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IRS Provides Additional Clarity on RMD Calculations

On February 24, 2022, the Internal Revenue Service (IRS) published proposed regulations addressing the calculation and payment of required minimum distributions under qualified retirement plans (the Proposed Regulations). The Proposed Regulations are generally designed to address the changes to a participant's required beginning date and payment of death benefits enacted under the SECURE Act.

Applicable to all plan sponsors, the Proposed Regulations update existing regulations to account for the increase in a participant's required beginning date to age 72. Additionally, the Proposed Regulations confirm that non-governmental and church plan sponsors must provide actuarial benefit increases beginning at age 70-1/2 regardless of the plan's definition of required beginning date.

For defined contribution plan sponsors, the Proposed Regulations also provide needed clarifications on the calculation of death benefits.

Definition of Eligible Designated Beneficiary

As an initial matter, the Proposed Regulations provide additional detail on the definition of eligible designated beneficiaries. Under the SECURE Act, eligible designated beneficiaries are:

- The participant's surviving spouse;
- The participant's minor child;
- A beneficiary who is disabled or chronically ill; or
- A beneficiary who is not more than 10 years younger than the participant.

Recognizing plan sponsors may not be able to neatly apply these categories, the Proposed Regulations provide that:

- **Age of Majority**. For purposes of required minimum distributions, a minor child reaches the age of majority upon attaining age 21.
- **Determination of Disability**. An individual under the age of 18 as of the date of the participant's death is disabled if he or she 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. The Proposed Regulations also provide that a plan sponsor is permitted to rely upon a determination of disability made by the

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Social Security Administration (SSA).

- Documentation of a beneficiary's disability status must be provided to the plan sponsor by October 31 of the calendar year following the calendar year of the participant's death. Other than requesting documentation of a determination of disability by the SSA, the IRS did not provide guidance regarding what type of evidence must be provided to the plan sponsor to establish a beneficiary's disability status. However, as with other determinations of disability, plan sponsors should take a uniform and reasonable approach in its evaluation of a beneficiary's disability status.
- **Determination of Chronic Illness**. An individual is chronically ill if he or she is (a) unable to perform, without substantial assistance from at least two activities of daily living for an indefinite period of time that is reasonably expected to be lengthy in nature; or (b) requires substantial supervision to protect himself or herself from threats to health and safety due to such impairment.
- Certification of the individual's chronic illness must be provided by a licensed health care practitioner. As with documentation of disability, documentation of a beneficiary's chronic illness must be provided to the plan sponsor by October 31 of the calendar year following the calendar year of the participant's death.

See Through Trusts. The Proposed Regulations also provide extensive rules regarding payment of required minimum distributions to see-through trusts, which are designed to allow retirement assets to pass to a beneficiary following death.

Payment of Benefits to Beneficiaries if Participant Died Prior to Commencing Benefits

Generally, a participant's benefit must generally be distributed to the participant's designated beneficiary by the last day of the tenth year following the year of the participant's death unless the beneficiary is an eligible designated beneficiary. Eligible designated beneficiaries are permitted to be paid over the beneficiary's life expectancy.

The Proposed Regulations now confirm that plan sponsors can apply either the 10-year rule or the life expectancy rule to an eligible designated beneficiary, provided the plan document is clear regarding the payment terms. For example, a plan document could provide that all non-spouse beneficiaries must be paid within 10 years of the death of the participant.

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Additionally, if a participant designated multiple beneficiaries prior to his or her death, the Proposed Regulations clarify that all beneficiaries must be eligible designated beneficiaries in order for benefits to be paid over a beneficiary's life expectancy. If one or more beneficiaries is not an eligible designated beneficiary, then all beneficiaries must be paid by December 31 of the calendar year following the participant's death.

Payment of Benefits to Beneficiaries if Participant Died After Commencing Benefits

If a participant dies after commencing benefits or attaining his or her required beginning date, the beneficiary's benefit payments must be calculated based on the beneficiary's life expectancy. If the participant had no beneficiary designation on file, then the death benefits are calculated based on the participant's life expectancy. Additionally, the Proposed Regulations provide that benefits paid to eligible designated beneficiaries must be accelerated under the following circumstances:

- If the participant has designated multiple beneficiaries, death benefits are calculated using the oldest beneficiary's life expectancy unless the beneficiary is a minor child, chronically ill or disabled.
- If the beneficiary is a non-spouse eligible designated beneficiary but has a life expectancy that exceeds the participant's life expectancy, the beneficiary's benefit payments must be calculated using the participant's life expectancy. However, any remaining payments owed upon the expiration of the beneficiary's life expectancy must be paid in a single lump sum.
- If the beneficiary is a minor child as of the date of the participant's death, any remaining benefit amount must be paid by the close of the tenth calendar year following the year in which the beneficiary attains the age of majority.
- If the beneficiary is not an eligible designated beneficiary, any remaining benefit amount must be paid by the close of the tenth calendar year following the year of the participant's death.

Changes Impacting Rollovers of Required Minimum Distributions

Under Code section 402(c)(4), required minimum distributions cannot be rolled over to another eligible retirement plan or individual retirement account. However, not all benefit payments made after a participant's or beneficiary's required beginning date are required minimum distributions. The Proposed Regulations describe the method required to calculate the portion of a

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distribution deemed to be a required minimum distribution.

Additionally, the Proposed Regulations clarify the portion of death benefit payments that are deemed to be a required minimum distribution noting that it generally depends upon the period of payment:

- No amount distributed in the year of the participant's death is considered a required minimum distribution.
- If the five-year rule or 10-year rule applies, then no amount distributed before the fifth calendar year or tenth calendar year, respectively, following the participant's death is deemed to be a required minimum distribution. Any amount distributed during the fifth or tenth calendar year following the participant's death is considered a required minimum distribution.
- If the participant dies on or after his or her required beginning date or the life expectancy rules applies, then the amount deemed to be a required minimum distribution is determined based on the participant's life expectancy.

While the Proposed Regulations are not final, the IRS directs plan sponsors to calculate distributions in accordance with the Proposed Regulations beginning January 1, 2022.

If you have questions regarding the Proposed Regulations or any other question pertaining to your benefit plans, please do not hesitate to contact Martha Mohs or your Reinhart attorney.

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