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In this article, Blankenship examines the IRS's interpretation of the required minimum distribution rules under the SECURE Act, and he ponders the fate of the final regulations in a post-*Chevron* world.

I. Introduction

The IRS has issued final regulations (T.D. 10001) governing the treatment of beneficiaries of tax-favored retirement plans under the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019.[1] Some provisions of the final regulations, which are effective for tax years beginning in 2025, were unexpected. Tax practitioners had generally thought that certain new rules under the SECURE Act would entirely replace the old rules. However, to a large extent, the regulations do not take that approach. For example, they blend the old rules with the new rules to determine required minimum distributions (RMDs) for beneficiaries of plan participants who die on or after their required beginning dates (RBDs).

Practitioners had also expected that the old rules applicable upon the death of a beneficiary who was receiving life expectancy distributions would be entirely replaced by the new rule requiring full distribution of the plan benefit by the end of a 10-year period following the beneficiary's death. Instead, under the final regulations, the old rules requiring continuation of life expectancy payments after the death of the beneficiary still apply until the end of the ninth year in the 10-year period. Thus, the new 10-year total distribution requirement is treated simply as a limitation superimposed over the old life expectancy distribution requirements.

After the death of a plan participant, the amount and timing of RMDs paid to beneficiaries have generally depended on the existence of designated beneficiaries.[2] The SECURE Act did not purport to change the nature and definition of designated beneficiaries, and the existence or nonexistence of designated beneficiaries continues to be important. However, the final regulations try to clarify the definition and, in the process, have made significant unanticipated changes.

This article incorporates the relevant provisions of 2022's SECURE 2.0.[3] Also, it uses the term "tax-favored plan" or simply "plan" to refer to a qualified retirement plan, a section 403(b) plan, a section 457 government plan, a traditional IRA, or a Roth IRA. The term "participant" includes both an employee participating in an employer retirement plan and an owner of a traditional IRA or Roth IRA.

II. Required Nonannuity Distributions to Beneficiaries

The changes made by the SECURE Act apply only to defined contribution plans. Under the act, defined contribution plans include traditional

[1] P.L. 116-94, div. O, Title IV.

[2] Section 401(a)(9)(E)(i).

[3] Division T of the Consolidated Appropriations Act, 2023, P.L. 117-328.

IRAs, Roth IRAs, qualified trusts that are not part of defined benefit plans, section 403(b) plans, and section 457 government plans (if not defined benefit plans).[4] Defined contribution plans also include section 457 tax-exempt organization plans that provide (1) an individual account for each participant and (2) benefits based on amounts in the account (even though the accounts are not funded).[5]

The SECURE Act does not apply to annuity distributions unless the annuities are purchased by a defined contribution plan. Because defined contribution plans usually do not purchase annuities, this article focuses first on the final regulations' treatment of required nonannuity distributions by those plans.

A. Different RMD Rules Apply to Different Classes of Beneficiaries

For defined contribution plan participants dying after 2019, the treatment of RMDs paid to the participants' beneficiaries differs depending on the classifications of the beneficiaries. For this purpose, a beneficiary of a tax-favored plan may be classified as an eligible designated beneficiary (EDB), an ineligible designated beneficiary (IDB), or a nondesignated beneficiary (NDB).[6] EDBs are the primary class of beneficiaries entitled to receive distributions over their life expectancies under the SECURE Act.[7]

1. Definition of eligible designated beneficiary.

An EDB is a designated beneficiary who is:

- the surviving spouse of the participant;
- a minor child of the participant;
- a disabled individual;
- a chronically ill individual; or
- an individual who is not more than 10 years younger than the participant.[8]

a. Disabled individual.

An individual age 18 or older is considered disabled if they cannot do substantial work because of a physical or mental medical condition that will last for a long and indefinite period or from which they will probably die. This has long been the definition used for disabled individuals.

To deal more appropriately with minors, the final regulations also provide that an individual under age 18 is disabled if they have a medically determinable physical or mental impairment that results in marked and severe functional limitations that will last for a long and indefinite period or from which they will probably die.

The regulations further provide that if the commissioner of Social Security has determined that an individual is disabled, they will be conclusively deemed disabled for purposes of classification as an EDB.[9]

Documentation of the disability must generally be provided to the retirement plan trustee by October 31 of the calendar year following the participant's death. However, this documentation need not be provided to the trustee of an IRA.[10]

b. Minor child.

For purposes of EDB classification, a child is a minor until they reach age 21.[11] There are no exceptions. Thus, the final regulations reject the rule under the old regulations that treated a child as a minor (1) so long as they were disabled or, if later, (2) until the earlier of the completion of a specified course of education or age 26. However, the final regulations clarify that minor children of the participant may include stepchildren, adopted children, and foster children.[12]

c. Chronically ill individual.

A chronically ill individual is someone certified within the preceding 12-month period

[4] Section 401(a)(9)(H)(vi).

[5] Section 414(i); preamble to T.D. 10001, at Section V.

[6] P.L. 116-94, div. O, Title IV.

[7] An IDB may also be entitled to life expectancy distributions if they are a beneficiary of a plan with one or more other beneficiaries who are minor children of the participant. Reg. section 1.401(a)(9)-5(f)(1)(i). Further, the IDB of a participant who dies on or after their RBD may receive RMDs based on the life expectancy of either the participant or the oldest designated beneficiary, whichever is longer. Reg. section 1.401(a)(9)-5(d)(1)(i) and (ii). However, under either exception, one of the 10-year rules (or a modification thereof) will also apply. See the discussion below regarding IDBs of applicable multibeneficiary trusts (AMBTs).

[8] Section 401(a)(9)(E)(ii).

[9] Reg. section 1.401(a)(9)-4(e)(4).

[10] Reg. sections 1.401(a)(9)-4(e)(7) and 1.408-8(b)(4)(i).

[11] Reg. section 1.401(a)(9)-4(e)(3).

[12] Section 152(f)(1); reg. section 1.401(a)(9)-4(e)(1)(ii).

(by a physician, registered nurse, or licensed social worker) as suffering from certain mental or physical impairments. For physical impairments, the professional must certify that the individual is unable to perform two daily living activities for an indefinite and lengthy period without substantial assistance.[13]

Daily living activities include eating, toileting, making physical transfers, bathing, dressing, and managing incontinence.[14] Substantial assistance with those activities includes either hands-on physical assistance or standby assistance. Standby assistance is help provided by someone within arm's reach who can prevent injury during performance of the activity (for example, by physically catching a falling individual or dislodging food from a choking individual's throat).[15]

Alternatively, the licensed professional may certify that the individual requires substantial supervision to protect against threats to health and safety because of their severe cognitive impairment.[16] Severe cognitive impairment means loss of intellectual capacity as a result of Alzheimer's disease or similar types of irreversible dementia, as determined from clinical evidence and standard tests measuring impairments of memory, orientation, and reasoning.[17] Substantial supervision includes continual physical or verbal supervision necessary to protect the health and safety of the individual.[18]

For physical impairment (but not for mental impairment), the final regulations also require that the certification by the professional state that the individual's disability is reasonably expected to be indefinite and lengthy.[19] Documentation of the certification must generally be provided to the retirement plan trustee by October 31 of the calendar year following the participant's death. However, this documentation need not be provided to the trustee of an IRA.[20]

d. EDB status determined as of date of death of plan participant.

The determination of whether a designated beneficiary is an EDB is made as of the date of death of the plan participant.[21] However, this provision does not generally change the way designated beneficiaries are determined.[22] Rather, the SECURE Act and the final regulations merely provide that the condition that qualifies a designated beneficiary as eligible must exist on the date of death of the participant. For example, a later-acquired disability or chronic illness will not retroactively qualify a designated beneficiary as an EDB.

2. IDBs and NDBs.

An IDB is a designated beneficiary who is not an EDB. An NDB is a beneficiary who is neither an EDB nor an IDB (that is, a beneficiary who is not a designated beneficiary).

3. Identifying designated beneficiaries.

As explained above, a beneficiary cannot be an EDB or an IDB unless they are first a designated beneficiary. The SECURE Act did not change the definition of designated beneficiary, which is generally an individual entitled to benefits after the participant's death who is specifically designated as a beneficiary under the governing instrument of a tax-favored plan.[23] The governing instrument may designate beneficiaries by name or in some other identifiable way. For example, the governing instrument's designation of the spouse of each employee as a beneficiary is an identifiable designation.

Alternatively, and more commonly, the instrument will allow the participant (or their surviving spouse) to choose designated

[13] Section 7702B(c)(2)(A); reg. section 1.401(a)(9)-4(e)(5).

[14] Section 7702B(c)(2)(B).

[15] Notice 97-31, 1997-1 C.B. 417.

[16] Section 7702B(c)(2)(A)(iii).

[17] Notice 97-31; H.R. Rep. No. 104-736, "Health Insurance Portability and Accountability Act of 1996" (July 31, 1996) (Conf. Rep.) (see discussion of title 3, addressing the tax treatment of long-term care insurance and services); Joint Committee on Taxation, "General Explanation of Tax Legislation Enacted in the 104th Congress," JCS-12-96 (Dec. 18, 1996) (treatment of long-term care insurance and services).

[18] Notice 97-31.

[19] Section 401(a)(9)(E)(ii); reg. section 1.401(a)(9)-4(e)(5).

[20] Reg. sections 1.401(a)(9)-4(e)(7) and 1.408-8(b)(4)(i).

[21] Section 401(a)(9)(E)(i); reg. section 1.401(a)(9)-4(e)(1). Nevertheless, if the employee's benefit is paid in the form of a life annuity, the plan must determine the EDB status of the beneficiary as of the annuity starting date. Reg. section 1.401(a)(9)-6(b)(2)(i) and (d)(2)(ii).

[22] Section 401(a)(9)(E)(ii)(IV).

[23] Section 401(a)(9)(E)(i); reg. section 1.401(a)(9)-4(a)(1).

beneficiaries. It may even allow them to choose a class of designated beneficiaries that may expand or contract (for example, the participant's grandchildren).[24] The plan may also provide for a default election if the participant or their surviving spouse does not make an affirmative election.[25] Nevertheless, the choice of beneficiary is subject to (1) any overriding statutory requirement to provide annuities to spouses for their lifetimes (qualified joint and survivor annuities and qualified preretirement survivor annuities) or (2) the need to comply with qualified domestic relations orders.[26]

A designated beneficiary must generally qualify as such as of the date of the participant's death, and again on September 30 of the calendar year following the participant's death. The final regulations also provide that a beneficiary will cease to be a designated beneficiary if they predecease the participant or are treated as predeceasing the participant. A beneficiary is treated as predeceasing the participant if a simultaneous death provision so provides, or if they properly disclaim their entire interest.[27]

Further, a beneficiary is disregarded if they receive all their benefit before September 30 of the calendar year following the participant's death. However, a beneficiary who dies after the participant but before the September 30 date without receiving or disclaiming all their interest will continue to qualify as a designated beneficiary.[28]

Example 1. A participant dies on June 1, 2025, naming his four children (A, B, C, and D) as equal beneficiaries of his IRA. Child A signs a qualified disclaimer of her IRA interest in January 2026. Child B receives a distribution of all his interest in February 2026, and Child C dies in March 2026 without receiving or disclaiming her interest. As of September 30, 2026, Child D is alive and has neither received nor disclaimed his interest. On these facts, deceased Child C and Child D are the designated beneficiaries, even though Child C died before the September 30 date.

If an NDB (for example, a charitable organization) had also been named as a beneficiary in the above example, the IRA would have been deemed to have had no designated beneficiaries. However, the beneficiaries could have retained their status as designated beneficiaries by having the IRA distribute the entire interest of the charitable organization on or before the September 30 date.[29]

A beneficiary may make a timely disclaimer of their interest in a plan and thus cease to be a designated beneficiary, even if they receive the RMD payable for the year of the participant's death. However, the beneficiary must also accept any post-death income earned by the distribution, and the disclaimer should meet the requirements applicable to "qualified" disclaimers. The tax-favored plan must also pay the disclaimed amount to the beneficiary who is entitled to receive it after the disclaimer, or else segregate the disclaimed amount in a separate account.[30]

Note that the IRS has ruled that a beneficiary whose interest was conditioned on their survival for 60 days could be a designated beneficiary if they in fact survived for 60 days.[31] Presumably, an alternative individual beneficiary could be the designated beneficiary if the primary beneficiary did not survive for 60 days.

However, the IRS has refused to allow an executor to name a new designated beneficiary.[32] Similarly, when a nonexistent trust was named as an IRA beneficiary, the IRA did not have a designated beneficiary on the date of the owner's death, even though a state court later ruled that the surviving spouse was the beneficiary.[33]

The IRS has also ruled that a designated beneficiary as of the September 30 date remains a designated beneficiary even though they later, and retroactively, cease to be a beneficiary under

[24] Reg. section 1.401(a)(9)-4(a)(3).

[25] Reg. section 1.401(a)(9)-4(a)(4).

[26] *Id.*

[27] Reg. section 1.401(a)(9)-4(c)(2)(i) and (ii). However, if the employee's benefit is paid in the form of a life annuity for the lives of the employee and a designated beneficiary, the designated beneficiary is determined as of the annuity starting date. Reg. section 1.401(a)(9)-6(b)(2).

[28] Reg. section 1.401(a)(9)-4(c)(2)(iii).

[29] Reg. section 1.401(a)(9)-4(c)(3)(iv).

[30] Rev. Rul. 2005-36, 2005-1 C.B. 1368. In a similar situation, the IRS allowed a qualified disclaimer even though the distributions for the year of death exceeded the RMDs for that year. LTR 201245004.

[31] LTR 200610026.

[32] LTR 200126036.

[33] LTR 201706004.

state law. In the ruling, A, the sole beneficiary of two IRAs, was convicted of murdering the owner of the IRAs. Upon exhaustion of A's unsuccessful appeals, the IRAs retroactively passed under state law to the succeeding beneficiary, B. Although the IRS held that previous minimum distributions should have been made to B over the life expectancy of A, the IRS waived imposition of the 50 percent penalty.[34]

B. Continuing Importance of the RBD

After the SECURE Act, distributions to beneficiaries may still differ depending on whether the participant dies before, on, or after their RBD. The RBD is normally April 1 of the year following the calendar year in which the participant reaches the "applicable age." For this purpose, the applicable age is:

- 70½ for a participant born before July 1, 1949;
- 72 for a participant born on or after July 1, 1949, but before January 1, 1951;
- 73 for a participant born on or after January 1, 1951, but before January 1, 1960;[35] or
- 75 for a participant born on or after January 1, 1960.

Consequently, the applicable age for RBDs is 73 (for years after 2023 and before 2033), and the applicable age will be 75 for years after 2034. Note that there are no RBDs during 2023, 2033, and 2034.[36]

However, if a participant retires after the applicable age, their RBD is generally April 1 of the year following the calendar year of retirement (but only under a qualified retirement plan, a section 403(b) plan, or a section 457 plan).[37] Nevertheless, a plan may by its terms eliminate this retirement alternative altogether, reverting to the applicable age in all events.[38] Moreover, the retirement alternative does not apply to a participant who is directly or indirectly a 5 percent owner of the employer.[39]

If a plan eliminates RBDs based on retirement (requiring instead an RBD based solely on the applicable age), the RMD for a participant (other than a 5 percent owner) who dies after the applicable age but before April 1 of the year following retirement is the lesser of two amounts: (1) an amount computed as if the participant died before their RBD or (2) an amount computed as if the participant died on or after their RBD.[40]

Roth IRAs and designated Roth accounts are not required to pay minimum distributions during the participant's lifetime or for the year of their death.[41] Therefore, for a Roth IRA, a participant is always considered to have died before their RBD.[42] For a plan with a designated Roth account, a participant is always considered to have died before the RBD if the balance of the plan consists only of amounts in a designated Roth account. The implication is that if the plan has both a Roth account and a non-Roth account, the RBD for the Roth account is determined in the same way as the RBD for the non-Roth account.[43]

C. Nonannuity Distributions When Participant Dies On or After RBD

Before the issuance of regulations under the SECURE Act, tax practitioners had generally assumed that the new rules would apply to designated beneficiaries of participants in a defined contribution plan in the same way, regardless of whether the participants died before, on, or after their RBDs. More particularly, practitioners had assumed that the old rules no longer applied to designated beneficiaries of participants who died on or after their RBDs. Surprisingly, though, the final regulations instead

[34] LTR 201008049.

[35] Because of a drafting error in the statutory language, a participant born in 1959 would technically satisfy the requirements for both the age 73 and age 75 beginning dates. However, it appears likely that the age will ultimately be set at 73. *See* prop. reg. section 1.401(a)(9)-2(b)(2)(v). In any event, though, it is almost certain that Congress will resolve the issue with corrective legislation long before it becomes directly relevant (in 2032).

[36] P.L. 117-164, div. T, Title I, section 107; reg. section 1.401(a)(9)-2(a)(3)(ii).

[37] Section 401(a)(9)(C)(i)(II); reg. sections 1.401(a)(9)-2(b)(1)(ii), 1.403(b)-6(e)(3), and 1.457-6(d).

