



THE SECURE ACT AND SECURE 2.0

WHERE ARE WE NOW?

Amy N. Morrissey
Mitzel Law Group PLC
1590 Eisenhower Place
Ann Arbor, MI 48108

HOW DID WE GET WHERE WE ARE NOW?

- The Setting Every Community Up for Retirement Enhancement Act (SECURE Act) was signed into law in December 2019 with most provisions effective January 1, 2020 – this was a bipartisan effort
- Proposed Treasury Regulations on SECURE Act were issued February 2022
- SECURE 2.0 was signed into law December 2022
- Final Treasury Regulations on SECURE Act and Proposed Regs on SECURE 2.0 were issued July 2024 and apply for distribution calendar years beginning on or after January 1, 2025

SITUATION- SPECIFIC PLANNING OPPORTUNITIES

- Roth 401(k)s are exempt from Required Minimum Distributions during the account holder's lifetime (similar to IRAs)
- Unused funds in a 529 savings plan that has been open at least 15 years can be rolled into a Roth IRA for the beneficiary (up to a lifetime limit of \$35,000)
- Qualified Charitable Distributions (QCDs) offer a one-time \$50,000 gift to a charitable gift annuity or charitable remainder trust
- Certain individuals age 60-63 have increased catch-up contributions to employer plans

CHANGE IN REQUIRED BEGINNING DATE

ELIMINATION OF THE STRETCH FOR MOST DESIGNATED BENEFICIARIES

- SECURE Act increased the age for commencing required minimum distributions (RMDs) from age 70.5 to 72; SECURE 2.0 increased the age to 73 beginning in 2023, and age 75 beginning in 2033. SECURE 2.0 changed the fixed age to the *applicable age*.
- Required Beginning Date (RBD) is April 1 of the year following attaining the applicable age, generally.
- RBD is key to figuring out timing of RMDs after the death of the account owner.
- SECURE eliminated the “stretch” for most designated beneficiaries, who are now subject to a 10-year distribution rule.

5 CLARIFICATION OF “AT LEAST AS RAPIDLY” RULE

- For general designated beneficiaries of account owners dying on or after their RBD who are subject to the 10-year rule, the Regulations clarified that the “at least as rapidly” rule still applies, meaning annual RMDs are required during years 1-9 of the 10-year period.
- This wasn’t completely clear until the Final Regulations were issued last year so the IRS provided transition relief to designated beneficiaries who did not take RMDs between 2021-2024; the Final Regulations ended this relief and require compliance beginning in 2025.
- The “at least as rapidly” rule never applies to inherited Roth IRAs because the account owner isn’t required to take RMDs so always dies before his/her RBD.

NEW CLASSES OF ELIGIBLE DESIGNATED BENEFICIARIES

- SECURE creates new classes of “eligible designated beneficiaries.”
- Who is an “eligible designated beneficiary” (EDB)?
 - Surviving Spouse
 - Minor child of the account owner (under 21)
 - Individual who is chronically ill or disabled
 - Individual who is not more than 10 years younger than the account owner (includes older individuals)
- EDB status is desirable to avoid application of the 10-year distribution rule applicable to a regular designated beneficiary (DB).
- EDB status generally allows for use of pre-SECURE stretch rules, with a hybrid approach for minor children of the account owner.

SEE THROUGH TRUST RULES STILL APPLY

- Trusts are desirable for minors, chronically ill or disabled individuals, and sometimes spouses in a blended family situation.
- To achieve EDB status or even designated beneficiary status, the trust must be a “see-through” trust.
- These basic “see-through” trust rules still apply:
 - Trust must be valid under state law;
 - Trust must be irrevocable at the death of the account owner;
 - A copy of the trust (or list of the designated beneficiaries) must be supplied to the administrator of an *employer-sponsored plan* by 10/31 of the year following the account owner’s death, and if a beneficiary is chronically ill or disabled, this is also the deadline for documentation; and
 - Beneficiaries must be identifiable.

TRUST TERMINOLOGY

- Terminology that we have used has been formally recognized:
 - *Conduit Trust* – a “see through” trust, the terms of which provide that with respect to the deceased employee’s interest in the plan, all distributions will, upon receipt by the trustee, be paid directly to or for the benefit of specified beneficiaries
 - *Accumulation Trust* – any see-through trust that is not a conduit trust
- *Applicable multi-beneficiary trust* is a trust: (1) that has more than one beneficiary; (2) all the beneficiaries of which are treated as designated beneficiaries for purposes of determining the distribution period pursuant to IRC section 401(a)(9); and (3) at least one of the beneficiaries of which is an eligible designated beneficiary who is either disabled or chronically ill

