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SECURE-LY PLANNING FOR RETIREMENT ASSETS

By

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I. Introduction[♣]

A. The Setting Every Community Up for Retirement Enhancement Act of 2019 (the "**SECURE Act**") was signed into law on December 20, 2019, as part of the Further Consolidated Appropriations Act, 2020. It dramatically revamped IRC § 401(a)(9)'s required minimum distribution ("**RMD**") rules for retirement accounts[1] following the death of the account owner.[2] Most importantly for estate planners, the SECURE Act eliminated the ability of many non-spouse beneficiaries to "stretch" distribution of death benefits over their own life expectancies. The RMD changes took effect in 2020.

B. In February 2022, the U.S. Department of the Treasury ("**Treasury**") published 275 pages of proposed regulations attempting to answer many open questions raised by the SECURE Act's changes to the RMD rules and RMD-related matters. Treasury received many comments on the proposed rules.

C. Before Treasury could finalize its proposed SECURE regulations, Congress enacted the SECURE 2.0 Act of 2022 ("**SECURE 2.0**") on December 29, 2022.

D. Treasury issued final regulations in July 2024 incorporating some aspects of SECURE 2.0 into the proposed regulations. It simultaneously published new proposed regulations addressing SECURE 2.0's less ministerial and more complex provisions. The final regulations apply for purposes of determining RMDs for

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[♣] Significant portions of these materials are based on outlines I prepared in collaboration with fellow Virginia estate planning attorney Timothy J. Guare for prior presentations we've made together. Those were in turn patterned on materials originally developed by Tim's former law partner, Louis A. Mezzullo, before the SECURE Act's passage. I'm grateful to both Tim and Lou for graciously allowing me to continue building on the excellent framework they established.

[1] This outline focuses on defined contribution plans and IRAs. Defined benefit plans (traditional annuity-style "pension" plans) have their own RMD rules and aren't addressed here. In general, defined benefit plans don't have death benefits other than a surviving spouse annuity. However, a key exception may be cash balance plans, which typically offer a lump sum payout that can be rolled over by a surviving spouse or other beneficiary.

[2] "**Account owner**" in this outline refers interchangeably to either a participant in an employer-sponsored retirement plan or an individual for whom an IRA is originally established by contributions for the benefit of that individual and that individual's beneficiaries. The proposed SECURE Act regulations refer to a plan participant as the "employee" (regardless of whether the employee has retired or otherwise terminated employment) and to an IRA account owner as the "IRA owner."

calendar years beginning on or after January 1, 2025. For 2021–2024, the proposed regulations and subsequent notices directed taxpayers to apply the existing pre-SECURE Act regulation but taking into account a good faith interpretation of the SECURE Act's amendments and provided that compliance with the proposed regulations will satisfy that requirement.[3]

E. IRC § 401(a)(9)'s RMD rules require that employer-sponsored retirement plan benefits be distributed to participants and their beneficiaries over certain periods to prevent the indefinite deferral of the federal income tax on the income accumulated in the plan and to ensure that the favorable tax treatment afforded to qualified retirement plans serves the intent of Congress to encourage saving for retirement.

F. Before SECURE 2.0, IRC § 4974 imposed a 50% excise tax on the amount of an RMD that is not distributed from a retirement account within a particular year. SECURE 2.0 reduced this penalty to 25% for tax years beginning after December 29, 2022.[4]

1. IRC § 408(a)(6) and (b)(3) apply these RMD rules to individual retirement accounts and annuities ("**IRAs**").

2. IRC § 457(d)(2) applies these rules to certain deferred compensation plans for tax-exempt organizations or state and local government employees.

3. Generally, by an account owner's RBD (defined below), either the entire account balance must be distributed to the account owner, or the distribution must commence over an account owner's life or over the joint lives of the account owner and a "designated beneficiary" (or over a period not extending beyond such single or joint lives). IRC § 401(a)(9)(A).

4. If the account owner dies before the entire account has been distributed, the beneficiary must receive the balance over a certain period of time specified in the Code. IRC § 401(a)(9)(B).

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[3] As discussed in more detail later in this outline, the Preamble to the final regulations include an important footnote stating that no makeup distributions will be required for 2021-2024 for taxpayers who failed to continue taking annual distributions after the death of an account owner for whom RMDs had begun.

[4] The penalty is further reduced to just 10% if the taxpayer (1) takes a corrective distribution of the missed RMD within a correction window and (2) files a Form 5329 reflecting the 10% penalty (instead of simply noting "RC" for reasonable cause on the form's tax penalty line). Treas. Reg. § 54.4974-1(a)(2). The correction window is the last day of the second taxable year following the end of the taxable year of the missed RMD, or if earlier the date a deficiency notice is mailed or the 25% penalty is assessed. *Id.* § 54.4974-1(a)(2)(iii).

II. Important Definitions and Concepts

A. Required Beginning Date ("RBD")

1. Before the SECURE Act, the RBD for traditional IRA account owners and participants in employer-sponsored retirement plans who own more than five percent of the sponsoring employer (i.e., a sole proprietor, or a partner, limited liability company member, or shareholder who owns more than five percent of the sponsoring employer) was April 1 following the calendar year in which the individual reaches age 70½. The SECURE Act increased this to age 72.[5] SECURE 2.0 further increased this to age 73 effective for 2023[6] and age 75 in 2033.[7] IRC § 401(a)(9)(C)(i)-(ii). This age is now referred to as the "**applicable age**."

2. The RBD for participants in qualified retirement plans who do not own more than five percent of the sponsoring employer is April 1 following the later of the calendar year in which the participant reaches the applicable age specified above or the calendar year in which the participant retires. IRC § 401(a)(9)(C)(i).

3. Account owners who wait until their RBD (April 1) to take their first RMD are still required to take their second RMD by the end of that year. In essence, this results in a "double" RMD that year. For income tax planning purposes, they may consider taking their first RMD in the year before (i.e., in the year in which they obtain their applicable age, rather than waiting until their RBD in the following year).

4. The options available to the beneficiaries will depend upon whether the account owner dies before or after his or her RBD.

B. Beneficiary Finalization Date ("**BFD**")

1. For RMD purposes, the beneficiaries of a deceased account owner's account are determined as of September 30 of the calendar year following the calendar year of the account owner's death. Treas. Reg. § 1.401(a)(9)-4(c)(1).

2. This outline refers to September 30 of the calendar year following the calendar year of the account owner's death as the BFD.

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[5] Individuals born July 1, 1949 through 1950.

[6] Individuals born 1951-1959. See footnote 7 in the final regulations' Preamble, 89 Fed. Reg. 58886 at 58891 (Jul. 19, 2024), which discusses the SECURE 2.0's ambiguity on the applicable age for individual born in 1959. Prop. Treas. Reg. § 1.401(a)(9)–2(b)(v) sets the applicable age at 73 for these individuals.

[7] Individuals born in 1960 or later.

C. Designated Beneficiary ("DB")

1. DB is a defined term in the regulations; it is not merely the individual or entity that is designated to receive the retirement account on the date of the account owner's death.

2. The DB's age is an important reference point in determining the rate at which the plan benefit or IRA must be distributed under the RMD rules, although after the SECURE Act only if the DB is an EDB (defined below) or if the account owner dies after his or her RBD.

3. A DB must be an individual. IRC § 401(a)(9)(E)(i).

    a. The DB does not need to be specified by name, provided the person is identifiable pursuant to the designation. For example, the designation of "the employee's children" works even if the children aren't specified by name. Treas. Reg. § 1.401(a)(9)-4(a)(3).

    b. An account owner will not have a DB if his or her estate is the named beneficiary, even though an individual becomes entitled to receive the benefit by the BFD. Treas. Reg. § 1.401(a)(9)-4(a)(3) and (b).

    c. A DB may be designated by default election under the terms of the retirement plan or account or by affirmative election of the account owner. Treas. Reg. § 1.401(a)(9)-4(a)(4).

    d. An individual beneficiary of a trust may be treated as a DB if the trust meets the "see-through trust" requirements discussed below. Treas. Reg. § 1.401(a)(9)-4(b) and (f)(1).

4. An account owner's DB after his or her death is determined as of the BFD. Treas. Reg. § 1.401(a)(9)-4(c)(1).

    a. However, if an individual who is a beneficiary as of the date of the account owner's death dies before the BFD, that individual will continue to be treated as a beneficiary on the BFD unless treated as predeceasing the account owner pursuant to a simultaneous death act under applicable state law or a qualified disclaimer satisfying IRC § 2518 that applies to the entire interest to which the beneficiary is entitled. Treas. Reg. § 1.401(a)(9)-4(c)(2).

    b. Presumably, a deceased individual's personal representative may disclaim if permitted under state law.

5. There are three ways a DB's identity can change after the account owner's death but before the BFD.

a. The beneficiary predeceases the account owner or is treated as having predeceased the account owner pursuant to a simultaneous death act under applicable state law. Treas. Reg. § 1.401(a)(9)-4(c)(2)(i)-(ii).

b. One or more beneficiaries may disclaim their right to receive the plan benefit or IRA, by use of a qualified disclaimer under IRC § 2518, but the disclaimer must occur before the BFD and the beneficiary cannot receive any consideration in exchange for the disclaimer. Treas. Reg. § 1.401(a)(9)-4(c)(2)(ii) and (3)(i)-(iii).

c. One or more beneficiaries may be cashed out, i.e., they receive the entire amount of the plan benefit or IRA to which they are entitled. Treas. Reg. § 1.401(a)(9)-4(c)(2)(iii).

(i) For example, if an account owner names a charitable organization as the beneficiary of the first $100,000 of his or her plan benefit or IRA and an individual as the beneficiary of the remaining portion, the account owner would not be treated as having a DB because the charity's portion of the account would not be treated as a separate account.[8]

(ii) However, if $100,000 is paid to the charity before the BFD, the charity will no longer be considered in determining whether the account owner has a DB. Treas. Reg. § 1.401(a)(9)-4(c)(3)(iv).

D. Eligible Designated Beneficiary ("EDB")

1. Under the SECURE Act, EDBs are the only types of DBs entitled to take distributions over their own life expectancy following the account owner's death. IRC § 401(a)(9)(H)(ii). In general, all other DBs are subject to a maximum 10-year payout rule (the "**10-year rule**") following the account owner's death. IRC § 401(a)(9)(H)(i)(I).

