Steve Leimberg's Retirement Benefits Email Newsletter - Archive Message #

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From: **Steve Leimberg's Employee Benefits and Retirement Planning Newsletter**
Subject: **The New RMD Landscape for a Surviving Spouse under SECURE 2.0 and Final and Proposed Regulations**

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Executive Summary: SECURE 2.0 made some slight (and favorable) changes in the RMD rules for a surviving spouse named as beneficiary. Treasury final and proposed regulations provide clear implementation of the changes. What's new: The spouse as beneficiary will use the Uniform Lifetime Table to compute her RMDs as beneficiary rather than the Single Life Table; and there is a wild card practitioners must beware of: the spouse may be subject to the 10-year rule in some cases! As always, if the participant died before reaching his Applicable Age, the surviving spouse defers the start of RMDs until the deceased spouse would have reached that age; the spouse, or a conduit trust for her sole life benefit, must be sole beneficiary (of the whole account or of a separate account created per regulation) to get the special spousal deal; and a rollover to the spouse's own IRA will provide better tax results in some cases. The article assumes the reader is generally familiar with basic post-SECURE minimum distribution rules and concepts.

Commentary:.

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Abbreviations, symbols, terminology

"§" indicates a section of the Internal Revenue Code, unless preceded by "Reg." or "Prop. Reg."

Applicable Age Age at which the participant becomes subject to lifetime RMD rules; currently, age 73. § 401(a)(9)(C)(v); Reg. § 1.401(a)(9)-2(b); Prop Reg. § 1.401(a)(9)-2(b)(2)(v).

DRAC Designated Roth account. § 402A.

EDB Eligible designated beneficiary. § 401(a)(9)(E)(ii).

Participant The individual for whom the retirement account is originally established (the employee in the case of a qualified plan; the IRA owner in case of an IRA).

Qualified plan: An employee's trust described in § 401(a); see Reg. § 1.402(c)-2(a)(1)(iii)(B)(2). For example, a "401(k) plan" is a qualified plan.

RBD Required beginning date. § 401(a)(9)(C).

RMD Required minimum distribution under § 401(a)(9)**.**

RMD Options and Obligations for the Participant's Surviving Spouse

Introduction

The participant's surviving spouse is an Eligible Designated Beneficiary (EDB) and as such entitled to a life expectancy payout. For convenience, the deceased participant is referred to as "he" and the surviving spouse as "she."

Note: If the surviving spouse remarries while still holding the inherited account as beneficiary, then dies, the surviving spouse's surviving spouse is NOT an EDB. Reg. § 1.401(a)(9)-3(e)(2); Prop. Reg. § 1.401(a)(9)-4(e)(8). To turn him into an EDB she would have to roll the account inherited from the first spouse into her own IRA (see IV(B)).

There are two sets of special rules for the surviving spouse. One is the minimum distribution (RMD) rules that apply only to the spouse (explained in Parts II and III). The other special deal for the surviving spouse is NOT a minimum distribution rule at all—that is the spouse's ability to roll over the inherited account to her own retirement account or elect to treat it as her own—see Part IV.

I. Special RMD Rules for Spouse: Background; effective date

There are and always have been special rules for determining how to compute life expectancy payments to the surviving spouse-beneficiary and when such payments must commence. The special rules for determining when payouts to the surviving spouse must commence, how such payments are computed, and what happens if she dies before she is required to start taking such distributions were not significantly changed by SECURE (2019) or by the IRS's 2022 Proposed Regulations (except that the age at which the deceased spouse would have had to commence distributions was changed from age 70½ to the Applicable Age and the 10-year rule entered the picture).

However, SECURE 2.0 (2019) made **substantial changes** in the surviving-spouse RMD rules. The new version is now primarily in the form of Final and Proposed Regulations issued July 19, 2024. The following explanation is based on the Proposed Treasury regulations issued July 2024, as well as on the Code, the final regulations issued July 2024, and section 327 of The SECURE 2.0 Act of 2022 (P.L. 117-328, Div. T). Comments on the proposed regulations can be submitted until mid September 2024.

Section 327 of SECURE 2.0 "shall apply to calendar years beginning after December 31, 2023." The Proposed Regulations are still just proposed regulations so may be modified before they become final. They propose to be effective as to surviving spouse-beneficiaries whose first RMD year would be 2024 or later (meaning participant might have died in 2023 or even earlier). This is consistent with the wording of SECURE 2.0 s. 327 which appears to want the new provision effective pretty much immediately for the benefit of surviving spouses. Prop. Reg. § 1.401(a)(9)-5(g)(3)(ii)(E); Preface, p. 10.

Is this fair to pre-2024 decedents?

The proposed effective date of the proposed regulation would mean that a decedent who died in 2023or even earlier leaving his account to his surviving spouse would find as he looks down from Heaven that the rules applicable to his surviving spouse-beneficiary were not the same as those in effect when he actually signed his estate plan and died. Some pre-2024 decedents may object to this effective date which retroactively changes their estate plan. However, there is nothing in the Code or the Constitution that guarantees decedents the RMD rules will not change after they die.

The treatment of the surviving spouse is different depending on whether the deceased spouse died before or on/after his required beginning date (RBD) under the applicable retirement plan, so the advisor must know which applies before attempting to advise the surviving spouse.

