IRS ISSUES PROPOSED REQUIRED MINIMUM DISTRIBUTION REGULATIONS

Hodgson Russ Employee Benefits Alert
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The Internal Revenue Service ("IRS") recently issued proposed regulations under Code Section 401(a)(9) which impact required minimum distributions ("RMDs") for calendar years beginning on or after January 1, 2022. These regulations are meant to restate the current RMD regulations to reflect changes made necessary as a result of the Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE Act"), and apply to qualified plans, IRAs, Code Section 403(b) annuity contracts, and governmental 457(b) plans. These proposed regulations also amend the rollover regulations under Code Section 402(c).

As background, the SECURE Act made significant changes to the RMD rules, chiefly among them, raising the required beginning date ("RBD") to age 72 for individuals born on or after July 1, 1949 and accelerating the distribution timeframe for many beneficiaries in defined contribution plans and IRAs. Prior to the SECURE Act, the RBD for many participants was age 70 ½ and some beneficiaries were permitted to "stretch" the benefit they inherited under a defined contribution plan or IRA by taking it over their life expectancy.

Under the new rules set forth in the SECURE Act and the proposed regulations, for participants who die after December 31, 2019, there are three classes of beneficiaries which impact the timing for distributions: eligible designated beneficiaries, designated beneficiaries, and nondesignated beneficiaries. An "eligible designated beneficiary" is defined in Code Section 401(a)(9)(E)(ii) to mean:

- a surviving spouse,
- a child who has not reached the age of majority (which these proposed regulations clarify means 21 years old in most cases),
- a disabled or chronically ill beneficiary (defined in these proposed regulations), or
- a beneficiary who is not more than 10 years younger than the participant.

A "designated beneficiary" is any *individual* designated by the participant as a beneficiary who is not an eligible designated beneficiary. If the beneficiary is not an individual, such as a trust that is not a "see-through" trust, the beneficiary is a "nondesignated beneficiary."

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These beneficiary classes dictate the timeframe during which benefits must be distributed if the participant dies. For example, if a participant dies prior to his or her RBD, an eligible designated beneficiary may elect to receive payments beginning in the year after the participant's death over the beneficiary's lifetime or receive the entire interest by the end of the calendar year which includes the tenth anniversary of the participant's death. In contrast, if the beneficiary is a designated beneficiary, then the entire interest must be distributed by the end of the calendar year which includes the tenth anniversary of the participant's death. Note that for designated beneficiaries, there is no option to "stretch" the distributions over the lifetime of the beneficiary. Lastly, in the case of a nondesignated beneficiary, the entire interest must be distributed by the end of the calendar year including the fifth anniversary of the participant's death.

If a participant dies after his or her RBD, then these beneficiary classes are still relevant and there is the added complication of the "least as rapidly" rule. The proposed regulations illustrate this when they provide the following example: "if an employee died after the required beginning date with a designated beneficiary who is not an eligible designated beneficiary, then the designated beneficiary would continue to have required minimum distributions calculated using the beneficiary's life expectancy as under the existing regulations for up to nine calendar years after the employee's death. In the tenth year following the calendar year of the employee's death, a full distribution of the employee's remaining interest would be required." If the final rule is not altered, complying with these new rules could prove to be quite challenging from an administrative standpoint.

The proposed regulations include numerous other changes, including but not limited to provisions affecting defined benefit plans and rollover treatment for beneficiaries. Unfortunately, the proposed regulations do not extend the deadline to amend plans to comply with the changes to the RMD rules made by the SECURE Act. Nor do the proposed regulations provide model language that can be used by plan sponsors in amending their plan documents. If you have questions regarding how this guidance could impact your retirement plans, please contact one of the Employee Benefits attorneys here at Hodgson Russ.