[38] Reg. sections 1.401(a)(9)-2(b)(4) and 1.457-6(d).

[39] Section 401(a)(9)(C)(ii) and (iv); reg. section 1.401(a)(9)-2(b)(3). The definition of a 5 percent owner is complex; it may be found in section 416(i)(1)(B).

[40] Reg. section 54.4974-1(c)(4) and (d)(5).

[41] Section 408A(c)(4); T.D. 9237; reg. section 1.408A-6, Q&A 14(a); reg. section 1.401(a)(9)-3(a)(2); reg. section 1.401(a)(9)-5(b)(3).

[42] Reg. section 1.408A-6, Q&A 14(b).

[43] Reg. sections 1.401(a)(9)-3(a)(2) and -5(b)(3).

blend the old rules with the new rules for those beneficiaries.

1. Unpaid portion of RMD for year of death.

A tax-favored plan must pay the participant's beneficiary any previously unpaid portion of the minimum distribution required for the year of death. The plan must make this payment on or before (1) the due date for the beneficiary's tax return (including extensions) for their tax year beginning in the calendar year of the participant's death or, if later, (2) the last day of the year following the calendar year of the participant's death.[44]

2. RMDs to beneficiaries for years following the year of participant's death.

For years after the calendar year of the death of a participant who dies on or after their RBD, a plan with only designated beneficiaries may meet minimum distribution requirements by making prescribed nonannuity payments over the longer of two periods: (1) the hypothetical life expectancy of the deceased participant, and (2) the life expectancy of the oldest designated beneficiary.[45]

The participant's hypothetical life expectancy is based on the age the participant attained, or would have attained, in the calendar year of their death. For the first full calendar year following the death of the participant (the first distribution year), the RMD is determined by dividing (1) the preceding year's adjusted account balance by (2) the participant's hypothetical life expectancy minus one year (the modified life expectancy). For each distribution year thereafter, the RMD is determined by dividing the preceding year's adjusted account balance by the modified life expectancy used in the preceding year minus one year.[46]

The life expectancy of the oldest designated beneficiary is based on the age that beneficiary attained in the calendar year following the death of the participant (the first distribution year). For the first distribution year, the RMD is determined by dividing the preceding year's adjusted account balance by the beneficiary's life expectancy. For each subsequent year, the beneficiary determines the RMD by dividing the preceding year's adjusted account balance by their life expectancy reduced by one for each previously elapsed distribution year. However, if the surviving spouse is the sole beneficiary, the RMD for each distribution year is determined by dividing the preceding year's adjusted account balance by the life expectancy of the spouse determined based on the age they attained in that distribution year.[47]

Nevertheless, if any of the designated beneficiaries are IDBs, the entire benefit must generally be distributed by the end of the 10th full calendar year following the participant's death (the primary 10-year rule), with life expectancy payments also continuing through the ninth year of the 10-year period.[48]

Example 2. Assume the participant in an IRA dies in 2025 at age 75 (after his RBD). Assume he is unmarried and has designated his daughter, age 45, and his son, age 35, as equal beneficiaries of the IRA. Neither of the children has any of the characteristics that would qualify them as an EDB. Under these facts, the life expectancy of the participant's oldest child (the daughter) is longer than the hypothetical life expectancy of the participant, and minimum distributions may thus be made over the life expectancy of the daughter. Nevertheless, because the daughter is an IDB, all funds in the IRA must be distributed by the end of 2035, the 10th full calendar year following the death of the participant.

Whether EDBs are receiving distributions over the life expectancy of the participant or the life expectancy of the oldest EDB, any remaining benefit must be distributed by the end of the 10th full calendar year following the death of the oldest EDB (the successor 10-year distribution rule). However, annual life expectancy distributions must also continue after the death of the oldest EDB. They must continue until the plan benefit is

[44] Reg. section 54.4974-1(g)(3). If the participant has multiple IRAs with different beneficiaries, the unpaid portion of the minimum distribution required for the year of death must be allocated to the IRAs in proportion to the IRAs' account balances at the end of the preceding year. Reg. section 1.408-8(e)(4).

[45] Reg. section 1.401(a)(9)-5(d)(1)(i) and (ii).

[46] Reg. section 1.401(a)(9)-5(d)(3)(ii).

[47] Reg. section 1.401(a)(9)-5(d)(3)(iii) and (iv). The regulations use the term "applicable denominator" to refer to life expectancies and adjusted life expectancies. Reg. section 1.401(a)(9)-5(d).

[48] Reg. section 1.401(a)(9)-5(e)(2).

fully distributed or, if earlier, until final distribution is required under the successor 10-year rule.[49]

Example 3. Assume the participant in an IRA dies in 2025 at age 75 (after her RBD). Assume she is unmarried and had previously designated her sister and brother as equal beneficiaries of the IRA. Her sister and brother attained ages 70 and 82, respectively, during the year of the participant's death. Both are EDBs because they are not more than 10 years younger than the participant.

Under these facts, life expectancy distributions to the siblings must begin in 2026, the year following the death of the participant. The modified life expectancy of the participant for the first distribution year is 13.8 years (that is, a 14.8-year life expectancy in the year of their death less 1.0 for the following year). The life expectancy of the brother (the oldest designated beneficiary, now age 83) is 9.3 years for the first distribution year.[50]

Thus, distributions may be made over the 13.8-year modified life expectancy of the participant (normally ending in 2039) since that is longer than the 9.3-year life expectancy of the participant's brother (ending in 2035). Assume further that the brother dies in 2027. Then, all the funds remaining in the IRA must be distributed before the end of 2037, the 10th full calendar year following the death of the brother, who was the oldest EDB.

3. Surviving spouse as the sole beneficiary.

If a surviving spouse is the sole designated beneficiary of the plan of a participant who died after their RBD, the spouse may be entitled to special treatment for RMD purposes. The surviving spouse may be able to (1) redetermine their distribution period based on their life expectancy in each distribution year, (2) elect ownership of the participant's IRA, or (3) elect to be treated as the participant in the deceased spouse's employer plan. For a full discussion of these special rules, see Section II.E below.

D. Nonannuity Distributions When Participant Dies Before RBD

For participants who die before their RBD, RMDs may differ depending on whether a beneficiary is an EDB, IDB, or NDB and whether the life expectancy rule or the primary 10-year rule applies.

1. Distributions to IDBs.

An IDB of a participant who dies before their RBD is not entitled to take nonannuity distributions over the beneficiary's life expectancy to satisfy minimum distribution requirements. Instead, the IDB must take distributions under the primary 10-year rule.[51] As noted, the primary 10-year rule provides that a plan must distribute the entire amount of a participant's benefit by the end of the calendar year containing the 10th anniversary of the participant's death.[52]

2. Distributions to EDBs.

The tax-favored plan of a participant who dies before their RBD and has only EDBs could make distributions under either the primary 10-year rule or the life expectancy rule.[53] Under the life expectancy rule, the plan must generally make distributions to the EDBs over the life expectancy of the oldest EDB.[54] These distribution alternatives for EDBs are identical to those that would have been available before enactment of the SECURE Act, except that the primary 10-year rule has replaced the five-year rule.

a. Distributions when a plan has both EDBs and IDBs.

If a plan has both EDBs and IDBs (but no NDBs), it is treated as having only IDBs. Thus, if a plan participant dies before their RBD, the plan may generally make RMDs only under the primary 10-year rule.[55] As discussed below, there are exceptions allowing life expectancy distributions (1) for plans with beneficiaries who are minor children and (2) for applicable

[49] Reg. section 1.401(a)(9)-5(e)(3).

[50] Reg. section 1.401(a)(9)-9(b), Single Life Table.

[51] Section 401(a)(9)(H)(i)(I); reg. section 1.401(a)(9)-3(c)(5)(i)(B).

[52] Reg. section 1.401(a)(9)-3(c)(3), Q&A 2.

[53] Section 401(a)(9)(H); reg. section 1.401(a)(9)-3(c)(5)(i)(C), (5)(ii), and (5)(iii).

[54] Reg. section 1.401(a)(9)-5(f).

[55] Reg. section 1.401(a)(9)-5(e)(2).

multibeneficiary trusts (AMBTs), even though the beneficiaries include IDBs.

Note that if a tax-favored plan is divided into separate accounts before the end of the year following the death of the plan participant, the life expectancy rule may be used for distributions from any separate account benefiting only EDBs. The regulations have long allowed plans to timely create separate accounts for neutralizing the potential unfavorable effect on a beneficiary of the undesirable characteristics of another beneficiary (for example, to avoid the downgrading of a designated beneficiary to NDB status because another beneficiary is an NDB).[56]

b. Distributions to EDBs under the primary 10-year rule.

The primary 10-year rule generally applies to all distributions to EDBs from a plan with only designated beneficiaries, one or more of whom is an IDB, unless the beneficiaries have timely created separate accounts in the plan. The primary 10-year rule also applies to distributions from a plan with only EDBs if:

1. the governing instrument for the tax-favored plan *requires* distribution under the primary 10-year rule;[57] or
2. the governing instrument allows the participant or EDB to elect either the primary 10-year rule or the life expectancy rule, and the participant or EDB elects the primary 10-year rule.[58]

The primary 10-year rule also applies if the participant and EDB fail to make an irrevocable election under item 2 above and the governing instrument then requires use of the 10-year rule.[59]

If the primary 10-year rule applies, an EDB may not roll over any funds remaining in the tax-favored plan in the 10th year, because the distribution of the total amount of those funds is an RMD ineligible for rollover.[60] Consequently, an EDB subject to the primary 10-year rule who wishes to roll over funds to an inherited IRA should do so before the 10th year (that is, during a period when minimum distributions are not "required").

Similarly, a surviving spouse subject to the primary 10-year rule who wishes to roll over funds to their own IRA (with its own different RMD rules) should do so before the 10th year.[61] However, if the surviving spouse is the sole beneficiary of the participant's IRA, they generally may become the owner of the IRA in the 10th year by simply putting the IRA in their own name (although catch-up RMD provisions may be applicable to a spouse who is then age 73 or older).[62] See Section II.E.2 below for a more detailed explanation of the spousal ownership option and the catch-up provisions.

c. Distributions to EDBs under the life expectancy rule.

For EDBs of a plan participant who dies before their RBD, the life expectancy rule generally applies if the primary 10-year rule does not.[63] More specifically, the life expectancy rule applies to distributions to an EDB if:

1. the governing instrument for a tax-favored plan requires minimum distributions under the life expectancy rule;[64]
2. the governing instrument does not specify the minimum distribution rule and does not provide an election;[65] or
3. the governing instrument allows the participant or EDB to choose either the primary 10-year rule or the life expectancy rule, and the participant or EDB elects the life expectancy rule.[66]

The life expectancy rule also applies if the participant and EDB fail to make an irrevocable election under item 3 above, and the governing instrument then requires use of the life expectancy rule or does not specify a method of distribution.[67] If the life expectancy rule applies, a tax-favored plan must generally begin making distributions by the end of the first full calendar

[56] Reg. section 1.401(a)(9)-8(a)(1).
[57] Reg. section 1.401(a)(9)-3(c)(5)(ii).
[58] Reg. section 1.401(a)(9)-3(c)(5)(iii).
[59] Reg. section 1.401(a)(9)-3(c)(5)(iii)(A).
[60] Section 402(c)(4)(B).
[61] *Cf.* Notice 2007-7, 2007-1 C.B. 395, at Q&A 17(b).
[62] Reg. section 1.408-8(c)(3).
[63] Reg. section 1.401(a)(9)-3(c)(5)(i)(C).
[64] Reg. section 1.401(a)(9)-3(c)(5)(i)(C).
[65] Reg. section 1.401(a)(9)-3(c)(5)(ii) and (iii).
[66] Reg. section 1.401(a)(9)-3(c)(5)(iii).
[67] Reg. section 1.401(a)(9)-3(c)(5)(iii)(A).

year after the participant's death.[68] Nevertheless, if the surviving spouse is the sole beneficiary, the plan may instead begin making distributions as late as the end of the calendar year in which the participant would have reached age 73 (age 75 after 2034).[69]

A participant or EDB must generally make the life expectancy election under item 3 above before the end of the first full calendar year following the participant's death. However, if the sole designated beneficiary is the participant's surviving spouse, the spouse may instead make the life expectancy election by the end of the calendar year in which the participant would have reached age 73 (age 75 after 2034).[70] In no event, though, may the spouse make the election later than the end of the year containing the 10th anniversary of the participant's death.[71] Unfortunately, a surviving spouse who is unaware of this election deadline may be trapped into the primary 10-year rule if the tax-favored plan requires use of that rule in the absence of an election.

Example 4. Assume a participant dies in 2025 at age 51, and their surviving spouse is the sole beneficiary of their interest in a profit-sharing plan. The plan allows the surviving spouse to elect either the primary 10-year rule or the life expectancy rule, but it requires use of the primary 10-year rule in the absence of a timely election. In that case, the spouse's election to use the life expectancy rule will be effective only if irrevocably made by the end of 2035 (the 10th post-death calendar year) because that year is earlier than the year in which the participant would have reached the applicable age of 75 (in 2049). If the spouse fails to make a timely irrevocable election, the primary 10-year rule imposed by the plan will apply.

When the life expectancy rule applies, failure to make timely required annual distributions will generally trigger a 25 percent penalty on the amount not distributed (50 percent before 2024).[72] The tax law does not imply an election of the primary 10-year rule merely because the tax-favored plan fails to make timely life expectancy payments.[73] Nevertheless, the IRS generally will not apply the penalty in that case if the participant died before their RBD and the payee is an EDB automatically entitled to the life expectancy method who instead elects the primary 10-year rule before the end of the ninth full calendar year following the participant's death.[74]

d. Life expectancy of the oldest EDB.

Each year, under the life expectancy rule, a tax-favored plan must distribute an amount equal to the participant's adjusted account balance divided by the applicable distribution period.[75] If a tax-favored plan has more than one EDB (and no IDBs or NDBs), it may consider only the life expectancy of the oldest EDB to determine the distribution period.[76] That life expectancy is found in the Single Life Table for the age the oldest EDB attained in the first full calendar year after the death of the participant. For each subsequent year, the applicable distribution period is one year less than in the immediately preceding year.[77]

Example 5. Assume a plan participant dies in 2025 and was, or would have been, age 63 in that year. The participant has two EDBs who reach ages 50 and 54 in the year of the participant's death. Assume the participant elected the life expectancy method for distributions to beneficiaries. Assume further that the plan does not provide an annuity and had an adjusted account balance of $400,000 for 2025.

For 2026 the plan must make a minimum distribution of $12,658. The beneficiaries compute this amount by dividing the adjusted account balance of $400,000 by 31.6 years. The number of years used is the number of years specified in the Single Life Table for an individual age 55 (the age

[68] Section 401(a)(9)(B)(iii)(III); reg. section 1.401(a)(9)-3(c)(4).

[69] Section 401(a)(9)(B)(iv)(I); reg. section 1.401(a)(9)-3(d); P.L. 117-164, div. T, Title I, section 107.

[70] Section 401(a)(9)(B)(iv)(I); reg. section 1.401(a)(9)-3(d); P.L. 117-164, div. T, Title I, section 107.

[71] Reg. section 1.401(a)(9)-3(c)(5)(iii)(B).

[72] Section 4974(a). P.L. 117-164, div. T, Title III, section 302. A taxpayer may reduce the penalty to 10 percent by taking certain corrective steps. Reg. section 54.4974-1(a)(2).

[73] LTR 200811028.

[74] Reg. section 54.4974-1(g)(2).

[75] Reg. section 1.401(a)(9)-5(a)(1).

[76] Reg. section 1.401(a)(9)-5(f)(1); LTR 201430022.

[77] Reg. section 1.401(a)(9)-5(d)(3)(i) and (iii); reg. section 1.401(a)(9)-9(b), Single Life Table.

reached by the older designated beneficiary in the year after the participant's death).

For 2027, assume the preceding year's adjusted account balance is $420,000. The plan must therefore make a minimum distribution of $13,725. The beneficiaries compute this amount by dividing the adjusted account balance of $420,000 by 30.6 years (one year less than the 31.6 years used for 2026).

For 2028, assume the preceding year's adjusted account balance is $430,000. The plan must therefore make a minimum distribution of $14,527. The beneficiaries compute this amount by dividing the adjusted account balance of $430,000 by 29.6 years (one year less than the 30.6 years used for 2027).

e. Exceptions to the all-EDBs rule.

The final regulations provide two exceptions to the general rule that a designated beneficiary cannot be an EDB unless all the designated beneficiaries are EDBs. First, it does not matter whether an AMBT has some beneficiaries who are IDBs, provided that one or more of the designated beneficiaries does qualify as an EDB because of disability or chronic illness and the other AMBT rules are met.[78] (See below for a discussion of AMBTs.) Second, a designated beneficiary who qualifies as an EDB because they are a minor child of the participant will not cease to be an EDB merely because other designated beneficiaries are IDBs.[79] However, in the latter case, the plan must generally base life expectancy distributions on the age of the oldest designated beneficiary, even if that beneficiary is an IDB.[80]

f. Choice of distribution method.

