



Estate Planning with Retirement Assets in a Post-SECURE World

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50,000-Foot View

Major Changes From SECURE Act

- Life expectancy payout unavailable for most beneficiaries; new Outer Limit Year Rules are complex
- Required Minimum Distribution rules are more complicated for many beneficiaries
- Trust qualification is much clearer now
- Dealing with Powers of Appointment also much clearer now

Key Terms

- Required Minimum Distribution (“RMD”)
- Required Beginning Date (“RBD”)
- Designated Beneficiary (“DB”)
- Eligible Designated Beneficiary (“EDB”)
- Not Eligible Designated Beneficiary (“NotEDB”)

Key Terms (cont.)

- Outer Limit Year (“OLY”)
- Beneficiary Finalization Date (“BFD”)

My Family (for use in examples)

- Actual family: Me (Rob – 36), Jessica (35), Lillian (11), Kara (8), Iris (0)
- But for purposes of this exercise, let's make everyone 10 years older:
 - Rob (46)
 - Jessica (45)
 - Lillian (21)
 - Kara (18)
 - Iris (10)

Required Beginning Date

- Prior to the SECURE Act, the RBD for account owners was April 1 following the year in which the account owner attained age 70 ½
- SECURE increased this age to 72. Thus, an account owner born in 1950 has an RBD of April 1, 2023.

Required Minimum Distributions

- RMDs for account owner are based on his/her/their life expectancy
- There are never RMDs for a Roth IRA during the account owner's lifetime (Roth 401(k)s do require RMDs)
- Penalty for no/undersized RMD: 50% excise tax on undistributed amount.

Outer Limit Year ("OLY") Concepts

- Prior to SECURE, a beneficiary who inherited a retirement account could stretch RMDs over his/her/their lifetime.
- SECURE imposes a new default OLY that applies in most situations: all assets must be distributed to the beneficiary by the 10th anniversary of the decedent's death.
 - For NotEDBs, the OLY is Y10.
 - If a non-DB (non-person), the OLY is Y5 (charity/estate beneficiary trap).

RMD Complication

- Generally, RMDs are not required; thus, generally, no distributions must be made during years 1-9.
- But wait! If the account owner died following the RBD, RMDs are required as distributions must be paid “at least as rapidly” as they would have to the account owner. Thus, RMDs in years 1-9, then the RMD for Y10 is the remaining balance.

Eligible Designated Beneficiaries

- Surviving spouse
- Disabled individual
- Chronically ill individual
- Minor child (under 21, not 18)
 - Must be the account owner's child
- Individual who is not more than 10 years younger than the account owner

Surviving Spouse

- Non-Trust options
 - Spousal rollover
 - Ideal tax option
 - Spouse defers RBD to age 72, then takes RMDs using surviving spouse's own life expectancy
 - Non-rollover
 - RBD is deceased spouse's (when deceased spouse would have turned 72)
 - Surviving spouse takes RMDs using surviving spouse's or decedent's life expectancy
 - Life expectancy recalculated annually

Surviving Spouse

- Trust options
 - Two types of See-Through Trusts: Conduit Trusts and Accumulation Trusts
 - See-Through Trusts must be valid under state law, irrevocable at death, copied to the plan administrator, and beneficiaries must be identifiable.
 - Not jeopardized by POA or ability to decant/reform Trust
 - If all four criteria are satisfied, we can look through the trust to determine who the DB is, if applicable
 - Note: even a See-Through Trust could have a non-DB (charity) → Y5 OLY

Conduit Trust

- A Trust whereby the Trustee must pay all plan distributions received by the Trustee to specified beneficiaries.
- Only evaluate the current beneficiaries who could receive amounts in the Trust (i.e. ignore contingent beneficiaries).

Conduit Trust Example

- Surviving spouse is sole life beneficiary of Conduit Trust.
- Surviving spouse is the only beneficiary of the retirement account.
 - Trust gets the same RMD treatment as if surviving spouse held account individually as non-rollover:
 - Life expectancy, RMDs start at deceased spouse's age 72
- This scenario is the same as pre-SECURE

Accumulation Trust

- Any non-Conduit Trust
 - Generally, a Trust with some discretion for the Trustee
- Evaluate the current beneficiaries and those who could receive distributions of retirement account assets distributed to the Trust not distributed to the current beneficiaries (i.e. beneficiary of a discretionary interest)

Accumulation Trust Example

- Surviving spouse gets income for life, plus principal for HEMS
- Surviving spouse is not entitled to receive a distributions from retirement plan
 - Thus, Trustee can accumulate some assets
- RMD treatment of Trust depends on who the successor beneficiary is to follow surviving spouse

Accumulation Trust Example (cont.)

- Outcome depends on other countable beneficiaries:
 - If a charity is the successor beneficiary, the Trust has a countable non-individual beneficiary → the non-DB rules apply (Y5 OLY).
 - If a NotEDB DB is the other countable beneficiary → the DB rules apply (Y10 OLY).
 - If an EDB is the other countable beneficiary → the EDB rules apply (life expectancy).

Trusts with Multiple DBs

- If there are multiple DBs, the RMDs and the OLY are based on the oldest DB.
- Thus, even if all DBs are EDBs, the relevant life expectancy is the oldest EDB's life expectancy and the OLY is Y10 following the death of the oldest EDB.
 - See exception for minor children later.
- Only living beneficiaries count (predeceased beneficiary is disregarded).
 - Also true is surviving beneficiary disclaims.

QTIP Complication

- A standard QTIP that does not require that all retirement account distributions be distributed to the surviving spouse would be subject to Y10 OLY.
- Must be careful to draft special language into QTIP to make QTIP into Conduit Trust (or get comfortable with notion that QTIP won't qualify surviving spouse for life expectancy payout).