II. Participant died before his required beginning date (RBD)

Although the general rule is that a beneficiary who is required to take life-expectancy-based RMDs must commence such RMDs the year after the year of the participant's death (Reg. § 1.401(a)(9)-3(c)(4)), there are and always have been special rules for the surviving spouse. SECURE 2.0 made substantial changes in these special rules. The new regime is more favorable to many surviving spouses than was the prior regime.

The RMD treatment described here will apply whenever the participant died before his RBD and the surviving spouse is the "sole beneficiary" of the account for RMD purposes.

- The RBD for a traditional retirement account is April 1 of the year after the year the participant reaches his Applicable Age (or in the case of some qualified plans, the year after he retires if later). For a Roth IRA, or for a designated Roth account (DRAC) which constitutes the employee's entire interest within a qualified plan, death is always before the RBD. If the DRAC is just part of the employee's total balance in the applicable employer plan, the RBD is the same for the DRAC as for the rest of the employee's plan accounts, (for purposes of determining whether the employee died before or after his RBD) even though no lifetime RMDs are required from the DRAC. Reg. § 1.401(a)(9)-3(a)(2).

- "Sole beneficiary" means either (1) she is named as sole beneficiary outright, or (2) the named beneficiary is a "conduit trust" of which she is the sole life beneficiary. See Reg. § 1.401(a)(9)-4(f)(6)(i) [Example 1]. In determining whether the spouse is "sole beneficiary," see the separate accounts rule of Reg. § 1.408-8(a).

Unlike some other special spouse deals, it is NOT required (for the RMD treatment described here) that the surviving spouse have unlimited power to withdraw from the account. The special spousal RMD deal will apply even if a trust is the named beneficiary—provided it is a conduit trust for the spouse's sole life benefit. A conduit trust is one which requires that all distributions taken from the inherited retirement account by the trustee be immediately distributed out of the trust to or for the benefit of the conduit beneficiary (spouse in this case). Reg. § 1.401(a)(9)-4(f)(1)(ii)(A).

NOTE: Even though the spouse as an EDB is entitled to a life expectancy payout under the Code, under the regulations any EDB including the spouse MAY be subject to the 10-year rule rather than the life expectancy payout if the participant dies before his RBD. See II(E). Sections A–D of this Part II assume the 10-year rule does NOT apply.

A. Spouse special deal: Delayed start date, different table

Generally, if the participant died before his RBD, an EDB using the life expectancy payout must take RMDs (based on the EDB's single life expectancy) commencing the year after the year of the participant's death. § 401(a)(9)(B)(iii)(III); Reg. § 1.401(a)(9)-3(a)(4). The spouse gets a special deal—she is not required to commence distributions until the year in which the participant would have reached his Applicable Age; and when payments commence, they are based on the Uniform Lifetime Table (with her as "owner") not the Single Life Table (see "C").

The Code (§ 401(a)(9)(B)(iv)) provides that this spouse-only special treatment is elective; see Reg. § 1.401(a)(9)-3(d). Under the Proposed Regulations, however, the surviving spouse "is treated as having made that election." Prop. Reg. § 1.401(a)(9)-5(g)(3)(ii)(A). In other words treatment "as the employee" for RMD purposes is automatic.

Can the spouse elect OUT of this treatment? It's not clear that there would ever be any reason to elect out, but there is nothing said about this point, except as provided regarding the 10-year rule (see II(E)(iii)). Should practitioners be upset that this "election" would be taken away from the surviving spouse by this Proposed Regulation? Presumably not: She is deemed to have elected a later starting date with smaller RMDs. The alternative is to default her into an earlier starting date with larger RMDs. Let's accept this regulation and move on!

Tidbit: This "later start date for spouse" will produce an actual later start date if (and only if) the participant died two or more years before his Applicable Age-year:

Example: Ron was born in the 1951–1958 range, so his Applicable Age is 73. He will turn age 73 in 2026, so his RBD will be April 1, 2027. He dies in 2025, leaving his IRA in equal shares to his wife Linda and his sister Lucy, both age 72. Sister Lucy as an EDB (not more than 10 years younger) will have to start taking RMDs in 2026 (the year after Ron's death). Spouse Linda can delay her RMDs until the year Ron would have reached his Applicable Age—but that is also 2026. So there is no difference. If he dies in 2026, or in 2027 (before April 1), the result is the same—both Linda and Lucy will have to start RMDs the year after Ron's death. See PROBLEM NOTE below.

If Ron had died in 2024, then sister Lucy would have to commence RMDs in 2025 (year after Ron's death)—but spouse Linda could delay another year until 2026 (year Ron would have reached Applicable Age).

B. Compare the new RMD deal with a spousal rollover

Is this new deal a great deal for the surviving spouse? It's better than the old deal (RMDs over spouse's single life expectancy). But would the Surviving spouse be even BETTER off if she

rolled over the inherited account to her own IRA? That may depend on how old the surviving spouse is relative to the decedent and also what kind of account it is she inherited:

- **Great deal:** Spouse Linda is much older than Ron and he died many years before his RBD...that scenario would mean she can postpone the start of RMDs, for many years until what would have been Ron's RBD, giving her multi years with no RMDs from this inherited account. If she then rolls over to her own IRA will she have to take catchup distributions based on *her* age and "missed RMDs"? Apparently not. Compare treatment of electing 10-year rule then rolling over in year 9 (catchup distributions required) in Example at Prop. Reg. § 1.402(c)-2(j)(4)(vii) [see section IV(E) in this Article].

