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September 17, 2024

Internal Revenue Service
Attention: CC:PA:01:PR (REG-103529-23)
1111 Constitution Avenue, NW, Room 5203
Washington, DC 20224

Re: **Comments on Proposed RMD Regulations (REG-103529-23)**

Dear Sir or Madam:

On behalf of the SPARK Institute, Inc., we are pleased to provide comments on the Notice of Proposed Rulemaking entitled "Required Minimum Distributions," that the Treasury Department and Internal Revenue Service (collectively referred to as "IRS") published in the Federal Register on July 19, 2024 (the "Proposed Regulations").[1] In an appendix at the end of this letter, we also request clarifications on certain aspects of the final regulations that were published the same day (the "2024 Final Regulations").[2] In this comment letter, we refer to the "final regulations" to mean the eventual final regulations that will be published to implement the Proposed Regulations, and we refer to the "2024 Final Regulations" to mean the final regulations that were published on July 19, 2024.

The SPARK Institute represents retirement plan recordkeepers, mutual fund companies, brokerage firms, insurance companies, banks, consultants, trade clearing firms, and investment managers. Collectively, our member firms administer the retirement plans for over 110 million American workers.

Before we begin, we want to thank you for the thoughtful approach that you took in the 2024 Final Regulations. Although you did not accept all of the recommendations that we made in our 2022 comment letter, we recognize that you gave thoughtful consideration to our comments, and in a number of places eliminated rules that we indicated would create unnecessary complexity.

I. <u>The Applicability Date Should Be Delayed</u>

The Proposed Regulations are proposed to apply for distributions on or after January 1, 2025, the same date as the 2024 Final Regulations. This should be delayed, and the IRS should provide, as

[1] 89 Fed. Reg. 58,644 (July 19, 2024).

[2] 89 Fed. Reg. 58,886 (July 19, 2024).

it did with the 2024 Final Regulations, that plans can rely on a reasonable, good faith interpretation of the law until the applicability date.

The Proposed Regulations were not released until six months before they are proposed to be effective, and the comment period will not end until slightly more than three months before they are proposed to be effective. We appreciate the IRS's optimism at the time frame for issuance of final regulations, but this is not realistic. If the 2024 Final Regulations are a reasonable guide, it will take the IRS more than two years after the close of the comment period to issue final regulations.[3] In fact, the IRS had to issue multiple rounds of relief while the 2024 Final Regulations were being drafted, and during the period left plan administrators with significant uncertainty about whether to put in the administrative effort to change their procedures.

The Proposed Regulations provide proposed guidance on provisions of SECURE 2.0 that *are already in effect*, and for which plan administrators have needed to take positions; this is particularly the case with respect to the new rules for distributions to spousal beneficiaries. And like the proposed regulations issued in 2022, which took a surprising position with respect to the 10-year rule, these Proposed Regulations have some surprises which will be the subject of comments from the SPARK Institute and others.

The final regulations should not apply until, at the earliest, calendar years beginning at least nine months after the final regulations are released.

II. <u>Comments on the Spousal ULT and Spousal Delay Rules</u>

The Proposed Regulations implement Section 327 of SECURE 2.0, which generally provides that a spousal beneficiary may use the Uniform Lifetime Table ("ULT") to calculate required minimum distributions ("RMDs"), which we refer to as the "Spousal ULT Rule." The Proposed Regulations also implement how SECURE 2.0 addresses the rule, which existed under prior law, that a spouse may delay RMDs until the date that the participant would have reached their required beginning date ("RBD"), which we refer to as the "Spousal Delay Rule." Our comments on how the Proposed Regulations implement the Spousal ULT Rule and the Spousal Delay Rule follow.

A. The Proposed Applicability Date Should be Modified to Follow SECURE 2.0

Section 327(c) of SECURE 2.0 provides that the Spousal ULT Rule "shall apply to calendar years beginning after December 31, 2023." The Proposed Regulations, however, provide that the Spousal ULT Rule "applies only if the first year for which annual required minimum distributions to the surviving spouse must be made is 2024 or later." To be honest, this was a big surprise. We have spoken with a number of SPARK members, and although there was some

[3] The comment period on the 2022 proposed regulations ended in May of 2022, and the 2024 Final Regulations were issued in July of 2024.

difference in how they were interpreting the effective date of Section 327 of SECURE 2.0, this was not an interpretation many (if any) thought was among the reasonable alternatives.

