

The Proposed RMD Rules: Feeling SECURE Yet?

275 Pages of New Regulations

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Stephen W. Forbes J.D., LL.M.

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Your Presenters
Today

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How we got here



- ▶ December 20, 2019 SECURE enacted
 - ▶ Changed Required Beginning Date age from 70 ½ to 72
 - ▶ Put 10-year cutoff on many RMD payouts after participant's death
- ▶ IRS preliminary, informal thoughts in Publication 590-B
- ▶ Treasury released new RMD tables in 2020, effective in 2022
 - ▶ New tables in Treas. Reg. §1.401(a)(9)-9
 - ▶ Old tables in Publication 590-B

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New proposed regulations



- ▶ Last month IRS released proposed RMD regulations
 - ▶ Completely rewrite existing regulations
 - ▶ Primary changes relate to SECURE
 - ▶ Also incorporate guidance on trust IRS had given in private letter rulings
 - ▶ Also update rollover regulations
 - ▶ Proposed effective date 1/1/2022
 - ▶ No reliance promised
 - ▶ Good faith interpretation for 2021 is OK

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Lifetime

LIFETIME RMDs

How long can I leave the money in the plan?
How much do I need to receive each year?



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Definitions; Abbreviations

Term	Definition
ERD	Eligible rollover distribution
RMD	Required minimum distribution
DCY	Distribution calendar year
RBD	Required beginning date
ULT	Uniform lifetime table
J&S Table	Joint and survivor table



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Code §401(a)(9)

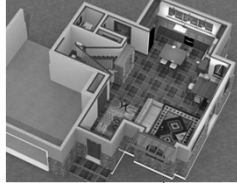
- By a participant's RBD, the plan must either:
 - Distribute to the participant 100% of the participant's vested account, or
 - Commence distributing the participant's account at least as rapidly as under IRS tables
- Distributions after death must follow the death RMD rules



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Plans subject to the RMD rules

- ▶ Qualified plans
- ▶ 403(b) plans
 - ▶ Treated like IRAs except for RBD
 - ▶ Except pre-87 amounts
- ▶ 457 plans
- ▶ IRAs
 - ▶ SEPs
 - ▶ SIMPLE IRAs
 - ▶ Roth IRAs after owner dies



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Roth RMDs

- ▶ Roth accounts (qualified plan, 403(b) and government 457(b) plan) are explicitly subject to normal RMD rules
- ▶ Roth IRAs are **NOT** subject to lifetime RMD rules
- ▶ If the participant wants to avoid, it's easy to solve the problem
 - Just take distribution from plan and roll to Roth IRA
- **Example:** Jim turns 72 in 2022
 - Can roll over entire account to Roth IRA by 12/31/2021
 - Otherwise, must take first RMD by 4/1/2023
 - Can roll over all but RMD



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RBD

- ▶ > 5% owner
 - ▶ April 1 following the calendar year the owner attains age 72
- ▶ All others
 - ▶ April 1 following the calendar year in which the later of the following events occur:
 - ▶ Participant attains age 72
 - ▶ Participant separates from service
- ▶ **Uniform RBD:** Plan can apply age 72 rule to all employees
 - ▶ There is no option to use an age 70½ RBD for all participants
- ▶ **IRAs** apply the 5% owner rule
- ▶ **SECURE 2.0**, if passed, will slowly extend the age to 75



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SECURE Act Change




Birthday	70½ Year	72 Year	Required Beginning Date
6/30/1949	2019	2021	4/1/2020
7/1/1949	2020	2021	4/1/2022

- Before SECURE Act, RBD based on age 70½
- New rule effective for distributions **after** 2019 for individuals turning 70½ **after** 12/31/19
 - Effective for persons born after 6/30/1949
 - Applies to all plan types and IRAs


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SECURE Act Changes to RBD


- 
- ▶ New RBD applies to an employee who died before attaining age 70½ if the employee would have attained age 70½ after December 31, 2019
 - ▶ New RBD rule applies to spousal-beneficiary who may delay RMDs until spouse-participant would have attained age 72
 - ▶ **Example:** if an employee who was born on June 1, 1952, died in 2018, and the employee's sole beneficiary is the employee's surviving spouse, then the surviving spouse may wait until 2024 (the calendar year in which the employee would have attained age 72) to begin receiving distributions

