

Take-Away: The proposed Regulations to the SECURE 2.0 Act provide a surviving spouse more flexibility in taking required minimum distributions (RMDs) from an *inherited* retirement account, yet understanding those new rules will be a challenge.

Background: While I have written a couple of missives recently on the SECURE 2.0 Act's proposed regulations to implement Section 327 of the Act, with the number of follow up questions that I received, I thought it best to try (again) to summarize the surviving spouse's options under that new Section.

Section 327: Section 327 of the Act has caused a lot of confusion, since it replaces old rules for a surviving spouse beneficiary who inherits a retirement account. The Senate Finance Committee's Report on Section 327 state that the purpose of the Section is to "*allow a surviving spouse to elect to be treated as the deceased employee for purposes of the required minimum distribution rules.*" Section 327 is effective in 2024.

Prior Distribution Rules Remain: One thing the proposed Regulations (published on July 18, 2024) state is that the 'existing' distributions rules for a surviving spouse were not eliminated by the Act. Rather, a couple of new rules, beneficial to a surviving spouse, were added to the 'existing' distribution rules which still can be used.

Rollovers: The 'existing' distribution rules with respect to a surviving spouse's *rollover* of an inherited retirement account to his/her own IRA remain in place, which is an option frequently used by a surviving spouse who is over the age 59 ½. For those surviving spouses who are under the age of 59 ½, the surviving may wish to maintain the inherited retirement account as an *inherited* retirement account rather than make a *rollover*

to his/her own IRA, so that the surviving spouse can access the *inherited* retirement account penalty-free, while potentially delaying their own required minimum distributions (RMDs) for several years.

Inherited Retirement Account: If the surviving spouse decides to retain their deceased spouse's retirement account as an *inherited* retirement account, a different set of rules will apply if the account owner's death was either before, or after, his/her required beginning date (RBD, which is April 1 of the year following the year the account owner attains the age 73, or in later years, age 75.)

Death Before RBD: If the account owner died before his/her RBD, the new proposed Regulations provide two options to the surviving spouse beneficiary, who chooses to retain the account as an *inherited* account. This choice exists if the surviving spouse does **not** engage in an IRA *rollover*. The **two options** for the surviving spouse are:

- (i) **The 10-year distribution rule of the SECURE Act; or**
- (ii) **The Section 327 option for the *inherited* retirement account, taking required minimum distributions (RMDs) over the survivor's life expectancy.**

Survivor's Decision: A surviving spouse might want to choose the Section 327 option if the deceased retirement account owner died before his/her RBD, because no annual RMDs are required during the 10-year period. The 10-year rule election is always available to a Roth IRA spouse beneficiary because all Roth IRA owners are considered to have died before their RBD.

327 Option: If the surviving spouse chooses to remain a beneficiary of his/her spouse's retirement account, keeping it as an *inherited* retirement account and opting not to make a *rollover* of the retirement account, and the survivor chooses to take *annual* RMDs as an *eligible designated beneficiary* (the survivor opts not to take distributions over the 10-year distribution period faced by other non-*eligible designated*

beneficiaries) Section 327 comes into play.

Special rules exist when RMDs must begin for the surviving spouse, and how those RMDs are calculated. Section 327's proposed Regulations make it clear that:

Avoid Early Distribution Penalty: The *inherited* retirement account will still be treated as an *inherited* retirement account, which means that the 10% early distribution penalty will not apply to any distributions taken by the surviving spouse from the *inherited* account;

Freedom to Rollover: At any point in time, the survivor can always *roll over* the balance of the *inherited* retirement account to his/her own IRA;

Delayed RMDs: The survivor can delay RMDs until the deceased retirement account owner would have reached the age when the account owner's RMD must start (currently age 73);

Survivor's Age for RMDs: The surviving spouse will use his/her own age (not the decedent's age) to calculate the RMDs;

Uniform Lifetime Table: The proposed Regulations allow the surviving spouse to use the more favorable IRS Uniform Lifetime Table to calculate his/her RMD, which will result in a smaller RMD; and

No Formal Election Required: The above benefits will occur without any formal election by the surviving spouse, so long as the account owner's death occurs before the account owner's RBD.

Example: Derek dies in 2024 at age 50. Derek's sole beneficiary of his traditional IRA is his spouse Debbie, who is age 54. Debbie will not have

to take RMDs on the *inherited* IRA until Derek would have been required to take RMDs, at age 75 in 2049. This allows Debbie to delay taking RMDs for decades. When Debbie does start to take RMDs, she will be able to use the Uniform Lifetime Table with her age, then 79 years. The divisor for Debbie's RMD would be 21.1; for comparison purposes, if Debbie had been required to use the Single Life Table to calculate her RMD, the divisor for her RMD would have been 11.9. Note that at any time Debbie can take distributions from the *inherited* IRA without incurring the 10% early distribution penalty. Moreover, at any time Debbie can *roll* the balance of this *inherited* IRA to her own IRA.

Death After RBD: Using the *inherited* IRA for distributions will leverage the new stretch distributions for a surviving spouse can apply when the IRA owner dies after his/her RBD, but it is not automatic election. A qualified plan or IRA can allow this option, and it can also be a default election in a qualified plan or an IRA custodial agreement if the surviving spouse makes no formal election under 327. By using a Section 327 election, the surviving spouse would be able to use the longer life expectancy under the Uniform Lifetime Table (using the beneficiary's own age) or the remaining single life expectancy of the deceased IRA owner from the Single Life Table, aka the decedent's *ghost life expectancy*.

Example: Barney dies at age 80 in 2024. Barney's wife, Betty, is age 75. Betty is the sole beneficiary of Barney's traditional IRA. Betty formally makes a Section 327 election, which retains the IRA as an *inherited* IRA. Betty will need to take her first RMD from the *inherited* IRA in 2025. Betty must use a 23.7 divisor to calculate her RMD, which is the longer of the factors using her age (age 76) and the Uniform Lifetime Table (23.7), or Barney's remaining single life expectancy under the Single Life Table, which is 10.2 ($11.2 - 1 = 10.2$.) Note, the 23.7 divisor would be the same factor that Betty would use if she made a spousal *rollover* of Barney's IRA.

Example: Ethel dies at age 74 in 2024 owning a traditional IRA. Ethel's husband, Fred, is age 90. Fred is the sole designated beneficiary of

Ethel's traditional IRA. If Fred formally makes a Section 327 election, he can take his first RMD from the *inherited* IRA using Ethel's remaining single life expectancy under the Single Life Table, which is 14.6 (15.6-1=14.6.) That would result in a smaller RMD than if Fred did a spousal *rollover* because the life expectancy (divisor) taken from the Uniform Lifetime Table for a person age 91 is 11.5.

Conclusion: While the proposed Regulations provide some clarity on Section 327, this election (automatic vs affirmative) and the associated distribution rules are still pretty confusing to follow. Perhaps the key point is that by the surviving spouse maintaining an *inherited* IRA, and his/her ability to use the Uniform Lifetime Table to calculate the survivor's RMD, the survivor will be able to take smaller RMDs, which translates to smaller taxes to be paid. We may be seeing fewer spousal *rollovers* in the years to come, assuming that we are able to understand these new distribution rules and how they work to delay RMDs taken by a surviving spouse.