



The Ridiculous and Impossible World of the RMD Regulations

S. Derrin Watson
Ilene H. Ferenczy

1

Your Co-Hosts



Maureen Pesek



Joanne Pecina



Tim McCutcheon




2

ERISApedia.com is a One-Stop Shop for all things webinar related...

Get Upcoming Webcast Registration Links

Get an email with attendee links for upcoming webcasts that you have registered for.

[GET LINKS](#)

Download Your Attendance Certifications

View your webcast attendance and download your attendance certifications.

[VIEW / DOWNLOAD](#)

Sign up for Webcast Announcements



Receive announcements of future webcasts.

[SIGN UP NOW](#)

Suggest a topic

Don't see what you're looking for? Let us know about topic coverage that would be helpful to you.


[SUGGEST A TOPIC](#)

3

During the Webinar


- All attendees' lines are muted.
- Use the Q&A icon for questions.
- Do NOT use the chat icon.
- Click on "Live Transcript/Closed Captioning" to see a transcript of what is being said.



FERENCZY

BENNETT LAW CENTER

CPA



ERISApedia.com


Get Answers. Win Clients.

4

4

CE Credits


- Our process for CE issuance is completely automated. Once registrations are submitted, **we cannot make changes.**
- Please review your registration before submitting to make sure
 - ✓ Your name is correct and spelled correctly
 - ✓ You've added your correct PTIN number for us to report ERPA credit to IRS
 - ✓ Your email address is correct and will be the address you use when logging in
- You must access the live portion of the webcast for the requisite time to get CE credit. Watching a recording or listening in is not sufficient. The time you are logged in is recorded automatically.
- Certificates for ASPPA/NIPA will be emailed within a couple of days of the webinar.
- To find past certificates, please go to ERISApedia.com, WEBCAST tab.



FERENCZY

BENNETT LAW CENTER

CPA



ERISApedia.com


Get Answers. Win Clients.

5

5

CE Credits – ERPA Process


- Attendees hoping to receive ERPA credit will receive their certificate by email within a few days of the webinar PROVIDED:
 1. Your email address is correct on registration and the same one is used when logging in.
 2. If you would like us to report ERPA credit to the IRS you must provide a PTIN number at the time of registration. If you would just like to get a certificate for ERPA credit without a PTIN, you should enter "Certificate" instead of a PTIN when registering.
 3. You must answer 3 poll questions/50-minute webinar or 6 poll questions/100-minute webinar. ASPPA and NIPA attendees will receive credit without answering the poll questions, but are free to answer if you would like.



FERENCZY

BENNETT LAW CENTER

CPA



ERISApedia.com

Get Answers. Win Clients.

6

6

2

After the Webinar

- Please join us for a brief educational session on how to find more information on today's topic on ERISApedia.com.
- At the conclusion of the webinar, you will be presented with a short Google Forms survey. Please let us know how we are doing. Completion of the survey is not a requirement for CE credit but we very much appreciate your feedback!
- Slides and recordings will be available on ERISApedia.com webcast tab.



7

7

Your Presenters Today



Ilene H. Ferenczy



S. Derrin Watson



8

8

BACKGROUND



9

9

§401(a)(9) Required Minimum Distributions (RMD)

- RMD Rules define the slowest and latest a plan can distribute an account
- By a participant's required beginning date (RBD), the plan must either:
 - Distribute to the participant 100% of the participant's vested account, or
 - Commence distributing the participant's account at least as rapidly as under IRS tables
- Distributions after death must also follow IRS rules



10

A Brief History

- RMD Rules part of Code §401(a) going back to ERISA
- 2002 Treasury issues detailed RMD regulations
- 2020 SECURE Act makes two major changes to RMDs
 - Delayed a participant's Required Beginning Date (RBD) from 70 ½ to 72
 - Imposes 10-year cutoff on many RMDs after death
- 2022 Treasury issues proposed regulations
 - Implement SECURE Act changes
 - Incorporate guidance on trusts that previously had been in letter rulings



11

History Continues

- 2022 SECURE 2.0 makes more changes to RMD rules
 - Delays RBD to 73/75
 - Provides election for spouse to use Uniform Lifetime Table (ULT)
 - Roth plan accounts not subject to RMDs while participant alive
 - Reduced penalty for failure to distribute
- 2022-2024 IRS delay in effective date of regulations until 2025 and provides penalty waiver for specified post-mortem distributions



12

Final Regulations

- Final regulations released July 18 (260 pages)
 - Addresses most SECURE Act and SECURE 2.0 changes
 - Also updates regulations on eligible rollover distributions
- Proposed regulations also released (36 pages)
 - Addresses potentially controversial items not discussed in original proposed regulations
- Applicable 1/1/2025



13

What About Years Before 2025?

