The COMMITTEE of ANNUITY INSURERS

1455 Pennsylvania Avenue NW, Suite 1200, Washington, DC 20004
(202) 347-2230 | www.annuity-insurers.org

September 17, 2024

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

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

To whom it may concern:

We are writing on behalf of the Committee of Annuity Insurers (the "Committee") to comment on the Notice of Proposed Rulemaking, titled "Required Minimum Distributions," that the Treasury Department and Internal Revenue Service ("IRS") published in the Federal Register on July 19, 2024 (the "Proposed Regulations").[1] We also are writing to request clarifications on certain aspects of the final regulations that were published in the Federal Register that same day (the "Final Regulations").[2]

The Committee submitted extensive comments on the proposed regulations regarding required minimum distributions ("RMDs") that Treasury and IRS published in February 2022 (the "2022 Proposed Regulations"). The Committee also has commented on various issues for which guidance is needed under the SECURE 2.0 Act. We would like to thank Treasury and IRS for their careful consideration of our comments, many of which were accepted and implemented in the Final Regulations and Proposed Regulations. The Committee appreciates this opportunity to comment further, and we request to testify at the September 25th public hearing. An outline of topics for our testimony at the hearing is attached. Our detailed comments are set forth below.

[1] 89 Fed. Reg. 58,644 (July 19, 2024). The Committee is a coalition of life insurance companies formed in 1981 to participate in the development of federal policy with respect to annuities. The Committee's 32 member companies represent approximately 80% of the annuity business in the United States and are among the largest issuers of annuity contracts to retirement plans and as individual retirement annuities. A list of member companies is attached.

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

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I. EFFECTIVE DATE ISSUES

A. Extend the Effective Date of the Proposed Regulations and Provide Relief for Reasonable, Good Faith Interpretations in the Meantime

The Committee requests guidance that (1) delays the effective date of the Proposed Regulations until the first calendar year beginning at least nine months after final regulations are published, in order to give taxpayers and service providers adequate time to implement the regulations, and (2) until that date, provides taxpayers relief for their reasonable, good faith interpretations of the underlying statutory rules. The guidance should be clear that although compliance with the Proposed Regulations will be deemed to satisfy the reasonable, good faith standard, such compliance is not the sole means of satisfying that standard.

The Proposed Regulations are proposed to apply for purposes of determining RMDs for calendar years beginning on or after January 1, 2025, and to distributions made on or after that date.[3] This is too short a timeframe for compliance. Even if Treasury and IRS were to finalize the Proposed Regulations shortly after the September 25th public hearing, taxpayers would have only a few short months to digest and implement any rule changes. That timeframe would be even shorter if final rules are not published until later in 2024, which seems a likely scenario. More time is needed and warranted, especially given the complexity of the new rules and the fact that, by 2025, taxpayers also must implement the Final Regulations published at the end of July.

The Final Regulations generally apply starting on January 1, 2025.[4] Thus, Treasury and IRS provided approximately five months of lead-time for taxpayers to implement the Final Regulations that were released in July, yet have proposed considerably shorter lead-time for the forthcoming finalization of the Proposed Regulations. The preamble to the Final Regulations also states that for years prior to 2025, taxpayers must apply the preexisting final regulations, taking into account a "reasonable, good faith interpretation" of sections 114 and 401 of SECURE 1.0, and that compliance with the 2022 Proposed Regulations will satisfy that requirement.[5] The preamble further provides that for the 2023 and 2024 distribution calendar years, taxpayers must take into account a "reasonable, good faith interpretation" of certain sections of SECURE 2.0 listed in the preamble.[6] Thus, Treasury and IRS have provided relief for "reasonable, good faith interpretations" as part of the Final Regulations, but not for the forthcoming finalization of the Proposed Regulations. The same relief is warranted for both sets of regulations.

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[3] 89 Fed. Reg. at 58,648. The amendments to Treas. Reg. § 1.402(c)-2 would apply "for distributions on or after January 1, 2025," whereas the rest of the Proposed Regulations would apply "for purposes of determining required minimum distributions" on or after that date. *Id.*

[4] 89 Fed. Reg. at 58,905.

[5] SECURE 1.0 is the Setting Every Community Up for Retirement Enhancement Act of 2019, Division O of the Further Consolidated Appropriations Act of 2019, Pub. L. No. 116-94.

[6] SECURE 2.0 is Division T of the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328.

B. Clarify that a "Reasonable, Good Faith Interpretation" Standard Applies for Section 327 of SECURE 2.0

The Committee requests clarification that, for 2024, taxpayers can rely on their own "reasonable, good faith interpretations" of section 327 of the SECURE 2.0 Act, which permits surviving spouses to use the Uniform Lifetime Table to calculate their RMDs as beneficiaries of a decedent starting in 2024.

As mentioned above, the preamble to the Final Regulations states that, for the 2023 and 2024 distribution calendar years, taxpayers must apply the preexisting final regulations, but also must take into account a reasonable, good faith interpretation of specific sections of SECURE 2.0 that are listed in the preamble. The preamble's list contains various provisions of SECURE 2.0 that became effective in 2023 and/or 2024.[7] The list does not, however, include section 327 of SECURE 2.0, even though it also became effective in 2024.[8] This means that, like the other SECURE 2.0 provisions listed in the preamble, section 327 started applying before the effective date of the Final Regulations and before the proposed effective date of the Proposed Regulations. In these circumstances, the guidance permitting taxpayers to rely on their reasonable, good faith interpretations should apply to section 327 of SECURE 2.0, just as it applies to the various other provisions of SECURE 2.0 that became effective in 2023 or 2024.

II. PARTIAL ANNUITIZATION ISSUES

Section 204 of SECURE 2.0 directs the Treasury Department to amend the RMD regulations to provide that in cases where a portion of an individual's interest in a defined contribution plan (or a portion of their interest in all their IRAs) is annuitized, they can reduce their RMD for the remaining non-annuitized account balance by any excess of their annuity payments over what their RMD would have been if they had not annuitized. For this purpose, the excess amount is determined by comparing the annuity payments to the RMD that would be determined using the "value" of the annuity contract. This provision is effective as of December 29, 2022, and until the Treasury Department amends the regulations SECURE 2.0 provides that taxpayers may rely on their reasonable, good faith interpretations. The Final Regulations and the Proposed Regulations implement this provision of SECURE 2.0 as an "Optional Aggregation Rule."[9] Our comments on these provisions are set forth below.

A. Eliminate the Mandate to Use the "Gift Tax Method" for Valuing Annuities and Adopt a Principle-Based Rule for Such Valuations

The Committee requests that final regulations abandon the proposal that would require the "gift tax method" to be used when determining the "value" of an annuity contract for purposes of the Optional Aggregation Rule. In lieu of that proposal, final regulations should (1) adopt a principle-based rule under which the "value" would be equal to the present value of the future annuity payments determined using reasonable actuarial methods and assumptions,

[7] The preamble lists sections 107, 201, 202, 204, and 337 of SECURE 2.0. 89 Fed. Reg. at 58,905.

[8] SECURE 2.0 § 327(c) (applying the new rule "to calendar years beginning after December 31, 2023").

[9] Treas. Reg. § 1.401(a)(9)-5(a)(5)(iv).

determined in good faith, and (2) confirm that the gift tax method is merely one method that can be used to satisfy the principle-based rule.

The Proposed Regulations provide that for purposes of the Optional Aggregation Rule, the "value" of an annuity contract *must* be determined using the "gift tax method" for valuing annuities under the regulations governing Roth conversions of traditional IRAs.[10] The Committee objects to any mandate on how to determine the value of an annuity contract. No other provision of the RMD regulations mandates a particular valuation method for any type of asset. Even the Roth conversion regulations do not impose such a mandate. Rather, after establishing the general requirement to reflect the "fair market value" of any annuity contract involved in a Roth conversion, the regulations (1) describe several methods that "may" (not "must") be used to determine that value, (2) acknowledge that other methods may be more appropriate, and (3) anticipate that future IRS guidance may further address the valuation issue. Thus, under the Roth conversion regulations the gift tax method is permissive, not mandatory, and taxpayers are free to determine the value of their annuity contracts in other ways, provided that the chosen method captures the "full value of the contract."[11] The guidance we have requested above would be consistent with this approach from the existing regulations.

Mandating the use of the gift tax method would raise several practical difficulties. Many annuity issuers already have systems in place to determine the fair market value ("FMV") of their annuity contracts for other purposes, such as to report in box 5 of Form 5498 (regarding the FMV of IRAs). Those systems may not follow the gift tax method and may produce slightly different values than the gift tax method. If companies are required to use the gift tax method for purposes of the Optional Aggregation Rule and they continue to use their existing systems to value their contracts for other purposes, they could find themselves reporting slightly different values for the same contract to the same person but for different purposes. This is not ideal and could lead to customer confusion. It also could lead to an IRS assertion of penalties for mis-reporting, which would be completely inappropriate given the fact that even the existing Roth conversion regulations recognize that multiple methods may reasonably be used to determine the FMV of an annuity contract.

To avoid potential minor discrepancies in the FMVs they report for a given contract, one might think that annuity issuers could simply change their systems to use the gift tax method for *all* purposes. This is not realistic. Currently, companies rarely use the gift tax method to value annuities involved in Roth conversions because such conversions almost never involve contracts that are in payout status. Rather, Roth conversions almost always involve *deferred* annuities, for which the regulations permit an "accumulation method" to be used, which reflects the "actuarial present value" of benefits that are not otherwise reflected in a specified account value under the contract.[12] Thus, annuity issuers' systems are much more likely to be currently programmed to

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[10] Prop. Treas. Reg. § 1.401(a)(9)-5(a)(5)(v). The requirement to use the gift tax method would apply for determining RMDs for 2026 or later. Under the gift tax method, the fair market value of an annuity contract is based on the price of a "comparable contract issued by the company which sold the annuity," or the "interpolated terminal reserve" if no comparable contract is available. Treas. Reg. § 1.408A-4, Q&A-14(b)(2).

[11] *See* Treas. Reg. § 1.408A-4, Q&A-14(b)(1)(i).

[12] Treas. Reg. § 1.408A-4, Q&A-14(b)(3). *See also* Treas. Reg. § 1.401(a)(9)-6(m).

determine an "actuarial present value" for any given annuity benefit, and those systems would need to continue to be used for determining FMVs in Roth conversions involving deferred annuities and for determining RMDs for deferred annuities.[13]

To use the gift tax method on the wider scale that the Proposed Regulations contemplate, annuity insurers likely would need to create entirely new systems that are separate from their existing valuation systems. In essence, those systems would need to run policy illustrations on every payout annuity every year. This would require a massive programming and administrative effort that companies simply cannot undertake. Employer plans and individual taxpayers would need to apply the gift tax method themselves if they wanted to use the Optional Aggregation Rule, as there is no statutory requirement that insurers must determine these values for the rule to apply.

