

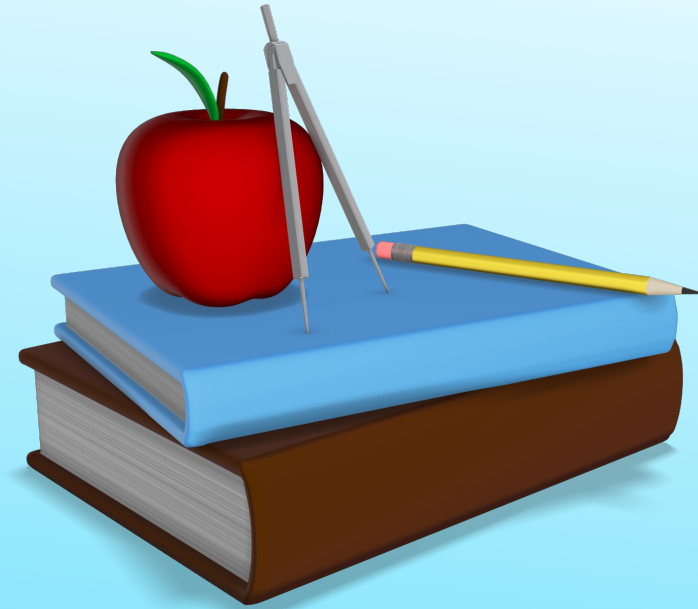


RMDs after the final regulations





BACKGROUND



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



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

A Brief History



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

History Continues



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

Final Regulations



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



What About Years Before 2025?



▶ Follow 2002 regulations

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





Lifetime

LIFETIME RMDs

How long can I leave the money in the plan?

How much do I need to receive each year?

Definitions; Abbreviations



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

Code §401(a)(9)



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



Plans subject to the RMD rules



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



RBD



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

Required Beginning Date after SECURE 2.0



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

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

Required minimum distribution (RMD)

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



First Distribution Calendar Year (DCY)

- ▶ Calendar year before year of RBD
- ▶ Example:
 - ▶ Kim born 11/1/1951; turn RBD Age in 2024
 - ▶ Kim's RBD is 4/1/2025
 - ▶ First DCY is 2024
 - ▶ Based on her age in 2024
 - ▶ Based on her account balance on the last day of the preceding year (valuation calendar year): 12/31/2023
 - ▶ First RMD due between 1/1/2024 – 4/1/2025
 - ▶ Second RMD due between 1/1/2025 – 12/31/2025
- ▶ Any money distributed during DCY (2024) must first go to satisfy the RMD



Example



- ▶ Assume the same facts as in the previous example
 - ▶ Kim first DCY: 2024
 - ▶ Kim's RBD: 4/1/2025
- ▶ Kim participates in a 401(k) plan and maintains an IRA
 - ▶ During 2024, Kim decides to consolidate and rolls her 401(k) plan account balance into her IRA
 - ▶ Although Kim may delay her RMD until 4/1/25, any distribution during a DCY, must first go to satisfy the RMD
 - ▶ Portion of 401(k) distribution is ineligible for rollover because it's an RMD
 - ▶ Must remove from IRA before due date of 2024 tax return to avoid 6% excise tax

Early distributions don't help

- ▶ Ignore distributions before first DCY
- ▶ Example:
 - ▶ Kim's RBD is 4/1/2025
 - ▶ In 2023, Kim obtained a \$10K distribution
 - ▶ Except that this distribution reduced Kim's 12/31/2023 account balance, the plan ignores the distribution in calculating the 2024 RMD



Amount of RMD



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

Age on birthday	Denominator	Age on birthday	Denominator	Age on birthday	Denominator
72	27.4	88	13.7	104	4.9
73	26.5	89	12.9	105	4.6
74	25.5	90	12.2	106	4.3
75	24.6	91	11.5	107	4.1
76	23.7	92	10.8	108	3.9
77	8.9	93	10.1	109	3.7
78	8.0	94	9.5	110	3.5
79	21.1	95	8.9	111	3.4
80	20.2	96	8.4	112	3.3
81	19.4	97	7.8	113	3.1
82	18.5	98	7.3	114	3.0
83	17.7	99	6.8	115	2.9
84	16.8	100	6.4	116	2.8
85	16.0	101	6.0	117	2.7
86	15.2	102	5.6	118	2.5
87	14.4	103	5.2	119	2.3
				120+	2.0

