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## Retirement Account Beneficiaries and Distribution Rules After the SECURE Act and CARES Act

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### I. INTRODUCTION

**Congress made** sweeping changes to the laws affecting retirement accounts when it signed the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) into law on Dec 20, 2019.<sup>1</sup>

The SECURE Act fundamentally altered many of the distribution rules for beneficiaries who inherit individual retirement accounts (IRAs), employer plans, and other qualified retirement plans that are governed by Sections 401, 403, and 408 of the Internal Revenue Code (IRC) (referred to collectively here as “retirement accounts”).<sup>2</sup>

In particular, the SECURE Act eliminated the lifetime stretch treatment of inherited retirement accounts for all but one new class of beneficiaries, referred to in the statute as the “eligible designated beneficiary.” The Act also raised the age at which account owners must start taking required minimum distributions (RMDs) from 70½ to 72.

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law and made further changes to treatment of retirement accounts.<sup>3</sup> The CARES Act eliminated RMDs for the year 2020.

With estate planning clients holding a greater portion of their wealth in increasingly large retirement accounts, it is important to understand how these new statutes affect outcomes for the beneficiaries of our clients. Choices in designating beneficiaries can lead to drastically

different outcomes in the wealth transferred.

Sections II.A and II.B of this article give an overview of the general rules for taxable distributions related to retirement account beneficiary designations.<sup>4</sup> Section II.C provides an introduction to the new eligible designated beneficiary (EDB) class that the SECURE Act created. Section II.D gives an overview of the various trusts that are treated as designated beneficiaries for the purpose of the retirement account tax rules. Sections III and IV discuss the application of the new rules to beneficiary designations naming spouses and other types of beneficiaries.

### II. OVERVIEW OF RETIREMENT ACCOUNT RULES

Section 401(a) of the IRC creates a special tax regime for retirement accounts. In general, these accounts allow the owner to make annual contributions, up to certain limits, and deduct all or some of those contributions from taxable income. Growth in the retirement accounts is not subject to immediate taxation.<sup>5</sup> When the assets are withdrawn, however, those withdrawals representing deductible contributions and the growth in the account are generally included in the gross income of the owner or other distributee.<sup>6</sup> The IRC and accompanying Treasury Regulations set forth rules about (1) how to contribute to a retirement account, (2) how to take distributions from the account, and (3) what happens if the owner dies and someone else inherits the account. This article focuses on the second and third sets of rules.

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## A. Vocabulary

As in the broader world of estate planning, the world of retirement account beneficiary designations and distributions has its own alphabet soup of vocabulary terms. Each capitalized term within a given definition below, if not defined in such definition, is defined elsewhere in this Section II.A.

**“Accumulation Trust”** is any trust that is not a Conduit Trust and therefore can accumulate assets within the trust. An Accumulation Trust may or may not be considered a See-Through Trust. Under prior law, drafting to make sure that the desired beneficiary was the one who “counted” for the purposes of the RMD rules was quite complex. Under the SECURE Act, however, any Accumulation Trust (other than a DCIB Trust) that qualifies as a DB must follow the Ten-Year Rule, and therefore the measuring life is no longer important.

**“Applicable Distribution Period” (ADP)** is the life-expectancy-based factor, also referred to as the “divisor,” that is found on the Uniform Lifetime Table (Table III), Single Life Expectancy Table (Table I), and Joint Life and Last Survivor Expectancy (Table II) published by the Internal Revenue Service (IRS). Beneficiaries or account owners should use the age of the measuring life to look up the corresponding ADP on the applicable table. For example, the ADP for an owner who turns 75 during the year would be 22.9 for that year, based on Table III. The ADP is used to determine the RMD for a given year by dividing the ADP into the retirement account balance on Dec. 31 of the previous year.<sup>7</sup>

**“Conduit Trust”** is a term used by practitioners (and rarely used by the IRS) to refer to a trust that requires all distributions from the retirement account (not just RMDs) to be paid immediately to the beneficiary, and that meets the requirements of [Treasury Regulation § 1.401\(a\)\(9\)-4](#), Q&A (5). All Conduit Trusts are See-Through Trusts.

**“Designated Beneficiary” (DB)** may be either an individual or a See-Through Trust that is treated as an individual.<sup>8</sup> The Treasury Regulations (“Regulations”) provide that a “designated beneficiary need not be specified by name in the plan or by the employee to the plan in order to be a designated beneficiary so long as the individual who is to be the beneficiary is identifiable under the plan.”<sup>9</sup> Thus, even if no beneficiary is designated on the account, that does not necessarily mean that there is no DB.

**“Eligible Designated Beneficiary” (EDB)** is a new type of Designated Beneficiary that the SECURE Act created. An EDB is entitled to a payout based on the beneficiary’s age rather than a 5-year or 10-year payout. EDBs include surviving spouses, disabled individuals, certain chronically ill individuals, minor children of the owner, and individuals who are no more than 10 years younger than (including those who are older than) the owner.

**“Five-Year Rule”** is a method of calculating an RMD for an NDB. Under the Five-Year Rule, there are no annual RMDs, but the entire balance of the retirement account must be distributed no later than Dec. 31 of the fifth year following the death of the owner. For example, if the owner died Aug. 30, 2022, then the account must be distributed by Dec. 31, 2027. The beneficiary could take interim distributions over the course of the five-year period in order to spread out the tax impact.

**“Fixed Method”** is generally a method of calculating an RMD for an inherited retirement account going to an EDB other than the surviving spouse, and for calculating an RMD where there is no DB and the owner survived to or beyond his or her RBD. To calculate the RMD using this method, the beneficiary takes the ADP corresponding with his or her age on the Single Life Expectancy Table (Table I) and divides the total balance of the retirement account on Dec. 31 of the preceding year by the

ADP (the “divisor”). Each subsequent year, the beneficiary subtracts one from the previous year’s divisor to get a new divisor.<sup>10</sup> For example, for an EDB, if the beneficiary turned 56 in the year after the owner’s death, the beneficiary would divide the account balance as of Dec. 31 of the year of the owner’s death by 28.7. The following year, the beneficiary would divide the December 31 balance by 27.7 (28.7 – 1 = 27.7). Note that under this method the retirement account could be completely distributed during the lifetime of the beneficiary.