2. There are five categories of EDBs: (1) the account owner's surviving spouse, (2) a child of the account owner who has not reached majority (meaning age 21 under the proposed regulations), (3) a disabled individual, (4) a chronically ill individual, or (5) an individual not more than 10 years younger than the account owner. IRC § 401(a)(9)(E)(ii). Important notes:

[8] This example assumes that either the beneficiary designation form or account provider's documents don't allow the fixed dollar ("pecuniary") gift to charity to share pro-rata in post-death investment gains, losses, contributions, forfeitures, and expenses, which is required for separate account treatment.

a. **Minor Child Category**. It bears emphasizing that only a child (biological, adopted, stepchild, or eligible foster child) of the account owner can be an EDB under the minor child category. Grandchildren and more remote descendants, young cousins, nieces and nephews, godchildren, etc. don't qualify for that category. The inclusion of stepchildren and eligible foster children is a clarification added in the final regulations.[9]

b. **Disabled and Chronically Ill ("DCI") Category**. "Disabled" and "chronically ill" are defined in IRC § 401(a)(9)(E)(ii)(III)-(IV) and the regulations.

(i) Disability status is determined as of the date of the account owner's death, which may create difficulties in qualifying a minor as disabled since his or her disability may not fully manifest for some time. For adult beneficiaries, the standard is inability to engage in *any* substantial gainful activity, which is a high bar. Treas. Reg. § 1.401(a)(9)-4(e)(4)(i) through (iii). The definition of disability appears to rely heavily or solely on a Social Security determination of disability, and having a determination by disability by the Commissioner of Social Security as of the date of the account owner's death is a safe harbor. Treas. Reg. § 1.401(a)(9)-4(e)(4)(iv) Commentors on the proposed regulations requested various alternative methods for determining and documenting disability, such as a method similar to the Service's guidance under the ABLE Act for IRC §529A accounts, which could work well for both adults and minors and also parallels the SECURE Act's certification of chronically ill status. However, the IRS chose not to include in the final regulations any of the additional safe harbor standards proposed by commentors.

(ii) Chronically ill status requires a certification from a "licensed health care practitioner" (as defined in IRC § 7702B, addressing qualified long-term care insurance) that the individual is unable to perform at least two activities of daily living for an indefinite period expected to be lengthy in nature (and not merely for 90 days). Treas. Reg. § 1.401(a)(9)-4(e)(5). Self-certification by the beneficiary is not sufficient.

(iii) Both statuses require that certain documentation be provided to the plan administrator by October 31 of the

[9] Preamble, 89 Fed. Reg. at 58892 and Treas. Reg. § 1.401(a)(9)-4(e)(1)(ii) (applying IRC § 152(f)(1) to define the account owner's "child" for EDB status purposes).

calendar year following the calendar year of account owner's death. Treas. Reg. § 1.401(a)(9)-4(e)(7).

(A) The documentation need not be detailed. Mere certification by the license practitioner that as of a specified date the DB meets the definition is sufficient without a detail. Treas. Reg. § 1.401(a)(9)-4(e)(9)(i).

(B) For account owners who died in 2021 through 2023 there is a transition deadline of October 31, 2025, to provide the documentation. Treas. Reg. § 1.401(a)(9)-4(e)(7).

(C) Documentation of a DB's DCI need not be provided to an IRA custodian. Treas. Reg. § 1.408-8(b)(4).

c. **Not More Than 10 Years Younger Category**. This status is determined based on dates of birth. For example, if the account owner's birth date is October 1, 1953, the beneficiary must have been born on or before October 1, 1963 to qualify as an EDB. Treas. Reg. § 1.401(a)(9)-4(e)(6).

3. **Multiple Beneficiaries: One Non-EDB Generally Spoils the EDB Bunch**. If an account owner has more than one DB and at least one of those is not an EDB, then the account owner is treated as not having an EDB. Treas. Reg. § 1.401(a)(9)-4(e)(2).

a. **AMBTs (Discussed Further Below)**. These are an exception.

b. **Special Rule for Children**. If any of the account owner's DBs is a minor child EDB, the account owner is treated as having an EDB even if he or she has other DBs who are not EDBs. Treas. Reg. § 1.401(a)(9)-4(e)(2)(ii).

E. "Separate Account"

1. If there are two or more beneficiaries at the BFD and at least one of the beneficiaries is not an individual, the account owner will be treated as having no DB unless a separate account has been established for the non-individual beneficiary. Treas. Reg. § 1.401(a)(9)-4(b).

2. Absent separate account treatment, if there are multiple DBs (and no non-DBs) at the BFD, the applicable denominator will generally be determined using the oldest DB's life expectancy.[10] Treas. Reg. § 1.401(a)(9)-5(f)(1).

3. Separate accounts are separate portions of an account owner's benefit reflecting the separate interests of the account owner's beneficiaries as of the date of the account owner's death for which separate accounting is maintained.

   a. If separate account treatment applies, the RMD rules apply separately with respect to the separate interests of each of the account owner's beneficiaries. Treas. Reg. § 1.401(a)(9)-8(a)(1)(i).

   b. The regulations continue the existing rule that the regulations' separate accounting requirements must be satisfied by the end of the calendar year following the calendar year of the account owner's death to be effective for purposes of separately determining the applicable denominator for a separate account. Treas. Reg. § 1.401(a)(9)-8(a)(1)(ii).

   c. To satisfy the separate accounting requirements, any post-death distribution to a beneficiary must be allocated to the separate account of that beneficiary. Treas. Reg. § 1.401(a)(9)-8(a)(2)(i).

   d. Also, the separate accounting must allocate all post-death investment gains and losses, contributions, and forfeitures for the period prior to the establishment of the separate accounts on a pro rata basis in a reasonable and consistent manner among the separate accounts. Treas. Reg. § 1.401(a)(9)-8(a)(2)(ii). Pecuniary gifts typically don't qualify for separate account treatment because beneficiary designation or governing account documents usually don't allow them to share in post-death changes in account value.

   e. If a separate account is to be established for a beneficiary who is not an individual, it is advisable to establish the separate account for that beneficiary by the BFD to ensure that the account owner has a DB, even though the separate account rule apparently would allow a delay until December 31.

   f. In general, separate account treatment remains unavailable for separate interests of each of the beneficiaries of a trust. Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(A). However, in a departure from the prior regulations, separate account treatment is now allowed for certain trusts. Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(B). The new

[10] AMBTs are an exception to this rule. Treas. Reg. § 1.401(a)(9)-5(f)(1)(ii).

rules for separate accounts as applied to trusts is discussed further in Section VI.A.5 below.

F. Inherited IRAs

1. When an account owner dies and an IRA is established for the benefit of a particular beneficiary, this IRA must be distinguished from the IRAs that the beneficiary has funded through the beneficiary's own deposits or the deposits of the beneficiary's employer.

2. This outline refers to the IRA that is established for the benefit of a particular beneficiary as an "inherited IRA."

3. Most financial institutions will title the inherited IRA in this fashion: the "[Name of Account Owner] IRA FBO [Name of Beneficiary]."

4. Beneficiaries frequently refer to this as their "rollover IRA," but this can create confusion.

   a. A "spousal rollover" results in an IRA that is treated, for purposes of the RMD rules, in the same manner as an IRA that was funded by the spouse or the spouse's employer; a spouse is free to combine his or her rollover IRA with the IRAs that the spouse has funded through the spouse's own deposits or the deposits of the spouse's employer.

   b. The establishment of an inherited IRA for the benefit of a non-spouse beneficiary results in an account that must be distributed over a schedule that is dictated by the RMD rules, but this schedule of distribution is never the same as the schedule that would apply to a separate IRA that was funded through the deposits of the non-spouse beneficiary or the deposits of his or her employer.

   c. A non-spouse beneficiary should never combine his or her inherited IRA with the IRAs that the non-spouse beneficiary has funded through his or her own deposits or the deposits of his or her employer.

5. Non-spouse beneficiaries can "roll over" their plan benefits to an inherited IRA.

   a. This allows the non-spouse beneficiary of a qualified plan, who might be subject to a plan provision that requires the distribution of all plan benefits over a relatively short period of time, to transfer those plan assets to an inherited IRA, from which distributions might be made in accordance with the RMD rules applicable to beneficiaries of a deceased account owner.

b. It does not allow a non-spouse beneficiary of a qualified plan to transfer the plan benefit to an IRA from which he or she may take distributions in accordance with the RMD rules applicable to the living owner of an account that was funded through his or her own deposits or the deposits of his or her employer.

c. The non-spouse "rollover" may allow for the significant deferral of income tax, but it does not allow for the more significant benefit of a spousal rollover, which is reserved for surviving spouses (as defined under the RMD rules).

d. Only surviving spouses and other DBs are permitted to perform a rollover from a qualified plan to an inherited IRA. IRC § 402(c)(9) and (11). This heightens the importance of ensuring a trust qualifies for DB status under the see-through trust rules discussed below in Section VI.A.

G. General Concepts Relating to Income in Respect of a Decedent ("IRD")

1. Because non-Roth retirement accounts represent IRD, a noncharitable beneficiary of a deceased account owner must treat account distributions in the same manner as the account owner would have, i.e., as ordinary income.

2. IRD, generally speaking, is cash or other consideration received by a beneficiary of a decedent that would have been includible in the decedent's gross income for federal income tax purposes had he or she survived to receive the income.

3. Other examples of IRD are nonqualified deferred compensation, vacation pay, and installment payments on a note received pursuant to an installment sale. *See* IRC § 691(a).

4. A taxpayer who receives IRD subject to income tax is entitled to an income tax deduction ("**IRD deduction**") equal to the federal (but not state) estate tax attributable to the income. IRC § 691(c)(1).

   a. The amount of the IRD deduction is determined by subtracting from the federal estate tax actually due the federal estate tax that would have been payable if all income in respect of a decedent, including IRAs, had not been included in the federal gross estate. Treas. Reg. § 1.691(c)-1(a)(2).

   b. The difference is then allocated proportionately to each item of IRD included in the decedent's federal gross estate. *See* IRC § 691(c)(1)(A).

   c. The deduction is not subject to the two-percent floor on miscellaneous itemized deductions but is included in the itemized

deductions that are reduced by three percent of the taxpayer's adjusted gross income in excess of certain dollar amounts.

III. RMDs During Account Owner's Lifetime and Year of Death

A. **Applicable Denominator Determines Rate of RMD**. While the account owner is alive, the RMD is determined annually by dividing the "**applicable denominator**" into the account's value as of the valuation date (December 31 in the case of an IRA or calendar year plan) in the calendar year preceding the calendar year in which the distribution has to be made. Treas. Reg. § 1.401(a)(9)-5(a)(1).