- Follow 2002 regulations
 - But apply reasonable, good faith interpretation of SECURE Act
 - Proposed regulations are such a good faith interpretation
 - Apply reasonable, good faith interpretation of SECURE 2.0



14

What We Will Do Today

- Highlight the significant issues in the new regulations
 - Focus on changes from 2022 proposed regulations
 - Focus on defined contribution plans
 - Largely ignore issues that haven't changed from 2002 regulations



15

Agenda

- RBD changes
- Impact of Roth account
- 10-year rule; 10-year cutoff
- Special rules for spouses
- Change in excise taxes





FERENCZY
BENNETT LAW CENTER
ERISA





ERISApedia.com
Get Answers. Win Clients.

16


RBD CHANGES

APRIL 1 OF CALENDAR YEAR FOLLOWING YEAR YOU
TURN RBD AGE (OR RETIRE IF NOT 5%+ OWNER)





FERENCZY
BENNETT LAW CENTER
ERISA




ERISApedia.com
Get Answers. Win Clients.

17


Required Beginning Date after SECURE 2.0

Date of Birth	RBD Age
Before July 1, 1949	70 ½
7/1/1949 – 12/31/1950	72
1/1/1951 – 12/31/1959	73
After 12/31/1958	75

- Proposed regulations clarify:
 - Age 73 applies for all born 1951-1959
 - Age 75 applies in born after 1959
- Consistent with draft technical corrections bill
- Example: Bill (5% owner) born January 5, 1959
 - First distribution year is 2032 (when he turns 73); RBD is April 1, 2033



FERENCZY
BENNETT LAW CENTER
ERISA



ERISApedia.com
Get Answers. Win Clients.

18

Earlier Dates

- “One commenter asked whether a plan could provide a uniform required beginning date of April 1 of the calendar year following the year an employee attains age 70½ that would apply to all employees in the plan regardless of the employee’s date of birth.
- “While the final regulations do not provide for such an option, the ... IRS note[s] that, subject to the requirements of section 411(a)(11), a plan could require benefits to commence by that date.”
- Moral: Yes, a plan can require earlier distributions
 - But that doesn’t make them RMDs
 - For example, they would still be eligible rollover distributions with 20% withholding



19

Other Rules

- General rule: If you are a more than 5% owner in year you reach RBD Age, you cannot delay RBD until you retire
- Plan can elect to use uniform RBD
 - Nobody gets to wait to retirement
- If multiple employers sponsor a plan, and participant is a more than 5% owner of ANY of those employers, then participant cannot delay RBD



20

IMPACT OF ROTH ACCOUNT



21

SECURE 2.0 Change

- Don't have to take RMDs from designated Roth account in plan while participant is alive
 - Roth deferrals
 - Roth rollovers and conversions
 - Roth employer contributions
- Final regulations: Account balance for computing RBD doesn't count designated Roth account balance
- Starts in 2024 distribution calendar year (DCY)
 - Only applies to years participant is alive (including year of participant's death)



22

22

Example

- Olivia was born 5/3/50; RMD Age is 72; first DCY 2022; RBD 4/1/2023
- Olivia dies 9/15/2025

Account Balance Date (last day of year before RMD)	Non-Roth Balance	Roth Balance	Total for RMD	DCY
12/31/2021	\$120,000	\$80,000	\$200,000	2022
12/31/2022	\$125,000	\$80,000	\$205,000	2023
12/31/2023	\$130,000	\$80,000	\$130,000	2024
12/31/2024	\$125,000	\$85,000	\$125,000	2025
12/31/2025	\$120,000	\$90,000	\$210,000	2026



23

23

Two Notes on Roth

- If participant's entire account is in Roth:
 - RMD is zero
 - Participant is treated as dying before RBD
 - Impacts distributions to beneficiaries
- Proposed regulations say that, while participant is alive, distributions from designated Roth account do not satisfy RMDs
 - Therefore, they can be eligible rollover distributions
 - RMD must be taken from non-Roth account (if there is one)



