

Inherited IRAs and Trusts: Understanding and Applying the Current Rules

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# **Inherited IRAs and Trusts: Understanding and Applying the Current Rules**

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## I. Introduction

An Individual Retirement Account ("IRA") is a retirement savings vehicle that allows the owner to contribute money to an account that the owner controls.<sup>2</sup> Earnings and growth in value of assets in an IRA are not taxable as long as the assets stay within the IRA.<sup>3</sup> Said differently, the assets in an IRA compound income tax free.

IRAs are one type of retirement account. Other retirement accounts may be 401(k) plans, 403(b) plans, governmental 457(b) plans, profit-sharing plans, defined benefit pension plans, money purchase pension plans, and other qualified plans under I.R.C. § 401(a). While there are some technical differences between IRAs and these qualified plans (for example, different contribution limits, different rules regarding loans, and different creditor protection), the Required Minimum Distribution rules under I.R.C. § 401(a)(9) that are the focus of this paper generally apply in a similar manner to all of these retirement vehicles. Therefore, unless the context indicates otherwise, references to "IRA" in this paper include these other types of retirement accounts. Defined benefit plans and retirement annuities are not discussed in this paper.

There are two types of IRAs: traditional IRAs (those funded with pre-tax dollars, which means that an income tax deduction was taken on the amount contributed to the IRA<sup>4</sup>), and Roth IRAs (those funded with after-tax dollars, where there was not an income tax

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<sup>2</sup> See I.R.C. § 408(a) (defining individual retirement accounts).

<sup>3</sup> I.R.C. § 408(e)(1).

<sup>4</sup> I.R.C. § 219.

deduction taken on the contribution to the IRA<sup>5</sup>). Some qualified plans also offer designated Roth accounts (DRACs) with similar tax treatment to Roth IRAs.<sup>6</sup> Distributions from traditional IRAs are taxable to the recipient as ordinary income,<sup>7</sup> while distributions from a Roth IRA are generally not taxable if certain requirements are met.<sup>8</sup>

For many people approaching retirement age, a substantial portion of their wealth may be held in retirement accounts, including IRAs. An attorney providing estate planning or public benefit planning services will frequently encounter retirement assets and must understand them in order to properly advise the clients.

This paper focuses primarily on the laws that apply to IRAs, plus some other retirement accounts (other than defined benefit plans and retirement annuities) upon the account owner's death, and what the options are for maximizing the value of the retirement account and minimizing the income tax liability. The applicable statutes and regulations use the word "employee" or "participant" to refer to a retirement account owner. For ease of reference, this paper refers to the retirement account owner as the "IRA owner."

## **II. Update on SECURE Act, SECURE 2.0 Act of 2022, and 2024 Final and Proposed Regulations**

**A. SECURE Act:** The Setting Every Community Up for Retirement Enhancement Act of 2019<sup>9</sup> (SECURE Act) was signed into law on December 20, 2019 as part of the Further Consolidated Appropriations Act, 2020. It is located in Division O, Title IV – Revenue Provisions, and the Section mostly described in this paper is in Section 401, entitled "Modification of Required Distribution Rules for Designated Beneficiaries."<sup>10</sup> This has been primarily codified in I.R.C. § 401(a)(9) by amending subparagraph (E) and adding a new subparagraph (H). Throughout this paper the Internal Revenue Code is referred to as the "Code" or "I.R.C."

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<sup>5</sup> I.R.C. § 408A.

<sup>6</sup> I.R.C. § 402A.

<sup>7</sup> I.R.C. § 408(d)(1).

<sup>8</sup> I.R.C. § 408A(d). See *infra* Section XI, D.

<sup>9</sup> Setting Every Community Up for Retirement Enhancement Act of 2019, Pub. L. No. 116-94, div. O, 133 Stat. 2534, 3137 (December 20, 2019).

<sup>10</sup> Setting Every Community Up for Retirement Enhancement Act of 2019, Pub. L. No. 116-94, div. O, 133 Stat. 2534, 3176 (December 20, 2019).

Among other changes, Section 401 of the SECURE Act created a new class of Designated Beneficiaries called “Eligible Designated Beneficiaries” and limited the ability to pay out any annual Required Minimum Distributions over the lifetime of a beneficiary to those who qualify as an Eligible Designated Beneficiary. Everyone else has to completely withdraw the IRA using the 10-Year Rule (and in one instance, using the 5-Year Rule). The Act also left many unanswered questions and made it more difficult to adequately plan for how to best utilize IRAs when planning what happens upon the IRA owner’s death.

**B. 2022 Proposed Regulations for SECURE Act:** Proposed regulations relating to Section 401 of the SECURE Act were published in the Federal Register on February 24, 2022.<sup>11</sup>

**C. SECURE 2.0 Act of 2022:** The SECURE 2.0 Act of 2022 was signed into law on December 29, 2022, as Division T of the Consolidated Appropriations Act, 2023.<sup>12</sup> From the perspective of the focus of this paper, there are a few changes to previously existing law that should be mentioned.

**1. Age Increase for Required Beginning Date:** The age used for determining the Required Beginning Date, the date when an IRA owner must start taking Required Minimum Distributions from an IRA, was increased to age 73 starting in 2023 and to age 75 in 2033. This change is discussed later in the section of this paper explaining the Required Beginning Date.<sup>13</sup>

**2. Modification of Required Minimum Distribution Rules Allowing a Charity to be a Beneficiary of an AMBT:** In a major change to the current rules, beginning January 1, 2023, Section 337 of the SECURE 2.0 Act of 2022 allows a qualifying charity to be named as a remainder beneficiary of a trust established for the benefit of an individual who is “Disabled” or “Chronically Ill” as defined in the SECURE Act (referred to as an “Applicable Multi-Beneficiary Trust” (AMBT) in the Code and regulations) without negatively affecting the beneficiary’s ability to take Required Minimum Distributions out over the beneficiary’s life expectancy. Under the previous rules, if a residual beneficiary was not an individual, the trust did not qualify

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<sup>11</sup> 87 Fed. Reg. 10504 (February 24, 2022).

<sup>12</sup> SECURE 2.0 Act of 2022, Pub. L. No. 117-328, div. T, 136 Stat. 4459, 5275 (December 29, 2022).

<sup>13</sup> See *infra* Section V, A, 2.

as a see-through trust and therefore would not qualify as an AMBT. This is covered in more detail later in this paper.<sup>14</sup>

**3. Reduction in Excise Tax for Failure to Take Required Minimum Distributions:** Section 302 of the SECURE 2.0 Act of 2022 amends I.R.C. § 4974 and reduces the excise tax that is imposed if an IRA owner does not draw a Required Minimum Distribution (RMD) by the deadline. This excise tax is now 25% of the amount of the RMD that was not withdrawn. Previously this had been 50%. In addition, if a failure to distribute the complete RMD is corrected in a timely manner, the excise tax is further reduced to 10%. This is covered in more detail later in this paper.<sup>15</sup>

**4. Changes for Surviving Spouses:** Section 327 of the SECURE 2.0 Act of 2022 amends I.R.C. § 401(a)(9)(B)(iv) and, beginning January 1, 2024, allows the surviving spouse to elect to be treated as though the surviving spouse were the “employee” (referred to as “IRA owner” throughout this paper), which allows the spouse to delay taking RMDs until the year the employee would have attained the employee’s Applicable Age. Also, the Uniform Lifetime Table (instead of the Single Life Table) is used when determining the surviving spouse’s Applicable Denominator (life expectancy).<sup>16</sup>

**5. Increased Age for ABLE Account Eligibility:** Although not related to inherited IRAs, Section 124 of the SECURE 2.0 Act of 2022 increases the age before which an individual must be disabled in order to have an ABLE account from 26 years to 46 years. This became effective on January 1, 2026.<sup>17</sup> ABLE accounts are not discussed any further in this paper.

**D. 2024 Final Regulations for SECURE Act Including Some Provisions of SECURE 2.0:** After considering all comments received on the 2022 proposed SECURE Act regulations, the IRS published final regulations on July 19, 2024.<sup>18</sup> These final regulations substantially followed the 2022 proposed regulations, with some exceptions. The final regulations have answered many questions raised by the SECURE Act and SECURE 2.0,

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<sup>14</sup> See infra Section XV, C, 2.

<sup>15</sup> See infra Section IX, D.

<sup>16</sup> See infra Sections V, A, 2 (contains definition of Applicable Age); VI, E; and VII, F.

<sup>17</sup> SECURE 2.0 Act of 2022, Pub. L. No. 117-328, div. T, § 124, 136 Stat. 4459, 5314.

<sup>18</sup> 89 Fed. Reg. 58886 (July 19, 2024).

although some of those answers may not be what everyone wanted to hear. One of those is explained below.

**Annual Distributions are Required if IRA Owner Died After Required Beginning**

**Date:** One of the surprises in the 2022 proposed regulations that was carried over to the final regulations is the requirement that annual minimum distributions from a traditional inherited IRA be made to beneficiaries subject to the 10-Year Rule if the IRA owner died on or after the owner's Required Beginning Date. After the SECURE Act was enacted, most commentators had concluded from its legislative history that these distributions were not required.

However, the actual wording of the SECURE Act did not carry out this alleged legislative intent. As a result, the IRS has taken the position that Required Minimum Distributions must be paid from an inherited IRA if the IRA owner died on or after the owner's Required Beginning Date and the beneficiary is subject to the 10-Year Rule, but this is not required if the IRA owner died prior to the Required Beginning Date. This is because the SECURE Act did not amend I.R.C. § 401(a)(9)(B)(i).

I.R.C. § 401(a)(9)(B)(i) states that if an IRA owner dies on or after the owner's Required Beginning Date (RBD) and the IRA has not been totally distributed, then the IRA must continue to distribute "at least as rapidly as under the method of distributions being used...as of the date of [the IRA owner's] death" (often referred to as the "at least as rapidly rule"). This does not apply if the IRA owner died before the owner's RBD.

The SECURE Act did not change this section of the Code; it changed I.R.C. § 401(a)(9)(B)(ii) and (iii). As a result, according to the final regulations,<sup>19</sup> if the IRA owner dies on or after the owner's RBD, distributions from the IRA after the IRA owner's death must satisfy the "at least as rapidly" requirement of I.R.C. § 401(a)(9)(B)(i). Essentially, after the IRA owner's Required Beginning Date (RBD) the owner must start taking RMDs. When the owner dies, the RMDs continue, which is why there are RMDs required the year after the owner's death. However, often the Applicable Denominator will change and be based on a life expectancy other than the deceased IRA owner's remaining "ghost" life expectancy.

This means the beneficiary's Applicable Denominator (based on the greater of the beneficiary's life expectancy under the Single Life Table and the deceased IRA owner's "ghost" life expectancy) is used to determine the minimum amount that

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<sup>19</sup> Treas. Reg. §§ 1.401(a)(9)-5(d)(1)(i), 1.401(a)(9)-5(a)(2)(i) and (ii), and 1.401(a)(9)-5(d)(3)(iv).

must be distributed to the beneficiary for years 1 through 9 after the IRA owner's death. By the end of year 10, the total amount held in the inherited IRA must be withdrawn by the beneficiary.

**E. 2024 Proposed Regulations for SECURE 2.0:** On July 19, 2024, the same day the IRS published the final regulations for the SECURE Act (which included final regulations for some of the provisions found in SECURE 2.0 Act of 2022), it also published proposed regulations for other provisions of the SECURE 2.0 Act of 2022.<sup>20</sup> The comment period closed September 17, 2024.

**F. 2025 and 2026 IRS Announcements:** Following the 2024 proposed regulations, the IRS issued two announcements regarding the applicability date of the regulations proposed in 2024. Initially the IRS issued Announcement 2025-2<sup>21</sup> (the amendments were anticipated to apply no earlier than the 2026 distribution calendar year, with good-faith interpretation in the interim) and this was followed by Announcement 2026-7<sup>22</sup>, which further postponed the anticipated applicability date. Section III of Announcement 2026-7 states:

Final regulations amending §§ 1.401(a)(9)-4, 1.401(a)(9)-5, and 1.401(a)(9)-6, issued pursuant to the 2024 proposed regulations, are anticipated to apply for purposes of determining required minimum distributions for the distribution calendar year that begins no earlier than 6 months after the date that final regulations are issued in the Federal Register. For periods before the applicability date of these regulations, taxpayers must continue to apply a reasonable, good-faith interpretation of the statutory provisions underlying the regulations.<sup>23</sup>

The announcements address only the proposed amendments to §§ 1.401(a)(9)-4, -5 and -6. The other changes in the 2024 proposed regulations, including the proposed amendments to §§ 1.401(a)(9)-8 (separate accounts for see-through trusts) and 1.401(a)(9)-9(c) (the extended Uniform Lifetime Table), are not mentioned in either announcement and remain proposed.

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<sup>20</sup> 89 Fed. Reg. 58644 (July 19, 2024).

<sup>21</sup> I.R.S. Announcement 2025-2, 2025-2 I.R.B. 305 (Jan. 6, 2025).

<sup>22</sup> I.R.S. Announcement 2026-7, 2026-11 I.R.B. 697 (Mar. 9, 2026).

<sup>23</sup> Id. (emphasis added)

As of the date of these materials, the IRS has not finalized the regulations proposed in 2024. Stay tuned.

### **III. Important IRA Dates and Deadlines**

Listed below are dates and deadlines imposed throughout I.R.C. § 401. It is important to comply with these deadlines. Failure to do so will cause adverse consequences.

#### **A. Date IRA owner died**

1. Date of the IRA owner's death determines the calendar year that is the starting point for many of these important dates.
2. This is the date by which a Designated Beneficiary must be sufficiently disabled<sup>24</sup> or otherwise qualified<sup>25</sup> to be an Eligible Designated Beneficiary.<sup>26</sup>

#### **B. December 31 of the year the IRA owner died**

1. If the IRA owner was required to receive a RMD during the year the IRA owner died, the entire amount must be distributed from the IRA by this date.<sup>27</sup>
2. If the IRA owner did not receive all the RMD prior to dying, then undistributed RMD must be distributed to the beneficiary of the IRA by this date.<sup>28</sup> But see below for an exception.

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<sup>24</sup> Treas. Reg. § 1.401(a)(9)-4(e)(4)(i). See also Treas. Reg. § 1.401(a)(9)-4(e)(9)(iii)(contains example illustrating this).

<sup>25</sup> Treas. Reg. § 1.401(a)(9)-4(e)(1).

<sup>26</sup> I.R.C. § 401(a)(9)(E)(ii).

<sup>27</sup> Treas. Reg. § 1.401(a)(9)-5(c)(1); Treas. Reg. § 1.401(a)(9)-5(d)(1)(i).

<sup>28</sup> Id.

**C. The date the IRA beneficiary files a personal income tax return for the year that the IRA owner died**

1. If the deceased IRA owner's RMD is not fully distributed by December 31 of the year the IRA owner died, the regulations say that the beneficiary of the IRA has until the date the beneficiary files their income tax return for the year the IRA owner died to receive the undistributed RMD.<sup>29</sup>
2. Failure to receive the deceased IRA owner's RMD that was not distributed to the IRA owner while living by this date will result in an excise tax equal to 25% of the undistributed portion of the RMD being imposed on the beneficiary.<sup>30</sup>

**D. September 30 of the year following the year the IRA owner died**

1. This is the date when all beneficiaries of the IRA are finalized.<sup>31</sup> It is referred to as the "Beneficiary Finalization Date" throughout this paper, a phrase not used in the Code or regulations.
2. It is possible to remove beneficiaries prior to this date by qualified disclaimer or by distributing sufficient assets to them so they are no longer a beneficiary.<sup>32</sup>

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<sup>29</sup> Treas. Reg. § 54.4974-1(g)(3)(iii).

<sup>30</sup> Treas. Reg. § 54.4974-1(a). This may be reduced to 10% if the beneficiary satisfies the provisions of Treas. Reg. § 54.4974-1(a)(2).

<sup>31</sup> Treas. Reg. § 1.401(a)(9)-4(c)(1).

<sup>32</sup> Treas. Reg. § 1.401(a)(9)-4(c)(2); Treas. Reg. § 1.401(a)(9)-4(c)(3).

**E. October 31 of the year following the year the IRA owner died — No longer applies to IRAs**

1. This was the deadline for (i) the trustee of a see-through trust to provide the IRA trustee, custodian, or issuer with a copy of the trust document or a satisfactory list of the IRA beneficiaries<sup>33</sup> and (ii) the beneficiary or someone else to provide the IRA administrator with documentation establishing that a beneficiary of the IRA is sufficiently Disabled or Chronically Ill to qualify as an Eligible Designated Beneficiary.<sup>34</sup>
2. However, the final regulations now say that **this documentation “need not be provided to the IRA trustee, custodian, or issuer.”**<sup>35</sup> According to the Preamble of the final regulations, commenters on the 2022 proposed regulations had objected that custodians are not experts in state trust law and are not qualified to read a trust instrument to determine who the beneficiaries are, and that custodians should not be asked to receive or review medical records. The Treasury Department and the IRS responded by simplifying the requirement for plans and eliminating it for IRAs.<sup>36</sup>
3. But this only applies to IRAs, not to qualified plans described in § 401(a), § 403(a) annuity plans, or § 457(b) plans.<sup>37</sup> Since this paper only focuses on IRAs, this will be the only mention that the plan administrator of one of those plans will need to receive this documentation by this date.

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<sup>33</sup> Treas. Reg. § 1.401(a)(9)-4(h)(1)(ii) and (h)(3). The plan administrator decides which of the two must be provided. For IRAs, § 1.408-8(a)(3) treats the IRA trustee, custodian or issuer as the plan administrator.

<sup>34</sup> Treas. Reg. § 1.401(a)(9)-4(e)(7).

<sup>35</sup> Treas. Reg. § 1.408-8(b)(4)(i) and (ii), applicable for calendar years beginning on or after January 1, 2025. Treas. Reg. § 1.408-8(j). This provision was not in the 2022 proposed regulations.

<sup>36</sup> T.D. 10001, 89 Fed. Reg. 58886 (July 19, 2024). The explanation appears in Section IV of the Summary of Comments and Explanation of Revisions.

<sup>37</sup> Treas. Reg. § 1.401(a)(9)-1(a)(1); Treas. Reg. § 1.457-6(d). The treatment of a § 403(b) contract is less clear. Treas. Reg. § 1.403(b)-6(e)(2) applies the provisions of § 1.408-8 to § 403(b) contracts except as otherwise provided in § 1.403(b)-6(e), and the exceptions listed there do not include § 1.408-8(b)(4).

4. Lastly, just because the documentation does not need to be provided does not mean it does not need to be available if needed. If the distribution treatment of an inherited IRA is later questioned, the trustee or the beneficiary will need to prove these facts. Practitioners should therefore continue to obtain the trust certification and the medical documentation and keep them in the file, even though no one is required to send them to the custodian. An IRA custodian remains free to ask for the trust document as a matter of its own account administration, and many still do.

**F. December 31 of the year following the year the IRA owner died**

1. If the beneficiary is required to receive annual RMDs, the first one must be distributed to the beneficiary no later than this date.<sup>38</sup>

There is an exception if the IRA owner died before the owner's RBD and the sole beneficiary of the IRA is the IRA owner's surviving spouse.<sup>39</sup>

2. This is the deadline for establishing separate accounts for an IRA.<sup>40</sup>

## **IV. Steps To Analyze and Understand IRAs**

In order to understand the rules regarding IRAs and when distributions must be made, it is necessary to understand six things. The first four are questions to ask and answer that will categorize the IRA so the appropriate rules will be able to be located and applied. The fifth is additional questions if a trust is named as beneficiary of an IRA. The sixth is how every IRA needs to now be analyzed in order to know when distributions must be made from the IRA and when the IRA must be completely distributed.

**1. Is the IRA Owner Living or Deceased?**

- a. If the IRA owner is living, there are specific rules that apply. These are not covered in this paper.

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<sup>38</sup> Treas. Reg. § 1.401(a)(9)-3(c)(4).

<sup>39</sup> Treas. Reg. § 1.401(a)(9)-3(d).

<sup>40</sup> Treas. Reg. § 1.401(a)(9)-8(a)(1)(ii).

- b. If the IRA owner is deceased, then the next question must be asked.

**2. If the IRA owner is Not Living, when did the IRA owner die?**

- a. There are two options -
  - 1) Before the IRA owner's Required Beginning Date, or
  - 2) On or after the IRA owner's Required Beginning Date.
- b. There are different rules that apply depending on when the IRA owner died.

**3. What type of beneficiary will ultimately end up with distributions from the IRA?**

- a. There are seven potential different types of ultimate beneficiaries of an IRA. These are:
  - 1) Not a Designated Beneficiary,
  - 2) A Designated Beneficiary who is not an Eligible Designated Beneficiary (sometimes referred to in this paper as "Only a Designated Beneficiary"),

An Eligible Designated Beneficiary who is –

- 3) The IRA owner's surviving spouse,
  - 4) A child of the IRA owner who is under the age of 21 (a "minor" child),
  - 5) A person who is sufficiently Disabled,
  - 6) A person who is sufficiently Chronically Ill, or
  - 7) A person who is not more than 10 years younger than the IRA owner and does not fit into any of the other EDB categories.
- b. There are different rules for each type of beneficiary, and
- c. These rules are different depending on whether the IRA owner died before, or on or after, the IRA owner's Required Beginning Date.

**4. Is the IRA beneficiary a trust?**

- a. If the IRA beneficiary is not a trust, then the questions stop and the analysis moves to number 6, below.

- b. If the IRA beneficiary is a trust, then the following questions must be asked and answered.

**5. If a trust is the initial beneficiary of the IRA, then the following applies:**

- a. **Does the trust qualify as a “see-through” trust?**
  - 1) If not, then the trust is treated as a beneficiary that is not a Designated Beneficiary and the IRA must be distributed accordingly.
- b. If the trust qualifies as a see-through trust, then **what type of see-through trust is it?** There are three different possibilities:
  - 1) Conduit Trust
  - 2) Accumulation Trust
  - 3) Applicable Multi-Beneficiary Trust (AMBT), which can be a conduit or accumulation trust.
- c. After the type of see-through trust is determined, it is necessary to look through the trust to see **which of the seven possible types of beneficiaries will ultimately receive distributions from the IRA.**
  - 1) There are different rules for each type of beneficiary, and
  - 2) Different rules depending on whether the IRA owner died before, or on or after, the owner’s Required Beginning Date, and
  - 3) Different rules depending on the type of trust.

**6. How to analyze and track IRA distributions**

After the IRA is properly classified based on the answers to the above questions, then for all IRAs it is now necessary to look at distributions from the IRA in two different ways:

- a. **Annual Distributions:**

Based on the answers to the above questions, there may or may not be annual distributions that must be made from the IRA. These are referred to in this paper as “RMDs” and “annual RMDs” (Required Minimum Distributions).

**b. End Date:**

Based on the answers to the above questions, there are different dates when an IRA must be completely distributed. This is when the final Required Minimum Distribution (RMD) must be made. This is referred to in this paper as the "End Date."