Powers of Appointment

- What if a surviving spouse (an EDB) has a power to appoint assets to NotEDBs or charities?
 - No problem: only default beneficiaries are countable until a POA has been exercised.
 - Thus, surviving spouse's ability to direct assets to a charity does not yield a non-individual beneficiary (the charity).

Other Post-Death Changes

- If POA is exercised or Trust is decanted/reformed before September 30 following year of account owner's death → change is given effect as of date of death.
- If POA/decanting/reformation occurs after September 30 following year of account owner's death → the Trust is retested and revised only if retesting results in acceleration of RMDs or OYL.

Grandfathered Beneficiaries

- If the account owner died before 2020, the DB keeps life expectancy payout.
- If both the account owner and the DB died before 2020, then the life expectancy payout of the account is forever grandfathered; successor beneficiaries are not subject to the 10-year rule.
- In all other situations, SECURE applies and an OLY exists at Y10 except...

Grandfathered Exception

- If there are multiple DBs and the oldest DB dies after 2019, the 10-year OLY rule applies to the other beneficiaries as well using the oldest DB as the measuring life.

Minor Child

- A child reaches majority at 21, not 18.
- OLY is Y10 of anniversary of child attaining age 21 or the child's death, whichever is first
 - So, if child survives to age 21, OLY is year in which child turns 31.
- RMDs occur over child's life expectancy, but OLY ensures that all assets distributed by age 31.

Minor Child OLY

- If a Trust has at least one countable beneficiary who is a minor child EDB, other beneficiaries are ignored when computing the OLY.
 - OLY is age-31 for oldest child who is a minor when account owner dies.
- Other beneficiaries are not ignored when calculating the RMD. Thus, RMDs are still based on oldest DB.

Minor Child Example

- I die (age 46) leaving an IRA to a Trust for my three daughters: Lillian (21), Kara (18), and Iris (10). All three are then living.
 - Because Lillian is 21, she is ignored when calculating the OLY; thus, the OLY is Y13 after my death (when Kara turns 31) for all three daughters; Iris's portion will be distributed in full by age 23.
 - RMDs are calculated based on Lillian's life expectancy as she is a DB (though not an EDB).

Disabled or Chronically Ill Individual

- If 18+:
 - a beneficiary is disabled if unable to engage in any substantial activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration.
- If under 18:
 - a beneficiary is disabled if he/she/they has a medically determinable physical or mental impairment that results in marked and severe functional limitations and that can be expected to result in death or to be of long-continued and indefinite duration.

Disabled or Chronically Ill Individual

- Regardless of age:
 - A beneficiary is disabled if Social Security has determined that individual is disabled.
- The beneficiary's status on the account owner's date of death is the relevant consideration. Thus, if the DB later becomes disabled/chronically ill, that is irrelevant.

Disabled or Chronically Ill Individual

- A Conduit Trust is not required for a disabled or chronically ill beneficiary. The regulations provide a generous carveout that a Trust with a disabled beneficiary will qualify as long as no other beneficiary receives distributions from the retirement account during that beneficiary's lifetime (basically, if the Trust is a Special Needs Trust).

Ind. Within 10 Years of Owner

- Generally receive life expectancy RMDs

RMD+OLY Owner Dies Before RBD

Beneficiary	RMD for Owner's Year of Death	RMDs	OLYs
Surviving Spouse	None	Over surviving spouse's life expectancy	Y10 following surviving spouse's death
Minor Child of Owner	None	Over minor child's life expectancy	Year where minor child turns 31
Disabled or Chronically Ill; or Beneficiary not more than 10 years younger than Owner	None	Over beneficiary's life expectancy	Y10 following beneficiary's death
DB	None	None	Y10 following owner's death
Non-DB (charity or estate)	None	None	Y5 following owner's death

RMD+OLY Owner Dies After RBD

Beneficiary	RMD for Owner's Year of Death	RMDs	OLYs
Surviving Spouse	Yes (unless taken by Owner)	Over surviving spouse's or decedent's life expectancy	Earliest of Y10 following surviving spouse's death, surviving spouse's life expectancy, or decedent's life expectancy
Minor Child of Owner	Yes (unless taken by Owner)	Over minor child's life expectancy	Year where minor child turns 31

RMD+OLY Owner Dies After RBD

Beneficiary	RMD for Owner's Year of Death	RMDs	OLYs
Disabled or Chronically Ill; or Beneficiary not more than 10 years younger than Owner	Yes (unless taken by Owner)	Over longer of beneficiary's life expectancy or decedent's life expectancy	Earliest of Y10 following beneficiary's death, beneficiary's life expectancy, or decedent's life expectancy
DB	Yes (unless taken by Owner)	Over longer of beneficiary's life expectancy or decedent's life expectancy	Earlier of Y10 following Owner's death, or beneficiary's life expectancy
Non-DB (charity or estate)	Yes (unless taken by Owner)	Over decedent's life expectancy	End of decedent's life expectancy

SECURE 2.0?

- Passed the House 414-5 in March 2022
- Likely to pass, in some form, in 2022
- Key provisions:
 - Increase age 72 RBD to age 75 by 2033
 - Further increase catch-up contribution limits
 - Permit SIMPLE and SEP plans to accept Roth contributions
 - Require automatic enrollment in some plans
 - RMD and OLY provisions appear to be unaffected

SECURE Act Key Takeaways

- Ability to obtain life expectancy stretch for unlimited generations curtailed
- Accumulation Trusts more attractive than Conduit Trusts (except for surviving spouse); can be used for minor child
- RBD is essential in calculating RMDs and OLY
- Remember: sometimes non-tax considerations rule the day!

Questions?