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Amendment Deadline

- 
- ▶ Amendment deadline
 - ▶ The last day of the plan year beginning in 2022
 - ▶ For governmental plans and collectively bargained plans (collective bargaining agreement was ratified before December 20, 2019) the amendment deadline is the last day of the first plan year beginning after December 31, 2023
 - ▶ Anti-cutback relief for timely amendment
 - ▶ SECURE 2.0, if passed, will extend deadline by two years
 - ▶ Includes SECURE, CARES, and SECURE 2.0


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Required minimum distribution (RMD)

- ▶ For any distribution calendar year (DCY), a participant's RMD is
 - ▶ The lowest amount the plan can distribute to the participant consistent with 401(a)(9)
 - ▶ The participant can receive more than the RMD and can receive it faster


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First Distribution Calendar Year (DCY)

- ▶ Calendar year before year of RBD
- ▶ Example:
 - ▶ Kim born 11/1/1949
 - ▶ Kim's RBD is 4/1/2022
 - ▶ First DCY is 2021
 - ▶ Based on her age in 2021
 - ▶ Based on her account balance on the last day of the preceding year (valuation calendar year): 12/31/2020
 - ▶ First RMD due between 1/1/2021 – 4/1/2022
 - ▶ Second RMD due between 1/1/2022 – 12/31/2022
- ▶ Any money distributed during DCY (2021) must first go to satisfy the RMD

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Example

- ▶ Assume the same facts as in the previous example
 - ▶ Kim first DCY: 2021
 - ▶ Kim's RBD: 4/1/2022
- ▶ Kim participates in a 401(k) plan and maintains an IRA
 - ▶ During 2021, Kim decides to consolidate and rolls her 401(k) plan account balance into her IRA
 - ▶ Although Kim may delay her RMD until 4/1/22, any distribution during a DCY, must first go to satisfy the RMD
 - ▶ Portion of 401(k) distribution is ineligible for rollover because it's an RMD
 - ▶ Must remove from IRA before due date of 2021 tax return to avoid 6% excise tax

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Early distributions don't help

- ▶ Ignore distributions before first DCY
- ▶ Example:
 - ▶ Kim's RBD is 4/1/2022
 - ▶ In 2020, Kim obtained a \$10K distribution
 - ▶ Except that this distribution reduced Kim's 12/31/2020 account balance, the plan ignores the distribution in calculating the 2022 RMD



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Amount of RMD

- ▶ Use ULT to compute RMDs for **everyone** except participant with younger spouse
- ▶ $RMD = \text{Acct.Bal.} / \text{ULT factor}$
 - ▶ Recalculate each year
- ▶ ULT based on the joint life expectancy of participant and a someone 10 years younger than participant
 - ▶ Updated effective **2022 DCY**
 - ▶ Now goes up to age 120
- ▶ You'll never outlive the ULT

Age	Old ULT		New ULT	
	Period	Distribution	Period	Distribution
70	27.4	\$3,650		
71	26.5	\$3,774		
72	25.6	\$3,906	27.4	\$3,650
73	24.7	\$4,049	26.5	\$3,774
74	23.8	\$4,202	25.5	\$3,922
75	22.9	\$4,367	24.6	\$4,065
76	22.0	\$4,545	23.7	\$4,219
80	18.7	\$5,348	20.2	\$4,950
85	14.8	\$6,757	16.0	\$6,250
90	11.4	\$8,772	12.2	\$8,197
95	8.6	\$11,628	8.9	\$11,236
100	6.3	\$15,873	6.4	\$15,625
110	3.1	\$32,258	3.5	\$28,571

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Automatic Recalculation

- ▶ Every year, up to and including the DCY of the participant's death, the plan consults the ULT to find the distribution period
 - ▶ Change to the new table in 2022 DCY
 - ▶ Change also applies to participants subject to the old RMD rules
- ▶ For a participant who dies after his/her RBD, what factor does the plan use to calculate the RMD?
- ▶ Who receives the distribution?
 - ▶ Estate
 - ▶ Beneficiary
 - ▶ ???



