

PROPOSED RMD REGULATIONS: KEY POINTS FOR PLANNING

Does your client have qualified assets? The proposed regulations for post-death distributions from qualified accounts have been published. *While proposed regulations are not final, there are areas where planning now may improve options later.*

With legislation such as the Setting Every Community Up for Retirement Enhancement (SECURE) Act, regulations typically clarify and define how certain parts of the statute will work. The proposed regulations for post-death distributions from qualified accounts, including Individual Retirement Accounts (IRAs), offer clarification—and a surprise. With comments on the proposed required minimum distribution (RMD) regulations due May 25, 2022, and the public hearing scheduled for June 15, 2022, it is reasonable to expect the final regulations to be published this year. Generally, changes in planning are best made when the regulations are final. But as the proposed RMD regulations are effective January 1, 2022, they may be current planning that will allow additional flexibility later.

What Are the Key Changes That Might Affect Clients?

There is much to review and consider in the proposed RMD regulations. The good news: The 10-year rule continues to apply to most designated beneficiaries (DBs). But here are several key points that might have an immediate effect.

- **The timing of the owner's death matters.**

Specifically, it matters if the owner died before or after his/her required beginning date (RBD). The 10-year rule seemed straightforward. If a DB is the beneficiary of the account, such as an IRA, the 10-year rule replaced the 5-year rule. No distributions are required in years 1 to 9. The entire account must be distributed by December 31 of the calendar year that includes the 10th anniversary of the owner's death. The proposed RMD regulations change this assumption.

- **Death before the RBD.** Nothing changes. The 10-year rule applies as above.
- **Death ON or AFTER the RBD.** Surprise! Both the 10-year rule and the “at least as rapidly” (ALAR) rule apply for account owners who die on or after their RBDs.
 - **ALAR applies.** In years 1 to 9, the DB must take an RMD based on their life expectancy using IRS Table I (Single Life). This satisfies ALAR, which requires that once required distributions begin, they must continue at least as rapidly.

- **10-year rule applies too.** The entire account still must be distributed by December 31 of the calendar year that includes the 10th anniversary of the owner’s death.

There is an unanswered question: What about RMDs for 2021? The Coronavirus Aid, Relief, and Economic Security (CARES) Act waived RMDs in 2020. This waiver was not extended for 2021. The proposed RMD regulations do not note whether DBs and some eligible designated beneficiaries (EDBs) will be required to “make up” 2021 RMDs or take some other action. Hopefully, this will be clarified in the final regulations and will include the appropriate process.

- **Age 21 is the age of majority.** The SECURE Act did not provide a clear definition for the age of majority, which is the age used for an EDB who is a minor child of the account owner. The proposed RMD regulations make age 21 the age of majority, eliminating any confusion that could result from different state rules. This means that a minor child must distribute the entire account by December 31 of the year containing the 10th anniversary of the child’s attaining age 21 or death, whichever is first.
- **Spouses can use the 10-year rule.** Now it is clear that a spouse could use the 10-year rule (although it may or may not be a favorable choice). Note that the example of a married couple where the younger spouse dies before his/her RBD and the older spouse is past or near his/her RBD. The older spouse might try to avoid distributions by electing the 10-year rule, then rolling the assets to his/her own IRA in year 9 (before it is considered an RMD). However, the proposed regulations require that the rollover be reduced by the amount of any deemed RMDs; that is, the amount that would have been distributed based on the surviving spouse’s age.

- **Trusts get some good news.** For the first time, certain trusts are formally recognized: see-through trust, conduit trust, and accumulation trust. What qualifies as a see-through trust is defined, which will make identifying when a trust qualifies easier. A trust will qualify as a see-through trust if:
 - It’s valid under state law.
 - It’s irrevocable at death.
 - The copy is provided to the plan administrator.
 - The beneficiaries are identifiable.

The last requirement makes planning easier because the mere potential successor (MPS) rule is dead, and there is now better definition as to how beneficiaries are determined. Concerns regarding powers of appointment, decanting, and reformations are largely resolved.

What, if Any, Steps Should Clients Take Today?

While the regulations are only in the proposed stage, it might benefit clients to consider some current actions.

- **Review beneficiary designations.** This is an excellent opportunity to help clients review existing beneficiary designations and determine if and how the proposed RMD regulations might affect planning choices.
- **Evaluate inherited accounts.** It is also a good time to check with beneficiaries of inherited qualified accounts and IRAs to determine if the proposed regulations will require any changes in their distributions.

One tip: For those DBs or EDBs with accounts affected by ALAR, remember that the regulations are only proposed. Unless funds are needed, it may be best to wait until later in the year to take any distributions as the rules could change!

The proposed RMD regulations are likely to keep most provisions. Clients may want to plan now to allow for more flexibility. Reaching out to clients today will help them have more options in the future.

Additional Resources and Links

[Required Minimum Distributions \(Federal Register\)](#)

[The SECURE Act: Several Key Retirement Plan Provisions](#)

[Further Consolidated Appropriates Act of 2020 \(includes SECURE Act\)](#)

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VLC2636-0722W

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