We recommend that the Proposed Regulation's applicability date be revised, for two reasons. The first reason is that it is not consistent with SECURE 2.0. As noted above, Congress made the Spousal ULT Rule effective for 2024 calendar years and later. There is no indication Congress intended to apply a different rule to spouses who happen to be receiving RMDs in 2023 or earlier. In fact, Congress clearly knows how to indicate that it wants to apply a rule like that: the change to create the 10-year rule in the SECURE Act generally applied to beneficiaries of participants who die after December 31, 2019.

Congress understood how the current RMD regulations work, since Section 327 referenced a specific life expectancy table in the regulations. In the case of a defined contribution plan, the RMDs apply by calculating a new RMD each year by taking the prior year's ending balance and dividing it by a life expectancy amount that changes each year. The regulations even have a term for this: "distribution calendar year." The most natural interpretation of the effective date is that Congress intended any spouse receiving an RMD for distribution calendar years in 2024 or later to be able to use the more favorable ULT in calculating RMDs. This is also consistent with the revenue estimate issued by the Joint Committee on Taxation, which estimated a loss of $24 billion in revenue in 2024—a number that would not make any sense if the only spousal beneficiaries who could take advantage of the provision are those whose first RMD was in 2024.

The second reason that the proposed applicability rule does not make sense is that it creates unnecessary complexity and opportunity for error. If the final regulations retain this rule, then plan administrators will need to administer two sets of rules for spousal beneficiaries, which depend solely on when the spouse needed to begin taking RMDs prior to 2024, which has implications not just for the amount due to the spouse, but also in calculating the amount eligible for rollover, the proper withholding, and the calculation of the "hypothetical RMD." This creates many opportunities for operational errors, as well as the perception of unfairness by spousal beneficiaries.

The interpretation in the proposed regulation is somewhat arbitrary, as it draws a distinction that is based neither exclusively on the date of birth nor the date of death of the participant. Spouses of two participants, both born in the same year, might have different outcomes solely because of the year of death. Similarly, two participants, both of whom died in the same year, might have different outcomes because of the year of their birth.

Accordingly, we recommend that the final regulations provide that the Spousal ULT Rule applies to distribution calendar years beginning after December 31, 2024. However the issue is resolved, it is critical that the IRS provide relief for reasonable good faith interpretations of the effective date of Section 327 until the final regulations are published.

B. Plans Should Have Flexibility as to Spouses Already Receiving RMDs

As noted above, we recommend that the final regulations provide that the Spousal ULT Rule applies to distribution calendar years beginning after December 31, 2024. As part of this, we recommend that the IRS confirm that a plan has flexibility about how to administer the Spousal ULT Rule to spouses who are currently receiving RMDs prior to 2024. This is important because plan administrators had to take reasonable good faith positions while they awaited guidance from IRS, and SPARK members had to program their systems to anticipate the most common position that plan administrators will want to take.

For example, we believe that many SPARK members have programed their systems to provide that all spouses will be switched to the Spousal ULT Rule in 2024. Even though 2024 has not ended, this impacts all distributions in 2024 because of the implications on withholding and direct rollover. Other SPARK members may have decided that a spouse who has been receiving RMDs in prior years may not want to be switched to an RMD rule that results in a lower annual distribution, in case the spouse is using these RMDs for living expenses. These SPARK members might switch spouses to the ULT only upon an affirmative election. Finally, some plans may want to use the defaults in the regulation, but only for spousal beneficiaries whose first RMD on or after a certain distribution calendar year (such as 2024 or 2025). All of these are reasonable interpretations of Section 327 of SECURE 2.0 and the IRS should confirm that plan administrators have flexibility as to how to transition spouses onto the new Spousal ULT Rule.