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Example

- ▶ Ed attains age 72 in 2021; 73 in 2022
 - ▶ RBD is April 1, 2022; first DCY is 2021
- ▶ Applying the ULT under the former tables would use a life expectancy of 25.6 years to calculate an RMD for 2021 DCY
- ▶ Under the new ULT, Ed would use a life expectancy of 26.5 years for RMD calculations starting in 2022
- ▶ For a 72-year-old, the new table reduces the RMD by 6.6% in the first year

	Old ULT	New ULT
	Before 2022	After 2021
Age	Period	Period
70	27.4	
71	26.5	
72	25.6	27.4
73	24.7	26.5
74	23.8	25.5
75	22.9	24.6
76	22.0	23.7
80	18.7	20.2
85	14.8	16.0
90	11.4	12.2
95	8.6	8.9
100	6.3	6.4
110	3.1	3.5

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Amounts that are not considered RMDs



- ▶ Amounts that are **not** taken into account in determining whether the RMD has been made for a DCY:
 - ▶ Amount is described in Treas. Reg. §1.402(c)-2(c)(3) (relating to amounts that are not treated as eligible rollover distributions (ERDs))
 - ▶ For example, 401(k) corrective distributions, deemed distributions of participant loans
 - ▶ Loan offsets can be an RMD

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Roth Conversions



- ▶ Many participants will not be significantly affected by the change in RMD starting age because they start taking distributions before the RBD
- ▶ However, financial advisors are likely to have clients who **will** be affected by the change and who may benefit from the additional time in which Roth Conversions can be executed

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Beneficiary Designation



- ▶ Does a participant's beneficiary designation (or lack of one) affect the lifetime RMD calculation?
 - ▶ With one exception, the answer to the question is "No"
- ▶ Exception (younger spouse rule)
 1. If the spouse is the sole beneficiary
 2. Spouse is more than 10 years younger than the employee
 3. Beneficiary for the entire DCY
- ▶ If exception applies, the plan uses the joint and survivor table to calculate RMDs (results in smaller RMD than ULT)
- ▶ *Note: If the spouse is the sole beneficiary on January 1, but the spouse dies or the employee and the spouse divorce, the plan continues to use the younger spouse rule for that year*

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Beneficiary Designations



- ▶ Beneficiary designations affect the death RMD distributions
 - ▶ However, the designations are made during the lifetime of the participant/IRA owner
 - ▶ Frequently made quickly and without much guidance
 - ▶ Unclear or imprecise designations can lead to legal challenges
 - ▶ Answer: have designations reviewed by participant's estate planning attorney
- ▶ Death of one or more of the beneficiaries before the participant/IRA owner's death
 - ▶ Beneficiary designation should be reviewed to determine if changes need to be made
 - ▶ If children of beneficiary who died are to step into the shoes of a beneficiary, make certain the proper percentage is designated

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Defined Benefit Plan RMDs



- ▶ In general, a DB plan must distribute its RMDs in the form of periodic annuity payments for the life expectancy of the employee (or joint life expectancy of the employee and his/her beneficiary)
 - ▶ The payment period must be uniform cannot exceed one year
 - ▶ Annuity payments must be nonincreasing except for: COLA, change in beneficiary due to death or a QDRO, refunds, plan amendments, (regs added: re-employment after commencing benefits, plan insolvency, or a plan in critical or declining status)
- ▶ Annuity payments must commence on or before the employee's RBD
- ▶ The regs added a rule that the annuity contract must be issued by an insurance company licensed in the jurisdiction where the annuity is sold (not applicable to 403(b)(9) accounts which may self-insure)
- ▶ While SECURE changed the age 70½ reference for RBD determinations, it (confirmed by the regs) did not change the age 70½ reference under the Code that requires an actuarial increase from age 70½ until the participant retires for those working past age 70½
 - ▶ Adjustment does not apply to 5% owners

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RMD FAILURES



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Failure to make an RMD

- ▶ Making RMDs is a qualification requirement
 - ▶ Failure to make an RMD is a disqualifying defect
- ▶ Participant (or beneficiary) also is subject to a 50% excise tax on the shortfall
 - ▶ Code 4974
 - ▶ Form 5329
- ▶ 3 Correction Options



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Correction

- ▶ In a defined contribution plan, the correction is simply to distribute a make-up distribution of the RMD (with earnings from the date of the failure)
 - ▶ The make-up distribution is calculated by dividing the adjusted account balance on the applicable valuation date by the applicable distribution period
 - ▶ For this purpose, if you file under VCP, the adjusted account balance means the actual account balance reduced by the amount of the total missed RMDs for prior years
- ▶ In a defined benefit plan, the permitted correction method is to distribute the RMD plus interest based on the plan's actuarial equivalence factors



