Surviving Spouse's HSA PUQME

It is apparent from Section 223(f)(8)(A) that Congress intended minimal change when a surviving spouse inherits an HSA from a deceased spouse. Spouses tend to be favored beneficiaries for all types of accounts. Further, it cannot have been Congress's intention to reset PUQME at death, since this would prohibit the surviving spouse from paying the deceased spouse's last medical expenses from the HSA without incurring tax and a potential penalty (if under age 65).

The above view is also supported by Notice 2004-50 Q&A 39, providing that there is no time limit on tax and penalty free reimbursements of previously unreimbursed qualified medical expenses.

However, there are at least some questions on the margins about PUQME when a spouse inherits a HSA. For example, what if the decedent spouse opened the HSA 15 years prior to death and married their spouse 10 years prior to death? Clearly, the decedent spouse's PUQME included their own unreimbursed qualified medical expenses incurred prior to the marriage and after the opening of the HSA. But does the surviving spouse's PUQME include such amounts?

My review of the authorities outside of the statute has not found anything on point from the IRS and Treasury in the many HSA Notices they have issued.

For example, Notice 2004-2, Q&A 31 could have answered the question, but simply says the surviving spouse can use the money for qualified medical expenses. Here's the relevant language:

Q-31. What are the income tax consequences after the HSA account beneficiary's death? A-31. Upon death, any balance remaining in the account beneficiary's HSA becomes the property of the individual named in the HSA instrument as the beneficiary of the account. If the account beneficiary's surviving spouse is the named beneficiary of the HSA, the HSA becomes the HSA of the surviving spouse. The surviving spouse is subject to income tax only to the extent distributions from the HSA are not used for qualified medical expenses.

A fair reading of Section 223(f)(8)(A) is that the surviving spouse becomes the owner of the HSA and all of its attributes as if they owned the HSA from the HSA's inception. Section 223(f)(8)(A) interestingly does not create a new HSA but rather simply provides that the surviving spouse is treated as the HSA's owner.

Considering the broad language in Section 223(f)(8)(A) applicable when a surviving spouse inherits a HSA, and that none of the voluminous Notices on HSAs issued by the IRS and Treasury reduce PUQME for a surviving spouse, or even for a change in status (such as aging out of a dependent or death of a non-HSA owning spouse), my view is that a spouse inheriting an HSA from a deceased spouse should inherit the same PUQME amount as the deceased spouse would have had they survived. My hope is the IRS and Treasury will issue guidance clarifying that this is the correct result.