24

24



THE 10-YEAR RULE; 10-YEAR CUTOFF


APPLIES TO DEFINED CONTRIBUTION PLANS






25

Cutoffs for Distributions After Death

- In SECURE Act, Congress accelerated distributions after the participant's death
 - Speeds up tax collection
- Four categories of beneficiaries
 - Spouse
 - Eligible designated beneficiary (EDB)
 - Other designated beneficiary (ODB)
 - Other recipient (e.g., estate, trust, charity)









26

Eligible Designated Beneficiary (EDB)

- Spouse
- Child who hasn't reached 21 when participant dies
 - Can include stepchild, adopted child, certain foster children
- Disabled or chronically ill
 - Must provided doctor's certificate by October 31 of year following year of participant death (or October 31, 2025, if later)
 - Need not be overly detailed; just reach conclusion
- Not more than 10 years younger than participant



27

10-Year Rule

- Only applies to participants who die before RBD
 - Must distribute entire account by 12/31 of year containing 10th anniversary of participant's death
 - No RMDs required before then
- Automatically applies to ODBs; no other choice
- Plan can apply to Spouses and other EDBs
 - Or give election between 10-year rule and life expectancy rule
 - Can apply different rules to different categories of recipients
 - Example: 10 year-rule applies to all designated beneficiaries other than spouses



28

10-Year Cutoff Once Distributions Have Begun

- Applies once life expectancy distributions have begun to participant or to a spouse or other beneficiary
 - Life expectancy distributions continue until account fully paid out
- Must pay out entire remaining account by 12/31 of year including the 10th anniversary of the earliest of:
 - Minor child beneficiary reaching 21
 - If multiple children, wait until youngest child reaches 31
 - EDB dies (including EDB of participant who died before 2020 and the EDB dies after 2019)
 - Participant dies if beneficiary is ODB



29

Treasury Stays the Course

- Most controversial part of proposed regulations
- Participant dies in 2025 after RBD; leaves 401(k) to children (ODB)
 1. Children must begin life expectancy distributions using SLT in 2026
 2. Entire account must be distributed no later than 12/31/2035
- Many urged IRS to eliminate point 1
 - Make it like 10 year-rule that applies to participants who died before RBD
- Treasury said NO
 - That would defeat the purpose of SECURE Act: raise revenue



30

IRS Notices

- Notice 2022-53, 2023-54, 2024-35 provided that there would be no penalty tax or operational failure if plan didn't distribute life expectancy RMDs to ODBs of participants who died after RBD (and after SECURE Act)
 - Limited to 2021, 2022, 2023, and 2024 DCYs
 - Also applied to a participant who died before SECURE Act, who left account to beneficiaries who died 2020-2023



31

The Party's Over

- Have to start RMDs in 2025
- Don't have to make up old balances
- 10-year cutoff is unchanged
- Example:
 - Chris dies in 2021 after RBD; leaves account to daughter (Dora)
 - They didn't take RMDs in 2022, 2023, or 2024 (relying on Notices)
 - Dora was born in 1970 (turns 52 in 2022; SLT factor 34.3)
 - 2025 RMD is 2024 account balance divided by 31.3 (34.3 minus 3 years)
 - Entire account must be paid no later than 12/31/2031



32

DISTRIBUTIONS TO A SURVIVING SPOUSE



33

Code 401(a)(9)(B)(iv)

- If the sole designated beneficiary is surviving spouse and spouse elects for this treatment, three benefits apply:
 1. Treat the spouse as the employee for purpose of computing life expectancy distributions
 - New with SECURE 2.0
 - Allows spouse to use ULT
 2. Deadline for distributing RMDs to spouse can be delayed to 12/31 of year participant would have turned RBD age
 3. If spouse dies before distributions begin, the spouse steps into the employee's shoes



34

Proposed Regulation Treatment

- Benefits 2 and 3 are automatic
 - Spousal delay and spouse stepping into participant's shoes apply regardless of election on Benefit 1 (ULT)
- ULT election is automatic if participant dies before RBD
- If participant dies on or after RBD
 - Election of ULT is not automatic but plan can provide it is the default
 - Denominator is greater of ULT factor for spouse or SLT factor for deceased participant