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Example



- ▶ Dan attained age 70½ in 2018 and did not begin receiving his RMDs on his RBD (April 1, 2019)
- ▶ The plan didn't discover and correct the RMD failures until 2021
- ▶ Dan's account balances reduced by the prior year corrective distributions (plus earnings calculated to the date of the correction) for the relevant years and the applicable ULT factor are as follows:

DCY	RMD due date	Adjusted account balance	Earnings	ULT Factor	Corrective distribution
2018	04/01/19	500,000	\$3800	27.4	\$22,048 (18248 + 3800)
2019	12/31/19	527,952 (550,000 – 22,048)	\$2400	26.5	\$22,323 (19923 + 2400)
2020	12/31/20	555,629 (600,000 – [22,048 + 22,323])	\$1900	25.5	\$23,689 (21789 + 1900)

- Dan is subject to an excise tax of \$29,980 (\$59,960 [18,248 + 19,923 + 21,789] x 50%) payable on three separate Forms 5329
- The earnings are not subject to the excise tax

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Correction option #1: Self-Correction



- ▶ Make-up missed RMDs (plus earnings)
 - ▶ The failure is operational so SCP should be available
- ▶ Rely on regulatory waiver of excise tax for "**reasonable cause**"
 - ▶ Recommendation: write-up reasonable cause statement and place in the file
- ▶ If the IRS doesn't audit the plan, then no disqualification or excise tax issues
- ▶ If the IRS audits the plan, inform them that failure was self-corrected and that excise tax should be waived because of reasonable cause

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Correction Option #2: Form 5329 Waiver



- ▶ Self-correct the qualification failure by making-up missed RMDs
- ▶ Request waiver of excise tax on Form 5329
- ▶ The instructions to the form permit the participant to calculate the penalty and enter "**RC**" and the amount you want waived in parentheses on the dotted line of line 54
- ▶ The participant also would attach a statement to the form requesting the waiver and explaining the reasonable error
- ▶ *Note: Although the Form 5329 provides a reasonable method for requesting a waiver of the excise tax, many participants are reticent to report their error to the Revenue Service.*

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Correction Option #3: VCP



- ▶ Make-up the missed RMDs
- ▶ File under VCP
- ▶ If the plan sponsor files under VCP, the plan sponsor may request a waiver of the excise taxes for all of the affected participants
 - ▶ Although the error is operational and can be corrected under SCP, some practitioners file under VCP to obtain IRS confirmation of the excise tax waiver
 - ▶ We have never heard of a case where the IRS didn't waive the excise tax
 - ▶ Previous EPCRS procedures, EPCRS included a reduced user fee for a VCP application for an RMD failure

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Automatic Waiver



- ▶ If beneficiary misses the year-of-death RMD, the IRS will waive the penalty tax if the beneficiary fails to take an RMD by the end of the year in which the account owner dies
- ▶ To get this automatic relief, the beneficiary must remove the year-of-death RMD by the beneficiary's tax filing deadline, including extensions
- ▶ **Example**
 - ▶ Steve dies in 2023, after his RBD
 - ▶ Prior to his death, Steve hasn't taken his RMD for 2023
 - ▶ Mary, his beneficiary, fails to take the RMD by 12/31/23
 - ▶ If Mary takes the 2023 RMD by April 15, 2024, the IRS will waive the penalty tax

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RMDs AFTER DEATH



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RMD for year of death



- ▶ Doesn't change; ULT factor based on age at birthday
 - ▶ Even if dies before birthday
- ▶ If not paid to participant before death, pay to beneficiary after death
 - ▶ Don't pay to estate unless estate is beneficiary
 - ▶ 1099-R goes to recipient

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Definitions - Abbreviations



Term	Meaning
Beneficiary	Gets the money after death
DesBen	Designated Beneficiary; individual
NotDesBen	Beneficiary that is not DesBen (e.g., estate or charity)
EDB	Eligible Designated Beneficiary; DesBen in several categories
ODB	Other Designated Beneficiary; DesBen that isn't EDB
Spouse	Surviving spouse; Could include QDRO alternate payee
SLT	Single Life Table
SECURE Effective Date	General participants who die after 2019