Under the life expectancy rule, annual distributions must begin by the end of the *first* full calendar year following a participant's death.[81] However, under the primary 10-year rule, a tax-favored plan may delay the first distribution until the end of the *10th* full calendar year following the participant's death.[82] Thus, by choosing the primary 10-year rule, a beneficiary can delay the first nonannuity distribution for nine additional years. On the other hand, the primary 10-year rule requires the distribution of *all* funds in the tax-favored plan by the end of the 10th full calendar year following the participant's death. In contrast, the life expectancy rule allows a beneficiary to spread the distributions over a normally longer period equivalent to the life expectancy of the oldest EDB.[83]

In many cases it will be intuitively obvious which distribution rule provides the more desirable tax deferral. In other cases the beneficiary may have to compare projections of respective tax deferrals under the two rules. The projections would normally consider the anticipated (and possibly differing) tax brackets for the beneficiary over future years, the time value of money, and other relevant factors.

E. When Spouse Is the Sole Beneficiary (Sole EDB)

If a plan participant dies before their RBD, a surviving spouse who is the sole beneficiary (and thus sole EDB) may usually choose between the primary 10-year rule and the life expectancy rule for minimum distributions. The considerations governing this choice after the SECURE Act are the same as before (except that the primary 10-year rule has replaced the five-year rule). As before, the spouse may generally delay minimum distributions under the life expectancy method until the deceased participant would have attained the applicable age (age 73, or age 75 after 2034).[84] If the spouse is more interested in tax deferral than in current personal use of funds, they will want to choose the distribution rule that delays the distribution of the most funds for the longest period.

As with nonspousal beneficiaries, the choice of the distribution rule providing the more desirable tax deferral will often be intuitively obvious. In other cases, the spouse may have to compare projections of respective tax deferrals under the two rules. As with nonspousal beneficiaries, the projections would normally consider the time value of money and the

[78] Reg. section 1.401(a)(9)-4(g)(3)(ii).

[79] Reg. section 1.401(a)(9)-4(e)(2)(ii).

[80] Reg. section 1.401(a)(9)-5(f)(1)(i).

[81] Section 401(a)(9)(B)(iii)(III); reg. section 1.401(a)(9)-3(c)(4).

[82] Reg. section 1.401(a)(9)-3(c)(3).

[83] Reg. sections 1.401(a)(9)-3(c)(3) and -5(d)(3)(iii).

[84] Section 401(a)(9)(C)(i)(I); P.L. 117-164, div. T, Title I, section 107.

anticipated (and possibly differing) tax brackets for the spouse over future years. The projections should also consider the impact of the respective ages of the participant and spouse, as well as any other relevant factors.

1. Distributions computed by annually redetermining life expectancy.

A surviving spouse who is the sole beneficiary under a plan and who is receiving distributions under the life expectancy rule is entitled to a special method for computing the distribution period regardless of whether the participant died before, on, or after their RBD. The applicable distribution period is the spouse's life expectancy in each distribution year. Thus, for each distribution year after the participant's death, the tax-favored plan must determine the spouse's life expectancy anew based on the age the spouse attained in that year. The plan finds the spouse's life expectancy in the Single Life Table in the regulations.[85]

Example 6. Assume a plan participant dies in 2025 at age 76, after his RBD. The sole designated beneficiary is his surviving spouse, who reaches age 74 in 2025. Assume the plan does not provide an annuity and had an adjusted account balance of $400,000 for 2025. Under these facts, the spouse must take RMDs over her life expectancy beginning in 2026 (because she has a longer life expectancy than the participant).

For 2026 the plan must make a minimum distribution of $27,027 to the spouse. The spouse computes this amount by dividing the adjusted account balance of $400,000 by 14.8 years (the number of years specified in the Single Life Table for their age of 75 in the year after the participant's death).

For 2027, assume the prior-year adjusted account balance is $390,000. The plan must therefore make a minimum distribution of $27,660 to the spouse. The spouse computes this amount by dividing the prior-year adjusted account balance of $390,000 by 14.1 years (the years specified in the Single Life Table for the one-year-older spouse, who is now age 76).

For 2028, assume the prior-year adjusted account balance is $380,000. The plan must therefore make a minimum distribution of $28,571 to the spouse. The spouse computes this amount by dividing the prior-year adjusted account balance of $380,000 by 13.3 years (the years specified in the Single Life Table for the one-year-older spouse, who is now age 77).

For distributions in calendar years beginning after the death of a surviving spouse, the spouse's life expectancy is no longer determined anew each year. Instead, the applicable denominator is the spouse's hypothetical life expectancy determined in the year of their death, reduced by one for each subsequent calendar year. The successor 10-year rule also applies to the spouse's beneficiaries.[86]

2. Surviving spouse's IRA ownership option.

Rather than choosing between the primary 10-year rule and the life expectancy rule for distributions from a participant's IRA, a surviving spouse may elect to become the owner of the IRA if they (1) are the sole beneficiary and (2) have an unlimited right to withdraw funds.[87] Note that the ownership election is available regardless of whether the participant died before, on, or after their RBD. After the election, the minimum distribution requirements will apply to the spouse as if they had established the IRA. The spouse could then, for example, defer RMDs from a traditional IRA until they attain age 73 (age 75 after 2032)[88] and could take advantage of the favorable distribution periods provided by the Uniform Lifetime Table.

However, if a participant died before their RBD, a surviving spouse who takes or must take distributions under the primary 10-year rule generally may not make the election after the later of (1) the calendar year following the participant's death or (2) the calendar year in which the spouse attains age 73 (age 75 after 2034). The election will be available in those circumstances only if the IRA first makes a catch-up RMD. The catch-up RMD

[85] Reg. sections 1.401(a)(9)-5(d)(3)(iv) and -9(b), Single Life Table; LTR 201902023.

[86] Preamble to REG-105954-20.

[87] Reg. section 1.408-8(c). The spouse is deemed to have made the election if the IRA fails to pay an RMD or receives a contribution (other than a rollover from an eligible plan). Reg. section 1.408-8(c)(2).

[88] Section 401(a)(9)(C)(i)(I); P.L. 117-164, div. T, Title I, section 107.

must equal the total of all the hypothetical RMDs that would have been required during the catch-up period if the spouse were instead taking distributions under the Uniform Lifetime Table, less the actual distributions received by the spouse during the catch-up period. The catch-up period begins with the later of the year in which the spouse attained age 73 (age 75 after 2034) or the year in which the participant would have attained that age.[89]

A surviving spouse may not circumvent this rule by *rolling over* the funds in the IRA to their own IRA. To make such a rollover, the spouse must still first take a distribution of the excess hypothetical RMDs described in the preceding paragraph.[90]

Example 7. Assume the participant in an IRA dies in 2025 at age 68 and that her surviving spouse is then age 71. Assume the surviving spouse irrevocably elected to receive RMDs under the 10-year rule. In 2034 the then-80-year-old surviving spouse decides to roll over the funds in the decedent's IRA to his own IRA. First, though, the plan must make a catch-up distribution to the spouse of the total of the hypothetical RMDs that would have been required under the Uniform Lifetime Table for 2030 (the year in which the younger participant would have attained age 73) through 2034 (the year of the spouse's ownership election). If the spouse had received actual distributions during the catch-up period, the amount of the catch-up distribution may be reduced by those earlier distributions.

3. Surviving spouse dies before minimum distributions are required.

A special rule may apply to minimum distributions to beneficiaries after the death of a participant's surviving spouse. It applies if the surviving spouse is the sole designated beneficiary of a participant who dies before his RBD and the surviving spouse dies before minimum distributions are required to be paid to them under the life expectancy rule. In that case, the tax law applies the five-year rule, the 10-year rules, and the life expectancy rule to the spouse's beneficiaries as if the spouse were the participant. The date of death of the spouse is substituted for the date of the participant's death (even if the participant died before the effective date of the SECURE Act).[91]

Example 8. Assume a participant died on December 15, 2018, on his 62nd birthday. Had he lived, the participant would have reached age 73 on December 15, 2029. The participant's surviving spouse is the sole beneficiary of his IRA and, under the terms of the IRA, must take RMDs under the life expectancy rule beginning in 2029.

Assume the surviving spouse died in 2025, before distributions were required under the life expectancy rule.[92] Assume the surviving spouse had the foresight to name her disabled son (an EDB) as the succeeding beneficiary. If the terms of the IRA allow, her son may choose between the primary 10-year rule and the life expectancy rule, determined as if the surviving spouse were the owner of the IRA. If, however, the surviving spouse had remarried and, before she died, named her new husband as her beneficiary, the new husband could not be treated as her surviving spouse; he would instead receive minimum distributions determined and paid as if he were merely a nonspousal beneficiary.[93]

Note that if the spouse had elected the primary 10-year rule or the IRA required use of that rule, the benefits of the special rule would not have been available to her and her beneficiaries.[94]

As Example 8 illustrates, the beneficiaries of a surviving spouse may qualify as designated beneficiaries, even EDBs, under the special rule.[95] Unfortunately, though, the spouse might have failed to designate a beneficiary, and the plan may not have designated a default beneficiary. In that case, the five-year rule applicable to NDBs will apply to distributions after the spouse's death.[96]

[89] Section 401(a)(9)(C)(i) and (v); reg. section 1.402(c)-2(j); reg. section 1.408-8(c)(1)(iii) and (iv); P.L. 117-164, div. T, Title I, section 107.

[90] Reg. sections 1.402(c)-2(j)(4) and 1.408-8(d).

[91] Section 401(a)(9)(B)(iv)(II); reg. section 1.401(a)(9)-3(e)(1).

[92] If the spouse in this example had died in 2019 (before the effective date of the SECURE Act), the SECURE Act provisions that are applicable to pre-2020 plans would have applied. *See* Section II.F.4, *infra*. Under those provisions, life expectancy distributions to successor beneficiaries of the spouse's designated beneficiaries would be subject to the successor 10-year rule. Reg. section 1.401(a)(9)-1(b)(2)(iii)(C).

[93] Reg. section 1.401(a)(9)-3(e)(2).

[94] Section 401(a)(9)(B)(iv); reg. section 1.401(a)(9)-3(d) and (e).

[95] Section 401(a)(9)(H).

[96] Reg. section 1.401(a)(9)-3(c)(5)(A); LTR 200644022.

Note that the special rule applies even though the tax-favored plan made nonannuity distributions to the surviving spouse before any minimum distributions were required under the life expectancy rule. In no event, however, would the rule apply if the plan made annuity payments to the surviving spouse before her death.[97]

4. Surviving spouse's election to be treated as the participant.

For minimum distributions that are required to begin after 2023, a qualified plan that is a defined contribution plan may provide that a surviving spouse who is the sole beneficiary may elect to be treated as the participant in the plan.[98] The code and regulations do not appear to limit when the election can be made. However, the election is available only if the spouse was taking, or was required to take, distributions under the life expectancy rule.

A surviving spouse who takes or is required to take life expectancy payments is deemed to have made the election if the participant died before their RBD. If the surviving spouse then dies before the date on which their distributions must begin, the special rule effectively applies — that is, the regulations apply the five-year rule, the primary 10-year rule, and the life expectancy rule to the spouse's beneficiaries as if the spouse were the participant.[99]

If an electing spouse does begin receiving RMDs during their lifetime, they are entitled to use the Uniform Lifetime Table for determining RMDs, in lieu of a less favorable life expectancy under the Single Life Table.[100] Unfortunately, though, upon the death of a surviving spouse who has begun receiving RMDs, distributions to their beneficiaries can no longer be based on the Uniform Lifetime Table. Instead, distributions to the beneficiaries must be based on the Single Life Table for the spouse's age at the date of their death, and the successor 10-year rule applies to those distributions.[101]

Note that the spousal election to be treated as the participant applies only for purposes of determining the amount of RMDs.[102] Thus, the electing spouse is not considered the participant for purposes of applying the 10 percent penalty on premature distributions.[103] Instead, they are treated more favorably as a beneficiary who is exempt from the penalty because of the death of the original participant.[104]

Nor is the electing spouse considered the participant for purposes of determining when RMDs to them must commence.[105] An electing spouse must still begin receiving life expectancy distributions by (1) the end of the calendar year in which the original participant would have reached age 73 (before 2033, age 75 after 2034) or, if later, (2) the end of the first full calendar year after the original participant's death.[106] The age of the spouse is irrelevant for this purpose. Further, the rule that RMDs need not be made to participants from designated Roth accounts does not apply to an electing spouse: They must take Roth account distributions as a spousal beneficiary.[107] The surviving spouse may be able to avoid these problems by rolling over the plan funds to their own traditional IRA or Roth IRA.

5. Qualifying the surviving spouse as the sole beneficiary.

To qualify as the sole beneficiary for minimum distribution purposes, a surviving spouse must generally be at least one of the beneficiaries at the participant's death. They must also be the only beneficiary on September 30 of the first full calendar year following the participant's death. Thus, the surviving spouse may become the sole beneficiary by the September 30 date if any other beneficiaries are eliminated by qualified

[97] Reg. section 1.401(a)(9)-3(e)(3).

[98] Section 401(a)(9)(B)(iv); reg. section 1.401(a)(9)-5(g)(3)(i).

[99] Section 401(a)(9)(B)(iv)(I) and (III); prop. reg. sections 1.401(a)(9)-5(g)(3)(ii)(A) and -3(e)(1).

[100] Prop. reg. section 1.401(a)(9)-5(g)(3)(ii)(C); reg. section 1.401(a)(9)-9(c), Uniform Lifetime Table.

[101] Section 401(a)(9)(B)(iv)(III); prop. reg. section 1.401(a)(9)-5(g)(3)(ii)(D).

[102] Reg. section 1.401(a)(9)-5(g)(3)(i).

[103] Section 72(t).

[104] Section 72(t)(2)(A)(ii).

[105] Reg. section 1.401(a)(9)-3(d).

[106] Section 401(a)(9)(B)(iii)(III); reg. section 1.401(a)(9)-3(c)(4) and (d).

[107] Section 402A(d)(5); reg. section 1.401(a)(9)-3(a)(2).

disclaimer or by distribution of their interests.[108] Further, if separate accounts are timely established, the spouse may become the sole beneficiary of one of the separate accounts.[109]

Example 9. Assume a participant dies on December 15, 2025. His spouse and adult daughters A and B are named as the three equal beneficiaries of his IRA. On June 15, 2026, A executes a qualified disclaimer of her entire interest in the IRA. On August 1, 2026, B receives a distribution of her entire interest. Thus, the participant's surviving spouse becomes the sole designated beneficiary because she is a beneficiary as of the participant's death and is the only beneficiary as of September 30, 2026.

F. Application of the Primary and Successor 10-Year Rules

This section discusses application of the rules requiring the distribution of all plan funds before the end of a 10-year period following the death of a participant or an EDB. To eliminate potential confusion, this article uses the term "primary beneficiary" to refer to a beneficiary who may receive plan funds that are not contingent on or delayed until the death of another beneficiary. It refers to all other beneficiaries as "successor beneficiaries." Similarly, the article refers to the 10-year rule that is applicable after the death of a participant as the "primary 10-year rule" and refers to the 10-year rule applicable after the death of an EDB as the "successor 10-year rule."

1. Death of designated beneficiary receiving distributions under the primary 10-year rule.

The primary 10-year rule applies to all IDBs whether the participant dies before, on, or after their RBD. It also applies to EDBs who elect it or who are beneficiaries of plans that require it, but only if the plan participant dies before their RBD. Under the primary 10-year rule, as discussed, the plan must distribute the participant's benefit by the end of the 10th full calendar year after the death of the participant.[110] The death of the beneficiary before all the benefit is distributed does not affect the distribution period; the entire benefit must still be distributed by the end of the 10th year after the death of the participant. (Note, though, that the primary 10-year rule is neither imposed on nor available to the EDB of a participant who dies on or after their RBD.)[111]

Example 10. Assume an IRA participant dies in 2021. His sister is the sole beneficiary and is an IDB. Assume the sister dies in 2026, before the balance of the IRA has been entirely distributed. Under these facts, the remaining balance of the IRA must be distributed by the end of 2031 (the 10th year after the death of the participant).

2. Death of EDB receiving distributions under the life expectancy rule.

When enacting the SECURE Act, Congress was intent not only on eliminating the life expectancy rule for primary beneficiaries who do not qualify as EDBs but also on denying lengthy life expectancy distributions to beneficiaries who succeed to the plan benefit of deceased EDBs — that is, before the SECURE Act, successor beneficiaries could continue to receive payments of RMDs for the same life expectancy period that was being used before a designated beneficiary's death, without any further limitation. Now, however, under the SECURE Act and the final regulations, the entire plan benefit must be distributed by the end of the 10th full calendar year following the EDB's death, regardless of whether the participant died before, on, or after their RBD.[112]

Example 11. Assume an IRA participant died in 2021 at age 65. The participant's 63-year-old surviving spouse was the sole beneficiary. The spouse received RMDs over her life expectancy and died in 2026 at age 68, before the balance of the IRA had been entirely distributed. The participant's daughter succeeded to the spouse's beneficial interest in the IRA.