After covering some definitions and concepts that apply to inherited IRAs, this paper first focuses on rules that apply if an IRA distributes upon the death of an IRA owner directly to a beneficiary, and then on the rules that apply if a trust is named as the beneficiary of an IRA. In addition, there are a few random final planning thoughts at the end of this paper. Also, Appendix A contains a chart summarizing the various distribution options that apply to IRAs depending on when the IRA owner died and the type of beneficiary receiving the IRA.

## **V. Definitions and Concepts Applicable to Inherited IRAs**

### **A. General Definitions:**

**1. Inherited IRA and IRA Owner:** An "inherited IRA" is an IRA that is received by a beneficiary following the death of the person who owned the IRA (who is referred to as the "IRA owner" in this paper and "employee" in the regulations). The phrase "Beneficiary IRA" is also used by some people and companies.

**2. Required Beginning Date (RBD):** The Required Beginning Date (often referred throughout this paper as "RBD") is the date an IRA owner must begin taking distributions from a traditional (non-Roth) IRA during the IRA owner's lifetime. Currently, the RBD is April 1 of the calendar year following the later of:

- a. the calendar year during which the IRA owner attains their "applicable age" and
- b. the calendar year during which the IRA owner retires from employment with the employer maintaining the retirement plan.<sup>41</sup>

In the past, this age was set forth as a number in the statute (for example, it used to be 70½ and was changed to 72 by the SECURE Act). However, SECURE 2.0 Act of 2022 established one age to be effective on January 1, 2023, and an older age to be

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<sup>41</sup> I.R.C. § 401(a)(9)(C); Treas. Reg. § 1.401(a)(9)-2(b)(1).

effective on January 1, 2033. As a result, the phrase “applicable age” is now used to describe the age that triggers an IRA owner’s RBD. This paper uses “Applicable Age.” The current Applicable Ages are set forth below:

- Age 73, for people who attain age 72 after December 31, 2022, and attain age 73 before January 1, 2033 (or said differently, are born in years 1951 through 1958); and
- Age 75, for people who attain age 74 after December 31, 2032 (or said differently, are born in 1960 or later).<sup>42</sup>
- Note: Due to a drafting error in SECURE 2.0, the Applicable Age for individuals born in 1959 was skipped. The proposed regulations published on July 19, 2024, addressed this by inserting age 73 as the Applicable Age for people born in 1959.<sup>43</sup>

This is effective for distributions required to be made after December 31, 2022.<sup>44</sup> There is an exception for IRA owners who retire after their respective Applicable Age from an employer who maintains a defined contribution plan.<sup>45</sup>

An example of the law as it was changed by the SECURE 2.0 Act of 2022 is this: if an IRA owner’s 72<sup>nd</sup> birthday is May 28, 2024, then the IRA owner’s Required Beginning Date is April 1, 2026 (April 1 of the calendar year following the calendar year 2025 within which the IRA owner turns age 73).

This is important when discussing an inherited IRA because the inherited IRA being distributed to a beneficiary after an IRA owner dies will be treated differently depending on whether the IRA owner died (i) before, or (ii) on or after, the IRA owner’s Required Beginning Date.

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<sup>42</sup> SECURE 2.0 Act of 2022, Pub. L. 117-328, div. T of the Consolidated Appropriations Act, 2023, Sec. 107, (December 29, 2022) amending Section 401(a)(9)(C) by adding a new subsection (v). See also, Treas. Reg. § 1.401(a)(9)-2(b)(2).

<sup>43</sup> Prop. Treas. Reg. § 1.401(a)(9)-2(b)(2)(v), 89 Fed. Reg. 58644, 58650 (July 19, 2024).

<sup>44</sup> Id. § 107(e). But See IRS Notice 2023-54, 2023-31 I.R.B. (July 14, 2023)(provided transitional relief and guidance related to certain 2023 distributions in light of the new RMD rules).

<sup>45</sup> I.R.C. § 401(a)(9)(C)(i)(II); Treas. Reg. § 1.401(a)(9)-2(b)(1)(ii).

**3. Required Minimum Distribution (RMD):** The Required Minimum Distribution (RMD) refers to the minimum amount that must be withdrawn each calendar year from an IRA. Occasionally, this is referred to as “Minimum Required Distribution.”<sup>46</sup> The RMD applies to the IRA owner during their lifetime, and often also applies to an inherited IRA after the IRA owner is no longer living.

The RMD is calculated by dividing the value of the IRA on December 31 of the year immediately preceding the calendar year for which the RMD must be made (the “account balance”<sup>47</sup>) by the “Applicable Denominator.”<sup>48</sup>

**4. Applicable Denominator:** The Applicable Denominator is generally the remaining life expectancy of a Designated Beneficiary; however, if the IRA owner died on or after the owner’s Required Beginning Date, the Applicable Denominator is the greater of the Designated Beneficiary’s remaining life expectancy or the deceased IRA owner’s remaining (“ghost”) life expectancy.<sup>49</sup> Prior to the 2022 proposed regulations, the phrase “applicable distribution period” was used to describe this number. This was changed in the 2022 proposed regulations and maintained in the final regulations.<sup>50</sup>

The Applicable Denominator can be found by utilizing the appropriate life expectancy table provided by the IRS.<sup>51</sup> The table used when calculating the RMD that applies to an inherited IRA is the Single Life Table. The other two life expectancy tables (the Uniform Lifetime Table and the Joint and Last Survivor Table) are used during the IRA owner’s lifetime.<sup>52</sup> There is one exception when the IRA owner’s surviving spouse elects to be “treated as the employee” and can use the

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<sup>46</sup> Treas. Reg. § 1.401(a)(9)-5(a).

<sup>47</sup> Treas. Reg. § 1.401(a)(9)-5(b).

<sup>48</sup> Treas. Reg. § 1.401(a)(9)-5(a)(1).

<sup>49</sup> Treas. Reg. Preamble § E.3.b, 89 Fed. Reg. 58886, 58897 (July 19, 2024); Treas. Reg. § 1.401(a)(9)-5(c) and (d); and Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii).

<sup>50</sup> Id.

<sup>51</sup> Treas. Reg. § 1.401(a)(9)-5(c) and (d); Treas. Reg. § 1.401(a)(9)-9(a).

<sup>52</sup> There is one exception to this. If the IRA owner’s surviving spouse takes the IRA as an inherited IRA and elects to be “treated as the employee,” then the Uniform Lifetime Table is used to calculate the spouse’s Applicable Denominator even after the IRA owner is no longer living. See *infra* Sections VI, E and VII, F for more information.

Uniform Lifetime Table. These tables were revised for distribution years beginning January 1, 2022 and can be found in subsections (a), (b), and (c), respectively, in Treas. Reg. § 1.401(a)(9)-9. This is more fully explained later in this paper.<sup>53</sup>

## **B. Beneficiaries of an Inherited IRA:**

**1. Generally:** An IRA owner can name any of the following as beneficiaries of the IRA: (i) the IRA owner's estate, (ii) one or more charities, (iii) one or more individuals, or (iv) one or more trusts, whether testamentary or living.

All beneficiaries of an inherited IRA are divided into two broad categories: those who are a Designated Beneficiary (DB) and those who are not (referred to in this paper as Not a Designated Beneficiary (NDB)). In addition, Designated Beneficiaries are further divided into two categories: those who are Only a Designated Beneficiary (ODB) and those who are an Eligible Designated Beneficiary (EDB).

**2. Designated Beneficiary (DB):** In all cases except one, a Designated Beneficiary must be an individual designated by the IRA owner to be a beneficiary of the IRA.<sup>54</sup> In other words, the general rule is that Designated Beneficiary must be a living human being. Neither an estate, a trust that is not a "see-through" trust, nor a charity (with one exception) qualifies as a Designated Beneficiary because they are not an individual and do not have a life expectancy.<sup>55</sup> The one exception applies to an AMBT, where a qualifying charitable organization that is not a donor advised account or a supporting organization is deemed to be a Designated Beneficiary. This is more fully explained later in this paper.<sup>56</sup>

**3. Not a Designated Beneficiary (NDB):** If a beneficiary of an inherited IRA is not a Designated Beneficiary, then it is referred to in this paper as Not a Designated Beneficiary (NDB). An NDB is a beneficiary who is not a human being (with the one exception of a qualifying charity that is a beneficiary of an AMBT). Examples of common NDBs are entities such as a corporation, probate estate, charity (unless named a beneficiary of an AMBT), and a trust that is not a "see-through" trust.

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<sup>53</sup> See *infra* Section VIII.

<sup>54</sup> I.R.C. § 401(a)(9)(E)(i); Treas. Reg. § 1.401(a)(9)-4(a)(1).

<sup>55</sup> Treas. Reg. § 1.401(a)(9)-4(b).

<sup>56</sup> See *infra* Section XV, C, 2.

**4. Only a Designated Beneficiary (ODB):** The SECURE Act established a new subset of Designated Beneficiaries, referred to as "Eligible Designated Beneficiaries"<sup>57</sup> (often referred to throughout this paper as "EDB").

This means there are now two types of Designated Beneficiaries:

- (i) a Designated Beneficiary who is not an Eligible Designated Beneficiary, and
- (ii) a Designated Beneficiary who is an Eligible Designated Beneficiary.

In an attempt to distinguish between these two types of Designated Beneficiaries, this paper will often refer to the first type (a Designated Beneficiary who is not an Eligible Designated Beneficiary) as Only a Designated Beneficiary (ODB) (a phrase not used in the Code or regulations) and the second type as an Eligible Designated Beneficiary (EDB).

**5. Eligible Designated Beneficiary (EDB):** An Eligible Designated Beneficiary (EDB) is a Designated Beneficiary who, as of the date of the IRA owner's death,<sup>58</sup> satisfies additional criteria and, as a result, is treated differently than a person who is only a Designated Beneficiary (ODB). An EDB is "eligible" to use the Life Expectancy Rule. This means the mandatory distributions that must be made annually from the IRA (Required Minimum Distributions (RMDs)) are usually smaller because they are drawn out over the beneficiary's life expectancy. And to make things even more interesting, the IRA distributable to each different type of EDB is treated differently. There are different criteria to qualify and different rules that must be followed for the IRAs received by each type of EDB.

**a. People Who Qualify to be an Eligible Designated Beneficiary (EDB):** There are five different types of EDBs.<sup>59</sup> These are:

- 1)** the surviving spouse of the IRA owner;
- 2)** a child of the IRA owner who has not reached the age of majority (which is set at age twenty-one (21) in the

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<sup>57</sup> I.R.C. § 401(a)(9)(E)(ii); Treas. Reg. § 1.401(a)(9)-4(e).

<sup>58</sup> Treas. Reg. § 1.401(a)(9)-4(e)(1).

<sup>59</sup> I.R.C. § 401(a)(9)(E)(ii); Treas. Reg. § 1.401(a)(9)-4(e)(1).

regulations<sup>60</sup>). "Child" includes a naturally born child, stepchild, legally adopted child, and an eligible foster child.<sup>61</sup> An eligible foster child is "an individual who is placed with the [IRA owner] by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction."<sup>62</sup>

- 3) a Designated Beneficiary who is Disabled within the meaning of Section I.R.C. § 72(m)(7);<sup>63</sup>
- 4) a Designated Beneficiary who is Chronically Ill within the meaning of I.R.C. § 7702B(c)(2);<sup>64</sup> and
- 5) a Designated Beneficiary not described above who is not more than ten (10) years younger than the IRA owner.<sup>65</sup> For example, if the IRA owner turned age 74 on May 28, 2026, then this EDB must be age 64 or older on this date.

**b. When a Person Must Satisfy the Criteria to be an EDB:** The determination of whether a Designated Beneficiary qualifies to be an Eligible Designated Beneficiary is made as of the date of the IRA owner's death.<sup>66</sup>

**c. If a Person Qualifies for Multiple Types of EDB Status:** It is possible for a person to qualify as more than one type of an Eligible Designated Beneficiary. For example, an IRA owner's surviving spouse or minor child may also be Disabled or Chronically Ill.

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<sup>60</sup> Treas. Reg. § 1.401(a)(9)-4(e)(3).

<sup>61</sup> Treas. Reg. § 1.401(a)(9)-4(e)(1)(ii), which defines "child" of the IRA owner by referring to I.R.C. § 152(f)(1).

<sup>62</sup> I.R.C. § 152(f)(1)(C).

<sup>63</sup> See infra Section XV, A, 2 (contains clarification of what is required to be Disabled).

<sup>64</sup> See infra Section XV, A, 3 (contains clarification of what is required to be Chronically Ill).

<sup>65</sup> Treas. Reg. § 1.401(a)(9)-4(e)(6) ("Whether a designated beneficiary is not more than 10 years younger than the employee is determined based on the dates of birth of the employee and the beneficiary. Thus, for example, if an employee's date of birth is October 1, 1953, then the employee's beneficiary is not more than 10 years younger than the employee if the beneficiary was born on or before October 1, 1963.").

<sup>66</sup> I.R.C. § 401(a)(9)(E)(ii); Treas. Reg. § 1.401(a)(9)-4(e)(1).

This probably will not make much difference to a surviving spouse because the spouse is eligible for a lifetime payout of the IRA merely by being a surviving spouse. However, a minor child is only an Eligible Designated Beneficiary (EDB) as a "minor child of the IRA owner" until the child attains age twenty-one (21). After that the child's EDB status ends, the 10-Year Rule applies, and the inherited IRA must be fully distributed by the end of the year when the minor child turns age thirty-one (31). But if the child is also sufficiently disabled to qualify as an EDB who is Disabled, then the child will qualify for lifetime payout of the IRA. However, in order to qualify as "disabled" the child must have been sufficiently disabled on the date of the IRA owner's death.<sup>67</sup>

While the regulations for the SECURE Act require that the documentation that the Designated Beneficiary is sufficiently disabled to qualify as an EDB who is Disabled be provided to the plan administrator no later than October 31 of the calendar year following the year of the IRA owner's death, **that requirement does not apply to an IRA.**<sup>68</sup> It continues to apply to other types of retirement plans.

The beneficiary must still actually have been Disabled as of the date of the IRA owner's death. The documentation should therefore still be obtained and kept, because the trustee or the beneficiary will have to prove that fact if the distribution treatment of the inherited IRA is later questioned.

**6. Beneficiary Finalization Date (BFD):** Exactly who or what is a beneficiary of an inherited IRA is not finalized until September 30 of the year following the year of the IRA owner's death.<sup>69</sup> This paper refers to this date as the "Beneficiary Finalization Date (BFD)," a phrase not found in the Code or regulations.

**7. Beneficiaries Usually Must Be Same Type:** With a few exceptions, an IRA is treated as though there are no Designated Beneficiaries if there is any countable beneficiary of the IRA that is not an individual, even if there are also individuals

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<sup>67</sup> Treas. Reg. § 1.401(a)(9)-4(e)(4)(i).

<sup>68</sup> Treas. Reg. § 1.408-8(b)(4)(i). See supra Section III, E.

<sup>69</sup> Treas. Reg. § 1.401(a)(9)-4(c)(1).

named as beneficiaries.<sup>70</sup> For example, if an IRA names a charity and two individuals as beneficiaries, the IRA is treated as not having a Designated Beneficiary because the charity is not a Designated Beneficiary (NDB). This also applies to Eligible Designated Beneficiaries. If there are two EDBs plus another beneficiary who is only a Designated Beneficiary (ODB), then the IRA is treated as not having any EDBs. However, there are exceptions to this. How multiple beneficiaries are treated is more fully explained later in this paper.<sup>71</sup>

**8. Post-Death Changes of IRA Beneficiaries:** During the time between the IRA owner's death and September 30 of the year following the year of the IRA owner's death (the Beneficiary Finalization Date), it is possible to alter the beneficiaries of an IRA to obtain better tax treatment of the inherited IRA. This can be helpful, for example, if an NDB (such as a charity or non-see-through trust) is named as a beneficiary of an IRA along with ODBs or EDBs, or if an ODB is named along with an EDB.

In this situation, the beneficiary who is causing the problem can take action to be removed as a beneficiary of the inherited IRA before the Beneficiary Finalization Date. This can be accomplished by (i) the beneficiary executing a qualified disclaimer, or (ii) the IRA owner's estate or trust distributing sufficient other assets to the beneficiary so the beneficiary has received what the beneficiary is entitled to and is no longer eligible to receive anything from the IRA owner's estate or trust (and thus no longer a beneficiary of the IRA).<sup>72</sup> Alternatively, the problem beneficiary does not have to be removed if the IRA is divided into separate accounts, one for each beneficiary, no later than December 31 of the year following the year of the IRA owner's death. (If the IRA is payable to a trust, this is available only if the trust qualifies under Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(B).) The beneficiary who is an NDB then affects only its own separate account, not the other beneficiaries' accounts.<sup>73</sup> This is further described later in this paper.<sup>74</sup>

If the inherited IRA is distributing to a trust, then additional options to consider taking prior to the Beneficiary Finalization Date are (i) exercising or restricting a power of appointment, if one is granted in the trust document, (ii) reforming the

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<sup>70</sup> Treas. Reg. § 1.401(a)(9)-4(b).

<sup>71</sup> See *infra* Section X.

<sup>72</sup> Treas. Reg. § 1.401(a)(9)-4(c)(2) and (3).

<sup>73</sup> Treas. Reg. § 1.401(a)(9)-8(a)(1)(i)-(ii).

<sup>74</sup> See *infra* Section X, D and E.

trust pursuant to local law, or (iii) decanting the trust into one that has different beneficiaries.<sup>75</sup> This is further described later in this paper.<sup>76</sup>

## C. Concepts That Apply to Inherited IRAs:

**1. Three Ways an Inherited IRA Can Be Distributed:** There are three different ways an inherited IRA can be distributed. These are described below.

**a. 5-Year Rule:** Since the enactment of the SECURE Act, the only time the 5-Year Rule applies is when both (i) the IRA owner died before the owner's Required Beginning Date, a condition that is always satisfied for a Roth IRA, regardless of the owner's age at death,<sup>77</sup> and (ii) the IRA beneficiary is not a Designated Beneficiary (NDB).<sup>78</sup>

If the 5-Year Rule applies, then an inherited IRA must be fully distributed by the end of the calendar year containing the 5<sup>th</sup> anniversary of the date of the IRA owner's death.<sup>79</sup> This does not mean that distributions must be made periodically over the five year period. The IRA could be distributed out in a lump sum immediately or in a lump sum at the end of the five year period. Or it could be distributed sporadically over the five years. The only requirement is that the final distribution occurs no later than December 31 of the calendar year that contains the fifth anniversary of the date of the IRA owner's death. Stated differently, there is only one Required Minimum Distribution and it is 100% of the amount remaining in the IRA at the end of the calendar year that contains the 5th anniversary of the IRA owner's

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<sup>75</sup> Treas. Reg. § 1.401(a)(9)-4(f)(5)(ii)(B); Treas. Reg. § 1.401(a)(9)-4(f)(5)(iii)(C).

<sup>76</sup> See *infra* Section XIV, C, 2.

<sup>77</sup> Treas. Reg. § 1.408-8(b)(1)(ii) (no minimum distributions during the Roth IRA owner's life, and after death the rules apply "as though the Roth IRA owner died before his or her required beginning date"). Author's Note: I.R.C. § 408A(c)(4) exempts Roth IRAs only from the lifetime Required Minimum Distribution rules of I.R.C. § 401(a)(9)(A), not from the post-death rules of I.R.C. § 401(a)(9)(B). Note that Treas. Reg. § 1.408A-6, A-14(b) states the same deemed-death-before-RBD rule but has never been conformed to the SECURE Act; it still describes a five-year default, life expectancy payouts for any designated beneficiary, and an age 70½ spousal delay. Section 1.408-8(b)(1)(ii) is the current statement of the rule.

<sup>78</sup> Treas. Reg. § 1.401(a)(9)-3(c)(5)(i)(A); I.R.C. § 401(a)(9)(B)(ii) as altered by I.R.C. § 401(a)(9)(H)(i).

<sup>79</sup> Treas. Reg. § 1.401(a)(9)-3(c)(2).

death.<sup>80</sup> This rule was not changed by the SECURE Act or the SECURE 2.0 Act of 2022.

**b. 10-Year Rule:** The 10-Year Rule applies when the Life Expectancy Rule does not apply (with one exception when the 5-Year Rule applies, which is described above). If the 10-Year Rule applies, then the inherited IRA must be fully distributed by the end of the calendar year containing the 10th anniversary of the date of the IRA owner's death.<sup>81</sup>

It may also be necessary to distribute annual RMDs during this 10-year period. Whether this is required depends on when the IRA owner died.

**1) Death Before Required Beginning Date:** If the IRA owner died before the owner's Required Beginning Date, then the only requirement is that the IRA be fully distributed no later than December 31 of the calendar year that contains the 10th anniversary of the date of the IRA owner's death;<sup>82</sup> there is no requirement that distributions be made during the 10-year period.<sup>83</sup> Or said another way, there is only one Required Minimum Distribution and it is 100% of the amount remaining in the IRA at the end of the calendar year that contains the 10th anniversary of the IRA owner's death.<sup>84</sup>

**2) Death On or After Required Beginning Date:** On the other hand, if the IRA owner died on or after the owner's Required Beginning Date, then there must be Required Minimum Distributions made annually<sup>85</sup> and the IRA must be fully distributed no later than December 31 of the calendar year that contains the 10th anniversary

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<sup>80</sup> Treas. Reg. § 54.4974-1(c)(2).

<sup>81</sup> Treas. Reg. § 1.401(a)(9)-3(c)(3).

<sup>82</sup> Id.

<sup>83</sup> Treas. Reg. § 1.401(a)(9)-3(c)(1)-(3).

<sup>84</sup> Treas. Reg. § 54.4974-1(c)(2).

<sup>85</sup> See supra Section II, D (contains explanation).

of the date of the IRA owner's death or, in some cases, the death of the primary beneficiary of the inherited IRA.<sup>86</sup>

**c. Life Expectancy Rule:** Since the enactment of the SECURE Act, the Life Expectancy Rule<sup>87</sup> only applies when the IRA beneficiary is an Eligible Designated Beneficiary (EDB). This applies whether the inherited IRA is distributable directly to the EDB or held in a see-through trust for the benefit of the EDB.

If the Life Expectancy Rule applies, then annual Required Minimum Distributions (RMDs) must be made from the inherited IRA at least annually to the EDB (or the qualified trust holding the inherited IRA for the benefit of the EDB) over a period no longer than the life expectancy of someone (usually the EDB)<sup>88</sup> using the Single Life Table (although the Uniform Lifetime Table may be used if the IRA owner's surviving spouse is the sole beneficiary and elects to be "treated as the employee"<sup>89</sup>). The annual RMDs must commence on or before December 31 of the calendar year that immediately follows the calendar year in which the IRA owner died.<sup>90</sup> Of course, it is also possible to draw the IRA out faster or in an immediate lump sum.

**2. Two Types of IRA Distributions:** Following the enactment of the SECURE Act, there are two different ways distributions are required to be made from an inherited IRA. For ease of reference these are referred to in this paper as "Annual Distributions" or "annual RMDs (Required Minimum Distributions)" (distributions made annually while the inherited IRA beneficiary is living) and the "End Date" (the date the inherited IRA must end and be fully distributed to a beneficiary).

The rules for these two types of distributions differ depending on:

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<sup>86</sup> Treas. Reg. § 1.401(a)(9)-5(e)(2).