In that regard, an ideal solution would be one that facilitates the ability of plans and individuals to determine the FMV of their payout annuities on their own, if they need or choose to do so. Many online calculators can generate present values for a given annuity stream, and except in the case of a complex payout design those calculators should produce a reasonable estimate of the "value" of the future annuity benefits.[14] Using such a present value is consistent with the gift tax method, which, at its core, is just a specific method of determining the present value of the future annuity benefits. While that specific method should be permitted, it should not be mandated because other present value methodologies can just as reasonably approximate the value. Accordingly, final regulations should abandon the mandated use of the gift tax method and should adopt a principle-based rule under which the value would be equal to the present value of the future annuity payments determined using reasonable actuarial methods and assumptions, determined in good faith. For this purpose, final regulations also should confirm that the gift tax method is merely one method that can be used to satisfy the principle-based rule.

B. <u>Clarify that the Optional Aggregation Rule Can Apply to a Single IRA</u>

The Committee requests confirmation that the Optional Aggregation Rule can apply in situations where an individual owns only one IRA and either (1) the IRA is an individual retirement annuity under section 408(b) that the individual "partially annuitizes," or (2) the IRA is an individual retirement account under section 408(a) that, in turn, holds an annuity contract from which annuity payments are made to the individual.

The Final Regulations provide that, for IRAs, the Optional Aggregation Rule is available if an individual owns an individual retirement annuity under section 408(b) along with one or more IRAs that have non-annuitized account balances.[15] We are concerned this could be interpreted as limiting the Optional Aggregation Rule for IRAs to situations where an individual owns *multiple* IRAs and fully annuitizes one of them. Such an interpretation would omit the

[13] *See* Treas. Reg. § 1.401(a)(9)-6(m).

[14] We note here that section 204 of SECURE 2.0 refers only to the "value" of the annuity contract, whereas the Proposed Regulations refer to the "fair market value."

[15] Treas. Reg. § 1.408-8(e)(1)(ii).

following situations in which the new rule should be available even though the individual owns only one IRA:

- *Partial annuitization of a single individual retirement annuity* – An individual owns only one IRA, which is a deferred annuity contract under section 408(b) that provides an account value. The contract allows the individual to "partially annuitize," meaning they can apply a portion of the account value to an annuity payout option while leaving the remaining account value intact.[16] Upon electing this option, the individual will receive annuity payments from a portion of their only IRA.

- *Annuitization within a single individual retirement account* – An individual owns only one IRA, which is an individual retirement account under section 408(a). The individual uses a portion of their account balance to purchase an annuity contract, which is held as an asset within the IRA account. The contract makes annuity payments directly to the individual.[17] After those payments commence, the individual still owns only one IRA.

In both of these situations, the individual has annuitized a portion of their IRA account balance, such that Treas. Reg. section 1.401(a)(9)-6 applies to that portion while Treas. Reg. section 1.401(a)(9)-5 continues to apply to the remaining portion. This is no different than an individual annuitizing a portion of their account balance in a qualified plan while continuing to maintain a non-annuitized account within that same plan. The regulations should clarify that the Optional Aggregation Rule is available in these analogous situations involving a single IRA.

C. Clarify that the Optional Aggregation Rule Applies to QPDAs

The Committee requests guidance clarifying that, in the case of a qualified plan distributed annuity ("QPDA"), (1) the Optional Aggregation Rule can apply to the individual's remaining balance in the plan by taking into account the QPDA, and (2) when determining the RMD that must be paid from the non-annuitized balance in the plan, the plan can rely on information about the QPDA that the plan receives from the annuity issuer or from the individual participant, provided that the participant represents that they obtained the information from the annuity issuer or obtained it consistently with applicable standards.

It is not uncommon for a qualified plan to provide that benefits are paid in cash or, at the participant's election, in the form of an annuity contract. If a plan provides for an annuity contract form of distribution, the plan typically will purchase an annuity contract from an insurance company in the participant's name using proceeds from assets in the participant's account in the plan. Once the contract is issued, the plan ceases to have any rights under the

[16] *See*, *e.g.*, section 72(a)(2) (regarding partial annuitization of a single annuity contract).

[17] Other Treasury regulations contemplate an individual retirement account holding an annuity contract as an asset of the account. *See*, *e.g.*, Treas. Reg. § 1.408A-4, Q&A-14(a). Typically, an annuity contract that is held as an asset within an individual retirement account is not designed to be an "individual retirement annuity" because it is the account, not the annuity, that provides the arrangement's status as an IRA.

contract. There also are situations where an individual annuity contract is "distributed" from a section 403(b) arrangement, *e.g.*, in connection with plan termination.[18]

For some purposes, a QPDA is no longer treated as part of the plan. For example, a QPDA is not a plan asset under ERISA.[19] For other purposes, however, QPDAs are effectively treated as continuations of the plans from which they were distributed. For example, payments from a QPDA are treated as eligible rollover distributions if they otherwise qualify as such, the spousal consent requirements apply to distributions from the contract, and the RMD rules continue to apply to the contract as if it were a qualified plan, not an IRA.[20] Consistently with these rules, it would be appropriate for final regulations to treat a QPDA as part of the plan from which it was distributed for purposes of applying the Optional Aggregation Rule to that plan.

We recognize that allowing plans to take QPDAs into account when applying the Optional Aggregation Rule to the remaining account balance in the plan will require some new administrative tasks and potentially coordination with QPDA issuers. For example, for each distribution calendar year the plan will need to know the "value" of the QPDA and the total amount of annuity payments made under the QPDA. In some cases, the plan may have this information or may be able to calculate it, because the plan originally purchased the contract and could retain records about the amount and duration of the QPDA payout. More likely, however, the plan would look to the annuity issuer to provide this information each year, which is what the proposed regulations contemplate even in cases not involving a QPDA.[21] Whether the information the plan receives from the annuity issuer relates to an in-plan annuity or a QPDA, the plan should be able to reasonably rely on that information. Likewise, the plan should be able to rely on such information it receives from the individual participant, provided that the participant represents that they obtained the information from the annuity issuer or obtained it consistently with applicable standards, such as the annuity valuation rules discussed above.

Permitting plans to take QPDAs into account when applying the Optional Aggregation Rule would further advance the purpose of the new rule to encourage annuitization, as well as the broader goal in SECURE 2.0 to discourage plan leakage.[22] With respect to plan leakage, if a

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[18] *See* Treas. Reg. § 1.403(b)-10(a)(1) ("delivery of a fully paid individual insurance annuity contract is treated as a distribution" for purposes of the rules requiring plan benefits to be distributed upon termination of a 403(b) plan).

[19] *See*, *e.g.*, 29 C.F.R. 2510.3-101(d)(2)(ii)(A); DOL Field Assistance Bulletin 2014-01; DOL Field Assistance Bulletin 2006-01; DOL Advisory Opinion 2005-08A; DOL Advisory Opinion 92-24A.

[20] *See*, *e.g.*, Treas. Reg. § 1.401(a)(9)-6 (minimum required distributions); Treas. Reg. § 1.401(a)-20, Q&A-20 (spousal consent to distributions); Treas. Reg. § 1.401(a)(31)-1, Q&A-17 (direct rollover requirements); Treas. Reg. § 1.411(d)-4, Q&A-2(a)(3)(ii) (prohibition against cutbacks in rights).

[21] The preamble to the Proposed Regulations states that "issuers are expected to provide the annuity valuations as a third-party disclosure. In addition, the amount of payments made under the annuity contract and the underlying value of the annuity contract is expected to be reported to the employer as a third-party disclosure." 89 Fed. Reg. at 58,648.

[22] *See, e.g.*, SECURE 2.0 § 327 (permitting spousal beneficiaries to determine RMDs using the Uniform Lifetime Table so that they do not need to roll their inherited benefits out of an employer plan into an IRA in order to get the benefit of that table); SECURE 2.0 § 202 (repealing the 25% account balance limit on QLAC premiums,

participant cannot get the benefit of the Optional Aggregation Rule when electing a QPDA, they may decide to roll their entire account balance from the plan into an IRA, annuitize a portion of that balance in the IRA, then apply the Optional Aggregation Rule to the remaining balance in the IRA. This should not be the only choice for participants whose plans offer QPDAs. They should be permitted to retain their non-annuitized account balances in the plan if they choose, without a penalty of losing the availability of the Optional Aggregation Rule.

D. Extend the Optional Aggregation Rule to Qualified Plans that Purchase IRA Annuities for their Participants

The Committee requests guidance that permits qualified plans to apply the Optional Aggregation Rule by taking into account annuities that the plan purchases for participants in direct rollovers to individual retirement annuities under section 408(b). This guidance would be limited to circumstances in which a plan, or an investment provider under the plan (such as a target date fund that includes a lifetime income feature), has negotiated with the IRA annuity issuer regarding the terms of the annuities that will be purchased using plan assets. Thus, the covered situations would be very similar to those involving QPDAs, discussed above.

In that regard, this guidance request is a variation and expansion of the request above regarding QPDAs. In some cases, a qualified plan may offer an annuity form of distribution through an IRA annuity that the plan or an investment provider under the plan negotiates on behalf of plan participants. This is essentially the same as the plan purchasing a QPDA for a participant, except that the annuity contract is issued as an individual retirement annuity under section 408(b) and is purchased in a direct rollover from the plan. Thereafter, the annuity is treated as an IRA for all tax purposes and is no longer part of the plan.

In this situation, if the participant retains an account balance in the plan that purchased the IRA annuity, the plan should be permitted to apply the Optional Aggregation Rule to that account balance by taking into account the IRA annuity that the plan purchased for the participant. Otherwise, the rules would encourage plan leakage as described above in the context of QPDAs, *i.e.*, a participant who wished to benefit from the Optional Aggregation Rule would roll their entire account balance from the plan to an IRA in order to do so.

We recognize that the RMD rules otherwise apply separately to qualified plans and IRAs, and that distributions from IRAs cannot be used to satisfy RMDs for a plan, and *vice versa*. The same would be true under our requested guidance. The annuity payments from the IRA would not be treated as RMDs from the plan, but they would, by virtue of the Optional Aggregation Rule, reduce the RMD amounts that otherwise would need to be distributed from the plan.

Of course, if a plan were to take the IRA annuity into account when applying the Optional Aggregation Rule to the remaining account balance in the plan, the guidance would need to clarify that the individual participant could not also take that same IRA annuity into account when applying the Optional Aggregation Rule to any other IRAs that the individual

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which effectively required a participant to roll up to three times the amount of the desired premium from the plan in order to purchase a QLAC under an IRA).

owns, *i.e.*, double-counting of the annuity would need to be prohibited. If the participant does have other IRAs, the participant should not be precluded from taking the plan-purchased IRA annuity into account when applying the Optional Aggregation Rule to those other IRAs, provided that the plan is not also taking it into account.