9 EDB: SURVIVING SPOUSE

QUALIFYING THE SURVIVING SPOUSE AS AN EDB

- The surviving spouse must be “sole beneficiary” to be an EDB which means:
 - The only designated beneficiary; or
 - One of multiple designated beneficiaries so long as a separate account for the spouse is created by 12/31 of the year following the account owner’s death; or
 - The sole beneficiary of a trust for the benefit of the spouse:
 - Must at a minimum be a conduit trust (meaning all annual RMDs and any additional withdrawals from the retirement account must be distributed to the spouse)
 - Traditional QTIP-type trust will NOT work
- If spouse is NOT considered the sole beneficiary, the spouse is not an EDB and the account must be distributed by the end of the 10th calendar year following the account owner’s death, unless payable to a trust of which there is also a minor child of the account owner in which case the minor EDB rules apply.

10 EDB: SURVIVING SPOUSE

THE “FAVORED” BENEFICIARY

- Rollover
 - Surviving spouse transfers IRA to his/her name and becomes new owner
 - Surviving spouse may use his/her life expectancy under uniform life table (IRS Pub. 590-B, Appendix B, Table III)
- Inherited IRA
 - Surviving spouse remains beneficiary of deceased account owner’s IRA. Why would s/he do this?
 - Would permit surviving spouses younger than age 59.5 to take withdrawals not subject to the 10% early withdrawal penalty.
 - This also benefits a surviving spouse who is past his/her RBD when the deceased account owner was not.
 - Traditionally, the spouse may use his/her life expectancy, recalculated annually, under single life table (IRS Pub. 590-B, Appendix B, Table I or II), but see new Section 327 of Secure 2.0.

|| EDB: SURVIVING SPOUSE

SECTION 327 OF SECURE 2.0: INHERITED IRA TREATMENT

- Section 327 of SECURE 2.0, beginning for calendar years after 12/31/23, for a surviving spouse who is the sole beneficiary (outright or via conduit trust) and does not roll over (or cannot because benefits are being paid through a conduit trust) but retains benefits in an inherited IRA in the deceased spouse's name:
 - For those account owners dying before their RBD, the surviving spouse may:
 - Elect the 10-year distribution rule (but see catch-up rule);
 - The surviving spouse is deemed to elect special treatment to use the uniform lifetime table for RMDs, 2) recalculate surviving spouse's life expectancy each year, 3) delay RMDs until account owner would have reached his/her RBD. Essentially the surviving spouse is treated as if s/he were the account owner for RMD purposes. The July 2024 proposed regulations on SECURE 2.0 state that the treatment is *automatic*.
 - If the account owner dies after their RBD, it appears that under Section 327, the surviving spouse may *elect* to be treated as the participant.

12 EDB: SURVIVING SPOUSE

SECTION 327 OF SECURE 2.0: INHERITED IRA TREATMENT

- Examples of Section 327 application assuming surviving spouse is the sole beneficiary, and the account owner dies in 2024 or later:
 - Charlie dies at age 72 (before his RBD) designating Connie, his spouse, age 65, as sole designated beneficiary. Although Connie will be deemed to have made a Section 327 election and RMDs will be automatically computed using the Uniform Lifetime Table (and Connie's age), she will need to start taking RMDs sooner than if she rolled over because of Charlie's age, and she's over 59.5 so rollover is advisable.
 - Charlie dies age 52 (before his RBD), designating Connie, his spouse, age 55, as sole designated beneficiary. Connie will be deemed to have made a Section 327 election and not have to take RMDs until Charlie would have been required to start taking them. When she starts taking RMDs, Connie will use her age and the Uniform Lifetime Table. Due to Connie's age, the inherited IRA makes sense at this time if she needs to access the money. But when she reaches 59.5, she may want to roll over.
 - Charlie dies at age 74 (after his RBD) designating Connie, his spouse, age 67, as sole designated beneficiary. Connie may make a Section 327 election to be treated as account owner, but again she may instead want to roll over instead as Charlie passed his RBD.
 - Carlos dies at age 74 (after his RBD) leaving Carol, his spouse, age 88 as sole designated beneficiary. Carol can elect to use Carlos' remaining life expectancy on the single lifetime table rather than hers on the Uniform Lifetime Table.