**“Joint Life and Last Survivor Expectancy Table” (“Table II”)** is a table published by the IRS that lists each potential age of an account owner and spouse with a corresponding ADP. Use of Table II is limited to owners of an account who are married to a spouse who is more than 10 years younger. Table II can be found in the appendices to IRS Publication 590-B. A discussion of Table II is largely beyond the scope of this article because it does not generally apply to inherited accounts.

**“Non-Designated Beneficiary” (NDB)** is a beneficiary who does not qualify as a DB or an EDB. Generally, an NDB has five years to take distribution of all of the assets in the account if the owner died before the RBD; otherwise, the Fixed Method applies.<sup>11</sup> Some examples of NDBs include trusts that do not qualify as See-Through Trusts, charitable beneficiaries, and the account owner’s estate.

**“Recalculating Method”** is a method of calculating an RMD for an inherited retirement account of a surviving spouse (as opposed to an account for which the spouse elected treatment as the account owner or rolled over into her own account). To calculate the RMD using this method, the surviving spouse divides the total balance of the retirement account on Dec. 31 of the preceding year by the ADP corresponding with her age on the Single Life Expectancy Table (Table I). Each year, she uses

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Table I to determine the new ADP used to calculate the RMD.<sup>12</sup>

**“Required Beginning Date” (RBD)** is the date on which a retirement account owner must begin taking distributions from the account. The SECURE and CARES Acts made some important changes to the RBD rules. Generally, the RBD is now April 1 of the calendar year following the calendar year in which the owner turns 72.<sup>13</sup> (Before the SECURE Act, the RBD was April 1 of the year following the year in which the owner turned 70½. For individuals who turned 70½ in 2019, their RBD was April 1, 2020. However, an owner who turned 70½ in 2019 but did not take the first distribution in 2019 did not have to take either the 2019 or 2020 distributions.<sup>14</sup>)

**“Required Minimum Distribution” (RMD)** is the amount that an owner of a retirement plan may be required to take as an annual distribution from the account. RMDs are calculated as a fraction of the account balance at the end of the previous year. All or a portion of the distributions from non-Roth retirement plans are includible in the distributee’s gross income and therefore may be subject to income taxation.

**“See-Through Trust”** is a trust that meets the requirements of [Regulation § 1.401\(a\)\(9\)-4, Q&A \(5\)](#), namely that (1) the trust is valid under state law, (2) the trust is irrevocable or will become irrevocable upon the death of the plan owner, (3) the beneficiaries of the trust are identifiable individuals, and (4) certain documentation is provided to the plan’s administrator. Generally, See-Through Trusts fall into two categories: (a) a Conduit Trust, and (b) certain special Accumulation Trusts with provisions that prevent anyone other than an identifiable individual from being a trust beneficiary.

**“Single Life Expectancy Table” (“Table I”)** is a table published by the IRS that lists each potential age

of an account beneficiary with a corresponding ADP (divisor). Table I is used to determine the RMD of the beneficiary of an inherited retirement account, using either the Recalculating Method (for a surviving spouse with an inherited account) or the Fixed Method (for all other beneficiaries). Table I can be found in the appendices to IRS Publication 590-B.

**“Table I,”** see Single Life Expectancy Table.

**“Table II,”** see Joint Life and Last Survivor Expectancy Table.

**“Table III,”** see Uniform Lifetime Table.

**“Ten-Year Rule”** is the term for the SECURE Act’s modification of the Five-Year Rule for calculating an RMD for an inherited IRA. Under the Ten-Year Rule, there are no annual RMDs, but the entire account must be distributed by the end of the tenth year following the death of the owner. For example, if the owner died Aug. 30, 2022, the account must be distributed no later than Dec. 31, 2032. The beneficiary could take interim distributions over the course of the 10-year period in order to spread out the tax impact. (The Ten-Year Rule also applies to an account inherited from a DB or EDB. An account inherited from a DB must be distributed 10 years from the death of the original owner. An account inherited from an EDB must be distributed 10 years from the death of the EDB.)

**“Trust for Disabled or Chronically Ill Beneficiaries” (“DCIB Trust”)** is a special Accumulation Trust that can have multiple beneficiaries, so long as no one other than an EDB who is either disabled or chronically ill is entitled to any distributions from the trust during that EDB’s lifetime.<sup>15</sup>

**“Uniform Lifetime Table” (“Table III”)** is a table published by the IRS that lists each potential age of an account owner with a corresponding ADP. Table III is used to determine the RMD of the owner of a retirement account (or the owner’s surviving spouse if she

either elects to treat the account as her own or rolls the account into her own account). Each year, the RMD is determined by dividing the total balance of the retirement account on Dec. 31 of the preceding year by the ADP that corresponds to the age that the owner turns that year. For example, if the beneficiary is 74 on Jan. 1 of a given year, the divisor for the account owner that year would be the ADP corresponding with age 75 (i.e., 22.9). Table III can be found in the appendices to IRS Publication 590-B.

## **B. General Rules Regarding Retirement Account Distributions**

Generally, the rules discussed in this article apply to three types of retirement account distributions: (1) those taken during the account owner’s lifetime, (2) those taken at the owner’s death, and (3) those taken after the account is inherited. Some of the rules depend on whether the owner had reached his or her required beginning date (RBD) at death.