C. Election Rule Should Not Depend on Whether Participant Died Before the RBD

We think the IRS should reconsider how the Proposed Regulations deal with the Spousal Delay Rule and the Spousal ULT Rule depending on whether or not the participant died before or on or after the RBD. As we read the Proposed Regulations, if the participant dies before the RBD, then the spouse is treated as having elected the Spousal Delay Rule and the Spousal ULT Rule. But if the participant dies on or after the RBD, the plan apparently must provide a spouse the right not to elect to have the Spousal ULT Rule apply—although the plan may implement a default rule so that no action by the spouse is required.

The preamble to the Proposed Regulations does not really explain the thinking behind this treatment, but seems to imply that this different treatment is required by how Congress drafted Section 327 of SECURE 2.0. We appreciate that Section 327 refers to an "election" by the spouse. But since nothing prevents a spouse from distributing more than is required,[4] and the spouse can always choose to use the participant's life expectancy if that is more favorable, we think this "election" to not to use ULT is a trap for the unwary, and could create unnecessary operational errors solely because the plan administrator does not formally offer and explain this choice. Worse yet, since the vast majority of spouses will be worse off by choosing the

[4] A small number of plans may only allow a spouse to receive installments in the form of RMDs, rather than installments or withdrawals of greater amounts, but in that case, a spouse could always roll over the balance to an IRA.

Single Life Table, it is concerning that a plan fiduciary might need to offer a choice that it would also need to explain is very likely a bad idea.

In short, we recommend that the IRS reconsider whether it would not be best to have a single rule that applies regardless of whether the participant died before, on, or after the RBD.

If the idea of an election for the Spousal ULT Rule remains in the final regulation, we recommend that the IRS confirms plans have broad flexibility in how to implement this election.

D. Final Regulations Should Clarify the Treatment of a New Spouse of the Spouse

There has been some uncertainty about how to apply the rules in the case of a spousal beneficiary who remarries and names the new spouse as sole beneficiary. This confusion relates in part to what is sometimes called the "Spousal Proxy Rule" in Code section 401(a)(9)(iv)(II). Under the Spousal Proxy Rule, if the spouse dies before lifetime payments must start, the spouse is treated as the employee, and the spouse's beneficiary is subject to the applicable RMD rule based on the beneficiary's status and when the spouse died in relation to their own RBD. This "Spousal Proxy Rule" can only be used once.

This leads to the question of whether the new spouse can use the ULT if the original spouse dies before lifetime distributions begin. Treas. Reg. § 1.401(a)(9)-3(e)(2) states that the Spousal Delay Rule does not apply to the second spouse if the first spouse remarries, but does not explain what distribution table applies to the new spouse when the original spouse dies before distributions are considered to have begun. It takes several leaps within the 2024 Final Regulations and Proposed Regulations to come to the conclusion that the Single Life Table should be used to determine distributions to the new spouse.[5] Thus, even if the spouse's new spouse is the sole beneficiary, it appears that the Single Life Table must be used (not recalculated) and capped at 10 years. But that is not 100% clear, and also leads to a result that is worse than if the first spouse had rolled the account to the spouse's own IRA. Accordingly, we recommend that the IRS clarify in the final regulation how to apply the rules in this case when the Spousal Proxy Rule comes into play and the spouse has remarried before dying.

III. <u>Distributions from Designated Roth Accounts</u>

Section 325 of SECURE 2.0 provides that RMDs are no longer required from designated Roth accounts while the participant is alive, and that the incidental death benefit rules do not apply to a designated Roth account. Our comments on how the Proposed Regulations implement Section 325 follow.

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[5] Treas. Reg. §1.401(a)(9)-5(g)(3)(ii)(D) states that the Single Life Table (not recalculated), capped at 10 years, is the method used for the surviving spouse's beneficiary (including a new spouse) if the surviving spouse dies after distributions are considered to have begun to the spouse (and Treas. Reg. §1.401(a)(9)-3(e)(3) addresses when that occurs). It seems that the proposed regulations should offer similar clarity on what happens when the original spouse dies before distributions are considered to have begun.

A. Clarify How to Apply the Rules if the Participant Dies on or After RBD

With respect to Roth IRAs, it has always been the case that when the Roth IRA owner dies, the Roth IRA owner is deemed to have died prior to the owner's RBD for purposes of administering the RMD rules after death. This is true even if the owner also had a traditional IRA.