13 EDB: SURVIVING SPOUSE

PLANNING TIP FOR SURVIVING SPOUSE BENEFICIARY

- We may see fewer rollovers if there is no tax benefit, but there are other considerations. If the surviving spouse (SS) remains beneficiary of the deceased account owner's account:
 - SS should name new designated beneficiaries to inherit the account. But if SS does not and dies before his/her RBD, the default beneficiaries under the plan document/IRA agreement will take and be subject to the 5-year rule.
 - As SS approaches his/her RBD, SS should consider rolling over the account balance into his/her own IRA so her designated beneficiaries will have the best options.
 - If for some reason the SS is subject to the straight 10-year distribution rule per the plan or has chosen the 10-year rule to delay the commencement of RMDs, and then rolls over the account at some point, SS must take catch-up RMDs that would have had to be taken in years 1-9 if the account had not been subject to the 10-year rule.
 - Example Albert dies in 2025 at age 72 and his spouse Annie, age 70, elected the 10-year rule to avoid taking RMDs sooner; if Annie then rolls the account over in 2034, year 9, she would have catchup RMDs beginning with the year in which she would have had to begin her RMDs, the year in which she attained age 73.

14 EDB: SURVIVING SPOUSE

CONDUIT TRUST FOR SPOUSE

- In a blended family, the conduit trust is an oft-employed tool, made even more attractive (perhaps) by Section 327, allowing the Uniform Lifetime Table to be used.
- At a minimum, the conduit trust requires all RMDs and any additional withdrawals from the retirement account to be distributed to the spouse.
- RMD treatment will depend on whether the account owner died before or after their RBD and whether an election (if required) under Section 327 has been made to use the Uniform Lifetime Table. If an election needs to be made, Section 327 suggests that surviving spouse needs to make it. When benefits are payable to a trust for the spouse, it is not clear whether the spouse rather than the trustee still makes that election. This can create a conflict if the spouse is not the trustee and wants larger RMDs (if for example, that is all that s/he is entitled to per the trust instrument).

15 EDB: SURVIVING SPOUSE

IMPORTANCE OF THE BENEFICIARY DESIGNATION FORM

- If it is expected that the surviving spouse make the Section 327 election, it is important for account owners dying after their RBD to incorporate their intentions in the trust (if any) and in the beneficiary designation.
- Do not make the revocable trust of the surviving spouse as the beneficiary of the retirement account. This violates the see-through rule that the trust must be irrevocable on the death of the account owner. If the spouse is intended to have full access, make spouse the beneficiary.
- Tiered beneficiary designations are advisable so that if clients have significant retirement account balances as of the first spouse's death and the surviving spouse is not likely to require distributions from some or all the deceased spouse's account, the surviving spouse may disclaim. If proper contingent beneficiaries are in place, such as children, the 10-year distribution period can start to them so that later inheritance of all of the money doesn't push them into a higher tax bracket.

16 EDB: MINOR CHILDREN OF ACCOUNT OWNER

- Must be a (minor) child of the account owner (not stepchild, not grandchild).
- Age 21 is the age of majority under Final Regulations.
- Minor children of the account owner must liquidate the account by the end of the 10th year following attainment of age 21. If there are multiple minor children who are beneficiaries of a trust and separate accounts are not (or cannot be) established, then the 10-year period begins when the *youngest* minor attains age 21 but the RMDs are based on *oldest* trust beneficiary, not oldest minor.

17 EDB: MINOR CHILDREN OF ACCOUNT OWNER

- Minor children of the account owner have special status as EDB
 - The Final Regulations clarified that payments of the RMD may be made “to or for the benefit of” the minor.
 - The Final Regulations also say that the rule requiring annual RMDs to or for the benefit of a minor during their minority and thereafter during the 10-year period applies *regardless of whether the account owner dies before or after their required beginning date*.
 - E.g. Connie, age 37 dies in 2025, leaving her IRA outright to her son Connor, age 12. Connor, as a minor beneficiary of an account owner, is an EDB. He can stretch RMDs until age 31, but during the entire period, Connor must take RMDs based on his age on the single life expectancy table.

18 EDB: MINOR CHILDREN OF ACCOUNT OWNER

- Options for Planning for Minor Children of an Account Owner
 - Some accounts permit payment to a custodian of a minor under UTMA; this may be appropriate if the account is modest in size. Special language should be added that the account continue until the minor is age 21, because in Michigan, there is a choice to extend the age from 18 to 21.
 - Trusts are the common way to plan for minors:
 - Conduit trust – all RMDs and other withdrawals are passed through to the minor. A conduit trust is not necessary to qualify a minor as an EDB and perhaps not ideal either because of the requirement to distribute the entire RMD, but payments can be made to the minor's parent or a custodian if the terms permit. In a conduit trust arrangement, the retirement account will need to be distributed to the child by the end of the calendar year in which the child attains age 31.
 - Accumulation trust – a minor child of the account owner will still be an EDB even if there are other trust beneficiaries who are not EDBs, but the IRA will need to be terminated, i.e., distributed to the trust, by the end of the year in which the youngest minor child attains age 31. RMDs will be based on the life expectancy of the oldest trust beneficiary.
 - In both types of trusts, the Trustee should be given flexibility as to the timing of distributions notwithstanding the standard for support to avoid having to make a large distribution in a single year.