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SECURE Effective Date



- ▶ Relates to effective date of Code §401(a)(9)(H)
 - ▶ New rule with 10-year cutoff of RMDs
- ▶ Most plans: Participants who die after 2019
- ▶ Governmental plans: Participants who die after 2021
- ▶ Union plans: Participants who die after 2021 unless collective bargaining agreement ends sooner

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The players before SECURE

- ▶ DesBen: Designated Beneficiary
 - ▶ Individual
 - ▶ Group of individuals
 - ▶ Certain trusts treated as individuals
 - ▶ Spouse is a DesBen
- ▶ NotDesBen
 - ▶ Estate of deceased
 - ▶ Charity
 - ▶ Trust that is not treated as DesBen



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The players after SECURE

- ▶ NotDesBen: Hasn't changed
- ▶ DesBen: Individuals; hasn't changed
 - ▶ Eligible Designated Beneficiary (EDB)
 - ▶ Spouse
 - ▶ Child under age 21 (Age of majority)
 - ▶ Disabled
 - ▶ Chronically ill
 - ▶ Less than 10 years younger than participant
 - ▶ Other Designated Beneficiary (ODB)
 - ▶ Every other DesBen



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Key points on EDBs

- ▶ Regs define "age of majority" as 21
 - ▶ Prior DB regs allowed 26 if going to school; unworkable
- ▶ Child of participant is EDB if under 21 when participant dies
 - ▶ Special rule for payout when child reaches 21
- ▶ Disabled
 - ▶ Over 18: unable to engage in substantial gainful activity
 - ▶ Under 18: physical or mental impairment that results in marked and severe functional limitations
 - ▶ Result in death or to be of long-continued and indefinite duration



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Key points on EDB

►Chronically ill

1. A health practitioner (such as a doctor, registered professional nurse, or licensed social worker) certifies that the individual is (and will continue to be indefinitely, or for reasonably long duration) unable to perform, without substantial assistance, at least two of the following activities of daily living, due to a loss of capacity:

- a. eating,
- b. toileting,
- c. transferring,
- d. bathing,
- e. dressing, or
- f. continence.



► The person requires substantial supervision to protect himself or herself from threats to health or safety because of severe cognitive impairment



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Documentation

- Disabled; chronically ill condition must exist at participant's death
- Written certification of condition must be received by plan by 10/31 of year following death



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EDB: Less than 10 years younger than participant

- Example: Participant born 5/1/1950
 - Anyone born prior to 5/2/1960 is EDB
- This category includes:
 - Participant's parents
 - Most siblings
 - Most romantic relationships
- It typically does not include
 - Children
 - Grandchildren
 - Nieces; nephews




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RMD RULES AFTER DEATH DEPEND ON 3 THINGS	<ul style="list-style-type: none"> ▶ Did participant die before RBD? ▶ Status of Beneficiary <ul style="list-style-type: none"> ▶ Spouse ▶ EDB ▶ ODB ▶ NotDesBen ▶ Plan elections
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Pre-SECURE RMDs
Apply to most participant who died before 2020



Recipient	Participant died before RBD		Participant died on or after RBD
	Default rules	Elections	
Spouse	Life expectancy	Wait until 70½; use 5-year rule	Life expectancy
DesBen	Life expectancy	5-year rule	Life expectancy
NotDesBen	5-year rule		Life expectancy

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RMDs after SECURE
Apply to most participant who die after 2019



Recipient	Participant died before RBD		Participant died on or after RBD
	Default rules	Elections	
Spouse	Life expectancy	Wait until 72; use 10-year rule	Life expectancy
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

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5-year rule



- ▶ Applies to
 - ▶ NotDesBen if participant died before RBD
 - ▶ DesBen of participant who died before SECURE if plan provided
- ▶ Pay out 100% of amount by 12/31 of year with 5th anniversary of death
 - ▶ No payments required before then
- ▶ Example:
 - ▶ Oscar leaves account to his estate
 - ▶ Oscar dies 2/1/2022
 - ▶ Estate must receive 100% of account by 12/31/2027

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10-year rule



- ▶ Limited to participants who die before RBD
- ▶ Limited to participants who die after SECURE effective date (generally after 2019)
- ▶ Applies to
 - ▶ ODB
 - ▶ EDB if plan provides
- ▶ Pay out 100% of amount by 12/31 of year with 10th anniversary of death
 - ▶ No payments required before then
- ▶ Example:
 - ▶ Oscar leaves account to his grandson
 - ▶ Oscar dies 2/1/2022
 - ▶ Grandson must receive 100% of account by 12/31/2032

