

## Spousal RMD "Trap"

Quick-Take: Buried inside the SECURE Act 2.0 Proposed Regulations is a potential 'trap' for some surviving spouses. The Proposed Regulations *require* a surviving spouse to take a required minimum distribution (RMD) of the deceased spouse's retirement account before the surviving spouse can engage in a spousal rollover. The Proposed Regulations call this either a *catch-up* or *hypothetical RMD*. Apparently, the IRS discovered a 'loophole' in the distribution rules that could be exploited by a surviving spouse. (God forbid a widow or widower might find a small tax break in the IRS's world!).

Surviving Spouse's Election: If a surviving spouse inherits an IRA, he/she can remain as its beneficiary or he/she can do a spousal rollover to his/her own IRA. Yet another rule applies when a surviving spouse remains the beneficiary who inherits from a deceased spouse's IRA who dies before his/her required beginning date (RBD), which is April 1 of the year following attaining the age 73. In this case, the surviving spouse can either elect to *stretch* RMDs over his/her single life expectancy or use the SECURE Act's 10-year distribution rule with no *annual* RMDs for those 10 years.

EDB: Recall that the surviving spouse is an *eligible designated beneficiary* (EDB) who can take distributions from an inherited retirement account over his/her lifetime.

Loophole: The perceived loophole is that a surviving spouse could *elect* to delay taking any distributions from the inherited IRA for 9 years, and then before the 10<sup>th</sup> year after his/her spouse's death, make a spousal rollover, which he/she could do to avoid taking any RMDs he/she would otherwise have to take after the surviving attained age 73.

Example: In 2023 Wilma, age 70, inherited an IRA from her late husband Fred. Fred died at age 72, prior to his required beginning date (RBD.) Wilma decides to elect to remain as the beneficiary of Fred's IRA and she elects the 10-year SECURE Act's distribution rule. Since Fred died prior to his RBD, the 10-year distribution rule would allow Wilma to defer taking any RMDs from Fred's IRA until December 31, 2033 (the 10<sup>th</sup> year after Fred's death.) Wilma's plan is to exploit the SECURE Act's 10-year distribution rule, with no annual distributions taken from Fred's IRA for 8 or 9 years, and then in the 10<sup>th</sup> year, make a spousal rollover to her own IRA, thus avoiding annual RMDs that Wilma would otherwise have had to take from her own IRA beginning at age 73 (Wilma's own RBD.) Rather than permit Wilma to 'game the system,' the IRS's Proposed Regulations create the *hypothetical RMD*. Wilma can still make a spousal rollover of Fred's IRA in the 10<sup>th</sup> year after Fred's death, but Wilma must first calculate the RMDs that she would have taken for each year that she was age 73 or older. Like any other RMD, these

*hypothetical RMDs* Wilma must take are not eligible for a rollover to her own IRA. In short, Wilma must first take these *hypothetical RMDs* from Fred's IRA before she can roll over the balance of the inherited IRA in a spousal rollover to her own IRA.

Conclusion: This Proposed Regulation is just one more example of where multiple layers of bewildering retirement plan distribution rules found in the Tax Code create both gaps and confusion, forcing the IRS to develop strange rules and concepts to fill the created gaps. Depending on the plan, depending on the identity of the beneficiary, depending on the decedent's age at death, varying distribution rules apply, all enforced by penalties for failing to take the correct RMD amount.

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