If Treasury and IRS are amenable to facilitating the treatment described above, perhaps the best way to proceed would be to issue sub-regulatory guidance with an opportunity for additional stakeholder input, since it would be somewhat groundbreaking. Also, it would be important that any new rules not result in additional burdens on issuers of IRAs that are not involved in the type of plan-purchased arrangement described above. This would be entirely consistent with the preamble's statement that IRA issuers have "no obligation to ensure compliance with the required minimum distribution rules."[23]

E. Add Examples of the Optional Aggregation Rule for Plans and IRAs

The Committee requests that final regulations include examples of the Optional Aggregation Rule as applicable to qualified plans and IRAs. The rule is new and questions are bound to arise when taxpayers begin applying it to their situations. Examples of how to make the various RMD calculations embedded in the new rule would go a long way towards alleviating uncertainty about those calculations. Such examples also could clarify the issue discussed above regarding how the new rule applies if an individual owns only one IRA.

Another question that examples could address is how the Optional Aggregation Rule interacts with the more general rules in the regulations that require separate RMD calculations for each IRA that an individual owns. In that regard, the Final Regulations continue to provide that if an individual holds multiple IRAs, an RMD must be calculated *separately* for each IRA, even though the RMD with respect to one IRA can be taken from any one or more of the individual's other IRAs.[24] In contrast, section 204(c) of SECURE 2.0 provides that "all individual retirement plans … which an individual holds as the owner … [shall be treated] as one such plan" for purposes of the Optional Aggregation Rule.[25] Thus, SECURE 2.0 seems to require an aggregate RMD calculation when applying the new rule to multiple IRAs, whereas the existing regulations require separate RMD calculations for each IRA before permitting the sum of those RMDs to spread among them. The more specific rule from SECURE 2.0, which the regulations call an "aggregation rule," should override the more general "separate calculation" rule in the existing regulations when applying the Optional Aggregation Rule.

We have attached to this letter several examples we prepared to demonstrate our understanding of how the Optional Aggregation Rule applies to IRAs. We hope these examples can help Treasury and IRS develop examples to include in the final regulations regarding IRAs and employer plans.

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[23] 89 Fed. Reg. at 58,905.

[24] Treas. Reg. § 1.408-8(e)(1).

[25] The provision applies analogous rules for 403(b) annuities and for beneficiaries who hold multiple IRAs or 403(b) annuities from the same decedent.

III. DESIGNATED ROTH ACCOUNT ISSUES

A. Provide Additional Time to Comply with the Changes to the Post-Death RMD Rules for Designated Roth Accounts

The Committee requests a one-year transition period for qualified plans to comply with the rule in the Final Regulations that deems an employee's death to always occur before their required beginning date ("RBD") if their interest in the plan is held in a designated Roth account.

The Final Regulations provide that if an employee's entire interest under a defined contribution ("DC") plan is held in a designated Roth account, then the employee is always treated as having died before their RBD, even if they died after their "applicable age" or retirement.[26] This reflects the fact that section 325 of SECURE 2.0 eliminated the RMD rules for designated Roth accounts during the employee's lifetime, which means the concept of a "required beginning date" generally is no longer relevant to designated Roth accounts.

Under prior law, because the lifetime RMD rules applied to designated Roth accounts, the post-death RMD rules applied differently depending on whether the employee died before their RBD or died on or after their RBD. Thus, plan administrators have systems designed to apply the post-death RMD requirements to designated Roth accounts in this manner. They will need additional time to adjust to the new rule, which is reflected for the first time in the Final Regulations.

B. Clarify How the Post-Death RMD Rules Apply if Only a Portion of an Employee's Interest in a DC Plan is Held in a Designated Roth Account

The Committee requests that final regulations clarify how the RMD rules apply following the death of an employee if only a portion of the employee's interest in a DC plan is held in a designated Roth account, while their remaining interest is held in a non-Roth account.

Pursuant to section 325 of SECURE 2.0, the lifetime RMD rules do not apply to any designated Roth account for taxable years beginning after 2023. Consistently with this change, the Final Regulations provide that if an employee's *entire* interest in a DC plan is held in a designated Roth account, then (1) no distributions are required during the employee's lifetime, and (2) the employee's death is always deemed to occur before their RBD.[27] The Final Regulations also provide that if only a *portion* of an employee's interest in a DC plan is held in a designated Roth account, the account balance that is subject to the RMD rules *during the employee's life* does not include amounts held in a designated Roth account.[28] The Final Regulations reserve a paragraph for rules set forth in the Proposed Regulations addressing how a

[26] Treas. Reg. § 1.401(a)(9)-3(a)(2); Treas. Reg. § 1.403(b)-6(e)(3)(iii).

[27] Treas. Reg. § 1.401(a)(9)-3(a)(2); Treas. Reg. § 1.403(b)-6(e)(3)(iii).

[28] Treas. Reg. §1.401(a)(9)-5(b)(3); Treas. Reg. §1.403(b)-6(e)(3)(iii); 89 Fed. Reg. at 58,645.

distribution from a designated Roth account made *while the employee is alive* is treated for RMD purposes.[29]

Neither the Final Regulations nor the Proposed Regulations address how the RMD rules apply *after the death* of an employee for whom only a *portion* of their account under a DC plan is held in a designated Roth account. We assume that in such cases the RMD rules apply separately to the Roth balance and the non-Roth balance. This would be consistent with the general requirement in section 402A(b)(2) that a plan that includes a "qualified Roth contribution program" must establish separate accounts for Roth contributions and earnings thereon and must maintain separate recordkeeping with respect to each account.[30] It also would be consistent with the existing regulations governing Roth IRAs, which provide that the RMD rules apply separately with respect to an individual's Roth and non-Roth IRAs.[31] Although these analogous rules suggest that post-death RMDs are determined separately for designated Roth accounts and non-Roth accounts within a plan, it is important that guidance clarifies this issue under the RMD regulations for designated Roth accounts and provides additional transitional relief as requested above. For instance, guidance should address the following issues.

- *Death on or after the RBD* – If an employee who has amounts both in a designated Roth account and a non-Roth account dies on or after their RBD, the employee's interest in the designated Roth account is subject to the RMD rules that apply when an employee dies prior to their RBD, whereas the employee's interest in the non-Roth account is subject to the RMD rules that apply when an employee dies on or after their RBD. Some statements in the regulatory package suggest that post-death RMDs are determined based on an aggregate account balance under a plan and are not determined separately with respect to the interests held in a designated Roth account and non-Roth account.[32] For employees who die on or after their RBD, without separate accounting of the Roth and non-Roth amounts, it is not clear how a plan could apply different post-death RMD rules to each type of account.[33]

- *Allocating distributions between account types* – Can a post-death distribution from a designated Roth account satisfy the RMD with respect to a non-Roth account, or *vice versa*? The Final Regulations provide generally that all distributions under a plan in a distribution calendar year are treated as RMDs until the total RMD for the plan is

[29] Prop. Treas. Reg. § 1.401(a)(9)-5(g)(2)(iii).

[30] *See also* Treas. Reg. § 1.401(k)-1(f)(3).

[31] Treas. Reg. § 1.408A-6, Q&A-15.

[32] For example, Treas. Reg. § 1.401(a)(9)-5(b)(3) provides that for distribution calendar years up to and including the calendar year that includes the employee's death, the "account balance" that is used for determining an employee's RMD does not include amounts held in a designated Roth account. Moreover, the preamble to the Proposed Regulations states that for purposes of determining the account balance on which RMDs are calculated while a surviving spouse is taking distributions, all amounts held in a designated Roth account and any other account under the plan are included for purposes of determining the RMD for the calendar year. 89 Fed. Reg. at 58,647.

[33] Separate accounting for purposes of determining the RMD with respect to the plan seems less important when the employee dies prior to their RBD because both the interest held in the designated Roth account and the interest held in the non-Roth account would be subject to the same post-death RMD rules.

satisfied.[34] This general rule does not seem to contemplate an employee having both types of accounts in the same plan. For example, if such an employee dies after their RBD, their beneficiary presumably can nonetheless defer distributions from the designated Roth account for up to 10 years (because the employee's death is deemed to occur before the RBD), whereas the beneficiary presumably would need to take RMDs annually from the non-Roth account, starting in the year after the employee's death. In such case, presumably the beneficiary could not satisfy their RMD for the non-Roth account by taking a distribution from the Roth account. This and other issues involving how to allocate distributions for RMD purposes need guidance.

- *Annuity payments from designated Roth accounts* – How do the post-death RMD rules apply to the interest in a designated Roth account that is being distributed in the form of an annuity at the time of the employee's death? As noted above, the Final Regulations indicate generally that an employee is always treated as having died before their RBD with respect to an interest held in a designated Roth account. This would seem to mean that the 10-year rule that applies upon an employee's death before the RBD (permitting distributions to be deferred for up to 10 years) would apply even though the annuity payments may continue after the employee's death. This raises a question of whether those payments are RMDs for purposes of the rules governing eligible rollover distributions, such as the requirements to provide a 402(f) notice and offer a direct rollover option. Guidance should address this question.

IV. ISSUES REGARDING THE "SPOUSAL ULT RULE"

Section 327 of SECURE 2.0 amended Code section 401(a)(9)(B)(iv) to provide that if an employee dies *before* their required beginning date (RBD) and their surviving spouse "elects the treatment in this clause," the Uniform Lifetime Table ("ULT") will be used when determining the distribution period for the spouse's RMDs as a beneficiary. SECURE 2.0 also directed the Secretary to amend the existing RMD regulation that dictates the distribution period for post-death RMDs in cases where the employee dies *on or after* their RBD to provide that if the surviving spouse "elects treatment under section 401(a)(9)(B)(iv), then the applicable distribution period … is determined under the uniform lifetime table." Hereinafter, we refer to these provisions as the "Spousal ULT Rule." Our comments on the Proposed Regulations implementing the Spousal ULT Rule are set forth below.

A. Apply the Same "Deemed Election" Under the Regulations Regardless of When an Employee Dies

The Committee requests that if final regulations provide for a "deemed election" by a surviving spouse to use the Spousal ULT Rule, that deemed election should apply under the regulations regardless of whether the employee dies before their RBD or dies on or after their RBD.

[34] Treas. Reg. § 1.402(c)-2(f)(1).

The Proposed Regulations provide that a surviving spouse will be treated as having made an election to use the Spousal ULT Rule if (1) the employee dies before their RBD, (2) the spouse is subject to the "life expectancy rule" of Treas. Reg. section 1.401(a)(9)-3(c)(4), and (3) the spouse is "eligible to make the election."[35] In contrast, if the employee dies on or after their RBD, the Proposed Regulations provide that the spouse is not automatically treated as having elected to use the Spousal ULT Rule, but the election may be a "default election" under the terms of the plan.[36]

The preamble does not explain why the Proposed Regulations draw this distinction between deaths before the RBD and deaths on or after the RBD. Our reaction, however, is that it unnecessarily adds administrative complexity to the rules. A simpler approach would be to apply the same treatment regardless of when an employee dies in relation to their RBD. Thus, to the extent that the final regulations continue to reflect a deemed election rule, that rule should apply in all cases where an annual RMD obligation applies to the surviving spouse after the employee's death. As discussed below, we also are requesting guidance to confirm that plans and IRAs have broad flexibility to require affirmative elections or to incorporate deemed elections into the terms of the plan or IRA, as well as guidance on certain implications of such optional plan or IRA provisions.