B. **Uniform Lifetime Table Determines Applicable Denominator**. Generally, the applicable denominator is determined using the Uniform Lifetime Table in Treas. Reg. § 1.401(a)(9)-9(c)(2), which is based on the account owner's age and the age of an individual ten years younger than the account owner in each distribution calendar year. Treas. Reg. § 1.401(a)(9)-5(c)(1). The table is set out in Appendix A.

C. **Special Life Expectancy Table for Owners with Younger Spouses**. If the sole DB is the employee's spouse and the spouse is more than ten years younger than the account owner, the applicable denominator is determined using the Joint and Last Survivor Life Expectancy Table in Treas. Reg. § 1.401(a)(9)-9(d), using their ages as of their birthdays in the relevant distribution calendar year. Treas. Reg. § 1.401(a)(9)-5(c)(2). To be the sole DB, the spouse must be the sole beneficiary of the account owner's entire interest at all times during the distribution calendar year, with limited exceptions due to divorce or the spouse's death. Treas. Reg. § 1.401(a)(9)-5(c)(2)(ii)-(iii).

D. **Charitable Planning with RMDs**. A qualified charitable distribution ("**QCD**") is an income-tax free direct transfer from an IRA to a qualified charity. This outline highlights just a few aspects of QCDs.

1. QCDs first became available in 2006, with an expiration date that was extended several times until QCDs were made permanent at the end of 2015.

2. QCDs are governed by IRC § 408(d)(8) and are for IRAs only; they are not an option for employer-sponsored retirement plan accounts.

3. SECURE 2.0 included two new rules for QCDs:

   a. The long-time $100,000 maximum annual QCD limit is now indexed for inflation. IRC § 408(d)(8)(G). The annual QCD limit for 2025 is $108,000.

   b. Account owners now have a one-time option to use a QCD to fund a Charitable Remainder Unitrust (CRUT), Charitable Remainder Annuity Trust (CRAT), or Charitable Gift Annuity (CGA). IRC §

408(d)(8)(F). The 2025 lifetime limit for this split-interest entity distribution is $54,000.

4. Even IRA owners whose applicable ages for RMD purposes are 72-75 can start taking QCDs at age 70-1/2. IRC § 408(d)(8)(B)(ii).

5. Donor-advised funds, supporting organizations, and private (non-operating) foundations do *not* qualify for QCD treatment. See IRC § 408(d)(8)(B)(i).

6. Timing is key. QCDs for a tax year cannot be made after December 31. Also, clients seeking to use a QCD to avoid tax on their RMD for a given year need to make sure any amount withdrawn from the IRA early in the year is distributed as a QCD. Treas. Reg. § 1.408-8(b)(3) provides that the first dollars withdrawn for a year from an IRA are treated as RMDs (commonly referred to as the "first dollar out rule"); any subsequent QCDs cannot retroactively offset an RMD taken earlier in the year.

7. The SECURE Act eliminated an upper age limitation for tax-deductible IRA contributions. As an anti-abuse measure, it also reduces an IRA owner's QCDs dollar-for-dollar by any tax-deductible IRA contributions made after attaining age 70½. IRC § 408(d)(8)(A)(i).

8. For charitably inclined clients who aren't able to itemize, QCDs can be a tax savvy way to fund their charitable gifts.[11]

E. No RMDs for Roth IRAs During Owner's Lifetime. Distributions from a Roth IRA are not required during the account owner's lifetime.

1. If the account owner's sole beneficiary is his or her surviving spouse, the spouse may either (1) do nothing and delay distributions until the Roth IRA owner would have attained the applicable age[12] or (2) do a spousal rollover/treat the deceased account owner's Roth IRA as his or her own Roth IRA (and thus delay distributions until the surviving spouse's death).

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[11] In addition to IRA owners, QCDs are available on similar terms for beneficiaries of inherited IRAs who are least age 70½ . Note that QCD eligibility in these cases is based on the *inherited IRA beneficiary's* age, not the IRA owner's age.

[12] It is unclear what the final regulations require here. Since a Roth IRA owner is not required to take any distributions even after attaining his or her applicable age, it's not clear whether or how distributions to the surviving spouse must be made after the owner's applicable age date passes. Perhaps it requires using the Uniform Lifetime Table, Single Life Table, or 10-year rule. Given this lack of clarity, for now the safest route is likely not to rely on IRC § 401(a)(9)(B)(iv)(II)'s provisions in these situations and simply rollover to an inherited Roth IRA.

2. In other cases, the RMD rules will apply after the account owner's death in the same manner as after the death of an account owner of a traditional IRA applied as though the Roth IRA owner died before his or her RBD.

See IRC § 408A(c)(5); Treas. Reg. § 1.408-8(b)(1)(ii).

F. RMD for the Year of Account Owner's Death

1. If the account owner dies after his or her RBD, and the entire RMD for the year of the account owner's death has not been distributed to the account owner before his or her death, the balance of the RMD must be paid to the account's beneficiary before the end of the year. Treas. Reg. § 1.401(a)(9)-5(c)(1).

2. Although this distribution is supposed to be taken in the year of death, the regulations now extend the grace period for taking a penalty-free corrective distribution through December 31 of the calendar year following the year of the account owner's death. Treas. Reg. § 54.4974-2(i).

3. If there are multiple beneficiaries, the final year RMD can be distributed to any of them.[13] Treas. Reg. § 1.401(a)(9)-5(d)(1)(i). If the account owner has multiple IRAs with the same beneficiaries, you can aggregate the accounts under Treas. Reg. § 1.408-8(e)(1) and pay the final RMD to just one of the beneficiaries, which enables targeting the final RMD to a low-income or charitable beneficiary. If the IRAs have differing beneficiaries, an allocation rule applies to require distribution from each IRA to a beneficiary of that IRA of a proportionate share the owner's aggregated remaining RMD, and the allocation of the shortfall to a particular IRA is made without regard to whether some of the aggregate RMD was already made to the owner from that IRA. Treas. Reg. § 1.408-8(e)(4).[14]

[13] The regulations contain no provisions addressing how the beneficiaries address this among themselves.

[14] As noted above in Section III.F, although this distribution is supposed to be taken in the year of death, the regulations now extend the grace period for taking a penalty-free corrective distribution through December 31 of the calendar year following the year of the account owner's death. Treas. Reg. § 54.4974-2(i).

Example
Owen dies on June 30, 2025, at the age of 75. He owned two IRAs at his death, one with Fidelity and one with Schwab and neither of which is a Roth IRA. On December 31, 2024, the Fidelity IRA's balance was $100,000, and the Schwab IRA's balance was $50,000. The total of the 2025 RMDs for the two IRAs is $6,097.56 ($150,000/24.6). Ann is the Fidelity IRA's beneficiary, and Bob is the Schwab IRA's beneficiary. Owen took a $3,000 distribution from the Schwab IRA during 2025 before his death. The remaining portion of Owen's 2025 RMD ($3,097.56) is allocated two-thirds to the Fidelity IRA and one-third to the Schwab IRA. Thus, in the calendar year of Owen's death, Ann is required to take an RMD of $2,065.04 from the Fidelity IRA, and Bob is required to take a further RMD of $1,032.52 from the Schwab IRA (regardless of the fact that Owen already withdrew $3,000 from that IRA).

IV. Post-Mortem Planning Options Available to Surviving Spouse

A. Complete Withdrawal

1. The spouse may withdraw all assets from the retirement account. This will be unusual, but there are circumstances where it is justifiable.

2. The surviving spouse may believe that his or her income tax situation for the period of time shortly after death justifies a complete withdrawal.

3. A relatively small account balance, or concern with administrative burdens and compliance with the RMD rules, may justify a complete withdrawal.

4. A desire to make gifts or to invest in other assets, such as personal use assets that cannot be owned in a plan or IRA (a new boat or a vacation home), may justify a complete withdrawal.

B. Spousal Rollover

1. Whether the account owner dies before or after his or her RBD, if the spouse is the beneficiary of all or part of the account, he or she may transfer the account into his or her own IRA. IRC § 402(c)(9); Treas. Reg. § 1.402(c)-2(j)(1)(i). This "**spousal rollover**" can generally be done at any time; however, special "catch-up" distributions will be required if the spouse has passed his or her own applicable age under Treas. Reg. § 1.402(c)-2(j)(4).

2. For IRAs only, both before and after the account owner's RBD, a surviving spouse who is the sole beneficiary of the IRA and has unlimited rights to withdraw from the IRA may simply elect to treat the IRA as the spouse's own rather than roll it over to a new account. Treas. Reg. § 1.408-

8(c)(1).[15] This election can be made at any time, except if the special catch-up rule under Treas. Reg. § 1.402(c)-2(j)(4) applies it can be made only after those amounts have been distributed. Treas. Reg. § 1.408-1(c)(1)(iii).

3. If the surviving spouse has already reached his or her RBD, he or she must begin receiving RMDs under the Uniform Lifetime Table in the year in which the rollover occurs, unless the rollover occurs in the year of the account owner's death and the account owner had already reached his or her RBD, in which case the spouse must take a RMD for that year, determined with respect to the deceased account owner, to the extent not distributed before the account owner's death. Treas. Reg. §§ 1.401(a)(9)-5(c)(1) and 1.402-2(j)(3)(F).

4. The IRS has approved a spousal rollover election where the surviving spouse's own revocable trust or continuing revocable trust under a joint trust (rather than a trust established solely by the decedent) was named as the beneficiary. PLR 201707001. Similar PLRs have been obtained for trusts not established by the spouse that have become irrevocable but where the spouse has the power to withdraw assets without the consent of any other person. See PLR 201423043; PLR 202040003.

5. If the surviving spouse is the only personal representative of the deceased account owner's estate and the residual beneficiary of the deceased account owner's estate, then a rollover may be possible. See PLR 200052045; PLR 200304038; PLR 200324059.

6. A spousal rollover may not be appropriate for a surviving spouse who is younger than 59½ and might need to withdraw from the retirement account for support or other needs.

    a. By rolling the assets over, the spouse who is younger than age 59½ will incur early withdrawal penalties upon a withdrawal from his or her rollover IRA.

    b. By leaving the assets in the deceased owner's account, similar withdrawals would not be subject to the early withdrawal penalties, because there is an exception for withdrawals following the account owner's death.

    c. Therefore, a young surviving spouse might choose not to roll over the deceased account owner's account balance until after he or she has reached age 59½.

[15] The surviving spouse cannot elect to treat a deceased account owner's IRA that is payable to a trust as his or her own even if the spouse is the sole beneficiary of the trust. Treas. Reg. § 1.408-8(c)(1)(ii).