### **1. During Owner’s Lifetime**

For the purposes of this article, the “owner” is the person whose earned income created the retirement account. (Also, in the case of a surviving spouse’s rollover or ownership election, the spouse is treated as an owner.) During the owner’s lifetime, he or she may contribute to the account. In the case of a non-Roth retirement account, a deduction from income is allowed up to a specified amount. Contributions to a retirement account in excess of that amount are allowed but are not eligible for a deduction from income. Those nondeductible contributions, however, are not taxed when distributed.<sup>16</sup>

As the name might suggest, retirement accounts were designed to be used by the owner of the account during retirement. Accordingly, to encourage saving for retirement, the owner may not take distributions

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prior to age 59½ without incurring a 10 percent additional income tax unless certain exemptions are met.<sup>17</sup> Owners who have attained 72 years of age must begin taking required minimum distributions (RMDs) (except that the CARES Act provided that in 2020, no owners, even those age 72 or older, were required to take distributions).<sup>18</sup> After reaching age 72, if the owner fails to take certain RMDs, he or she will face a 50 percent excise tax for failure to take such distributions.<sup>19</sup> RMDs are calculated by looking up the owner's age in the appropriate IRS table: either the Uniform Lifetime Table (Table III) or, if the spouse is more than 10 years younger than the account owner, the Joint Life and Last Survivor Expectancy Table (Table II).

For a person who turned 70½ in 2019, the RBD continued to be April 1, 2020 (regardless of when the person turns 72). However, under the CARES Act no RMD needed to be taken in 2020, so the account owner would skip taking RMDs for both 2019 and 2020, and take the first RMD in 2021.<sup>20</sup>

Finally, it should be noted that even though an IRA may be deemed community property under Washington law, any distributions from a retirement account will be taxed only to the account owner.<sup>21</sup>

## 2. At Owner's Death

When the owner of a retirement account dies, the entire value of the account must be included in the owner's gross estate with no discount for unpaid income taxes.<sup>22</sup> If an RMD was required in the year of the owner's death (because the owner had reached his RBD) and the owner had not taken the RMD at the time of death, then the beneficiary of the account needs to take that owner's RMD (calculated using the owner's age with Table III).

The personal representative of the owner's estate is not responsible for taking an RMD for the year of the owner's death unless the owner did not take the RMD and the estate is the beneficiary of the account.<sup>23</sup> In all

other instances, it is the beneficiary's responsibility to take all RMDs, including the owner's RMD for the year of the owner's death. As noted in the previous section, failure to take the RMD within the required time frame will result in a 50 percent excise tax unless the responsible party obtains a waiver from the IRS.<sup>24</sup>

## 3. After the Account Is Inherited

After the owner dies, the account will pass to some type of beneficiary. Each beneficiary is first categorized as either a designated beneficiary (DB) or a non-designated beneficiary (NDB). If the beneficiary is a DB, then the beneficiary is further categorized as a general DB or an eligible designated beneficiary (EDB). If the beneficiary is an EDB, the beneficiary is once again categorized as a spouse, minor beneficiary, DCIB Trust, or another EDB. Once an EDB dies, a successor beneficiary inherits the account. Thus, seven types of beneficiaries are possible:

(1) NDBs; (2) general DBs; (3) spouses; (4) minor beneficiaries; (5) DCIB Trusts; (6) other EDBs; and (7) successor beneficiaries. Each of these types is associated with particular distribution rules, and each is discussed in more detail below.<sup>25</sup>

The beneficiary designation filed with the account custodian (or, if no beneficiary is designated for a retirement account, the applicable rule of the plan or custodian) determines the identity of the beneficiary of the account. It is important to note that, by virtue of the plan rules, *an account may still have a DB (or EDB) even if the account owner did not designate a beneficiary.* That is, a decedent might not have designated a beneficiary, but because the plan rules provide that in the absence of a beneficiary designated by the owner the deceased owner's spouse would inherit the account, then the account would have an EDB (spouse) even though the account owner did not designate anyone. Each type of beneficiary is subject to different RMD rules, and those rules may change depending on

whether the account owner reached his or her RBD before death. A chart is provided below to generally show the RMD rules applicable before and after the SECURE Act passed.

Even though beneficiaries should be able to stretch out their account distributions over a period of years, according to the RMD rules outlined below, not all account custodians allow for this so-called "stretch treatment." A custodian may have a rule that a beneficiary can only take a lump-sum payment and may not allow for additional distributions stretched over subsequent years. In the event that a custodian will not allow stretch treatment, the custodian by law is required to allow a trustee-to-trustee transfer<sup>26</sup>—that is, a transfer of the retirement account to a new retirement account with a different custodian, retaining the decedent as the owner of the new account.<sup>27</sup> For example, if Son inherits a \$400,000 IRA from Dad, and the custodian requires Son to take one \$400,000 lump-sum distribution, Son can transfer Dad's IRA to a new IRA with a different custodian, still using Dad as the owner. The new custodian can then set up the account as an inherited IRA for Son and allow Son to take distributions using the Ten-Year Rule rather than one lump-sum distribution.

The chart on page 5 summarizes the general factors that determine an RMD for a given beneficiary. Note that these are general rules only and that additional research should be conducted to determine the RMDs in any particular circumstance.

- The first column of the chart indicates the year of calculation of the RMD.
- The second column applies to situations where the owner died before his or her RBD, and provides the method to be used to calculate the beneficiary's RMD (i.e., the applicable rule or IRS table, and the person whose age is used with the table to determine the ADP if appropriate).

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- The third column provides the same information as the second column, but for an owner who died on or after his RBD.

Thus, for example, in both the second and third columns, “Table III (owner)” means that the owner’s age is used with the Uniform Lifetime Table (Table III) to find the ADP (divisor) to use in calculating the RMD.<sup>28</sup> Examples of how to apply the IRS tables and rules follow in Section III (for spouses) and Section IV (for all other beneficiaries). Table II is not addressed in the chart, as use of Table II is outside the scope of this article.