- **Not so great deal:** Spouse Linda is much younger than Ron...In that case, Ron would have reached his Applicable Age much earlier than Linda. If she leaves the account as an inherited account she will have to take RMDs much sooner (when Ron would have reached his Applicable Age) than if she rolled it over to her own IRA (where her own later Applicable Age and RBD would apply).

- **Neutral deal:** Once Linda hits the year Ron would have reached his Applicable Age, she has to take RMDs from the inherited account at the same rate as from her own IRA (Uniform Lifetime Table), so at that point there is no difference between the RMDs from the inherited account vs. from her own IRA. That in turn means that if she is close in age to (or older than) Ron there is no difference in the amount and timing of RMDs from the inherited account vs. her own account. And that result, it appears, was the result Congress was aiming for—to give the surviving spouse/sole beneficiary as good a deal from the inherited retirement account as she would get by rolling that account over to her own IRA. For that purpose, it "works"—provided the surviving spouse is not substantially younger than the deceased spouse.

- **Definitely a bad deal:** As applied to an inherited *Roth IRA*, this is definitely a bad deal for the surviving spouse, because if (instead of taking RMDs as beneficiary) she rolled the account over to own Roth IRA she would not have to take any RMDs, either at Ron's Applicable Age OR her own Applicable Age, since there are no lifetime RMDs for Roth IRAs. The same is true, now, for Designated Roth Accounts. This is not to say SECURE 2.0 made things worse for the surviving spouse—it was always better tax-wise for the surviving spouse to become an "owner" of the deceased spouse's Roth IRA (via rollover) than for her to keep holding the account as a mere beneficiary.

THEY COULDA BUT THEY DIDN'T...

In imposing this new spouse-gets-ULT regime, § 401(a)(9)(B)(iv) as amended by SECURE 2.0 provides that "the date on which the distributions are required to begin under clause (iii)(III) shall **not be earlier than** the date on which the employee would have attained the Applicable Age..." So the Treasury COULD have provided that the spouse's starting date for RMDs from the inherited account would be the *later of* the employee's attaining his Applicable Age or the surviving spouse's attaining *her* Applicable Age. But Treasury did not go that way—the Proposed Regulation specifies the *employee's* Applicable Age-year will be the outer limit RMD commencement date for the surviving spouse. This means that (despite Congressional goal of making spousal rollover "unnecessary") the spousal rollover will still be a "better deal" for the surviving spouse who is substantially younger than the deceased spouse.

C. How RMDs to spouse are computed: ULT + recalculation

Life expectancy annual RMDs are computed by dividing the prior year end account balance (revalued annually) by a denominator (divisor). For nonspouse EDBs, the divisor for the first RMD year is the beneficiary's life expectancy as of his birthday in the year after the year of the participant's death. The denominator is reduced by one annually for subsequent years. Reg. § 1.401(a)(9)-5(d)(2). The effect is that the life expectancy will run out eventually, if the beneficiary lives longer than the table predicted.

The surviving spouse as EDB gets a totally different deal. First, as always, the surviving spouse's life expectancy is recalculated annually. Reg. § 1.401(a)(9)-5(d)(3)(iv). Thus, she will never run out of life expectancy unless she lives to be 120 years old (when the Single Life Table life expectancy drops to one year or less).

But even more significantly, now, thanks to SECURE 2.0, the life expectancy table she uses is not the Single Life Table, it's the Uniform Lifetime Table, effectively giving her the "life expectancy" of someone 10 years younger than herself. The distribution each year will be based on the joint life expectancy (recalculated annually) of the surviving spouse and a hypothetical individual who is 10 years younger than the surviving spouse. Linda's single life expectancy at age 73 would be 16.4 years, but the factor for age 73 under the Uniform Lifetime Table is 26.5. For a $1 million inherited IRA, that would be the difference between an RMD of $60,965 (single Life Table) vs. $37,736 (Uniform Lifetime Table).

Wait, what if the Surviving spouse is only 60 years old? The Uniform Table starts at age 70! Not to worry...the IRS has published (for a different purpose) a Uniform Lifetime Table starting at age 10, in Notice 2022-6, 2022-5 IRB 460; it is republished in the Proposed Regulations § 1.401(a)(9)-9(c).

D. It's still an inherited retirement account

Under the new RMD regime described above, it will "look like" the spouse-beneficiary is now the "owner" of the account (i.e., she is the "participant"), since she will be using the Uniform Table to compute her RMDs. But that is not the case—she is still just a beneficiary, holding an

inherited retirement account. That means at least these three things (see Preface to Proposed Regulations, Explanation of Provisions, (F), p. 11):

- Distributions to her are NOT subject to the § 72(t) 10% tax on pre-age 59½ distributions even if she is under age 59½ (distributions from an inherited plan are not subject to that tax). This provides motivation for *not* voluntarily ending beneficiary status until she is past age 59½.

- For an inherited Roth IRA, there is no advantage to holding as beneficiary past the year before the year in which the deceased spouse would have reached his Applicable Age, because RMDs would be required starting that year from the inherited Roth IRA, whereas if the spouse rolls over the inherited Roth IRA to her own Roth IRA there will be no RMDs during her lifetime.

- For purposes of computing the account balance, if this is a qualified retirement plan that contains a designated Roth account (DRAC), the DRAC balance will be included in the "account balance" used in computing her RMDs. Reg. § 1.401(a)(9)-5(b)(3). This provides motivation for *ending* beneficiary status no later than the year before the year the decedent would have reached his Applicable Age, if there is a substantial DRAC balance (since if she actually holds a Roth account as "owner" there are no RMDs during her lifetime; Reg. § 1.401(a)(9)-5(b)(3)). She can roll the inherited DRAC to her own Roth IRA. She can roll it into another DRAC as an inherited account, but only as an "employee" (owner) account not as a beneficiary account. See Reg. § 1.402(c)-2(j)(1)(ii).