35

Spousal Delay

- Grace was born in 1956
 - Would reach RBD Age in 2029
- Names husband, Hugh, as sole beneficiary of 401(k) account
- Grace dies in 2025
- Plan lets Hugh choose between 10-Year Rule or Life Expectancy Rule
 - If Hugh chooses 10-Year Rule, entire account must be distributed by 12/31/2035
 - If Hugh chooses Life Expectancy Rule, can delay first distribution until 12/31/2029
 - Let's call that the Distribution Commencement Date (DCD)



36

Stepping into the Participant's Shoes

- If:
 - Spouse is sole beneficiary
 - Participant dies before RBD
 - Spouse dies before DCD (12/31 of year participant would have turned RBD Age)
- Then
 - Spouse's beneficiaries are treated as though they were beneficiaries of participant
 - Exception, spouse's new spouse not treated as spouse



37

Example

- Grace dies in 2025; would have reached RBD Age in 2029
- DCD is 12/31/2029
- Hugh starts taking life expectancy distributions in 2026
- Hugh dies in 2028, leaving account to adult child (Carla) and new wife (Wanda) – plan divides their accounts into separate shares before 12/31/2029
- Carla treated as ODB of participant who died before RBD
 - Must take entire account by 12/31/2038
- Wanda (who is less than 10 years younger than Will) treated as EDB
 - Takes life expectancy distributions over her life expectancy



38

Limited Application of Treating Spouse as Employee

- New rule simply allows surviving spouse to use ULT
 - Doesn't permit further delay of distributions
 - Doesn't subject spouse to early distribution penalty if spouse takes distributions before 59 ½



39

Example

- Example
 - Harry dies at age 61 in 2020; leaves account to Wilma (55)
 - Harry would have turned 73 in 2032
 - Wilma takes first RMD in 2032 (ULT factor for 67-year-old) is 32.0
 - If she had to take distributions using SLT, the factor would have been 21.2
 - If she had taken distribution in 2023, 10% penalty would not apply
- Alternative; Wilma rolls to her own IRA
 - Wilma doesn't have to start RMDs until her RBD Age (75) in 2040
 - But if she had taken distribution from IRA in 2023, 10% penalty would apply



40

Effective Date

- Applies only to spouses whose first required DCY is 2024 or later
- Example: Harry died in 2024 but would have reach RBD age in 2034
 - No life expectancy distributions before 2034
 - So Wilma can use the election
- Example: Wanda died after RBD in 2022 leaving account to Hank
 - Hank required to take first RBD in 2023; Hank can't use election
- Example: Suppose Wanda died in 2023 instead
 - Hank can use election



41

Post-Death Distribution after SECURE

	Recipient	Participant died before RBD		Participant died on or after RBD
		Default rules	Elections	
Death After SECURE	Spouse	Life expectancy with ULT	Wait until participant would have reached RMD Age: Use 10-year rule	Life expectancy; Can elect to use ULT
	EDB	Life expectancy	10-year rule	Life expectancy
	ODB	10-year rule		Life expectancy; cut off at 10 years
	NotDesBen	5-year rule		Life expectancy



42

Once RMDs are Required to Start, They Never Stop

- Three events trigger the start of life expectancy RMDs:
 - Required beginning date (RBD) for participant
 - If participant died before RBD and left entire account to spouse, and spouse dies after DCD
 - Life expectancy distributions have commenced to other beneficiaries
- If the participant (or beneficiary) dies before one of the above has taken place, then RMDs have not begun and no annual distribution is required for the beneficiary
 - Otherwise, annual distributions must continue to new beneficiary



43

New Spouse Rule on Eligible Rollover Distributions

- Suppose plan provides for 10-Year Rule for spouses of participants who die before RBD
- Spouse rolls over plan balance into IRA (in spouse's name)
 - Before year 10
 - After spouse attains RBD Age
 - But plans to use life expectancy rule in IRA
- Final regulation under §402(c) provides that a portion of the distribution isn't an eligible rollover distribution
 - Calculate hypothetical RMDs for a catch-up period



44

Detailed Example in Proposed Regulations

- Participant dies in 2024 at age 67; leaves benefit to Spouse (66)
 - Plan applies 10-Year Rule
 - Spouse must withdraw no later than 12/31/2034
 - Participant would have turned 73 in 2030; Spouse turns 73 in 2031
 - Catch-up period begins in 2031 (later of RBD age for Participant or Spouse)
- Spouse wants to roll \$103,000 balance to her own IRA in 2033
 - Plan calculates RMDs that would have been required under life expectancy rule for 2031, 2032, 2033
 - Special rules and assumptions
 - Total hypothetical RMD (using ULT) roughly \$10,400