RMDs Before the SECURE Act and CARES Act		
Year of RMD Calculation	Owner died before the RBD	Owner died on or after the RBD
Year of Owner’s death – Year 0	No RMD	Table III (owner)
All other years		
Spouse rollover and Spousal election	Table III (spouse)	Table III (spouse) (except Table I (spouse) for the year of any rollover)
Spouse – inherited Spouse – See-Through Trust	Table I (spouse); Recalculating Method	Table I (ADP of spouse or owner, whichever is longer); Recalculating Method
DB	Table I (DB); Fixed Method	Table I (ADP of DB or owner, whichever is longer); Fixed Method
NDB	Five-Year Rule	Fixed Method (owner)
After DB’s death	Table I (continue DB) Fixed Method	Table I (continue DB or owner) Fixed Method

RMDs After the SECURE Act and CARES Act		
Year of RMD Calculation	Owner died before the RBD	Owner died on or after the RBD
Year of Owner’s death - Year 0	No RMD	Table III (except no RMD required in 2020 for IRAs, 403 plans, and certain 457 plans) <sup>29</sup>
All other years		
Spouse rollover and spousal election	Table III (spouse)	Table III (spouse) (except no RMD is required for 2020, and except Table I (spouse) for the year of any rollover)
Spouse – inherited Spouse – See-Through Trust	Table I (spouse); Recalculating Method (except no RMDs until owner would have attained 72) <sup>30</sup>	Table I (ADP of spouse or owner, whichever is longer); <sup>31</sup> Recalculating Method
EDB (other than spouse or minor child)	Table I (EDB); Fixed Method	Table I (ADP of EDB or owner, whichever is longer); Fixed Method
EDB – minor child	Table I (EDB); Fixed Method until child reaches 18, then Ten-Year Rule	Table I (EDB); Fixed Method until child reaches 18, then Ten-Year Rule
DB	Ten-Year Rule	Ten-Year Rule <sup>32</sup>
NDB	Five-Year Rule	Table I (owner); Fixed Method
After DB’s death	Ten-Year Rule (10 years from Owner’s death)	Ten-Year Rule (10 years from Owner’s death)
After EDB’s death	Ten-Year Rule (10 years from EDB’s death)	Ten-Year Rule (10 years from EDB’s death)

**NOTE:** This chart should be used as a general reference only. Many exceptions apply to these general rules. For more extensive information on estate planning with retirement accounts, I strongly recommend Natalie B. Choate’s publications.<sup>33</sup>

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### C. The Eligible Designated Beneficiary and the SECURE Act

The SECURE Act introduced a new type of beneficiary: the Eligible Designated Beneficiary, or EDB. The EDB must not only meet the criteria of a designated beneficiary but must also fall into one of five categories, each discussed below. While the SECURE Act generally requires inherited retirement accounts to be distributed over a maximum of 10 years, EDBs are allowed to stretch out payments over a longer period. The EDB categories are as follows: (1) the surviving spouse, (2) a minor child of the owner, (3) a disabled person, (4) certain chronically ill individuals, and (5) an individual who is not more than 10 years younger than the owner.<sup>34</sup> The determination as to the beneficiary's status is made as of the date of the account owner's death.<sup>35</sup> The sections below briefly describe each type of EDB.

#### 1. Surviving Spouse

The first category of EDB is the surviving spouse. The distribution rules for the surviving spouse were largely untouched by the SECURE Act. These rules are discussed in detail in Section III, below. Distribution rules for the other categories of EDB and other non-spouse beneficiaries are discussed in Section IV, below.

#### 2. Minor Child

The second category of EDB is the minor child.<sup>36</sup> A minor child is a child of the owner who has not yet reached the age of majority (in Washington, this is 18).<sup>37</sup> This EDB category does not include grandchildren, nieces, or nephews of the owner, or any other child who has not reached majority.

#### 3. Disabled Persons

The third category of EDB is the disabled person, as defined under the annuity rules in the IRC.<sup>38</sup> Pursuant to that definition, a beneficiary is disabled if he or she "is unable to engage in any substantial gainful

activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration."<sup>39</sup>

#### 4. Chronically Ill Individuals

The fourth category of EDB is the chronically ill individual, defined, with slight modifications, in the IRC provisions relating to long-term care insurance.<sup>40</sup> An EDB who is a chronically ill individual is an individual certified by a licensed health practitioner as follows: (1) "being unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for a period of at least 90 days due to a loss of functional capacity" (or a similar disability), and such disability is indefinite and reasonably expected to be lengthy in nature; or (2) requiring supervision to protect the individual from threats to health and safety due to severe cognitive impairment.<sup>41</sup>

#### 5. Close-in-Age Exception

The fifth category of EDB is an individual who is not more than 10 years younger than the owner and who is not an EDB under any of the other categories.<sup>42</sup> This would include an individual who is older than the owner.

### D. The See-Through Trust as a Beneficiary

The IRC provides that "[t]he term 'designated beneficiary' means any individual designated as a beneficiary by the [account owner]."<sup>43</sup> The Regulations recognize that some trusts can be treated as an individual, provided that certain qualifications are met. These are referred to as See-Through Trusts, and they include both Conduit Trusts and Accumulation Trusts with special provisions that allow the trusts to be considered See-Through Trusts. The SECURE Act provided for an additional Trust for Disabled or Chronically Ill Beneficiary (DCIB Trust) that is defined in the IRC as an EDB.

