

## SECURE 2.0 Act Rules Delayed

**Take-Away:** The IRS extended the time for qualified plan sponsors to implement technical changes to their plans caused by the SECURE 2.0 Act, including the determination of an eligible designated beneficiary along with a few other highly technical rules.

**Background:** The SECURE 2.0 Act made several technical changes that plan sponsors have to add to their qualified plans. Those required changes have triggered a lot of concern about how qualified plans had to be implemented which, in turn, has prompted the IRS to delay when some plan changes had to be implemented. The original effective date was January 1, 2025, but that quickly got pushed back after the July 2024 Proposed Regulations were released by the Service. The Proposed Regulations precipitated lots of comments (or concerns and confusion.) The IRS has, yet again, pushed back the implementation date for *some* of the highly technical provisions of the SECURE 2.0 Act.

**Announcement 2026-7:** In its recent Announcement, the IRS extended the timeline for plan sponsors to implement structural changes to their qualified plans. These technical sections of the Act deal with: (i) designated beneficiaries; (ii) distributions from defined contribution plans; and (iii) distributions from defined benefit plans and annuity contracts. This recent Announcement is that it builds upon the prior IRS Announcement 2025-2 with the goal to provide formalized relief to plan sponsors with respect to the effective date of the expected Final Regulations that implement the SECURE 2.0 Act's provisions. In short, the Announcement creates something of a *floating runway* to ensure sponsor compliance no earlier than six months *after* the date of the Final Regulations are published in the Federal Register. The purpose of the 6-month delay is to assure that a qualified plan is not forced to adapt to the Final Regulations mid-year without adequate lead time.

**Determination of *Designated Beneficiary*:** The Proposed Regulations provide an update for identifying an *eligible designated beneficiary* (EDB) particularly when a surviving spouse is the EDB. [Proposed Regulation 1.401(a)(9)-4.] The Proposed Regulations add a specific limitation with regard to a surviving spouse's successor beneficiaries. The proposed text adds that "*if the surviving spouse dies after benefits are considered to have commenced under Section 1401(a)(9)-3(e)(3), then the beneficiary of the spouse is not an eligible designated beneficiary.*" As a result, a final distribution of the entire interest in the

retirement account must be made by the end of the calendar year that includes the 10<sup>th</sup> anniversary of the surviving spouse's death.

**Default Spousal Election:** The SECURE 2.0 Act also permits a surviving spouse who is the sole beneficiary to elect to be treated as the 'employee-participant' for required minimum distribution (RMD) purposes. [Proposed Regulation 1.401(a)(9)-5.] If the employee-decedent dies *before* his/her required beginning date (RBD) and their surviving spouse is subject to the life expectancy rule, the survivor is *automatically* treated as having made this election. However, if the employee-decedent dies *after* his/her RBD, then the election is not automatic. The Proposed Regulations permit plans to write this into their plan documents as a 'default' election. Delaying this rule means that a plan will have more time to amend its governing instruments to establish this operational 'default' rule without any penalty.

**Roth Accounts:** The SECURE 2.0 Act provides that a plan Roth account is no longer subject to lifetime minimum distribution requirements, e.g., a Roth 401(k) account. The Proposed Regulations clarify the mechanics for this exclusion. [Proposed Regulation 1.401(a)(9)-5(g)(2).] The rule stipulates that distributions from a designated Roth account made during a distribution calendar year *will not count* toward satisfying the plan's overall RMD requirements for that year. The plan participant must calculate and satisfy his/her RMDs entirely from their pre-tax account balances, and Roth distributions will remain eligible for rollovers to Roth IRAs.

**Missed RMDs:** The SECURE 2.0 Act reduced the excise tax on missed RMDs from 25% to 10% if the oversight corrected within a prescribed period. [IRC 4974.] The Announcement addresses the ordering rules for the corrections. [Proposed Regulation 1.401(a)(9)-5(g)(2)(iv).] A corrective distribution that gives rise to the excise tax reduction is completely excluded when determining if the current calendar year's RMD requirement is satisfied. Restated, if a participant takes a corrective distribution in a subsequent tax year, the current year's RMD must be calculated and distributed in addition to the corrective amount.

**QLAC:** The last 'relief' is admittedly pretty narrow. It addresses a qualified longevity annuity contract (QLAC) that is purchased with joint and survivor annuity benefits when a divorce

occurs *before* the annuity payments commence. [Proposed Regulation 1.401(a)(9)-6.] Some qualified plans are not subject to the Qualified Domestic Relations Orders (QDROs), like an IRC 414(d) governmental plan. This Proposed Regulation provides an alternative to a QDRO. With this type of exempt qualified plan, a common divorce or separation agreement, defined as a divorce decree, or a written separation agreement, or a separation decree ordering support payments, can be substituted for a formal QDRO, without affecting the joint and survivor benefits under the QLAC.

**Conclusion:** Plan sponsors and plan participants must still use reasonable, good-faith interpretations of the SECURE 2.0 Act's provisions awaiting the release of its Final Regulations. That said, the delayed effective dates for some of these more technical changes in the law will be welcome to plan sponsors (and qualified plan participants,) However, we continue to await the Final Regulations with the understanding that the IRS is probably preoccupied with writing OB3 Regulations. If anything, this missive can serve as a helpful 'refresher' of some of the major changes that the Act made to retirement planning.

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