B. Confirm that Plans and IRAs Can Provide for a Different Default Rule than the Regulations

The Committee requests that final regulations expressly confirm that plans and IRAs have broad discretion to draft their governing documents in a manner that departs from any deemed elections in the regulations regarding the Spousal ULT Rule, including by (1) not offering the Spousal ULT Rule, (2) requiring an affirmative election to use the Spousal ULT Rule, or (3) in the case of an IRA, requiring the owner or beneficiary to accept sole responsibility for ensuring compliance with the RMD rules.

The Final Regulations provide that a DC plan "may include a provision" under which the surviving spouse "may elect" to use the Spousal ULT Rule.[37] More generally, the Final Regulations provide that a plan "may include optional provisions governing plan distributions that do not conflict with section 401(a)(9)."[38] For example, in cases where an employee dies before their RBD, a plan can specify whether the 10-year rule or the life expectancy rule applies to eligible designated beneficiaries ("EDBs"), or can apply the 10-year rule to some types of EDBs and the life expectancy rule to other types of EDBs, even though both rules are available to all EDBs under the Code.[39] Likewise, it is not uncommon for qualified plans to require lump

[35] Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(A). It is not entirely clear what "eligible to make the election" means. If it means anything other than the spouse is the sole beneficiary or treated as such under separate accounting principles, Treasury and IRS should consider including further clarification in the final regulations.

[36] Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(B).

[37] Treas. Reg. § 1.401(a)(9)-5(g)(3).

[38] Treas. Reg. § 1.401(a)(9)-1(c)(2).

[39] Treas. Reg. § 1.401(a)(9)-3(c)(5)(ii).

sum distributions shortly after an employee's death, rather than to apply the post-death RMD rules that permit longer deferrals.

Custodians, trustees, and issuers of IRAs (collectively, "issuers") have even greater latitude with respect to administering the RMD rules. As the preamble to the Final Regulations recognizes, "[a]n IRA custodian has no obligation to ensure compliance with the required minimum distribution rules."[40] This is primarily because an IRA owner or beneficiary can satisfy their RMD with respect to one IRA by taking distributions from another IRA, which means that the issuer of any IRA does not need to "force out" RMDs in order to ensure the individual's compliance with the RMD rules.

Despite the lack of any tax-law obligation to administer the RMD rules, many IRA issuers voluntarily offer "auto-RMD" services to their customers. Some of those IRA issuers may not yet have updated the systems they use to administer these voluntary auto-RMD services to reflect the ULT for surviving spouses, but the issuers may nonetheless wish to continue providing those voluntary services for their customers. In such cases, the IRA issuers also may wish (or feel compelled) to disclose to their customers that the distributions that the issuer voluntarily calculates may be larger than the minimum amount the tax law requires, due to the issuer's continued use of the SLT when the tax law would permit the surviving spouse to use the ULT. For this purpose, it would be very helpful if the final regulations, rather than just the preamble, expressly confirm that IRA issuers do not have any obligation to ensure compliance with the RMD rules, and that instead such responsibility falls solely on the IRA owner or beneficiary.[41]

C. <u>Address How the Eligible Rollover Distribution Rules Apply if Distributions are Made Using the SLT When the Regulations Would Allow the ULT to be Used</u>

The Committee requests that final regulations address the implications under the eligible rollover distribution ("ERD") rules in situations where the regulations would allow the Spousal ULT Rule to be used, but distributions instead are made in larger amounts determined using the SLT. The key for such guidance is not to impose additional requirements on plans and plan administrators that are not otherwise offering the Spousal ULT Rule as a distribution option for surviving spouses.

As discussed above, in some cases a plan may not offer the Spousal ULT Rule as an option, *e.g.*, because the system the plan administrator uses to calculate RMDs is not equipped to administer the rule. In such cases, the plan administrator may calculate distributions to a spousal beneficiary using the SLT and otherwise in accordance with the RMD regulations. This will result in distributions to the spouse being larger than they would be if the ULT had been used

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[40] 89 Fed. Reg. at 58,905.

[41] IRA issuers have certain reporting obligations with respect to RMDs during the owner's life. *See*, *e.g.*, 2024 Instructions for Forms 1099-R and 5498 (*Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*). This does not mean, however, that IRA issuers have an obligation to ensure compliance with the RMD rules. We also note that the RMD reporting requirements do not apply to IRA beneficiaries and, with respect to IRA owners, permit the issuer to make certain assumptions that could result in larger distributions than the tax law would require.

instead. For example, based on a $100,000 account balance for a 75-year-old spouse, the distribution would be $6,758 using the SLT but only $4,065 using the ULT, for a difference of $2,693.

This presents a question of how the excess amount, $2,693 in the example above, is treated under the rules governing ERDs from qualified plans. The Code and regulations impose certain requirements with respect to ERDs from a plan (but not an IRA), requiring the plan to apply 20% withholding, provide the distributee a special notice under section 402(f), and offer the distributee a direct rollover option.[42] For these purposes, an ERD does not include the portion of any distribution that constitutes an RMD. The question here is whether the $2,693 in the example above will be treated as an RMD, and therefore not subject to the additional requirements that apply to ERDs.

For purposes of section 3405(c)(1), section 402(f), and section 401(a)(31), we propose treating the excess described above as an RMD, not an ERD, if the terms of the plan do not offer the Spousal ULT Rule as an option. Without such treatment, a plan that is not equipped to calculate spousal distributions using the ULT would nonetheless need to make such calculations using the ULT for the sole purpose of identifying the "excess" of the SLT-based distribution over the ULT-based distribution. On the other hand, if a plan offers the Spousal ULT Rule, then that rule should be used when determining what portion of a distribution is an RMD and therefore not an ERD. The requested guidance should apply only for purposes of the plan's obligations to withhold taxes, provide 402(f) notices, and offer a direct rollover option, and not for purposes of whether a spouse can actually roll over any portion of a distribution.

D. Address How the Spousal ULT Rule Affects the RMD Excise Tax and the IRA Spousal Continuation Rule

The Committee requests that final regulations provide that, in the case of a surviving spouse, the RMD excise tax under section 4974 and the IRA spousal continuation rule in Treas. Reg. section 1.408-8(c) are always applied using the Spousal ULT Rule, regardless of whether the plan or IRA offers that rule as a distribution option.

Section 4974 imposes an excise tax on any individual who fails to receive at least their RMD for a year. The excise tax is calculated based on the difference between the distributions the individual received in the year and the RMD they should have received in the year. If a plan or IRA does not offer the Spousal ULT Rule and instead calculates distributions for a spousal beneficiary using the SLT, the question is how to measure any potential shortfall in the actual distributions relative to their RMD. In other words, is their RMD based on the ULT or the SLT for purposes of calculating the excise tax? The right answer seems to be that the ULT is always used for this purpose, and we request guidance confirming this.

Treas. Reg. section 1.408-8(c) provides that in certain cases the surviving spouse of an IRA owner can treat the IRA as the spouse's own IRA for federal income tax purposes. The regulation further provides that a spouse is deemed to have elected this treatment if, at any time,

[42] *See* section 3405(c)(1); section 402(f); and section 401(a)(31).

they fail to take an RMD as a beneficiary.[43] This presents a similar question as above, *i.e.*, whether a deemed election of spousal continuation due to a failure to take an RMD as a beneficiary is based on the Spousal ULT Rule, even if the IRA does not offer that rule as a distribution option. As stated in the preamble to the Final Regulations, an IRA issuer "has no obligation to ensure compliance with the required minimum distribution rules."[44] Accordingly, it should not matter whether an IRA or IRA issuer specifically offers the Spousal ULT Rule as a distribution option. Rather, the deemed spousal continuation election for failing to take an RMD as a beneficiary should apply based on the Spousal ULT Rule in all cases.

E. For Employees Who Die On or After the RBD, Permit the ULT to be Used to Determine Their Life Expectancy Under the At-Least-As-Rapidly Rule

The Committee requests guidance that, in cases where an employee dies on or after their RBD, the ULT can be used to determine *the employee's* life expectancy when applying the at-least-as-rapidly rule of section 401(a)(9)(B)(i).

The Final Regulations continue to interpret the at-least-as-rapidly rule as requiring distributions to be made over the longer of the employee's life expectancy and the beneficiary's life expectancy.[45] For this purpose, the regulations provide that the deceased employee's life expectancy is determined using the SLT, whereas a surviving spouse's life expectancy can be determined using the ULT. Section 327(b) of SECURE 2.0, on the other hand, simply provides that "the applicable distribution period … is determined under the uniform lifetime table." Thus, the statute does not seem to contemplate the use of any table other than the ULT, whether for the spouse or the deceased employee, at least if the spouse "elects" to use the ULT. We also note that section 401(a)(9)(B)(i) requires distributions to continue at least as rapidly "as under the method of distributions being used under subparagraph (A)(ii) as of the date of … death." Under that subparagraph, RMDs during the employee's life are determined using the employee's life expectancy under the ULT, so continuing to use the ULT to determine the employee's life expectancy after death would result in distributions continuing "at least as rapidly."

Based on the foregoing, permitting plans to use the ULT to determine both the employee's and their spouse's life expectancies would be consistent with the Code and SECURE 2.0. It also could help simplify plan administration. If guidance confirms this, it should be clear that plans that wish to continue using the SLT to determine the employee's life expectancy are permitted to do so. In other words, we are asking for a permissive, not mandatory, rule here.

F. Revise the Applicability Date to Include All Spouses, Starting in 2024

The Committee requests that final regulations modify the proposed "applicability date" of the Spousal ULT Rule so that the new rule is available to *all* surviving spouses starting in 2024, even if they were required to commence RMDs before 2024.

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[43] Treas. Reg. § 1.408-8(c)(2)(i).

[44] 89 Fed. Reg. at 58,905.

[45] Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii).

The Proposed Regulations 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."[46] In contrast, section 327(c) of SECURE 2.0 provides that the Spousal ULT Rule "shall apply to calendar years beginning after December 31, 2023." This statutory effective date makes no reference to when a surviving spouse was required to commence RMDs; rather, it merely refers to the calendar year in which the rule will start applying. A plain reading of this statutory language is that the Spousal ULT Rule became available to *all* spouses starting in 2024, regardless of whether they commenced RMDs as a beneficiary in a prior year.