#### 1. Conduit Trust

The Conduit Trust is an irrevocable trust that requires the trustee to distribute any and all distributions that the trustee receives from a retirement account to one beneficiary. The trustee cannot have any power to hold back any distributions from the retirement account. Keep in mind that certain rules of trust accounting differ from this requirement, so a simple trust that only requires distribution of all income to the beneficiary will not qualify as a Conduit Trust without additional language.<sup>44</sup>

#### 2. See-Through Accumulation Trust

A See-Through Accumulation Trust is an irrevocable trust, valid under state law, where all beneficiaries are individuals who are "identifiable . . . from the trust instrument."<sup>45</sup> A beneficiary need not be named, but "[t]he members of a class of beneficiaries capable of expansion or contraction will be treated as being identifiable if it is possible, to identify the class member with the shortest life expectancy."<sup>46</sup> If all of those requirements are met, then certain documentation must be provided to the plan administrator for the trust to qualify.<sup>47</sup> Even if the trust does qualify as See-Through, Natalie Choate has opined that such trusts can be subject to the Ten-Year Rule but cannot be used to stretch the retirement account over the lifetime of an EDB (with the exception of a DCIB Trust).<sup>48</sup> Other tax practitioners disagree and believe that where a trust qualifies as a See-Through Accumulation Trust, then if the EDB is the measuring life, the account should be able to be stretched over the EDB's lifetime.<sup>49</sup> There are myriad rules regarding what qualifies and does not qualify as a See-Through Accumulation Trust, so additional research should be done to determine whether such a trust qualifies and whether a measuring life must be determined.

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### 3. Trust for Disabled or Chronically Ill Beneficiaries ("DCIB Trust")

Unlike the Conduit and See-Through Accumulation Trusts, the DCIB Trust is defined by the SECURE Act in Section 401(a) of the IRC. The DCIB Trust is a multi-beneficiary trust where all of the beneficiaries are DBs and that is either divided upon the account owner's death or provides that no individual other than an EDB who is either disabled or chronically ill has any right to the account during the EDB's lifetime. After the death of the EDB, the account must be distributed pursuant to the Ten-Year Rule.<sup>50</sup>

### III. SPOUSE AS BENEFICIARY

If the surviving spouse is designated as the sole beneficiary of a deceased spouse's retirement account, the surviving spouse has the following options: (1) treat the account as the spouse's own by electing to designate the spouse as the owner of the account; (2) treat the account as the spouse's own by rolling the account into one of the spouse's retirement accounts<sup>51</sup>; (3) have the assets held in a trust for the benefit of the surviving spouse; or (4) treat the spouse as the beneficiary of an inherited retirement account. Sections III.A through III.C below address each of these options.

#### A. Roll Over Account or Elect Treatment as Spouse's Own Account

In most situations, tax laws favor either rolling the deceased spouse's retirement account into the surviving spouse's existing retirement account or electing to convert the account to the spouse's, naming the spouse as the owner. A rollover and an election are similar options. The rollover allows the spouse to roll the deceased owner's account into the spouse's own account tax free.<sup>52</sup> The election allows the spouse to elect to treat the account as her own.<sup>53</sup>

#### 1. Rollover

In the case of a rollover, the spouse calculates the RMD for the deceased owner's account in Year 0 (the year of death) based on the age of the deceased owner. If the owner did not reach his RBD, then the spouse does not need to take an RMD that year. If the owner died on or after his RBD, then in Year 0 the spouse must take the RMD based on the Uniform Lifetime Table (Table III), using the age of the deceased owner, unless the deceased owner already took his distribution for Year 0. If the spouse does not make a rollover in Year 0, then the spouse must take her RMD for future years as a beneficiary, up to and including the year of the rollover. That is, the RMD is calculated using the less-favorable Single Life Expectancy Table (Table I) based on the spouse's age for the rollover year. The RMD must be distributed, and then the account may be rolled over. For every subsequent year, the spouse calculates the RMD using Table III with the spouse's age.<sup>54</sup>

For example, if Homer Simpson died having just turned age 74, leaving his retirement account to Marge, age 68, then in Year 0 Marge would need to take an RMD calculated by dividing the balance of the account on Dec. 31 of the previous year by the ADP of 23.8 (using Table III based on Homer's age). The next year, Marge wants to roll over the account into her own IRA. She needs to take an RMD using Table I based on her age (she turns 69 in that year), so her ADP will be 17.8. The following year, when Marge turns 70, no RMD needs to be taken because Marge is not yet 72 and the account is treated as hers for all purposes.

#### 2. Spousal Election for Ownership Treatment

If the spouse makes an election in Year 0 to be treated as the owner of her deceased spouse's IRA, the deceased spouse's age will be used with Table III to calculate the Year 0 RMD. Then in Year 1 and in all

subsequent years, the spouse's age may be used with Table III. Table I, which is less favorable, does not need to be used to calculate any RMDs.<sup>55</sup>

Using the previous example, if Marge decided to elect to treat the account as her own, then the RMD in the year that Homer died would be the same (that is, based on Homer's age using Table III). As long as Marge makes the election in the year of Homer's death or the year following his death, then the next year no RMDs would need to be taken because the account would be treated as Marge's for all purposes and she was under age 72.

Note that there are many exceptions and odd strategies with regard to spouses inheriting retirement accounts, so it is important to research each situation to determine the most favorable approach.

#### B. Leave the IRA to a Trust for the Spouse

At times, it might make sense for the owner to leave a retirement account to a trust for the benefit of a surviving spouse, rather than leaving it to the spouse outright. When this is done, in order for the spouse to be able to take distributions measured over the spouse's lifetime (as opposed to under the Five- or Ten-Year Rule), it is important to make sure that the trust is a See-Through Trust with the spouse's life as the measuring life.

If the trust qualifies for See-Through EDB treatment for the surviving spouse, then the distribution rules for an inherited retirement account will apply, and the trustee should use Table I rather than Table III to determine the RMD. Table I is the table for beneficiaries of retirement accounts rather than owners. It uses smaller ADPs, and thus requires larger annual RMDs. Additionally, RMDs are required regardless of the spouse's age. The

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spouse would use the Recalculating Method to determine each RMD.