<sup>87</sup> Treas. Reg. § 1.401(a)(9)-3(c)(4); see also Treas. Reg. § 1.401(a)(9)-5(d)(1)(i) (applying the annual life expectancy payout where the IRA owner died on or after the Required Beginning Date).

<sup>88</sup> Treas. Reg. § 1.401(a)(9)-3(c)(5)(i)(C).

<sup>89</sup> See *infra* Sections VI, E (for death before RBD) and VII, F (for death on or after RBD).

<sup>90</sup> Treas. Reg. § 1.401(a)(9)-3(c)(4); see also Treas. Reg. § 1.401(a)(9)-5(d)(1)(i) (where the IRA owner died on or after the Required Beginning Date).

- (i) when the IRA owner died (before, or on or after, the owner's Required Beginning Date) and
- (ii) what type of beneficiary is receiving the IRA.

**a. Annual Distributions:** The amount of a distribution from an inherited IRA that is required to be made annually is calculated differently depending on the above-two factors. This is explained in more detail in Sections VI and VII, below. However, in summary, there are five options:

- 1) Nothing if the IRA owner died before Required Beginning Date and the 5-Year Rule or 10-Year Rule is being used;<sup>91</sup>
- 2) Based on the life expectancy of a beneficiary who is not the surviving spouse of the IRA owner;<sup>92</sup>
- 3) Based on the life expectancy of the IRA owner's surviving spouse (which is calculated differently than for a non-spouse beneficiary);<sup>93</sup>
- 4) Based on the greater of (i) the beneficiary's life expectancy or (ii) the deceased IRA owner's remaining life expectancy (often referred to as the "ghost" life expectancy, although, unfortunately, you will not find the word "ghost" in the Code or regulations);<sup>94</sup> and
- 5) Based on only the remaining ("ghost") life expectancy of the deceased IRA owner.<sup>95</sup>

**b. End Date:** Annual Distributions are required to end at different times, and when this happens the remaining assets in the IRA must be completely distributed. This is referred to in this paper as the "End Date," which is a phrase that does not appear in the Code or regulations. Exactly when the

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<sup>91</sup> See supra Section II, D (contains explanation); Treas. Reg. § 1.401(a)(9)-3(c)(2) and (3).

<sup>92</sup> Treas. Reg. § 1.401(a)(9)-5(d)(2); Treas. Reg. § 1.401(a)(9)-5(d)(3)(iii).

<sup>93</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iv).

<sup>94</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii).

<sup>95</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(iii).

End Date is for an inherited IRA depends on two factors: (i) whether the IRA owner died before, or on or after, the IRA owner's Required Beginning Date, and (ii) who the beneficiary is during the annual distribution period. This is more fully explained below.

Now that the definitions and basic concepts have been covered, the following sections review the rules for each type of beneficiary that may receive distributions from an inherited IRA. These are divided into two groups based on whether the IRA owner died before the owner's Required Beginning Date, or died on or after the owner's Required Beginning Date.

These rules are organized and summarized in the **Chart of IRA Distribution Rules for Individual Beneficiaries** that can be found in Appendix A of this paper.

## **VI. Death of IRA Owner Before Required Beginning Date**

If the IRA owner dies before the IRA owner's Required Beginning Date, then it must next be determined whether the IRA distributes to a beneficiary who is not a Designated Beneficiary (NDB), to a beneficiary who is only a Designated Beneficiary and not an Eligible Designated Beneficiary (ODB), or to an Eligible Designated Beneficiary (EDB), and if so, what type of EDB. As covered later in this paper,<sup>96</sup> the following also applies to a Roth IRA whether the IRA owner died before, or on or after, the owner's Required Beginning Date.

**A. Not a Designated Beneficiary (NDB):** If the IRA owner dies before the owner's Required Beginning Date and the beneficiary is not a Designated Beneficiary (NDB) (which also includes an Eligible Designated Beneficiary (EDB)) of the IRA, then the following applies.

- 1. Annual Distributions:** There are no Required Minimum Distributions that must be made annually because the IRA owner died before the owner's Required Beginning Date.<sup>97</sup>
- 2. End Date:** The 5-Year Rule<sup>98</sup> applies and the IRA must be fully distributed by the end of the calendar year containing the 5th anniversary of the date of the IRA

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<sup>96</sup> See *infra* Section XI.

<sup>97</sup> See *supra* Section II, D (contains an explanation).

<sup>98</sup> Treas. Reg. § 1.401(a)(9)-3(c)(2).

owner's death (the End Date).<sup>99</sup> Essentially, there is one Required Minimum Distribution in the amount of the remaining IRA that must be made no later than December 31 of the year that is 5 years after the calendar year when the IRA owner died.

**B. IRA Distributes to a Designated Beneficiary Who is Not an Eligible Designated Beneficiary (ODB):** If the IRA owner dies before the owner's Required Beginning Date and the IRA distributes to a person who is only a Designated Beneficiary (ODB) (i.e., who is not an Eligible Designated Beneficiary), then the following applies:

- 1. Annual Distributions:** There are no RMDs that must be made annually because the IRA owner died before the owner's Required Beginning Date.<sup>100</sup>
- 2. End Date:** The 10-Year Rule<sup>101</sup> applies and the IRA must be fully distributed by the end of the calendar year containing the 10th anniversary of the date of the IRA owner's death (the End Date).<sup>102</sup> Essentially, there is one RMD that must be made no later than December 31 of the year that is 10 years after the calendar year when the IRA owner died.

**C. IRA Distributes to an Eligible Designated Beneficiary Who is Disabled, Chronically Ill, or Not More than Ten Years Younger:** If the IRA owner dies before the owner's Required Beginning Date and the IRA distributes to an Eligible Designated Beneficiary (EDB) who is Disabled, Chronically Ill, or not more than 10 years younger than the IRA owner, and the retirement plan does not adopt an optional provision (see Section VI, F, below), then the following applies:

- 1. Annual Distributions:** Since the beneficiary is an EDB, the Life Expectancy Rule applies.<sup>103</sup> This means the IRA must distribute annual RMDs to the EDB over a period no longer than the life expectancy of the EDB.<sup>104</sup> The Single Life Table is used

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<sup>99</sup> Treas. Reg. § 1.401(a)(9)-3(c)(5)(i)(A); I.R.C. § 401(a)(9)(B)(ii) as altered by I.R.C. § 401(a)(9)(H)(i).

<sup>100</sup> See *supra* Section II, D (contains an explanation).

<sup>101</sup> Treas. Reg. § 1.401(a)(9)-3(c)(3).

<sup>102</sup> Treas. Reg. § 1.401(a)(9)-3(c)(5)(i)(B); I.R.C. § 401(a)(9)(B)(ii) as altered by I.R.C. § 401(a)(9)(H)(i)(I).

<sup>103</sup> Treas. Reg. § 1.401(a)(9)-3(c)(5)(i)(C).

<sup>104</sup> Treas. Reg. § 1.401(a)(9)-5(d)(2).

to determine the EDB's life expectancy (the Applicable Denominator).<sup>105</sup> The age to use when determining the Applicable Denominator is the age of the EDB in the calendar year following the year when the IRA owner died.<sup>106</sup> This is reduced by 1 for each subsequent year.<sup>107</sup> The RMDs must commence on or before December 31 of the calendar year that follows the calendar year in which the IRA owner died.<sup>108</sup> Of course, the IRA can always be distributed faster than required by the RMD rules or in an immediate lump sum. The Single Life Table can be found in Appendix B of this paper.<sup>109</sup>

**2. End Date:** If the EDB lives past their life expectancy as contained in the Single Life Table (calculated as described above), then the End Date for the inherited IRA will be December 31 of the year the EDB's life expectancy ends. On the other hand, if the EDB dies before the EDB's life expectancy ends, the successor beneficiary of the IRA must continue the annual RMDs the EDB was taking,<sup>110</sup> and the remainder of the IRA must be fully distributed no later than December 31 of the year that contains the 10th anniversary of the EDB's death.<sup>111</sup>

**3. Exceptions for Disabled and Chronically Ill EDBs When AMBT Used:** As a practical matter, if an EDB who is Disabled or Chronically Ill and possibly eligible for means-tested public assistance (such as SSI or Medicaid) is the beneficiary of an IRA, it is most likely the IRA will not be distributed directly to the beneficiary since doing so will disqualify the beneficiary from means-tested public assistance. Instead, the IRA should be distributed to a see-through accumulation trust, and most likely one that qualifies as an Applicable Multi-Beneficiary Trust (AMBT). There are special rules that apply to AMBTs regarding the calculation of the annual RMDs and the determination of the End Date, and the above-described RMDs and End Date options do not apply. Instead, the life expectancy of the oldest beneficiary

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<sup>105</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(i).

<sup>106</sup> Treas. Reg. § 1.401(a)(9)-5(a)(2)(iii); Treas. Reg. § 1.401(a)(9)-5(d)(3)(iii).

<sup>107</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iii).

<sup>108</sup> Treas. Reg. § 1.401(a)(9)-3(c)(4); I.R.C. § 401(a)(9)(B)(iii)(III) as altered by I.R.C. §§ 401(a)(9)(H)(i)(I) and 401(a)(9)(H)(ii).

<sup>109</sup> See also Treas. Reg. § 1.401(a)(9)-9(b).

<sup>110</sup> Treas. Reg. §§ 1.401(a)(9)-3(c)(4), 1.401(a)(9)-5(d)(3)(iii). See also Treas. Reg. § 1.401(a)(9)-4(f)(6)(i) (Example 1).

<sup>111</sup> Treas. Reg. § 1.401(a)(9)-5(e)(1) and (3).

identified in the trust as Disabled or Chronically Ill is used to calculate the annual RMDs, and the End Date is December 31 of the year containing the 10th anniversary of the death of the last of those beneficiaries.<sup>112</sup> AMBTs are discussed later in this paper.<sup>113</sup>

**D. IRA Distributes to an Eligible Designated Beneficiary Who is a Minor Child of the IRA Owner:** If the IRA owner dies before the owner's Required Beginning Date and the IRA distributes to an Eligible Designated Beneficiary who is a minor<sup>114</sup> child<sup>115</sup> of the IRA owner, then subsection 1 of this Section describes the applicable rules. However, if there are multiple Eligible Designated Beneficiaries who are minor children of the IRA owner, then the special rules described in subsection 2, below, apply, even if there are also other Designated Beneficiaries of the inherited IRA.

**1. Rules if Only One Minor Child is an Eligible Designated Beneficiary:** If there is only one minor child of the IRA owner who is an Eligible Designated Beneficiary of the inherited IRA, then the following applies:

**a. Annual Distributions:** The Life Expectancy Rule<sup>116</sup> applies<sup>117</sup> and RMDs must be made to or for the benefit of the minor child until the end of the calendar year that is 10 years after the calendar year in which the child reaches the age of majority (the regulations set the age of majority at twenty-one (21) years of age<sup>118</sup>). A minor child's status as an EDB ceases when the child turns 21 years old,<sup>119</sup> which means the Life Expectancy Rule is only applied when the child is younger than age 21. After that, the 10-Year

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<sup>112</sup> Treas. Reg. § 1.401(a)(9)-5(f)(1)(ii), (f)(2)(iii). See *infra* Section XV, F and G.

<sup>113</sup> See *infra* Section XV.

<sup>114</sup> Under the age of twenty-one (21) years. Treas. Reg. § 1.401(a)(9)-4(e)(3).

<sup>115</sup> "Child" includes an individual who is a naturally born child, legally adopted, stepchild, or eligible foster child. Treas. Reg. § 1.401(a)(9)-4(e)(1)(ii) and I.R.C. § 152(f)(1).

<sup>116</sup> Treas. Reg. § 1.401(a)(9)-3(c)(4).

<sup>117</sup> Treas. Reg. § 1.401(a)(9)-3(c)(5)(i)(C).

<sup>118</sup> Treas. Reg. § 1.401(a)(9)-4(e)(3).

<sup>119</sup> Treas. Reg. § 1.401(a)(9)-4(e)(1)(ii); Treas. Reg. § 1.401(a)(9)-4(e)(3).

Rule applies,<sup>120</sup> but annual RMDs must still be distributed to the child during the 10-year period until the child reaches age 31.<sup>121</sup>

The Applicable Denominator to use for the annual RMDs is based on the life expectancy of the child.<sup>122</sup> These are calculated using the Single Life Table<sup>123</sup> starting with the age of the child in the calendar year following the year when the IRA owner died,<sup>124</sup> and then reduced by 1 for each subsequent year.<sup>125</sup>

The RMDs must commence on or before December 31 of the calendar year that follows the calendar year in which the IRA owner died.<sup>126</sup> Of course, the IRA can always be distributed faster than required by the RMD rules or in an immediate lump sum. The Single Life Table can be found in Appendix B of this paper.

**b. End Date:** If the child survives until age 31, then the End Date is December 31 of the year that is 10 years after the calendar year in which the minor child reaches the age of majority<sup>127</sup> (which is age 21<sup>128</sup>), or in other words, the year when the child reaches the age of 31.

If the child dies before age 21, the IRA must be fully distributed to the next beneficiary no later than the end of the calendar year that contains the 10th anniversary of the date the child died,<sup>129</sup> even though it is prior to the end of the year when the child would have attained the age of 31. If the child dies after age 21 and before age 31, then the IRA must be fully distributed no

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<sup>120</sup> Treas. Reg. § 1.401(a)(9)-5(e)(4).

<sup>121</sup> Treas. Reg. § 1.401(a)(9)-3(c)(5)(i)(C).

<sup>122</sup> Treas. Reg. § 1.401(a)(9)-5(d)(2).

<sup>123</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(i).

<sup>124</sup> Treas. Reg. § 1.401(a)(9)-5(a)(2)(iii); Treas. Reg. § 1.401(a)(9)-5(d)(3)(iii).

<sup>125</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iii).

<sup>126</sup> Treas. Reg. § 1.401(a)(9)-3(c)(4); I.R.C. § 401(a)(9)(B)(iii)(III) as altered by I.R.C. §§ 401(a)(9)(H)(i)(I) and 401(a)(9)(H)(ii).

<sup>127</sup> Treas. Reg. § 1.401(a)(9)-5(e)(4).

<sup>128</sup> Treas. Reg. § 1.401(a)(9)-4(e)(3).

<sup>129</sup> Treas. Reg. § 1.401(a)(9)-5(e)(1), (3), and (4).

later than the end of the calendar year that contains the date the child would have turned age 31 (10 years after attaining majority age).<sup>130</sup>

For example, if the child's 21<sup>st</sup> birthday is May 1, 2026, then the Required Minimum Distributions continue to the child until 2036 and the IRA must be fully distributed to the child by December 31, 2036.

- If the child died at age 19 in year 2024, then the IRA must be fully distributed to the next beneficiary by December 31, 2034.
- If the child died at age 23 in year 2028, then the IRA must be fully distributed to the beneficiary by December 31, 2036.

**2. Special Rules if Multiple Minor Children are Eligible Designated Beneficiaries:** Despite the foregoing general rules, the following applies if there is more than one minor child of the deceased IRA owner who is an Eligible Designated Beneficiary of the inherited IRA. This applies even if there are also other Designated Beneficiaries of the inherited IRA.

**a. Annual Distributions:** The Life Expectancy Rule<sup>131</sup> applies<sup>132</sup> and RMDs must be made to or for the benefit of the IRA beneficiaries until the End Date is reached.

The Applicable Denominator to use for the annual RMDs is based on the life expectancy of the oldest Designated Beneficiary of the inherited IRA.<sup>133</sup> Note this is not limited to the oldest minor child who is an Eligible Designated Beneficiary. If there is a beneficiary of the inherited IRA who is Only a Designated Beneficiary (ODB) who is older than any of the minor children, then the Applicable Denominator is based on the life expectancy of the oldest DB. These are calculated using the Single Life Table<sup>134</sup> starting with the age of the oldest Designated Beneficiary in the calendar year following the

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<sup>130</sup> Id.

<sup>131</sup> Treas. Reg. § 1.401(a)(9)-3(c)(4).

<sup>132</sup> Treas. Reg. § 1.401(a)(9)-3(c)(5)(i)(C).

<sup>133</sup> Treas. Reg. § 1.401(a)(9)-5(f)(1)(i).

<sup>134</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(i).

year when the IRA owner died,<sup>135</sup> and then reduced by 1 for each subsequent year.<sup>136</sup>

The RMDs must commence on or before December 31 of the calendar year that follows the calendar year in which the IRA owner died.<sup>137</sup> Of course, the IRA can always be distributed faster than required by the RMD rules or in an immediate lump sum. The Single Life Table can be found in Appendix B of this paper.

**b. End Date:** If there are multiple minor children of the deceased IRA owner who are Eligible Designated Beneficiaries of the inherited IRA, then the End Date for the inherited IRA is the earlier of<sup>138</sup> (i) the end of the year that contains the 10th anniversary of the 21<sup>st</sup> birthday of the youngest Eligible Designated Beneficiary who is a minor child,<sup>139</sup> or (ii) the end of the year that contains the 10th anniversary of the death of the last surviving minor child who is an Eligible Designated Beneficiary.<sup>140</sup> These are major changes from the 2022 proposed regulations, which measured the 10-year period from the oldest minor child rather than the youngest, and which ended the deferral on the death of the oldest minor child rather than on the death of all of them.<sup>141</sup>

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<sup>135</sup> Treas. Reg. § 1.401(a)(9)-5(a)(2)(iii); Treas. Reg. § 1.401(a)(9)-5(d)(3)(iii).

<sup>136</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iii).

<sup>137</sup> Treas. Reg. § 1.401(a)(9)-3(c)(4); I.R.C. § 401(a)(9)(B)(iii)(III) as altered by I.R.C. §§ 401(a)(9)(H)(i)(I) and 401(a)(9)(H)(ii).

<sup>138</sup> Treas. Reg. § 1.401(a)(9)-5(e)(1).

<sup>139</sup> Treas. Reg. § 1.401(a)(9)-5(f)(2)(ii)(C).

<sup>140</sup> Treas. Reg. § 1.401(a)(9)-5(f)(2)(ii)(B).

<sup>141</sup> Prop. Treas. Reg. § 1.401(a)(9)-5(f)(2)(ii)(A), 87 Fed. Reg. 10504, 10536 (Feb. 24, 2022).

For example, if an inherited IRA is left to the IRA owner's 3 children who are ages 23, 16, and 10 when the IRA owner dies in 2026, then the following applies.

- The children who are 16 and 10 are EDBs who are minor children and the 23-year-old is an ODB.
- The Life Expectancy Rule applies because minor children of the IRA owner are EDBs.
- The Applicable Denominator for annual distributions is based on the 23-year-old's life expectancy.
- The End Date is the earlier of the end of the year that contains the 10th anniversary of:
  - the calendar year the youngest child reaches age 21 (11 years for the 10-year-old), or
  - the year the last minor child dies.
- If all children continue to live, then the End Date is December 31, 2047 (when the 10-year-old reaches age 31) and
  - the 23-year-old will be age 44 and
  - the 16-year-old will be age 37.

**E. IRA Distributes to the Surviving Spouse of the IRA Owner:** If the IRA owner dies before the owner's Required Beginning Date and the IRA distributes to the IRA owner's surviving spouse who was the sole beneficiary of the IRA, the surviving spouse is an EDB who has options regarding what the spouse does with the IRA. "Sole beneficiary" means either (i) the surviving spouse is named the sole beneficiary of the IRA outright, or (ii) a conduit trust<sup>142</sup> is the named beneficiary of the IRA and the surviving spouse is the sole current lifetime beneficiary of that trust<sup>143</sup> (referred to later in this paper as the sole "primary" beneficiary).<sup>144</sup>

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<sup>142</sup> Treas. Reg. § 1.401(a)(9)-4(f)(1)(ii)(A). See *infra* Section XIV, H, 1 (contains explanation of conduit trust).

<sup>143</sup> Treas. Reg. §§ 1.401(a)(9)-4(h)(2)(i), 1.401(a)(9)-5(c)(2); see also Treas. Reg. § 1.401(a)(9)-4(f)(6)(i), Example 1.

<sup>144</sup> See *infra* Section XIV, G.

If the IRA owner named multiple beneficiaries including the surviving spouse, separate accounts may be established by December 31 of the year following the year of the IRA owner's death. If separate accounts are timely established and the surviving spouse is the sole beneficiary of one of the separate accounts, then those special spousal rules will apply to that separate account.<sup>145</sup>

**1. Options Available to the Surviving Spouse:** The surviving spouse has three options, and a fourth if the governing plan provides for it, for what the surviving spouse can do with the deceased IRA owner's retirement accounts that name the surviving spouse as the sole beneficiary. These are:

**a. Roll the IRA Over to IRA Owned by the Surviving Spouse:** If the surviving spouse makes this election, then the surviving spouse becomes the owner of that IRA instead of being the beneficiary of an inherited IRA.<sup>146</sup> This is often the option chosen. The spouse will not be required to draw any RMDs until the spouse reaches the spouse's Required Beginning Date. The Uniform Lifetime Table will be used to determine the Applicable Denominator for the surviving spouse's life expectancy.<sup>147</sup> The End Date will depend on who the beneficiary of the IRA is when the spouse dies.

However, if the surviving spouse is under the age of 59½ and may need to draw money out of the deceased IRA owner's IRA prior to reaching this age, then the surviving spouse may want to elect to keep the IRA as an inherited IRA under either of the two below-described options. This is because if the surviving spouse rolls the IRA over to become the surviving spouse's personal IRA, then any withdrawals prior to the surviving spouse attaining the age of 59½ will usually be subject to a 10% additional tax (often referred to as an "early withdrawal penalty," although that is not how the Code refers to it) in addition to any income tax that may be payable.<sup>148</sup> This additional tax is avoided if the IRA is taken as an inherited IRA.

Another time the surviving spouse may consider not rolling the IRA over to one owned by the surviving spouse is when (i) the IRA owner died before the owner's Required Beginning Date, (ii) the IRA owner's surviving spouse is the

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<sup>145</sup> Treas. Reg. § 1.401(a)(9)-8(a). See *infra* Section X, D for a discussion of separate accounts.

<sup>146</sup> Treas. Reg. § 1.402(c)-2(j)(1).

<sup>147</sup> Treas. Reg. § 1.401(a)(9)-5(c)(1).

<sup>148</sup> I.R.C. § 72(t)(1), (2) (imposing the 10% additional tax and listing exceptions, including § 72(t)(2)(A)(i), for a distribution made on or after the date the IRA owner attains age 59½).

sole beneficiary of the IRA owner's IRA, and (iii) the surviving spouse is older than the IRA owner. In this circumstance, if the surviving spouse elects to keep the deceased IRA owner's IRA as an inherited IRA (instead of rolling the IRA over to the surviving spouse's IRA), then the surviving spouse can delay starting Required Minimum Distributions until the end of the calendar year in which the deceased IRA owner would have reached the owner's Applicable Age.<sup>149</sup>

Lastly, if the inherited IRA is a Roth IRA, the surviving spouse would normally roll the IRA over to become the surviving spouse's IRA. Roth IRAs are discussed later in this paper.<sup>150</sup>

**b. Keep the IRA as Inherited IRA and Take Life Expectancy Distributions:** The surviving spouse can choose to keep the IRA as an inherited IRA. Since the surviving spouse is an EDB, the Life Expectancy Rule<sup>151</sup> will apply. If this is chosen, and the 10-Year Rule does not apply (see Section VI, E, 1, d, below), then what happens is described below.

