The COMMITTEE of ANNUITY INSURERS

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VIA ELECTRONIC MAIL

Mr. Harlan M. Weller
Senior Actuary, Office of Tax Policy
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW, Room 1045
Washington, DC 20220

Re: Follow-Up on Question Asked During RMD Hearing

Dear Mr. Weller:

On behalf of the Committee of Annuity Insurers, we are writing to follow up on a question you asked during our testimony at the September 25th hearing on the proposed regulations regarding required minimum distributions ("RMDs") from qualified plans and IRAs. We testified that the regulations do not adequately address how the RMD rules apply after an employee's death if the employee had both a Roth and a non-Roth account in their qualified plan. We had assumed that in such cases the post-death RMD rules would apply separately to the Roth and non-Roth accounts. You questioned our assumption and suggested that in such cases the Roth and non-Roth accounts must be aggregated and the same post-death RMD rules must be applied to the aggregated accounts. We are following up to reiterate why, in our view, the regulations should not reflect such an aggregated approach and why, instead, the post-death RMD rules should apply separately to Roth and non-Roth accounts within a plan.

The final regulations continue to generally reflect the interpretation that different post-death RMD rules apply depending on when an employee dies in relation to their required beginning date ("RBD"). We have attached a chart that summarizes some of the key differences between these rules. Most importantly, however, if an employee dies *before* their RBD, the beneficiary can defer distributions for up to 10 years (the "10-Year Deferral Rule"), whereas if an employee dies *on or after* their RBD, the beneficiary must continue taking annual RMDs "at least as rapidly" as they were being made before the employee died (the "ALAR Rule").

As we observed in our written comments, the final regulations provide that if an employee's entire interest in a plan is held in a Roth account, then the employee's death is always deemed to occur before their RBD.[1] Thus, in such cases the 10-Year Deferral Rule is always available to a designated beneficiary of an in-plan Roth account, regardless of the timing of the employee's death. During the hearing, you suggested that because this rule is limited to situations where the employee's *entire* interest is held in a Roth account, the rule does not apply if only a *portion* of their interest is held in a Roth account. We understood you to mean that in such cases, the employee's Roth and non-Roth accounts must be aggregated and the same RMD rules must be applied to both, with the applicable rule determined by when the employee dies in relation to their RBD. Thus, for example, if the employee dies on or after their RBD, the ALAR Rule applies to their Roth account, even though that rule would not apply if the employee had *only* a Roth account under the plan.

Respectfully, we do not think such an interpretation is consistent with a plain reading of the relevant statutory rules or how IRS/Treasury have interpreted analogous rules in the past. In that regard, we note the following:

- *The ALAR Rule no longer makes sense for designated Roth accounts.* The ALAR Rule, as stated in section 401(a)(9)(B)(i), requires distributions after an employee's death to be made "at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death." Subparagraph (A)(ii) sets forth the rule for RMDs during the employee's life, *but that rule no longer applies to designated Roth accounts*, pursuant to the SECURE 2.0 Act.[2] Thus, for any employee's designated Roth account, there is no longer any "method of distributions being used under subparagraph (A)(ii) as of the date of his death." If distributions from a designated Roth account must continue after an employee's death at least as rapidly as they were required to be made before their death, but no distributions were actually required before their death, then continuing to not make any distributions after the employee's death would satisfy the ALAR Rule. In other words, the ALAR Rule makes no sense if there is no lifetime RMD obligation. This is why the regulations for Roth IRAs, which have never been subject to lifetime RMDs, have always deemed an IRA owner's death to occur *before* their RBD, even if the owner also has traditional IRAs to which the lifetime RMD rules apply.[3]

- *Congress wants conformity in the RMD rules for Roth-type accounts.* It is our understanding that Congress eliminated the pre-death RMD rules for in-plan Roth accounts in order to conform the treatment of such accounts to the longstanding treatment of Roth IRAs.[4] Doing so removes an incentive for plan participants to roll their

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

[2] *See* IRC § 402A(d)(5) (stating that neither IRC § 401(a)(9)(A) nor the incidental death benefit requirements of IRC § 401(a) apply to designated Roth accounts, effective starting in 2024).

[3] Treas. Reg. § 1.408A-6, Q&A-14(a) ("The post-death minimum distribution rules under section 401(a)(9)(B) that apply to traditional IRAs, *with the exception of the at-least-as-rapidly rule described in section 401(a)(9)(B)(i)*, also apply to Roth IRAs") (emphasis added); Treas. Reg. § 1.408A-6, Q&A-15 (section 401(a)(9) applies separately to traditional and Roth IRAs).

