Take-Away: The Final IRS Regulations that interpret the SECURE Act of 2019 clearly incorporate the *at-least-as-rapidly-rule* for a beneficiary who inherits an IRA or qualified plan account, e.g., a 401(k) account, when the account owner dies *after* his/her required beginning date (RBD- currently age 73). This rule requires the designated beneficiary who inherits the retirement account to take *annual* distributions, perhaps over a shorter distribution period if none were taken while the SECURE Act was being interpreted by the IRS.

Background: The *at-least-as-rapidly-rule* under the Tax Code provides that *"the at-least-as-rapidly rule* applies if distribution of the account owner's interest has begun" in accordance with IRC 401(a)(9)(A)(ii), which is the lifetime minimum distribution rules. [IRC 401(a)(9)(B)(i).] It applies only if the account owner dies on or after the account owner's required beginning date (RBD.)

When an IRA owner or a qualified plan participant dies on or *after* his/her required beginning date (RBD- currently age 73), their designated beneficiary is subject to the Tax Code's *at-least-as-rapidly-rule,* which essentially means that once required minimum distributions (RMDs) start, they cannot be stopped. Under this *rule*, a designated beneficiary must continue to take **annual** RMDs.

The Final IRS Regulations did not change the Proposed Regulations that were released a couple of years earlier, which were hotly opposed reflected by hundreds of comments that the IRS received to its Proposed Regulations and its insistence that the *at-leas- as-rapidly- rule* be followed despite the SECURE Act's general 10-year distribution rule which gives the option to other designated beneficiaries to delay taking any distribution for the entire 10 years after the account owner's death.

Final Regulation: Other than for *eligible designated beneficiaries* [i.e., the surviving spouse; a minor child of the account owner until age 21; a disabled or chronically ill beneficiary; or a beneficiary who is more than 10 years younger than the account owner] a designated beneficiary who inherits a retirement account normally has 10 years after the account owner's death to 'empty' the inherited account. However, the Final Regulations make it clear that a designated beneficiary must take **annual** RMDs if he/she inherited the retirement account after 2019 and he/she is either (i) a designated beneficiary who inherited a retirement account from an IRA owner or plan participant who **died on or after his/her RBD;** or (ii) a successor beneficiary of an *eligible designated beneficiary* who was taking life expectancy distributions from the inherited retirement account.

Waiver of Penalty: When the Proposed Regulations were first published there was a strong backlash to the IRS's interpretation of the SECURE Act. This prompted the IRS to waive any excise tax that would have otherwise applied to any of the '10-year' designated beneficiaries who failed to take RMDs for 2021,2022, 2023 and 2024, awaiting clarification from the IRS. With the IRS's Final Regulations, that waiver of the excise tax ceases, starting in **2025**. Moreover, the SECURE Act's original 10-year distribution period is **not extended** with the four years that the excise tax was waiver. Those beneficiaries are still subject to the original 10-year distribution period, which means that they now face a **6-year** distribution period for their inherited IRA.

Single Life Table: The designated beneficiary of the inherited retirement account, when its owner died after his/her RBD, must use the Single Life Expectancy Table, not the more favorable Uniform Lifetime or Joint Life Expectancy Table the account owner would have used. The Single Life Expectancy Table determines the life expectancy that a designated beneficiary must use to calculate his/her **annual** RMDs for the inherited account.

[In contrast, the Uniform Lifetime Table is used to calculate RMDs for the account owner, which assumes the owner's beneficiary is 10 years younger than the owner, regardless of the beneficiary's age; this Table results in a larger divisor, leading to a smaller taxable RMD. The Joint and Last Survivor Table is used to calculate RMDs for the account owner whose spouse is their sole primary beneficiary and who is more than 10 years younger than the account owner.]