Neither the Proposed Regulations nor the preamble provide any insight into why Treasury and IRS chose to add such a limiting concept to the applicability date despite the clear statutory language. In our view, that decision also is inconsistent with the congressional intent in enacting the Spousal ULT Rule, which we understand was to help discourage plan leakage *via* rollovers to IRAs. In that regard, if a surviving spouse is required to calculate their RMDs from a plan using the SLT, they can reduce their RMD obligation by rolling out of the plan and into their own IRA, thereafter calculating their RMDs using the ULT. That is exactly what the Proposed Regulations would encourage for all spouses whose RMDs commenced before 2024, even if the plan otherwise adopts the Spousal ULT Rule for other spouses. More generally, we have not identified any public policy reason why a surviving spouse should be denied access to the new rule based solely on when they commenced RMDs.

V. QLAC ISSUES

A. Eliminate the Inappropriate Double-Counting of Premiums Towards the Premium Limits When a QLAC is Surrendered, Cancelled, or Exchanged

The Committee requests guidance clarifying that if a qualifying longevity annuity contract ("QLAC") is terminated in a surrender, cancelled during a free-look period, or exchanged for another QLAC, the premiums originally paid for the terminated contract no longer count against the limits on premiums for future QLAC purchases.

Annuity contracts, including QLACs, have always provided a limited free-look period for the owner to exercise surrender rights as required by state law. If the owner exercises a free-look right, the contract becomes void *ab initio* and the entire premium is returned to the purchaser. For example, in the case of QLACs and other annuity contracts purchased by a plan (whether as a QPDA or an in-plan annuity), the entire premium would be returned to the plan if the free-look provision is exercised. Prior to the 2022 Proposed Regulations, however, QLACs could not otherwise be surrendered, due to the rule in the prior regulations that prohibited QLACs from having a cash value. For that same reason, exchanges of QLACs for other QLACs have been extremely rare.[47] The 2022 Proposed Regulations, for the first time, permitted QLACs to have a

[46] Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(E).

[47] In a typical exchange, the old contract is surrendered for its cash value and that value is applied as a premium for the new contract. Thus, the lack of a cash value makes contract exchanges more difficult. They can still occur if the issuer of the old contract is willing to cancel that contract and pay the issuer of the new contract some value, *e.g.*, based on the reserve for the contract. In our experience, these types of exchanges involving QLACs have been extremely rare, if they have occurred at all.

cash surrender value, but only prior to the required beginning date (RBD). The Final Regulations retain this rule.[48] As a result, we expect there may be more surrenders and exchanges of QLACs in the future.

The 2022 Proposed Regulations provided that "if an *insurance contract* is exchanged for a contract intended to be a QLAC, the fair market value of the exchanged contract will be treated as a premium paid for the QLAC."[49] The Final Regulations also retain this rule, but clarify that "if an *insurance contract* is surrendered for its cash value, the surrender extinguishes all benefits and other characteristics of the contract, and the cash is used to purchase a QLAC, then only the cash from the surrendered contract is treated as a premium paid for the QLAC."[50] It is not clear, however, whether or how this rule applies if the contract being exchanged also is a QLAC, rather than merely an "insurance contract," which is the broader term used in the regulation. This uncertainty arises in part from a discussion in the preamble regarding the reporting requirements that apply to QLACs.

Under current law, insurers must report certain information about QLAC premiums to the IRS and employee, including (1) the amount and date of each premium and (2) the cumulative premiums paid.[51] The preamble to the Final Regulations describes comments that the Committee submitted on the 2022 Proposed Regulations, where we asked how a QLAC issuer should report this information for an individual who has surrendered their QLAC pursuant to the new rule that permits QLACs to have a cash surrender value before the RBD. Treasury and IRS responded to our comment in the preamble as follows:

> The final regulations *do not modify the reporting* required under §1.6047-2 and *do not provide for a reversal of any premiums previously paid* for a contract that is commuted prior to the required beginning date or rescinded within a short period after purchase. This is because the purpose of these exceptions is to accommodate the possibility that the contract will permit the commutation or recission [sic] and not to accommodate an employee who chooses to commute or rescind the contract and later decides to purchase another QLAC.[52]

By stating that a surrender or novation of a QLAC does not result in a "reversal of any premiums previously paid for the contract," the preamble implies that such previously-paid premiums continue to count against the premium limit for any future QLAC purchase. If that is correct, it is hard to see how an exchange of one QLAC for another could satisfy the premium limits, since the premiums the person paid for the contract being surrendered in the exchange,

[48] Treas. Reg. § 1.401(a)(9)-6(q)(1)(iv).

[49] 2022 Prop. Treas. Reg. § 1.401(a)(9)-6(q)(2)(i) (emphasis added).

[50] Treas. Reg. § 1.401(a)(9)-6(q)(2)(iii) (emphasis added).

[51] *See* Treas. Reg. § 1.6047-2(a)(2)(v) and (vi); *Instructions for Form 1098-Q*, INTERNAL REVENUE SERV. (rev. March 2024), https://www.irs.gov/pub/irs-pdf/i1098q.pdf.

[52] 89 Fed. Reg. at 58,900 (emphasis added).

plus the FMV or cash surrender value of that contract, would count towards the premium limit for the QLAC received in the exchange. In other words, the Final Regulations appear to double-count premiums.

By stating that the Final Regulations "do not modify" the QLAC reporting rules, the preamble also implies that a QLAC issuer must continue reporting the premiums they received for a contract that has since been surrendered or novated. This would cause significant administrative difficulties for QLAC issuers, whose systems are not equipped to continue information reporting for terminated contracts. A rule in which premiums paid for since-surrendered QLACs continue to count against the premium limits also would be very difficult for plan administrators to administer in conjunction with determining participants' eligibility to purchase QLACs with assets from their retirement plan account. This is because a reversal of a QLAC purchase transaction may also reverse the underlying transaction history stored by the plan's recordkeeper, in the same manner that the exercise of a free-look provision under a plan-purchased annuity also reverses the underlying transaction history.

The preamble's statement that Treasury/IRS do not wish to "accommodate" an employee who chooses to terminate their QLAC and purchase another QLAC suggests that Treasury/IRS think some type of tax abuse may arise in such transactions. We find this perplexing. The new rule permitting cash values applies only *before* the RBD, whereas the tax benefit of a QLAC occurs *after* the RBD, by allowing the individual to ignore the value of the QLAC when calculating their lifetime RMDs before annuity payments commence under the QLAC. Thus, it remains impossible for an individual to reap the tax benefit of owning a QLAC only to later surrender the contract for cash.

Moreover, allowing the proceeds of a surrendered QLAC (including in an exchange or due to the exercise of a free-look provision) to be used to purchase a new QLAC empowers consumers to find the best products at the best price. Treasury and IRS should not prohibit individuals who are unhappy with their current QLAC from swapping it for a better one. To avoid such a prohibition, guidance should clarify that if a QLAC is terminated in a surrender, cancelled during a free-look period, or exchanged for another QLAC, the premiums originally paid for the terminated contract no longer count against the limits on premiums for future QLAC purchases, including for purposes of the insurance company's reporting obligations.

B. Clarify Whether QLACs Can Be Used with Designated Roth Accounts

The Committee requests that final regulations clarify whether QLACs can be purchased with funds from a designated Roth account within a qualified plan. Since their inception in 2014, the QLAC regulations have provided that a Roth IRA cannot be a QLAC.[53] The preamble to those regulations explained that this limitation was included because Roth IRAs are not subject to RMDs during the IRA owner's life, and a QLAC is intended to provide special relief only from the lifetime RMD rules.[54] The QLAC regulations have not included a similar rule for QLACs purchased in connection with designated Roth accounts under employer plans,

[53] Treas. Reg. § 1.401(a)(9)-6(q)(4)(iii)(B).

[54] 79 Fed. Reg. at 37,637 (July 2, 2014).

presumably because until SECURE 2.0 such accounts were subject to the lifetime RMD rules. Pursuant to section 325 of SECURE 2.0, however, designated Roth accounts are no longer subject to lifetime RMDs. Despite this, neither the Final Regulations nor the Proposed Regulations expressly prohibit the purchase of a QLAC within a designated Roth account. We anticipate questions from plan sponsors and participants whether QLACs are available within designated Roth accounts. Guidance answering this question would be welcomed. If the guidance concludes that QLACs cannot be used with designated Roth accounts, relief and transition rules should be provided for any QLACs that might have been issued in connection with designated Roth accounts before the guidance.

C. Correct a Typo in the QLAC Death Benefit Regulations

We noticed what appears to be a typo in section 1.401(a)(9)-6(q)(3)(i)(A) and (B) of the Final Regulations. Each of those provisions cross-references "paragraph (q)(3)(iv) of this section," which relates to the calculation of early annuity payments. We think this should be changed to cross-reference "paragraph (q)(3)(v) of this section," which relates to return of premium death benefits.

VI. OUTRIGHT DISTRIBUTIONS INVOLVING SEE-THROUGH TRUSTS

The Committee requests that final regulations clarify that the new special rule in section 1.401(a)(9)-8(a)(1)(iii)(D) of the Proposed Regulations, captioned "Outright distribution to trust beneficiary," is not limited to transactions that constitute "distributions" for federal income tax purposes. Thus, for example, the new rule will apply where a beneficiary of a see-through trust obtains a direct interest in an inherited IRA *via* a direct trustee-to-trustee transfer from the decedent's IRA, even though the transfer is not a "distribution" for federal income tax purposes.

The Final Regulations retain the general rule prohibiting "separate accounting" with respect to the separate interests of multiple beneficiaries of a see-through trust.[55] The Final Regulations include a new exception to this general rule if the terms of the see-through trust require it to be "divided immediately upon the death of the employee" into separate interests for each trust beneficiary, but "only if the separate interests are held in separate see-through trusts…."[56] The Proposed Regulations, in a provision captioned "Outright distribution to trust beneficiary," would clarify that this new rule will not fail to apply merely because, upon the trust's termination, a beneficiary's separate interest therein is to be "held directly" by that beneficiary rather than through a separate see-through trust (the "Held Directly Exception").[57]

The Committee supports inclusion of this Held Directly Exception in final regulations, but we ask for one minor clarification. As indicated above, the caption for this provision refers to a "distribution." The text of the provision, however, requires only that the interest be "held directly" by the beneficiary. We interpret this to mean that the Held Directly Exception does not require an actual "distribution" to the beneficiary, *e.g.*, a cash payment directly to them. Rather,

[55] Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(A).

[56] Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(B).

[57] Prop. Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(D).

the Held Directly Exception will apply as long as the beneficiary becomes directly entitled to the benefits they inherited from the employee, rather than their entitlement being held indirectly through a separate trust. Thus, for example, the Held Directly Exception applies if a beneficiary's indirect interest in the decedent's IRA is transferred tax-free directly to an inherited IRA issued to the beneficiary, even though the transfer establishing the inherited IRA is not technically a "distribution" for federal income tax purposes.[58] Although this seems relatively clear from the text of the Proposed Regulations, the caption's reference to a "distribution" could cause confusion, so we ask that final regulations clarify this point.

