

# JOURNAL *of* PENSION BENEFITS

ISSUES IN ADMINISTRATION, DESIGN, FUNDING, AND COMPLIANCE  
Volume 29 • Number 4 • Summer 2022

## LEGAL DEVELOPMENTS

### *Minimum Required Distribution Regulations Get a New (but still Complex) Look*

*This column summarizes the key changes the recently issued proposed regulations made to defined contribution and defined benefit plans.*

**BY ELIZABETH THOMAS DOLD**

Elizabeth Thomas Dold is a principal attorney at Groom Law Group, Chartered in Washington, DC. For over 25 years, her work has focused on employee benefits and compensation matters, including employment taxes and related reporting and withholding requirements. She regularly advises Fortune 500 companies (including corporate and tax-exempt employers, financial institutions, and third-party administrators) on plan qualification and employment tax issues. Ms. Dold is a past Chairperson of the Information Reporting Program Advisory Committee, a former adjunct professor at Georgetown Law Center, and fellow, the American College of Employee Benefits Counsel.

The anticipated proposed regulations on required minimum distributions (RMD) have been issued, along with updated eligible rollover

distribution regulations. These rules, set forth under Internal Revenue Code (Code) section 401(a)(9), dictate when benefits must commence to participants and their beneficiary(ies)—replacing the well-known age 70½ outside age limit with age 72 for certain participants, and generally shortening the period over which beneficiaries may take payments from a qualified plan. These proposed regulations reflect the major changes made under the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), which were largely effective beginning in 2020.

The entire line of regulations [Treasury Regulation sections 1.401(a)(9)-0 through 1.401(a)(9)-9] has been rewritten to reflect the SECURE Act changes, and to eliminate the current Q&A structure of the regulations that has been in place for over 20 years. Moreover,

the corresponding regulations for other types of plans that also are subject to RMD rules also were similarly updated. This includes IRAs, 403(b)s, and 457(b) plans. [87 Fed. Reg. 10504 (February 24, 2022).]

The proposed regulations are subject to public comments through May 25th, and a hearing is set for June 15. The timing on final regulations may depend on the extent of the comments, and whether the plan amendment deadline for adopting these SECURE Act changes gets extended (currently due by the end of the 2022 plan year). Historically, these RMD rules follow model Internal Revenue Service (IRS) amendments, but no amendments have been provided to date.

Notably, these rules provide a reasonable, good faith compliance standard for 2021 (and presumably that same standard would have been extended to 2020 when these rules generally first came into play, but we had a RMD waiver for 2020).

We summarize the key changes below for defined contribution and defined benefit plans.

### Defined Contribution Plans

The RMD rules impact the timing and amount of payments during the participant's lifetime and after death. We take a look at these rules in turn:

#### During the Participant's Lifetime

The SECURE Act only made one change to the RMD rules that apply during the participant's lifetime. Therefore, the calculation of RMD payments to the participant is largely unchanged, despite the fact that the regulations have been entirely rewritten and reorganized.

Specifically, Section 114 of the SECURE Act changed the definition of the "required beginning date" (RBD) for participants who reached age 70½ on or after January 1, 2020. The old and new definitions are set forth below and are reflected in proposed Treasury Regulation section 1.401(a)(9)-2:

**Old Rule:** The participant's RBD is April 1 of the calendar year following the later of (1) the calendar year in which the employee attains age 70½ or (2) the calendar year in which the employee retires from employment with the employer maintaining the plan. Part (2) does not apply to a five percent owner (as such term is defined in Section 416(i)(1)(B)(i)).

**New Rule:** The participant's RBD is April 1 of the calendar year following the later of (1) the calendar year in which the employee attains age 72, or (2) the calendar year in which the employee retires from employment

with the employer maintaining the plan. Part (2) does not apply to a 5 percent owner. Moreover, the old rule set forth above continues to apply for employees born before July 1, 1949.

### Upon Death of the Participant

The proposed regulations largely retain the existing structure for post-death benefits, interpreting the SECURE Act to have maintained the "at least as rapidly" rule for when a participant dies after his or her required beginning date. This adds some complexity to the rules that many hoped would be avoided, as now we have to comply with both the "at least as rapidly" rule and the new ten-year rule for non-eligible designated beneficiaries. Before we summarize the rules, it is important to understand the new term "eligible designated beneficiaries."

An eligible designated beneficiary (EDB) is a designated beneficiary that is still permitted to receive lifetime payments for their lifetime after the participant dies, under proposed Treasury Regulation section 1.401(a)(9)-4. This group is limited to the following individuals (or certain trusts for disabled or chronically ill beneficiaries):

- the surviving spouse of the participant,
- a child of the participant who has not yet reached the age of majority (which the proposed regulations simplified to be age 21, regardless of applicable state law),
- disabled (as defined under the regulations),
- chronically ill (as defined under the regulations), and
- an individual not more than 10 years younger than the participant.

The proposed regulations provide details on these individuals and require rather complex documentation procedures for a disabled or chronically ill individual. There also are complex rules when a participant names multiple designated beneficiaries. In general, if there is at least one non-EDB, then all the beneficiaries are treated as non-EDB, and the age of the oldest designated beneficiary is typically used for the various RMD rules. There are a few limited exceptions for certain trusts and special rules for minor children, and the proposed regulations did not eliminate the special separate account rules. Lastly, it is important to note that the proposed regulations retained the look-through trust rules (and added a lot of details from private letter rulings to help explain their use), which

result in the beneficiaries of the trust being taken into account for the RMD rules.