Example: Sandy inherited a traditional IRA from her mother, Wanda. Wanda died at age 83 in 2020. Sandy is not an *eligible designated beneficiary*. Accordingly, under the SECURE Act, Sandy is subject to the SECURE Act's 10-year distribution requirement, which means that Sandy must 'empty' her inherited traditional IRA no later than December 31, 2030. Now, with the 'clarification' of the Final Regulations that Sandy is also subject to the *at-least-as- rapidly- rule,* since Wanda died after her RBD, Sandy must take **annual** RMDs based on her own life expectancy (using the Single Life Expectancy Table) in years 1 through 9 of the 10-year payout period after Wanda's death. Due to the IRS's waiver of the excise tax for the failure to take an RMD for each of the years 2021 through 2024, Sandy can avoid having to pay any excise tax if she did not take any distributions while there was confusion regarding the IRS's Proposed Regulations. However, beginning in 2025, Sandy must take an **annual** RMD for years 2025 through 2029 from the inherited IRA, which means that she will have to report larger amounts of taxable income each year due to her RMDs.

Calculating the RMD: Calculating a beneficiary's RMD under the Final Regulations is not as simple as one might expect. Consider the following Example:

> **Example:** Bess inherited a traditional IRA from her father Ben who died at age 85 in 2020. Bess is subject to the 10-year distribution rule under the SECURE Act. Bess must 'empty' the inherited IRA by December 31, 2030. The Final Regulations require Bess to take **annual** RMDs based on Bess's life expectancy in years 1 through 9 of the 10-year payout period. With the waiver of any excise taxes for missed RMDs in years 2021 through 2024, Bess does not need to take RMDs for those years. But starting in 2025 Bess must take **annual** RMDs for years 2025 through 2029 from the inherited IRA. Bess turned age 60 in 2020, the year that

Ben died. Its now 2024, so Bess will turn age 65 in 2025 when her **annual** RMDs begin . At age 65 Bess's life expectancy is 22.9 years. Logic would suggest that Bess calculates her RMD by dividing the December 31, 2024 inherited IRA account balance by 22.9, i.e., Bess's life expectancy. But that would too easy! Rather, Bess must go back and determine what her baseline life expectancy was back in 2021, the year following Ben's death, when she was age 61, and then subtract 1.0 for each subsequent year up to 2025. The life expectancy of a 61-year-old individual under the IRS's Single Life Table is 26.2. Subtracting 1.0 for year subsequent year leads Bess to a **22.5-year** life expectancy for her 2025 RMD, **not 22.9 years.** [Aside: Is it any wonder that people make mistakes when they take RMDs when the calculation rules are this complex?]

Older Designated Beneficiaries: Under the *at-least-as-rapidly-rule, eligible designated beneficiaries* must take **annual** RMDs over the longer of either (i) the beneficiary's single life expectancy or (ii) the remaining single life expectancy of the deceased account owner. However, the Proposed Regulations penalized beneficiaries who were older than the decedent by requiring such a beneficiary to fully distribute the inherited retirement account when the designated beneficiary's life expectancy ends. Fortunately, the Final Regulations removed this requirement. Consequently, a designated beneficiary who is *older* than the deceased account owner may take distributions over the full life expectancy of the deceased account owner, which is longer.

Example: Ben died in 2020 at age 75, after his RBD. The *at least as rapidly rule* applies to Ben's designated beneficiary. Ben's sister, Julie, is the designated beneficiary of Ben's traditional IRA. Julie is age 80 at the time of Ben's death. Julie is an *eligible designated beneficiary* because she is 'not more than 10 years younger' than Ben- she's older than Ben. Julie must take distributions from the inherited IRA over her single life expectancy or Ben's single life expectancy, whichever is longer. In this case, Ben's life expectancy is longer. In 2024, Ben's life expectancy would be 10.8 years. In 2024, Julie's life expectancy is 7.5 years. Julie can use Ben's life expectancy to calculate her RMD each year. The Proposed

Regulations would have required Julie to fully 'empty' the inherited IRA no later than 2031 when Julie would have been age 91, and her life expectancy then would then have been less than one. With the Final Regulations, Julie can now extend taking distributions from her inherited IRA to 2024 when Ben's life expectancy ends.

Conclusion: The *at-least-as-rapidly-rule* survives thus creating problems for some designated beneficiaries and a bit of a reprieve for older *eligible designated beneficiaries*. Probably many designated beneficiaries of inherited traditional IRAs and retirement accounts will choose to take annual distributions rather than delay taking any distributions for the full 10 years in order to 'spread' the taxable income over a longer period of time rather than bunch all that retirement income into a single year. These RMD rules are a mess, and we have an inattentive Congress to thank for the confusion.