September 17, 2024

Internal Revenue Service
1111 Constitution Ave NW
Washington, D.C. 20224

Re: Required Minimum Distributions; REG-103529-23, RIN 1545-BQ66

Ladies and Gentlemen,

SIFMA[1] submits comments on the 2024 proposed required minimum distribution ("RMD") regulations. We appreciate the work that went into the proposal and hope that our comments and requests for clarification are helpful in finalizing the regulations.

I. More Guidance and Time Needed on Treatment of a Spouse

The proposed RMD regulations provide the rules under which a surviving spouse may elect to be treated as the employee for purposes of determining an RMD for a calendar year. The proposed regulations set forth the rules applicable to the spousal election, depending on whether the employee has died before or after the required beginning date. The applicability date for the spousal election in subclause (E) makes clear that that the spousal election is available only if the *"first year for which annual required minimum distributions to the surviving spouse must be made is 2024* or later." See §1.401(a)(9)-5(g)(3)(ii)(E). Thus, the election with respect to employees who die before the required beginning date applies only if the required beginning date is 2024 or later. As an initial matter, the final regulations make clear that this is indeed an optional election, and that the surviving spouse of an employee who dies before the employee's

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

required beginning date can elect out of the automatic application of the spousal election. We assume that is the case; otherwise, it would hardly be an election. However, since there has been some confusion on this point, we hope the necessary clarification can be made. On an analogous point, the final regulations should clarify whether an eligible surviving spouse of an employee who dies on or after the employee's required beginning date can make the spousal election is it does not otherwise automatically apply.

We are a little confused by the following sentence: "Under the proposed regulations, the spousal election described in § 1.401(a)(9)–5(g)(3)(i) would be available only if the first year for which annual required minimum distributions to the surviving spouse must be made is 2024 or later." Please confirm that the reference to "first year" and the phrase "made is 2024 or later" is based on the RMD calculated using the spouse's age and life expectancy, and payable by the later of 12/31 of the year after the participant's death or 12/31 of the year the participant would have reached the applicable RMD age.

We appreciate the examples provided in the preamble. The IRS should also provide a clarifying example for the following factual scenarios.

- Where the participant died in 2023 after already reaching their required beginning date and the participant had not taken the minimum required distribution for 2023 as of the date of death. In this scenario, the spouse beneficiary is permitted to use the Uniform Lifetime Table since the first annual RMD due to the surviving spouse is for 2024 (and the 2023 RMD that needs to be paid to the spouse would be attributable to the participant using the participant's age and life expectancy).

- Practical examples on how the elections work with respect to periods prior to enactment of Secure 2.0, after enactment, under the proposed rule, and under the final regulation, including any required timing and manner of these elections, and whether reasonable cause will excuse timing failures. We think such flexibility is particularly important in that, with respect to IRAs, all of the timing depends on the IRA beneficiary, and in light of how complex these rules are, mistakes and delays are inevitable.

Please clarify account titling. In the event that a spouse elects to be treated as the employee, should the account continue to be titled in the employee's name or must the title of the account change to that of the spouse? How would a custodian know which rule to follow? The IRS should provide more examples.

Additionally, the ten-year rule is quite complex for spouse beneficiaries who inherit from the IRA owner before the RBD under Section 327 of SECURE 2.0. The inclusion of various options and working parts means that there are many possibilities for error by the spousal beneficiary. An added layer of complexity under the 10-year rule is that if the spouse decides to distribute and rollover to their own IRA in years one through nine, they will have hypothetical RMDs to satisfy.

The final rule states that if the employee dies before the required beginning date, the surviving spouse is the beneficiary, and the life expectancy rule applies, there is no election

required to calculate the RMD using the Uniform Lifetime Table. If all three of these requirements are not met, then the spouse would calculate the RMD using the Single Life Table, unless they either elect the ten-year rule, or in the case where the account owner died after the required beginning date, the spouse makes the election to be treated as the decedent. We request that the IRS address whether it is necessary for the surviving spouse of an employee who dies on or after the requirement beginning date to affirmatively make a spousal election in order to use the Uniform Lifetime Table in determining the denominator for purposes of determining the RMD. In addition, we request the IRS to address whether the Uniform Lifetime Table or the Single Life Table is to be used in determining the employee's remaining life expectancy.

It appears that the election after the required beginning date is optional in the ERISA plan context. Please clarify the rules where an IRA agreement has not been updated to acknowledge this "automatic" election before the required beginning date or the optional election after the required beginning date.