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Life expectancy rule



- ▶ Similar to RMDs during participant's life
- ▶ First post-death DCY is year following year of death
 - ▶ Distribution deadline is 12/31
- ▶ For each DCY, RMD is account balance 12/31 of prior year divided by "applicable denominator" (life expectancy factor)
- ▶ Uses Single Life Table
 - ▶ New table issued for 2022
 - ▶ Goes from age 0 to 120
 - ▶ Faster than ULT
 - ▶ ULT at 72 is 27.4; SLT at 72 is 17.2

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Determining the applicable denominator after death

Measuring life to use		
Recipient	Participant died before RBD	Participant died on or after RBD
Spouse	Spouse	Younger of spouse or participant
EDB	EDB	Younger of EDB or participant
ODB	Life expectancy not available	Younger of ODB or participant
NotDesBen	Life expectancy not available	Participant

Determine applicable denominator based on measuring life		
Measuring life	Starting point	Subsequent years
Spouse	SLT based on age in year after death	Recalculate via SLT
ODB	SLT based on age in year after death	Subtract one
Participant	SLT based on age in year of death	Subtract one

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Put it together

Participant died after SECURE Effective Date			
Recipient	Participant died before RBD		Participant died on or after RBD
	Default rules	Elections	
Surviving Spouse	Life expectancy	Wait until 72; use 10-year rule	Life expectancy; Younger of participant (subtract 1.0) or spouse (recalculate)
	Spouse's age, recalculate		
EDB	Life expectancy EDB's age, subtract 1.0	10-year rule	Life expectancy Younger of participant or EDB, subtract 1.0
ODB	10-year rule		Life expectancy; cut off at 10 years Younger of participant or ODB, subtract 1.0
NotDesBen	5-year rule		Life expectancy Participant's age, subtract 1.0

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Example 1

- ▶ Eleanor, born November 10, 1960, dies June 15, 2024, at age 63.
- ▶ She leaves her account to her brother, Frank, born October 1, 1962.
- ▶ Frank is an EDB because he is not more than 10 years younger than Eleanor.
- ▶ Frank will take distributions using the life expectancy rule.
- ▶ The first DCY is 2025, the year following the year of death.
- ▶ In 2025, Frank will turn 63.
- ▶ His applicable denominator, based on the SLT, is 24.5.
 - ▶ The following year, the denominator is 23.5. In 2027 the denominator is 22.5.
 - ▶ You subtract one each year. You only look at the SLT once.

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Example 2

- ▶ Same facts except Frank is Eleanor's spouse
- ▶ The 2025 applicable denominator is 24.5.
 - ▶ The 2025 RMD is the 12/31/2024 account balance divided by 24.5
- ▶ For 2026, the denominator, based on the SLT factor for a 64-year-old is 23.7.
- ▶ For 2027, the denominator is 22.9.



Year	Age	Spouse	Brother
2025	63	24.5	24.5
2026	64	23.7	23.5
2027	65	22.9	22.5
2028	66	22.0	21.5
2029	67	21.2	20.5
2030	68	20.4	19.5

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Example 3

- ▶ Elisa dies at age 79 on March 15, 2024, following her RBD.
- ▶ Her birthday is in December, meaning she would have turned 80 had she lived to her 2024 birthday.
- ▶ She did not file a beneficiary designation and under plan terms her account goes to her estate.
 - ▶ Her estate is not a designated beneficiary and does not have a life expectancy.
- ▶ Her applicable denominator is based on her age.
- ▶ The SLT factor for an 80-year-old is 11.2.
 - ▶ We subtract one from that to arrive at the applicable denominator for 2025, 10.2.

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Example 4

- ▶ Quincy dies in 2025 at age 75.
 - ▶ His RBD was April 1, 2023.
- ▶ His applicable denominator for 2025 is 24.6, based on the ULT.
- ▶ The plan did not pay the 2025 RMD to Quincy before he died, and instead distributes it to his beneficiary, his older sister, Petra.
- ▶ In 2026, Petra will turn 77.
 - ▶ The applicable denominator based on her age would be 13.3.
 - ▶ The applicable denominator based on Quincy's age would be 13.8.
 - ▶ (This is 14.8, the SLT factor for a 75-year-old, his age on his birthday in the year of death, minus 1.)
 - ▶ Since Quincy died after his RBD, and his denominator is greater than Petra's, we use his denominator, subtracting one each year.