There are two ways the surviving spouse's "I'm just a beneficiary" status can end. One is her death, upon which occurrence she is automatically treated as "the participant." See (F). The other way is to roll over the inherited account to her own IRA or any other plan account that is her own (i.e., as to which she is the participant) or, (in the case of an inherited IRA) elects to be treated as owner of the account; see IV(B). As long as she lives and holds this inherited account she is "just a beneficiary." But we are not finished with the participant-died-before-RBD scenario:

E. 10-year rule might apply in cases of death before RBD!

An Eligible Designated Beneficiary (EDB) is entitled to a life expectancy payout when the participant dies. The 10-year rule applies to designated beneficiaries who are not EDBs (i.e., "plain old designated beneficiaries" or PODBs). Right? Yes, except....

When the participant dies before his RBD, the regulations provide three pathways by which the 10-year rule may apply to an EDB after all: The IRA plan document may impose the 10-year rule on all or some categories of EDBs; or may permit the participant (the employee or IRA owner) to elect to impose the 10-year rule on his/her EDBs; or may permit the EDBs themselves to elect it. Reg. § 1.401(a)(9)-3(c)(5)(ii), (iii).

Practitioners could perhaps assume that few or no plan administrators have yet incorporated these possibilities into their documents. One might guess that the administrators of a big employer

plan might impose the 10-year rule on all EDBs, to avoid the complications of the life expectancy payout. Presumably IRA providers would want to offer all options to their IRA-owning customers. Whatever route the plan goes, the participant's advisor must find out exactly which route the client's plan takes and arrange the client's beneficiary designation accordingly.

(i) Effect on a conduit trust for spouse

A participant who plans to leave his account to a conduit trust for the benefit of his surviving spouse (or any other EDB) presumably does not want to have the 10-year rule apply to the conduit trust. The whole point of the conduit trust is to keep the IRA in the trust for the EDB's lifetime, with the EDB limited to RMDs plus whatever additional amounts the trust instrument directs the trustee to withdraw from the IRA and pay to the beneficiary. Thus for openers the participant will not want the benefits to be in a plan that *requires* the 10-year rule.

What if the plan says the beneficiary can *elect* the 10-year rule—who makes the election if the named beneficiary is a trust for EDBs—the trustee? Or the EDB(s)?

If the retirement account is payable to a trust, and all countable beneficiaries of the trust are EDBs, then the election in or out of the 10-year rule (if the election is available under the applicable retirement plan) would be in the hands of the trustee, according to Reg. § 1.401(a)(9)-4(f)(6), Examples 2, 3, 5. The cited examples deal with a trust that has multiple EDB-beneficiaries, and all countable beneficiaries are EDBs, and the trust is not a conduit trust. The one example dealing with a conduit trust for one single EDB (Example 1) does not mention who makes the election; it just says that "D [the conduit beneficiary] may use the life expectancy rule." This unfortunately leaves a slight ambiguity about who makes the election when there is a conduit trust for a single beneficiary (and the plan offers an election).

Reg. § 1.401(a)(9)-3(c)(5)(iii) permits the retirement plan to allow the employee to forbid the election of the 10-year rule; if the applicable plan permits this, the participant should take advantage of that to prohibit use of the 10-year rule for the account payable to the conduit trust if it is unclear whether the election is made by the beneficiary or the trustee.

(ii) Beware of unexpected 10-year rule!

If a participant is planning to leave his retirement account to a conduit trust for his spouse or any other EDB, the participant will need to be sure that either the applicable retirement plan prohibits the 10-year rule option for EDBs, or, if the plan allows the participant to elect out of it, that the participant DOES elect out of it, or if the plan imposes the 10-year rule for all EDBs, that the participant moves his account to a different company! This is not a concern once the participant is past his RBD, since the election applies only in cases of death before the RBD...but remember the participant may be over the "Applicable Age" but still "before" his RBD in some retirement plans, for example a Roth IRA and/or a company retirement plan where he has not yet retired and is not a 5% owner.

(iii) How (and if) spouse can get out of the 10-year rule

If the 10-year rule is imposed on the surviving spouse either by the plan document or (presumably unlikely) by the deceased spouse's direction, can the surviving spouse do anything to resurrect her life expectancy payout? Or, if she herself elected the 10-year rule, can she change her mind and switch back to the life expectancy payout?

Generally, if she is the sole outright beneficiary of the account she has the right to roll over or transfer that account to another plan more to her liking, i.e., one that permits the life expectancy payout. She can always roll to an IRA; she cannot roll over to a qualified employer plan, however, unless she will hold the recipient account as employee rather than beneficiary (in other words that type of rollover cannot be made into another inherited account). In the case of an inherited IRA, she can elect to treat it as her own. There are several particular issues involved in using the rollover to *her own IRA*, or election to treat an inherited IRA *as her own IRA*, to escape from the 10-year rule:

- A required minimum distribution (RMD) is not an eligible rollover distribution. Reg. § 1.402(c)-2(c)(2)(ii). Accordingly, once year 10 arrives of the "10-year rule" payout period arrives, it is too late—nothing can be rolled over because for a plan subject to the 10-year rule, the entire account is an RMD in that year. Reg. § 1.402(c)-2(j)(3)(i)(D).

