from the account owner's retirement account if the primary beneficiary dies before full distribution to that primary beneficiary.

Identifiability of Trust Beneficiaries: The Proposed Regs modify the definition of "identifiability" of trust beneficiaries. A trust will not be considered a see-through trust (and thus will be subject to the 5 Year Rule) unless its beneficiaries entitled to distributions from the account owner's retirement account are identifiable from the trust instrument.

- **Class of Individuals:** Beneficiaries do not need to be specified by name, as long as it is possible to identify each person who is a beneficiary at any moment in time. For example, if the account owner designates a class of individuals, such as the account owner's grandchildren, those individuals are identifiable, even if there is an addition to the class of individuals, such as the birth of new grandchild.
- **Power of Appointment:** The Proposed Regs provide that a see-through trust will not fail to meet the identifiability requirement merely because an individual has a power of appointment that can be exercised in favor of one or more persons that are not identifiable. The Proposed Regs provide that if, by September 30 of the calendar year following the calendar year of the account owner's death, the power is exercised in favor of one or more identifiable individuals or is restricted so that any exercise of the appointment made at a later time may only be made in favor of one or more identifiable individuals, then those identifiable individuals are taken into account as beneficiaries of the account owner. If the holder of the power of appointment does not exercise the power by September 30, then each taker in default is taken into account as a beneficiary of the account owner.

- **Modification of Trust:** The Proposed Regs provide that a see-through trust will not fail to meet the identifiability requirements merely because the trust is subject to state law that allows the trust terms to be modified after the death of the account owner, such as by a court reformation, through a decanting, or otherwise, that would permit a change in the beneficiaries of the trust.

Multiple Designated Beneficiaries: The general rules under the Proposed Regs for multiple designated beneficiaries is that if at least one of them is not an EDB, then the account owner is not treated as having an EDB, and the account owner's interest in the plan must be distributed under the 10 Year Rule. If there are multiple designated beneficiaries and each designated beneficiary is an EDB, then distributions may be made using the life expectancy of the oldest EDB.

There are, however, two exceptions to these general rules:

1. The first exception is for any trust in which at least one of the account owner's designated beneficiaries is a child of the account owner who, as of the date of the account owner's death, has not yet reached the age of majority. In such a case, the account owner is still treated as having an EDB, and a full distribution of the account owner's remaining interest is not required until the 10th year following the calendar year in which the oldest child of the account owner who is a designated beneficiary and who was a minor as of the employee's death attains the age of majority (or the 10th calendar year following the calendar year of that child's death, if earlier). If there are multiple children who have not attained the age of majority, then distributions are determined using the life expectancy of the oldest child who is an EDB.
2. The second exception to the general rule applies to what the Proposed Regs define as a "Type II Applicable Multi-Beneficiary Trust." This is a trust the terms of which provide that no individual other than a disabled EDB has any right to the account owner's interest in the plan until the death of all such EDBs. In such case, the distributions are determined using the life expectancy of the oldest disabled individual.

The Proposed Regs generally apply for purposes of determining RMDs for calendar years beginning on or after Jan. 1, 2022, or to distributions on or after that date. For distributions for the 2021 calendar year, taxpayers must apply the existing regulations, but taking into account a reasonable, good-faith interpretation of the SECURE Act amendments; compliance with the proposed regulations will satisfy that requirement.

If you have questions about the proposed regulations, the SECURE Act, or any of the other issues discussed in this article, please contact a member of Gould & Ratner's [Estate Planning and Wealth Transfer Practice](#).

¹For purposes of this article, disabled beneficiaries include chronically ill beneficiaries. A chronically ill beneficiary is a beneficiary who has been certified by a licensed health care practitioner as (1) being unable to perform (without substantial assistance from another individual) at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity, (2) having a similar level of disability as determined under IRS regulations prescribed in consultation with the Department of Health and Human Services, or (3) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

²The SECURE Act raised the age at which individuals must begin taking RMDs from their retirement accounts from 70½ to 72 for individuals born on or after July 1, 1949.

³For a 5-percent owner or an IRA owner, the required beginning date is April 1 of the calendar year following the calendar year in which the account owner attains age 72, even if the account owner has not retired.

⁴A beneficiary is treated as having predeceased the account owner if the beneficiary is treated as predeceasing the account owner pursuant to a simultaneous death provision or a qualified disclaimer.