VII. HYPOTHETICAL RMD ISSUES

A. Confirm that a Plan Administrator is Permitted to Assume that No Portion of a Distribution to a Surviving Spouse is a Hypothetical RMD

The Committee asks that final regulations confirm that a plan administrator is permitted to assume that *no* portion of a distribution the plan makes to a surviving spouse will be rolled over to the spouse's own IRA or plan under which the spouse is not treated as a beneficiary, and therefore that no portion of such a distribution is a "hypothetical RMD" for purposes of the rules governing eligible rollover distributions (ERDs).

The Final Regulations retain the rules from the 2022 Proposed Regulations that characterize certain distributions to surviving spouses as "hypothetical RMDs" that are not treated as ERDs and therefore cannot be rolled over.[59] To the extent that a distribution to a surviving spouse is a hypothetical RMD, the various rules that apply to ERDs (mandatory 20% withholding, section 402(f) notice, direct rollover right) do not apply. An amount will constitute a hypothetical RMD only if certain conditions are met, one of which is that "[t]he surviving spouse rolls over a portion of that distribution to an eligible retirement plan under which the surviving spouse is not treated as the beneficiary of the employee."[60] In other words, the hypothetical RMD rule applies only if the spouse actually rolls over the distribution to their own plan or IRA. For this purpose, the Final Regulations provide that a plan administrator is permitted to assume that the spouse *will* roll over the distribution to their own plan or IRA.[61]

The Committee requests confirmation that, in lieu of the foregoing assumption, a plan administrator is permitted to assume that a surviving spouse will *not* roll over a distribution to their own plan or IRA. Thus, the plan administrator can treat the entire amount of a distribution to a surviving spouse as an ERD without regard to the hypothetical RMD rule, assuming that the distribution otherwise constitutes an ERD. This alternative assumption is just as reasonable as assuming the spouse will roll over amounts to their own plan or IRA. The very nature of an assumption is that the plan administrator does not need to obtain information from the spouse

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[58] *See, e.g.*, Rev. Rul. 78-406, 1978-2 C.B. 406 (trustee-to-trustee transfer between an owner's IRAs did not result in amounts being "paid or distributed" for tax purposes); PLR 202031007 (May 20, 2020) (same for transfer between a non-spouse beneficiary's inherited IRAs).

[59] *See* Treas. Reg. § 1.402(c)-2(j)(4).

[60] Treas. Reg. § 1.402(c)-2(j)(4)(i)(B).

[61] Treas. Reg. § 1.402(c)-2(j)(4)(vi).

about how they intend to use the distribution proceeds. A spouse could just as readily decide to keep the distribution or roll it over to an inherited IRA. By assuming they will do so, the plan administrator would be applying a more conservative assumption because it triggers the various rules for ERDs, such as 20% mandatory withholding. It also will be easier for plans to administer the rules using this assumption, because they can treat all distributions to surviving spouses and non-spouse beneficiaries as ERDs if those distributions otherwise qualify as such.

B. Confirm that IRA Issuers Are Not Required to Administer the Hypothetical RMD Rules in Connection with Spousal Continuation Elections

The Committee requests that final regulations confirm that IRA issuers have no obligation to administer the new "hypothetical RMD" rules in the context of elections, or deemed elections, by a surviving spouse to treat a decedent's IRA as their own.

The Final Regulations generally retain the longstanding rules that permit a surviving spouse of a deceased IRA owner to treat the IRA as their own in certain circumstances.[62] The Final Regulations provide, however, that if the surviving spouse attains the applicable age (currently age 73) in or after the calendar year in which this spousal continuation election is made, the election is permitted only after any amounts treated as hypothetical RMDs have been distributed from the IRA.[63]

As discussed above and acknowledged in the preamble to the Final Regulations, IRA issuers have "no obligation to ensure compliance with the required minimum distribution rules."[64] Accordingly, the Committee interprets the Final Regulations as permitting an IRA issuer to assume that a surviving spouse beneficiary electing to continue a decedent's IRA as their own has distributed any hypothetical RMD, and thus the spousal continuation election of the IRA can be made with respect to the decedent's entire IRA. This interpretation is supported by the following rules.

- An IRA issuer is not required to determine a beneficiary's RMD with respect to an IRA,[65] and thus should not be required to determine the existence or amount of a surviving spouse beneficiary's hypothetical RMD with respect to an IRA.

- An IRA issuer cannot unilaterally make an unrequested distribution from an IRA to satisfy an RMD, including a hypothetical RMD, especially since a taxpayer may be able to take an RMD with respect to one IRA from another IRA held in the same capacity by the taxpayer.[66]

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[62] Treas. Reg. § 1.408-8(c)(1)(i) and (ii).

[63] Treas. Reg. § 1.408-8(c)(1)(iii) and (iv).

[64] 89 Fed. Reg. at 58,905.

[65] Treas. Reg. § 1.408-8(f); Notice 2002-27, 2002-18 I.R.B. 814, *clarified by* Notice 2003-3, 2003-2 I.R.B. 258; 2024 Instructions to Forms 1099-R and 5498, page 19; page 2 of Publication 590-B (*Distributions from Individual Retirement Arrangements (IRAs)*) (March 12, 2024).

[66] Treas. Reg. § 1.408-8(e).

- In the case of a contribution to a surviving spouse's own IRA that the spouse asserts is made in a tax-free rollover from a deceased owner's IRA, the IRA issuer will not know whether any portion of the contribution is an RMD, including a hypothetical RMD.

- In the case of a distribution from the IRA of a deceased owner to the surviving spouse beneficiary, the IRA issuer will not know whether or not the amount distributed includes a hypothetical RMD. This is because the IRA issuer will not know whether or not the distribution will be retained by the spouse or rolled over to an IRA that the spouse holds as a beneficiary, neither of which would trigger the hypothetical RMD requirement. In addition, even if the surviving spouse does roll over part or all of a distribution to their own IRA, the IRA issuer will not know the extent to which any hypothetical RMD with respect to the distribution might have been distributed from one or more other IRAs that the spouse inherited from the same deceased owner.

- Even if a surviving spouse beneficiary makes a spousal continuation election as permitted in the regulations by redesignating an IRA in the name of the surviving spouse as IRA owner rather than as beneficiary,[67] the IRA issuer will not know the extent to which any hypothetical RMD with respect to the IRA might have been distributed from one or more other IRAs that the spouse inherited from the same deceased owner.

C. Provide an Online Calculator that Taxpayers and Plan Administrators Can Use To Calculate their Hypothetical RMDs

The Committee asks Treasury and IRS to provide an online calculator that taxpayers and plan administrators can use to calculate hypothetical RMDs. The hypothetical RMD requirement is completely new and requires complex calculations using assumptions that differ from how RMDs otherwise are determined. The Proposed Regulations include only a single example, which, although appreciated and helpful, is inadequate. Providing an online calculator would ensure that plan administrators, individual taxpayers, their advisors, and the IRS are on the same page regarding how these new complex calculations must be made and how the IRS will apply the new rules in potential audits. This is especially warranted considering that Treasury and IRS created this new requirement and the associated administrative burdens despite the lack of any direction in the enabling statute to do so.

VIII. DETERMINING EDB STATUS ON THE ANNUITY STARTING DATE

The Committee requests guidance clarifying that in the case of an annuity contract that is subject to section 401(a)(9)(H), the rule in the Final Regulations under which a beneficiary's status as an EDB is determined as of the annuity starting date applies only in cases involving a joint life payout with the employee as the annuitant and their EDB as the joint annuitant who is entitled to receive any survivor annuity payments after the employee's death.

[67] Treas. Reg. § 1.408-8(c)(2).

The 2022 Proposed Regulations provided that the determination of whether a designated beneficiary is an EDB is made as of the date of the employee's death.[68] In the Committee's comments on the 2022 Proposed Regulations, we stated that we would prefer a rule that a beneficiary's status as an EDB is determined on the annuity starting date, at least in the case of a joint and survivor annuity, so that employees can annuitize with confidence that their payout choices will comply with the RMD rules without needing to be modified later to comply with section 401(a)(9)(H). The Final Regulations adopt this approach, stating that in the case of an annuity to which section 401(a)(9)(H) applies, "the determination of whether a beneficiary is an eligible designated beneficiary … is made as of the annuity starting date." We greatly appreciate Treasury and IRS making this change, but we have some concern that it may be too broadly stated in the Final Regulations.

The main reason we requested such a change was to address the situation where an employee purchased a joint and survivor annuity with their spouse as the joint annuitant, and they divorced after annuity payments commenced.[69] In such cases, the 2022 Proposed Regulations would seem to have imposed the 10-year rule following the employee's death, if the former spouse could not otherwise qualify as an EDB on the date of the employee's death.[70] The preamble to the Final Regulations also discusses this scenario as a reason for the change described above.[71] The regulation itself, however, is not limited to joint and survivor annuities. Rather, it provides for EDB status to be determined on the annuity starting date for any type of annuity payout.

This means that the new rule for determining EDB status on the annuity starting date would apply in the case of a single life annuity with a period certain and in the case of an annuity for a period certain with no life contingency. For example, assume that an IRA owner elects a single life annuity with a 20-year period certain and names an EDB as the beneficiary of any period certain payments after the owner's death. Assume further that the contract permits the owner to change the beneficiary designation at any time (which is very common), and that pursuant to this contract provision the owner changes the beneficiary to a non-EDB the day after the annuity starting date. Now assume that the owner dies one year later, when there are 19 years left in the period certain. The Final Regulations, as currently written, could permit the non-EDB to continue receiving those payments over the 19-year period, even though the 10-year rule otherwise would apply to the non-EDB.

We assume that Treasury and IRS would not want this treatment to apply in this situation or in similar situations involving annuities for a period certain with no life contingency. If that is the case, then the Final Regulations should be clarified. Such a clarification would be consistent

[68] *See* 2022 Prop. Treas. Reg. § 1.401(a)(9)-4(e)(1).

[69] A similar concern could arise for an employee who elected a joint life annuity with a non-spouse chronically ill or disabled EDB as the joint annuitant. That concern seems less pressing, however, because such an EDB's status is unlikely to change after the annuity starting date, whereas spouses often divorce.

[70] This concern related primarily to IRAs. Qualified plans are subject to the rules for qualified domestic relations orders ("QDROs"), which have long treated former spouses as spouses for RMD purposes. *See* Treas. Reg. § 1.401(a)(9)-8(d)(1).

[71] *See* 89 Fed. Reg. at 58,899.

with section 1.401(a)(9)-6(b)(2)(i) of the Final Regulations, which provides that in lieu of the normal timing rule for determining a decedent's "designated beneficiary" as of September 30th of the year following the year of the employee's death, such determination is made as of the annuity starting date "[i]f the employee's benefit is paid in the form of a life annuity for the lives of the employee and a designated beneficiary," *i.e.*, a joint life annuity.

IX. SECURE 1.0 RELIEF FOR CERTAIN "QUALIFIED" ANNUITY CONTRACTS

The Committee requests that the Final Regulations modify or eliminate the example in Treas. Reg. section 1.401(a)(9)-1(b)(3)(vi) because the example is inconsistent with the substantive rule in the regulation.