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Multiple beneficiaries



- ▶ Starting point: Treat them as one beneficiary
- ▶ Age is age of oldest beneficiary
- ▶ Status is the lowest status of any beneficiary
 - ▶ Spouse
 - ▶ EDB
 - ▶ ODB
 - ▶ NotDesBen
- ▶ Examples:
 - ▶ Account shared by son and charity = NotDesBen
 - ▶ Account is shared by wife and adult daughter = ODB (age of wife)
- ▶ Special rule for minor child: Minor child + ODB = EDB (age of oldest)

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Ways to break up multiple beneficiaries



- ▶ Pay out beneficiary by September 30 of year following death
 - ▶ Example:
 - ▶ Erin leaves half her account to her husband, Patrick, and half to her mother, Colleen.
 - ▶ Erin dies August 1, 2024.
 - ▶ Her beneficiary determination date is September 30, 2025.
 - ▶ The plan pays Colleen her entire benefit prior to the beneficiary determination date.
 - ▶ Patrick, her surviving spouse, is Erin's sole beneficiary for purposes of the RMD rules.
- ▶ Beneficiary files qualified disclaimer (Code §2518)
- ▶ Split account into separate shares by December 31 of year following death
- ▶ Disregard beneficiary who dies before participant
 - ▶ Or treated as such under state simultaneous death law

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Death and RMDs



- ▶ Example 1
 - ▶ Paula named her son, Harvey, as the beneficiary of her 403(b) account. If Harvey predeceased her, then her twin sister, Doris, would take the account.
 - ▶ Harvey died two months before Paula did.
 - ▶ Doris is the beneficiary for purposes of the RMD rules.
- ▶ Example 2
 - ▶ Same facts, except Harvey died the day after Paula did.
 - ▶ Under state law, Harvey and Doris are treated as dying simultaneously.
 - ▶ Doris is the beneficiary for purposes of the RMD rules.
- ▶ Example 3
 - ▶ Same facts, except Harvey died three months after Paula.
 - ▶ Harvey is nonetheless the designated beneficiary for purposes of the RMD rules.

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Election to use 10-year rule in place of life expectancy rule



- ▶ Limited to EDBs
- ▶ Limited to participants who die after SECURE effective date
- ▶ Plan document can:
 - ▶ Mandate use of 10-year rule or
 - ▶ Allow participant/beneficiary to elect 10-year rule
 - ▶ Plan must specify whether life expectancy or 10-year rule is default
 - ▶ Election deadline is deadline for first RMD
 - ▶ Generally 12/31 of year following year of death

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Surviving spouse election



- ▶ Limited to participants who die before RBD
- ▶ Only applies if spouse is sole beneficiary
- ▶ Spouse can limit start of life expectancy RMDs until 12/31 of year participant would have turned 72
 - ▶ If participant born before 7/1/1949, use 70 ½
- ▶ Treat spouse as a participant in terms of subsequent death

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Cut off of RMDs



- ▶ Cut-off applies to participants who die after SECURE effective date
- ▶ Must distribute entire account by 12/31 of earliest of the following years:
 - ▶ 10th year after death year if beneficiary is ODB
 - ▶ 10th year after death of EDB
 - ▶ 10th year after minor child EDB reaches age of majority
 - ▶ Unless child is disabled or chronically ill
 - ▶ Year beneficiary's life expectancy does not exceed one (if based on employee life expectancy)

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Put it together



Participant died after SECURE Effective Date			
Recipient	Participant died before RBD		Participant died on or after RBD
	Default rules	Elections	
Surviving Spouse	Life expectancy Spouse's age, recalculate	Wait until 72; use 10-year rule	Life expectancy; Younger of participant (subtract 1.0) or spouse (recalculate)
EDB	Life expectancy EDB's age, subtract 1.0	10-year rule	Life expectancy Younger of participant or EDB, subtract 1.0
ODB	10-year rule		Life expectancy; cut off at 10 years Younger of participant or ODB, subtract 1.0
NotDesBen	5-year rule		Life expectancy Participant's age, subtract 1.0

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New rule for participant who dies before SECURE effective date