C. Leave in Inherited IRA

1. Death Before RBD

a. **Spousal Election**. SECURE 2.0 Section 327(a) amended Code § 401(a)(9)(B)(iv) to provide for a "spousal election" when the spouse is the sole beneficiary:

(i) The spouse need not take any distributions until the account owner would have attained his or her applicable age. IRC § 401(a)(9)(iv)(II). Then the spouse takes distributions over the spouse's life expectancy using the Uniform Lifetime Table (rather than the Single Life Table). Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(C).

(ii) If the spouse dies prior to starting distributions, the pre-RBD death rules apply as if the surviving spouse were the account owner. Treas. Reg. § 1.401(a)(9)-3(e)(1). However, if the surviving spouse remarries, his or her new spouse will not be treated as an EDB. Treas. Reg. § 1.401(a)(9)-3(e)(2).

Under proposed regulations, the spousal election is automatic for pre-RBD account owner deaths, unless the plan provides for that as the default election. Prop. Treas. Reg. §§ 1.401(a)(9)-5(d)(3)(ii)(A).

b. **Opt Out of Spousal Election?** If the spouse can elect of the spousal election[16] and the spouse does not make the 10-year election, while the spouse is living the applicable denominator is the spouse's life expectancy under the Single Life Table and is redetermined each year. Treas. Reg. §§ 1.401(a)(9)-5(d)(2) and -5(d)(3)(iv).

(i) When the spouse dies after RMDs have commenced, the applicable denominator is the spouse's life expectancy in the calendar year of his or her death, reduced by one for each calendar year that has elapsed after the calendar year of the spouse's death. Treas. Reg. § 1.401(a)(9)-5(d)(1). Distributions must be completed within 10 years following the spouse's death. Treas. Reg. § 1.401(a)(9)-5(e)(3).

[16] The proposed regulations implementing the spousal election do not include any express language allowing the surviving spouse to opt out of the automatic spousal election for pre-RBD account owner deaths. *See* Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(A). They probably can, but without express language it's uncertain.

(ii) If the account owner's sole DB is his or her surviving spouse, the distribution must commence by the end of the calendar year in which the account owner would have reached his or her applicable age (currently, age 73), or, if later, December 31 of the calendar year following the calendar year of the account owner's death (i.e., the account owner dies during the year in which he or she reaches age 73). Treas. Reg. § 1.401(a)(9)-3(d).

(A) This can prove to be beneficial when the surviving spouse is considerably older than the account owner, as it allows the surviving spouse to delay the commencement of RMDs beyond his or her RBD to the date of his or her deceased spouse's RBD.

(B) Although the commencement of RMDs following the account owner's death would be delayed, these RMDs would be based on the surviving spouse's life expectancy rather than the Uniform Lifetime Table.

(C) Older surviving spouses might, therefore, choose to wait until the calendar year in which the account owner would have reached age 73, at which time the surviving spouse would roll the deceased account owner's plan benefit or IRA to the surviving spouse's IRA, to take advantage of the Uniform Lifetime Table rather than the Single Life Table.

(1) This approach carries some risk that income tax deferral may be lost if the surviving spouse dies before he or she has the opportunity to complete the rollover, but less so now that life expectancy payments are available to so few types of beneficiaries.

(2) If appropriate contingent beneficiaries (who will receive distributions following the surviving spouse's death) are not named, then RMDs may be accelerated.

(3) In many cases the deceased account owner's revocable trust, rather than his or her children, will be designated as the contingent beneficiary, which may result in less deferral than would be available if the children were designated by name.

(4) By rolling over the plan benefit or IRA before dying, and by naming new beneficiaries of his or her rollover IRA, the surviving spouse might have allowed his or her beneficiaries to receive RMDs over their respective life expectancies (but only if they are EDBs).

c. **Elect 10-Year Rule**. The spouse can elect the 10-year rule if the plan allows. However, catch up distributions will be required if a spousal rollover occurs after the spouse has elected to use the 10-year rule. Treas. Reg. § 1.402(c)-2(j)(4).

2. **Death After RBD**

a. **Spousal Election Allowed?** Under proposed regulations, the spousal election is not automatic for post-RBD deaths, unless the plan provides for that as the default election. Prop. Treas. Reg. §§ 1.401(a)(9)-5(d)(3)(ii)(B). Assuming these provisions mean a spousal election is allowed, then distributions start in the year following the account owner's death and are made over the spouse's life expectancy, recalculated, using the Uniform Lifetime Table. At the spouse's death, distributions continue based on the spouse's age at death, not recalculated, using the Single Life Table and subject to the 10-year limit. Prop. Treas. Reg. § 1.401(a)(9)-5(d)(3)(ii)(C)–(D).

b. **No Spousal Election**. If the spousal election is not made (or is not allowed for post-RBD deaths) and the account owner's sole DB is the account owner's spouse, the applicable denominator is the spouse's life expectancy as recalculated each year until his or her death, when it then becomes the life expectancy of the spouse determined in the calendar year of the surviving spouse's death, reduced by one for each calendar year that has elapsed after the calendar year of the spouse's death. Treas. Reg. § 1.401(a)(9)-5(d)(3)(iv).

D. Spousal Disclaimer

1. The surviving spouse may choose to disclaim his or her beneficial interest in the plan benefit or IRA, so that the plan benefit or IRA can pass to the secondary (or contingent) beneficiary.

2. A qualified disclaimer might be used to facilitate the funding of a credit shelter trust.

a. Careful consideration should be given to the funding formula in the trust document and the disclaimer; a fractional formula will be preferred to minimize income tax concerns with income in respect of a decedent.

b. If, by virtue of the disclaimer, the trust becomes the beneficiary of the plan benefit or IRA, and if the trust meets the trust requirements described below (so that the beneficiaries of the trust can be examined to determine the identity of the DBs), then RMDs will be based on the life expectancy of the oldest beneficiary of the trust rather than the Uniform Lifetime Table. This may result in the loss of income tax deferral (as compared to a spousal rollover), the cost of which must be weighed against the benefit of fully funding the credit shelter trust.

c. If, by virtue of the disclaimer, the account owner's estate becomes the beneficiary of the plan benefit or IRA, the beneficiaries of the estate cannot be considered DBs, so the RMDs will be determined as if the account owner had no DB. This will result in the loss of income tax deferral (as compared to a spousal rollover), the cost of which must be weighed against the benefit of fully funding the credit shelter trust.

3. A qualified disclaimer might facilitate the transfer of assets to other beneficiaries who might be able to take advantage of greater deferral of income taxes, if they qualify as EDBs.

4. A qualified disclaimer might facilitate the transfer of assets to charities, which might meet the planning objectives of the account owner or surviving spouse. Because of the charitable deduction, the charity might receive more than the disclaiming surviving spouse is giving up.

E. When Is the Surviving Spouse the "Sole Beneficiary" of the Account Owner's Plan Benefit or IRA?

1. If the retirement account is payable to more than one beneficiary, and the surviving spouse is one of those beneficiaries, he or she will not be treated as the account owner's sole beneficiary unless, by the BFD, the other beneficiaries have been cashed out, have disclaimed their right to receive the plan benefit or IRA, or a separate account has been created for the portion of the plan benefit or IRA to which the surviving spouse is entitled.

   a. The regulations continue to allow the separate account to be established by the end of the calendar year following the calendar year of the account owner's death. Treas. Reg. § 1.401(a)(9)-8(a).

   b. However, if one of the beneficiaries as of the BFD is not an individual, a separate account should be established for that beneficiary by the BFD to ensure that the account owner has a DB.

2. If a surviving spouse is the beneficiary of a trust created by the account owner, the spouse will not, in most cases, be the "sole beneficiary" of the plan benefit or IRA unless it is a conduit trust where the surviving spouse is the sole conduit beneficiary. In most accumulation trusts, there will likely be other countable beneficiaries. See Section VI.A below discussing

the concepts of conduit vs. accumulation trusts and how to determine which accumulation trust beneficiaries count.

V. Post-Mortem Planning Options Available to Beneficiaries Other Than the Surviving Spouse

A. Complete Withdrawal

1. The beneficiaries may withdraw all assets from the retirement account. This is not that unusual. In many cases, a complete withdrawal is justifiable.

2. The beneficiary may believe that his or her income tax situation for the period of time shortly after death justifies a complete withdrawal.

3. A relatively small account balance or concern with administrative burdens and compliance with RMD rules may justify a complete withdrawal.

4. A desire to make gifts or to invest in other assets, such as personal use assets that cannot be owned in a retirement account (a new luxury car or a vacation home), may justify a complete withdrawal.

5. Significant expenses, such as college education for children, may dictate that immediate access to the assets in the retirement account should take priority over income tax deferral.

B. Account Owner's Death Before RBD

1. **"5-Year Rule" if No DB**. If the account owner does not have a DB by the BFD, the entire account must be distributed by the end of the fifth calendar year following the calendar year of the account owner's death. IRC § 401(a)(9)(B)(ii); Treas. Reg. § 1.401(a)(9)-3(c)(2). No distribution has to be taken prior to the fifth year.

2. **"10-Year Rule" for DBs Who are Not EDBs**. If the account owner has a non-spouse DB who is not an EDB, the entire account must be distributed by the end of the tenth calendar year following the calendar year of the account owner's death. IRC § 401(a)(9)(H)(i)(I); Treas. Reg. § 1.401(a)(9)-3(c)(3). No distribution has to be taken prior to the tenth year.

3. **"Life Expectancy Payments" for EDBs Only**. If an account owner dies before reaching his or her RBD and the DB is an EDB, the retirement account can be distributed over the non-spouse EDB's life expectancy, beginning no later than the end of the calendar year after the calendar year of the account owner's death. IRC § 401(a)(9)(H)(ii); Treas. Reg. § 1.401(a)(9)-3(c)(4).

    a. The life expectancy of the non-spouse EDB is determined as of the EDB's birthday in the calendar year following the calendar

year of the account owner's death and is reduced by one year for each year thereafter. Treas. Reg. § 1.401(a)(9)-5(d)(2) and (3)(iii).

b. Per Treas. Reg. § 1.401(a)(9)-5(d)(3)(i) and (iii), the non-spouse EDB's life expectancy is determined under the Single Life Table in Treas. Reg. § 1.401(a)(9)-9(b)(1), which is set out in Appendix B.

c. If the account owner's non-spouse EDB fails to take RMDs in any of the first nine calendar years following the calendar year of the account owner's death, the regulations provide for an automatic waiver of the IRC § 4974 excise tax if the DB receives the entire remaining plan benefit or IRA by the end of the tenth calendar year following the calendar year of the account owner's death. Treas. Reg. § 54.4974-1(g)(2). Under the pre-SECURE Act regulations, distribution had to be made by the fifth calendar year since there was no 10-year rule.

d. For EDBs who are minor children of the account owner, distribution must be completed by the end of the tenth calendar year following the calendar year in which the minor child EDB reaches the age of majority, which is defined as age 21.[17] Treas. Reg. §§ 1.401(a)(9)-5(e)(4) and 1.401(a)(9)-4(e)(3).