Payments to the daughter over the life expectancy of the now-deceased surviving spouse must continue after the spouse's death. Nevertheless, the entire remaining balance of the IRA must be distributed by the end of 2036 (the 10th full calendar year after the death of the

[108] Reg. section 1.401(a)(9)-4(c)(2).

[109] Reg. section 1.401(a)(9)-8(a)(1)(i) and (ii).

[110] Section 401(a)(9)(B)(ii), (H)(i), and (H)(ii).

[111] Reg. section 1.401(a)(9)-5(e)(2).

[112] Section 401(a)(9)(H)(iii).

spouse). It is irrelevant whether the daughter would have been an EDB if she had been a primary beneficiary of the participant.

Before the SECURE Act, the participant's daughter would have continued to receive RMDs over the life expectancy of the surviving spouse, but without limitation of the distribution period.[113] By imposing the successor 10-year rule, the SECURE Act cut off the normally longer life expectancy distributions.

3. Death of EDB of a plan with multiple beneficiaries.

Some practitioners had thought that the death of any EDB of a plan with multiple EDBs might trigger the successor 10-year rule under the SECURE Act. The final regulations, however, provide that it is only the death of the oldest EDB that provides the trigger. That makes the successor 10-year rule a little less threatening.

Nevertheless, upon the death of the oldest EDB, the successor 10-year rule applies to all the remaining beneficiaries, including their successors — not merely to the successors of the deceased EDB.[114] This is consistent with the regulatory maxim that different methods of making RMDs to different beneficiaries may be used only if the plan is timely divided into separate accounts for each beneficiary.[115]

Example 12. Assume an IRA participant died in 2021 at age 65. Assume he named his surviving spouse, age 63, and his brother, age 60, as equal beneficiaries of the IRA. Both the spouse and the brother are EDBs — the brother because he is not more than 10 years younger than the participant. RMDs are being paid to the spouse and brother under the life expectancy rule.

The participant's daughter is the successor beneficiary for the spouse's beneficial interest in the IRA, and the brother's son is the successor beneficiary for the brother's beneficial interest in the IRA. The IRA is not divided into separate accounts for the spouse and brother. Assume the spouse dies in 2026 at age 68, before the balance of the IRA has been entirely distributed.

Under these facts, the entire balance of the IRA, including both the brother's benefit and the spouse's benefit, must be distributed by the end of 2036, the 10th year after the death of the spouse. It does not matter that the brother's share is not distributable to the participant's daughter, who is the successor to the deceased spouse's interest. Note, though, that the successor 10-year rule would not have been triggered if it had been the younger brother who had died rather than the older spouse.

The outcome for the beneficiaries can, however, be quite different if the participant or the plan trustee forms separate accounts for each beneficiary before the end of the calendar year following the death of the participant. In that case, the RMD rules apply separately to each beneficiary's account, without regard to the separate accounts of other beneficiaries. Thus, if the successor 10-year rule is applicable on the death of an EDB, it applies only to the separate account of the deceased EDB; the separate accounts of other beneficiaries are not affected.[116]

Example 13. Assume the same facts as in Example 12, except that, before his death, the participant divided the IRA into separate accounts for his spouse and brother. The separate accounts became fully effective as of the calendar year following the participant's death.[117] Under these facts, the balance in the separate account of the deceased spouse must be distributed by the end of 2036, the 10th year after her death.

The brother's separate account is unaffected by the death of the spouse. The IRA may continue to distribute the balance of his account under the life expectancy rule or the primary 10-year rule, whichever method originally applied to the brother's account. Note, though, that if the method applicable to the brother were the primary 10-year rule, the 10-year period under that rule would be determined based on the death of the participant, not on the death of either the spouse or the brother.

[113] Reg. sections 1.401(a)(9)-3, Q&A 2, and -4(a) (2019); reg. section 1.401(a)(9)-4, Q&A 4(c) (2019); reg. section 1.401(a)(9)-5, Q&A 5(c)(2) and 7(c)(2) (2019).

[114] Section 401(a)(9)(H)(iii); reg. section 1.401(a)(9)-5(e)(1), (e)(3), and (f)(2)(i).

[115] Reg. section 1.401(a)(9)-8(a)(1)(i) and (ii).

[116] *Id.*

[117] *Id.*

Unfortunately, a late division of a plan into separate accounts for beneficiaries cannot protect nondeceased EDBs from the application of the successor 10-year rule upon the death of the oldest EDB. The regulations clearly state that the distribution period for a separate account will be determined separately from other accounts only if the plan is divided into separate accounts for beneficiaries before the end of the calendar year following the death of the participant. The regulations go on to specify that different accounts may use different RMD methods (for example, the life expectancy method and the primary 10-year method) only if the account separation is timely.[118]

Example 14. Assume the same facts as in Example 13, except that the IRA trustee divided the IRA into separate accounts in 2023, the second full calendar year after the death of the participant in 2021. Formation of the separate accounts was too late to allow the spouse and brother to use their own RMD methods and periods for their respective accounts. Instead, RMDs for the entire IRA must be paid over the life expectancy of the spouse, who is the older beneficiary. After the death of the spouse in 2026, the entire balance of both her separate account and the brother's separate account must be distributed by the end of 2036 (the 10th year after the death of the spouse).

4. Deceased designated beneficiary of participant dying before 2020.

The SECURE Act generally does not apply to the interest in a plan of a participant who died before 2020. Congress was still concerned, however, about the potential long-term continuation of life expectancy distributions after the post-2019 death of a designated beneficiary of a pre-2020 plan. By contrast, if a participant in a defined contribution plan dies after 2019, one of the central provisions of the SECURE Act requires that life expectancy distributions for an EDB of the plan terminate with the distribution of the entire remaining benefit by the end of the 10th full calendar year after the death of the EDB.

Thus, the outcome for a successor to a designated beneficiary of a pre-2020 plan who dies after 2019 might have been much more favorable (indefinite continuation of life expectancy distributions) than the outcome for a successor to a deceased EDB of a post-2019 plan (limitation under the successor 10-year rule). The result would generally have been more favorable under the pre-2020 plan even if the primary beneficiaries of the two plans died at the same time.

Consequently, Congress provided special rules that apply upon the post-2019 death of a designated beneficiary who is receiving life expectancy distributions from a pre-2020 plan. Those rules require that the plan benefit be distributed after the death of the designated beneficiary as if the deceased beneficiary were an EDB of a post-2019 plan. These rules apply regardless of whether the participant dies before, on, or after their RBD.[119]

This provision puts successor beneficiaries of designated beneficiaries who are receiving life expectancy distributions from pre-2020 plans on the same footing as successor beneficiaries of EDBs of post-2019 plans. Thus, if a designated beneficiary receiving life expectancy RMDs was the sole beneficiary of the participant's interest in a pre-2020 plan, the entire remaining plan benefit must be distributed by the end of the 10th year following the post-2019 death of the beneficiary.[120]

Example 15. Assume an IRA participant died in 2018. Assume his sister was a designated beneficiary and the sole beneficiary. The sister received life expectancy RMDs. She died in 2023 before the balance of the IRA had been entirely distributed. Upon her death, the sister was deemed to have been an EDB, so the entire remaining balance of the IRA at her death must be distributed by the end of 2033 (the 10th year after her death). It does not matter that the sister would not have qualified as an EDB if the plan had been a post-2019 plan.

If there were multiple designated beneficiaries of the plan, the successor 10-year rule would have

[118] *Id.*

[119] P.L. 116-94, div. O, Title IV, section 401(b)(5); reg. section 1.401(a)(9)-1(b)(2)(iii)(A).

[120] Section 401(a)(9)(H)(iii); reg. section 1.401(a)(9)-1(b)(2)(iii)(A).

applied to all the beneficiaries upon the death of the oldest designated beneficiary.[121] However, if separate accounts had been timely established for the beneficiaries, the post-2019 death of a designated beneficiary who was receiving life expectancy RMDs would not affect the distribution methods and periods applicable to the other designated beneficiaries.[122]

Example 16. Assume the same facts as in Example 15, except that the participant named his sister and brother as equal beneficiaries. Assume the sister and brother were both designated beneficiaries and that, before his death in 2018, the participant divided the IRA into two separate accounts, one for each of his siblings. The sister received life expectancy distributions from her separate account, while the brother elected to receive distributions from his separate account under the old five-year rule.

Under these facts, the sister was deemed to be an EDB when she died in 2023, and the remaining balance in her separate account must be distributed by the end of 2033 (the 10th year after her death). The brother's separate account is unaffected by the death of the sister; he continues to be subject to the five-year rule.[123]

5. Application of the successor 10-year rule to minors.

If the minor child of a plan participant is the beneficiary of a plan making life expectancy distributions, the successor 10-year rule applies when the child reaches the age of majority.[124] The successor 10-year rule also applies after the earlier death of the child. Thus, in any event, the remaining benefit must be distributed by the end of the 10th full calendar year following the earlier of the date the child dies or the date they reach majority.[125] For this purpose, a child reaches majority at age 21.[126] These rules apply to plans with a beneficiary who is a minor child of the participant, without regard to whether the participant dies before, on, or after their RBD.

Example 17. Assume an IRA participant died in 2023 and named his 16-year-old son as the sole beneficiary of his IRA. The son was a minor and therefore an EDB. The IRA commences distribution of the IRA funds over the 69-year life expectancy of the son.[127] After the son reaches majority in 2028, the plan must continue to make distributions over his 69-year life expectancy. Nevertheless, the plan must also distribute all the remaining IRA funds before the end of 2038, the 10th calendar year following the year he reaches majority.

Before issuance of the regulations, there was a concern that a minor could not be an EDB if any other plan beneficiary was an IDB. Fortunately, the final regulations clarify that a minor who qualifies as an EDB will not cease to be an EDB merely because other designated beneficiaries are not EDBs.[128] However, those other designated beneficiaries generally must be considered in determining the oldest designated beneficiary on whose life expectancy distributions are based.[129] On the other hand, the successor 10-year rule is always measured from the earlier of (1) the year the youngest minor child reaches majority or (2) the year of death of the last surviving minor child.[130]

Example 18. Assume an IRA participant dies in 2025 before her RBD and names her three sons as beneficiaries of her IRA. The three sons are ages 10, 16, and 30. The 10-year-old and the 16-year-old are minor EDBs, but the 30-year-old is an IDB. Thus, life expectancy distributions must be made over the life expectancy of the 30-year-old, the oldest designated beneficiary. It does not matter that the 30-year-old is not an EDB.

After the 10-year-old (the youngest minor EDB) reaches majority or, alternatively, upon the earlier death of all the minor EDBs, distributions must continue over the life expectancy of the 30-year-old. However, the entire benefit in the IRA must be distributed before the end of the 10th full

[121] Reg. section 1.401(a)(9)-1(b)(2)(iii)(B).

[122] Reg. section 1.401(a)(9)-8(a)(1)(i) and (ii).

[123] Because minimum distributions were not required for 2020, the five-year rule in this example effectively becomes a six-year rule. Section 401(a)(9)(I)(iii)(II).

[124] Section 401(a)(9)(H)(iii); reg. section 1.401(a)(9)-5(e)(4).

[125] Section 401(a)(9)(E)(iii); reg. section 1.401(a)(9)-5(e)(3).

[126] Reg. section 1.401(a)(9)-4(e)(3).

[127] Reg. section 1.401(a)(9)-9(b), Single Life Table.

[128] Reg. section 1.401(a)(9)-4(e)(2)(ii).

[129] Reg. section 1.401(a)(9)-5(f)(1)(i).

[130] Reg. section 1.401(a)(9)-5(f)(2)(ii).

calendar year following (1) the year in which the 10-year-old reaches majority or, if earlier, (2) the year of death of the last of the minor EDBs.

A literal application of these regulatory rules could lead to some clever but abusive tax planning, as Example 19 illustrates.

Example 19. Assume an IRA participant names her sons as the beneficiaries of her IRA. She dies in 2025, before her RBD. At the time of her death, the participant has two sons: a 23-year-old and an adopted one-year-old. The one-year-old is a minor EDB, and the 23-year-old is an IDB. Thus, life expectancy distributions must be made over the life expectancy of the 23-year-old, the oldest designated beneficiary. Knowing that she had sufficient nonretirement assets to provide for her one-year-old son, the participant provided that 99 percent of all the IRA distributions would be paid to her 23-year-old son, and 1 percent of all the distributions would be paid for the benefit of the one-year-old.

Thus, applying the regulatory rules literally, the 23-year-old would enjoy RMDs from 99 percent of the IRA funds computed by using his life expectancy, even though he is an IDB who normally would not have been entitled to life expectancy distributions. Although distribution of all the funds would be required in the 10th calendar year after the minor son reaches age 21 (assuming he does not die earlier), that total distribution would not occur until some 30 years after the death of the participant. (That 30-year period consists of the 20 years required for the one-year-old to reach majority plus the 10-year successor distribution period allowed thereafter.) Thus, under a literal interpretation of the rules, the nominal interest of a minor beneficiary could allow an IDB to enjoy most of the tax deferral ordinarily available only to an EDB.

It seems highly unlikely that this arrangement or similar arrangements would escape the scrutiny of the IRS and courts. They might well apply substance-over-form doctrines to nullify the deferral, or they might find constructive use of separate accounts. Note, though, that the latter alternative would not be available to the IRS or courts if the beneficiaries received their benefits through a see-through trust (which cannot have separate accounts for trust beneficiaries). See the discussion of see-through trusts below.

Finally, note that a minor child of a participant might also be classified as a disabled EDB, who would not be subject to the successor 10-year rule upon reaching age 21 — that is, the minor's status as a disabled EDB could continue until their death. However, care must be taken that their disabled status is properly determined as of the date of the participant's death. For example, the minor will not be classified as a disabled EDB if a qualified plan does not timely give the administrator the disability documentation required by the regulations.[131]

6. Relief from penalty for failure to take life expectancy distributions before 2025.

As previously noted, practitioners had expected that the successor 10-year distribution rule would entirely supersede the old rule requiring the continuation of life expectancy distributions after the death of an EDB. Practitioners had also expected that the primary 10-year total distribution rule, applicable to IDBs of participants who die on or after their RBD, would entirely supersede the old rule requiring life expectancy distributions for those IDBs. Instead, as discussed above, the final regulations continue to apply the old rules requiring life expectancy distributions. The new 10-year distribution rules are treated simply as limitations superimposed over the old life expectancy distribution requirements.

Because this regulatory interpretation of the statutory language was so unexpected and controversial, the IRS announced that it would not penalize failures to make those life expectancy distributions for years before the regulations became effective (that is, for the years 2021 through 2024). Nevertheless, if a beneficiary had actually taken life expectancy distributions in those years, the distributions were still deemed to be RMDs that could not be recontributed to the plan or rolled over to another plan.[132] Thus, if a beneficiary wanted to roll over amounts from a plan in one of those years, they had to first draw down and accept the minimum distribution for

[131] Reg. section 1.401(a)(9)-4(e)(9)(i) and (ii).

[132] Notice 2022-53, 2022-44 IRB 437; Notice 2023-54, 2023-31 IRB 382; Notice 2024-35, 2024-19 IRB 1051.

that year before becoming eligible to roll over additional distributions.

For years after 2024 it is unclear whether a beneficiary may roll over distributions without having to take retroactive RMDs for years that were shielded from the penalty. The IRS has not addressed that issue.

G. Managing Distributions Under the 10-Year Rules

As explained above, a tax-favored plan that is a defined contribution plan must distribute its entire benefit to an IDB by the end of the calendar year containing the 10th anniversary of the participant's death (the primary 10-year rule).[133] Similarly, such a plan must distribute its entire benefit to the beneficiary of an EDB by the end of the calendar year containing the 10th anniversary of the EDB's death (the successor 10-year rule).[134] Although the recipient beneficiary may in each case take the entire remaining benefit in the 10th year, a taxable distribution in that year could push the beneficiary into higher marginal tax brackets. Thus, careful planning may be required to spread the distributions over the 10-year period in such a way as to absorb the distributions in the lowest tax brackets possible.

On the other hand, 10-year distributions from Roth IRAs and designated Roth accounts enjoy a huge advantage: The plans may distribute their entire benefit *tax free* in the 10th year, after allowing the benefit to accumulate tax free for the entire 10-year period.[135] Of course, from a predeath planning standpoint, a participant or beneficiary must weigh these Roth advantages against the cost of the up-front income taxes that must be paid on the original contributions to the Roth IRA or designated Roth account. That planning may become even more complicated if the participant or beneficiary must factor in the effect of the Roth conversion and the payment of related income taxes on the liability for federal estate taxes and state inheritance taxes.

H. Special Rules for Beneficiary Rollovers From Qualified Plan to IRA

A surviving spouse may roll over funds from a non-Roth account in the participant's qualified plan to a traditional IRA (nontaxable rollover) or Roth IRA (taxable rollover) to the same extent that the participant could have during their lifetime. The spouse may similarly make a rollover from the participant's designated Roth account to a Roth IRA (nontaxable rollover).[136]

The spouse may roll over the funds to an IRA that is either (1) in their name as owner or (2) in the participant's name as deceased, with the spouse as the beneficiary. Of course, as discussed above, the tax law applies the RMD rules differently depending on whether the surviving spouse becomes the owner or the beneficiary of the IRA.