**1) Annual Distributions:** The Life Expectancy Rule applies and annual RMDs must be made to the spouse.<sup>152</sup> However, the surviving spouse is not required to start receiving these RMDs until the later of (i) the end of the calendar year immediately following the year of the IRA owner's death (which is the general rule applicable to EDBs), or (ii) the end of the calendar year when the IRA owner would have attained their Applicable Age<sup>153</sup> (which is a special rule only available to surviving spouses).

**2) Life Expectancy of Surviving Spouse:** The life expectancy (Applicable Denominator) of the surviving spouse for purposes of calculating the spouse's RMDs is based on the surviving spouse's age as of the surviving spouse's birthday in the calendar year the spouse's

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<sup>149</sup> Treas. Reg. § 1.401(a)(9)-3(d).

<sup>150</sup> See *infra* Section XI.

<sup>151</sup> Treas. Reg. § 1.401(a)(9)-3(c)(4).

<sup>152</sup> Treas. Reg. § 1.401(a)(9)-3(c)(5)(i)(C).

<sup>153</sup> Treas. Reg. § 1.401(a)(9)-3(d).

RMDs start.<sup>154</sup> Unlike every other beneficiary, the spouse's life expectancy is recalculated every subsequent year based on the spouse's then-current age.<sup>155</sup>

**3) Spouse is "Treated as the Employee:"** Section 327 of the SECURE 2.0 Act<sup>156</sup> gives the surviving spouse an option to elect to be "treated as the employee" (i.e., the IRA owner) for purposes of determining required minimum distributions.<sup>157</sup> However, under the Proposed Regulations issued July 19, 2024, when the IRA owner dies before the Required Beginning Date, the surviving spouse is deemed to have made this election automatically.<sup>158</sup> In contrast, if the IRA owner had died on or after the RBD, this is an election the spouse may or may not choose.<sup>159</sup>

The July 19, 2024 Proposed Regulations and accompanying preamble make clear that this election only applies to the determination of RMDs and does not constitute an actual ownership election or rollover causing the IRA to no longer be treated as an inherited IRA.<sup>160</sup> Although the surviving spouse computes annual RMDs using the Uniform Lifetime Table as if the spouse were the IRA owner,<sup>161</sup> the IRA remains an inherited IRA unless and until the spouse completes an actual rollover or elects to treat the IRA as the spouse's own IRA, which the spouse can do at any time.<sup>162</sup> As a result, the spouse continues to be treated as the beneficiary of an inherited IRA for non-RMD purposes. This includes being eligible for the exception to the 10% additional tax on IRA distributions taken before the spouse

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<sup>154</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iv). See also Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(C), 89 Fed. Reg. 58644, 58650 (July 19, 2024). See *supra* Section II, F (applicability of the 2024 proposed regulations).

<sup>155</sup> *Id.*

<sup>156</sup> I.R.C. § 401(a)(9)(B)(iv).

<sup>157</sup> Treas. Reg. § 1.401(a)(9)-5(g)(3)(i).

<sup>158</sup> Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(A), 89 Fed. Reg. 58644, 58650 (July 19, 2024).

<sup>159</sup> Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(B), 89 Fed. Reg. 58644, 58650 (July 19, 2024).

<sup>160</sup> Prop. Treas. Reg. Preamble § F, 89 Fed. Reg. 58644, 58646-47 (July 19, 2024).

<sup>161</sup> Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(C), 89 Fed. Reg. 58644, 58650 (July 19, 2024).

<sup>162</sup> Treas. Reg. § 1.408-8(c).

attains age 59½,<sup>163</sup> and the determination of when the spouse must begin taking RMDs continues to be based on when the deceased IRA owner would have reached the owner's Applicable Age rather than when the spouse attains the spouse's own Applicable Age.

The principal advantage of making this election is that annual RMDs are calculated using the Applicable Denominator under the Uniform Lifetime Table for the surviving spouse's age recalculated annually. As compared to the standard EDB payout regime, which generally requires use of the Single Life Table alone, use of the Uniform Lifetime Table will typically produce a larger Applicable Denominator and therefore a smaller annual RMD obligation for the surviving spouse.

A disadvantage of this election is that if there is a designated Roth account (DRAC) received from the deceased spouse, the value of the DRAC is included when determining RMDs.<sup>164</sup> However, this can be easily avoided by the surviving spouse rolling the designated Roth IRA account over to an inherited Roth IRA account owned by the surviving spouse.

**4) End Date for Surviving Spouse:** If the surviving spouse survives his or her full life expectancy, then the End Date is December 31 of the year when the surviving spouse's life expectancy ends. Since the surviving spouse's life expectancy is recalculated each year and the Uniform Lifetime Table is used, it is very likely this date will never be reached.

If the surviving spouse dies before reaching the surviving spouse's full life expectancy, the End Date when the IRA must be fully distributed depends on when the spouse dies: whether it occurred before or after the surviving spouse had begun, or was required to begin, drawing RMDs.

**A) If the surviving spouse dies before RMDs have commenced or are required to commence<sup>165</sup> to the surviving spouse** – then the surviving spouse's date of death

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<sup>163</sup> I.R.C. § 72(t)(2)(A)(ii).

<sup>164</sup> Prop. Treas. Reg. Preamble § F, 89 Fed. Reg. 58644, 58647 (July 19, 2024).

<sup>165</sup> Treas. Reg. § 1.401(a)(9)-3(e)(1) and (3).

is substituted for the IRA owner's date of death and the End Date depends on whether the next beneficiary is (i) not a Designated Beneficiary (NDB), (ii) a Designated Beneficiary who is not an EDB (or in other words, is Only a Designated Beneficiary (ODB)), or (iii) one of the Eligible Designated Beneficiaries.<sup>166</sup> Based on this, see the preceding subsections of this Section VI for which End Date applies to the next beneficiary.

**B) If the surviving spouse dies after RMDs have commenced (or are required to have commenced) to the surviving spouse** – then the End Date is the earlier of the end of the calendar year that contains (i) the 10th anniversary of the surviving spouse's death, or (ii) the final year of the life expectancy payout of the surviving spouse's life expectancy (which is the spouse's year of death life expectancy reduced by one for each subsequent year).<sup>167</sup>

**c. Elect to Treat Inherited IRA as Spouse's Own IRA:** The surviving spouse has a unique option (not available to other beneficiaries) to elect to treat an inherited IRA as the spouse's own IRA.<sup>168</sup> This election is regulatory in nature and does not appear in the Internal Revenue Code. It is available whether the IRA owner died before, or on or after, the owner's RBD.

**1) Annual Distributions:** If the surviving spouse makes this election, the IRA is treated as the spouse's own IRA (not an inherited IRA). The spouse becomes the owner, and future Annual Distributions are calculated based on the spouse's age using the Uniform Lifetime Table, with Annual Distributions commencing at the spouse's own Required Beginning Date.<sup>169</sup>

**2) End Date:** The End Date depends on when the surviving spouse (now treated as the IRA owner) dies:

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<sup>166</sup> Treas. Reg. § 1.401(a)(9)-3(e).

<sup>167</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iv) and Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(D)(1), 89 Fed. Reg. 58644, 58651 (July 19, 2024) .

<sup>168</sup> Treas. Reg. § 1.408-8(c)(1).

<sup>169</sup> Id.

**A) If the surviving spouse dies before the spouse's RBD,** then the End Date depends on whether the next beneficiary is (i) not a Designated Beneficiary (NDB), (ii) a Designated Beneficiary who is not an EDB (or in other words, is Only a Designated Beneficiary (ODB)), or (iii) one of the Eligible Designated Beneficiaries. Based on this, see the preceding subsections of this Section VI for which End Date applies to the next beneficiary.

**B) If the surviving spouse dies on or after the surviving spouse's RBD,** then the End Date is the earlier of the end of the calendar year that contains (i) the 10th anniversary of the surviving spouse's death, or (ii) the final year of the life expectancy payout of the surviving spouse's life expectancy (which is the spouse's year of death life expectancy reduced by one for each subsequent year).<sup>170</sup>

**3) How this Differs from a Rollover:** Unlike a rollover, which involves a transfer of funds from one account to another account, the election by the surviving spouse to treat the inherited IRA as the spouse's own IRA is a redesignation of the same IRA. The IRA is retitled in the spouse's name as owner (eliminating the "FBO" or "for benefit of" designation), but the account number and underlying investments typically remain unchanged. However, it is expected that the actual practice of IRA custodians will be to close the inherited IRA account and establish a new account in the spouse's name, making the process functionally similar to a rollover.

**4) Requirements for the Spouse to Make This Election:** The following are required for the surviving spouse to be able to make this election.

**A) This only applies to an IRA.** It is not available for inherited accounts in qualified plans, such as 401(k) plans, 403(b) plans, or governmental 457(b) plans.

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<sup>170</sup> Treas. Reg. § 1.401(a)(9)-5(e).

**B) The surviving spouse must be the sole beneficiary of the IRA.**<sup>171</sup> For purposes of this requirement, if the IRA owner named multiple beneficiaries but separate accounts were established by December 31 of the year following the year of death, the surviving spouse need only be the sole beneficiary of the spouse's separate account.<sup>172</sup>

**C) The surviving spouse must have an unlimited right to withdraw amounts from the IRA.**<sup>173</sup> The IRA must be in the spouse's name, not in a trust. The final regulations specifically say that if a trust is named as the beneficiary of the IRA, the unlimited withdrawal requirement is not satisfied, even if the trust is a conduit trust and the surviving spouse is the sole beneficiary of the trust.<sup>174</sup>

**5) How the Election is Made:** This election can be made in three different ways: (i) the surviving spouse notifies the IRA custodian and requests the IRA be redesignated in the spouse's name as owner rather than as a beneficiary; (ii) the surviving spouse fails to take the full RMD for any year after the year of the IRA owner's death; or (iii) the surviving spouse makes a contribution to the inherited IRA (other than a rollover contribution from another inherited IRA inherited from the same deceased spouse).<sup>175</sup> The last two of these methods are deemed to be elections and can be made inadvertently.

**d. Elect to Apply the 10-Year Rule:** If the retirement plan governing the IRA contains an option for a beneficiary to elect to apply the 10-Year Rule instead of the Life Expectancy Rule (this is more fully explained below), then the surviving spouse may choose the 10-Year Rule to apply to the IRA the surviving spouse receives from the IRA owner. This is only available if the IRA owner died prior to the IRA owner's Required Beginning Date and the

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<sup>171</sup> Treas. Reg. § 1.408-8(c)(1)(ii).

<sup>172</sup> Treas. Reg. § 1.408-8(a) (IRAs); Treas. Reg. § 1.401(a)(9)-8(a) (qualified plans). See *infra* Section X, D.

<sup>173</sup> Treas. Reg. § 1.408-8(c)(1)(ii).

<sup>174</sup> *Id.* See *infra* Sections XIV, F, 1 and XIV, H, 1 for discussion of conduit trusts.

<sup>175</sup> Treas. Reg. § 1.408-8(c)(2).

retirement plan governing the IRA authorizes this election.<sup>176</sup> If this option is chosen, then the following applies:

- 1) Annual Distributions:** There are no RMDs that must be made annually because the IRA owner died before the owner's Required Beginning Date.<sup>177</sup>
- 2) End Date:** The IRA must be fully distributed by the end of the calendar year containing the 10th anniversary of the date of the IRA owner's death.<sup>178</sup>

**F. Plan May Require or Allow Election To Choose 10-Year Rule:** As mentioned above, the regulations allow defined contribution plans to adopt an optional plan provision that either requires the 10-Year Rule to apply, or allows the IRA owner or an Eligible Designated Beneficiary to elect between two payout options, keeping the Life Expectancy Rule payout that would normally apply or electing to have the 10-Year Rule apply.<sup>179</sup> Note that this only applies if the IRA owner dies before the owner's Required Beginning Date; it is not applicable if the IRA owner dies on or after the owner's Required Beginning Date.

- 1. Applies to Any Eligible Designated Beneficiary:** Although only described above as something that applies to the IRA owner's surviving spouse, this applies to any Eligible Designated Beneficiary if the plan contains this provision.
- 2. Requirements if a Plan Allows This Election:** A plan must comply with the following requirements if the plan requires this or allows this type of election. These requirements are (i) the plan must specify the method of distribution that applies if no election is made,<sup>180</sup> and (ii) the election must be made "... no later than the end of the earlier of the calendar year by which distributions must be made in order to satisfy [the requirements for the 10-Year Rule] and the calendar year in which

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<sup>176</sup> Treas. Reg. § 1.401(a)(9)-3(c)(5)(ii) and (iii).

<sup>177</sup> Author's Note: Even though the beneficiary is the IRA owner's surviving spouse who is an Eligible Designated Beneficiary, it is believed that this election to apply the 10-Year Rule instead of the Life Expectancy Rule will result in no RMDs being required because the IRA owner died before the owner's Required Beginning Date. See *supra* Section II, D for this explanation. The final regulations do not directly say this is the correct interpretation, but Preamble § I.C (89 Fed. Reg. 58886, 58892 (July 19, 2024)) seems to imply this.

<sup>178</sup> Treas. Reg. § 1.401(a)(9)-3(c)(5)(i)(B); I.R.C. § 401(a)(9)(B)(ii) as altered by I.R.C. § 401(a)(9)(H)(i)(I). See also the Author's Note in the preceding footnote.

<sup>179</sup> Treas. Reg. § 1.401(a)(9)-3(c)(5)(ii) and (iii).

<sup>180</sup> Treas. Reg. § 1.401(a)(9)-3(c)(5)(iii)(A).

distributions would be required to begin in order to satisfy the requirements of [the life expectancy payout rule – which is the end of the calendar year following the calendar year of the IRA owner’s death] (or, if applicable, paragraph (d) of this section).<sup>181</sup> (emphasis added). The referenced paragraph (d) is the Section of the final regulations issued in 2024 describing the spouse’s option to delay commencement of RMDs until the end of the calendar year when the IRA owner would have attained their Applicable Age and RMDs would be required to start.<sup>182</sup> This election must be irrevocable and is only applicable to future calendar years (i.e., cannot be retroactive and apply to years prior to the year when the election was made).<sup>183</sup>

## VII. Death of IRA Owner On or After Required Beginning Date

If the IRA owner died on or after the IRA owner’s Required Beginning Date (RBD), then two questions must be asked and answered: (1) Did the deceased IRA owner receive all the Required Minimum Distribution (RMD) for the year the owner died? and (2) Who or what is the beneficiary of the IRA?

**A. IRA Owner’s Undistributed Required Minimum Distribution:** If the deceased IRA owner did not receive all the Required Minimum Distributions (RMD) for the year of the IRA owner’s death, then the remaining unpaid RMD must be distributed to the beneficiary of the IRA no later than December 31 of the year of the IRA owner’s death.<sup>184</sup> The regulations allow this to be delayed until the date the beneficiary of the IRA files the beneficiary’s income tax return for the year of the IRA owner’s death, including extensions.<sup>185</sup> If this undistributed RMD is not taken before the deadline, there will be an excise tax imposed on the beneficiary that is equal to 25% of the amount of the RMD that was not fully distributed.<sup>186</sup>

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<sup>181</sup> Treas. Reg. § 1.401(a)(9)-3(c)(5)(iii)(B).

<sup>182</sup> Treas. Reg. § 1.401(a)(9)-3(d).

<sup>183</sup> Treas. Reg. § 1.401(a)(9)-3(c)(5)(iii)(C).

<sup>184</sup> Treas. Reg. § 1.401(a)(9)-5(c)(1).

<sup>185</sup> Treas. Reg. § 54.4974-1(g)(3)(iii). This is accomplished by waiving the excise tax if the remaining RMD is taken by the designated beneficiary before the beneficiary’s tax filing deadline, including extensions, for the year the RMD should have been distributed.

<sup>186</sup> Treas. Reg. § 54.4974-1(a). See *infra* Section IX, D (contains a more complete explanation).

**B. Not a Designated Beneficiary (NDB):** If the IRA owner dies on or after the owner's Required Beginning Date and the beneficiary is not a Designated Beneficiary (NDB) (which also includes not being an Eligible Designated Beneficiary (EDB)) of the IRA, then the following applies:

**1. Annual Distributions:** Annual RMDs must be made to the beneficiary.<sup>187</sup> The Single Life Table is used<sup>188</sup> and the age to use for the Applicable Denominator for the RMDs is the age of the IRA owner as of the owner's birthday in the calendar year of the IRA owner's death,<sup>189</sup> reduced by 1 for each subsequent year.<sup>190</sup> The RMDs must begin in the calendar year following the calendar year the IRA owner died.<sup>191</sup>

**2. End Date:** The IRA must be fully distributed by the end of the calendar year containing the final year of the deceased IRA owner's remaining ("ghost") life expectancy.<sup>192</sup> How this is calculated is explained later in this paper.<sup>193</sup>

**C. IRA Distributes to a Designated Beneficiary Who is Not an Eligible Designated Beneficiary (ODB):** If the IRA owner dies on or after the owner's Required Beginning Date and the IRA distributes to a beneficiary who is only a Designated Beneficiary (ODB) and not an Eligible Designated Beneficiary (EDB), then the following applies:

**1. Annual Distributions:** Annual RMDs must be made to the Designated Beneficiary (ODB).<sup>194</sup> The RMDs are based on the greater of (i) the ODB's life expectancy or (ii) the deceased IRA owner's remaining ("ghost") life expectancy.<sup>195</sup>

As a practical matter, the RMDs will always be based on the ODB's life expectancy. Any beneficiary who is not more than 10 years younger than the IRA owner, including a beneficiary who is older than the owner, is an Eligible Designated

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<sup>187</sup> See supra Section II, D (contains an explanation of why this is required).

<sup>188</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(i).

<sup>189</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(ii).

<sup>190</sup> Id.

<sup>191</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(i).

<sup>192</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(iii).

<sup>193</sup> See infra Section VIII, D.

<sup>194</sup> See supra Section II, D (contains explanation why this is required).

<sup>195</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii).

Beneficiary rather than an ODB.<sup>196</sup> An ODB is therefore always more than 10 years younger than the IRA owner, and the ODB's life expectancy will always be greater than the IRA owner's remaining "ghost" life expectancy.

The Single Life Table is used to calculate the RMDs.<sup>197</sup> The age of the ODB used for determination of the ODB's life expectancy (the Applicable Denominator) is the age the ODB will be in the calendar year following the calendar year of the IRA owner's death.<sup>198</sup> This is reduced by 1 for each subsequent year.<sup>199</sup> The Applicable Denominator to use for the deceased IRA owner's life expectancy is based on the age of the IRA owner as of the owner's birthday in the calendar year when the IRA owner died.<sup>200</sup> This also is reduced by 1 for each subsequent year.<sup>201</sup>

**2. End Date:** The IRA must be fully distributed by the end of the calendar year containing the 10th anniversary of the IRA owner's death,<sup>202</sup> or the end of the ODB's life expectancy, if earlier.

**D. IRA Distributes to an Eligible Designated Beneficiary Who is Disabled, Chronically Ill, or Not More than Ten Years Younger:** If the IRA owner dies on or after the owner's Required Beginning Date and the IRA distributes to an Eligible Designated Beneficiary (EDB) who is Disabled, Chronically Ill, or not more than 10 years younger than the IRA owner, then the following applies:

**1. Annual Distributions:** The Life Expectancy Rule applies<sup>203</sup> for two reasons: the IRA owner died after the owner's Required Beginning Date (RBD) and the beneficiary is an Eligible Designated Beneficiary. As a result, annual RMDs must be distributed to the EDB over a period of time equal to the greater of (i) the EDB's life

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<sup>196</sup> I.R.C. § 401(a)(9)(E)(ii)(V); Treas. Reg. § 1.401(a)(9)-4(e)(1)(v). See supra Section V, B.

<sup>197</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(i).

<sup>198</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iii).

<sup>199</sup> Id.

<sup>200</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(ii).

<sup>201</sup> Id.

<sup>202</sup> Treas. Reg. § 1.401(a)(9)-5(e)(2).

<sup>203</sup> See supra Section V, C, 1, c (contains definition of Life Expectancy Rule); Treas. Reg. § 1.401(a)(9)-5(d)(1)(i).

expectancy, or (ii) the deceased IRA owner's remaining ("ghost") life expectancy.<sup>204</sup> This means if the EDB was older than the IRA owner and has a shorter life expectancy, then the EDB can use the IRA owner's life expectancy when calculating the annual RMDs during the EDB's life because the IRA owner's life expectancy is greater than the EDB's life expectancy.

The Single Life Table is used to calculate the life expectancies.<sup>205</sup> The age of the EDB used for determination of the EDB's life expectancy (the Applicable Denominator) is the age the EDB will be in the calendar year following the calendar year of the IRA owner's death.<sup>206</sup> This is reduced by 1 for each subsequent year.<sup>207</sup> The Applicable Denominator to use for the deceased IRA owner's life expectancy is based on the age of the IRA owner as of the owner's birthday in the calendar year when the IRA owner died.<sup>208</sup> This also is reduced by 1 for each subsequent year.<sup>209</sup> The RMDs must begin in the calendar year following the IRA owner's death.<sup>210</sup>

If the EDB dies before the IRA is fully distributed, the successor beneficiary of the IRA must continue the annual RMDs the EDB was taking.<sup>211</sup>

**2. End Date:** If the EDB lives past their life expectancy as contained in the Single Life Table (calculated as described above), then the End Date for the inherited IRA will be December 31 of the year the EDB's life expectancy ends. On the other hand, if the EDB dies before the IRA is fully distributed, the remainder of the IRA must be fully distributed no later than the end of the year that contains the 10th anniversary of the EDB's death.<sup>212</sup> If the EDB was older than the deceased IRA owner,

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<sup>204</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii).

<sup>205</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(i).

<sup>206</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iii).

<sup>207</sup> Id.

<sup>208</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(ii).

<sup>209</sup> Id.

<sup>210</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(i).

<sup>211</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(i), (d)(3)(iii), (e)(3). See also Treas. Reg. § 1.401(a)(9)-4(f)(6)(i) (Example 1).

<sup>212</sup> Treas. Reg. §§ 1.401(a)(9)-5(e)(3) and 1.401(a)(9)-5(e)(1). See also Final Treas. Reg. Preamble § I.E.3.c., 89 Fed. Reg. 58886, 58897 (July 19, 2024).

then the life expectancy of the deceased IRA owner would be used to determine the RMDs that are distributed to the EDB.<sup>213</sup>

### **3. Practical Exception for Disabled and Chronically Ill EDBs When AMBT**

**Used:** As a practical matter, if an EDB who is Disabled or Chronically Ill and possibly eligible for means-tested public assistance (such as SSI or Medicaid) is the beneficiary of an IRA, it is most likely the IRA will not be distributed directly to the beneficiary since doing so will disqualify the beneficiary from means-tested public assistance. Instead, the IRA should be distributed to a see-through accumulation trust, and most likely one that qualifies as an Applicable Multi-Beneficiary Trust (AMBT). There are special rules that apply to AMBTs regarding the calculation of the annual RMDs and the determination of the End Date, and the above-described RMDs and End Date options do not apply. Instead, the life expectancy of the oldest beneficiary identified in the trust as Disabled or Chronically Ill is used or, if greater, the IRA owner's remaining "ghost" life expectancy.<sup>214</sup> AMBTs are discussed later in this paper.<sup>215</sup>

### **E. IRA Distributes to an Eligible Designated Beneficiary Who is a Minor Child of the IRA Owner:**

If the IRA owner dies on or after the owner's Required Beginning Date and the IRA distributes to an Eligible Designated Beneficiary who is a minor<sup>216</sup> child<sup>217</sup> of the IRA owner, then subsection 1 of this Section describes the applicable rules. However, if there are multiple Eligible Designated Beneficiaries who are minor children of the IRA owner, then the special rules described in subsection 2 apply, even if there are also other Designated Beneficiaries of the inherited IRA.