4. **Plan May Provide a Shorter Distribution Period**. A plan may provide that the 5-year rule always applies to certain types of distributions or applies to all distributions and can apply different methods of distribution to different employees.

C. Account Owner's Death After RBD

1. **Owner's Remaining Life Expectancy if No DB**. If there is no DB by the BFD, the applicable denominator is the life expectancy of the account owner determined in the year of his or her death, reduced by one year for each year thereafter (sometimes referred to as the account owner's "ghost life expectancy"). Treas. Reg. §§ 1.401(a)(9)-5(d)(1)(iii) and (3)(ii). This might be the case where children or grandchildren are named as beneficiaries along with charities or other beneficiaries that do not qualify as DBs and the charity's share is not paid out by the September 30 BFD deadline or separate accounting requirements are not satisfied by the December 31 separate account deadline.[18]

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[17] The planning community was initially concerned this age may be set at age 18 instead of 21. Others hoped or speculated it might to or closer to 26 for children still in school.

[18] The author suggests establishing a separate account for the charity by the September 30 BFD deadline to avoid arguments with account providers.

2. **More Complicated for DBs Who are Not EDBs**. If an account owner dies after his or her RBD, and the account owner has a DB by the BFD who is not an EDB, distributions must be completed by the tenth calendar year following the year of the account owner's death. Treas. Reg. § 1.401(a)(9)-5(e)(2). In addition, the regulations impose the "at least as rapidly rule" ("**ALAR**") to require distributions during years 1-9 following the account owner's death after his or her RBD. This contrasts with a pre-RBD death, where no distribution is required prior to the tenth year.

   a. Under the ALAR, the applicable denominator for distributions in years 1-9 following the account owner's death equals the greater of (x) the DB's life expectancy, determined in the year following the calendar year of the account owner's death, or (y) the account owner's remaining life expectancy, determined in the year of the account owner's death, in each case reduced by one year for each year thereafter, commencing by the end of the calendar year following the calendar year of the account owner's death. Treas. Reg. §§ 1.401(a)(9)-5(d)(1)(ii) and -5(d)(3)(ii)-(iii).

   b. The Service's decision to combine the ALAR with the 10-year rule for post-RBD deaths shocked planning professionals when the proposed version of the now-final regulations was issued in February 2022. Most had interpreted the statute's requirements differently, and many non-EDB DBs chose not to take distributions for post-RBD deaths prior to the regulations' issuance.

   c. The Service issued relief from the IRC § 4974 excise tax for 2021 through 2024 RMDs in the form of Notices 2022-53, 2022-45, 2023-54, and 2024-19. The Preamble to the final regulations confirms that the ALAR will apply for RMDs starting January 1, 2025. In a key footnote, the Service clarified that while the relief does not require distributions missed during 2021 through 2024 to be made up, it also doesn't extend the 10-year deadline by which distributions must be made.[19]

3. **Rules for EDBs**. In general, the post-death RMDs for EDBs are made over the longer of (x) the DB's life expectancy, determined in the year following the calendar year of the account owner's death, or (y) the account owner's remaining life expectancy, determined in the year of the account owner's death, in each case reduced by one year for each year thereafter, commencing by the end of the calendar year following the

[19] For example, if an account owner died in 2020, then in 2025 six years remain in the 10-year period without regard to whether the DB took distributions in 2021 through 2024. The DB must take annual RMDs starting in 2025 and complete distribution of the remaining account balance in 2030 (if not completed sooner). See footnote 11 of the final regulations' Preamble, 89 Fed. Reg. at 58897 (Jul. 19, 2024).

calendar year of the account owner's death. Treas. Reg. §§ 1.401(a)(9)-5(d)(1)(ii) and -5(d)(3)(ii)-(iii). However, the RMDs are subject to the following additional limits:

a. **10-Year Limit Following EDB's Death**. Distribution must be completed by the tenth calendar year following the EDB's death. Treas. Reg. § 1.401(a)(9)-5(e)(3).

b. **10-Year Limit after Minor Child EDB Reaches Age 21**. The same as for pre-RBD deaths, distribution must be completed by the end of the tenth calendar year following the calendar year in which the minor child EDB reaches the age of majority, which is defined as age 21. Treas. Reg. §§ 1.401(a)(9)-5(e)(4) and 1.401(a)(9)-4(e)(3). In addition, distributions must be taken annually in the years leading up to the final distribution date.

c. **Older EDBs**. The proposed SECURE Act regulations included an odd rule requiring a non-spouse EDB who is older than the account owner to complete distributions by the end of the calendar year in which the EDB's life expectancy is equal to or less to one, which will be shorter than the account owner's ghost life expectancy. This position surprised and disappointed the planning community because it meant a non-DB might be treated much more favorably than an EDB. Fortunately, the Service listened to commentors and eliminated this provision from the final regulations. Older EDBs using the account owner's ghost life expectancy (because it's longer than their own) therefore do not have to complete distribution until the ghost life expectancy is less than or equal to one.

D. Multiple Beneficiaries

1. **Generally**. If an account owner has more than one EDB or regular DB (and there are no other countable beneficiaries), the applicable denominator is determined using the account owner's oldest EDB or regular DB for pre- or post-RMD distributions where the beneficiary's life expectancy is relevant. Treas. Reg. § 1.401(a)(9)-5(f)(1)(i).

2. **Special Rule for AMBTs**. If the beneficiary is an AMBT, you use the oldest disabled or chronically ill beneficiary's life expectancy, even if other beneficiaries are older. Treas. Reg. § 1.401(a)(9)-5(f)(1)(ii).

3. **Special Rule for Final Distribution Date When at Least One DB is Minor Child EDB.** If any of the account owner's DBs is a minor child EDB, the regulations provide that you use the oldest DB's life expectancy for determining distributions, and the 10-year cutoff for final distribution doesn't apply until the youngest minor child EDB dies or reaches age 21. Treas. Reg. §§ 1.401(a)(9)-4(e)(2)(ii) and 1.401(a)(9)-5(f)(2)(i)–(ii). This is another example where the Service listened to commentors who requested that the 10-year cutoff be based on the youngest minor child

EDB attaining age 21 instead of the oldest minor EDB as in the proposed regulations. Many families use a "pot trust" benefitting all children until the youngest reaches adulthood. But in situations where there's a significant gap in the children's ages, the proposed regulations would have created very different payout periods depending on the age of a minor child EDB's oldest sibling when the account owner dies.

4. **Separate Account Treatment.** When the deceased account owner has designated more than one non-spouse beneficiary, it may be important for each beneficiary to take advantage of the opportunity to treat his or her separate share of the decedent's IRA as a separate account.

    a. This is likely less imperative now that only EDBs qualify for life expectancy payouts and all other DBs are subject to the 10-year rule.

    b. Still, it's worth considering when a single older EDB is listed with a number of other EDBs in the same generation (i.e., "ten percent to my mother, with the balance in equal shares to my siblings").

    c. Due to the ALAR, it might also be worth considering for post-RBD deaths when the DBs have a wide age spread.

    d. Even without significant age differences among EDBs, separate account treatment can allow each beneficiary to determine RMDs from his or her separate inherited IRA based on his or her age, rather than the age of another older beneficiary. This may reduce confusion, even if the tax benefit associated with deferral is not significant.

    e. Remember that separate account treatment is unavailable to the separate interests of beneficiaries under a trust unless certain requirements discussed in Section VI.A.5 are met.

E. Issues to Consider When Dealing with Non-Spouse Beneficiaries

1. *Consult with beneficiaries regarding personal income tax status and need/desire for accelerated distribution of account assets*.

2. *Explain to the beneficiaries the difference between their own employer-sponsored retirement accounts and IRAs and the inherited IRAs that are established for their benefit following the death of the account owner*.

    a. A beneficiary of an inherited IRA will not be allowed to wait until his or her RBD to begin taking RMDs.

    b. If life expectancy-based RMDs are available (i.e., EDBs), they will be based on a fixed single life expectancy, determined in the year after the account owner's death, not on the Uniform Life Table.

c. Where separate account treatment is not available, the life expectancy may be that of another older beneficiary.

d. A non-spouse beneficiary's "rollover" to an inherited IRA is very different from a spousal rollover, but the distinction is often lost on clients.

3. *For pre-RBD deaths, consider life expectancy payout vs. option to pay out all assets by the end of the tenth year following death*. For many DBs and EDBs, and for smaller balances, the 10-year rule will represent a good compromise between competing concerns with income tax deferral and administrative complexity.

4. *Choose the best practical alternative for beneficiaries*.

a. Not all beneficiaries are similarly situated with regard to income taxes, investment goals and risk tolerances, financial need, etc.

b. Not all financial institutions can or will offer distribution options that are appropriate for a particular beneficiary.

c. Recognize the bias towards deferral that exists in the financial industry and the legal profession, and, when appropriate, dismiss this bias in favor of more objective advice that serves the needs of the beneficiary.

5. *To be safe, pay out all benefits to charities and significantly older DBs (who are not EDBs) before the BFD*.

VI. Trust as Beneficiary

A. RMDs After the Year of the Account Owner's Death

1. **Regulations Explicitly Adopt "See-Through Trust," "Conduit Trust," and "Accumulation Trust" Terminology**. If a trust is the beneficiary of a retirement account, the question arises as to which beneficiaries of the trust must be considered in determining whether any beneficiary is not a DB or EDB and thus disqualifies the trust from favored DB or EDB treatment.

a. If at least one beneficiary of the trust that must be considered for this purpose is not an individual, such as a charitable organization, then the account owner will be treated as not having a DB.

b. Under the pre-SECURE Act regulations, all current and potential beneficiaries were required to be considered, except for those classified as "mere potential successors," a term that wasn't well defined.

c. The planning community coined the terms "see-through trust," "conduit trusts," and "accumulation trusts" to help in analyzing these situations. Although the SECURE Act itself makes no mention of this terminology, the regulations have now explicitly adopted it.

2. **General Requirements for "Seeing Through" a Trust to Treat Its Beneficiaries as DBs or EDBs**. To qualify for any sort of preferential RMD treatment, the trust must meet the requirements to qualify as a "see-through trust" as defined in the regulations. All non-disregarded beneficiaries of a trust must be DBs or EDBs. The trust must satisfy the following four requirements to be a see-through trust:

   a. It must be a valid trust or would be a valid trust under state law if it had a corpus;

   b. It is irrevocable or will, by its terms, become irrevocable at the account owner's death;

   c. The trust beneficiaries entitled to the retirement account's benefits must be identifiable; and

   d. For qualified plans only, certain documentation requirements are satisfied by October 31 of the year following the year of the account owner's death. As discussed below, the documentation requirements do not apply to IRAs.