If the surviving spouse becomes the owner of the traditional IRA or Roth IRA, the beginning of RMDs and the distribution period depend on their age. If the surviving spouse does not become the owner, the minimum distribution method and the distribution period used by the qualified plan must also be used by the traditional IRA or Roth IRA (unless the spouse elects to change from the primary 10-year method to the life expectancy method, as described in Section II.H.2 below).[137]

1. Rollover by nonspouse beneficiary from qualified plan to inherited IRA.

A designated beneficiary who is not the surviving spouse may not roll over funds from a qualified plan to an IRA in their own name. However, the nonspouse designated beneficiary may authorize a trustee-to-trustee rollover from a non-Roth account in a qualified plan to a newly established traditional IRA (nontaxable transfer) or Roth IRA (generally taxable transfer). If the trustee-to-trustee rollover is from a designated Roth account to a newly established Roth IRA, it is nontaxable. The beneficiary making the rollover may even be a see-through trust.[138]

[133] Section 401(a)(9)(H)(i)(I); reg. section 1.401(a)(9)-5(e)(2).

[134] Section 401(a)(9)(H)(iii); reg. section 1.401(a)(9)-5(e)(3).

[135] Section 402A(d).

[136] Sections 402(c)(9) and 408(d)(3)(C)(ii)(II); reg. section 1.408-8(d)(1)(ii); Notice 2008-30, 2008-1 C.B 638, Q&A 7.

[137] Reg. section 1.408-8(d)(2)(i).

[138] Sections 402(c)(11), 403(a)(4)(B) and (b)(8)(B), and 408(d)(3)(C)(ii)(II). Reg. section 402(c)-2(j)(2)(iii); Notice 2007-7; Notice 2008-30.

In any case, the nonspouse beneficiary continues as a beneficiary (and not the owner) of the recipient traditional IRA or Roth IRA, which is treated as an inherited IRA. The minimum distribution method used by the qualified plan must also be used by the inherited IRA (unless the beneficiary elects to change from the primary 10-year method to the life expectancy method, as described below).[139]

2. Special rule allowing an EDB to switch to the life expectancy method.

A nonspouse EDB of a retiree who died before their RBD may be able to take minimum distributions from a newly established IRA under the life expectancy rule even though a transferor qualified plan or IRA required distributions under the primary 10-year rule. To qualify for the life expectancy distribution method, the transferor plan must make the first annual minimum distribution using the life expectancy method and then consummate a trustee-to-trustee rollover of the plan balance to a newly established IRA before the end of the first full calendar year following the participant's death.[140]

Example 20. Assume a participant died at age 63 on December 15, 2021, with his disabled daughter as the only beneficiary under his qualified plan. The terms of the plan require distribution of benefits under the primary 10-year rule. Thus, the plan must distribute all the participant's benefits by the end of 2031. However, the beneficiary's guardian wants the beneficiary to receive the distributions over her life expectancy. To achieve this goal, in 2022 the beneficiary's guardian withdraws from the plan an amount equal to the first-year distribution under the life expectancy rule. Then, before the end of 2022, the guardian rolls over the balance of the plan in a trustee-to-trustee transfer to an inherited IRA in the name of the participant and continues distributions from the IRA over the beneficiary's life expectancy.

This change of minimum distribution methods is also available to a surviving spouse who rolls over funds from a qualified retirement plan to an IRA in the name of the participant, with the spouse as beneficiary. However, the transferor plan must similarly make the first annual minimum distribution using the life expectancy rule and consummate the transfer to the IRA before the end of the first full calendar year in which the spouse would have ordinarily been required to choose between the primary 10-year rule and the life expectancy rule. It does not matter whether the spouse actually had that choice.[141]

Alternatively, the surviving spouse may simply roll over the qualified plan funds to their own IRA and apply the minimum distribution rules applicable to them.[142] However, if the spouse is then age 73 or older (age 75 after 2034),[143] they must retain and pay tax on the portion of the distribution that equals the hypothetical RMDs that would have been required if they had already begun receiving distributions under the Uniform Lifetime Table.[144] See Example 7 above.

I. Treatment of NDBs

If an entity that is not an individual (for example, the participant's trust or estate) is one of the beneficiaries of a tax-favored plan, the tax law generally treats the tax-favored plan as having no designated beneficiaries.[145] For example, if a participant designates her two children and a charitable organization as the beneficiaries of her IRA, the tax law treats the IRA as having no designated beneficiary. Note, though, that a plan may create separate accounts for the beneficiaries before the end of the year following the death of the participant. In that case, the presence of NDBs of one or more separate accounts will not affect the status of the EDBs and IDBs of other separate accounts.[146]

[139] Reg. section 1.408-8(d)(3) and (2)(i).

[140] Sections 402(c)(11), 403(a)(4)(b) and (b)(8)(b), 408(d)(3)(C)(ii)(II), and 457(e)(16)(B). Reg. section 1.408-8(d)(2)(ii) and (3); reg. section 1.402(c)-2(j)(3)(ii); Notice 2007-7; Notice 2008-30.

[141] Sections 402(c)(9) and (11), 403(a)(4)(b) and (b)(8)(b), 408(d)(3)(C)(ii)(II), and 457(e)(16)(B). Reg. section 1.408-8(d)(2)(ii); Notice 2007-7; Notice 2008-30.

[142] Section 402(c)(9).

[143] Section 401(a)(9)(C)(i)(I); P.L. 117-164, div. T, Title I, section 107.

[144] Reg. section 1.402(c)-2(j)(3)(iii). The result would be the same even if the rollover were funneled from the qualified plan to an IRA in the participant's name and then to an IRA in the spouse's name. Reg. section 1.408-8(d)(2)(iii).

[145] Reg. section 1.401(a)(9)-4(b).

[146] Reg. section 1.401(a)(9)-8(a)(1)(i) and (ii).

1. Distributions to an NDB if participant dies on or after the RBD.

As noted above, if a tax-favored plan has an NDB, it is deemed to have no designated beneficiaries. All the beneficiaries are instead treated as NDBs. If the participant in that plan dies on or after their RBD, distributions must be made to the beneficiaries over a period depending on the age of the participant on their birthday in the calendar year of their death. For the first full calendar year following the participant's death, the applicable distribution period is the number of years found in the Single Life Table by reference to that age, but reduced by one. For each subsequent calendar year, the applicable distribution period is one year less than in the immediately preceding calendar year.[147]

Note that the 10-year distribution rules do not apply to NDBs.[148]

2. Distributions to an NDB if participant dies before the RBD.

A tax-favored plan must make distributions to an NDB under the five-year rule if the participant dies before their RBD.[149] Under the five-year rule, a tax-favored plan must distribute the entire amount of a participant's benefits by the end of the calendar year containing the fifth anniversary of the participant's death.[150]

J. Transition Rules for Beneficiary Distributions Under the SECURE Act

Although the SECURE Act generally applies to RMDs from defined contribution plans to beneficiaries of participants who die after 2019, the act and the final regulations also provide various transition rules that may in some cases delay application of the new rules or grandfather the old rules[151]:

1. For governmental plans, the new rules apply to distributions to beneficiaries of participants who died after 2021.[152]
2. For plans under a preexisting collective bargaining agreement, the new rules apply to distributions to beneficiaries of participants who died after the earlier of the date of termination of the agreement or 2021.[153]
3. The new rules do not apply to certain preexisting irrevocable purchased annuities that pay benefits over the lifetimes of the participant and their designated beneficiary if the annuities were already providing those benefits or were irrevocably committed to providing the benefits on or before December 20, 2019.[154]
4. As discussed above, if the participant died before the date the new rules applied to a plan and their designated beneficiary receives distributions under the life expectancy rule and dies on or after that date, any successor beneficiary of the designated beneficiary must receive their remaining benefit by the end of the calendar year containing the 10th anniversary of the designated beneficiary's death.[155]

For simplicity's sake, and unless otherwise indicated, this article generally discusses the rules under the SECURE Act as if the act applies to beneficiaries of all participants in defined contribution plans who die after 2019, without regard to the transition rules above that delay the effective date for some types of plans.

K. Use of Trusts to Provide for Beneficiaries

Designating a trust as the beneficiary of a participant's tax-favored plan may provide

[147] Reg. section 1.401(a)(9)-5(d)(1)(i) and (iii), and reg. section 1.401(a)(9)-9(b), Single Life Table. The retiree's hypothetical life expectancy is the age they attained, or would have attained, in the calendar year of their death. For the first full calendar year following the death of the retiree (the first distribution year), the RMD is determined by dividing (1) the preceding year's adjusted account balance by (2) the retiree's hypothetical life expectancy minus one year (the modified life expectancy). For each distribution year thereafter, the RMD is determined by dividing the preceding year's adjusted account balance by the modified life expectancy used in the preceding year minus one year. Reg. section 1.401(a)(9)-5(d)(3)(ii).

[148] The 10-year distribution rules apply only to designated beneficiaries. Reg. section 1.401(a)(9)-5(e)(2) and (3).

[149] Reg. section 1.401(a)(9)-3(a)(4)(i)(A).

[150] Section 401(a)(9)(A)(ii); reg. section 1.401(a)(9)-3(b)(2).

[151] P.L. 116-94, div. O, Title IV, section 401(b).

[152] Reg. section 1.401(a)(9)-1(b)(2)(i). *See* sections 414(d) and 457 for the definition of governmental plans.

[153] Reg. section 1.401(a)(9)-1(b)(2)(ii).

[154] Reg. section 1.401(a)(9)-1(b)(2)(iv).

[155] Reg. section 1.401(a)(9)-1(b)(2)(iii).

important advantages. Unfortunately, though, if a trust is one of the beneficiaries of a tax-favored plan, the tax law generally treats the plan as having no designated beneficiary.[156] As discussed above, a tax-favored plan without a designated beneficiary must generally make larger minimum distributions after the participant's death. However, there is a significant exception for see-through trusts: Beneficiaries of a see-through trust may be treated as designated beneficiaries of a plan in which the trust has an interest if certain conditions are met.

1. Designated beneficiary exception for see-through trusts.

To qualify as a see-through trust, a trust must be valid under state law and irrevocable as of the date of the participant's death. The trustee must also be able to identify trust beneficiaries who have an interest in the tax-favored plan "with respect to the trust's interest" in the plan.[157] Thus, the IRS does not consider a trust beneficiary to be a beneficiary of the plan if, under the terms of the trust, the trust beneficiary does not enjoy at least an indirect interest in the plan through the trust (whether that interest is contingent or noncontingent).[158] See Section II.K.8 below for a more detailed analysis of this requirement.

For purposes of identification of the beneficiaries of a trust who have an interest in the plan, the final regulations continue to treat as identifiable all those individual members of a class of beneficiaries that may expand or contract (for example, children or grandchildren).[159] However, see Section II.A.3 above for a discussion of beneficiaries that are not considered to have an interest in the plan for purposes of identifying beneficiaries because of disclaimers, simultaneous death provisions, or timely distributions of the beneficiary's entire benefit. Also see Section II.K.4 below for special beneficiary identification rules applicable to the removal or addition of beneficiaries by power of appointment, reformation of a trust, or trust decanting.

To qualify as a see-through trust, a trust may also have to satisfy certain documentation requirements. A participant or trustee can most easily satisfy these requirements by timely providing a copy of the trust instrument and any current or future trust amendments to the administrator of the tax-favored plan.[160] Note, though, that these documents need not be provided to the trustee of an IRA.[161]

a. Trust beneficiaries who are deemed countable.

Under the final regulations, an identifiable trust beneficiary with an interest in the plan through the trust may qualify as a beneficiary of the plan only if the beneficiary is "countable."[162] Identifiable trust beneficiaries who are not deemed countable are disregarded.

Only two categories of identifiable beneficiaries are deemed to be countable. The first category (primary beneficiaries) consists of trust beneficiaries who may receive plan funds through the trust that are not contingent on or delayed until the death of another beneficiary. However, the primary beneficiary category does not include beneficiaries who predecease the participant or who are treated as predeceasing the participant (for example, by reason of disclaimer).[163]

The second category of identifiable beneficiaries deemed to be countable are residual beneficiaries. Residual beneficiaries are generally beneficiaries who, after the death of another beneficiary, may receive plan funds accumulated by the trust because the funds were not distributed by the trust to primary beneficiaries.[164] However, residual beneficiaries do not include certain disregarded beneficiaries, which are generally beneficiaries who could receive accumulated plan funds only after the death of a residual beneficiary. The disregard of such a beneficiary does not apply, though, if the immediately preceding beneficiary is a residual beneficiary who (1) is also a primary beneficiary

[156] Reg. section 1.401(a)(9)-4(b).

[157] Reg. section 1.401(a)(9)-4(f)(1)(i), (2), and (5)(i).

[158] LTR 200620026.

[159] Reg. section 1.401(a)(9)-4(a)(3).

[160] Reg. section 1.401(a)(9)-4(h)(2)(ii) and (3)(iii).

[161] Reg. sections 1.401(a)(9)-4(h) and 1.408-8(b)(4)(ii).

[162] Reg. section 1.401(a)(9)-4(a)(1). The term "countable" is not used by the regulations; it is used here for analytical convenience.

[163] Reg. section 1.401(a)(9)-4(f)(3)(i)(A).

[164] Reg. section 1.401(a)(9)-4(f)(3)(i)(B).

or (2) predeceased the participant or is treated as predeceasing the participant (for example, by reason of disclaimer).[165]

A special exclusion from the residual beneficiary category is also applicable if the terms of the trust require that it distribute all amounts in the trust representing the participant's interest in the plan to a primary beneficiary before the end of the calendar year in which the primary beneficiary attains age 31 (or before the end of the first full calendar year following the death of the participant, if that should be later). Under this special exclusion, a residual beneficiary will be disregarded in determining RMDs, and thus their age will be of no consequence in that determination (unless they are also a primary beneficiary).[166]

Example 21. Assume an IRA participant dies in 2025 at age 55 and designates a trust as the beneficiary of her IRA. The participant's 23-year-old nephew is the primary beneficiary of the trust. The trust terms provide that the trustee has discretion to distribute income and principal to the nephew for his health, maintenance, support, and education. Upon the death of the nephew, the trust must distribute all its funds (including all plan distributions accumulated in the trust) to the participant's brother, age 30. If, however, the nephew survives to age 31, all amounts in the trust representing the participant's interest in the IRA must be distributed by the trust to the nephew before the end of the calendar year.

The nephew is a primary beneficiary because he may receive plan distributions that are not contingent on or delayed until the death of another beneficiary. The participant's 30-year-old brother would normally be a residual beneficiary because he may receive accumulated plan funds only after the death of the nephew. However, because the requirements of the special exclusion have been met, the participant's brother is disregarded; the only countable beneficiary is the 23-year-old nephew.

b. Trust beneficiaries who are designated beneficiaries.

If one or more of the beneficiaries deemed to be countable is not an individual, all the trust beneficiaries will be deemed to be NDBs, and the trust will thus be subject to the unfavorable RMD rules applicable to NDBs. On the other hand, if all the beneficiaries deemed to be countable are individuals, they will be treated as designated beneficiaries for RMD purposes. If all those beneficiaries qualify as EDBs, the trust will generally be entitled to receive RMDs over the life expectancy of the oldest EDB. Upon the death of the oldest EDB, plan distributions to the trust will become subject to the successor 10-year rule.

If one or more of the designated beneficiaries is an IDB (and there are no NDBs), all the designated beneficiaries will generally be treated as IDBs, and the trust will be subject to the primary 10-year rule.[167] But see sections II.K.7 and II.K.9 below for exceptions allowing life expectancy distributions for (1) beneficiaries who are minor children of the participant and (2) AMBTs, even though one or more of the beneficiaries is an IDB.

Note that, unlike direct beneficiaries of a tax-favored plan, a see-through trust and its beneficiaries may not divide the trust's account in the plan into separate accounts for each trust beneficiary. Thus, the plan may use only one method for distributions to the trust from the trust's account in the plan.[168]

2. Use of conduit trusts with designated beneficiaries.

In the final regulations, the IRS recognizes and defines a conduit trust for the first time. The regulations provide that a conduit trust is a see-through trust that is required by its terms to immediately pay all distributions received from a tax-favored plan to primary beneficiaries until the death of the last survivor of those beneficiaries.[169] The primary beneficiaries are treated as designated beneficiaries if all of them are individuals. Other beneficiaries are disregarded.

[165] Reg. section 1.401(a)(9)-4(f)(3)(ii)(A).

[166] Reg. section 1.401(a)(9)-4(f)(3)(ii)(B).

[167] Reg. sections 1.401(a)(9)-4(f)(1)(i) and -8(a)(1)(iii).

[168] Reg. section 1.401(a)(9)-8(a)(1)(iii).

[169] Reg. section 1.401(a)(9)-4(f)(1)(ii)(A).