Treas. Reg. § 1.401(a)(9)-3(a)(2) provides that if a participant's *entire* interest in a DC plan is held in a designated Roth account, then (1) no distributions are required during the participant's lifetime, and (2) the participant's death is always deemed to occur before their RBD. But the 2024 Final Regulations do not explicitly explain how to administer the plan if the participant dies on or after the RBD and the participant has both a designated Roth account and non-Roth accounts (pre-tax and/or non-Roth after-tax amounts).

Some members have concluded that amounts in the designated Roth account must be administered using the rules that apply as if the participant died before the RBD. Thus, for example, the "at least as rapidly rule" would not apply, and a designated beneficiary could elect to take no distributions for 10 years from the designated Roth account. All other amounts in the plan, however, would need to be distributed using the rules that apply when a participant dies on or after the RBD. Thus, distributions would must continue under the "at least as rapidly rule."

Other members have pointed out that such an interpretation rule creates significant complexity because different RMD rules are being applied to the Roth and the non-Roth portion, and this will lead to a number of problems and opportunities for inadvertent errors.[6]

A related question is whether or not, once the participant dies, distributions from the designated Roth account can be used to satisfy the RMD due from non-Roth amounts in the plan, and vice versa. Prior to SECURE 2.0, a plan participant could take RMDs from any source under the plan to satisfy the RMD due for the year. However, a distribution from a Roth IRA cannot be used to satisfy the RMD from a traditional IRA (or vice versa).

Because we have different views with the SPARK membership, we do not have a recommendation as to how to resolve this question. Either way, we recommend the final regulations clarify how to apply the rules once the participant dies in the case of a participant with both Roth and non-Roth amounts in their account, including with one or more examples. To the extent possible, it is important that the rules permit flexibility to avoid operational failures and unnecessary systems programming.

[6] For example, the beneficiary might be subject to the 10-year rule for Roth amounts, but life expectancy for all other amounts—which is complex to administer. There also could potentially be different life expectancies used for the Roth and non-Roth portions (for example if the beneficiary is older than the participant).

B. Clarify Implications of a Roth Conversion after RMDs Begin

The Proposed Regulations confirm that distributions from the designated Roth account while the participant is alive cannot be counted towards the RMD due from the non-Roth portion of the participant's account. We have received questions about how a plan should account for an in-plan Roth conversion made by a participant after the RBD. For example, consider the following situation. A participant has passed their RBD, and must take a distribution for 2026. The participant's pre-tax balance as of the end of 2026 is $100,000, and assume the RMD for 2026 is $3,922. Sometime in 2026, the participant contacts the plan and requests an in-plan Roth conversion of $5,000.

We think that the proper analysis is that the participant may not make the in-plan Roth conversion until the RMD of $3,922 is distributed from the plan (because an RMD generally cannot be rolled over). Once that has occurred, the participant may make the $5,000 in-plan Roth conversion. Whatever is left in the pre-tax account at the end of 2026 would be used to calculate the RMD for 2027.

We recommend that the final regulations (or the preamble) address this situation, as we think it will be a more common strategy among participants to utilize in-plan Roth conversions now that designated Roth accounts are not subject to lifetime RMDs.

C. Provide Reasonable Rules for Alternate Payees with Designated Roth Accounts

As we pointed out in our comments on the 2022 proposed regulations, for a long time the RMD regulations have provided insufficient guidance on administering the RMD rules in the case of an alternate payee under a QDRO. For one thing, the regulations appear to assume that a divorce always occurs before a participant reaches the RBD, which of course is not always true. The 2024 Final Regulations did not make any changes to the special rules that apply to alternate payees.

As was the case in prior regulations, the 2024 Final Regulations essentially tie the alternate payee's RMDs to the participant. Thus, we expect that while a participant with a designated Roth account is alive, any designated Roth amount of an alternate payee of such participant should be exempt from the RMD rules. Following the death of the participant, we would expect that the alternate payee would be subject to the RMD rules that apply after the death of the participant.

For purposes of the new rule for designated Roth accounts, a problem we pointed out in our prior comments impacts the rules for designated Roth accounts. While not very common, it does happen that an alternate payee will leave their account in the plan, and the participant (former spouse) will leave the plan and retire. In that case, the plan administrator has no way of knowing when the participant dies (and thus when distribution of a designated Roth account must begin), unless the alternate payee informs the plan administrator.