   Treas. Reg. § 1.401(a)(9)-4(f)(2). It is very important to qualify as a see-through trust for employer-sponsored plan accounts because only DBs (including EDBs) are entitled to rollover such accounts to IRAs. Without access to a rollover, the account will be subject to whatever distribution option the employer-sponsored plan chooses to offer, and those options are typically limited.

3. **See-Through Trust Documentation Requirements (Employer-Sponsored Plans Only**. To satisfy the documentation requirements, the trustee must furnish to the plan administrator (for an employer-sponsored plan) by October 31 of the calendar year following the calendar year of the account owner's death either:

   a. A copy of the full trust instrument; or

   b. A list of all beneficiaries of the trust as of the BFD with a description of their conditions on their entitlement sufficient to establish who the beneficiaries are. In addition:

      (i) The trustee must certify that the list is complete and that the other three requirements for qualifying as a see-through trust are satisfied; and

(ii) The trustee must agree to provide a copy of the trust instrument to the plan administrator upon request.

Treas. Reg. § 1.401(a)(9)-4(h). The safer course for meeting the documentation requirement would appear to involve the delivery of the entire trust document.

Note that similar trust documentation rules apply to married account owners seeking more favorable lifetime RMD treatment factoring in their spouse's life expectancy but who name a trust benefiting the spouse as their beneficiary instead of the spouse directly. Treas. Reg. § 1.401(a)(9)-4(h)(2).

4. **No Documentation Requirement for IRAs**. Treas. Reg. § 1.408-8(b)(4)(ii) eliminates any requirement to provide trust documentation to IRA providers. This is because IRA providers are not responsible for accurately determining RMDs,[20] and per Treas. Reg. § 1.408-8(e) account owners may take the total of the RMDs calculated separately for each their IRAs from any one or more of their IRAs.

> *Example*
> Assume that an account owner has four IRAs and that each IRA has an account balance as of the end of the previous calendar year of $500,000, for a total amount in all four IRAs of $2,000,000. Assume also that the applicable denominator is 10 years, so the RMD will be $200,000 (10% of $2,000,000). The account owner could take the aggregate RMD of $200,000 (10% of $2,000,000) from one IRA, $50,000 from each IRA, or any variation thereof.

a. Consequently, each IRA provider may never know whether the account owner was taking his or her RMD in any given year.

b. Inherited IRAs may not be aggregated with IRAs in the individual's own name, but IRAs inherited from the same decedent may be aggregated for purposes of determining the RMDs from all of such IRAs and the RMD may be taken from any of such inherited IRAs.

5. **Separate Account Rule for Trusts**. Separate account treatment is unavailable for trusts unless (i) specific subtrusts for each of the desired

[20] Treas. Reg. § 1.408-8(f) imposes RMD reporting requirements on IRA providers. Information must be reported to both the account owner and the IRS. IRS Notice 2002-27 requires IRA providers to either calculate or offer to calculate the RMD for account owners. However, they are not obligated to correctly calculate the amount of the RMD since they can use certain assumptions about the account's beneficiary and account balance that may not be accurate. Form 5498 is used for the IRS reporting requirement and can also be used as the account owner's notice.

separate interest beneficiaries are directly named as the beneficiary on the retirement account's beneficiary designation form or (ii) the trust is "immediately divided" into separate see-through trusts upon the account owner's death, provided there is no discretion over the division of the retirement account among the subtrusts.[21] Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii). The second exception is a welcome departure from prior law, which did not allow separate account treatment when the beneficiary designation form simply named a trust (sometimes referred to by planners as a "funding trust") that splits into separate subtrusts or shares for different beneficiaries. To meet the new "immediately divided" exception:

a. The trust must terminate as of the date of the account owner's death; and

b. There can be no discretion in allocating retirement account among the subtrusts.

Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(C).[22] This new exception should resolve a common trap for the unwary. However, drafters should consider overriding—at least for retirement accounts—any "pick and choose" powers that state law may automatically provide to trustees.[23]

Example
The "John Doe Living Trust" divides into three subtrusts following the grantor's death, one for each of the grantor's three minor children. If the beneficiary designation form for the retirement account simply names the "John Doe Living Trust" as the beneficiary (*and – very importantly – assuming the trustee has no discretion over allocating the account among the subtrusts*), the RMD for each subtrust can be calculated separately using its own beneficiary's life expectancy, and the final distribution date for each subtrust's interest in the retirement account will be based on its own beneficiary's death or reaching the age of majority. Otherwise, all RMDs must be calculated using the oldest child's life expectancy and the account must be fully distributed within 10 years after the oldest child dying or turning 21, regardless of whether separate inherited IRAs are established for each subtrust by December 31 of the year following the account owner's year of death.

[21] This newly broadened rule eliminated the need to distinguish between two types of AMBTs as the Service had initially provided in its proposed guidance under the SECURE Act.

[22] The new proposed regulations clarify that this exception is also available to beneficiaries receiving an outright distribution of their interest, again on the condition that the portion of the account allocated to them not be discretionary. Prop. Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(C) and (D).

[23] See, for example, Va. Code § 64.2-778(A)(23), which is an unaltered version of Uniform Trust Code § 816(22).

6. Which Beneficiaries of a See-Through Trust Matter (i.e., "Count")?

a. **It Depends on Classification as a Conduit Trust vs. Accumulation Trust**. The regulations are now much more specific than prior law and divide see-through trusts into two categories for determining the relevant beneficiaries:

(i) **Conduit Trusts**. All distributions from accounts subject to the RMD rules must be paid directly to or for the benefit of the specified beneficiaries upon receipt by the trustee. Treas. Reg. § 1.401(a)(9)-4(f)(1)(ii)(A).

(A) The regulations confirm that a conduit trust can have more than one distribution beneficiary. Thus, you can have a "sprinkling" conduit trust giving the trustee discretion to divide the distribution among multiple beneficiaries so long as in the aggregate the entire distribution is distributed upon receipt.

(B) The requirement to pay all account distributions means just that — any and all account distributions, not just RMDs. They're essentially flow-throughs. Account distributions cannot be accumulated inside conduit trusts for future distribution to trust beneficiaries.

(C) Conduit trusts can be particularly onerous post-SECURE Act since distributions will often need to be completed within 10 years of the account owner's death.

(D) However, conduit trusts may still be preferred in limited circumstances, such as a blended family where the account owner wants the control of a marital trust but is also okay providing a potentially significant annual benefit to support the surviving spouse. In this situation, a conduit trust for the spouse's sole benefit can provide extra favorable treatment due to other trust beneficiaries being disregarded — allowing the use of a delayed RBD in some cases and annually recalculated life expectancy. Treas. Reg. §§ 1.401(a)(9)-3(d) and -5(d)(2)(iv).

(ii) **Accumulation Trusts**. An "**accumulation trust**" is a see-through trust that's not a conduit trust. Treas. Reg. § 1.401(a)(9)-4(f)(1)(ii)(B). Essentially, it's a trust that's allowed or required to accumulate any portion of a

distribution from a retirement account subject to the RMD rules.

(A) Most account owners will want an accumulation trust to achieve their non-tax planning goals. Even if the RMD rules apply to require full distribution of a retirement account to the trust, accumulation trusts are not required to immediately distribute the account distributions to the trust beneficiaries. There may be income tax savings reasons for doing so, but with an accumulation trust the trustee can have flexibility to let the account owner's other goals take priority — such as ongoing asset management and creditor protection.

(B) The planning community was initially concerned that you might not be able to have more than one beneficiary of an accumulation trust other than an AMBT and still receive favored EDB treatment. Fortunately, the regulations alleviated that concern in the most common planning scenario — a trust benefitting the account owner's children where some of the children are already over age 21. As discussed above, Treas. Reg. § 1.401(a)(9)-5(f)(2)(ii) provides a welcome exception in the circumstances to the general concept of one non-EDB spoiling the bunch.

b. **Primary Beneficiaries Always Count**. Any beneficiary who could receive amounts in the trust representing the account owner's interest in the retirement account that are neither contingent upon, nor delayed until, the death of another trust beneficiary who did not predecease (and is not treated as having predeceased) the account owner is always counted. Treas. Reg. § 1.401(a)(9)-4(f)(3)(i)(A).

(i) This outline refers to these types of beneficiaries as "primary beneficiaries."

(ii) This term encompasses all of a trust's current beneficiaries — both those entitled to mandatory distributions and those entitled to discretionary distributions. It can also encompass a beneficiary whose interest isn't based on the death of another beneficiary. For example, a beneficiary who becomes entitled to an interest based solely on the passage of time.

(iii) With a conduit trust, all beneficiaries other than primary beneficiaries can be disregarded. As noted above, the

regulations confirm a conduit trust can have multiple beneficiaries.

c. **For Accumulation Trusts, Some or All Secondary Beneficiaries Count**. Any beneficiary of an *accumulation trust* that could receive amounts in the trust representing the account owner's interest in the account that were not distributed to primary beneficiaries. Treas. Reg. § 1.401(a)(9)-4(f)(3)(i)(B).

(i) This outline refers to these types of beneficiaries as "secondary beneficiaries."

(ii) Secondary beneficiaries generally encompass a trust's non-current beneficiaries, specifically those whose interests are contingent on another beneficiary's death. Typically, these are the trust's first line remainder beneficiaries.

(iii) By definition, conduit trusts have no secondary beneficiaries.

(iv) Secondary beneficiaries who can take solely because of another secondary beneficiary's death can be disregarded unless the other secondary beneficiary:

(A) Predeceased the account owner (or is treated as predeceasing the account owner, such as due to a qualified disclaimer); or

(B) Is also a primary beneficiary.

Treas. Reg. § 1.401(a)(9)-4(f)(3)(ii)(A). You can generally think of these beneficiaries as a trust's alternate remainder beneficiaries, and they're disregarded unless they are themselves a primary beneficiary or a remainder beneficiary ahead of them is already deceased at the account owner's death or makes a qualified disclaimer.