► If oldest DesBen dies after SECURE effective date, then entire account must be paid by 12/31 of 10th year after DesBen

► Example

- Jack died 5/1/2018
- Left account to sister, Jill
- Jill taking life expectancy RMDs
- Jill dies in 2023, leaving account to Bill
- Bill continues to take RMDs using Jills life expectancy
- Complete payout 12/31/2033

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Request for comments about 403(b)



► Current law:

- 403(b) plans treated like IRAs for most RMD rules
- Means you can choose to take all 403(b) RMDs from a single plan

► Request for comment

- Each plan stands alone
- Like qualified plan



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Trust as DesBen: "See-through trust"



- ▶ Trust beneficiaries treated as participant's beneficiaries if:
 - ▶ Trust is valid under state law
 - ▶ Trust is irrevocable or becomes irrevocable when employee dies
 - ▶ Beneficiaries are identifiable from trust instrument
 - ▶ Possible to identify each person entitled to an interest
 - ▶ New rules for powers of appointment: exercise or release by Sept. 30
 - ▶ Documentation provided to plan by October 31 of year following year of death
 - ▶ List of beneficiaries or copy of trust

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Types of trusts



- ▶ Conduit trust: All plan distributions, upon receipt, are paid to or applied for specified beneficiaries
 - ▶ Plan beneficiaries doesn't include contingent beneficiaries
- ▶ Accumulation trust: Any other trust
 - ▶ Plan beneficiaries includes most contingent beneficiaries
- ▶ Disregard beneficiaries who predecease employee

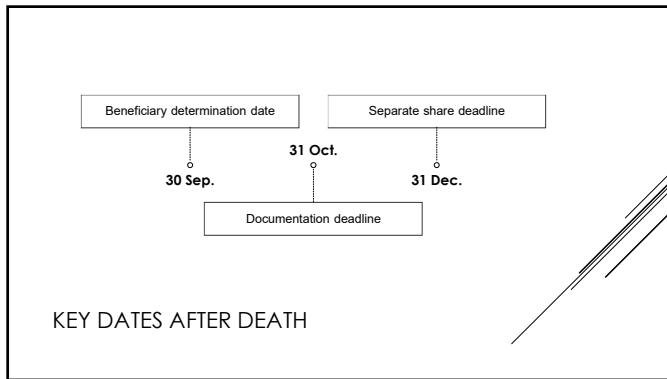
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Trust generally treated as one beneficiary




- ▶ Cannot use separate share rule
- ▶ But can divide trust into multiple trusts, each treated as separate, immediately upon employee's death
- ▶ Trust for disabled or chronically ill EDB and others can be treated as EDB depending on terms

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Automatic Waiver




- ▶ If the account owner's death is before the RBD and an EDB fails to take a life expectancy payment, the IRS will automatically waive the penalty tax if:
 - ▶ the beneficiary did not make an affirmative election to take life expectancy payments (e.g., a plan provision defaulted to that method), and
 - ▶ the beneficiary elects the 10-year rule by the end of the ninth calendar year following the account owner's death
- ▶ **Example**
 - ▶ Ben dies in 2023, before his RBD
 - ▶ Plan defaults to life expectancy payments
 - ▶ Kiley, his beneficiary, fails to commence RMDs in 2024 or the following years
 - ▶ If Kiley elects the 10-year rule by the end of 2032, the IRS will waive the penalty tax

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Coming attractions



- ▶ April 20; 2 PM Eastern
- ▶ Kicking out the Bad Apple – The New Proposed MEP Regulations
- ▶ Ilene Ferenczy and Derrin Watson
- ▶ May 19; 2 PM Eastern
- ▶ RMD: Answers to Your Questions
- ▶ Steve Forbes and Derrin Watson



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Thank you!

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- ▶ Derrin's books are available at ERISApedia.com
 - ▶ Who's the Employer (8th ed)
 - ▶ 403(b) Plan eSource
 - ▶ 457 Plan eSource
 - ▶ Plan Correction eSource (with Ilene Ferenczy and Alison Cohen)
- ▶ Coming this year:
 - ▶ Plan Distribution eSource



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A Few Reminders

- ▶ ASPPA/NIPA certificates will be emailed within a day or two. ERPA certificates may take up to two weeks.
- ▶ 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.



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For Further Study

Joanne Pecina will demonstrate how to find more information on today's topic from the ERISApedia.com resources.



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