Going back to the example above of Homer and Marge Simpson, if Homer named a Conduit Trust for the benefit of Marge as his beneficiary, then the trustee would distribute out Homer's RMD in the year of his death (Year 0). Then, to determine the RMD required for Year 1, the trustee would use Table I to look up the ADP (divisor) corresponding to Marge's age in Year 1 (69). The trustee would divide the account balance on Dec. 31 of Year 0 by that divisor to determine Marge's RMD for Year 1. That is, the trustee would divide the account balance by 17.8. The trustee would then distribute the entire RMD to Marge outright. In Year 2 when Marge turned 70, the trustee would use Table I and the Recalculating Method, finding a new divisor of 17.0 to determine the new RMD. In Year 3, the divisor would be 16.3. (Note that if Marge could have elected to treat the account as her own, rather than having it held in trust, no distributions would have been required because she would have been under the age of 72.)

### C. Treat the Account as an Inherited IRA

There are rare instances when a spouse might wish to treat her deceased spouse's retirement account as an inherited account instead of making an ownership election or a rollover. For example, considerations regarding creditor issues or Roth rollovers with respect to after-tax money in the plan might lead a spouse to make this choice. For a spouse's inherited account, the RMD would be calculated using Table I and the Recalculating Method, in the same way that it would be calculated for a See-Through Trust for the spouse, described in Section III.B, above.

### IV. NON-SPOUSE BENEFICIARIES

As discussed above in Section II.B.3, an inherited retirement account passes to either a designated

beneficiary (DB) or a beneficiary who does not qualify as a DB, and is therefore a non-designated beneficiary (NDB). A DB is either an individual or a See-Through Trust. If the account passes to a DB, then the beneficiary must figure out whether he or she is that special kind of DB created by the SECURE Act and called an eligible designated beneficiary (EDB)—and if so, what type of EDB. What type of beneficiary receives the account has important ramifications for when and how the account assets will be distributed and taxed.

#### A. Distributions to an NDB

For an account distributed to an NDB, if the owner had not yet attained his or her required beginning date (RBD) as of the date of his or her death, then the Five-Year Rule applies. That is, no annual required minimum distributions (RMDs) are required, but the entire account must be distributed by December 31 of the fifth year following the owner's death. If the owner had attained his or her RBD, then annual RMDs are determined by using the deceased owner's age on Table I, using the Fixed Method.<sup>56</sup>

For example, if Homer Simpson named his estate (an NDB) instead of naming Marge as the beneficiary of his retirement account, then in the year of 74-year-old Homer's death, his ADP would be 23.8, based on Table III (which is for owners). The RMD would be the account balance divided by the ADP (the divisor). The following year, if the estate did not choose a lump-sum payout, it would need to calculate the new RMD by finding the ADP on Table I (which is for beneficiaries) for the year that Homer died (i.e., 14.1) and subtracting one. Each year, another one would be subtracted: the ADP for the estate in Year 1 would be 13.1; in Year 2 it would be 12.1; in Year 3, it would be 11.1.

On the other hand, if Homer died at age 55 (before his RBD), then the Five-Year Rule would apply to his estate as beneficiary. No RMDs would be required, but the entire

account would have to be distributed to his estate, with any income taxes paid, by Dec. 31 of the fifth year following Homer's death.

#### B. Distributions to a DB Who Is Not an EDB

If the beneficiary is a DB who is not also an EDB, then no annual RMDs are required, but the entire account must be distributed by Dec. 31 of the 10th year following the account owner's death ("Ten-Year Rule"). It does not matter whether the owner died before or after her required beginning date (RBD). This rule would usually apply, for example, to any individual beneficiary who is not an EDB and some See-Through Trusts.

#### C. Distributions to an EDB Who Is Not a Spouse

If the beneficiary is an EDB (other than a surviving spouse, discussed in Section III, above), then distributions are based on the beneficiary's age, with certain exceptions. The Year 1 RMD is calculated by looking up the beneficiary's age in the year after the owner's death on Table I to get the initial ADP (divisor). Each subsequent year's RMD is calculated by subtracting one from that ADP (Table I, Fixed Method). For an example of this fixed method, see Section IV.A, above.

A minor child who is an EDB receives the Fixed Method treatment until he or she reaches majority age (18 in Washington), at which point the Ten-Year Rule begins to apply. Therefore, when a retirement account owner names his minor child as a beneficiary, the child must take distribution of the entire account by age 28.

Since many parents do not wish to name a child (or at times even a young adult) as the outright owner of a large retirement account, it is important to consider options with regard to trusts. A Conduit Trust for the benefit of a minor child appears to qualify for the stretch treatment to age 28. However, until the IRS issues

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more guidance, some commentators believe that a trust named as an account beneficiary should not be a trust for multiple beneficiaries (a so-called “pot trust”), even if the trust divides into separate trusts upon the death of the owner.<sup>57</sup>

More generally, questions remain about eligibility of See-Through Trusts for EDB treatment. Presently the only type of See-Through Trust explicitly blessed by the SECURE

Act for treatment as an EDB is a DCIB Trust—that is, a trust that only allows distributions to a chronically ill or disabled individual.<sup>58</sup> See also the discussion of See-Through Trust treatment in the context of spouses as beneficiaries, in Section III.B, above.

## V. CONCLUSION

This article only touches the surface of some of the complexities

involved in choosing beneficiaries for designation on retirement accounts and determining how they will be treated once the account owner dies. We hope the article gives the reader some context to start additional research into each particular situation. It is to be hoped that in the coming years we will have additional guidance from the IRS and other commentators that can clarify some of the issues raised here. ■

1 Pub. L. No. 116-94, 133 Stat. 2534 (2019). The SECURE Act was enacted as Division O of the Further Consolidated Appropriations Act, 2020, *id.*, amid appropriations for military, transportation, and agriculture.