(v) *Caveat Regarding Common Sprinkling Trust Design*: Accumulation trusts are often drafted to allow sprinkling among a certain primary beneficiary and his or her descendants prior to the trust's termination and distribution to final beneficiaries. Under the regulations, having the descendants in the mix for current distributions appears to make them primary beneficiaries under Treas. Reg. § 1.401(a)(9)-4(f)(3)(i)(A), opening up a new level of countable secondary beneficiaries behind them under Treas. Reg. § 1.401(a)(9)-4(f)(3)(i)(B). If any of those secondary beneficiaries aren't DBs (for example, a contingent remainder beneficiary that's a charity, or a

non-see-through trust), the trust may not qualify for favored RMD treatment as desired. An Age 31 Trust (discussed immediately below) would solve this problem, allowing you to disregard the secondary beneficiaries, but if that design doesn't work you must be careful who's named as an alternate remainder beneficiary.[24] If you want to continue the trust past age 31, you should include a "last person standing" provision where the retirement account (including accumulations) would be distributed to the last living descendant, which provides the account from having a beneficiary other than a DB or EDB (i.e., a non-individual beneficiary).

d. **Special Rule for Age 31 Trusts Allows Secondary Beneficiaries to Be Disregarded**. You can disregard any other trust beneficiary of a trust where a primary beneficiary is entitled to receive full distribution of amounts in the trust representing the retirement account interest by age 31, unless the other trust beneficiary is also a primary beneficiary. Treas. Reg. § 1.401(a)(9)-4(f)(3)(ii)(B).

(i) This outline refers to this type of trust as an "Age 31 Trust."

(ii) Unlike the EDB rules, the primary beneficiary does not have to be a child of the account owner for the Age 31 Trust rule to apply.

(iii) This rule prevents the 5-year rule from applying to common trust designs where the alternate remainder beneficiary is a charity or other non-individual. For post-RBD deaths, it also prevents an older DB's shorter life expectancy from applying in determining the RMDs payable to the Age 31 Trust.

e. **Can a See-Through Trust Distribute for Trust Beneficiary's Benefit Instead of Directly?** The regulations clarify that a trust still qualifies as a see-through trust regardless of whether trust distributions are payable directly to the EDB or DB or for such beneficiary's benefit. The regulations give the express example of a trust having the account owner's minor child as a beneficiary

[24] During the rulemaking process leading up to the new regulations, a commentor asked the Service was asked to provide relief in these situations and not count the sprinkling beneficiaries as primary beneficiaries when their interests are discretionary only and subordinated to another primary beneficiary's interest, but the Service declined to do so and expressly noted the Age 31 Trust exception as an alternative. See Comment No. 11 from *American College of Trust and Estate Counsel ("ACTEC") Comments and Recommendation Regarding Proposed Regulations Published in IRS REG-105945-20* available online at *https://www.actec.org/assets/1/6/2022_05_24_ACTEC_Comments_on_Proposed_Regulations_IRS_REG-105954-20.pdf* and the final regulations' Preamble, 89 Fed. Reg. 58886 at 58894–58895 (Jul. 19, 2024)

where the trust's distributions are payable to a custodial account (e.g., an UTMA account) for the child's benefit. Treas. Reg. § 1.401(a)(9)-4(f)(3)(iv).

f. **Restriction on Payment of Expenses**

(i) It is helpful if the terms of the trust direct that, after the BFD, retirement account funds distributed to the trust may not be used to pay debts or expenses of the account owner's estate, including federal and state estate and death taxes; otherwise, the account owner may not be treated as having a DB because the account owner's estate could be a countable beneficiary.

(ii) In the absence of such a provision, trustees should administer trusts in a manner that will ensure that, after the BFD, retirement account distributions to the trust may not be used to pay debts or expenses of the account owner's estate, including federal and state estate and death taxes.

(A) Establishing and funding inherited IRAs on or before the BFD can accomplish this result. Treas. Reg. § 1.401(a)(9)-4(c)(1).

(B) If retirement account funds may be needed to pay debts or expenses of the account owner's estate, they might be withdrawn and placed in a taxable account before the inherited IRAs are established.

g. **Powers of Appointment and Trust Modifications Can Cause Other Beneficiaries to Be Counted or Disregarded**. As discussed immediately below, a trust beneficiary that may be added or removed in connection with an exercise or release of a power of appointment given to an individual under the trust or modification of the trust (such as through a court reformation or a permitted decanting) will count — or not count, as applicable — depending on the beneficiary's status as of the BFD.

7. **Identifiability of Trust Beneficiaries**. As noted above, one of the requirements to qualify for favorable "see-through" trust status is that the trust beneficiaries be identifiable. The regulations provide some clarifying and surprisingly generous rules in this regard.

a. **Specificity**. A beneficiary need not be identified by name, provided the person is identifiable. For example, a designation of the account owner's children is sufficient even if they aren't specified by name. Treas. Reg. § 1.401(a)(9)-4(a)(3) and (f)(5)(i).

b. **Powers of Appointment ("POA")**. If the POA given to an individual by a trust is exercised or released in favor of one or more identifiable beneficiaries by the BFD, those beneficiaries count. Similarly, if the powerholder restricts the power so that it can be exercisable only in favor of two or more identifiable beneficiaries, all of the identified beneficiaries count. If the power isn't exercised or restricted in favor of one or more identifiable beneficiaries by the BFD, then each taker in default counts. Treas. Reg. § 1.401(a)(9)-4(f)(5)(ii)(A).

c. **Trust Modification**. Many state laws now have broad trust modification provisions. These will not cause a trust to fail the identifiability requirement merely because it can be modified after the account owner's death (such as through a court reformation or a permitted decanting). Prop. Treas. Reg. § 1.401(a)(9)-4(f)(5)(iii)(A). The regulations provide that trust beneficiaries removed by the BFD are disregarded. Beneficiaries added by the BFD are counted.

d. **Effect of POA or Modification After BFD**. Addition of a trust beneficiary after the BFD will not cause the trust to fail the identifiability requirement. However, the multiple beneficiary rules for determining the amount of the year's RMD will take the new beneficiary into account beginning in the calendar year after the year in which the beneficiary is added. Similarly, DB and EDB determinations will take the new beneficiary into account as well as all countable trust beneficiaries before the new beneficiary's addition. Treas. Reg. § 1.401(a)(9)-4(f)(5)(iv). The regulations also provide a grace period delaying full distribution until the end of the following calendar year if a trust beneficiary's addition in a calendar year would otherwise require full distribution in that calendar year or an earlier calendar year. Treas. Reg. § 1.401(a)(9)-4(f)(5)(v).

8. **Applicable Multi-Beneficiary Trusts ("AMBTs")**. A detailed discussion of the rules for AMBTs is beyond the scope of this outline. As noted above, AMBTs are an exception allowing EDB treatment for a see-through trust where fewer than all the countable trust beneficiaries are EDBs, although generally all must at least be DBs.[25] Treas. Reg. § 1.401(a)(9)-4(g). Understanding the SECURE Act's AMBT rules is important if your client is likely to have a disabled or chronically ill

[25] Section 337 of SECURE 2.0 modified IRC § 401(a)(9)(H)(v) to add a narrow exception for distributions to charitable organizations described in IRC § 408(d)(8)(B)(i) (i.e, charities to which a "qualified charitable distribution" can be made under IRC § 408 — so 501(c)(3) orgs but not private non-operating foundations, donor-advised funds, or supporting organizations).

beneficiary. Some planners are deciding to build AMBT provisions into all trusts "just in case."

B. Post-Mortem Planning Options Available to Trustees When the Trust Beneficiaries Do Not Qualify as DBs

1. If the see-through trust requirements are not met, or if they are met and it is determined that the account owner has any countable non-DBs as of the BFD, then the retirement account assets will need to be distributed as if the account owner had no DB. For example, this might occur if a charity remains as a countable trust beneficiary as of the BFD, assuming separate account treatment isn't available.

2. The options available to the trustee where the account owner is determined to have no DBs will depend upon whether the account owner died before or after his or her RBD.

    a. If the account owner died before his or her RBD and does not have a DB by the BFD, the account must be fully distributed by the end of the fifth calendar year following the calendar year of the account owner's death. IRC § 401(a)(9)(B).

    b. If the account owner died after his or her RBD and there is no DB by the BFD, the applicable denominator is the life expectancy of the account owner determined in the year of his or her death, reduced by one year for each year thereafter. Treas. Reg. §§ 1.401(a)(9)-5(d)(1)(iii) and -5(d)(3)(i)-(ii). For account owners who die in or before the year in which they would turn age 89 (life expectancy: 6.1 years), using the account owner's remaining life expectancy will allow for a distribution over more than five years.

3. When it is possible to do so, the Trustee should consider making an election to treat the trust and the deceased account owner's estate as a single taxable entity under IRC § 645.

    a. This will allow the trust to report its income by reference to the estate's fiscal year.

    b. In the case of a lump sum withdrawal, this will allow the trust to take advantage of deferral opportunities that result from income distributions to beneficiaries being treated as having been made on the last day of the trust's fiscal year.

C. QTIP Trust as Beneficiary

1. With the increase in the applicable exclusion amount, the likelihood that plan benefits or IRA assets will pass to a marital trust is reduced. In cases where the deceased account owner wishes to control the ultimate disposition of the trust assets, however, attention must be paid to the rules

applicable to qualified terminable interest property ("**QTIP**") trusts as beneficiaries.

2. Unless the QTIP trust is designed as a conduit trust requiring all amounts withdrawn from the retirement account to be distributed upon receipt by the trustee to the spouse (and no other beneficiary), the QTIP trust most likely won't receive EDB treatment unless at least one of the account owner's children is a beneficiary and under age 21 at the account owner's death or the trust qualifies as an AMBT, since generally speaking all countable beneficiaries must be EDBs to qualify for that. Further, cutting off benefits upon a spouse's remarriage could blow the trust's favored RMD treatment because the trust's alternate beneficiaries will be countable due their right to receive benefits not being contingent solely on the surviving spouse's death as required for noncountable status under Treas. Reg. § 1.401(a)(9)-4(f)(3)(ii)(A) — since they could take on the spouse's remarriage not just the spouse's death. If distributions based on the spouse's life expectancy are important to your client, don't use a remarriage restriction.[26]

3. For the QTIP trust to get the spousal benefits of delaying distributions until the account owner would have turned 73[27] and using the spouse's annually recalculated life expectancy, the spouse must be the trust's sole countable beneficiary applying the rules of Treas. Reg. § 1.401(a)(9)-4(f). The spouse is unlikely to be sole countable beneficiary unless the trust is a conduit trust with all retirement account distributions payable solely to the spouse.