We recommend that the final regulations provide that if the employee is no longer a participant in the plan, the plan administrator can always assume, for purposes of paying RMDs to the alternate payee, that the participant is alive, and only needs to begin distributions of the designated Roth account after the alternate payee dies. Alternatively, the plan administrator may treat the date that the participant leaves the plan and receives a full distribution of benefits as the date of the death for purposes of commencing RMDs for the designated Roth account.

D. Confirm no RMD Due in Year of Death and Other Rules Still Apply

The 2024 Final Regulations and Proposed Regulations confirm that, per SECURE 2.0, no distributions are due from the designated Roth account while the participant is alive. We understand that this is also the case in the year that the participant died, because this is how the rule generally works for Roth IRAs. But the regulations do not make this explicit, so we would appreciate confirmation.

In addition, we would ask for confirmation that the following rules still apply in the case of a designated Roth account:

- A spouse beneficiary is permitted to delay distribution of the Roth account to 12/31 of the later of: (1) year employee would have reached his or her RMD age or (2) 12/31 of the year after the employee's death.
- An eligible designated beneficiary who is electing life expectancy using the Single Life Table for the Roth account is required to take a distribution by 12/31 of the year after the year of employee's death.

IV. Partial Annuitization

Section 204 of SECURE 2.0 requires the IRS to amend the RMD regulations to provide that a defined contribution plan may allow an employee to elect to have the amount required to be distributed from an annuity to be counted against the RMD otherwise due, which we refer to as the "Partial Annuitization Rule." Under this rule, where a portion of an interest in a plan is distributed in the form of annuity payments, and the annuity payments exceed the amount that would be required to be distributed under the individual account rules based on the value of the annuity, the excess annuity payment amount for a year can be applied towards the RMD for the year with respect to any remaining non-annuitized interest in the same plan. Our comments on how the Proposed Regulations implement Section 204 follow.[7]

[7] The Partial Annuitization Rule is implemented in the both the 2024 Final Regulations and the Proposed Regulations. For simplicity, in this section we use "Proposed Regulations" to refer to both, with respect to implementation of the Partial Annuitization Rule.

A. Clarify that QPDAs, In-Plan Annuities, and Purchase of DB Annuities are Eligible

The Proposed Regulations provide that the Partial Annuitization Rule applies "[i]n the case of an annuity contract purchased with a portion of the employee's account balance." We request clarification that the Partial Annuitization Rule is available in the following circumstances:

- ***Qualified plan distributed annuity (QPDA)***. A QPDA is generally an annuity that is purchased with a participant's account balance and then "distributed" to the participant. A QPDA might be an individual annuity or a certificate issued under a group annuity contract. But in either case, generally with a QPDA, ownership and all rights are given to the participant, and the value of the QPDA is no longer considered to be assets of the plan. The Code contains a definition in Code section 401(a)(38)(B)(iv), and QPDAs are referenced throughout the regulations, such as in Treas. Reg. §§ 1.402(c)-2(h), 1.401(a)(31)-1 Q&A-17, and 1.402(a)-1(a)(2).

- ***In-plan investment in a deferred annuity contract***. It is becoming increasingly common for defined contribution plans to offer participants the right to purchase deferred income annuities as investments. These investments may be liquid to start, but may later be annuitized. Sometimes the annuity payments technically are made to the participant's account in the plan's trust, in other cases annuity payments are always made to the participant as distributions. We believe that the Partial Annuitization Rule would apply to an in-plan annuity investment once the participant has made an irrevocable commitment to receive annuity payments from the annuity.

- ***Purchase of annuity in employer's defined benefit (DB) plan***. In 2012, the IRS released Revenue Ruling 2012-4, which explains how an employer could offer participants the ability to do a rollover from a defined contribution plan to the employer's DB plan to purchase additional annuity benefits under the DB plan. Although Section 204 refers to the purchase of an "annuity contract," it does not require that the annuity contract be issued by an insurance company.