Please also confirm that in the IRA context, all decisions on the calculation of the RMD are the responsibility of the beneficiary, and the IRA trustee/custodian has no responsibility to validate the calculation, or ensure that the beneficiary is making an election that is available to them (e.g., whether they are the sole beneficiary).

The IRS should provide additional examples where the surviving spouse is the beneficiary, including the available options and the appropriate method for calculation of the RMD under each option. Hopefully, these examples can cover both the lifetime of the surviving spouse and how the RMD is calculated after the surviving spouse subsequently dies.

As is evident, our members have significant questions on how the rules are intended to work, and in addition to a longer lead period, we think it may make sense for the IRS to allow an election to be treated as the decedent optional for 2025 and automatic for 2026.

The 2024 final regulations also reflect that for distribution calendar years beginning before January 1, 2024, a plan may rely on a reasonable, good faith interpretation of sections 107, 201, 202, 204 and 337 of SECURE 2.0. Please confirm that a plan may also rely on a reasonable, good faith interpretation of SECURE 2.0 Section 327 for distribution calendar years beginning before January 1, 2024.

II. Rules of Operation

The proposed regulations provide rules for valuing and aggregating an annuity contract with a participant's account balance in a defined benefit plan for purposes of satisfying the RMD rules. We suggest adding language enabling a plan administrator to reasonably rely on a participant's self-certification regarding aggregation and reductions in the RMD amount from the account under the plan, unless the administrator has actual knowledge to the contrary.

It was helpful that the special analyses section made clear, in the Paperwork Reduction Act section, that "under these rules of operation, annuity contract issuers are expected to provide the

annuity valuations as third-party disclosure. In addition, the amount of payments made under annuity contract and the underlying value of the annuity contract is expected to be reported to the employer as a third-party disclosure." The IRS should add this expectation to the final regulations so that the regulated community is aware of this requirement.

The final rule should include timing deadlines that insurers can reasonably comply with but which, at the same time, meets both participants' financial planning needs and plan administrators' information distribution requirements. The final rule should make clear that in the context of 403(b) plans, the amount of payments made under the annuity contract and the underlying value of the annuity contract should be reported directly to the employee. It should also permit plan administrators and employees to reasonably rely on the disclosure provided by the issuer of the annuity contract.

III. Eligible Rollover Distributions

Under 1.408-8(d)(2)(i) Carryover of election under qualified plan or IRA, if a surviving spouse rolls over a distribution of the employee's or IRA owner's interest to an IRA, the method for determining required minimum distributions that applied under the deceased employee or IRA's owner account also applies to the IRA receiving the rollover. This is subject to a change from the 5-year or 10-year rule to life expectancy outlined in subsection (ii).

Please clarify that the obligation to make sure the proper method for determining required minimum distributions from the rollover account is on the spouse or non-spouse beneficiary. It should be clear from the final rule that the Plan Sponsor is not responsible for notifying the IRA Custodian of the method selected. Nor should the IRA Custodian be responsible for asking for, and making sure it receives this information from the Plan Sponsor.

IV. Optional Aggregation Rule

The optional aggregation rule has raised questions among our members. The proposed section of the rule is reserved for the how the prior year end account value of the annuity contract is determined. However, the final regulations do not address if the plan document (in the context of an ERISA plan) or IRA agreement (in the context of an IRA) have to be amended to permit the election, and if so, in what manner is the election made. In addition, the regulation should make clear that the optional aggregation rule apply to IRAs and defined contribution plans. The final rule should also clarify that annuitized payments already begun in one IRA can be used to offset the RMD required in the other IRA.

In the case of IRAs, the final rules should make clear that the responsibility for aggregation is on the taxpayer. IRA trustees/custodians are able to calculate the RMD based only on the assets that they have. It would be administratively impossible to accommodate IRA owners claiming that they have aggregated their accounts and are taking their RMD from a different account. Nor is it administrable for an IRA provider to document that an IRA owner is taking their RMD from another account.

In the context of IRAs, please confirm that IRA agreements do not have to be updated in

order for an IRA owner to be able to make the election. In addition, the final rules should confirm that the election is not a written election that must be retained by an IRA trustee or custodian.

V. Conclusion

SIFMA appreciates the IRS' consideration of its comments and is happy to provide additional information upon request.

Respectfully submitted,

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