It does not matter that plan benefits may be paid either directly to a primary beneficiary or for their benefit.[170] Nor does it matter that, after the death of the last primary beneficiary, the trust terms allow accumulation of plan distributions.[171]

Example 22. A participant in a qualified defined contribution plan dies in 2025 at age 55, survived by his spouse, age 53. The plan participant named a valid irrevocable trust as the sole beneficiary of his interest in the plan, with the intention of qualifying the trust as a see-through trust. As required by the regulations, the trust provides a copy of its trust agreement to the trustee of the plan before October 31, 2026.

Under the terms of the trust, all trust income is payable annually to the surviving spouse, and no one has the power to appoint trust principal to any person other than the spouse. The trustee must withdraw from the plan each year the greater of the amount of the trust income earned by the plan or the RMD. The two children of the participant are entitled to the trust funds on the death of the spouse.

The terms of the trust also provide that the trust must immediately pay to the surviving spouse all amounts received from the plan during the spouse's lifetime. The trust must pay the plan distributions to the spouse even if the distributions exceed trust income for the year. Thus, distributions from the plan (including RMDs) cannot be accumulated in the trust for eventual distribution to the children (that is, the trust is a conduit trust).

Because the trust is a conduit trust, all beneficiaries but the spouse (the only primary beneficiary) are disregarded. Thus, the other beneficiaries are not designated beneficiaries for purposes of (1) identifying the oldest designated beneficiary or (2) determining whether the surviving spouse is the sole beneficiary. Consequently, the spouse is the sole EDB for these purposes and the trust can take RMDs over her life expectancy beginning in 2045, when the participant would have reached age 75.[172] Further, the trust may compute those RMDs by using a distribution period based on the spouse's life expectancy as determined anew in each of the distribution years.

3. Use of accumulation trusts with designated beneficiaries.

The final regulations define an accumulation trust as a see-through trust that is not a conduit trust. Thus, an accumulation trust is a see-through trust that is not required to immediately distribute all amounts received from a tax-favored plan during the lifetimes of the primary beneficiaries. Instead, the trust may retain and accumulate distributions received from the plan during that period.[173] The designated beneficiaries of an accumulation trust are (1) the primary beneficiaries and (2) the residual beneficiaries, but only if all those beneficiaries are individuals. The process for determining designated beneficiaries is presented in detail in Section II.K.1 above but may be summarized as follows.

First, as a part of the process of qualifying a trust as a see-through trust, it is necessary to identify all the trust beneficiaries who are deemed to have an interest in the tax-favored plan through the trust. Second, from the beneficiaries so identified, it is necessary to select those who are deemed to be countable. For this purpose, only primary beneficiaries and residual beneficiaries are deemed to be countable. The countable beneficiaries will be treated as designated beneficiaries for RMD purposes if they are all individuals.[174]

If a participant dies on or after their RBD, the tax-favored plan may make RMDs to an accumulation trust over the longer of the hypothetical life expectancy of the participant or the life expectancy of the oldest designated beneficiary.[175] However, the primary 10-year rule applies to accelerate payments if any of the trust beneficiaries is an IDB (and there are no NDBs).[176] If all the trust beneficiaries are EDBs, the successor 10-year rule applies to accelerate payment after the death of the oldest EDB.[177]

[170] Reg. section 1.401(a)(9)-4(f)(3)(iv).

[171] Reg. section 1.401(a)(9)-4(f)(3).

[172] P.L. 117-164, div. T, Title I, section 107.

[173] Reg. section 1.401(a)(9)-4(f)(1)(ii)(B).

[174] Reg. section 1.401(a)(9)-4(f)(3).

[175] Reg. section 1.401(a)(9)-5(d)(1)(ii).

[176] Reg. section 1.401(a)(9)-5(e)(2).

[177] Reg. section 1.401(a)(9)-5(e)(3).

If a participant dies before their RBD, a tax-favored plan may generally make distributions to an accumulation trust under the primary 10-year rule if all the trust beneficiaries are designated beneficiaries. If all those designated beneficiaries are EDBs, the plan may alternatively make minimum distributions to the trust over the life expectancy of the oldest of the beneficiaries.[178] However, the successor 10-year rule will apply to accelerate payment after the death of the oldest EDB.[179]

Example 23. A participant in an IRA dies in 2025 at age 68. The participant names his valid irrevocable trust as the beneficiary of his IRA. The terms of the trust require the annual distribution of all trust income to the participant's surviving spouse during her lifetime. Upon the death of the surviving spouse, all trust income must be distributed to the participant's disabled son for his life. After the death of the disabled son, all trust income must be distributed to the participant's granddaughter during her lifetime. The granddaughter is neither disabled nor chronically ill; nor is she a minor. Upon the death of the granddaughter, all the trust funds must be distributed to a named charity. In the year of the participant's death, the surviving spouse is 68, the disabled son is 46, and the granddaughter is 22.

Under the terms of the trust, no one has the power to appoint trust principal to any person other than the surviving spouse. Further, each year the trustee must withdraw from the IRA the greater of (1) the amount of trust income earned by the IRA or (2) the RMD. However, the trustee is not required to pay to the spouse amounts distributed by the IRA that exceed trust income for the year. Thus, IRA distributions that exceed trust income may be accumulated in the trust.

The trust described above is a see-through trust because it is valid and irrevocable and it is possible to identify all trust beneficiaries who have an interest in the IRA through the trust. Those identifiable beneficiaries are the surviving spouse, the participant's son, the participant's granddaughter, and the named charity. The trust is also an accumulation trust because it is not required to immediately distribute all IRA distributions it receives.

However, only the spouse and son are deemed to be countable. The spouse is countable because she is a primary beneficiary; the son is countable because he is the residual beneficiary — that is, he is a beneficiary who may receive previous trust accumulations of plan distributions only after the death of the primary beneficiary. The granddaughter and the named charity are disregarded because they can become entitled to the trust accumulations only after the death of the son (a residual beneficiary).

Since both the surviving spouse and the participant's son are individuals, they qualify as designated beneficiaries. Further, because the son is disabled, both he and the spouse qualify as EDBs. Consequently, the IRA may make distributions to the trust over the life expectancy of the surviving spouse, the oldest EDB.

However, because the son is a designated beneficiary, the spouse is not the sole beneficiary of the trust. Thus, the IRA must begin distributions to the trust before the end of the calendar year following the participant's death and may not further delay distributions until 2030, when the participant would have attained age 73. In any event, the IRA must distribute all the remaining funds before the end of the 10th full calendar year following the death of the spouse (the oldest EDB).

If the son had not been disabled and were thus an IDB, the IRA could not have made life expectancy distributions to the trust. Instead, the IRA would have had to make distributions to the trust under the primary 10-year rule.

The analysis would have been the same even if the disabled son (as the residual beneficiary) had not survived the spouse (the primary beneficiary), provided that the son survived the participant. On the other hand, if the son predeceased the participant (or was so treated), he would not be considered to have any interest in the plan, and the granddaughter would thus become the residual beneficiary and therefore a designated beneficiary.[180] In that case, because the granddaughter is an IDB, the IRA would have had

[178] Section 401(a)(9)(H)(i) and (ii); reg. section 1.401(a)(9)-3(c)(5).

[179] Reg. section 1.401(a)(9)-5(e)(3).

[180] Reg. section 1.401(a)(9)-4(f)(3)(ii)(A)(1).

to make distributions under the primary 10-year rule.

4. Use of powers of appointment, reformation, or decanting.

The final regulations completely rewrite the rules applicable to powers of appointment held by an individual. Gone is the need to identify the oldest possible appointee under a power of appointment. Instead, the regulations provide clear rules that are much easier to use.

The final regulations provide that a power of appointment given to an individual does not disqualify an otherwise qualifying see-through trust merely because potential appointees are not identifiable. Rather, if the power is not exercised by September 30 of the calendar year following the participant's death, the takers in default are deemed to be the countable beneficiaries, and potential appointees are disregarded. If the takers in default, any other primary beneficiaries, and the residual beneficiaries are all individuals, they will qualify as designated beneficiaries.

If the power is exercised by appointment of (or restricted to) identifiable beneficiaries by September 30 of the calendar year following the participant's death, the appointed beneficiaries (or beneficiaries within the restriction) are deemed countable. The takers in default are disregarded. Thus, the appointed (and restricted) beneficiaries, any other primary beneficiaries, and the residual beneficiaries are designated beneficiaries if they are all individuals.[181]

a. Exercise of powers of appointment after September 30.

The exercise of a power of appointment after September 30 of the calendar year following the plan participant's death does not cause the trust to fail to satisfy the requirements for identifiability of beneficiaries. Instead, the appointees are added as beneficiaries and the RMDs are redetermined for calendar years after the year of the appointment, taking into account the augmented set of beneficiaries. If reapplication of the rules would have theoretically required a distribution of the entire benefit in the year of appointment or a prior year, distribution of the entire benefit will instead not be required until the first full calendar year after the year of appointment.[182]

Example 24. A plan participant died unmarried at the age of 60. He named a valid irrevocable trust as the sole beneficiary of his IRA and satisfied the documentary requirements for a see-through trust. The trustee has discretion to pay income and principal of the trust for disabled individual V's health, maintenance, support, and education. Any income or IRA distributions that the trust does not pay to or for V will accumulate in the trust. However, V has the power to appoint all or part of the participant's interest to any individual or individuals. Any of the interest not so appointed passes outright to individual W, who is also disabled but younger than V.

Assume that V does not exercise her power or restrict it to identifiable individuals before September 30 of the calendar year following the death of the participant. In that case, W might take by default. Since V and W are both EDBs and V is the oldest EDB, plan distributions to the trust may be made over the life expectancy of V.

Assume instead that V exercises her power *before* September 30 of the calendar year following the death of the participant and appoints the participant's interest to disabled individual Y, who is an EDB older than V. Because both V and Y are disabled EDBs and Y is the oldest EDB, plan distributions to the trust may be made over the life expectancy of Y. W, the taker in default, is disregarded.

Assume instead that V exercises her power *after* September 30 of the calendar year following the death of the participant and appoints the participant's interest to Y, who is an EDB older than V. Because V, W, and Y are all EDBs and Y is the oldest, plan distributions to the trust may be made over the life expectancy of Y beginning with the first full calendar year following the appointment of Y. It is because of the delayed exercise of the power of appointment (after September 30) that the age of W must be considered in determining the oldest EDB even though, as the superseded taker in default, he is

[181] Reg. section 1.401(a)(9)-4(f)(5)(ii)(A).

[182] Reg. section 1.401(a)(9)-4(f)(5)(ii)(B), (iv), and (v). For example, distribution of the entire benefit could be required under the five-year rule because the appointed beneficiary is not an individual.

not entitled to any of the benefit. (In this case, he also happened not to be the oldest EDB.)

b. Adding or removing beneficiaries by reformation or decanting.

In the final regulations, the IRS has for the first time given express guidance on the treatment of beneficiaries added or removed by reformation or decanting of a trust. The regulations provide that, on or before September 30 of the first full calendar year following a participant's death, a beneficiary of the participant's see-through trust may be removed by a court reformation of the trust instrument or by a permitted decanting under state law.[183] A trust beneficiary may also be added by a court reformation or decanting before the September 30 date.[184] Neither of these events will result in loss of identifiability of beneficiaries.[185] Rather, the added beneficiary will be treated as among the identifiable beneficiaries, and the removed beneficiary will be disregarded.[186]

Similarly, a reformation or decanting to add beneficiaries after September 30 of the calendar year following the participant's death does not cause the trust to fail to satisfy the requirements for identifiability of beneficiaries. Instead, the method and period of distribution are redetermined for calendar years after the year of the reformation or decanting, taking into account the augmented set of beneficiaries (including both beneficiaries added and removed). Further, if by reason of reapplication of the rules distribution of the entire benefit would have been required in the year of reformation or decanting, or in a prior year, distribution of the entire benefit will instead not be required until the first full calendar year following the year of reformation or decanting.[187]

Note, though, that the method and period of distribution are not redetermined if beneficiaries are removed but not added after September 30 of the calendar year following the participant's death.

c. Different distribution period attributable to late addition of beneficiary.

Whether the result of appointment, reformation, or decanting, the late addition of a beneficiary who then becomes the oldest designated beneficiary may require a change in the distribution period to the life expectancy of the additional beneficiary beginning with the calendar year following the beneficiary's addition. (See Example 24 above for that situation.)

Presumably, distributions in years after the addition of the beneficiary would be computed by determining the oldest beneficiary's life expectancy as of the calendar year following the death of the participant (and not as of the year following the addition of the beneficiary), and then by reducing that life expectancy by one for each year elapsed after the death of the participant but before the distribution year. Using that method would ensure that the distribution period for the post-addition years would be the same as it would have been if the additional beneficiary had been a beneficiary from the outset. However, the final regulations are silent on this point.[188]

5. Trust with nonindividual beneficiary.

Under the final regulations, if any of the trust beneficiaries is a nonindividual entity, none of the trust beneficiaries are treated as a designated beneficiary, unless the entity or entities are themselves trusts that meet all the requirements for the see-through trust exception.[189] In applying this rule, the regulations consider only trust beneficiaries deemed countable (identifiable beneficiaries that are primary beneficiaries or residual beneficiaries). See Section II.K.1.a above for more detailed definitions of primary beneficiaries, residual beneficiaries, and disregarded beneficiaries.[190]

Example 25. A retiree was a participant in her employer's qualified profit-sharing plan. The participant died at age 60 in 2021, survived by her spouse. She named her irrevocable trust as the sole beneficiary of her interest in the plan. Under the terms of the trust, all trust income is payable

[183] Reg. section 1.401(a)(9)-4(f)(5)(iii)(B).

[184] Reg. section 1.401(a)(9)-4(f)(5)(iii)(C).

[185] Reg. section 1.401(a)(9)-4(f)(5)(iii)(A).

[186] Reg. section 1.401(a)(9)-4(f)(5)(iii)(B) and (C).

[187] Reg. section 1.401(a)(9)-4(f)(5)(iii)(C), (iv), and (v). For example, distribution of the entire benefit could be required under the five-year rule if the appointed beneficiary is not an individual.

[188] Reg. section 1.401(a)(9)-4(f)(5)(iv).

[189] Reg. section 1.401(a)(9)-4(b) and (f)(4).

[190] Reg. section 1.401(a)(9)-4(f)(3)(i)(B).

annually to the surviving spouse, and no one has the power to appoint trust principal to any person other than the spouse during his lifetime. Upon the death of the spouse, the remaining principal of the trust is distributable to named charitable organizations.

The trust instrument also requires the trust to withdraw the income earned each year from the participant's plan and thereafter distribute the total income of the trust to the spouse during his lifetime. Thus, each year, the trustee must withdraw from the plan the greater of (1) the amount of income earned from the plan or (2) the plan's RMD for the year. If plan distributions for the year exceed trust income, the trust must distribute to the spouse only the lesser amount of trust income. In that event, the trust would accumulate the excess plan distributions in the trust for possible ultimate distribution to the charities.

In this situation, the charitable organizations must be considered in determining whether all the beneficiaries of the trust are designated beneficiaries because the charities are countable residual beneficiaries for which plan distributions might accumulate in the trust. Thus, the regulations treat the participant's plan as having no designated beneficiaries since some of the countable beneficiaries are entities that are not individuals. Consequently, the plan may use neither the life expectancy rule nor the primary 10-year rule for RMDs paid to the trust. Instead, the plan must use the five-year rule that is applicable to an NDB of a participant who died before her RBD.

6. Separate accounts, separate trusts, and subtrusts.

The final regulations continue to apply the rule that a tax-favored plan may not treat as separate accounts the interests of two or more beneficiaries held indirectly through the same see-through trust — that is, the aggregate interests of the trust's beneficiaries may constitute no more than one account in the tax-favored plan.[191] Thus, the plan may use only one method of distribution for the trust account, whether that method be the life expectancy rule, the primary 10-year rule, or the five-year rule. The plan may use the life expectancy rule if all the trust beneficiaries are EDBs, and it may use the primary 10-year rule if all the beneficiaries are EDBs or IDBs (or a combination thereof). If one or more of the beneficiaries is an NDB, the plan must follow the less favorable minimum distributions rules applicable to NDBs.[192]

Nevertheless, if the terms of the trust provide that it be divided into separate trusts and terminate at the death of the participant, each separate trust may be treated as a separate account in a tax-favored plan for RMD purposes. To qualify, there can be no discretion regarding the allocation of post-death distributions from the plan to the separate trusts. Further, trust receipts during the administrative period preceding the actual division and termination of the trust must be allocated to the separate trusts as if they were separated as of the date of the participant's death. The administrative period must also be of reasonable duration.[193] If done properly, methods of distribution from the plan to each separate trust for a beneficiary will depend on the status of the beneficiary as an EDB, IDB, or NDB without regard to the status of the beneficiaries of the other separate trusts.[194]

Example 26. An IRA participant is age 65 and unmarried at the time of his death in 2025. During his lifetime, the participant designated his trust Y as the beneficiary of his IRA. At the participant's death, Y becomes irrevocable and is, by its terms, immediately divided into three separate subtrusts — JS, KS, and LS — for the participant's three brothers J, K, and L, respectively. The division automatically terminates Y. The subtrusts are see-through trusts that may accumulate distributions received from the IRA. Disabled cousin P, who is younger than J, K, and L, is the residuary beneficiary for each subtrust. J, K, and L attained ages 50, 58, and 61, respectively, in the year of the participant's death.