B. Clarify Whether Purchases of IRA Annuity are Eligible

It appears from the Proposed Regulations that the Partial Annuitization Rule applies to a plan separately from any IRAs that the participant might own. This is consistent with the general principle that RMDs for a plan are based solely on that plan, and are not aggregated with other plans or IRAs. However, SPARK members have inquired whether it is possible for a participant to purchase an IRA annuity with a direct rollover from the plan and use that to apply the Partial Annuitization Rule to remaining amounts the plan.

One reason for the IRS to consider allowing this is that it would remove an artificial distinction between a QPDA and a direct rollover to purchase an IRA annuity. These two methods of generating guaranteed income from a defined contribution plan are very similar. In addition, if this were allowed, then this removes an artificial incentive to roll over the remaining balance out of the plan to an IRA to take advantage of the Partial Annuitization Rule.

C. Allow Plan to Rely on Information from Participant or Insurer

In order for a plan administrator to comply with the Partial Annuitization Rule – which it is not required to do – the plan administrator will need to receive information from either the participant or the insurance company on the payments made during the year and the fair market value of the annuity as of the end of the prior year. The Proposed Regulations do not address this, but in the preamble, the IRS explains "under these rules of operation, annuity contract issuers are expected to provide the annuity valuations as third-party disclosure. In addition, the amount of payments made under annuity contract and the underlying value of the annuity contract is expected to be reported to the employer as a third-party disclosure."

We understand that reporting is not mandatory, and thus we would expect many insurers will not automatically provide it (or not provide it at all). This is especially true for annuities issued before SECURE 2.0, where the cost of reporting was not contemplated in the cost of the product. Even where it is provided, we would expect that insurers may provide it to the participant, not the plan administrator or recordkeeper. We would expect that the participant would then pass this information to the plan administrator and request a reduction in the RMD.

In many cases, however, we anticipate that the plan administrator, recordkeeper, and insurance company will work together to provide a distribution option that allows partial annuitization of the account and an automatic reduction in the RMD. Even in that case, the reporting will come from the insurance company or through the participant.

We recommend that the final regulations confirm that a plan administrator may rely on information provided from an insurance company, or may rely on a participant's self-certification regarding aggregation and reductions in the RMD amount from the individual account under the plan, unless the administrator has actual knowledge to the contrary. This is similar to the approach taken under the current regulations with respect to QLACs.[8]

D. Provide Additional Guidance on Expectations and Timing for Reporting

As noted above, we understand that it will not be mandatory for an insurance company to calculate and provide the information needed for the Partial Annuitization Rule, unless the insurance company has agreed to do voluntarily by contract or otherwise. We are not suggesting it should be mandatory, as many insurance companies have not agreed to do this prior to the passage of SECURE 2.0 We also believe that there will be competitive pressures in the industry as more insurance companies want to assist individuals with taking advantage of the Partial Annuitization Rule.

[8] Treas. Reg. § 1.401(a)(9)-6(4)(i)(A).

Nonetheless, this reporting is going to be a critical component of making the Partial Annuitization Rule work, especially for QPDAs. Thus, we recommend that the IRS consider additional guidance providing color on its expectations that this reporting will occur, including explaining the timing of the reporting to provide sufficient time in advance of the payment of the RMD, and to whom reporting should normally occur (especially in the case of a multi-vendor plan such as a 403(b) plan).

V. Clarifications Regarding Final Regulations

We recognize that the IRS is not seeking comments on the 2024 Final Regulations, at least those aspects that do not implicate SECURE 2.0 provisions that are the subject of the Proposed Regulations. Nonetheless, we received a number of questions from SPARK members on the Final Regulations, which we have included as an appendix to this letter. As appropriate, we recommend the IRS consider addressing these in some form.

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The SPARK Institute appreciates the opportunity to provide these comments on the Proposed Regulations. If you have any questions or would like more information regarding this letter, please contact the SPARK Institute's outside counsel, Michael Hadley (mlhadley@davis-harman.com), Davis & Harman LLP.