4. To qualify for the marital deduction, the QTIP trust must either (i) mandate that trustee annually withdraw all trust accounting income from the retirement account and distribute it through the trust to the spouse or (ii) give the spouse the power, exercisable annually, to compel the trustee to do so. Rev. Rul. 2006-26, 2006-22 I.R.B. 939.

    a. This requirement applies even in years where no RMD is required (e.g., because the 5- or 10-year rule applies to the account owner's death before the RBD or when the trust qualifies as an EDB with special spouse delayed RBD).

    b. In states that have adopted the unaltered Uniform Fiduciary Income and Principal Act ("**UFIPA**"), the annual trust accounting income of the retirement account in these situations is either (i) the retirement account's actual internal income determined as if the retirement account was a trust subject to UFIPA or (ii) if actual

[26] Whether such a provision may be separately problematic under any particular state's law as an impermissible restraint on marriage is beyond the scope of these materials.

[27] Per SECURE 2.0, age 75 for account owners born in 1960 or later.

internal income can't be determined, it's 4% of the retirement account's preceding December 31 value.[28]

VII. Estate as Beneficiary

A. **No DB if Estate Named**. An account owner will not have a DB if his or her estate is the named beneficiary, even though an individual becomes entitled to receive the benefit by the BFD. Treas. Reg. §§ 1.401(a)(9)-4(a)(3) and -4(b).

B. **Post-Death RMDs Depend on Whether Death Occurred Before or After RBD**. The options available to the executor or administrator will depend upon whether the account owner died before or after the RBD.

1. If the account owner died before the RBD and does not have a DB by the BFD, the account owner's plan benefits or IRAs must be distributed by the end of the fifth calendar year following the calendar year of the account owner's death. IRC § 401(a)(9)(B)(ii).

2. If the account owner died after the RBD and there is no DB by the BFD, the applicable denominator is the remaining (or "ghost") life expectancy of the account owner determined in the year of his or her death, reduced by one year for each year thereafter. Treas. Reg. §§ 1.401(a)(9)-5(d)(1)(iii) and (3)(i)-(ii). For account owners who die in or before the year in which they would turn age 91 (life expectancy: 5.3 years), using the account owner's ghost life expectancy will allow for a distribution over more than five years.

C. **Selecting Estate's Fiscal Year**. The executor or administrator should carefully select the estate's fiscal year and take care in timing the withdrawal of the plan benefit or IRA, to take advantage of deferral opportunities that result from income distributions to beneficiaries being treated as having been made on the last day of the estate's fiscal year.

D. **When to Close the Estate?** The executor or administrator must evaluate costs and benefits associated with keeping the estate open until the end of the RMD period; the cost of doing so may outweigh the benefit of income tax deferral.

E. **Spousal Rollover?** If the surviving spouse is the only personal representative and the only residual beneficiary of the estate, a spousal rollover should be considered. See PLRs 200052045, 200304038, and 200324059.

[28] For example, see Va. Code § 64.2-1056(B).

APPENDIX A
UNIFORM LIFETIME TABLE

Age of the Participant	Applicable Denominator*	Applicable Percentage
72	27.4	3.65%
73	26.5	3.77%
74	25.5	3.92%
75	24.6	4.07%
76	23.7	4.22%
77	22.9	4.37%
78	22	4.55%
79	21.1	4.74%
80	20.2	4.95%
81	19.4	5.15%
82	18.5	5.41%
83	17.7	5.65%
84	16.8	5.95%
85	16	6.25%
86	15.2	6.58%
87	14.4	6.94%
88	13.7	7.30%
89	12.9	7.75%
90	12.2	8.20%
91	11.5	8.70%
92	10.8	9.26%
93	10.1	9.90%
94	9.5	10.53%
95	8.9	11.24%
96	8.4	11.90%
97	7.8	12.82%
98	7.3	13.70%
99	6.8	14.71%
100	6.4	15.63%
101	6	16.67%
102	5.6	17.86%
103	5.2	19.23%
104	4.9	20.41%
105	4.6	21.74%
106	4.3	23.26%
107	4.1	24.39%
108	3.9	25.64%
109	3.7	27.03%
110	3.5	28.57%
111	3.4	29.41%
112	3.3	30.30%
113	3.1	32.26%
114	3	33.33%
115	2.9	34.48%
116	2.8	35.71%
117	2.7	37.04%
118	2.5	40.00%
119	2.3	43.48%
120+	2	50.00%

*This table uses the 2024 final regulations' terminology. The prior regulations used the phrase "distribution period" for this column.

Note: This table is contained in Treas. Reg. § 1.401(a)(9)-9(c) and reflects updates made in 2020 effective for distribution calendar years beginning on or after January 1, 2022. The applicable denominator is the joint and last survivor expectancy of an individual with an age in the first column and a beneficiary 10 years younger than the participant. The applicable percentage, which is not included in the regulations, is the percentage, rounded to two decimal places, determined by dividing the applicable denominator into 100. This is the percentage of a participant's plan benefit or IRA balance that must be distributed by the end of each distribution calendar year, except the distribution for the first distribution calendar year, which can be deferred until April 1 of the following calendar year. However, if the participant's sole beneficiary is a spouse who is more than ten years younger than the participant, the applicable denominator is their joint and last survivor expectancy, determined each year, while both of them are alive. The joint and last survivor expectancy is determined under the Joint and Survivor Table contained in Treas. Reg. § 1.402(a)(9)-9(d).

APPENDIX B
SINGLE LIFE TABLE

Age	Life Expectancy
0	84.6
1	83.7
2	82.8
3	81.8
4	80.8
5	79.8
6	78.8
7	77.9
8	76.9
9	75.9
10	74.9
11	73.9
12	72.9
13	71.9
14	70.9
15	69.9
16	69
17	68
18	67
19	66
20	65
21	64.1
22	63.1
23	62.1
24	61.1
25	60.2
26	59.2
27	58.2
28	57.3
29	56.3
30	55.3
31	54.4
32	53.4
33	52.5
34	51.5
35	50.5
36	49.6
37	48.6
38	47.7
39	46.7
40	45.7

Age	Life Expectancy
41	44.8
42	43.8
43	42.9
44	41.9
45	41
46	40
47	39
48	38.1
49	37.1
50	36.2
51	35.3
52	34.3
53	33.4
54	32.5
55	31.6
56	30.6
57	29.8
58	28.9
59	28
60	27.1
61	26.2
62	25.4
63	24.5
64	23.7
65	22.9
66	22
67	21.2
68	20.4
69	19.6
70	18.8
71	18
72	17.2
73	16.4
74	15.6
75	14.8
76	14.1
77	13.3
78	12.6
79	11.9
80	11.2
81	10.5

Age	Life Expectancy
82	9.9
83	9.3
84	8.7
85	8.1
86	7.6
87	7.1
88	6.6
89	6.1
90	5.7
91	5.3
92	4.9
93	4.6
94	4.3
95	4
96	3.7
97	3.4
98	3.2
99	3
100	2.8
101	2.6
102	2.5
103	2.3
104	2.2
105	2.1
106	2.1
107	2.1
108	2
109	2
110	2
111	2
112	2
113	1.9
114	1.9
115	1.8
116	1.8
117	1.6
118	1.4
119	1.1
120+	1

Note: This table is contained in Treas. Reg. § 1.401(a)(9)-9(b) and reflects updates made in 2020 effective for distribution calendar years beginning on or after January 1, 2022. Under the RMD rules, this table is used for determining the life expectancy of a participant who dies after the RBD if there is no DB by the BFD, or the life expectancy of the participant's EDB after the participant's death (regardless of whether the participant dies before or after the RBD) if there is an EDB by the BFD. *See* the chart in Appendix C for when the life expectancy of an individual is determined (or, in the case of a spouse, redetermined each year).

APPENDIX C
CHART FOR DETERMINING APPLICABLE DENOMINATOR

Beneficiary	Applicable Denominator at RBD During O's Life	O Dies before RBD	O dies after RBD	Beneficiary's death
S is sole beneficiary	1. ULT (or, if S >10 years younger than O, J&S) recalculated each year. (If S no longer O's sole DB at end of a calendar year, the ULT must be used unless S died or a divorce occurred and O did not name new beneficiary before the end of that year).	2. Beginning in the year O would have reached O's RBD and continuing until S's death, either (1) S's L EX using ULT (if spousal election applies) or (2) S's L EX using SLT (if S can opt out of spousal election), in either case S's L EX is recalculated annually. Box 10 may also be an option, if account allows. **(Consider spousal rollover, but catch-up RMDs may apply if S is past S's applicable age.)**	3. Distributions continue based on the more favorable of (1) S's L EX using SLT, recalculated each year until S's death (or if account allows spousal election, spouse's annually recalculated L EX using ULT) or (2) Ghost L EX. **(Consider spousal rollover.)**	4. If distributions to S have begun, use S's L EX in the year of death using SLT, reduced by 1 for each year that elapses after the year of S's death, but all must be distributed by the end of the 10th calendar year following S's death. If distributions to S haven't begun, treat as a pre-RBD death applied as if S were the O (except S's new spouse can't use the EDB rules).
Non-S EDB	5. ULT	6. EDB's L EX using SLT, determined in the year following the year of O's death, reduced by 1 for each year thereafter.* Box 10 may also be an option, if account allows.	7. Distributions continue based on the more favorable of box 6 or Ghost L EX.*	8. EDB's L EX in the year of death using SLT, reduced by 1 for each year that elapses after the year of EDB's death, but all must be distributed by the end of the 10th calendar year following EDB's death.
DB	9. ULT	10. No distribution required until the end of the 10th calendar year following the calendar year of O's death, but all must be distributed by that date.	11. Distributions continue based on the more favorable of (i) DB's L EX using SLT determined in the year following the year of O's death, reduced by 1 for each year thereafter or (ii) Ghost L EX, but all must be distributed by the end of the 10th calendar year following calendar year of O's death.	12. Continue using box 10 or 11, as applicable.
No DB	13. ULT	14. No distribution required until the end of the 5th calendar year following the calendar year of O's death, but all must be distributed by that date .	15. Ghost L EX	16. Continue using box 14 or 15, as applicable.

RBD=Required beginning date
ULT = Uniform Lifetime Table
SLT= Single Life Table
O=Account owner, which includes the participant in an employer-sponsored plan or the original IRA owner
S=Spouse

EDB=Eligible designated beneficiary
DB = Designated beneficiary who is not an EDB
J&S = Joint & survivor expectancy of the P&S
L EX = Life expectancy of the DB
Ghost L EX = O's L EX in the year of P's death using SLT, reduced by 1 for each year thereafter

*For minor child EDB, all must be distributed by end of 10th calendar year following the calendar year in which minor child attains age 21.

Multiple EDBs/DBs (non-AMBT): Use oldest EDB/DB's L EX; if there's a minor child EDB, use oldest EDB/DB's L EX until youngest minor child EDB attains age 21.