Under SECURE 1.0, the 10-year rule of section 401(a)(9)(H) does not apply to certain pre-existing annuity contracts if the "employee" made an "irrevocable election" before December 20, 2019, as to the method and amount of annuity payments to the employee and any designated beneficiaries.[72] The Final Regulations clarify that the foregoing effective date relief applies whether it was the employee or their beneficiary who made the "irrevocable election" to annuitize.[73] However, the Final Regulations also retain an inconsistent example from the 2022 Proposed Regulations that had suggested the effective date relief was available only if it was the employee, not their beneficiary, who annuitized.[74]

The example involves an employee who died in 2017 before their RBD. The beneficiary elected an annuity that pays over their lifetime with a 15-year period certain, starting in 2018. The beneficiary dies in 2024. The example concludes that the 10-year rule will apply upon the beneficiary's death, so that the annuity may not provide distributions any later than the end of 2034. This suggests that the beneficiary's election of the life annuity did not qualify for the special effective date relief, even with the change made to the Final Regulations described above. In addition, the example is somewhat strange, since under the assumed facts the period certain would have ended in 2033 (15 years after 2018), which is before the end of the 10-year distribution cap that the example says applies (year-end 2034). Based on the foregoing, the example should be modified or eliminated from the Final Regulations.

X. SPECIAL "SEPARATE ACCOUNTING" RULE FOR MINOR EDBs

The Committee requests guidance clarifying that in cases where the "children exception" to the rules for multiple beneficiaries applies, annual RMDs are determined using the life expectancy of the youngest child beneficiary, not the oldest of all the employee's beneficiaries.

The Final Regulations largely retain the rules from the 2022 Proposed Regulations regarding employees who designate multiple beneficiaries. Very generally, unless an exception applies, those rules provide as follows:

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[72] SECURE 1.0 § 401(b)(4).

[73] Treas. Reg. § 1.401(a)(9)-1(b)(2)(iv).

[74] Treas. Reg. § 1.401(a)(9)-1(b)(3)(vi).

- if an employee has multiple beneficiaries and one or more of them is not an individual, the employee is treated as not having any "designated beneficiary,"[75]

- if an employee has multiple beneficiaries and all of them are individuals, the characteristics of the oldest beneficiary determine the denominator for any RMD calculation and whether and when section 401(a)(9)(H) requires a full distribution,[76] and

- if an employee has multiple beneficiaries, all of them are individuals, but any of them is not an EDB, the employee is treated as not having any EDBs.[77]

The Final Regulations also retain an exception to the foregoing rules for children. Specifically, if any of the employee's designated beneficiaries is an EDB because they are a minor child of the employee (a "minor EDB"), then (1) the rule that otherwise treats the employee as not having an EDB will not apply even if one or more other designated beneficiaries is not an EDB, (2) the rule that applies the 10-year rule upon an EDB's death will not apply until the youngest of the employee's minor EDBs dies, and (3) the rule that applies the 10-year rule upon a minor EDB's attaining age 21 will not apply until the youngest of the employee's minor EDBs attains that age.[78]

Based on the foregoing, it is clear that in cases involving multiple beneficiaries where separate accounting is not available, the Final Regulations nonetheless permit "life expectancy" payments to be made if at least one of those beneficiaries is a minor EDB. It is less clear, however, which of those multiple beneficiaries' life expectancies must be used when calculating those payments. The exception for children does not expressly modify the more general rule that in cases involving multiple beneficiaries the oldest beneficiary's life expectancy is used to determine the distribution amounts for all beneficiaries. Thus, for example, if an employee's beneficiaries are his minor child and a much older non-EDB, it is not entirely clear whether the life expectancy payments should be based on the child's life expectancy or the much older non-EDB's life expectancy. It occurs to us that the correct position here is to permit the child's life expectancy (or the youngest child's life expectancy if there are multiple child EDBs) to be used when making these calculations, especially because it would be strange to base life expectancy distributions on a non-EDB's life expectancy. We request confirmation of this conclusion or clarification if Treasury and IRS intended a different result.

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The Committee appreciates this opportunity to comment on the Proposed Regulations and on certain aspects of the Final Regulations that we believe warrant further clarification. Should any questions arise regarding the Committee's comments or the attached outline of topics

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[75] Treas. Reg. § 1.401(a)(9)-4(b).

[76] Treas. Reg. § 1.401(a)(9)-5(f)(1) and (2).

[77] Treas. Reg. § 1.401(a)(9)-4(e)(2)(i).

[78] Treas. Reg. § 1.401(a)(9)-5(f)(2)(ii). *See also* Treas. Reg. § 1.401(a)(9)-4(e)(2)(ii).

that the Committee plans to discuss at the September 25th public hearing, please contact either of the undersigned.

Counsel to the Committee of Annuity Insurers

Bryan W. Keene
Partner, Davis & Harman LLP
bwkeene@davis-harman.com
202-662-2273

Mark E. Griffin
Partner, Davis & Harman LLP
megriffin@davis-harman.com
202-662-2268

Attachments: List of Committee Member Companies
Examples of Optional Aggregation Rule
Outline of Topics for Public Hearing

The COMMITTEE of ANNUITY INSURERS

Allianz Life Insurance Company, Minneapolis, MN
Ameriprise Financial, Minneapolis, MN
Athene USA, Des Moines, IA
AuguStar Life Insurance Company, Cincinnati, OH
Brighthouse Financial, Inc., Charlotte, NC
Corebridge Financial, Houston, TX
Equitable, New York, NY
Fidelity & Guaranty Life Insurance Company, Des Moines, IA
Fidelity Investments Life Insurance Company, Boston, MA
Fortitude Re, Jersey City, NJ
Genworth Financial, Richmond, VA
Global Atlantic Financial Group, Southborough, MA
Guardian Insurance & Annuity Co., Inc., New York, NY
Jackson National Life Insurance Company, Lansing, MI
John Hancock Life Insurance Company, Boston, MA
Lincoln Financial Group, Fort Wayne, IN
Massachusetts Mutual Life Insurance Company, Springfield, MA
Metropolitan Life Insurance Company, New York, NY
Nationwide Life Insurance Companies, Columbus, OH
New York Life Insurance Company, New York, NY
Northwestern Mutual Life Insurance Company, Milwaukee, WI
Pacific Life Insurance Company, Newport Beach, CA
Protective Life Insurance Company, Birmingham, AL
Prudential Insurance Company of America, Newark, NJ
Sammons Financial Group, Chicago, IL
Security Benefit Life Insurance Company, Topeka, KS
Symetra Financial, Bellevue, WA
Talcott Resolution, Windsor, CT
Thrivent, Minneapolis, MN
TIAA, New York, NY
TruStage, Madison, WI
USAA Life Insurance Company, San Antonio, TX

The Committee of Annuity Insurers was formed in 1981 to participate in the development of federal policies with respect to annuities. The member companies of the Committee represent approximately 80% of the annuity business in the United States.

EXAMPLES OF HOW THE OPTIONAL AGGREGATION RULE APPLIES TO IRAS

This attachment to the Committee of Annuity Insurers' comment letter provides several examples demonstrating our understanding of how the Optional Aggregation Rule applies to IRAs. The examples address situations where an individual (1) owns one traditional IRA and partially annuitizes it, (2) owns two traditional IRAs and fully annuitizes one of them, and (3) owns two traditional IRAs and partially annuitizes one of them. The examples do not reflect any particular approach to valuation, and instead simply assume a stated "value" for the annuitized benefits. Although the examples focus on IRAs, we expect that similar concepts would apply to employer plans.

Example 1: Single IRA, Partially Annuitized

Assume the following facts. An individual owns only one IRA, which is a traditional (non-Roth) individual retirement annuity ("IRA-1"). In 2023, the owner attained age 75 and thus has passed their required beginning date. That year, they annuitized half of their then-current account value in IRA-1 and started receiving an annual annuity payment of $16,000. At the end of the year (12/31/23), the account balance of the non-annuitized portion of IRA-1 is $200,000, and the value of the annuitized portion was $200,000. Thus, for purposes of applying the Optional Aggregation Rule for 2024, the total account balance of IRA-1 as of 12/31/23 is $400,000.

RMD for 2023 – the year of the partial annuitization

For 2023, the partial annuitization that occurred that year does not affect the owner's RMD calculation, which was already determined based on the account balance of IRA-1 as of the end of the *prior* year (2022). Since no portion of the contract had been annuitized at the end of 2022, there was no value of an annuity on that date to be treated as part of the 2022 year-end account balance under the Optional Aggregation Rule.[1] Thus, the RMD for 2023 is calculated by dividing the 12/31/22 account balance of IRA-1 by the Uniform Lifetime Table ("ULT") factor for a 75-year-old. The sum of all distributions received in 2023 from IRA-1 (whether as withdrawals or annuity payments) must at least equal the RMD amount determined in the prior sentence.[2]

RMD for 2024 – the year after the partial annuitization

For 2024, the Optional Aggregation Rule is available because, as of the prior year-end, IRA-1 had been partially annuitized. Thus, the owner can choose whether or not to determine their 2024 RMD under the Optional Aggregation Rule.

No Optional Aggregation Rule

If the owner chooses *not* to use the Optional Aggregation Rule, their 2024 RMD would be determined as follows. The account balance of the non-annuitized portion of IRA-1 as of 12/31/23 would be divided by the ULT factor for a 76-year-old (the age the owner will attain in 2024). Under the facts assumed above, the calculation would be $200,000 divided by 23.7, which equals $8,439. The owner would need to withdraw that amount from the non-annuitized portion of IRA-1, *in addition to receiving their full annuity payment*.[3] Thus, the owner would receive RMDs totaling $24,439 in 2024 (the $8,439 withdrawal plus the $16,000 annuity payment).

Optional Aggregation Rule

If the owner instead chooses to use the Optional Aggregation Rule, their 2024 RMD with respect to the non-annuitized portion of IRA-1 would be determined as the excess of the "total required amount" for 2024 over the "annuity amount" for 2024. This calculation would be made as follows:

- *Step 1 – Determine the "total required amount."* The "total required amount" is determined by dividing the *aggregate* account balance of IRA-1 as of 12/31/23 (meaning the account balance of the non-annuitized portion plus the value of the annuitized portion) by the ULT factor for a 76-year-old. Under the facts assumed above, $400,000 would be divided by 23.7, for a "total required amount" of $16,878.

- *Step 2 – Determine the "excess."* Next, the excess of the "total required amount" over the "annuity amount" is determined. The "annuity amount" is simply the sum of the annuity payments to be made in 2024, which above is assumed to be $16,000. This results in an "excess" of $878 (the $16,878 "total required amount" minus the $16,000 "annuity amount"). *This excess is the only RMD with respect to the non-annuitized portion of IRA-1.*

Based on the foregoing, the owner's RMD for 2024 with respect to IRA-1 will be satisfied by (1) the $16,000 annuity payment from the annuitized portion of IRA-1, plus (2) the $878 withdrawal from the non-annuitized portion of IRA-1. The owner would receive RMDs totaling $16,878 in 2024.