[4] *See*, *e.g.*, S. REP. NO. 117-142, at 95 (describing a predecessor bill to SECURE 2.0 and stating that the change to the pre-death RMD rules for designated Roth accounts was included because "[t]he Committee believes

designated Roth account balances out of their employer-sponsored plans into Roth IRAs merely to get the RMD treatment that applies to Roth IRAs. In other words, Congress sought conformity in the RMD treatment of in-plan Roth accounts and Roth IRAs in order to discourage "plan leakage." Despite this congressional goal of conformity, IRS/Treasury would retain a disparity in the RMD treatment of designated Roth accounts and Roth IRAs if the regulations apply the ALAR Rule to the former but not the latter. This would continue to encourage plan leakage, not discourage it. Beneficiaries may seek to roll their inherited Roth balances out of the decedent's plan and into an inherited Roth IRA in order to avoid the disparate treatment of their in-plan Roth account. If IRS/Treasury were to seek to prevent such beneficiary rollovers, the participants themselves may roll out of the plan during their lifetime in order to better position their future beneficiaries under the RMD rules. Either way, IRS/Treasury would be thwarting a key congressional goal under SECURE 2.0. IRS/Treasury also would be interpreting virtually identical statutory language in sections 402A(d)(5) and 408A(c)(4) very differently by applying the ALAR Rule under the former but not the latter.

- *Section 402A requires separate accounting*. Section 402A(b)(2) provides that a plan that offers 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.[5] This reflects the fact that designated Roth accounts and non-Roth accounts are subject to different rules regarding the taxation of distributions. Although this statutory separate accounting rule does not specifically reference RMDs, it broadly requires separate accounting to ensure that the different rules that apply to designated Roth accounts can be applied properly. Now that designated Roth accounts are subject to different RMD rules than non-Roth accounts, it seems clear that the general separate accounting rule of section 402A(b)(2) should apply for RMD purposes as well.

- *It would be unnecessarily burdensome to apply an aggregation approach*. An interpretation that applies the ALAR Rule to designated Roth accounts only if the employee also has a non-Roth account in the plan would be unnecessarily burdensome to administer. Plans would need to separately account for designated Roth accounts for RMD purposes (1) before the participant's death,[6] and (2) after the participant's death if they have only a Roth account, but ignore such separate accounting after the participant's death if they have both types of accounts. It would be much easier to administer RMDs if

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that it is appropriate to extend to designated Roth accounts *the exceptions that apply to Roth IRA*s from the pre-death minimum distribution rules and from the incidental death benefit requirements.") (emphasis added).

[5] *See also* Treas. Reg. § 1.401(k)-1(f)(3). We note that Treas. Reg. § 1.401(k)-1(f)(4) continues to provide that a "designated Roth account under [a] plan is subject to the rules of section 401(a)(9)(A) and (B) in the same manner as an account that contains pre-tax elective contributions." This is no longer true in light of IRC § 402A(d)(5)(A), which was added to the Code by section 325 of the SECURE 2.0 Act. We ask that the regulation be updated to reflect this change in law.

[6] *See*, *e.g.*, Treas. Reg. §§ 1.401(a)(9)-3(a)(2) and 1.401(a)(9)-5(b)(3). *See also* 89 Fed. Reg. at 58,645 (explaining that if an employee has both a Roth and non-Roth account in a plan, a distribution from the Roth account cannot be used to satisfy a pre-death RMD obligation for the non-Roth account).

the same "separate accounting" treatment applied to Roth accounts in all cases and if the same post-death RMD rule applied to Roth accounts in all cases.

- *An aggregation approach would create a trap for the unwary.* The RMD rules are already extremely complex. They are replete with variations on rules and exceptions to exceptions. Even seasoned tax practitioners struggle with all the nuances embedded therein. Adding a rule that treats in-plan Roth accounts differently merely because an employee also has a non-Roth account is a prime example of a provision that unnecessarily complicates the RMD rules. Employees will almost certainly find it difficult to understand and anticipate this disparate treatment. It also could create illogical and inappropriate results. For example, assume that two participants each has $100,000 in a plan and each dies after age 73 and after retiring. Assume further that the first participant's entire balance is held in a Roth account, so the 10-Year Deferral Rule applies to their entire $100,000 and the ALAR Rule does not apply. Assume further that the second participant has only $1 in their non-Roth account and the remaining $99,999 is held in their Roth account. Under the aggregation approach that has been suggested, the second participant's $1 of non-Roth money would cause their entire $99,999 Roth balance to be subject to the ALAR Rule rather than the 10-Year Deferral Rule. Such disparate treatment of two almost-identically situated taxpayers makes little sense from a technical or tax policy perspective.