- In year 9 or before, she can roll over or transfer the inherited retirement account to an IRA or other eligible retirement plan account (in her own name as owner) everything that is left in the account, minus (if she has reached her own Applicable Age at the time of such rollover or transfer) an adjustment representing the life expectancy RMDs that she did not take in years 1-9. In other words she can't use the 10-year rule to skip RMDs when she is over Applicable Age, then roll over to her own IRA in year 9 to get back on the life expectancy payout track. Reg. § 1.402(c)-2(j)(4). See Example at Prop. Reg. § 1.402(c)-2(j)(4)(vii) for how to calculate the "make-up" distribution of missed RMDs.

- If she wants to keep the account as an inherited account but in a different plan or account, or if the named beneficiary is a conduit trust for the spouse and the trustee wants to move the account (before year 10) into an inherited IRA still in the name of "deceased owner, payable to [spouse] or [conduit trust for spouse]," that can be done by means of a plan to plan transfer from one inherited IRA to another inherited IRA [no cite] or by a direct rollover from a qualified plan to an inherited IRA (Reg. § 1.402(c)-2(j)(2)(ii)).

NOTE: There are deadlines applicable to changing the 10-year rule election and other moves discussed here—these deadlines are NOT covered in this Article.

F. When surviving spouse later dies...

We have a participant who died before his RBD, and his surviving spouse as sole beneficiary is to start (or has started) life expectancy RMDs (under the Uniform Lifetime Table) in the year the

participant would have reached his Applicable Age. What if she dies while there is still money in this inherited account?

What happens next depends on whether she died before or after her required commencement date:

If she dies before her mandatory RMDs start:

If she dies "before distributions have commenced," the RMD rules will be applied as if she were the participant and died before her RBD. Reg. § 1.401(a)(9)-3(e)(3). **So if she hasn't named a designated beneficiary, the 5-year rule will probably apply** (that's the fate, under most plans/IRAs, for inheritance of benefits when no beneficiary is designated by the participant)**.** Reminder: This deadline is the date distributions to her as beneficiary are REQUIRED to commence (i.e., the end of the year in which the deceased spouse would have reached his Applicable Age) regardless of when she actually first took any distribution from the inherited account. So taking a distribution earlier than that date (or taking her first distribution later than that date) has no effect on the determination of whether the account is subject to death-before-the-RBD rules. Reg. § 1.401(a)(9)-3(e)(1).

This "guess what, you're the participant now!" treatment of the surviving spouse-beneficiary upon her death MAKES IT EXTREMELY IMPORTANT FOR A SURVIVING SPOUSE WHO INHERITS FROM A DECEASED SPOUSE WHO DIED BEFORE HIS RBD TO NAME A BENEFICIARY TO INHERIT THE ACCOUNT UPON THE SURVIVING SPOUSE'S LATER DEATH! For example, if she designates her adult children as outright beneficiaries, they will be subject to the 10-Year Rule upon her death. If she does not designate any beneficiary, the default beneficiary under the plan document (*e.g.* the IRA agreement) will be "the" beneficiary. In most cases the default beneficiary is the spouse's estate (resulting in the 5-year rule).

Example: Adam dies in 2024. He would have reached his Applicable Age in 2027. His wife Eve is sole beneficiary of his IRA. She must start taking RMDs as beneficiary, using the Uniform Lifetime Table, in 2027, with a deadline for that first year's RMD of 12/31/2027. If she dies on or before 12/30/2027, she "flips" from beneficiary status to owner status, as she passes into Heaven, for purposes of computing RMDs to whatever beneficiaries get the account next. So their RMDs will be based on whatever applies to a beneficiary of a decedent who died before his RBD.

If she dies after she is required to start taking RMDs:

What if she dies ON OR AFTER 12/31/2027? If the "election to be treated as owner" is in effect (which it is automatically, because this was a participant death before RBD), then the payout period is determined under Reg. § 1.401(a)(9)-5(d)(3)(iv): Regardless of who is the successor beneficiary to Eve, the payout is over the remaining years of Eve's life expectancy (NOT recalculated annually), with final payout no later than the year that contains the 10th anniversary of her death. Prop. Reg. § 1.401(a)(9)-5(g)(3)(ii)(D); Reg. § 1.401(a)(9)-5(d)(3)(iv).

III. If the participant dies on or after his RBD (a l0t simpler)

The spouse's options in case of participant death after his RBD are the same as applied for participant death before the RBD, except without the 10-year rule wild card and without the question of when distributions as beneficiary begin (they begin right away). Also, the payout period for her successor beneficiaries may be slightly less complicated.

Meet the Death-after-RBD RMD regulation structure

Required minimum distributions (RMDs) in case of participant's death BEFORE the required beginning date (RBD) get their own regulation, Reg. § 1.401(a)(9)-3, "Death before the required beginning date." But there is no regulation titled "Death AFTER the required beginning date." In the IRS view, the beneficiary who inherits a retirement account from a participant who died after his RBD is merely continuing the decedent's RMDs (though at a different rate), not starting a new payout. The post-death RMD rules are accordingly contained in Reg. § 1.401(a)(9)-5 [at -5(d)(1)], "Required minimum distributions from defined contribution plans."