2 Both IRAs and employer plans fall under the rubric of “retirement accounts.” Many of the rules discussed in this article apply equally to both. That said, employer plans such as those created pursuant to [IRC §§ 401\(k\) and 403\(b\)](#) may have employer-specific provisions that change the application of some of the rules discussed in this article. Since employer plans vary greatly and are generally eligible to be transferred to IRAs in an eligible rollover distribution pursuant to [IRC § 401\(a\)\(31\)](#), this article focuses on rules related to IRAs and does not discuss complexities pertaining solely to employer plans. Because the rules do not pertain only to IRAs, however, this article generally uses the broader term “retirement accounts.”

3 Pub. L. No. 116-136, 134 Stat. 281 (2020).

4 This article is not intended as an exhaustive treatment of retirement benefits. Natalie Choate has written a terrific (and now with the SECURE Act, partly out of date) book on the subject. Natalie B. Choate, *Life and Death Planning for Retirement Benefits* (8th ed. 2019) [hereinafter Choate 8th ed.]. The reader should use this article as a general overview and introduction to concepts and changes introduced by the SECURE and CARES Acts, then use other more extensive reference materials to research any particular client’s situation.

5 [Internal Revenue Code \(IRC\) § 408\(e\)\(1\)](#).

6 [IRC § 408\(d\)\(1\)](#). So-called “Roth” accounts are not taxed, and the account’s owner does not have to take required minimum (RMDs). When Roth accounts are inherited, they are subject to the same distributions requirements that apply to other retirement accounts, but the distributions are not subject to income taxation.

7 Tables I and II refer to the divisor as “life expectancy” and Table III refers to it as the “ADP.” Choate refers to all of the divisors as the “ADP,” see generally Choate 8th ed., *supra*, and this article follows the same convention.

8 Confusingly, the Treasury Regulations provide that a designated beneficiary must be an individual, but also provide that certain trusts will be treated as individuals for these purposes. See [Treas. Reg. § 1.401\(a\)\(9\)-4, Q&A\(1\)](#), (3).

9 [Treas. Reg. § 1.401\(a\)\(9\)-4, Q&A\(1\)](#).

10 [Treas. Reg. § 1.401\(a\)\(9\)-5, Q&A\(5\)\(c\)\(1\)](#).

11 [IRC § 401\(a\)\(9\)\(B\)\(ii\)](#). The “trust” referred to in the cited section refers to the employer plan, not an estate planning trust, and provides that the default is the Five-Year Rule.

12 [Treas. Reg. § 1.401\(a\)\(9\)-5, Q&A\(5\)\(c\)\(2\)](#).

13 There are exceptions to this rule for non-five-percent owners of employer plans (RBD is the later of age 72 or the calendar year in which the employee retires) and for certain 403(b) plans. [IRC § 401\(a\)\(9\)\(C\)](#).

14 I.R.S. Notice 2020-6, 2020-7 I.R.B. 411.

15 [IRC § 401\(a\)\(9\)\(H\)\(iv\)](#).

16 [IRC § 408\(o\)](#). The principle that an after-tax contribution is not taxable is actually more of a general principle under [IRC § 72\(b\)\(2\)](#) as an “investment in the contract.” There is also a general “cream in the coffee” rule under [IRC § 72](#) that says that where there are both basis and normal contributions, each distribution consists of part income and part return of basis. There are exceptions for non-IRAs, however, so these must be analyzed individually under the relevant plan.

17 See [IRC § 72\(q\)](#). The CARES Act waives this 10 percent penalty for distributions of less than \$100,000 in 2020 for certain qualified individuals who have been affected by the COVID-19 disease. See CARES Act § 2202.

18 See CARES Act § 2203(a)(I)(i).

19 [IRC § 4974](#).

20 See CARES Act § 2203(a)(I)(ii). This is true even if the owner does not attain the age of 72 until 2021.

21 See Angela C. Morris v. Comm., TC Memo 2002-17. Community property laws are particularly tricky with respect to retirement accounts. Washington courts have held that “retirement benefits are considered deferred compensation for past services, and thus the portion of those benefits accrued during marriage is community property.” *In re Marriage of Nuss*, 65 Wn. App. 334, 343 (1992). However, the United States Supreme Court has held that community property

law is preempted by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. ch. 18, so a non-participant spouse does not have any community property rights in the participant spouse’s qualified plan subject to ERISA, other than as provided under federal law. Boggs v. Boggs, 520 U.S. 833, 836, 117 S. Ct. 1754 (1997). Since ERISA governs only employer plans, it would appear that different community property classification rules exist for IRA and ERISA plans. In light of the Boggs decision, the author treats plans under ERISA as the separate property of the participant spouse, while treating IRAs and non-ERISA plans as community property, but acknowledges that reasonable minds may differ on this treatment. For an excellent analysis of this issue, see Gair Petrie, *Estate & Income Tax Planning for Retirement Plans & IRAs* § 13.6 (revised Oct. 2011), available at [www.epcsww.org/wp-content/uploads/2013/03/120515GairPetrie.pdf](http://www.epcsww.org/wp-content/uploads/2013/03/120515GairPetrie.pdf).

22 Estate of Smith v. United States, 300 F. Supp. 2d 474, 479 (S.D. Tex. 2004) (finding that the fair market value was the correct value of a retirement account and disallowing any discount for income taxes to be paid by the beneficiary). Instead, an account beneficiary may be entitled to a credit for estate taxes paid on income in respect of a decedent (IRD). [IRC § 691](#); see also Estate of Smith, 300 F. Supp. at 478.

23 See [Treas. Reg. § 1.401\(a\)\(9\)-5, A-4\(a\)](#). This is really a practical necessity. Where the deceased owner named a beneficiary, the beneficiary inherits the retirement account without any action on the part of the personal representative (as with all nonprobate assets). Thus, it is the beneficiary rather than the personal representative who is responsible for taking any RMDs.

24 [Treas. Reg. § 54.4974-2, A-7](#); IRS Form 5329.

25 It is worth noting that Congress could have simplified the RMD rules by making everyone other than an EDB subject to the Ten-Year Rule, but chose not to do so. Instead, it kept the complex DB regime and layered onto that an additional EDB category for some, but not all DBs, with a slightly different rule for NDBs. What a headache!