**1. Rules if Only One Minor Child is an Eligible Designated Beneficiary:** If there is only one minor child of the IRA owner who is an Eligible Designated Beneficiary of the inherited IRA, then the following applies:

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<sup>213</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii) (providing that the Applicable Denominator is the greater of the EDB's or the deceased owner's remaining life expectancy).

<sup>214</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii), (f)(1)(ii), (f)(2)(iii). See *infra* Section XV, F and G.

<sup>215</sup> See *infra* Section XV.

<sup>216</sup> Under the age of twenty-one (21) years. Treas. Reg. § 1.401(a)(9)-4(e)(3).

<sup>217</sup> "Child" includes an individual who is a naturally born child, legally adopted, stepchild, or eligible foster child. Treas. Reg. § 1.401(a)(9)-4(e)(1)(ii) and I.R.C. § 152(f)(1).

**a. Annual Distributions:** The Life Expectancy Rule<sup>218</sup> applies<sup>219</sup> and RMDs must be made to or for the benefit of the minor child until the end of the calendar year that is 10 years after the calendar year in which the child reaches the age of majority (the regulations set the age of majority at twenty-one (21) years of age<sup>220</sup>). A minor child's status as an EDB ceases when the child turns 21 years old,<sup>221</sup> which means the Life Expectancy Rule is only applied when the child is younger than age 21. After that, the 10-Year Rule applies,<sup>222</sup> but annual RMDs must still be distributed to the child during the 10-year period until the child reaches age 31.<sup>223</sup>

The Applicable Denominator to use for the annual RMDs that must be made to the child is based on the greater of (i) the minor child's life expectancy, or (ii) the deceased IRA owner's remaining ("ghost") life expectancy.<sup>224</sup> The Single Life Table is used to determine both life expectancies.<sup>225</sup>

The age of the child used for determination of the child's life expectancy (the Applicable Denominator) is the age the child will be in the calendar year following the calendar year of the IRA owner's death.<sup>226</sup> This is reduced by 1 for each subsequent year.<sup>227</sup> The Applicable Denominator to use for the deceased IRA owner's life expectancy is based on the age of the IRA owner as of the owner's birthday in the calendar year when the IRA owner died.<sup>228</sup>

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<sup>218</sup> See supra Section V, C, 1, c (contains definition of Life Expectancy Rule).

<sup>219</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(i).

<sup>220</sup> Treas. Reg. § 1.401(a)(9)-4(e)(3).

<sup>221</sup> Treas. Reg. § 1.401(a)(9)-4(e)(1)(ii); Treas. Reg. § 1.401(a)(9)-4(e)(3).

<sup>222</sup> Treas. Reg. § 1.401(a)(9)-5(e)(4).

<sup>223</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(i).

<sup>224</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii).

<sup>225</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(i).

<sup>226</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iii).

<sup>227</sup> Id.

<sup>228</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(ii).

This also is reduced by 1 for each subsequent year.<sup>229</sup> The RMDs must begin in the calendar year following the IRA owner's death.<sup>230</sup>

**b. End Date:** The IRA must be fully distributed no later than the earlier of the end of the calendar year that contains the 10th anniversary of the date the child (i) attained the age of 21, or (ii) died.<sup>231</sup>

**2. Special Rules if Multiple Minor Children are Eligible Designated Beneficiaries:** Despite the foregoing general rules, the following applies if there is more than one minor child of the deceased IRA owner who is an Eligible Designated Beneficiary of the inherited IRA. This applies even if there are also other Designated Beneficiaries of the inherited IRA.

**a. Annual Distributions:** The Life Expectancy Rule<sup>232</sup> applies<sup>233</sup> and RMDs must be made to or for the benefit of the IRA beneficiaries until the End Date is reached.

The Applicable Denominator to use for the annual RMDs that must be made to the Designated Beneficiaries of the IRA is based on the greater of (i) the life expectancy of the oldest Designated Beneficiary (not the oldest minor child EDB) of the inherited IRA,<sup>234</sup> or (ii) the deceased IRA owner's remaining ("ghost") life expectancy.<sup>235</sup> The Single Life Table is used to determine both life expectancies.<sup>236</sup>

The age used for determination of the oldest Designated Beneficiary's life expectancy (the Applicable Denominator) is the age the oldest Designated Beneficiary will be in the calendar year following the calendar year of the IRA

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<sup>229</sup> Id.

<sup>230</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(i).

<sup>231</sup> Treas. Reg. § 1.401(a)(9)-5(e)(4).

<sup>232</sup> See supra Section V, C, 1, c (contains definition of Life Expectancy Rule).

<sup>233</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(i).

<sup>234</sup> Treas. Reg. § 1.401(a)(9)-5(f)(1)(i).

<sup>235</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii).

<sup>236</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(i).

owner's death.<sup>237</sup> This is reduced by 1 for each subsequent year.<sup>238</sup> The Applicable Denominator to use for the deceased IRA owner's life expectancy is based on the age of the IRA owner as of the owner's birthday in the calendar year when the IRA owner died.<sup>239</sup> This also is reduced by 1 for each subsequent year.<sup>240</sup> The RMDs must begin in the calendar year following the IRA owner's death.<sup>241</sup>

**b. End Date:** If there are multiple minor children of the deceased IRA owner who are Eligible Designated Beneficiaries of the inherited IRA, then the End Date for the inherited IRA is the earlier of<sup>242</sup> (i) the end of the year that contains the 10th anniversary of the 21<sup>st</sup> birthday of the youngest Eligible Designated Beneficiary who is a minor child,<sup>243</sup> or (ii) the end of the year that contains the 10th anniversary of the death of the last surviving minor child who is an Eligible Designated Beneficiary.<sup>244</sup> These are major changes from the 2022 proposed regulations, which measured the 10-year period from the oldest minor child rather than the youngest, and which ended the deferral on the death of the oldest minor child rather than on the death of all of them.<sup>245</sup>

**F. IRA Distributes to the Surviving Spouse of the IRA Owner:** If the IRA owner dies on or after the owner's Required Beginning Date and the IRA distributes to the IRA owner's surviving spouse who was the sole beneficiary of the IRA, the surviving spouse is an EDB who has options regarding what the spouse does with the IRA owner's IRA. "Sole beneficiary" means either (i) the surviving spouse is named the sole beneficiary of the IRA

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<sup>237</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iii).

<sup>238</sup> Id.

<sup>239</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(ii).

<sup>240</sup> Id.

<sup>241</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(i).

<sup>242</sup> Treas. Reg. § 1.401(a)(9)-5(e)(1).

<sup>243</sup> Treas. Reg. § 1.401(a)(9)-5(f)(2)(ii)(C).

<sup>244</sup> Treas. Reg. § 1.401(a)(9)-5(f)(2)(ii)(B).

<sup>245</sup> Prop. Treas. Reg. § 1.401(a)(9)-5(f)(2)(ii)(A), 87 Fed. Reg. 10504, 10536 (Feb. 24, 2022).

outright, or (ii) a conduit trust<sup>246</sup> is the named beneficiary of the IRA and the surviving spouse is the sole current lifetime beneficiary of that trust<sup>247</sup> (referred to later in this paper as the sole “primary” beneficiary).<sup>248</sup>

If the IRA owner named multiple beneficiaries including the surviving spouse, separate accounts may be established by December 31 of the year following the year of the IRA owner’s death. If separate accounts are timely established and the surviving spouse is the sole beneficiary of one of the separate accounts, then these special spousal rules will apply to that separate account.<sup>249</sup>

**1. Options Available to the Surviving Spouse:** The surviving spouse who is the sole beneficiary of an IRA has three options for what the surviving spouse can do with the deceased IRA owner’s retirement accounts that name the surviving spouse as the sole beneficiary. The first is to take the retirement account as the surviving spouse’s own. The other two are alternative methods of calculating the annual RMDs if the account is instead kept as an inherited IRA. These are:

Option 1: Roll the IRA over so the surviving spouse becomes the owner (see subsection a, below);

Option 2: Keep the IRA as an inherited IRA and calculate the annual RMDs the way they are calculated for any other Eligible Designated Beneficiary (see subsection b, 1), A), below); or

Option 3: Keep the IRA as an inherited IRA and elect under § 327 of the SECURE 2.0 Act to be treated as the IRA owner for purposes of calculating the annual RMDs (see subsection b, 1), B), below).

Options 2 and 3 differ only in which life expectancy table supplies the Applicable Denominator. Under both, the RMDs must begin in the calendar year following the calendar year of the IRA owner’s death, and under both the End Date is the same (see subsection b, 2), below).

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<sup>246</sup> Treas. Reg. § 1.401(a)(9)-4(f)(1)(ii)(A). See infra Sections XIV, F, 1 and XIV, H, 1 (contains explanation of conduit trust).

<sup>247</sup> Treas. Reg. §§ 1.401(a)(9)-4(h)(2)(i), 1.401(a)(9)-5(c)(2); see also Treas. Reg. § 1.401(a)(9)-4(f)(6)(i), Example 1.

<sup>248</sup> See infra Section XIV, G.

<sup>249</sup> Treas. Reg. § 1.401(a)(9)-8(a). See infra Section X, D for a discussion of separate accounts.

**a. Roll the IRA Over to IRA Owned by Surviving Spouse:** If the surviving spouse makes this election, then the surviving spouse becomes the owner of that IRA instead of being the beneficiary of an inherited IRA.<sup>250</sup> This is often the option chosen. The spouse will not be required to draw any RMDs until the spouse reaches the spouse's Required Beginning Date. The Uniform Lifetime Table will be used to determine the Applicable Denominator for the surviving spouse's life expectancy.<sup>251</sup> The End Date will depend on who the beneficiary of the IRA is when the spouse dies.

However, if the surviving spouse is under the age of 59½ and may need to draw money out of the deceased IRA owner's IRA prior to reaching this age, then the surviving spouse may want to elect to keep the IRA as an inherited IRA under either of the two below-described options. This is because if the surviving spouse rolls the IRA over to become the surviving spouse's personal IRA, then any withdrawals prior to the surviving spouse attaining the age of 59½ will usually be subject to a 10% additional tax (often referred to as an "early withdrawal penalty," although that is not how the Code refers to it) in addition to any income tax that may be payable.<sup>252</sup> This additional tax is avoided if the IRA is taken as an inherited IRA.

If the inherited IRA is a Roth IRA, the surviving spouse would normally roll the IRA over to become the surviving spouse's IRA. Roth IRAs are discussed later in this paper.<sup>253</sup>

**b. Keep the IRA as Inherited IRA and Take Life Expectancy Distributions:** The surviving spouse can choose to keep the IRA as an inherited IRA. Since the surviving spouse is an EDB, the Life Expectancy Rule<sup>254</sup> will apply. If this is chosen, then what happens is described below.

**1) Annual Distributions:** Because the IRA owner died after the owner's RBD, the surviving spouse must begin taking annual RMDs

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<sup>250</sup> Treas. Reg. § 1.402(c)-2(j)(1).

<sup>251</sup> Treas. Reg. § 1.401(a)(9)-5(c)(1).

<sup>252</sup> I.R.C. § 72(t)(1), (2) (imposing the 10% additional tax and listing exceptions, including § 72(t)(2)(A)(i), for a distribution made on or after the date the IRA owner attains age 59½).

<sup>253</sup> See *infra* Section XI.

<sup>254</sup> See *supra* Section V, C, 1, c (contains definition of Life Expectancy Rule); Treas. Reg. § 1.401(a)(9)-5(d)(1)(i).

the year following the year of the IRA owner's death.<sup>255</sup> The life expectancy of the surviving spouse for purposes of calculating the spouse's RMDs is based on the surviving spouse's age as of the spouse's birthday in that calendar year.<sup>256</sup> Unlike every other beneficiary, the spouse's life expectancy is recalculated every subsequent year based on the spouse's then-current age.<sup>257</sup>

The surviving spouse has two options concerning how the RMDs are calculated:

**A) Be Treated Like Other EDBs:** If the surviving spouse chooses to be treated like other EDBs, then the Single Life Table is used,<sup>258</sup> but the spouse's life expectancy is recalculated every year based on the spouse's then-current age.<sup>259</sup> The Applicable Denominator is the greater of (i) the surviving spouse's life expectancy, or (ii) the IRA owner's remaining ("ghost") life expectancy.<sup>260</sup> Because the surviving spouse's life expectancy is recalculated each year based on the surviving spouse's age in that year and the IRA owner's ghost life expectancy is calculated once and then reduced by 1 each year,<sup>261</sup> both life expectancies are compared each year, and the greater (longer) life expectancy is used as the Applicable Denominator. Using the greater life expectancy produces a smaller Annual Distribution.

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<sup>255</sup> Treas. Reg. §§ 1.401(a)(9)-5(d)(1)(i), 1.401(a)(9)-5(a)(2)(i) and (ii), and 1.401(a)(9)-5(d)(3)(iv). Essentially, after the IRA owner's RBD the owner must start taking RMDs. When the owner dies, the RMDs continue, which is why there are RMDs required the year after the owner's death. However, often the Applicable Denominator will change and be based on a life expectancy other than the deceased IRA owner's remaining "ghost" life expectancy.

<sup>256</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iv).

<sup>257</sup> Id.

<sup>258</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(i).

<sup>259</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iv).

<sup>260</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii).

<sup>261</sup> See *infra* Section VIII, D (contains explanation of how the ghost life expectancy is calculated).

**B) Elect to be Treated as the IRA Owner:** Section 327 of the SECURE 2.0 Act of 2022 allows the IRA owner's surviving spouse to elect to be "treated as (the) employee" (which is how the IRA owner is referred to in the statute and regulations). Unlike when the IRA owner dies before the owner's RBD (where this election is automatic), when the IRA owner dies on or after the owner's RBD the spouse must make an election for this option to apply. However, the election may be a default election under the terms of the plan, and the preamble anticipates that most plans will provide the election as a default.<sup>262</sup>

The July 19, 2024 Proposed Regulations and accompanying preamble make clear that this election can only be made if the IRA owner died in 2023 or later,<sup>263</sup> and when this election is made it only applies to the determination of RMDs and does not constitute an actual ownership election or rollover causing the IRA to no longer be treated as an inherited IRA.<sup>264</sup> Although the surviving spouse computes annual RMDs using the Uniform Lifetime Table as if the spouse were the IRA owner,<sup>265</sup> the IRA remains an inherited IRA unless and until the spouse completes an actual rollover or elects to treat the IRA as the spouse's own IRA, which the spouse can do at any time.<sup>266</sup> As a result, the spouse continues to be treated as the beneficiary of an inherited IRA for non-RMD purposes. This includes being eligible for the exception to the 10% additional tax on IRA distributions taken before the spouse attains age 59½.<sup>267</sup>

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<sup>262</sup> Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(B), 89 Fed. Reg. 58644, 58650 (July 19, 2024); see also 89 Fed. Reg. at 58646, 58649 (preamble).

<sup>263</sup> Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(E), 89 Fed. Reg. 58644, 58651 (July 19, 2024). See *supra* Section II, F (applicability of the 2024 proposed regulations).

<sup>264</sup> Prop. Treas. Reg. Preamble § F, 89 Fed. Reg. 58644, 58646-47 (July 19, 2024).

<sup>265</sup> Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(C), 89 Fed. Reg. 58644, 58650 (July 19, 2024).

<sup>266</sup> Treas. Reg. § 1.408-8(c).

<sup>267</sup> I.R.C. § 72(t)(2)(A)(ii).

The principal advantage of making this election is that the annual RMDs are calculated using the greater of (a) the Applicable Denominator under the Uniform Lifetime Table for the surviving spouse's age recalculated annually or (b) the deceased IRA owner's remaining "ghost" life expectancy determined under the Single Life Table. As compared to the standard EDB payout regime, which generally requires use of the Single Life Table alone, use of the Uniform Lifetime Table will typically produce a larger Applicable Denominator and therefore a smaller annual RMD obligation for the surviving spouse.

A disadvantage of this election is that if there is a designated Roth account (DRAC) received from the deceased spouse, the value of the DRAC is included when determining RMDs.<sup>268</sup> However, this can be easily avoided by the surviving spouse rolling the designated Roth IRA account over to an inherited IRA Roth account owned by the surviving spouse.

**2) End Date for Surviving Spouse:** If the surviving spouse dies after the IRA owner, the End Date when the IRA must be fully distributed is the earlier of the end of the calendar year that contains (i) the 10th anniversary of the surviving spouse's death<sup>269</sup> or (ii) the final year of the life expectancy payout of the surviving spouse's life expectancy (which is the spouse's year of death life expectancy reduced by one each subsequent year).<sup>270</sup>

## VIII. How to Determine Life Expectancy

Life expectancy for purposes of determining how much of an IRA must be distributed in a given year (the Required Minimum Distribution (RMD)) is calculated differently depending

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<sup>268</sup> Prop. Treas. Reg. Preamble § F, 89 Fed. Reg. 58644, 58647 (July 19, 2024).

<sup>269</sup> Treas. Reg. § 1.401(a)(9)-5(e)(3). In addition, if the surviving spouse chose to be treated as the employee (IRA owner), as authorized by § 327 of the SECURE 2.0 Act of 2022, then Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(D), 89 Fed. Reg. 58644, 58651 (July 19, 2024) also applies.

<sup>270</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iv). In addition, if the surviving spouse chose to be treated as the employee (IRA owner), as authorized by § 327 of the SECURE 2.0 Act of 2022, then Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(D), 89 Fed. Reg. 58644, 58651 (July 19, 2024) also applies.

on whose life expectancy is being determined. Two factors are involved: (i) which life expectancy table is used, and (ii) which birthday is used to determine the age of the person whose life expectancy is being calculated.

**A. Life Expectancy Tables:** There are three life expectancy tables in the Regulations. These tables were updated by final regulations published on November 12, 2020, and apply to retirement account distributions to be made in calendar years beginning on or after January 1, 2022. For distributions before that date, the prior life expectancy tables need to be used. In 2024, the IRS proposed extending the Uniform Lifetime Table to cover ages 10 through 71, using a version of the table first published in 2022 for another purpose.<sup>271</sup> That extension has not been finalized. See Section II, F, above. The current tables can be found in Treas. Reg. § 1.401(a)(9)-9 and IRS Publication 590-B. In addition, two of them are reproduced in Appendices B and C of this paper.

**1. Single Life Table:** This table is used to determine the life expectancy of (i) a beneficiary who is only a Designated Beneficiary (ODB) and (ii) an Eligible Designated Beneficiary (EDB). It is also used to determine the remaining ("ghost") life expectancy after the year of death for the IRA owner who died on or after the owner's Required Beginning Date. This table is reproduced in Appendix B of this paper. It is located at Treas. Reg. § 1.401(a)(9)-9(b).

**2. Uniform Lifetime Table:** This table is normally the one that is used to determine the IRA owner's RMDs during the IRA owner's lifetime and in the year the IRA owner dies. However, it is not used when the IRA owner's spouse is the sole beneficiary of the IRA for the entire calendar year and the spouse is more than ten years younger than the IRA owner; in that situation the Joint and Last Survivor Table is used.<sup>272</sup> The Uniform Lifetime Table is also used if a surviving spouse is "treated as the employee" of an IRA the surviving spouse has taken as an inherited IRA.<sup>273</sup> The Uniform Lifetime Table published in 2020 was updated to start at age 10 and published in Appendix A of IRS Notice 2022-6, 2022-5 IRB 460. It was also reproduced in the proposed regulations issued July 19, 2024, which would modify Treas. Reg. § 1.401(a)(9)-9(c). The proposed updated Uniform Lifetime Table is reproduced in Appendix C at the end of this paper. It is located at Treas. Reg.

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<sup>271</sup> Prop. Treas. Reg. § 1.401(a)(9)-9(c), 89 Fed. Reg. 58644, 58651-52 (July 19, 2024); see 89 Fed. Reg. at 58647 (preamble); I.R.S. Notice 2022-6, 2022-5 I.R.B. 460.

<sup>272</sup> Treas. Reg. §§ 1.401(a)(9)-5(c)(2)(i)-(ii), 1.401(a)(9)-9(d), 1.401(a)(9)-5(c)(1).

<sup>273</sup> Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(C), 89 Fed. Reg. 58644, 58650 (July 19, 2024).

§ 1.401(a)(9)-9(c) as modified by Prop. Treas. Reg. § 1.401(a)(9)-9(c), 89 Fed. Reg. 58644, 58651-58652 (July 19, 2024).

**3. Joint and Last Survivor Table:** This table is used to determine the IRA owner's RMDs during the IRA owner's lifetime and in the year the IRA owner dies when the sole beneficiary of the IRA for the entire calendar year during which the RMD is to be made is the IRA owner's spouse and the spouse is more than ten years younger than the IRA owner. This table is too large to include in this paper, but is located at Treas. Reg. § 1.401(a)(9)-9(d).

**B. Beneficiary's Life Expectancy - Not Surviving Spouse:** Life expectancy of a Designated Beneficiary (DB), including an Eligible Designated Beneficiary (EDB) who is not the IRA owner's surviving spouse, is determined using the Single Life Table.<sup>274</sup> The beneficiary's age is determined as of the beneficiary's birthday in the calendar year immediately following the calendar year of the IRA owner's death.<sup>275</sup> Thereafter, that life expectancy is reduced by one for each calendar year that elapses after the calendar year immediately following the calendar year of the IRA owner's death.<sup>276</sup>

Example: Assume the IRA owner died on November 29, 2026, when the beneficiary is 25 years old. If the beneficiary turned age 26 on December 28, 2026, then the age to use for the beneficiary's life expectancy is age 27, the age the beneficiary will be on December 28, 2027 (the calendar year following the calendar year of the IRA owner's death).

If the beneficiary is a see-through trust, the life expectancy used is that of the oldest countable beneficiary of the trust or, if the trust is an AMBT, the oldest beneficiary identified in the trust as Disabled or Chronically Ill.<sup>277</sup>

**C. Beneficiary's Life Expectancy - Surviving Spouse:** If the Designated Beneficiary is an Eligible Designated Beneficiary (EDB) who is the IRA owner's surviving spouse and the

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<sup>274</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(i).

<sup>275</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iii).

<sup>276</sup> Id.

<sup>277</sup> Treas. Reg. § 1.401(a)(9)-5(f)(1)(i)-(ii). See *infra* Sections XIV and XV.

spouse is not rolling the IRA over to become the spouse's IRA, then how the surviving spouse's life expectancy is determined depends on which option applies to the surviving spouse.