The participant's RMDs continue through the year of his death. If at the time of his death he had not yet taken the RMD for the year of his death, that will be the first RMD the beneficiary must take (whether the beneficiary is the spouse or someone else). See Reg. § 1.401(a)(9)-5(d)(1)(i).

The year after the year of the participant's death is generally when the beneficiary must start taking RMDs based on his/her status as beneficiary rather than merely taking the distribution the decedent was supposed to take in the year he died. Reg. § 1.401(a)(9)-5(d)(1)(i). The surviving spouse as beneficiary has two options with respect to RMDs. The first is the same as other EDBs—a life expectancy payout based on the longer of her life expectancy or the decedent's. The second is the special spouse-only deal added by SECURE 2.0. She also may have non-RMD options—the spousal rollover or election-to-treat-as-own (see Part IV).

1. **First RMD option:** Because the surviving spouse is an eligible designated beneficiary (EDB), she can take a life expectancy payout, beginning the year after the year of the participant's death. § 401(a)(9)(B)(i), (E)(i), (ii)(I); Reg. § 1.401(a)(9)-5(d)(1). The "life expectancy" would be the spouse's life expectancy (recalculated annually) or the decedent's remaining life expectancy ("ghost life expectancy," not recalculated), whichever is longer. Reg. § 1.401(a)(9)-5(d)(1)(i), (ii); (3)(iv). Note that if the decedent was younger than the surviving spouse, so the ghost life expectancy is the longer one, the surviving spouse's annually recalculated ("redetermined") life expectancy will eventually be longer than the deceased spouse's fixed life expectancy...if she lives that long, she will switch over to her own life expectancy at that time.

2. **Second RMD option.** Alternatively, the surviving spouse can elect "to be treated as the employee." § 401(a)(9)(B)(iv); Reg. § 1.401(a)(9)-5(d), (g)(3). In this case (as laid out in the proposed regulations) the election is truly an election, i.e., she can elect this treatment or NOT elect it (compare death before the RBD where the treatment-as-employee Uniform Lifetime Table is automatically applied so it's not really an election). However, the

> "elective" treatment could be the default provision under the plan, meaning, unless some affirmative action is taken, treatment "as the employee" will be automatic. Prop. Reg. § 1.401(a)(9)-5(g)(3)(ii)(B).

Treatment "as the employee" means the spouse generally would use the Uniform Lifetime Table to determine her RMDs as beneficiary, instead of the greater-of-his-or-hers single life expectancy described at #1 above, so RMDs would be based on the joint life expectancy of the surviving spouse and a hypothetical 10-years-younger designated beneficiary (recalculated annually). Despite using the ULT, she is still just a beneficiary. As intended by SECURE 2.0, the surviving spouse gets the main benefit of the "spousal rollover" (slower RMD payout) without having to actually do the spousal rollover.

But there is one more wrinkle that could make the surviving spouse's payout period even longer than if she rolled over the account to her own IRA: If the first-to-die spouse (the participant) was much more than 10 years younger than the surviving spouse, the deceased participant's fixed-term "ghost life expectancy" would be longer (at least for a while) than the Uniform Lifetime Table— life expectancy of the surviving spouse and her hypothetical 10-years younger beneficiary! Not to worry: In that case, the Proposed Regulations say the "longer of" rule will apply (i.e., the surviving spouse's RMD will be determined by the ghost life expectancy as long as it stays longer than her Uniform Lifetime Table expectancy). Prop. Reg. § 1.401(a)(9)-5(g)(3)(ii)(C), last sentence.

That being the case, it's not apparent why a surviving spouse would elect out of this treatment. But if "electing out" is good for the spouse for some reason, perhaps a rollover to her own account (where she would REALLY be the owner) would be even better (see "C").

Suppose the sole beneficiary of the account is a conduit trust for the surviving spouse. Who makes the election in or out of "treated as owner" status, the trustee or the spouse-beneficiary? The answer should be the trustee (who is the named beneficiary of the account, and who is legally required to act in the best interest of the trust beneficiaries). However I did not find a specific answer to this question in the regulations or proposed regulations.

Where there is a trust that is entitled to a life expectancy payout due to having multiple EDBs as its only countable beneficiaries, the Regulations provide examples that indicate the election in or out of the 10-year rule (if the decedent died before his RBD) is up to the trustee....but there are no examples regarding the election (if decedent died after his RBD) for the spouse to use the "owner" RMD schedule (Uniform Lifetime Table) vs. the "beneficiary" schedule (Single Life Table).

As a reminder, this election is only for purposes of determining spouse's RMDs from the inherited account—it is NOT to be confused with the spousal rollover or election whereby the spouse actually becomes the owner of the account—the regulations are explicit that THAT election can NOT be made if a conduit trust for the spouse is the beneficiary rather than the spouse personally. As with participant death before the RBD, "electing to be treated as the employee" will cause the account nevertheless to continue to be an "inherited account" even though for RMD purposes the spouse's RMDs are determined as if she were the owner—see Part II(D) for the effects of that status.

IV. Spouse can change from "beneficiary" to "owner" via rollover or election

For convenience, this Part IV summarizes the spouse's options for moving the inherited account into a different retirement account than the one she actually inherited. This section does not provide all details, deadlines, or citations for all of these options. The main requirements and limitations are described. These are avenues to investigate further if for any reason seeks to move the inherited benefits to a different retirement account.