<u>Example 2: Two IRAs, One Fully Annuitized</u>

Assume the following facts. An individual owns a traditional individual retirement annuity ("IRA-1") and a traditional individual retirement account ("IRA-2"), and does not own any other IRAs. In 2023, the owner attained age 75 and thus has passed their required beginning date. Also in 2023, the owner fully annuitized IRA-1 and began receiving an annual annuity payment of $16,000. They do not annuitize any portion of IRA-2. On 12/31/23, the value of the annuitized IRA-1 is $200,000 and the account balance of the non-annuitized IRA-2 was $200,000. Thus, for purposes of applying the Optional Aggregation Rule for 2024, the total account balance of IRA-1 and IRA-2 as of 12/31/23 is $400,000.

<u>RMD for 2023 – the year of the partial annuitization</u>

For 2023, the full annuitization of IRA-1 that occurred that year does not affect the owner's RMD calculation, which was already determined separately for IRA-1 and IRA-2 based on their respective account balances as of the end of the *prior* year (2022), at which point no portion of either IRA had been annuitized. Thus, the RMD for 2023 is calculated by dividing the 12/31/22 account balance of IRA-1 by the ULT factor for a 75-year-old, and by separately making this same calculation with respect to IRA-2.[4] The sum of all distributions received in 2023 from IRA-1 and IRA-2 (whether as withdrawals or annuity payments) must at least equal the sum of the RMD amounts determined in the prior sentence.

RMD for 2024 – the year after the partial annuitization

For 2024, the Optional Aggregation Rule is available because, as of the prior year-end, IRA-1 had been fully annuitized and IRA-2 remained un-annuitized. In that regard, the Optional Aggregation Rule treats both IRAs as "one plan," and fully annuitizing IRA-1 while not annuitizing IRA-2 is treated as a partial annuitization of that "one plan." Thus, the owner can choose whether or not to determine their 2024 RMDs under the Optional Aggregation Rule.

No Optional Aggregation Rule

If the owner chooses *not* to use the Optional Aggregation Rule, their 2024 RMDs would be determined as follows. Their RMD with respect to the fully-annuitized IRA-1 would equal the annuity payments made thereunder, which above is assumed to be $16,000. For IRA-2, its account balance as of 12/31/23 would be divided by the ULT factor for a 76-year-old (the age the owner will attain in 2024). Under the facts assumed above, this calculation would be $200,000 divided by 23.7, which equals $8,439. The owner would need to withdraw that amount from IRA-2, *in addition to receiving their full annuity payment from IRA-1*. Thus, the owner would receive RMDs totaling $24,439 in 2024 (the $8,439 withdrawal from IRA-2 plus the $16,000 annuity payment from IRA-1).

Optional Aggregation Rule

If the owner instead chooses to use the Optional Aggregation Rule, their 2024 RMD with respect to IRA-2 (their non-annuitized account balance) would be determined as the excess of the "total required amount" for 2024 over the "annuity amount" for 2024. This calculation would be made as follows:

- *Step 1 – Determine the "total required amount."* The "total required amount" is determined by dividing the *aggregate* account balance of IRA-1 (which has been fully annuitized) and IRA-2 (under which no portion has been annuitized) as of 12/31/23 by the ULT factor for a 76-year-old. In that regard, the Optional Aggregation Rule states that for purposes of that rule all IRAs of the same owner are treated as "one plan."[5] Thus, an aggregate RMD calculation is made using *all* the owner's traditional IRAs, based on the combined account balances of those IRAs, including the value of any annuitized portions thereof. Under the facts assumed above, this means that $400,000 would be divided by 23.7, for a "total required amount" of $16,878.

- *Step 2 – Determine the "excess."* Next, the excess of the "total required amount" over the "annuity amount" is determined. The "annuity amount" is simply the sum of the annuity payments to be made in 2024 under all of the owner's traditional IRAs, which above is assumed to be $16,000. This results in an "excess" of $878 (the $16,878 "total required amount" minus the $16,000 "annuity amount"). *This excess is the only RMD with respect to IRA-2.*

Based on the foregoing, for 2024 the owner's RMD with respect to IRA-1 will be satisfied by the $16,000 annuity payment from the fully-annuitized IRA-1, and the RMD with respect to IRA-2 will be satisfied by an $878 withdrawal from IRA-2. The owner would receive RMDs from both IRAs totaling $16,878.

Example 3: Two IRAs, One Partially Annuitized

Assume the following facts. An individual owns a traditional individual retirement annuity ("IRA-1") and a traditional individual retirement account ("IRA-2"), and does not own any other IRAs. In 2023, the owner attained age 75 and thus has passed their required beginning date. Also in 2023, the owner annuitized half of their account balance under IRA-1 and began receiving an annual annuity payment of $8,000. At the end of the year (12/31/23), the value of the annuitized portion of IRA-1 is $100,000, the account balance of the non-annuitized portion of IRA-1 is $100,000, and the account balance of IRA-2 was $200,000. Thus, for purposes of applying the Optional Aggregation Rule for 2024, the total account balance of IRA-1 and IRA-2 as of 12/31/23 is $400,000.

RMD for 2023 – the year of the partial annuitization

For 2023, the partial annuitization of IRA-1 that occurred that year does not affect the owner's RMD calculation, which was already determined separately for IRA-1 and IRA-2 based on their respective account balances as of the end of the *prior* year (2022), at which point no portion of either IRA had been annuitized. Thus, the RMD for 2023 is calculated by dividing the 12/31/22 account balance of IRA-1 by the ULT factor for a 75-year-old, and by separately making this same calculation with respect to IRA-2. The sum of all distributions received in 2023 from IRA-1 and IRA-2 (whether as withdrawals or annuity payments) must at least equal the RMD amount determined in the prior sentence.

RMD for 2024 – the year after the partial annuitization

For 2024, the Optional Aggregation Rule is available because, as of the prior year-end, IRA-1 had been partially annuitized while the remaining portion of IRA-1 and all of IRA-2 were not annuitized. Thus, the owner can choose whether or not to determine their 2024 RMDs under the Optional Aggregation Rule.

No Optional Aggregation Rule

If the owner chooses *not* to use the Optional Aggregation Rule, their 2024 RMDs would be determined as follows.

- The RMD with respect to the annuitized portion of IRA-1 would equal the annuity payments made thereunder, which above is assumed to be $8,000.

- The RMD with respect to the non-annuitized portion of IRA-1 would be determined by dividing the 12/31/23 account balance of that portion of IRA-1 by the ULT factor for a 76-year-old (the age the owner will attain in 2024). Under the facts assumed above, this calculation would be $100,000 divided by 23.7, which equals $4,219.

- The RMD with respect to IRA-2 would be determined by dividing the 12/31/23 account balance of IRA-2 by the ULT factor for a 76-year-old. Under the facts assumed above, this calculation would be $200,000 divided by 23.7, which equals $8,439.

Based on the foregoing, the owner would need to withdraw a total of $12,658 ($4,219 plus $8,439) from the non-annuitized portion of IRA-1 and / or from IRA-2, *in addition to receiving their full annuity payment from the annuitized portion of IRA-1.* The $12,658 could be withdrawn from the non-annuitized portion of IRA-1, from IRA-2, or from any combination of the two. The owner would receive RMDs totaling $20,658 in 2024 ($12,658 in withdrawals plus an $8,000 annuity payment).

Optional Aggregation Rule

If the owner instead chooses to use the Optional Aggregation Rule, their 2024 RMD with respect to their non-annuitized IRA account balances (meaning the non-annuitized portion of IRA-1 and all of IRA-2) would be determined as the excess of the "total required amount" for 2024 over the "annuity amount" for 2024. This calculation would be made as follows:

- *Step 1 – Determine the "total required amount."* The "total required amount" is determined by dividing the *aggregate account balance* of IRA-1 (including the value of the annuitized portion and the account balance of the non-annuitized portion thereof) and IRA-2 as of 12/31/23 by the ULT factor for a 76-year-old. As described in Example 2, for purposes of this rule an aggregate RMD calculation is made using *all* the owner's traditional IRAs, based on the combined account balances of those IRAs, including the value of any annuitized portions thereof. Under the facts assumed above, this means that $400,000 would be divided by 23.7, for a "total required amount" of $16,878.

- *Step 2 – Determine the "excess."* Next, the excess of the "total required amount" over the "annuity amount" is determined. The "annuity amount" is simply the sum of the annuity payments to be made in 2024 under all of the owner's traditional IRAs, which above is assumed to be $8,000. This results in an "excess" of $8,878 (the $16,878 "total required amount" minus the $8,000 "annuity amount"). *This excess is the aggregate RMD with respect to the non-annuitized portion of IRA-1 and the entirety of IRA-2.*

Based on the foregoing, the owner's RMDs for 2024 with respect to IRA-1 and IRA-2 will be satisfied by (1) the $8,000 annuity payment from the annuitized portion of IRA-1, plus (2) a total of $8,878 in withdrawals from the non-annuitized portion of IRA 1, from IRA-2, or from any combination of these two IRAs. Thus, the owner would receive RMDs totaling $16,878 in 2024.

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[1] Prop. Treas. Reg. § 1.401(a)(9)-5(a)(5)(iv)(A) and (v) (adding the fair market value of the annuity contract as of December 31 of the prior calendar year to the account balance used to determine the RMD for the current year).

[2] Treas. Reg. § 1.401(a)(9)-5(a)(5)(ii) (payments under an annuity contract that is purchased with an individual account on or after the required beginning date will be treated as distributions from the individual account for purposes of determining if the individual account satisfies section 401(a)(9) *for the year of the purchase*).

[3] *See* Treas. Reg. § 1.401(a)(9)-5(a)(5)(ii) (payments under an annuity contract that is purchased with an individual account on or after the required beginning date will be treated as satisfying section 401(a)(9) for *calendar years after the calendar year of purchase* if the annuity payments comply with Treas. Reg. § 1.401(a)(9)-6).

[4] Treas. Reg. § 1.408-8(e)(1).

[5] SECURE 2.0 § 204(c).

Outline of Topics for September 25, 2024, Public Hearing

1. Effective date (< 1 min.)

2. Optional aggregation rule (3 min.)
   - Gift tax method
   - Distributed annuities
   - Examples

3. Transition relief for designated Roth accounts (< 1 min.)

4. Uniform Lifetime Table (ULT) for surviving spouses (3 min.)
   - Applicability date
   - Deemed elections
   - Using the ULT for the employee's and their spouse's life expectancy
   - Interaction with eligible rollover distribution and IRA spousal continuation rules

5. QLAC premium limits and terminated QLACs (< 1 min.)

6. Administration of hypothetical RMD rules for plans and IRA issuers (2 min.)