## 1. Options Applicable to the Surviving Spouse:

**a. Standard EDB Approach:** If the surviving spouse is treated as a standard EDB, which is the case if the IRA owner died on or after the IRA owner's RBD and neither the surviving spouse nor the plan has made the election described in subsection b, below, then the Single Life Table is used,<sup>278</sup> with life expectancy recalculated each year based on the spouse's then-current age.<sup>279</sup>

**b. Treated as the Employee (SECURE 2.0 § 327):** If the surviving spouse is treated as the employee<sup>280</sup> (which is automatic if the IRA owner dies before the owner's RBD<sup>281</sup> and a choice the surviving spouse can make if the IRA owner dies on or after the owner's RBD<sup>282</sup>), then the Uniform Lifetime Table is used to calculate the spouse's life expectancy instead of the Single Life Table.<sup>283</sup> If the IRA owner died before the owner's RBD, the Applicable Denominator is based on the surviving spouse's age as of the surviving spouse's birthday in the distribution calendar year.<sup>284</sup> If the IRA owner died on or after the owner's RBD, then the Applicable Denominator for a distribution calendar year is the greater of (i) the Applicable Denominator from the Uniform Lifetime Table for the surviving spouse's age as of the surviving spouse's birthday in the distribution calendar year or (ii) the IRA

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<sup>278</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(i).

<sup>279</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iv).

<sup>280</sup> I.R.C. § 401(a)(9)(B)(iv); Treas. Reg. § 1.401(a)(9)-5(g)(3).

<sup>281</sup> Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(A), 89 Fed. Reg. 58644, 58650 (July 19, 2024). See *supra* Section II, F (applicability of the 2024 proposed regulations).

<sup>282</sup> Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(B), 89 Fed. Reg. 58644, 58650 (July 19, 2024).

<sup>283</sup> Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(C), 89 Fed. Reg. 58644, 58650 (July 19, 2024).

<sup>284</sup> *Id.*

owner's remaining "ghost" life expectancy<sup>285</sup> (which is described in Section VIII, D, below).

**2. Calculating Life Expectancy After Death of Surviving Spouse:** The remaining life expectancy after the surviving spouse dies is determined under the Single Life Table, using the age of the surviving spouse as of the surviving spouse's birthday in the calendar year the surviving spouse died.<sup>286</sup> Thereafter, that life expectancy is reduced by one for each calendar year following the surviving spouse's death.<sup>287</sup>

**D. IRA Owner's Remaining "Ghost" Life Expectancy - Death On or After RBD:** If an IRA owner died on or after the owner's Required Beginning Date, the IRA owner's remaining ("ghost") life expectancy is determined by using the Single Life Table.<sup>288</sup> The age to use for the deceased IRA owner is the age the owner would have attained on the owner's birthday in the calendar year of the IRA owner's death.<sup>289</sup> In subsequent years, this is reduced by one for each calendar year that has elapsed after the calendar year of the IRA owner's death.<sup>290</sup>

## **IX. Calculating IRA Distributions**

**A. Calculating the Required Minimum Distribution:** The Required Minimum Distribution (RMD) for an inherited IRA is calculated by -

- (i) referring to the Single Life Table<sup>291</sup> (see Appendix B),

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<sup>285</sup> Id.

<sup>286</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iv); see also Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(D)(1), 89 Fed. Reg. 58644, 58651 (July 19, 2024).

<sup>287</sup> Id.

<sup>288</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(i).

<sup>289</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(ii).

<sup>290</sup> Id.

<sup>291</sup> For the surviving spouse who is treated as the employee, use the Uniform Lifetime Table. Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(C), 89 Fed. Reg. 58644, 58650 (July 19, 2024).

- (ii) locating the life expectancy (Applicable Denominator<sup>292</sup>) associated with the beneficiary who is only a Designated Beneficiary's (ODB) or Eligible Designated Beneficiary's (EDB) age on the appropriate date, and
- (iii) dividing the value of the IRA on December 31 of the preceding calendar year<sup>293</sup> by the appropriate Applicable Denominator.<sup>294</sup>

If the IRA owner died on or after the owner's Required Beginning Date, the Applicable Denominator in step (ii) is the greater of the beneficiary's remaining life expectancy and the IRA owner's remaining ("ghost") life expectancy. If the IRA owner had no Designated Beneficiary, the IRA owner's remaining ("ghost") life expectancy is used.<sup>295</sup>

The resulting amount is the RMD for that calendar year. For all beneficiaries who are only Designated Beneficiaries (ODB) or are Eligible Designated Beneficiaries (EDB) other than the IRA owner's surviving spouse, the Applicable Denominator is reduced by one each subsequent year and a new RMD is calculated.<sup>296</sup> For the IRA owner's surviving spouse, the current age of the spouse each year is used to recalculate the spouse's Applicable Denominator during the spouse's lifetime up to and including the year of the spouse's death.<sup>297</sup> After the spouse's death, the Applicable Denominator of the surviving spouse in the year of the spouse's death is reduced by one for each calendar year following the year of the spouse's death.<sup>298</sup>

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### Example Continued

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Continuing the example from above, if the IRA owner died in 2026 after the owner's Required Beginning Date, in the year the owner would have been age 75, and the age to use for the beneficiary is age 27, the Applicable Denominator using the Single Life Table is the greater of the beneficiary's life

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<sup>292</sup> Prior to the 2022 proposed regulations this was referred to as the "Applicable Distribution Period."

<sup>293</sup> Treas. Reg. § 1.401(a)(9)-5(b)(1).

<sup>294</sup> Treas. Reg. § 1.401(a)(9)-5(a)(1).

<sup>295</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii) and (iii). See *supra* Section VIII, D.

<sup>296</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iii).

<sup>297</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iv).

<sup>298</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iv); see also Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(D)(1), 89 Fed. Reg. 58644, 58650 (July 19, 2024).

expectancy of 58.2 years and the IRA owner's remaining "ghost" life expectancy of 14.8 years.<sup>299</sup> Because the beneficiary's life expectancy is greater, the Applicable Denominator is 58.2. In other words, based on this IRS table the beneficiary has a life expectancy of 58.2 years. This means that in the first year (which is 2027, the year after the year the IRA owner died), the Required Minimum Distribution (RMD) that must be distributed to the beneficiary is 1/58.2 of the value of the inherited IRA as of December 31, 2026.<sup>300</sup> If that value is \$100,000, then the RMD is \$1,718.21 ( $100,000 / 58.2 = 1,718.21$ ).

If the beneficiary was not the IRA owner's surviving spouse, then the next year (2028), the beneficiary must withdraw 1/57.2 out of the balance in the inherited IRA on December 31, 2027. This reduction by 1 repeats every subsequent year during the life of the beneficiary until the End Date or the death of the beneficiary, whichever occurs first.

If the beneficiary was the IRA owner's surviving spouse, then the next year the original process would repeat using the Applicable Denominator for the surviving spouse's age in 2028. Using the surviving spouse's actual age to determine the Applicable Denominator repeats every subsequent year of the surviving spouse's life. The Single Life Table would be used for determining the Applicable Denominator of the surviving spouse unless the spouse chose to be treated as the employee,<sup>301</sup> in which case the Uniform Lifetime Table is used.

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End of Example

**B. Final Required Minimum Distribution at End Date:** The Code has always required that an inherited IRA be fully distributed by a certain date, and the SECURE Act changed when that date occurs for most beneficiaries.<sup>302</sup> For ease of reference, this paper refers to this as the "End Date," a phrase that is not found in the Code or the regulations.<sup>303</sup> In

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<sup>299</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii).

<sup>300</sup> Treas. Reg. § 1.401(a)(9)-5(b)(1).

<sup>301</sup> Treas. Reg. § 1.401(a)(9)-5(g)(3)(i).

<sup>302</sup> I.R.C. § 401(a)(9)(B) and (H); Treas. Reg. § 1.401(a)(9)-5(e).

<sup>303</sup> See *supra* Section V, C, 2, b.

essence, there is a final Required Minimum Distribution equal to 100% of the amount remaining in the inherited IRA that must be distributed no later than the End Date.

When the End Date occurs depends on whether (i) the IRA owner died before, or on or after, the IRA owner's Required Beginning Date (RBD), (ii) the beneficiary of the IRA is not a Designated Beneficiary (NDB), (iii) the beneficiary is a Designated Beneficiary who is not an Eligible Designated Beneficiary (ODB), or (iv) the beneficiary is an Eligible Designated Beneficiary (EDB), and if so, which type of EDB. The various options for the End Date based on the different types of beneficiaries are explained earlier in this paper.<sup>304</sup>

Whichever year applies, the End Date is always December 31 of that year.<sup>305</sup>

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### Examples

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To illustrate this, consider the following examples assuming the IRA owner died on December 1, 2026, the year when the owner would have been age 75, which is after the owner's Required Beginning Date. The owner's remaining ("ghost") life expectancy (Applicable Denominator) is 14.8 because the deceased IRA owner's life expectancy is calculated as of the age the owner would be on the owner's birthday in the year the owner died.<sup>306</sup>

1. If the IRA beneficiary is a Disabled or Chronically Ill EDB who was 26 years old in the year the IRA owner died (therefore 27 years old in the year following the year the IRA owner died)<sup>307</sup> and lives until July 12, 2059, the End Date is December 31, 2069, which is the earlier of:
  - December 31, 2069 (10 years after death of the beneficiary), or
  - December 31, 2085 (the final year of the beneficiary's 58.2 year life expectancy)Note: the final year of the IRA owner's remaining ("ghost") life expectancy is not an option here because the beneficiary was not older than the IRA owner and is therefore not using the IRA owner's

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<sup>304</sup> See supra Sections VI and VII.

<sup>305</sup> Treas. Reg. § 1.401(a)(9)-5(e).

<sup>306</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(ii).

<sup>307</sup> Treas. Reg. § 1.401(a)(9)-5(d)(3)(iii).

life expectancy to determine the annual RMDs during the beneficiary's lifetime.<sup>308</sup>

2. If the IRA beneficiary is age 80 in the year the IRA owner died in 2026 (i.e., an EDB who is not more than 10 years younger than the IRA owner), the Applicable Denominator is the greater of:
- The beneficiary's 10.5 year life expectancy, determined for 2027, the year following the year the IRA owner died, which would run out December 31, 2037, or
  - The IRA owner's remaining ("ghost") life expectancy of 13.8 years, determined for 2027 (14.8 in the year of death, reduced by one), which runs out December 31, 2040.<sup>309</sup>

Because the IRA owner's remaining life expectancy is greater, it is the Applicable Denominator. If the beneficiary dies on July 12, 2032, the End Date is December 31, 2040, which is the earlier of:

- December 31, 2042 (10 years after the beneficiary's death), or
- December 31, 2040 (the final year of the IRA owner's remaining ("ghost") life expectancy, which is calculated as of the year the IRA owner died).<sup>310</sup>

3. If the IRA beneficiary is the surviving spouse of the IRA owner who turned age 72 in the year the IRA owner died (2026) and elected to be treated as the employee,<sup>311</sup> and the spouse dies December 12, 2030 when the spouse is age 76, the End Date is December 31, 2040, which is the earlier of:
- December 31, 2040 (10 years after the spouse's death), or
  - December 31, 2044 (the final year of the spouse's 14.1 year life expectancy).

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<sup>308</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii).

<sup>309</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii).

<sup>310</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii). Note: The final year of the beneficiary's own 10.5 year life expectancy (December 31, 2037) is not an option here because the beneficiary was older than the IRA owner, and the Applicable Denominator is the IRA owner's remaining ("ghost") life expectancy.

<sup>311</sup> Treas. Reg. § 1.401(a)(9)-5(g)(3)(i). This allows the spouse to use the Uniform Lifetime Table to calculate RMDs. See Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(C), 89 Fed. Reg. 58644, 58650 (July 19, 2024).

Note: After the surviving spouse's death, the Applicable Denominator is the surviving spouse's remaining life expectancy and the IRA owner's remaining ("ghost") life expectancy is no longer used.<sup>312</sup>

4. If the IRA beneficiary is the minor child of the IRA owner who turned 15 years old in the year when the IRA owner died, the End Date is:
  - December 31, 2042 (10 years after the year the child turns age 21)
5. If the IRA beneficiary is the minor child of the IRA owner who turned 15 years old in the year when the IRA owner died in 2026, and the child dies before reaching age 21, the End Date is 10 years after the child died. If the child dies in 2030, the End Date is December 31, 2040; or if the child dies in 2028, the End Date is December 31, 2038. In each case that date is earlier than December 31, 2042, which is 10 years after the year the child would have turned age 21.
6. If the IRA beneficiary is the minor child of the IRA owner who turned 15 years old in the year when the IRA owner died in 2026, and who dies in 2035, the End Date is December 31, 2042, which is the earlier of:
  - December 31, 2042 (10 years after the year the child turns age 21), or
  - December 31, 2045 (10 years after the year the child died)

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End of Examples

**C. Withdrawals Are Not Limited To the Minimum Amount:** The RMD rules only set the minimum amount that must be withdrawn; nothing prohibits larger withdrawals. The beneficiary of an inherited IRA can always withdraw more than the Required Minimum Distribution, even up to the entire amount remaining in the inherited IRA. Although whatever is withdrawn from a traditional IRA is taxable income to the beneficiary, there is generally no penalty for withdrawing more than the RMD.<sup>313</sup> Withdrawals from an inherited Roth IRA are normally not taxable income to the beneficiary,<sup>314</sup> and there is no penalty for withdrawing more than the RMD.

**D. Excise Tax Imposed if RMD Not Distributed From an IRA on a Timely Basis:** If the IRA owner while living, or the beneficiary of an inherited IRA, does not draw all of the Required Minimum Distribution out of the IRA during the applicable calendar year, I.R.C.

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<sup>312</sup> Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(D), 89 Fed. Reg. 58644, 58650-51 (July 19, 2024).

<sup>313</sup> The 10% additional tax on early distributions does not apply to a distribution made to a beneficiary on or after the death of the IRA owner. I.R.C. § 72(t)(2)(A)(ii).

<sup>314</sup> See *infra* Section XI.

§ 4974 imposes a penalty that is equal to a percentage of the amount of the Required Minimum Distribution that was not withdrawn.<sup>315</sup> This penalty is referred to as an “excise tax” in the I.R.C. and regulations.

Section 302 of the SECURE 2.0 Act of 2022 made two amendments to I.R.C. § 4974. The first amended § 4974(a) by reducing the excise tax percentage to 25% (previously it had been 50%).<sup>316</sup> The second amendment added a new subsection (e) that allows a person who did not draw the entire RMD, whether the IRA owner or the beneficiary of an inherited IRA, to reduce the excise tax to 10% of the amount of the RMD that was not withdrawn if that person:

- receives, during the “correction window,” a corrective distribution from the IRA that is equal to the amount of the RMD that was not withdrawn, and
- files a return during the “correction window” reflecting the 10% excise tax on the amount by which the RMD for the calendar year exceeded the amount actually distributed during that year.<sup>317</sup>

The “correction window” begins on the date the excise tax is imposed with respect to the undrawn RMD and ends on the earliest of (i) the date the IRS mails a notice of deficiency with respect to the undrawn RMD, (ii) the date on which the excise tax was assessed, or (iii) the last day of the second taxable year that begins after the end of the taxable year in which the excise tax is imposed.<sup>318</sup>

Note that this also applies to an inherited IRA. If any RMDs are not distributed from an inherited IRA on a timely basis, this excise tax will be imposed on the amount of the RMD that is not distributed.

The excise tax may also be waived. The IRS may waive the excise tax if the payee establishes that the failure to distribute the Required Minimum Distribution was due to reasonable

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<sup>315</sup> I.R.C. § 4974; Treas. Reg. § 54.4974-1. The current version of Treas. Reg. § 54.4974-1 applies for taxable years beginning on or after January 1, 2025. For earlier taxable years, the rules of former Treas. Reg. § 54.4974-2 apply. Treas. Reg. § 54.4974-1(h).

<sup>316</sup> Treas. Reg. § 54.4974-1(a)(1).

<sup>317</sup> Treas. Reg. § 54.4974-1(a)(2)(ii).

<sup>318</sup> I.R.C. § 4974(e)(2); Treas. Reg. § 54.4974-1(a)(2)(iii); SECURE 2.0 Act of 2022, Pub. L. No. 117-328, div. T, § 302, 136 Stat. 4459, 5339.

error and that reasonable steps are being taken to remedy the failure.<sup>319</sup> The regulations also provide two automatic waivers. The first applies where the IRA owner died before the Required Beginning Date, the beneficiary is an Eligible Designated Beneficiary whose RMDs are determined under the Life Expectancy Rule without having made an affirmative election, the beneficiary fails to take an RMD, and the beneficiary elects the 10-Year Rule by the end of the ninth calendar year following the calendar year of the IRA owner's death.<sup>320</sup> The second applies to the Required Minimum Distribution for the year of death. If the person who was required to take that distribution dies during that calendar year without having taken it, the excise tax is waived automatically if that person's beneficiary takes a corrective distribution of the required amount no later than the beneficiary's tax filing deadline, including extensions, for the taxable year that begins with or within that calendar year, or if later, the last day of the following calendar year.<sup>321</sup>

## **X. Rules for Inherited IRA with Multiple Beneficiaries**

Potential issues arise if an IRA pays to more than one beneficiary. The regulations provide guidance for some of these. Note: Some of the words and phrases used in this Section have not yet been defined in this paper because they apply to when a trust is a beneficiary of an IRA. Refer to Sections XIV and XV of this paper, below, for those definitions.

**A. Not All Beneficiaries are DBs or EDBs:** IRAs are treated differently if there are only beneficiaries who are (i) not Designated Beneficiaries (NDB), or (ii) only Designated Beneficiaries and not Eligible Designated Beneficiaries (ODB), or (iii) Eligible Designated Beneficiaries (EDB) (and if so, which type of EDB). If an IRA has a mix of different types of beneficiaries, then there are questions about how the IRA is to be distributed.

**1. General Rule - All Beneficiaries Must Qualify:** Generally, if not all beneficiaries of an IRA qualify as a Designated Beneficiary (which includes ODBs and EDBs), the IRA is treated as not having any Designated Beneficiaries.<sup>322</sup> This also

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<sup>319</sup> Treas. Reg. § 54.4974-1(g)(1).

<sup>320</sup> Treas. Reg. § 54.4974-1(g)(2).

<sup>321</sup> Treas. Reg. § 54.4974-1(g)(3). See *supra* Section VII, A.

<sup>322</sup> Treas. Reg. § 1.401(a)(9)-4(b).

applies for Eligible Designated Beneficiaries; if not all beneficiaries are EDBs, then the inherited IRA is treated as not having any beneficiaries who are EDBs.<sup>323</sup>

**2. Exceptions:** However, there are exceptions to this general rule. These are:

**a. Minor Child of IRA Owner:** If a minor child of the IRA owner is one of the Eligible Designated Beneficiaries (EDB) of the inherited IRA, then the IRA is treated as having an EDB even though there are other beneficiaries who are only Designated Beneficiaries (ODB).<sup>324</sup> This means the Life Expectancy Rule can be applied to all beneficiaries of the IRA.

There is not a special rule for whose life expectancy to use to determine the Applicable Denominator used to calculate the Required Minimum Distributions (RMDs) when a minor child of the IRA owner is a beneficiary of the inherited IRA. Therefore, the general rule described in Section X, B, below, applies, and the life expectancy of the oldest ODB or EDB who is a beneficiary of the inherited IRA is used to determine the Applicable Denominator and calculate the annual RMDs.

**b. Applicable Multi-Beneficiary Trust:** If the IRA is payable to an Applicable Multi-Beneficiary Trust (AMBT), then the beneficiaries of the trust who are identified in the trust as being Disabled or Chronically Ill are treated as Eligible Designated Beneficiaries even though one or more of the other beneficiaries of the trust are not Eligible Designated Beneficiaries.<sup>325</sup> This means the Life Expectancy Rule can be applied, using the life expectancy of the oldest beneficiary who is Disabled or Chronically Ill, as described in Section X, B, 2, a, below. AMBTs are further described later in this paper.<sup>326</sup>

**c. Separate Accounts:** If the IRA that has mixed types of beneficiaries is divided into separate accounts by December 31 of the calendar year following the year of the IRA owner's death, then each separate account is viewed separately to determine if the beneficiary is not a Designated

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<sup>323</sup> Treas. Reg. § 1.401(a)(9)-4(e)(2)(i).

<sup>324</sup> Treas. Reg. § 1.401(a)(9)-4(e)(2)(ii).

<sup>325</sup> Treas. Reg. § 1.401(a)(9)-4(e)(2)(iii).

<sup>326</sup> See *infra* Section XV.

Beneficiary (NDB), only a Designated Beneficiary (ODB), or an Eligible Designated Beneficiary (EDB).<sup>327</sup>

If the IRA is payable to a see-through trust, the beneficiaries of the trust rather than the trust itself are treated as the beneficiaries of the IRA, and different rules apply depending on the type of trust. This is discussed later in this paper.<sup>328</sup>

**B. Which Life Expectancy Is Used to Calculate RMDs:** The life expectancy used to determine the Applicable Denominator to calculate the Required Minimum Distributions (RMDs) that must be made annually will depend on whether (i) the IRA pays to an Applicable Multi-Beneficiary Trust (AMBT), (ii) the IRA pays to an age 31 trust, (iii) the IRA is divided into separate accounts by December 31 of the calendar year following the year of the IRA owner's death, or (iv) the IRA pays to multiple beneficiaries.

**1. General Rule for Calculating RMDs - Oldest Beneficiary:** If an IRA pays to more than one Designated Beneficiary (DB) (in this situation, an Eligible Designated Beneficiary is not distinguished and is included in the definition of a Designated Beneficiary), the general rule is the life expectancy of the oldest Designated Beneficiary will be used for the determination of the Applicable Denominator to calculate the Required Minimum Distributions (RMDs).<sup>329</sup>

If the IRA owner died on or after the owner's Required Beginning Date, the Applicable Denominator is the greater of the oldest Designated Beneficiary's remaining life expectancy and the IRA owner's remaining ("ghost") life expectancy. If the IRA owner had no Designated Beneficiary, the IRA owner's remaining ("ghost") life expectancy is used.<sup>330</sup>

**2. Exceptions:** There are exceptions to this general rule. Note that there is not an exception for a minor child of the IRA owner. This means the general rule applies in that situation. The exceptions to the general rule are:

**a. Applicable Multi-Beneficiary Trust:** If the IRA beneficiary is an Applicable Multi-Beneficiary Trust (AMBT), then the life expectancy of the

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<sup>327</sup> Treas. Reg. § 1.401(a)(9)-4(b); Treas. Reg. § 1.401(a)(9)-4(e)(2)(i); Treas. Reg. § 1.401(a)(9)-8(a).

<sup>328</sup> See *infra* Section XIV.

<sup>329</sup> Treas. Reg. § 1.401(a)(9)-5(f)(1)(i).