19 AGE 31 TRUST – FOR ANYONE

- Age 31 Trusts
 - If the retirement assets are payable to a trust for the minor child of the account owner, so long as the trustee is required to distribute to the child any “amounts in the trust representing the employee’s interest in the plan” by the end of the year in which the child attains age 31, the trust for the child does NOT need to be a conduit trust for the minor child of the account owner to be treated as an EDB and the child’s life expectancy to be used to compute RMDs.
 - This age 31 distribution trust concept allows an accumulation trust for *any* young person, but only minor children of the account owner get the stretch to age 31; other minors are subject to the 10-year rule for account distribution, making it more important to allow trustee discretion to pass through distributions to or for the minor, but also making this concept less attractive for non-EDB minors.

20 DRAFTING FOR DESIGNATED BENEFICIARIES OF A TRUST SEPARATE ACCOUNT TREATMENT

- Separate account treatment – the Final Regulations allow for separate account treatment in determining RMDs for beneficiaries of a trust if the IRA is “immediately divided upon death” of the account owner, i.e., split into separate inherited IRA accounts by December 31 of the year following the account owner’s death. This is important if some beneficiaries are EDBs (such as chronically ill or disabled) and others are DBs. To qualify:
 - The (administrative) trust must terminate;
 - The separate interests of the trust beneficiaries must be allocated to separate subtrusts (or directed outright), and
 - There cannot be any discretion in the trustee as to the allocation of account proceeds among the various subtrusts (this language should affirmatively be stated in the trust).

21 DRAFTING FOR DESIGNATED BENEFICIARIES OF A TRUST SEPARATE ACCOUNT TREATMENT

- Example of separate account treatment: Carlos designates his revocable living trust for the benefit of his three children, Andy, Betsy, and Chloe, as the beneficiary of his IRA and dies in 2025 before his RBD. Andy is disabled within the meaning of IRC section 72(m)(7), so his share is allocated to a discretionary trust for his benefit, Betsy is an adult whose share is directed outright, and Chloe is a minor, age 15, whose share is directed to an age-31 trust. If separate accounts are created per the Regulations, each beneficiary can receive separate treatment:
 - Andy, as a disabled EDB, may use his life expectancy to compute RMDs continuing over his lifetime;
 - Betsy, as a regular DB is subject to the straight 10-year distribution rule; and
 - Chloe, as an EDB minor, may use her life expectancy to compute RMDs, which continue until the year in which she attains age 31 at which time the account balance must be distributed to her.
- Some planners suggest not relying on this treatment and instead dividing the account on the beneficiary designation and allocate the separate shares to separate sub-trusts in account owner's revocable living trust or standalone trusts.

22 DESIGNATED BENEFICIARIES OF A TRUST WHO COUNTS NOW?

- First Tier Beneficiaries count: Any beneficiary whose receipt of benefits is not contingent upon the death of another beneficiary, i.e., conduit beneficiaries and other current beneficiaries (mandatory or permissive).
- Second Tier Beneficiaries count: Any beneficiaries who receive benefits upon the death of a first-tier beneficiary, but **not** if:
 - the trust is a conduit trust for the first-tier beneficiary; or
 - the trust requires distribution of benefits to the first-tier beneficiary by the end of the year in which the first-tier beneficiary attains age 31 (an “Age 31” trust); or
 - the first-tier beneficiary is chronically ill or disabled (the Regulations permit charities to receive benefits on the death of a chronically ill or disabled beneficiary)

23 DRAFTING FOR DESIGNATED BENEFICIARIES OF A TRUST WHO **DOESN'T** COUNT NOW?

- Third Tier Beneficiaries don't count: Any beneficiaries who receive benefits upon the death of a second-tier.
- Permissible appointees under a power of appointment don't count unless the power is exercised.
- Implication: The new tier system makes an accumulation trust more attractive with Trustee discretion to consider distribution for tax reasons.

TAKEAWAYS

- Spouse is still the favored beneficiary – must be sole beneficiary of account (either only, one of multiple if separate shares created, or beneficiary of conduit trust).
- Minors – Age 31 (accumulation) trust is an attractive alternative to the conduit trust.
- Separate account treatment can be achieved by designating the RLT as beneficiary if the Trustee does not have any discretion as to allocation of the retirement benefits.

THANK YOU

AMY N. MORRISSEY
MITZEL LAW GROUP PLC
1590 EISENHOWER PLACE
ANN ARBOR, MI 48108
(734) 668-4100