45

Spouse Choice

- Roll amount to beneficiary IRA
 - Can roll entire \$103,000 balance to beneficiary IRA
 - IRA is subject to 10-Year Rule
 - Must withdraw entire balance by 12/31/2024
- Can roll \$92,600 (\$103,000 - \$10,400) to her own IRA
 - Use life expectancy rule in IRA
 - Remaining \$10,400 is not eligible rollover distribution



46

CODE 4974 PENALTY TAX FOR FAILURE TO TAKE RMDs



47

SECURE 2.0 Changes


- Late RMDs have been subject to 50% penalty tax
- Automatically reduced to 25%
- Can reduce it to 10% if:
 - Take RMD during 2-year correction window
 - Submits return during correction window reflecting tax
- Effective for 2023 and later years




48


Final Regs Specify the 10% Reduction

- Two requirements to qualify:
 - Take the RMD from the plan that was required to distribute it
 - You can choose any IRA for a required IRA RMD
 - You can choose any 403(b) for a required 403(b) RMD
 - File Form 5329 showing the 10% penalty





FERENCZY
BENEFITS LAW CENTER
ERISA

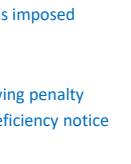



ERISApedia.com
Get Answers. Win Clients.

49


End of Correction Window (Deadline for 10% Correction)

- Earliest of:
 - Date IRS mails deficiency notice for 25% penalty
 - Date IRS assesses 25% penalty
 - Last day of second tax year after end of year penalty tax is imposed
- Example:
 - Maria fails to take RMD due in 2024
 - In 2026, Maria (1) takes 2024 RMD, and (2) files 5329 paying penalty
 - Penalty is only 10% unless IRS has assessed tax or sent deficiency notice





FERENCZY
BENEFITS LAW CENTER
ERISA

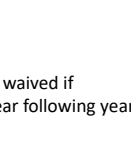



ERISApedia.com
Get Answers. Win Clients.

50


Automatic Waiver #1

- If:
 - Individual is taking life expectancy RMDs
 - Dies before taking RMD for year of death
 - Beneficiary is required to take that RMD by 12/31
- Penalty tax for failure to take that RMD is automatically waived if beneficiary takes the RMD no later than 12/31 of the year following year of death





FERENCZY
BENEFITS LAW CENTER
ERISA





ERISApedia.com
Get Answers. Win Clients.

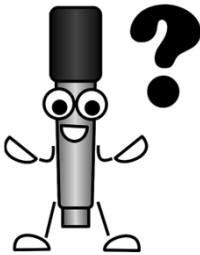
51

Automatic Waiver #2



- Penalty for failure to take RMDs is automatically waived if:
 - Participant dies before RBD
 - Beneficiary is EDB required to take life expectancy distributions
 - Beneficiary did not affirmatively elect to use life expectancy rule
 - (e.g., plan provided life expectancy rule by default)
 - Beneficiary did not take annual RMDs
 - Beneficiary elects 10-Year Rule no later than 9th year after death
 - Example: Participant dies at age 65 in 2024
 - Beneficiary elects 10-Year Rule no later than 12/31/2033



52



YOUR QUESTIONS



Adriana*

53

Contact Information



S. Derrin Watson, Esq.
Attorney at Law - Of Counsel, FBLC
5631 Kent Place
Goleta, CA 93117
805.451.8713 (V)
404.320.1105 (F)
dwatson@ferenczylaw.com

Ilene H. Ferenczy, Esq.
FBLC – Managing Partner
2635 Century Parkway, #200
Atlanta, GA 30345
678.399.6602 (V)
404.320.1105 (F)
ilene@ferenczylaw.com



54

A Few Reminders

- ASPPA/NIPA and ERPA certificates will be emailed within a day or two.
- Go to ERISApedia.com WEBCAST tab to retrieve previous certificates.
- After the webcast you will be presented with a short google forms survey. Please let us know how we are doing.
- Joanne Pecina will demonstrate how to find more information on today's topic from the ERISApedia.com resources



55