<sup>330</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii) and (iii). See *supra* Section VIII, D.

oldest beneficiary who is Disabled or Chronically Ill is used to determine the Applicable Denominator to determine the RMDs.<sup>331</sup> All other beneficiaries are ignored. AMBTs are further described later in this paper.<sup>332</sup>

**b. Age 31 Trust:** If the IRA beneficiary is a trust for the benefit of a primary beneficiary under age 31 and the trust must fully distribute the IRA and proceeds received from investing any RMDs received from the IRA to the beneficiary by December 31 of the year the beneficiary turns age 31, then any beneficiary who would take only if the primary beneficiary dies before full distribution is disregarded, so the primary beneficiary's life expectancy is used. This type of trust is further described later in this paper.<sup>333</sup>

**c. Separate Accounts:** If an IRA that has multiple beneficiaries is divided into separate accounts by December 31 of the calendar year following the year of the IRA owner's death, then each separate account is viewed separately to determine which beneficiary's life expectancy is used to determine the Applicable Denominator to calculate the Required Minimum Distributions that must be made annually until the applicable End Date.<sup>334</sup>

**C. Which Life Expectancy Is Used to Calculate the End Date:** If there are multiple beneficiaries, the life expectancy used to determine when the IRA must be fully distributed (referred to in this paper as the End Date) will depend on whether (i) the IRA pays to one or more minor children of the IRA owner; (ii) the IRA pays to an Applicable Multi-Beneficiary Trust; (iii) the IRA is divided into separate accounts by December 31 of the calendar year following the year of the IRA owner's death; or (iv) the IRA pays to multiple beneficiaries.

**1. General Rule for Determination of End Date - Oldest Beneficiary:** If an IRA pays to more than one Designated Beneficiary (DB) (in this situation, an Eligible Designated Beneficiary is not distinguished and is included in the definition of a Designated Beneficiary), the End Date is determined by applying the ten-year rules with respect to the oldest Designated Beneficiary. If any beneficiary is only a DB

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<sup>331</sup> Treas. Reg. § 1.401(a)(9)-5(f)(1)(ii).

<sup>332</sup> See *infra* Section XV.

<sup>333</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(ii)(B). See *infra* Section XIV, H, 2, c, 2.

<sup>334</sup> Treas. Reg. § 1.401(a)(9)-5(f)(1)(i); Treas. Reg. § 1.401(a)(9)-8(a).

(ODB), that is the tenth year after the IRA owner's death; if all beneficiaries are EDBs, it is the tenth year after the oldest EDB's death.<sup>335</sup>

**2. Exceptions:** There are exceptions to this general rule.

**a. Minor Children of IRA Owner:** If the IRA owner is survived by children who are minors when the IRA owner died (for ease of reference, each of these children is referred to as a "minor child" throughout this Section even though they may attain the age of 21 after the IRA owner died and they will no longer be a minor), then these minor children of the IRA owner are Eligible Designated Beneficiaries of the IRA owner's IRA. Even if there are also other Designated Beneficiaries of the IRA owner's IRA who may be older than the minor children (such as, for example, other children of the IRA owner who were age 21 or older on the date of the IRA owner's death), the date by which the entire IRA must be distributed (End Date) is the earlier of: (i) December 31 of the calendar year when the youngest minor child who was an Eligible Designated Beneficiary of the IRA turns age 31 (10 years after attaining the age of majority),<sup>336</sup> or (ii) December 31 of the 10th calendar year following the calendar year when the last of the minor children dies (i.e., when all of the minor children are not living).<sup>337</sup> The other beneficiaries do not affect the End Date, but they remain countable in determining the Applicable Denominator, as described in the next paragraph.

Note that for RMD purposes, it is the oldest Designated Beneficiary's (not the oldest minor child's) life expectancy that is used to calculate the annual RMDs from the IRA. But for End Date purposes, it is the age of the IRA owner's youngest minor child at the IRA owner's death that controls, not the life expectancy of the oldest Designated Beneficiary. However, it is also possible for the IRA to be fully distributed before the End Date. If the oldest Designated Beneficiary's remaining life expectancy (the Applicable Denominator) runs out prior to the End Date, the RMD for that final year is the entire remaining balance.

**b. Applicable Multi-Beneficiary Trust:** If the IRA beneficiary is an Applicable Multi-Beneficiary Trust (AMBT), then the IRA must be fully

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<sup>335</sup> Treas. Reg. § 1.401(a)(9)-5(f)(2)(i).

<sup>336</sup> Treas. Reg. § 1.401(a)(9)-5(f)(2)(ii)(C).

<sup>337</sup> Treas. Reg. § 1.401(a)(9)-5(f)(2)(ii)(B).

distributed (i.e., the End Date) no later than December 31 of the 10th year following the year the last Eligible Designated Beneficiary who is Disabled or Chronically Ill died.<sup>338</sup> AMBTs are further described later in this paper.<sup>339</sup>

**c. Separate Accounts:** If an IRA that has multiple beneficiaries is divided into separate accounts by December 31 of the calendar year following the year of the IRA owner's death, then each separate account is viewed separately to determine which beneficiary is used to determine the applicable End Date.<sup>340</sup>

**D. Separate Accounts:** It is possible to divide an IRA payable to multiple beneficiaries into separate IRAs, one for each beneficiary. If this is done in a manner that satisfies the requirements of the regulations, then each separate inherited IRA receives "separate account" treatment. This means each beneficiary of each separate account (i.e., separate IRA) will be treated separately when determining the applicable Required Minimum Distributions (RMDs) and the applicable End Date.<sup>341</sup> In other words, each beneficiary can use their own life expectancy and status as a beneficiary (either NDB, ODB, or a type of EDB) when determining RMDs and the End Date for the beneficiary's separate IRA.

In order to qualify for "separate account" treatment, the IRA must be split into separate accounts (separate IRAs) by December 31 of the calendar year following the calendar year of the original IRA owner's death.<sup>342</sup>

In summary, the beneficiaries of the IRA are those named as of the IRA owner's death who remain beneficiaries on the Beneficiary Finalization Date, September 30 of the year following the year the IRA owner died.<sup>343</sup> That date does not require the IRA to be divided; it only fixes who the beneficiaries are. The IRA may be divided into separate IRAs at any time after the IRA owner's death, but to receive "separate account" treatment the division must be completed no later than December 31 of that same year.

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<sup>338</sup> Treas. Reg. § 1.401(a)(9)-5(f)(2)(iii).

<sup>339</sup> See *infra* Section XV.

<sup>340</sup> Treas. Reg. § 1.401(a)(9)-5(f)(2)(i); Treas. Reg. § 1.401(a)(9)-8(a).

<sup>341</sup> Treas. Reg. § 1.401(a)(9)-8(a).

<sup>342</sup> Treas. Reg. § 1.401(a)(9)-8(a)(1)(ii).

<sup>343</sup> Treas. Reg. § 1.401(a)(9)-4(c)(1).

An IRA can still be divided into separate IRAs after that December 31 date. However, the separate IRAs will not receive separate account treatment. Instead, the RMD for each later year is calculated as though the IRA had not been divided and is then allocated among the separate IRAs in proportion to their balances. As a result, the RMDs and End Date of all the separate IRAs will be based on the countable beneficiary whose classification and life expectancy results in the earliest End Date or least favorable distribution method.<sup>344</sup>

**1. IRA Payable Directly to Beneficiaries:** An IRA that is payable directly to multiple beneficiaries (as opposed to a trust) can be divided into a separate IRA for each beneficiary that receives “separate account” treatment as long as it is accomplished no later than December 31 of the year following the calendar year the IRA owner died. This can be accomplished by (i) the owner of the IRA directing in the IRA beneficiary designation form that the IRA be divided into a separate IRA for each beneficiary upon the owner’s death, or (ii) the IRA custodian or administrator dividing the IRA into separate IRAs after the IRA owner’s death and no later than December 31 of the year following the calendar year the IRA owner dies. In practice, it is better if this is accomplished before the IRA is distributed to any beneficiary, since some custodians may balk at dividing an IRA after a distribution has been made.

If the IRA is not divided into separate IRAs on or before December 31 of the year following the year when the IRA owner died, then the separate IRAs do not receive “separate account” treatment. Instead, the RMDs and End Date for all of the separate IRAs will be governed by the countable beneficiary whose beneficiary classification and life expectancy is most disadvantageous to the IRA beneficiaries as a whole.

**2. IRA Payable to a Trust - General Rule:** The final regulations issued in 2024 retained the prior general rule for an IRA payable to a trust, but provided an exception if certain conditions are met. The prior rule was that an IRA payable to a see-through trust can be divided into separate IRAs for each primary beneficiary of the trust, but each IRA does not receive separate account treatment. The effect of this after the SECURE Act was enacted was that any required annual RMDs and the End Date were determined prior to dividing the IRA. This means all countable trust beneficiaries were taken into account when determining whether annual RMDs are payable, and if so, what life expectancy is used and how End Date is determined. This then applied to all the separate IRAs established when the original IRA was divided into separate IRAs.

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<sup>344</sup> Treas. Reg. § 1.401(a)(9)-8(a)(1)(ii).

For example, if an IRA owner dies after the owner's Required Beginning Date and the IRA pays to a conduit trust with two primary beneficiaries, both of whom are ODBs but not an EDB, and one is 25 years old and the other is 55 years old when the IRA owner dies, then the oldest beneficiary's life expectancy will be used to determine the annual RMDs for both beneficiaries, and the End Date for both is December 31 of the tenth year after the IRA owner's death. The RMD for the separate share of the IRA that is payable to the 25-year-old, or is held in a conduit trust for the benefit of the 25-year-old, will be based on the 55-year-old beneficiary's life expectancy.

**3. Exception for See-Through Trust That Immediately Divides:** The SECURE Act created an exception to the general rule described above for an Applicable Multi-Beneficiary Trust (AMBT) and the proposed regulations issued in 2022 applied this to what was referred to as a "type I" AMBT.<sup>345</sup> The 2024 final regulations, however, expanded separate account availability to any see-through trust (not just an AMBT) as long as certain conditions are met. In addition, the 2024 proposed regulations further clarified this (but keep in mind that these proposed provisions have not been finalized and may be different when the final regulations are published<sup>346</sup>). The below description is based on both the 2024 final and the 2024 proposed regulations.

These conditions are:

**a. Divided Immediately:** The trust receiving the IRA must be a see-through trust that is "divided immediately" upon the death of the IRA owner into separate see-through trusts.<sup>347</sup>

Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(C) contains a definition of "divided immediately." The IRS is proposing to further clarify this in the 2024 proposed regulations. Most of the below quote is from the final regulation except the italicized words were added and the "~~are allocated~~" phrase was removed in the 2024 proposed regulation. The underlined words are added as emphasis by the author. To be consistent with the terminology used in this paper, the reference to "IRA owner" is added by the author in lieu of "employee."

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<sup>345</sup> Prop. Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii), 87 Fed. Reg. 10504, 10551 (Feb. 24, 2022).

<sup>346</sup> See supra Section II, F.

<sup>347</sup> Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(B).

... a trust is immediately divided upon the death of the [IRA owner] only if, as of the date of death, the trust is terminated and there is no discretion as to the extent to which the separate trusts (or the beneficiaries described in paragraph (a)(1)(iii)(D) of this section) will be entitled to receive post-death distributions attributable to the employee's interest in the plan [~~are allocated~~].<sup>348</sup> A trust does not fail to be immediately divided upon the death of the employee merely because there are administrative delays between the date of the employee's death and the date on which the trust is divided and terminated, provided that any amounts received by the trust during this period are allocated as if the trust had been divided on the date of the employee's death.<sup>349</sup>

**b. Receiving Trust Must Terminate:** The above-quoted regulation requires the trust receiving the IRA to be terminated, which means the separate account rule will not apply if any of the IRA continues to be held in the receiving trust. If that happens, then the general rule will apply and the RMDs and End Date for all of the separate IRAs will be governed by the countable beneficiary whose beneficiary classification and life expectancy is most disadvantageous to the IRA beneficiaries as a whole.

**c. No Discretion to Allocate IRA Among Beneficiaries:** The trust receiving the IRA must direct the trustee how to divide and allocate the IRA among the multiple beneficiaries. The trustee cannot have any discretion over how the IRA is allocated. This does not mean the trustee cannot have discretion to allocate other assets held in the trust among multiple beneficiaries. But the separate account rule will not apply if the trustee has discretion over how the IRA payable to the trust will be allocated among multiple beneficiaries. Instead, the general rule will apply and the RMDs and End Date for all of the separate IRAs will be governed by the countable beneficiary whose beneficiary classification and life expectancy is most disadvantageous to the IRA beneficiaries as a whole.

**Practice Point:** Although the trust itself may be divided and terminated after some administrative delay, the IRA should be divided into separate inherited IRAs, one for

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<sup>348</sup> Prop. Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(C)(emphasis added), 89 Fed. Reg. 58644, 58651 (July 19, 2024).

<sup>349</sup> Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(C) (emphasis added).

each separate see-through trust, no later than December 31 of the year following the calendar year in which the IRA owner died. Any distribution from the IRA before it is divided should be allocated to the separate share to which it belongs. If the separate IRAs are not established by that December 31, the RMD for each later year is calculated as though the IRA had not been divided and is then allocated among the separate IRAs in proportion to their balances, so each separate trust loses the benefit of having its own beneficiaries determine its RMDs and End Date.<sup>350</sup>

**4. Proposed Relaxation of Requirement to Hold in Separate See-Through Trusts:** In order to allow each beneficiary to use their own life expectancy when determining RMDs (i.e., in order for the separate account rule to be applicable) the regulation requires that the separate shares of the divided IRA must be “held in separate see-through trusts.”<sup>351</sup> However, the 2024 proposed regulations add a new paragraph 8(a)(1)(iii)(D) that clarifies that distributing an inherited IRA from the trust directly to a beneficiary rather than to a separate see-through trust will satisfy the requirement that the separate interests be held in separate see-through trusts. This proposed regulation says:

(D) Outright distribution to trust beneficiary. The separate interests of the beneficiaries in a see-through trust will not fail to be eligible for the exception under paragraph (a)(1)(iii)(B) of this section merely because, upon termination of the trust, a beneficiary’s separate interest in the trust is to be held directly by that beneficiary rather than being held by a separate see-through trust.<sup>352</sup>

**E. Removing Beneficiaries After Owner’s Death:** If an IRA has multiple beneficiaries, it may be desirable to remove one or more of them prior to the Beneficiary Finalization Date of September 30 of the year following the year the IRA owner died. For example, if an IRA names a person and a charity as equal beneficiaries of an IRA, it may be favorable to remove the charity as a beneficiary because it is not a Designated Beneficiary. If the charity is still a beneficiary on the Beneficiary Finalization Date, then the general rule is the IRA must be distributed as if it did not have any Designated Beneficiaries. Or if the

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<sup>350</sup> Treas. Reg. § 1.401(a)(9)-8(a)(1)(i)-(ii), (a)(2). Section 1.401(a)(9)-8(a)(1)(iii)(B) does not expressly cross-reference these provisions. It is, however, an exception to the prohibition in paragraph (a)(1)(iii)(A), and both sit within paragraph (a)(1), whose separate-account requirements appear in paragraphs (a)(1)(i) and (ii). The conservative reading is that those requirements apply.

<sup>351</sup> Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(B).

<sup>352</sup> Prop. Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(D), 89 Fed. Reg. 58644, 58651 (July 19, 2024).

IRA named a person who is an EDB and another person who is only a "DB who is not an EDB" (i.e., an ODB), then the general rule is the IRA must be distributed as though there were only Designated Beneficiaries, not any EDBs (assuming one of the exceptions to the general rules described above does not apply).

The regulations allow four ways to disregard a beneficiary named in the beneficiary designation on the date the IRA owner died so that beneficiary is no longer a beneficiary on the Beneficiary Finalization Date. These are:

- (i) The beneficiary predeceases the IRA owner;
- (ii) The beneficiary is deemed to have predeceased the IRA owner by the provisions of a simultaneous death provision in the applicable State law;
- (iii) The beneficiary executes a qualified disclaimer of the beneficiary's entire interest in the IRA; or
- (iv) The beneficiary receives the entire benefit to which the beneficiary is entitled.<sup>353</sup>

The regulations contain six examples of how this applies in different situations.<sup>354</sup> They make the point that a disclaimer must actually be a "qualified" disclaimer<sup>355</sup> in order to satisfy this requirement. They also illustrate how a charity (and presumably any other beneficiary who should be removed, perhaps because they are not an EDB or a DB, or are older than other beneficiaries) can receive its share of the IRA prior to the Beneficiary Finalization Date and is successfully removed from the IRA. Lastly, one example illustrates

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<sup>353</sup> Treas. Reg. § 1.401(a)(9)-4(c)(2).

<sup>354</sup> Treas. Reg. § 1.401(a)(9)-4(c)(3).

<sup>355</sup> A qualified disclaimer is defined in I.R.C. § 2518(b) as "an irrevocable and unqualified refusal by a person to accept an interest in property but only if—

(1) such refusal is in writing,

(2) such writing is received by the transferor of the interest, his legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is 9 months after the later of—

(A) the day on which the transfer creating the interest in such person is made, or

(B) the day on which such person attains age 21,

(3) such person has not accepted the interest or any of its benefits, and

(4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either—

(A) to the spouse of the decedent, or

(B) to a person other than the person making the disclaimer."

that a beneficiary who survives the IRA owner but dies before September 30 of the year following the owner's death is not removed as a beneficiary. That deceased beneficiary continues to be counted, regardless of who actually receives that beneficiary's share of the IRA.<sup>356</sup>

## **XI. Roth Inherited IRA Rules**

A Roth IRA does not have Required Minimum Distributions during the lifetime of the IRA owner.<sup>357</sup> This means a Roth IRA owner can let a Roth IRA continue to accumulate income tax free for the lifetime of the IRA owner. However, upon the death of the Roth IRA owner, a Roth IRA must begin paying out under the RMD rules for non-Roth IRAs<sup>358</sup> that apply to an IRA owner who died before the owner's Required Beginning Date.<sup>359</sup> This means that no matter how old a Roth IRA owner is when the owner dies, a Roth IRA is always treated as if the Roth IRA owner died before the owner's Required Beginning Date.

How a Roth IRA must pay out upon the death of the Roth IRA owner depends on whether there is a Designated Beneficiary, and if so, whether the Designated Beneficiary is an Eligible Designated Beneficiary, and if so, what type of Eligible Designated Beneficiary.

**A. Roth IRA Beneficiary is Not a Designated Beneficiary (NDB):** If the beneficiary of the Roth IRA is not a Designated Beneficiary (i.e., the beneficiary is an NDB), then there are no RMDs required and the Roth IRA must be fully paid out by the end of the calendar year containing the 5th anniversary of the date of the IRA owner's death<sup>360</sup> (the "5-Year Rule").

**B. Roth IRA Beneficiary is a Designated Beneficiary Who is Not an Eligible Designated Beneficiary (ODB):** If a Roth IRA pays to a Designated Beneficiary who is not an Eligible Designated Beneficiary (or in other words, who is only a Designated Beneficiary (ODB)), then there are no RMDs required and the Roth IRA must be fully paid out by the

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<sup>356</sup> Treas. Reg. § 1.401(a)(9)-4(c)(3)(vi).

<sup>357</sup> I.R.C. § 408A(c)(4); Treas. Reg. § 1.408-8(b)(1)(ii).

<sup>358</sup> Treas. Reg. § 1.408-8(b)(1)(ii). Author's Note: I.R.C. § 408A(c)(4) only exempts Roth IRAs from the lifetime Required Minimum Distribution rules of I.R.C. § 401(a)(9)(A), not the distribution rules applicable at death as found in I.R.C. § 401(a)(9)(B).

<sup>359</sup> *Id.*

<sup>360</sup> *Id.* See also Treas. Reg. §§ 1.401(a)(9)-3(c)(2) and 3(c)(5)(i)(A).

end of the calendar year containing the 10th anniversary of the date of the IRA owner's death<sup>361</sup> (the "10-Year Rule").

**C. Roth IRA Beneficiary is an Eligible Designated Beneficiary (EDB):** See Section VI earlier in this paper for a description of how a Roth IRA is required to be distributed depending on which type of Eligible Designated Beneficiary is the beneficiary of the Roth IRA.

As noted in Section VI, C, 1, above, a surviving spouse who is the sole beneficiary of a Roth IRA will normally roll it over to the spouse's own Roth IRA. The spouse then owns the Roth IRA and has no Required Minimum Distributions during the spouse's lifetime.<sup>362</sup> A younger spouse who may need to withdraw earnings before age 59½ may prefer to wait, however. Distributions to a beneficiary after the owner's death are qualified distributions, but distributions from the spouse's own Roth IRA are not treated as made to a beneficiary.<sup>363</sup>

**D. Income Tax Treatment; Roth IRA Payable to a Trust:** A qualified distribution from a Roth IRA is not included in gross income.<sup>364</sup> A distribution is a "qualified distribution" if two requirements are met. First, it must be made after the five-taxable-year period described below. Second, it must be (i) made on or after the date the IRA owner reaches age 59½, (ii) made to a beneficiary (or to the estate of the IRA owner) on or after the owner's death, (iii) attributable to the owner's disability, within the meaning of I.R.C. § 72(m)(7), or (iv) made for a first-time home purchase.<sup>365</sup> A distribution to a beneficiary after the owner's death therefore always satisfies the second requirement, but it is a qualified distribution only if the five-taxable-year period has also been met.

The five-taxable-year period begins with the first year the Roth IRA owner made a contribution to, or conversion into, any Roth IRA. It ends on the last day of the fifth consecutive taxable year, beginning with that first year. If the owner dies before the period ends, a distribution made before it ends is taxable only to the extent it exceeds the owner's contributions. This is because distributions are treated as coming first from contributions,

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<sup>361</sup> Treas. Reg. § 1.408-8(b)(1)(ii); see also Treas. Reg. §§ 1.401(a)(9)-3(c)(3) and 3(c)(5)(i)(B).

<sup>362</sup> I.R.C. § 408A(c)(4).

<sup>363</sup> I.R.C. § 408A(d)(2)(A)(ii); Treas. Reg. § 1.408A-6, A-3.

<sup>364</sup> I.R.C. § 408A(d)(1).

<sup>365</sup> I.R.C. § 408A(d)(2)(A), (B); Treas. Reg. § 1.408A-6, A-1(b); I.R.C. § 72(t)(2)(F).

then from conversions, and only last from earnings.<sup>366</sup> The 10% additional tax on early distributions does not apply to distributions made after the owner's death.<sup>367</sup>

As a result, a trust that is the beneficiary upon the owner's death of a Roth IRA can generally take distributions and keep them in the trust without paying income tax on them. In contrast, a distribution from a traditional IRA that is kept in the trust is taxed at the compressed income tax rates that apply to trusts. This benefit is available to any trust named as the beneficiary of a Roth IRA, but it is especially valuable for a supplemental needs trust. A supplemental needs trust is almost always an accumulation trust, because Required Minimum Distributions passed directly to the beneficiary would reduce or eliminate means-tested benefits.<sup>368</sup> If the trust qualifies as an AMBT, the Roth IRA can also be paid out over the life expectancy of the Disabled or Chronically Ill beneficiary, allowing potentially years of tax-free growth. As a result, an IRA owner who plans to leave retirement assets to a supplemental needs trust may want to consider converting a traditional IRA to a Roth IRA during the owner's lifetime, and paying the income tax at the owner's rates.