#### Death Before Required Beginning Date

Despite the overall re-write of Treasury Regulation section 1.401(a)(9)-3, the existing rules largely remain in place, but with a narrowing of who can elect lifetime payments after the participant's death and expanding the existing 5-year rule to include a similar 10-year rule. The rules are summarized as follows:

- *Eligible Designated Beneficiaries*—The existing rules are largely unchanged if the participant designates an eligible designated beneficiary to be the beneficiary. That beneficiary can elect to receive the participant's account balance over his or her lifetime if payments commence within a year following the year of the participant's death (with the spouse being able to delay the start of payments until the participant would have reached his or her RBD). If lifetime benefits are not timely commenced (or the beneficiary otherwise elects), the new 10-year rule applies as described below. Notably, after the death of the EDB, payments generally must be paid out within 10 years of the EDB's death.
- *No Designated Beneficiary*—The existing rules also are largely unchanged when there is no designated beneficiary, which include the participant's estate or a charity. The death benefit must be paid out in five years following the year of the participant's death.
- *All Other Designated Beneficiaries (that is non-EDB)*—For all other beneficiaries, the death benefit must be paid out by the end of the 10th year following the year of the participant's death. This means that no payments must be made until the 10th year, and, therefore, any payment made in years one through nine can be rolled over to an inherited IRA. The entire payout in year 10 is an RMD and is not eligible for rollover.

Importantly, the proposed regulations permit a plan sponsor to restrict these rules, and provides the above rules as the default if the plan is silent. Specifically, the plan document is permitted to (1) provide that the 10-year rule (and not the life expectancy rule) applies to some/all EDBs, or (2) give the participant or EDB the option to make an irrevocable election (subject to certain timing rules) between the 10-year rule or life

expectancy rule, and include a default in the plan in the event no election is made.

#### Death On or After Required Beginning Date

Similarly, despite the overall re-write of Treasury Regulation section 1.401(a)(9)-5, the existing "at least as rapidly" rule largely remains in place, but with a new limitation to stop payments after 10 years (or not longer than the eligible designated beneficiary's life expectancy, if older than the participant). Therefore, if the participant already commenced payments after reaching his required beginning date, then the RMD payment is calculated using the longer of the participant's or beneficiary's life expectancy, as under the old rules. However, here is the new wrinkle—the plan benefit must be paid in full by the earliest of:

- *Non-Eligible Designated Beneficiary*—The end of the 10th calendar year following the calendar year in which the participant died.
- *Eligible Designated Beneficiary* (not the participant's child and not older than the participant)—The end of the 10th calendar year following the calendar year in which the eligible designated beneficiary died.
- *Eligible Designated Beneficiary* (participant's child)—The end of the 10th calendar year in which the beneficiary reaches the age of majority (age 21).
- *Older Eligible Designated Beneficiary*—The end of the calendar year in which the applicable denominator would have been less than or equal to one if it were determined using the EDB's remaining life expectancy rather than the participant's remaining life expectancy.

Note that the regulations also expand the qualified longevity annuity contract (QLAC) rules slightly to help facilitate use within target date funds. Lastly, there is an automatic waiver of the 50 percent excise tax (which should extend to both defined contribution and defined benefit plans) for missed RMD payment that was due to be paid to the participant in the year of death, provided that it is paid out to the beneficiary no later than the beneficiary's tax filing deadline (including extensions).

#### Defined Benefit Plans

As explained above, the SECURE Act changed the definition of RBD. These same rules apply to defined benefit plans. Notably, the proposed regulations retain

the rule that the RBD may be based solely on age (and not the later of age or retirement).

The proposed regulations also explain that the actuarial adjustment under Code section 401(a)(9)(C)(iii) that requires an actuarial increase from age 70½ until the participant retires for those working past age 70½ continues to apply (but does not apply to 5 percent owners).

Unfortunately, the preamble to the regulations does not give us any insight on the scope of the anti-cutback relief provided under the SECURE Act in making this change, nor do they explain the impact of forcing out benefits for all participants at age 70½, in part for simplification and in part to avoid the actuarial adjustment that results post-age 70½.

Lastly, the proposed regulations made a few changes under Treasury Regulation section 1.401(a)(9)-6 that are outside the scope of the SECURE Act changes, but which were largely intended to help facilitate meeting the existing requirements. These include: (1) adding a rule that the annuity contract must be issued by an insurance company licensed in the jurisdiction where the annuity is sold; (2) expanding the exceptions to the non-increasing annuity payment rule for resumption of benefits following certain suspensions [§§ 411(a)(3)(B), 418E, 432(e)(9)]; and (3) modifying the exceptions under which payments from annuity contracts from insurance companies may increase. They also provide some helpful relief from RMD compliance

where the RMD beneficiary payments are restricted due to Code section 436(d).

### Next Steps

Plan sponsors should review the new RMD rules with their in-house team and/or third party record-keeper and see what, if any, changes are necessary for 2022 to comply with these proposed regulations. Policies and procedures will need to be updated to reflect these new rules, which will impact a number of different (but related areas):

- Timing of RMD payments during lifetime (RMD communications/distribution packages),
- Calculation and timing of death payments for defined contribution plans,
- Distribution packages regarding any annuity options offered under defined contribution plans
- Rollover procedures to reflect the new RMD rules and when amounts are eligible for rollover, and
- Reporting and withholding updates.

Moreover, plan amendments must generally be adopted by the end of the 2022 plan year (that is, December 31, 2022 for a calendar year plan), unless the IRS grants an extension, and summary plan descriptions (or summary of material modifications) should reflect the new provisions. Lastly, stay tuned for the final regulations! ■

Copyright © 2022 CCH Incorporated. All Rights Reserved.  
Reprinted from *Journal of Pension Benefits*, Summer 2022, Volume 29, Number 4,  
pages 29–32, with permission from Wolters Kluwer, New York, NY,  
1-800-638-8437, [www.WoltersKluwerLR.com](http://www.WoltersKluwerLR.com)