26 See Rev. Rul. 78-406, 1978-2 C.B. 157.

27 See I.R.S. Priv. Ltr. Rul. 200707158 (Dec. 19, 2006) (“Revenue Ruling 78-406, 1978-2 C.B. 157, provides that the direct transfer of funds from one IRA trustee to another IRA trustee, even at the behest of the IRA holder, does not constitute a payment or distribution to a participant, payee or distributee as those terms are used in Code section 408(d). Furthermore, such a transfer does not constitute a rollover distribution. Finally, Rev. Rul. 78-406 is applicable if the trustee to trustee transfer is directed by the beneficiary of an IRA after the death of the IRA owner as long as the transferee IRA is set up and maintained in the name of the deceased IRA owner for the benefit of the beneficiary.”).

28 As the chart shows, the Uniform Lifetime Table (also known as “Table III”) is generally used for computing RMDs for the account owner or the spouse, if the spouse is treated as the account owner. The Single Life Expectancy Table (Table I) is generally used for determining RMDs for inherited accounts. Use of the Joint Life and Last Survivor Expectancy Table (Table II) is beyond the scope of this article and thus is not addressed in the chart.

29 See CARES Act § 2203(a)(I)(i).

30 [IRC § 401\(a\)\(9\)\(B\)\(iv\)](#).

31 [Treas. Reg. § 1.401\(a\)\(9\)-5](#). But see § II.D.2, below (treatment of See-Through Trust for surviving spouse may be uncertain). A-5(a)(1).

32 [IRC § 401\(a\)\(9\)\(H\)\(i\)\(II\)](#). The SECURE Act specifically provides that the Ten-Year Rule applies whether or not the owner has already started taking distributions.

33 See Choate 8th ed., *supra*. Although Choate’s book is an invaluable resource on many aspects of estate planning involving retirement benefits, the 8th edition does not address any of the changes resulting from the SECURE Act and CARES Act. Until a new edition is published, on SECURE Act topics see Natalie B. Choate, “Planning for Retirement Benefits After the SECURE Act,” 54th Annual Heckerling Institute on Estate Planning, Univ. of Miami Sch. of Law 16 (Jan. 16, 2020) [hereinafter “Choate 2020”]. See also Alan S. Gassman, et al., *Planning for Ownership and Inheritance of Pension and IRA Accounts and Benefits in Trust or Otherwise After the SECURE Act* (Haddon Hall Publishing 2020) [hereinafter “Gassman”].

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- 34 [IRC § 401\(a\)\(9\)\(I\)\(ii\)](#).  
 35 [IRC § 401\(a\)\(9\)\(E\)\(ii\)](#).  
 36 [IRC § 401\(a\)\(9\)\(E\)\(ii\)\(I\)](#).  
 37 [RCW § 26.28.010](#).  
 38 [IRC § 72\(m\)\(7\)](#).  
 39 *Id.*  
 40 See [IRC § 401\(a\)\(9\)\(E\)\(ii\)\(IV\)](#) (citing [IRC § 7702B\(c\)\(2\)](#)).  
 41 [IRC §§ 401\(a\)\(9\)\(E\)\(ii\)\(IV\)](#), [7702B\(c\)\(2\)\(i\)-\(iii\)](#).  
 42 [IRC § 401\(a\)\(9\)\(E\)\(ii\)\(V\)](#).  
 43 [IRC § 409\(a\)\(9\)\(E\)\(i\)](#).  
 44 Likewise, qualified terminable interest property (QTIP) trusts, like simple trusts, would not qualify without additional language. In addition, there are special tax considerations for qualified domestic trusts (QDOTs) designed to hold assets for non-citizen spouses that call for taxing distributions of corpus, which could include RMDs. See Choate, 8th ed., *supra*, for a broad discussion of these issues.  
 45 [Treas. Reg. § 1.401\(a\)\(9\)-4](#), A-5(b)(3).  
 46 [Treas. Reg. § 1.401\(a\)\(9\)-4](#), A-1.  
 47 [Treas. Reg. § 1.401\(a\)\(9\)-4](#), A-5(b)(4). Each of these requirements is quite complex. I recommend Choate, 8th ed., *supra*, for a full discussion of the complexities of accumulation trust requirements.  
 48 Choate 2020, *supra* (“Generally, without issuance of new regulations, an accumulation trust cannot qualify for EDB treatment, even if the primary or life beneficiary of the trust is an EDB, because if the EDB is not the sole beneficiary of the participant EDB treatment does not apply.”).  
 49 Gassman, *supra*.  
 50 [IRC § 401\(a\)\(9\)\(E\)\(iii\)](#).  
 51 In some cases, the spouse may elect to roll over the account where he or she is not named as the beneficiary. See I.R.S. Priv. Ltr. Rul. 9524020 (Mar. 21, 1995) (in a circumstance where the estate was beneficiary of the retirement plan and the spouse took an elective share under state law, the IRS treated the share as having been received from decedent’s plan directly, so it qualified for rollover treatment).  
 52 [IRC § 408\(d\)\(3\)\(C\)](#).  
 53 [Treas. Reg. § 1.408-8](#), A-5(a).  
 54 [Treas. Reg. § 1.408-8](#), A-5.  
 55 *Id.*  
 56 [Treas. Reg. § 1.401\(a\)\(9\)-5](#), A-5(c)(3).  
 57 For a discussion of this topic, see Choate 2020, *supra* (“How does the exception work if there is a conduit trust for multiple minors? That is unknown. Since the IRS has rarely if ever acknowledged that there can even be a conduit trust for multiple beneficiaries it might be wise to avoid this approach if seeking to qualify for the exception.”). But see Gassman, *supra* (stating that the oldest child’s age could be used in calculating the RMDs).  
 58 [IRC § 401\(a\)\(9\)\(H\)\(iv\)](#).