Sincerely,

Tim Rouse
Executive Director

Appendix – Questions and Comments on Final Regulations

Hypothetical RMD

The 2024 Final Regulations retain the rules in the 2022 proposed regulations that prevents the rollover of a portion of a distribution from the spouse beneficiary's account that is a catch-up of a missed hypothetical RMD. The rules apply to the account of a spouse beneficiary of the employee if: (1) the spouse is subject to the 10-year rule and the employee dies before their required beginning date, (2) a distribution is made in or after the calendar year in which the spouse beneficiary attains "applicable age," and (3) the surviving spouse rolls over a portion of that distribution to the spouse's own plan or IRA.

- Please confirm that a plan will need to track the "applicable age" of a spouse beneficiary who is subject to the 10-year rule, to determine if RMDs would be required to commence prior to the end of the 10-year period.
- Please confirm with respect to a spouse beneficiary who has reached the "applicable age" requesting a rollover in the 10-year period, the hypothetical RMD is calculated using the applicable denominator for each distribution calendar year beginning with the calendar year following the year of the employee's death and up to and including the calendar year that includes the spouse beneficiary's date of death determined using ULT in §1.401(a)(9)-9(c) for the surviving spouse's age as of the surviving spouse's birthday in the distribution calendar year.

Multiple designated beneficiaries – application of life expectancy where no separate accounts

Suppose a participant names four beneficiaries, two minor children, and two designated beneficiaries ("DBs") who are not eligible designated beneficiaries ("EDBs"). Suppose the participant dies after the required beginning date, and the separate account rule does *not* apply. Whose life expectancy is used to calculate RMD?

We *think* the answer is that you would use the oldest DB's life expectancy to determine RMDs each year, not either child's life expectancy. That seems counterintuitive, but that seems to be what the regulations are saying. Here's why:

- Under Treas. Reg. § 1.401(a)(9)-4(e)(2)(ii), the employee is treated as having an EDB because one of the beneficiaries is a minor child.
- Because the employee died after his RBD, the "at least as rapidly" rule applies.
- Under Treas. Reg. § 1.401(a)(9)-5(f)(1)(i), you use the life expectancy of the oldest DB. Nothing in that provision suggests that you used the life expectancy of the youngest or oldest minor child.
- There is a special rule for how to apply the 10-year rule in this case (Treas. Reg. § 1.401(a)(9)-5(f)(2)(ii)). But that life expectancy calculation uses the oldest DB, not the oldest minor child.

That said, this feels like the wrong answer. The "special rule" in Treas. Reg. § 1.401(a)(9)-4(e)(2)(ii) that treats the employee as having an EDB by reason of having a child beneficiary even though there are non-EDBs, would naturally lead to the conclusion that the child must be the EDB whose life expectancy is used to determine the stretch payout, because only EDBs can stretch. But it appears that the "special rule" applies only for purposes of determining when a full distribution is required, not for purposes of whose life expectancy is used.

Multiple designated beneficiaries – other

In the preamble to the 2024 Final Regulation (see footnote 13), the IRS clarified that when an employee had one minor beneficiary and one older designated beneficiary, annual distributions may continue until the minor child reaches the age of majority plus 10 years. Please confirm that this only applies in multiple beneficiary situations.

Application to non-governmental 457(b) plans

The 2024 Final Regulations confirm that the 10-year rule in the SECURE Act (i.e. Code section 401(a)(9)(H)) applies to a section 457(b) plan of a non-governmental entity.

Please confirm that all the other rules that apply to beneficiaries in qualified plans apply to non-governmental 457(b) plans, including:

- The 10-year rule applies to an employee's designated beneficiary where the employee dies before the entire interest has been distributed, and on or after December 31, 2019.
- The life expectancy exception in Code section 401(a)(9)(H)(ii) for eligible designated beneficiaries also apply to plans sponsored by non-governmental 457(b) tax exempt entities.
- Spousal beneficiaries in non-governmental 457(b) plans are treated similar to their treatment in qualified plans, including the application of the Spousal ULT Rule.

Carry-over rollover rule

Under 1.408-8(d)(2)(i), if a surviving spouse rolls over a distribution of the employee's or IRA owner's interest to an IRA as a beneficiary, the method for determining required minimum distributions that applied under the deceased employee account also applies to the receiving IRA. Please confirm that this obligation is on the spouse or non-spouse beneficiary and the plan administrator is not responsible for notifying the IRA custodian.