Amounts that are not considered RMDs



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

Beneficiary Designation



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

Defined Benefit Plan RMDs



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



IMPACT OF ROTH ACCOUNT

SECURE 2.0 Change



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



Example

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

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

Two Notes on Roth



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



RMDS AFTER DEATH



RMD for year of death



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

Definitions - Abbreviations



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

SECURE Effective Date



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

The players before SECURE



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



The players after SECURE



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

NEW

Key points on EDBs



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

Key points on EDB



► Chronically ill

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

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



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

Documentation

- ▶ Disabled; chronically ill condition must exist at participant's death
- ▶ Written certification of condition must be received by plan by 10/31 of year following death
 - ▶ Or, if later 10/31/2025



EDB: Less than 10 years younger than participant



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

RMD RULES AFTER DEATH DEPEND ON 3 THINGS

- ▶ Did participant die before RBD?
- ▶ Status of Beneficiary
 - ▶ Spouse
 - ▶ EDB
 - ▶ ODB
 - ▶ NotDesBen
- ▶ Plan elections

Post-Death Distribution after SECURE

Generally use Single Life Table (SLT)



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

5-year rule



- ▶ Applies to
 - ▶ NotDesBen if participant died before RBD
 - ▶ DesBen of participant who died before SECURE if plan provided
- ▶ Pay out 100% of amount by 12/31 of year with 5th anniversary of death
 - ▶ No payments required before then
- ▶ Example:
 - ▶ Oscar leaves account to his estate
 - ▶ Oscar dies 2/1/2024 before RBD
 - ▶ Estate must receive 100% of account by 12/31/2029

10-year rule



- ▶ Limited to participants who die before RBD
- ▶ Limited to participants who die after SECURE effective date (generally after 2019)
- ▶ Applies to
 - ▶ ODB
 - ▶ EDB if plan provides
- ▶ Pay out 100% of amount by 12/31 of year with 10th anniversary of death
 - ▶ No payments required before then
- ▶ Example:
 - ▶ Oscar leaves account to his grandson
 - ▶ Oscar dies 2/1/2024 before RBD
 - ▶ Grandson must receive 100% of account by 12/31/2034

Life expectancy rule



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

Determining the applicable denominator after death



Measuring life to use

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

Determine applicable denominator based on measuring life

Measuring life	Starting point	Subsequent years
Spouse	SLT/ULT based on age	Recalculate via SLT/ULT
EDB	SLT based on age in year after death	Subtract one
ODB	SLT based on age in year after death	Subtract one
Participant	SLT based on age in year of death	Subtract one

Example 1



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

Example 2



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

Example 3



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

Multiple beneficiaries



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

Ways to break up multiple beneficiaries



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

Death and RMDs



▶ Example 1

- ▶ Paula named her son, Harvey, as the beneficiary of her 403(b) account. If Harvey predeceased her, then her twin sister, Doris would take the account.
- ▶ Harvey died two months before Paula did.
- ▶ Doris is the beneficiary for purposes of the RMD rules.

▶ Example 2

- ▶ Same facts, except Harvey died the day after Paula did.
- ▶ Under state law, Harvey and Doris are treated as dying simultaneously.
- ▶ Doris is the beneficiary for purposes of the RMD rules.

▶ Example 3

- ▶ Same facts, except Harvey died three months after Paula.
- ▶ Harvey is nonetheless the designated beneficiary for purposes of the RMD rules.