A. Options for any designated beneficiary

If the surviving spouse as designated beneficiary, or a conduit trust for the spouse as beneficiary, or any other designated beneficiary, does not like the payout (or other) rules for the account actually inherited (for example, a qualified plan account that pays only lump sum distribution death benefits, or an IRA that mandates the 10-year rule even for EDBs when the participant dies before his RBD), the spouse (or conduit trust) can move the inherited account to an inherited IRA *with the same decedent and beneficiary*, as follows:

- If the inherited account is in a qualified plan (such as a 401(k) plan), the designated beneficiary (including a designated beneficiary trust) can require that the account be moved by direct transfer to an inherited IRA with the same ownership titling as the transferor account (*e.g.*, "John Doe, FBO Jane Doe," "John Doe Trust as beneficiary of John Doe"). Reg. § 1.401(a)(31)-1. This option is not available to a trust that does not qualify as a designated beneficiary.

- If the inherited account is in an IRA, the designated beneficiary (including a designated beneficiary trust) can move the account via direct transfer to an inherited IRA with the same ownership titling as the transferor account

B. Additional options for surviving spouse

The surviving spouse has additional options other beneficiaries don't have to move the inherited retirement benefits to another retirement account. Within limitations (and subject to deadlines not covered here):

- If the surviving spouse is sole beneficiary of the IRA and has the unlimited right to withdraw amounts from the IRA, the surviving spouse can elect to treat an inherited IRA as her own IRA. See Part IV(D).

- She can roll over distributions from an inherited account into her own retirement account, changing her status from "beneficiary" to "owner." Rollovers have various requirements not covered here—e.g., RMDs can never be rolled over, in some cases there is a limit of one rollover per 12 months, etc. A trust (even a conduit trust) can NOT do this. See Part IV(E)

regarding catchup distributions that may be required if the inherited plan was subject to the 10-year rule.

C. Reasons spouse might want to transfer to her own IRA

Since, as a result of SECURE 2.0, the surviving spouse's RMDs are determined as if she were the owner of the account (*i.e.*, using the Uniform Lifetime Table based on her age as "owner"), why would she want to bother to change ownership so she actually IS the owner? Here are several reasons:

- If the participant died before his RBD, and the plan the spouse actually inherited makes her subject to the 10-year rule [see Part II(E)], she may wish to get OUT of that plan and into one that permits life expectancy payouts. See the regulations for applicable deadline. See Part IV(E) regarding what if any "catchup distributions" are required if she rolls or transfers the inherited account to her own IRA.

- As beneficiary, she must start withdrawals no later than the year the deceased spouse would have reached his Applicable Age (or the year after his death, if later). If she is younger than the decedent she may get a later (even much later) starting date by becoming owner of the account instead of beneficiary. E.g., Clark dies in 2025 at age 75, after taking his RMD for 2025, leaving his IRA to his spouse Lois, age 60. Since Clark had reached his Applicable Age, Lois as beneficiary would have to start RMDs the year after his death. Using the Uniform Lifetime Table for age 60, her applicable denominator would be 38.7, so she would have to withdraw 1/38.7th of the account the first year. Prop. Reg. § 1.401(a)(9)-9(c). By becoming owner instead of beneficiary she can postpone all RMDs until she reaches her own Applicable Age.

- If the inherited account is a Roth IRA, or a designated Roth account (DRAC) within the decedent's 401(k) plan, she must take annual RMDs as beneficiary—whereas if she held the account as owner there would be no RMDs during her lifetime.

D. Election to treat inherited IRA as spouse's own IRA

The surviving spouse's right to elect to treat an IRA inherited from her spouse as her own IRA is created by the regulations. It does not appear in the Code. The election is available whether the first spouse died before or after his RBD.

(i) Requirements and mechanics

"The surviving spouse of an individual may elect, in the manner described in paragraph (c)(2) of this section, to treat the surviving spouse's entire interest as a beneficiary in the individual's IRA (or the remaining part of that interest if distributions have begun) as the surviving spouse's own IRA..... In order to make the election..., the surviving spouse must be the sole beneficiary of the IRA

and have an unlimited right to withdraw amounts from the IRA. If a trust is named as beneficiary of the IRA, this requirement is not satisfied even if the surviving spouse is the sole beneficiary of the trust." Reg. § 1.408-8(c)(1)(i), (ii).

In determining whether the spouse is "sole beneficiary," the separate accounts rule of Reg. § 1.408-8(a) is applied: If the spouse is just one of multiple designated beneficiaries, but separate accounts are timely established for the multiple beneficiaries per the regulation, she need only be sole beneficiary of her "separate account" in the inherited IRA, not of the entire IRA, and the election of course applies only to her separate account. Reg. § 1.401(a)(9)-8(a)

Example: Nora leaves her IRA equally to her husband Nick and her son Ned as beneficiaries. They establish separate inherited IRAs, each funded with half of Nora's IRA, by December 31 of the year after the year of Nora's death. Nick can elect to treat his inherited separate account as his own solely-owned inherited account. RMDs to each beneficiary will be based on such beneficiary as sole beneficiary of his separate account.

In the real world, once the spousal election is made (or discovered, in the case of an inadvertent election; see "ii"), the deceased spouse's account ("Nora, f/b/o Nick") is closed and its assets transferred into a new account in the surviving spouse's own name ("Nick" only), since the IRA provider can't simply cross out the participant's name on the old account documents and write in the surviving spouse's name instead.

Unlike a spousal rollover, which could apply to a partial distribution, the spousal election would of necessity apply to the entire account (or the entire remaining account if distributions had been made prior to the election). Reg. § 1.408-8(c)(1).