[191] Reg. section 1.401(a)(9)-8(a)(1)(iii).

[192] Reg. section 1.401(a)(9)-3(c)(5).

[193] Reg. section 1.401(a)(9)-8(a)(1)(iii)(B) and (C). The division into separate trusts should not fail merely because one or more of the individual beneficiaries takes their interest outright (instead of in trust), provided that there is no discretion regarding how plan distributions are allocated. Reg. section 1.401(a)(9)-8(a)(1)(iii)(C) and (D).

[194] *See also* LTR 200537044.

Under these facts, JS, KS, and LS qualify as separate see-through trusts with J, K, and L as their respective primary beneficiaries, and P as the residual beneficiary of each subtrust. P is an EDB of each subtrust because he is disabled. Each of K and L (but not J) is an EDB of their respective subtrusts because they are less than 10 years younger than the participant. Further, each of K and L is the oldest designated beneficiary of his own subtrust.

Thus, KS and LS may take RMDs from the IRA over the respective life expectancies of K and L. JS must take distributions under the primary 10-year rule because J is an IDB. He does not qualify as an EDB because he is more than 10 years younger than the participant. Note, though, that none of the trusts could use the life expectancy method if the residual beneficiary of each subtrust, P, were not disabled (and thus not an EDB).

By contrast, assume the participant had simply named trust Y as the beneficiary of his IRA, without providing for subtrusts for his brothers. In that case, J, K, and L would have been designated beneficiaries of a single trust account in the IRA. Because J is an IDB, the IRA would have had to use the primary 10-year rule and not the life expectancy rule for all distributions to the trust.

7. Applicable multibeneficiary trust

For participants dying after 2019, the SECURE Act provides a very favorable method for providing life expectancy distributions from a tax-favored plan to a trust with disabled or chronically ill beneficiaries. The trust need only be an AMBT, which is generally defined as a see-through trust with more than one beneficiary, all of whom are treated as designated beneficiaries, and at least one of whom qualifies as an EDB because they are disabled or chronically ill.[195]

If no beneficiary of an AMBT other than EDBs who are disabled or chronically ill has any right to plan benefits until the death of all the disabled and chronically ill EDBs, the plan benefit may be distributed to the trust under the life expectancy rule.[196] So long as all the beneficiaries are designated beneficiaries, it does not matter that some of them are IDBs.[197] The distribution period must be based on the age of the oldest disabled or chronically ill EDB.[198] The life expectancy distributions may continue until the death of the last surviving disabled or chronically ill EDB.[199]

Upon the death of the last surviving disabled or chronically ill EDB, successor beneficiaries are treated as if they have been added as beneficiaries.[200] For the treatment of beneficiaries added to a plan, see Section II.K.4 above. Note also that a provision in the trust agreement that allows termination of the interest of a disabled or chronically ill EDB before their death will not disqualify the trust as an AMBT. However, the trust must continue to provide that no beneficiary (other than EDBs who are disabled or chronically ill) has any right to plan benefits before the death of all the disabled or chronically ill EDBs.[201]

Example 27. IRA participant R died in 2021 at age 73, naming irrevocable Trust S as the sole beneficiary of his IRA. Trust S is a see-through trust. The beneficiaries of Trust S are R's four adult daughters: disabled daughter L (age 35), chronically ill daughter M (age 45), daughter N (age 30), and daughter P (age 55). IRA distributions may be accumulated by the trust, and the trust may make distributions only to L or M, and no other beneficiary, as long as either L or M is alive. Thus, L and M are EDBs, and Trust S is an AMBT. IRA distributions to the trust may be made over the life expectancy of M, the older of L and M (even though N and P are IDBs).

Assume M dies at age 50, just five years after the death of the participant, and L dies at age 55, 20 years after the death of the participant. Upon the death of L, the surviving daughters N and P are treated as if they have been added as beneficiaries of Trust S. Since N and P are IDBs, the primary 10-year rule now applies. However, because the 10-year distribution period has already expired, the plan must distribute the participant's entire interest to Trust S before the

[195] Section 401(a)(9)(H)(v); reg. section 1.401(a)(9)-4(g)(1).

[196] Section 401(a)(9)(H)(iv)(II); reg. section 1.401(a)(9)-4(g)(1)(iii).

[197] Reg. section 1.401(a)(9)-4(e)(2)(iii).

[198] Reg. section 1.401(a)(9)-5(f)(1)(ii).

[199] Reg. section 1.401(a)(9)-5(f)(2)(iii).

[200] Reg. section 1.401(a)(9)-4(g)(2).

[201] *Id.* For example, a disabled or chronically ill EDB's interest in an AMBT might be terminated because continuation of the interest could result in discontinuation of means-tested government benefits.

end of the first full calendar year following the death of L.

An AMBT may alternatively provide that upon the death of the plan participant, the trust is to be divided into separate trusts for each beneficiary. In that case, the code provides that the minimum distribution rules are to be applied separately to each separated trust that has a disabled or chronically ill beneficiary.[202] However, this statutory provision appears to have been co-opted by final regulations that allow any see-through trust to be so divided, whether or not it is an AMBT.[203]

As noted above, an AMBT will qualify as such only if all the beneficiaries are designated beneficiaries. However, certain types of charitable organizations can be treated as designated beneficiaries for this purpose, thus allowing the charities to be named as remainder beneficiaries. Qualifying charities generally include churches, educational organizations, hospitals, medical research organizations, governmental units, and publicly supported charities, among others. They do not include (1) certain organizations that provide support to other charities, or (2) funds or accounts over which donors have advisory rights.[204]

Additional considerations apply if the disabled or chronically ill beneficiary is receiving means-tested government assistance, such as supplemental security income, Medicaid, Department of Housing and Urban Development housing benefits, veterans' benefits, and in-home supportive services. In that case, the beneficiary's trust should be carefully drafted to not endanger the governmental assistance (that is, it should be drafted as a special needs trust). As noted above, the terms of the trust may allow the termination of the interest of a disabled or chronically ill beneficiary if necessary to protect government assistance for that beneficiary.[205]

A difficult problem may arise if a participant names a disabled individual (and not a trust) as the direct beneficiary of their tax-favored retirement plan. Availability of plan funds for the disabled individual's support could reduce payments or services otherwise receivable from government agencies. However, in one such case, a disabled individual apparently solved this problem by transferring funds from their inherited IRA to a new inherited IRA formed with a special needs trust as beneficiary. The disabled individual was in turn the sole beneficiary of the special needs trust during their lifetime.

The IRS ruled that the transfer to the new IRA was not taxable as a disposition of "income in respect of a decedent." Rather, it recognized the special needs trust as a grantor trust, with the disabled individual continuing to own the beneficial rights in the IRA funds. Of course, the IRS did not need to consider whether the government agencies that were providing assistance to the disabled individual would recognize the transfer.[206]

8. Identifying trust beneficiaries with an interest in a tax-favored plan.

As noted above, the final regulations did not change the rule that a beneficiary of a see-through trust will be disregarded if they are not a beneficiary of the trust "with respect to the trust's interest" in the tax-favored plan.[207] Thus, a trust beneficiary is not a beneficiary of a tax-favored plan if, under the terms of the trust, they do not enjoy at least an indirect interest in the tax-favored plan through the trust (whether that interest is contingent or noncontingent).[208]

Example 28. Assume a plan participant named a see-through trust as the beneficiary of his IRA. The trust is a conduit trust because its terms require it to immediately distribute all amounts received from the IRA. Further assume that the terms of the trust require its division into two subtrusts, A and B, and require allocation of the interest in the IRA to B. Individuals D and E are the only beneficiaries of A (other than successor beneficiaries), and individuals F and G are the

[202] Section 401(a)(9)(H)(iv).

[203] Reg. section 1.401(a)(9)-8(a)(1)(iii)(B) and (C).

[204] Sections 401(a)(9)(H)(v) and 408(d)(8)(B)(i); reg. section 1.401(a)(9)-4(g)(3).

[205] Reg. section 1.401(a)(9)-4(g)(2).

[206] LTR 201116005. The transfer to the trust must satisfy certain other nontax statutory requirements to avoid termination of government assistance. 42 U.S.C. section 1396p(d)(4).

[207] Reg. section 1.401(a)(9)-4(f)(2)(iii).

[208] Reg. section 1.401(a)(9)-4(f)(1)(i), (2), and (5)(i); LTR 200620026.

only beneficiaries of B (other than successor beneficiaries).

In this situation, only F and G, the beneficiaries of B containing the IRA interest, can be designated beneficiaries of the IRA — that is, D and E are not beneficiaries of the trust "with respect to the trust's interest in the IRA." If both F and G are EDBs, distributions under the life expectancy rule will be based on the life expectancy of the older of F and G (without regard to the life expectancies of D and E).

On the other hand, it seems unlikely that an executor or trustee could eliminate trust beneficiaries from consideration after the death of the participant simply by making discretionary allocations of interests in tax-favored plans between trust shares or subtrusts. In an analogous situation, the IRS refused to recognize a trustee's postmortem use of subtrusts to segregate beneficiaries for purposes of determining the oldest beneficiary, even though state law required the segregation.[209] To the contrary, though, in another private letter ruling, the IRS fully recognized the trustee's allocation of an IRA to a subtrust when the allocation was required by state law.[210]

Given that postmortem allocations are questionable, the safest course of action from a planning standpoint is simply to irrevocably name the target subtrust as the sole beneficiary of the IRA. Also see the discussion at Section II.K.6 above about the use of subtrusts in similar situations.

9. Distributions to a see-through trust before and after the death of an EDB.

An EDB will often be the sole beneficiary of a see-through trust that is in turn the sole beneficiary of a participant's interest in a plan. If the EDB dies while the trust is receiving life expectancy distributions, ongoing minimum distribution requirements can generally be met by continuing to distribute the plan benefit to the trust using the life expectancy of the deceased EDB (as originally determined in the first full calendar year following the participant's death and as modified for elapsed years). However, if the deceased EDB is a surviving spouse who is the sole beneficiary, the life expectancy to be used is that of the spouse determined as of the date of their death, and that life expectancy (as modified thereafter for elapsed years) must continue to be used. In either event, though, the plan must limit the distribution period by distributing the entire remaining plan benefit to the trust by the end of the 10th full calendar year following the death of the EDB.[211]

Example 29. Assume an IRA participant names an *inter vivos* trust as the sole beneficiary of his IRA. The trust becomes irrevocable when the participant dies in 2025 at age 65. Assume the trust is a see-through trust that qualifies as a conduit trust. The participant's 63-year-old surviving spouse is the sole beneficiary of the trust, and the trust is receiving RMDs over the life expectancy of the spouse.

Assume the surviving spouse dies in 2028 at age 66, before the balance of the IRA has been entirely distributed to the trust under the life expectancy method. Under these facts, the plan must continue to make distributions based on the life expectancy of the spouse determined as of the date of her death (as modified thereafter for elapsed years). Nevertheless, the entire balance of the IRA must be distributed to the trust by the end of 2038 (the 10th year after the death of the spouse).

More unfortunate consequences may occur upon the death of an EDB who is the oldest beneficiary of a see-through trust that has multiple beneficiaries. After the death of that EDB, the participant's entire remaining interest must be distributed to the trust by the end of the 10th calendar year after the death of the EDB. Thus, even the portion of the participant's interest that is for the benefit of EDBs other than the deceased EDB must be distributed to the trust under the successor 10-year rule.[212] Alas, this problem cannot be solved by establishing separate accounts for the beneficiaries; beneficiaries of trusts are not allowed to establish separate accounts in plans.[213]

[209] LTR 200528035.

[210] LTR 200708084.

[211] Section 401(a)(9)(H)(iii); reg. section 1.409(a)(9)-5(e)(3).

[212] Section 401(a)(9)(H)(iii); reg. section 1.409(a)(9)-5(e)(3).

[213] Reg. section 1.401(a)(9)-8(a)(1)(iii)(A).

Example 30. Assume the same facts as in Example 29, except that the participant names his spouse and his brother as equal beneficiaries of the conduit trust. Both are EDBs — the brother because at age 60 he is only five years younger than the participant. Unfortunately, the see-through trust's interest in the IRA cannot be divided into separate accounts for the spouse and brother. Thus, the entire balance of the IRA, including the brother's share, must be distributed by the end of 2038 (the 10th year after the death of the spouse).

The inability to divide a plan account for a see-through trust into separate accounts for trust beneficiaries has been a problem creating unfair results for many years. The IRS had an opportunity to rectify it in the final regulations under the SECURE Act but chose not to do so. Although the regulations allow the division of a trust into separate trusts for each beneficiary (thereby achieving essentially the same results as separate trust accounts), the division must occur immediately after the death of the participant and must be required by the terms of the trust.[214] Regrettably, it is too late to comply with these requirements for many existing trusts, and it may be impractical to do so for many new trusts.

Note that this unfortunate result involved plan distributions to a multibeneficiary conduit trust (a see-through trust that must immediately distribute all amounts received from the plan). Even more serious problems are presented by a multibeneficiary see-through trust that may accumulate plan distributions (an accumulation trust).

With a few exceptions, a plan generally cannot satisfy minimum distribution requirements by making life expectancy distributions to an accumulation trust unless all the trust beneficiaries are EDBs,[215] including a successor beneficiary who may receive plan distributions accumulated by the trust (a residual beneficiary).[216] On the other hand, if all the beneficiaries (including the residual beneficiary) are EDBs, the plan generally may make distributions over the life expectancy of the oldest EDB even if the oldest EDB is the residual beneficiary.[217] Upon the death of the oldest EDB, life expectancy distributions must continue unchanged, except that the entire benefit must be distributed by the end of the 10th full calendar year following the oldest beneficiary's death.[218]

Example 31. Assume an IRA participant names a see-through trust that is an accumulation trust as the beneficiary of his IRA. The trust becomes irrevocable when the participant dies in 2025 at age 65. His 63-year-old surviving spouse is the sole primary beneficiary of the trust. The participant's 64-year-old brother is the residual beneficiary entitled to the trust accumulations of plan benefits upon the death of the spouse. The brother is also the oldest EDB. Thus, the trust may take RMDs only over the life expectancy of the brother.

Assume the spouse survives the brother, who dies in 2028, before the balance of the IRA has been entirely distributed to the trust under the life expectancy method. Under these facts, distributions may continue to be made to the trust over the life expectancy of the brother, but the entire balance of the IRA must still be distributed to the trust by the end of 2038 (the 10th year after the death of the brother).

This unfortunate result is consistent with the congressional intent to limit a successor beneficiary's enjoyment of the life expectancy

[214] Reg. section 1.401(a)(9)-8(a)(1)(iii)(B) and (C).

[215] Section 401(a)(9)(H)(i); reg. section 1.401(a)(9)-4(e)(2)(i). Under one exception, a see-through trust with a beneficiary who is an IDB may be entitled to life expectancy distributions if one or more other trust beneficiaries are minor children of the participant. Reg. section 1.401(a)(9)-5(f)(1)(i). Another exception may apply if a participant dies on or after their RBD. In that case, a see-through trust with a beneficiary who is an IDB may receive RMDs based on the life expectancy of either the participant or the oldest designated beneficiary, whoever has the longer life expectancy. Reg. section 1.401(a)(9)-5(d)(1)(i) and (ii). Additional exceptions are available for AMBTs, discussed below. However, under these exceptions, one of the 10-year rules (or a modification thereof) will also apply.

[216] Reg. section 1.401(a)(9)-4(f)(3)(i)(B).

[217] Reg. section 1.401(a)(9)-5(f)(1).

[218] Reg. section 1.401(a)(9)-5(e)(3).

method. This is apparently the intended result even though the interest of the residual beneficiary is only a potential future interest in plan distributions (including plan distributions accumulated in the trust), and yet it is the residual beneficiary's death that limits the deferral of what may be more substantial distributions to other EDBs who are primary beneficiaries (for example, a surviving spouse).

a. Special treatment for see-through trusts with beneficiaries who are minors.

If a see-through trust that is a conduit trust has one or more EDBs who are minor children of a plan participant, RMDs will be determined in the same way they would have been if the trust beneficiaries had instead held direct interests in the plan. It does not matter that some of the beneficiaries are EDBs or IDBs who are not minor children of the participant.[219] However, those other trust beneficiaries (whether EDBs or IDBs) generally must be taken into account in determining the oldest designated beneficiary on whose life expectancy plan distributions are based.[220] Thus, to avoid shortening the distribution period, it is generally desirable to avoid naming older individuals as beneficiaries of a trust with minor EDBs.