- *Employees who have in-plan Roth accounts are likely to also have non-Roth accounts.* Any employee who has a Roth account under a plan is very likely to also have a non-Roth account under the same plan. This is because in-plan Roth accounts have become available only in recent years, and many employees contributed to their plans on a non-Roth basis before Roth accounts were introduced. Moreover, prior to SECURE 2.0, all employer contributions have been made on a non-Roth basis. As a result, most participants and beneficiaries who have any Roth balances in their plans are likely to also have non-Roth balances and therefore would be affected by an aggregation approach. This makes it even more important to clarify that such an approach does not apply.

Based on the foregoing, we urge IRS/Treasury to amend the final regulations to clarify that designated Roth accounts are always subject to the RMD rules that apply to employees who die before their RBD, regardless of when the employee actually dies or retires and regardless of whether the employee also has any non-Roth accounts in the plan. Although the "aggregation" approach that you suggested during the hearing is not directly reflected in the regulations, that approach could be inferred from the final regulations if they are not amended.

We realize that the clarification we are requesting would require amendments to regulations that already have been issued as final. However, the aggregation approach is not expressly described in the regulations, and in any event the final regulations from which an aggregation approach could be inferred were never preceded by any proposal that gave stakeholders notice of that approach nor any opportunity to comment on it before final rules were published. Moreover, the Committee (and likely other stakeholders) reasonably expected conformity between the post-death RMD treatment of in-plan Roth accounts and Roth IRAs, so the "aggregation" approach that you suggested at the hearing was surprising to us. In our view, that approach would be incorrect as a matter of law. We therefore hope that IRS/Treasury will amend the final regulations to clarify this. In the meantime, our members are extremely reluctant to begin efforts to comply with an aggregation approach that is not expressly described in the final regulations and that seems incorrect. Committee members and other stakeholders deserve clarity on these issues before they should be expected to even begin developing systems, procedures, and training to comply. For these reasons and for the reasons stated in our prior written comments, we continue to believe that our prior request for transition relief and a delayed effective date with respect to these rules is fully warranted.

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We appreciate this opportunity to follow up on our oral testimony and written comments on the RMD regulations. If you have any questions or if we can be of any assistance as you consider the issues we raised, we would be pleased to follow up further.

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Attachment: Key Differences in Post-Death RMD Rules

cc: Laura Warshawsky (IRS)
Linda Marshall (IRS)
Brandon Ford (IRS)
Jessica Weinberger (IRS)

Key Differences in Post-Death RMD Rules

Type of Rule	Death Before RBD	Death On/After RBD
Deferral vs. Annual RMDs	The employee's designated beneficiary ("DB") or eligible designated beneficiary ("EDB") can defer distributions for up to 10 years after the employee's death (the "10-Year Deferral Rule"). If the employee does not have a DB or EDB, the beneficiary can defer distributions for up to 5 years after the employee's death (the "5-Year Deferral Rule").	The 10-Year Deferral Rule and 5-Year Deferral Rule are not available. Instead, the at-least-as-rapidly rule ("ALAR Rule") applies, which requires distributions to continue each year after the employee's death.
Relevant Life Expectancies	The employee's EDB (but not any other beneficiary) can use the "Life Expectancy Rule" in lieu of the 10-Year Deferral Rule. Only the EDB's life expectancy is relevant when calculating distributions under the Life Expectancy Rule.	The Life Expectancy Rule does not apply. Instead, the ALAR Rule applies. Under the ALAR Rule, distributions must be made over the deceased employee's remaining life expectancy. If the employee has a DB (including an EDB), distributions must be made over the longer of the employee's and beneficiary's life expectancy. Thus, up two life expectancies are relevant, one of which may be a DB who is not an EDB.
Required Commencement Dates	If the employee's spouse is the sole beneficiary, the spouse is not required to commence RMDs under the Life Expectancy Rule until the employee would have attained the "applicable age" (generally, age 73).	The Life Expectancy Rule does not apply. Instead, the ALAR Rule applies. Under that rule, distributions must commence by the end of the year after the year the employee died, even if the beneficiary is the employee's spouse.
Applicable Life Expectancy Tables	If the employee's spouse is the sole beneficiary, the final regulations deem the spouse to have made an election to use the Uniform Lifetime Table ("ULT") to calculate their post-death RMDs under the Life Expectancy Rule.	If the employee's spouse is the sole beneficiary, the proposed regulations do *not* deem the spouse to have made an election to use the ULT to calculate their post-death RMDs under the ALAR Rule. Instead, the proposed regulations default the spouse into using the Single Life Table.