Note the requirement that, in order to be eligible to make this election, the spouse must have an unlimited right to withdraw from the IRA. **The regulation explicitly states that a trust named as beneficiary cannot meet that requirement, even if (for RMD purposes) the spouse is deemed to be the sole beneficiary of the trust (i.e., the trust is a conduit trust).**

It is possible to imagine a situation in which, using a trusteed IRA, the client could enable the benefits of the spousal election and also the benefits of having the investments and distribution schedule in the hands of a professional bank trustee:

Example: Felix, husband of Kitty, has Alzheimer's disease and is not capable of managing his financial affairs. Kitty has her trusteed IRA at Biggole Bank and Trust Co. The trust agreement establishing and governing the IRA names Felix as beneficiary on Kitty's death and provides that Felix has the unlimited right to withdraw from the IRA. However, since Felix can act only through his legal guardian, withdrawals will be made by cooperation of the guardian and the trustee. Felix's rights, benefits, and tax options are preserved and the IRA is protected by professional management and cooperation of the trustee and guardian.

(ii) How the election is made; when it takes effect

There are three ways the spouse can make this election—one is intentional, the other two are "deemed" elections triggered by the spouse's action or inaction:

- The spouse can voluntarily "redesignate" the account as an account in her name as owner rather than as beneficiary. Check the IRA agreement to determine if the IRA provider provides specific instructions for how to do this.

- She can fail to take an RMD she was required to take as beneficiary (for any year AFTER the year of the owner's death), thus triggering a deemed election. An RMD shortfall in the year of the first spouse's death does not trigger the deemed election.

- She can make a contribution to the account (other than a rollover contribution from another account inherited from the deceased spouse). Reg. § 1.408-8(c)(2).

The election is effective starting in the year it occurs—unless the election is made in the year of the first spouse's death, in which case the election doesn't apply for purposes of determining RMDs until the following year. Reg. § 1.408-8(c)(3).

Example: Nick is holding, as beneficiary, the IRA he inherited from Nora in 2025. His RMD for 2026 is $3,678. Due to a math error, he withdraws only $3,677 in 2026. Because of this $1 shortfall, he is deemed to have elected to treat the inherited IRA as his own IRA. Since it occurred after the year of Nora's death, the election is effective for the year it occurs (2026) and subsequent years. Now here is the very odd effect: The RMD schedule applicable to Nick in 2026 (as beneficiary) was (as a result of SECURE 2.0) the Uniform Lifetime Table applied as if he were owner of the account. But that's the same RMD schedule that applies to him after he makes the deemed election! The effect of Nick's deemed election in 2026 is that he still owes a 25% "penalty" for missing $1 of his RMD!

E. Catchup distributions required if spouse changes from beneficiary to owner

An eligible designated beneficiary (EDB), though entitled to a life expectancy payout, may become subject instead to the 10-year rule in various ways, if the deceased participant died before his Required Beginning Date. See II(E). If the surviving spouse finds herself subject to the 10-year rule, there are two possible ways she can get out of it and switch over to a life expectancy payout. One is by transferring the account to a different "inherited account" that would provide a life expectancy payout; see IV(A).

The second is by transforming the inherited plan into her OWN retirement account, either by rollover/transfer or by electing to treat an inherited IRA as her own IRA. A spouse who is over (or soon to be over) age 73 might get this bright idea: Since hubby died before his RBD I can elect the 10-year rule for this account I'm inheriting from him and take no RMDs for 9 years. If instead I roll it over to my own account right now I would have to take RMDs immediately because I am already age 73 (or I would have to take them very soon since I am almost 73). So I'll use the 10 year rule (no RMDS until year 10) and then roll the entire account into my own account in year 9!"

The regulations put an end to this brilliant idea: If the surviving spouse does the rollover or transfer or election moving the inherited account into her OWN IRA (or other plan account which she holds as "owner" rather than beneficiary), then, if two conditions apply, the surviving spouse will be subject to a one-time "catchup" distribution which must be taken from the deceased spouse's plan

account or IRA before the surviving spouse can complete the rollover/transfer into her own retirement account. Reg. § 1.402(c)-2(j)(4), § 1.408-8(c)(1)(iv). These conditions are:

- RMDs to the surviving spouse from the inherited account were being determined under the 10-year rule; and
- The election or rollover or transfer is made in the year the surviving spouse attains her Applicable Age or any later year.

See Reg. § 1.402(c)-2(j)(4)(iii) for how to calculate the hypothetical RMD for the "catch-up period." This amount must be distributed before the spouse can elect to treat the rest of the account as her own or otherwise transfer it into a retirement account with herself as "owner." As a reminder, if a plan is subject to the 10-year rule, 100% of the account is deemed an RMD in year 10 and therefore cannot be rolled over. The spouse accordingly cannot elect to treat the inherited account as her own after year 9.

Note: This catchup distribution rule applies only if the surviving spouse tries to shift from "10-year rule as beneficiary" into her own plan account or IRA. It is still possible and "legal" to delay a spousal rollover to take advantage of different life expectancies when the younger spouse dies first. For example, if Martha (age 75) inherits from hubby George (who died at age 68), she has a choice of rolling the account to her own IRA (RMDs would start immediately because she is older than age 73) or delaying the rollover to her own account for a few more years (until he would have reached age 72 or 73). For about 4-5 years there will be no RMDs from the inherited account so she might as well delay the rollover until he would have reached RMD age.

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