Further, the successor 10-year rule applies after the youngest minor EDB reaches majority. The successor 10-year rule will also apply following the earlier death of all the minor EDBs. Thus, the remaining plan benefit must be distributed to the trust by the end of the 10th full calendar year following the earlier of the date the youngest minor reaches majority or when all the minors have died.[221] For this purpose, a child reaches majority at age 21.[222] These rules apply whether the participant dies before, on, or after their RBD.

The rules applicable to a conduit trust with minor EDBs also generally apply to an accumulation trust with minor EDBs. However, the necessary addition to the designated beneficiary list of a residual beneficiary who is entitled to trust accumulations of plan distributions may be a complication. Such a beneficiary must be considered in determining the life expectancy distribution period, and unfortunately, the residual beneficiary who is most desired will often be an older individual.

There are two potential solutions to the older residual beneficiary problem: The participant may instead choose a residual beneficiary who is younger than the oldest minor EDB, or the participant may provide in the terms of the accumulation trust that all amounts in the trust representing their interest in the plan must be distributed by the trust to a specific beneficiary before the end of the calendar year in which the beneficiary attains age 31 (or before the end of the first full calendar year following the death of the participant, if that should be later).

Under the latter solution, the residual beneficiary will be disregarded in determining RMDs and their age will be of no consequence (unless they are also a primary beneficiary). Note that this latter solution applies regardless of whether the beneficiary receiving the age-31 distribution is the child of the participant, and it applies even though the beneficiary attains majority before the participant dies.[223] See Example 22 above.

Example 32. Assume an IRA participant died in 2023 at age 45 and designated a see-through trust as the beneficiary of her IRA. The participant's son, who was 16 at that time, is the primary beneficiary of the trust. The trust terms provide that the trustee has discretion to distribute income and principal to the son for his health, maintenance, support, and education. Upon the death of the son, the trust must distribute all its funds (including all plan distributions accumulated in the trust) to the participant's brother, who was age 30 at the time of the participant's death.

Thus, the trust is an accumulation trust because the trustee has discretion to accumulate plan distributions in the trust. The son is a minor EDB, and the participant's brother is an IDB because he is more than 10 years younger than the

[219] Reg. section 1.401(a)(9)-4(e)(2)(ii).

[220] Reg. section 1.401(a)(9)-5(f)(1)(i).

[221] Section 401(a)(9)(E)(iii) and (H)(iii); reg. section 1.401(a)(9)-5(f)(2)(ii); reg. section 1.401(a)(9)-5(e)(3) and (4).

[222] Reg. section 1.401(a)(9)-4(e)(3).

[223] Reg. section 1.401(a)(9)-4(f)(3)(ii)(B).

participant. The plan must make minimum distributions to the trust over the life expectancy of the participant's brother. If the son survives until majority at age 21, the plan must continue distributions to the trust over the brother's life expectancy. However, the plan must distribute its entire benefit to the trust before the end of the 10th full calendar year following the year the son reaches majority. Note that there is no commensurate requirement that the trust distribute its accumulated plan distributions.

Assume, however, that the trust terms provide that all amounts in the trust representing the participant's interest in the IRA must be distributed by the trust to the son before the end of the calendar year in which he attains age 31. Under the special exclusion, the participant's brother is disregarded as a beneficiary and distributions to the trust after the death of the participant may be made over the life expectancy of the son, who is then deemed to be the oldest designated beneficiary.

It does not appear that the special exclusion illustrated in the preceding example is practical if there is more than one primary beneficiary of the trust. The regulations appear to require that the trust's interest in the plan *all* be distributed to the primary beneficiary, who will trigger the required final plan distribution when they attain age 31. Thus, it appears that a trust with more than one primary beneficiary cannot provide for division of that final distribution between the beneficiaries without losing the benefit of the special exclusion.[224] In that situation, two or more separate trusts might be needed.

b. See-through trust receiving life expectancy payments from pre-2020 plan.

The sole beneficiary of an interest in a pre-2020 plan (the plan of a participant who died before 2020) may be a see-through trust that itself has a sole beneficiary who qualifies as a designated beneficiary. If so, and if the trust is receiving RMDs under the life expectancy method, the designated beneficiary will be treated as an EDB when and if they die after 2019. The final regulations provide that minimum distribution requirements may be met after the beneficiary's death by continuing to distribute the plan benefit to the trust over the life expectancy of the deemed EDB. However, the plan must also distribute its entire remaining benefit to the trust by the end of the 10th calendar year following the death of the deemed EDB.[225]

Example 33. Assume an IRA participant named an *inter vivos* trust as the beneficiary of his IRA. The trust became irrevocable when he died in 2018. Assume the trust is a see-through trust that qualifies as a conduit trust. The participant's sister is a designated beneficiary and the sole beneficiary of the trust, which is receiving RMDs based on the life expectancy of the sister. The sister dies in 2023, before the balance of the IRA has been entirely distributed to the trust. Under these facts, the sister is a designated beneficiary who is treated as an EDB at her death. Thus, distributions must continue to be made to the trust over the life expectancy of the sister, but with the entire balance of the IRA distributed to the trust by the end of 2033 (the 10th full year after the death of the sister).

A see-through trust that is the beneficiary of a plan whose participant died before 2020 cannot establish separate accounts for multiple trust beneficiaries who are designated beneficiaries.[226] Thus, if the trust is receiving RMDs under the life expectancy method, the death of the oldest designated beneficiary after 2019 will require distribution of all the benefit in the plan by the end of the 10th year following the death of the beneficiary.[227]

Example 34. Assume the same facts as in Example 33, except that the participant named his sister and brother as equal beneficiaries of the pre-2020 conduit trust. Under these facts, the sister and brother are designated beneficiaries. Assume the trust is receiving RMDs based on the life expectancy of the older sister. At the sister's death in 2023, the trust may continue to receive distributions over the sister's life expectancy. But because the sister is treated as an EDB at her

[224] *Id.*

[225] Section 401(a)(9)(H)(iii); reg. sections 1.401(a)(9)-5(e)(3), -1(b)(2)(iii)(A), and -4(f)(1).

[226] Reg. section 1.401(a)(9)-4, Q&A 5(c) (2019); reg. section 1.401(a)(9)-8(a)(1)(iii)(A).

[227] Section 401(a)(9)(H)(iii); P.L. 116-94, div. O, Title IV, section 401(b)(5); reg. sections 1.401(a)(9)-5(e)(3), -1(b)(2)(iii)(A), and -4(f)(1).

death, the entire balance of the IRA, including the brother's share, must be distributed to the trust by the end of 2033 (the 10th year after the death of the sister).

Unfortunately, the see-through trust's interest in the IRA was not, and could not have been, divided into separate accounts for the sister and brother, and it is too late to establish separate subtrusts to provide separately tailored RMDs for them.

On the other hand, a participant in a plan who died before 2020 could have executed a see-through trust instrument requiring the trust to establish separate subtrusts for each of the trust beneficiaries, all of whom qualify as designated beneficiaries. The participant may then have divided the plan into separate accounts and named the subtrusts of the beneficiaries as the respective beneficiaries of the separate accounts. If that had happened, the separate accounts for the separate subtrusts should have been recognized for RMD purposes. Thus, upon the post-2019 death of one of the designated beneficiaries whose subtrust was receiving life expectancy RMDs, only the separate subtrust of the deceased beneficiary must receive all its plan benefit by the end of the 10th full calendar year following the death of the beneficiary. Distributions being made to the other subtrusts are unaffected by application of the successor 10-year rule to the deceased beneficiary's subtrust.[228]

Example 35. Assume that the participant in an IRA died in 2018 and named his sister and brother as equal beneficiaries of a see-through trust that is an accumulation trust. Upon the death of the participant, the trust terms required that the trust timely form separate subtrusts for the sister and brother. Assume further that the participant divided his IRA into two separate accounts before his death, with the subtrust for the sister as the beneficiary of one of the accounts and the subtrust for the brother as the beneficiary of the other account.

The participant's nephew is the residual beneficiary who will take outright the entire balance of the separate subtrusts of the brother and sister upon their respective deaths, including any trust accumulation of IRA distributions. The nephew is younger than the sister and brother, but the three of them are all designated beneficiaries. The subtrusts of the sister and the brother take distributions from their separate IRA accounts over their respective life expectancies. The sister dies in 2023.

Under these facts, the balance in the separate IRA account for the sister's subtrust must be distributed by the end of 2033 (the 10th year after the death of the sister). The balance in the separate IRA account for the brother's trust is unaffected by the death of the sister. The IRA may continue to distribute the balance of the IRA account for the brother's trust over his life expectancy, unaffected by the 10-year limitation. However, it is too late for a participant dying before 2020 to implement this subtrust strategy, unless the strategy was previously implemented for other reasons (for example, to allow designated beneficiaries to use their own life expectancies for their RMDs).

III. Required Annuity Distributions to Beneficiaries

Additional restrictions apply under the SECURE Act and the final regulations for life annuities purchased by defined contribution plans for beneficiaries of plan participants who die after 2019. For this purpose, defined contribution plans include traditional IRAs, Roth IRAs, qualified trusts that are not part of defined benefit plans, section 403(b) plans, and section 457 government plans (if not defined benefit plans).[229]

A. Life Annuity Purchased for an EDB

The final regulations provide that a defined contribution plan may meet minimum distribution requirements by purchasing a life annuity for an EDB, provided that the annuity meets the requirements in the regulations that

[228] Although reg. section 1.401(a)(9)-8(a)(1)(iii), allowing the division of see-through trusts, was not applicable to pre-2020 trusts, a trust division before 2020 that satisfied the conditions described above should be recognized for RMD purposes. *See* LTR 200537044.

[229] Section 401(a)(9)(H)(vi). Defined contribution plans also include section 457 tax-exempt organization plans that provide (1) an individual account for each participant and (2) benefits based only on amounts in the account. Section 414(i); preamble to T.D. 10001, at Section V.

apply to annuities under defined benefit plans.[230] Thus, the annuity must generally be purchased before the end of the calendar year following the participant's death (with a potentially later purchase date allowed for a spouse who is the sole beneficiary).[231] However, any benefit remaining on the death of the EDB (for example, period-certain payments) must be distributed by the end of the 10th full calendar year following the death of the EDB (that is, under the successor 10-year rule).[232]

B. Life Annuity Purchased for an IDB

A plan could also satisfy minimum distribution requirements by purchasing a life annuity for an IDB of a participant who died on or after their RBD, provided that the annuity and the payments met the requirements discussed in the immediately preceding paragraph. However, the annuity must end and all the remaining benefit must be distributed by the end of the 10th full calendar year following the death of the participant (that is, under the primary 10-year rule).[233]

C. Life Annuity Purchased Too Late

If a life annuity is purchased too late to satisfy all the payment requirements for minimum distributions (including the initial RMD requirements), annuity payments will meet minimum distribution requirements only for years after the year of purchase. For the year of purchase and earlier years, distributions must meet the minimum distribution requirements for nonannuity distributions. For this purpose, annuity distributions in the year of purchase are treated as nonannuity distributions.[234]

D. Life Annuity Purchased With Less Than All the Plan Funds

If less than all the plan benefit is used to purchase a life annuity, distribution of the remainder of the benefit must meet the minimum distribution requirements applicable to nonannuity distributions.[235] However, under the final regulations, a plan may allow a participant to elect to aggregate the annuity and the remaining account benefit and treat all distributions as nonannuity payments, in the same way as otherwise required for the year of purchase of a late-starting annuity.[236]

E. Different Rules Apply to Qualifying Longevity Annuity Contracts

A completely different set of rules applies to qualifying longevity annuity contracts (QLACs). QLACs allow a plan participant to defer an annuity starting date until they are as old as age 85 without violating RMD rules.[237] The RMD for a QLAC is computed separately from the other funds in a plan, and the value of the QLAC is not included in the prior-year account balances used for computing the RMDs on those other funds.[238]

F. Liquidity Needed to Satisfy Successor 10-Year Rule

If a young EDB of a defined contribution plan is receiving payments under a life annuity with a period certain based on the EDB's life expectancy and then dies before that period has expired, the remaining plan benefit must still be distributed to the successor beneficiary by the end of the successor 10-year period.[239] The successor beneficiary may then need to convert the remaining period certain payments to cash to

[230] Reg. Section 1.401(a)(9)-5(a)(5)(i).

[231] Reg. section 1.401(a)(9)-5(a)(5)(ii). The annuity may be purchased as late as the end of the calendar year in which the deceased participant would have attained age 73 (age 75 after 2034) for a surviving spouse who is the sole beneficiary under the plan. Reg. section 1.401(a)(9)-3(d).

[232] Reg. section 1.401(a)(9)-6(d)(2)(i).

[233] Reg. sections 1.401(a)(9)-6(d)(2)(i) and -5(e)(2).

[234] Reg. section 1.401(a)(9)-5(a)(5)(ii).

[235] Reg. section 1.401(a)(9)-5(a)(5)(iii). It seems unlikely that the separate account provisions of the regulations are relevant when a defined contribution plan purchases an annuity with less than all the plan benefit. However, caution favors making sure the annuity complies with separate accounting rules. Reg. section 1.401(a)(9)-8(a)(2).

[236] P.L. 117-164, div. T, Title II, section 204; reg. section 1.401(a)(9)-5(a)(5)(iv). For purposes of the election, an individual retirement annuity contract may generally be aggregated with one or more other nonannuity IRAs and treated in their entirety as nonannuity IRAs. Reg. section 1.408-8(e)(1)(ii).

[237] Reg. section 1.401(a)(9)-6(q)(1)(ii).

[238] Reg. section 1.401(a)(9)-5(b)(4).

[239] Section 401(a)(9)(H)(ii) and (iii).

make a final distribution before expiration of the 10-year period. Fortunately, the final regulations allow a purchased annuity contract to provide for such an acceleration of payments.[240]

G. Some Preexisting Annuities Grandfathered

The SECURE Act grandfathers certain preexisting irrevocable commercial annuities that were already providing benefits for the lifetimes of the participant or their designated beneficiary as of December 20, 2019 (or were then irrevocably committed to providing those benefits).[241]

IV. Challenging the Final Regulations

The final regulations under the SECURE Act were almost entirely drafted when the *Chevron* doctrine applied. That doctrine gave the IRS wide latitude to write regulations that interpreted ambiguous statutory language, provided that the agency's interpretation was one of the possible "reasonable" interpretations of the statute. For this purpose, a reasonable interpretation did not need to be the "best" interpretation of the statute.[242]

However, the Supreme Court in 2024 overruled *Chevron* (20 days before the final regulations were released). Henceforth, courts must use traditional methods of statutory construction to find the best interpretation of a statute. In doing so, courts may not give deference to regulations, although they may consider their possible persuasiveness. Consequently, a court now may generally invalidate regulations that do not represent the best interpretation of a statute. Note, though, that the Supreme Court did reaffirm an important exception requiring a court to respect express delegations by Congress of broader regulatory authority, provided that the boundaries of the delegation and any constitutional constraints have been respected.[243]

The SECURE Act, and the previous code provisions that the act amended, contain many ambiguities that the regulations have tried to resolve. But because the regulations were almost entirely drafted in the more lenient *Chevron* environment, the IRS likely overreached in some cases. Consequently, the regulatory interpretations of the statutory provisions may be easier to challenge post-*Chevron*.

V. Conclusion

Some provisions of the regulations incorporating the changes made by the SECURE Act were unexpected. Most practitioners had thought that the new primary 10-year distribution rule would supersede the old rule requiring life expectancy distributions to a designated beneficiary when a participant died on or after their RBD. Practitioners had also expected that the successor 10-year rule would eliminate the need to continue life expectancy distributions after the death of a beneficiary. Instead, in both cases, the old rules requiring post-death life expectancy distributions continue to apply. The new 10-year rules are treated as simply limitations superimposed over the old requirements.

Fortunately, the IRS has recognized the unfairness of holding taxpayers to its interpretation of the new 10-year rules for periods before the issuance of the final regulations. Consequently, for 2021 through 2024, the IRS is not penalizing failures to make life expectancy distributions to beneficiaries who are subject to the 10-year rules. (Minimum distributions were not required for 2020.)

More broadly, though, the IRS chose to completely rewrite the regulations rather than simply amend them to the extent necessary to conform to the SECURE Act. In the rewriting, the IRS made other changes, many of which did not seem to be necessary to implement the provisions of the SECURE Act. For example, among other such changes, the IRS (1) provided a new method for determining which beneficiaries of a see-through trust are designated beneficiaries; (2) revamped the method for identifying designated beneficiaries in the case of powers of appointment, reformations, and decanting; (3) simplified the determination of who is a minor; and (4) introduced a new definition of disability for individuals under age 18. ■

[240] Reg. sections 1.401(a)(9)-6(o)(3)(ii) and -1(b)(3)(vi).

[241] P.L. 116-94, div. O, Title IV, section 401(b)(4).

[242] *Chevron U.S.A. Inc. v. Natural Resources Defense Council Inc.*, 467 U.S. 837 (1984); *Mayo Foundation for Medical Education and Research v. United States*, 562 U.S. 44 (2011) (extending *Chevron* deference to tax regulations).

[243] *Loper Bright Enterprises Inc. v. Raimondo*, 603 U.S. 369 (2024).