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



- ▶ Limited to EDBs (including spouses) who dies before RBD
- ▶ Limited to participants who die after SECURE effective date
- ▶ Plan document can:
 - ▶ Mandate use of 10-year rule or
 - ▶ Allow participant/beneficiary to elect 10-year rule
 - ▶ Default is life expectancy unless plan says 10-year rule is default
 - ▶ Election deadline is deadline for first RMD
 - ▶ Generally 12/31 of year following year of death

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



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

Proposed Regulation Treatment



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

Spousal Delay



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

Stepping into the Participant's Shoes



▶ If:

- ▶ Spouse is sole beneficiary
- ▶ Participant dies before RBD
- ▶ Spouse dies before DCD (12/31 of year participant would have turned RBD Age)

▶ Then

- ▶ Spouse's beneficiaries are treated as though they were beneficiaries of participant
 - ▶ Exception, spouse's new spouse not treated as spouse

Example



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

Limited Application of Treating Spouse as Employee



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



Example



▶ Example

- ▶ Harry dies at age 61 in 2020; leaves account to Wilma (55)
- ▶ Harry would have turned 73 in 2032
- ▶ Wilma takes first RMD in 2032 (ULT factor for 67-year-old) is 32.0
 - ▶ If she had to take distributions using SLT, the factor would have been 21.2
- ▶ If she had taken distribution in 2023, 10% penalty would not apply

▶ Alternative; Wilma rolls to her own IRA

- ▶ Wilma doesn't have to start RMDs until her RBD Age (75) in 2040
- ▶ But if she had taken distribution from IRA in 2023, 10% penalty would apply

Effective Date



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

Cut off of RMDs



- ▶ Cut-off applies to participants who die after SECURE effective date
- ▶ Must distribute entire account by 12/31 of earliest of the following years:
 - ▶ 10th year after death year if beneficiary is ODB
 - ▶ 10th year after death of EDB
 - ▶ 10th year after minor child EDB reaches age of majority
 - ▶ Unless child is disabled or chronically ill
 - ▶ If multiple minor children, use age youngest reaches majority

Rule for participant who dies before SECURE effective date



- ▶ If oldest DesBen dies after SECURE effective date, then entire account must be paid by 12/31 of 10th year after DesBen
- ▶ Example
 - ▶ Jack died 5/1/2018
 - ▶ Left account to sister, Jill
 - ▶ Jill taking life expectancy RMDs
 - ▶ Jill dies in 2023, leaving account to Bill
 - ▶ Bill continues to take RMDs using Jills life expectancy
 - ▶ Complete payout 12/31/2033

Once RMDs are Required to Start, They Never Stop



- ▶ Three events trigger the start of life expectancy RMDs:
 - ▶ Required beginning date (RBD) for participant
 - ▶ If participant died before RBD and left entire account to spouse, and spouse dies after DCD
 - ▶ Life expectancy distributions have commenced to other beneficiaries
- ▶ If the participant (or beneficiary) dies before one of the above has taken place, then RMDs have not begun and in some cases annual distribution is not required for the beneficiary
 - ▶ Otherwise, annual distributions must continue to new beneficiary

Treasury Stays the Course



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

IRS Notices



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



The Party's Over

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



Post-Death Distribution after SECURE



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



CODE 4974 PENALTY TAX FOR FAILURE TO TAKE RMDS



SECURE 2.0 Changes

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



Final Regs Specify the 10% Reduction



▶ Two requirements to qualify:

1. **Take the RMD from the plan that was required to distribute it**
 - ▶ You can choose any IRA for a required IRA RMD
 - ▶ You can choose any 403(b) for a required 403(b) RMD
2. **File Form 5329 showing the 10% penalty**



End of Correction Window (Deadline for 10% Correction)



▶ Earliest of:

- ▶ Date IRS mails deficiency notice for 25% penalty
- ▶ Date IRS assesses 25% penalty
- ▶ Last day of second tax year after end of year penalty tax is imposed

▶ Example:

- ▶ Maria fails to take RMD due in 2024
- ▶ In 2026, Maria (1) takes 2024 RMD, and (2) files 5329 paying penalty
- ▶ Penalty is only 10% unless IRS has assessed tax or sent deficiency notice

Automatic Waiver #1



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

Automatic Waiver #2



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