## **XII. How to Title an Inherited IRA**

An inherited IRA must be titled so that it is identified as an IRA held for the beneficiary of a deceased IRA owner. For an IRA that receives a direct rollover from an employer plan on behalf of a nonspouse beneficiary, the IRS requires that the title identify it as an IRA with respect to a deceased individual and identify both the deceased individual and the beneficiary.<sup>369</sup> IRA custodians generally follow the same approach when an inherited IRA is created from a deceased owner's IRA. Although the exact wording varies among custodians, the title should include the deceased owner's name, the beneficiary's name, and a phrase such as "inherited IRA" or "beneficiary IRA." For example, "Homer Simpson, deceased, for the benefit of Bartholomew J. Simpson, Beneficiary," or "Bartholomew J. Simpson as beneficiary of Homer Simpson."

If the above IRA is payable to a trust for Bart's benefit, the inherited IRA would be titled "Homer Simpson, deceased, for the benefit of Bartholomew J. Simpson through Morris

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<sup>366</sup> Treas. Reg. § 1.408A-6, A-2, A-4, A-7(a), A-8, A-11.

<sup>367</sup> I.R.C. § 72(t)(2)(A)(ii).

<sup>368</sup> See *supra* Section VII, D, 3.

<sup>369</sup> Miscellaneous Pension Prot. Act Changes, 2007-1 C.B. 395 (2007) ("A-13. The IRA must be established in a manner that identifies it as an IRA with respect to a deceased individual and also identifies the deceased individual and the beneficiary, for example, "Tom Smith as beneficiary of John Smith.").

Szyslak, or his successor, as Trustee of the Bartholomew J. Simpson Trust Dated (the date the trust is established).<sup>370</sup>

If the trust is a supplemental needs trust, the account should identify the trust as the beneficiary, rather than the disabled individual who is the beneficiary of the trust. For example: "Homer Simpson, deceased, for the benefit of Morris Szyslak, Trustee of the Bartholomew J. Simpson Supplemental Needs Trust Dated (the date the trust is established), Beneficiary."<sup>371</sup> An account titled in the disabled individual's name could lead a benefits caseworker to treat the inherited IRA as that individual's own resource.

### **XIII. Steps to Follow if a Trust is Named as IRA Beneficiary**

If a trust is named as the beneficiary of an IRA, then, unless certain requirements are met, the IRA does not have a Designated Beneficiary or Eligible Designated Beneficiary because the trust is not an individual.

However, if the trust meets certain requirements, it is possible to "look through" the trust to "see" who are the countable beneficiaries of the trust.<sup>372</sup> A trust that meets these requirements is referred to as a "see-through trust" in the regulations.<sup>373</sup> In the past, some authors used the phrase "look-through trust," but the regulations have adopted and defined the term "see-through trust." This paper refers to this type of trust as a "see-through trust."

**Step 1:** The first step if a trust is named as a beneficiary of an IRA is to determine if the trust qualifies as a "see-through trust."

If the trust is not a see-through trust, then there cannot be a Designated Beneficiary because the trust itself is not an individual (i.e., human being) and it is not possible to see through the trust to see if there are Designated Beneficiaries. This stops the inquiry and the IRA must be distributed under the following rule ("Default Rule"):

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<sup>370</sup> Id. at Q&A-16 "The IRA must be established in accordance with the rules in Q&A-13 of this notice, with the trust identified as the beneficiary."

<sup>371</sup> See I.R.S. Notice 2007-7, Q&A-16, 2007-1 C.B. 395.

<sup>372</sup> Treas. Reg. § 1.401(a)(9)-4(b); Treas. Reg. § 1.401(a)(9)-4(f)(1)(i); I.R.C. § 402(c)(11)(B).

<sup>373</sup> Treas. Reg. § 1.401(a)(9)-4(f)(1)(i).

- (1) if the IRA owner died before the owner's Required Beginning Date, the 5-Year Rule must be utilized,<sup>374</sup> or
- (2) if the IRA owner died on or after the owner's Required Beginning Date, the remaining ("ghost") life expectancy of the IRA owner using the Single Life Table must be utilized.<sup>375</sup>

**Step 2:** If the trust qualifies as a see-through trust, then the second step in the analysis is to look through the trust to the beneficiaries and classify each beneficiary as:

- (1) a beneficiary who does not qualify as a Designated Beneficiary (NDB),
- (2) a Designated Beneficiary who is not an Eligible Designated Beneficiary (i.e., is only a Designated Beneficiary (ODB)), or
- (3) an Eligible Designated Beneficiary (EDB), and if an EDB, which type of EDB.

Only those who are still beneficiaries on the Beneficiary Finalization Date are taken into account. However, this step should initially be done well before that date so that any beneficiary who would cause an unfavorable result can be identified and, if possible, removed in time. See Section V, B, 6 and 8, above.

**Step 3:** The third step is to classify each beneficiary as:<sup>376</sup>

- (1) a primary beneficiary,
- (2) a residual beneficiary who receives some or all of the IRA after the primary beneficiary dies, or
- (3) a residual beneficiary who only receives some or all of the IRA after another residual beneficiary dies.

**Step 4:** The fourth step is to determine what type of see-through trust it is. The choices are:

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<sup>374</sup> Treas. Reg. § 1.401(a)(9)-3(c)(5)(i)(A).

<sup>375</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(iii).

<sup>376</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(i)(A)-(B). See *infra* Section XIV, G.

- (1) a "conduit trust" (a see-through trust that requires all distributions from an IRA to be distributed upon receipt by the trustee to or for the benefit of a beneficiary)<sup>377</sup> or
- (2) an "accumulation trust" (a see-through trust that is not a conduit trust).<sup>378</sup>

These are defined in the regulations and are further described later in this paper.<sup>379</sup>

**Step 5:** The fifth step is to determine whether the see-through trust is an Applicable Multi-Beneficiary Trust (AMBT).

As described in Section XV, A, 1, below, an AMBT is a see-through trust (i) that has more than one beneficiary, (ii) all of whose beneficiaries are Designated Beneficiaries (which, for an AMBT, can include a qualifying charity), and (iii) at least one of whose beneficiaries is an Eligible Designated Beneficiary who is Disabled or Chronically Ill. In addition, the trust terms must identify the Disabled or Chronically Ill beneficiaries as primary beneficiaries, and must provide that no other beneficiary has any right to the IRA until the death of all of them.<sup>380</sup> AMBTs are further described later in this paper.<sup>381</sup>

**Step 6:** The sixth step is to determine whether each beneficiary is either "countable" or "disregarded."<sup>382</sup>

Which beneficiaries of the trust must be taken into account (countable) and included in this analysis depends on the beneficiary's classification in Step 3 and the type of trust determined in Steps 4 and 5 (and, if applicable, the age 31 trust rule).

If any countable beneficiary is not a Designated Beneficiary (NDB), the trust is treated as having no Designated Beneficiary, and the IRA must be distributed under

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<sup>377</sup> Treas. Reg. § 1.401(a)(9)-4(f)(1)(ii)(A).

<sup>378</sup> Treas. Reg. § 1.401(a)(9)-4(f)(1)(ii)(B).

<sup>379</sup> See *infra* Section XIV, F and H.

<sup>380</sup> I.R.C. § 401(a)(9)(H)(iv)(II), (v); Treas. Reg. § 1.401(a)(9)-4(g)(1), (g)(3).

<sup>381</sup> See *infra* Section XV.

<sup>382</sup> See *infra* Section XIV, E.

the Default Rule described in Step 1. If all countable beneficiaries are Designated Beneficiaries, the IRA is distributed based on those beneficiaries, as described in Step 7.

Two special rules apply if the trust is an AMBT. First, a qualifying charity is treated as a Designated Beneficiary.<sup>383</sup> Second, although the other countable beneficiaries remain countable, only the beneficiaries who are Disabled or Chronically Ill are taken into account in determining the life expectancy used for RMDs and the End Date.<sup>384</sup>

**Step 7:** The seventh step is to determine how the inherited IRA (or each separate share<sup>385</sup>) must be distributed, based on:

- (1) whether the IRA owner died before, or on or after, the owner's Required Beginning Date, and
- (2) the classification of the countable beneficiaries as NDB, ODB, or EDB (and which type), applying the rules for multiple beneficiaries in Section X (or, for an AMBT, the rules in Section XV).

Keep in mind that it is not the trust that qualifies as a Designated Beneficiary or Eligible Designated Beneficiary, but it is the beneficiaries of the trust who qualify, if they would otherwise qualify as (i) a Designated Beneficiary who is not an Eligible Designated Beneficiary (i.e., an ODB) or (ii) an Eligible Designated Beneficiary (EDB).<sup>386</sup>

#### **XIV. Rules If a Trust is Named as an IRA Beneficiary**

As mentioned earlier in this paper, if a trust is named as the beneficiary of an IRA, then, unless certain requirements are met, the inherited IRA does not have a Designated Beneficiary because a trust is not an individual. If this happens, then the inherited IRA cannot be drawn out over the lifetime of an EDB. Instead, the inherited IRA will be distributed pursuant to the 5-Year Rule (if the IRA owner died before their Required Beginning Date (RBD)) or owner's remaining "ghost" life expectancy (if the IRA owner died on or after their RBD).

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<sup>383</sup> Treas. Reg. § 1.401(a)(9)-4(g)(3). See *infra* Section XV, C, 2.

<sup>384</sup> Treas. Reg. § 1.401(a)(9)-5(f)(1)(ii), (f)(2)(iii).

<sup>385</sup> See *infra*, Section X, D.

<sup>386</sup> Treas. Reg. § 1.401(a)(9)-4(f)(1)(i).

On the other hand, if the trust meets certain requirements, it is possible to look through the trust to see who or what are the beneficiaries of the trust. A trust that meets these requirements is referred to as a “see-through trust” in the regulations.<sup>387</sup>

If the trust beneficiaries of a see-through trust qualify as an NDB, ODB, or EDB, then those beneficiaries are used to determine whether RMDs are required to be made from the inherited IRA each year and the date by which the inherited IRA must be fully distributed (referred to as the “End Date” in this paper).

**A. Requirements of a See-Through Trust:** The following four requirements must be satisfied in order for a trust to qualify as a “see-through trust,”<sup>388</sup> although as described in requirement 4 below, the fourth is satisfied automatically for an IRA.

1. The trust must be a valid trust under state law, or would be, but for the fact there is no corpus;
2. The trust must be irrevocable or will, by its terms, become irrevocable upon the death of the IRA owner;
3. The trust beneficiaries who are receiving any portion of an IRA must be identifiable from the terms of the trust; and
4. **This requirement does not apply to an IRA.** The documentation described below need not be provided to the IRA trustee, custodian or issuer, so this requirement is satisfied for an inherited IRA without any action by the trustee of the trust.<sup>389</sup> It continues to apply to other types of retirement plans, for which, by October 31 of the calendar year following the calendar year in which the participant dies,<sup>390</sup> the plan administrator must be provided with either of the below-listed items. The plan administrator can direct which option the trustee must satisfy.<sup>391</sup>

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<sup>387</sup> Treas. Reg. § 1.401(a)(9)-4(f)(1)(i) and (ii).

<sup>388</sup> Treas. Reg. § 1.401(a)(9)-4(f)(2).

<sup>389</sup> Treas. Reg. § 1.408-8(b)(4)(ii). See *supra* Section III, E.

<sup>390</sup> Treas. Reg. § 1.401(a)(9)-4(h)(1)(ii) and (h)(3)(i).

<sup>391</sup> Treas. Reg. § 1.401(a)(9)-4(h)(3)(i).

- a. A copy of the actual trust document for the trust that is named as a beneficiary,<sup>392</sup> or
- b. A final list of all beneficiaries of the trust, including contingent (residual) beneficiaries, as of September 30 of the calendar year following the calendar year of the participant's death.<sup>393</sup> There must be a description of the conditions on the beneficiaries' entitlement sufficient to establish who are the beneficiaries. This list must be certified that, to the best of the trustee's knowledge, the list is correct and complete, and the above three requirements for the trust to qualify as a see-through trust are satisfied. In addition, the trustee must agree to provide a copy of the trust instrument to the plan administrator upon request.

Even though nothing must be provided to an IRA custodian, the first three requirements above must still be satisfied, and the trustee should still prepare and keep the certified list of beneficiaries described in subsection b, above. If the distribution treatment of the inherited IRA is later questioned, the trustee will have to prove that the trust qualified as a see-through trust. An IRA custodian also remains free to ask for the trust document as a matter of its own account administration, and many still do.

**B. Multiple See-Through Trusts:** It is common in estate planning for a person to have one trust that divides into separate subtrusts or distributes to other existing trusts. For example, an IRA can be payable to the IRA owner's revocable living trust that either (i) establishes a trust for a beneficiary of the living trust, or (ii) distributes a beneficiary's share of the assets of the living trust to a different, previously established trust for the beneficiary's benefit.

The proposed regulations expressly permitted this, and the final regulations continue the rule. As long as both trusts qualify as see-through trusts, then the beneficiaries of the second trust will be treated as beneficiaries of the first trust and, ultimately, beneficiaries of the IRA that is distributed to the first trust.<sup>394</sup>

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<sup>392</sup> Treas. Reg. § 1.401(a)(9)-4(h)(3)(iii).

<sup>393</sup> Treas. Reg. § 1.401(a)(9)-4(h)(3)(ii).

<sup>394</sup> Treas. Reg. § 1.401(a)(9)-4(f)(4).

**C. Identifiable Beneficiaries of a See-Through Trust:** The regulations provide a description of what is required for beneficiaries of a trust to be “identifiable” for the purpose of qualifying a trust as a see-through trust.

**1. Generally:** In the past it appeared that a trust did not qualify as a see-through trust unless only Designated Beneficiaries were named as beneficiaries. However, in reality the “identifiability” requirement for a see-through trust is satisfied if it is possible to determine who or what may receive a portion of the IRA that is distributable to the trust. Based on the qualifications of these beneficiaries, the trust will then be treated as either (i) not having Designated Beneficiaries (NDB), (ii) having Designated Beneficiaries who are not Eligible Designated Beneficiaries (i.e., only Designated Beneficiaries (ODB)), or (iii) having Eligible Designated Beneficiaries (EDB).

Obviously, specifically naming a person or entity as a beneficiary of the trust makes them identifiable. In addition, a beneficiary is identifiable if the beneficiary is a member of a class, such as the children of the IRA owner.<sup>395</sup>

**2. Powers of Appointment, Decanting, and Reformation:** In addition, the regulations clarify that a trust will not fail the “beneficiaries must be identifiable” requirement to qualify as a see-through trust merely because someone holds a power of appointment to appoint a portion of the IRA to beneficiaries who are currently not identifiable. Instead, the power of appointment is ignored unless it is actually exercised.<sup>396</sup> In addition, even though state law allows a trust to be decanted or modified through court reformation, this is not sufficient to disqualify a trust from being a see-through trust based on the beneficiaries not being identifiable.<sup>397</sup>

The regulations state that if the trust is not decanted or reformed, or if a power of appointment is not exercised or restricted to certain identifiable beneficiaries, by September 30 of the calendar year following the calendar year of the IRA owner’s death (the Beneficiary Finalization Date), then the beneficiaries named in the trust document to receive the IRA if the power of appointment was not exercised are the beneficiaries who are looked at to determine if the beneficiaries are identifiable and, if so, whether they are (i) Not Designated Beneficiaries (NDB), (ii) only Designated

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<sup>395</sup> Treas. Reg. § 1.401(a)(9)-4(a)(3).

<sup>396</sup> Treas. Reg. § 1.401(a)(9)-4(f)(5)(ii).

<sup>397</sup> Treas. Reg. § 1.401(a)(9)-4(f)(5)(iii).

Beneficiaries who are not Eligible Designated Beneficiaries (ODB), or (iii) Eligible Designated Beneficiaries (EDB), and if EDBs, whose life expectancy is used to determine the Required Minimum Distributions and the End Date.<sup>398</sup>

On the other hand, if the trust is decanted or reformed, or the power of appointment is exercised or restricted to certain identifiable beneficiaries, prior to September 30 of the calendar year following the calendar year of the IRA owner's death (the Beneficiary Finalization Date), then the removed beneficiaries are ignored ("disregarded") and the new beneficiaries are looked at to determine if they are identifiable. In other words, the new beneficiaries become the beneficiaries who must be identifiable and, if so, whether they are (i) Not Designated Beneficiaries (NDB), (ii) only Designated Beneficiaries who are not Eligible Designated Beneficiaries (ODB), or (iii) Eligible Designated Beneficiaries (EDB), and if EDBs, whose life expectancy is used to determine the Required Minimum Distributions and the End Date.<sup>399</sup>

Exercise of a power of appointment, decanting, or modifying a trust after September 30 of the calendar year following the calendar year of the IRA owner's death (the Beneficiary Finalization Date) will not cause a trust to fail the identifiable beneficiary requirement or alter the Required Minimum Distributions or End Date that applied for the prior years. However, beginning the calendar year after the calendar year when a new beneficiary is added, the identifiable requirements apply and the trust will be retested to determine if all beneficiaries are identifiable for future years and, if so, whether they are (i) Not Designated Beneficiaries (NDB), (ii) only Designated Beneficiaries who are not Eligible Designated Beneficiaries (ODB), or (iii) Eligible Designated Beneficiaries (EDB), and if EDBs, whose life expectancy is used to determine the Required Minimum Distributions and the End Date.<sup>400</sup> If the retest produces an End Date that has already passed, or that falls in the year of the addition, the IRA need not be fully distributed until December 31 of the year after the year the beneficiary is added or after the year of the exercise or modification.<sup>401</sup>

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<sup>398</sup> Treas. Reg. § 1.401(a)(9)-4(f)(5)(ii)(A); Treas. Reg. § 1.401(a)(9)-4(f)(5)(iii)(B) and (C). See also Treas. Reg. § 1.401(a)(9)-4(f)(6)(iv) and (v) (Examples 4 and 5 illustrate this).

<sup>399</sup> Id.

<sup>400</sup> Treas. Reg. § 1.401(a)(9)-4(f)(5)(iv).

<sup>401</sup> Treas. Reg. § 1.401(a)(9)-4(f)(5)(v).

**D. Levels of Beneficiaries of a Trust:** Most trusts have multiple levels of beneficiaries. These are often referred to as "primary" and "successor," "contingent," "secondary," "remainder," or "residual" beneficiaries.

Primary beneficiaries are those who are entitled to receive trust distributions upon the establishment of a trust for their benefit. Their ability to receive trust distributions is not contingent upon the happening of an event, such as the death or disqualification of another beneficiary.

Successor (or secondary, contingent, remainder, or residual) beneficiaries are those who are entitled to receive a distribution from a trust that is contingent upon the happening of some event, and it is possible that event may not happen.

For example, a successor beneficiary may receive trust distributions upon the death of a primary beneficiary, or if a primary beneficiary is disqualified from receiving trust distributions and, as a result, the successor beneficiary now becomes the primary beneficiary and is eligible to receive trust distributions.

There are often different levels of successor beneficiaries in a trust. For example, a trust may direct the trustee to distribute to the settlor's spouse for life, then upon the spouse's death to the settlor's child, and if the child is not living, then to the settlor's grandchild, and if none of them are living, to a charity. In this situation, the spouse is the primary beneficiary, the settlor's child is the first successor beneficiary, the settlor's grandchild is the next or successor beneficiary, and the charity is the final successor beneficiary.

**E. Countable and Disregarded Beneficiaries for Inherited IRA Purposes:** For inherited IRA purposes, the regulations describe similar levels of beneficiaries of a see-through trust. These are described in the following Sections of this paper.

The primary purpose for this is to determine which beneficiaries of the see-through trust need to be taken into account (referred to as "countable" in this paper) when determining exactly which beneficiaries will be receiving some of the inherited IRA held in the see-through trust. How fast the inherited IRA will be required to distribute depends on who are the countable beneficiaries of the trust.

For inherited IRA purposes, all beneficiaries of a see-through trust can be divided into two types. These are referred to in this paper as beneficiaries that are "countable" and beneficiaries that are "disregarded." The word "countable" is not used in the regulations.

**1. Countable Beneficiaries:** These are beneficiaries of a see-through trust who are required to be "treated as having been designated as beneficiaries of the"<sup>402</sup> IRA owner. In other words, they are "taken into account"<sup>403</sup> ("countable") when determining who are the trust beneficiaries who possibly may receive some of the inherited IRA that is distributed to the trustee.

This is important because the calculations of the RMDs and End Date of the inherited IRA held in the trust are different depending on what type of beneficiaries are countable. For example, countable beneficiaries who are not a Designated Beneficiary (NDB) or only Designated Beneficiaries (ODB) may cause the inherited IRA held in the trust to have different RMDs and End Date than countable beneficiaries who are Eligible Designated Beneficiaries (EDB).

**2. Disregarded Beneficiaries:** These are beneficiaries of the trust who are not countable. They can be ignored when making a determination of how fast the IRA must be distributed.

**F. Two Types of See-Through Trusts:** There are two types of see-through trusts for purposes of IRA analysis. These are referred to in the regulations as a "conduit trust" and an "accumulation trust."<sup>404</sup>

**1. Conduit Trust:** A conduit trust is a trust that requires that "all distributions" received by a trustee from an inherited IRA held by the trust (including, but not limited to, annual RMDs) must be paid out "upon receipt by the trustee . . . directly to, or for the benefit of, specified trust beneficiaries."<sup>405</sup> Or, in other words, no IRA distributions can be accumulated in the trust. Instead, they must quickly be paid out to or for the benefit of the primary beneficiaries of the trust.

**2. Accumulation Trust:** An accumulation trust is a trust that is not a conduit trust (or in other words, does not mandate that all distributions received by the trustee from an inherited IRA held by the trust must be distributed upon receipt by

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<sup>402</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(i).

<sup>403</sup> Treas. Reg. Preamble § I.D.2.a.1, 89 Fed. Reg. 58886, 58894 (July 19, 2024).

<sup>404</sup> Treas. Reg. § 1.401(a)(9)-4(f)(1)(ii).

<sup>405</sup> Treas. Reg. § 1.401(a)(9)-4(f)(1)(ii)(A).

the trustee to, or for the benefit of, a primary trust beneficiary).<sup>406</sup> It does not matter whether the trustee is directed to accumulate the IRA distributions or given discretion to accumulate or distribute; it is an accumulation trust if the trustee is not required to distribute all IRA distributions to a beneficiary “upon receipt” by the trustee of each such distribution.

**G. Levels of Trust Beneficiaries for Inherited IRA Purposes:** As stated above, the SECURE Act regulations describe two levels of potential beneficiaries of the inherited IRA held in a see-through trust. First are those who will receive the inherited IRA if living and not disqualified (referred to as “primary” beneficiaries in the preamble to the final regulations),<sup>407</sup> and next are those who will receive the inherited IRA if the first beneficiary is not able to receive the IRA (referred to as “residual” beneficiaries in the preamble to the final regulations<sup>408</sup>). In addition, the regulations describe instances when residual beneficiaries can be ignored (“disregarded”) for purposes of determining how the inherited IRA held in a trust is treated.

For ease of reference throughout this paper, and to be consistent with the preamble of the final regulations, these beneficiaries will be referred to in this paper as “primary,” “residual,” and “disregarded” beneficiaries.

**1. Primary Beneficiary:** A primary beneficiary is a beneficiary of a see-through trust whose ability to receive amounts from the inherited IRA held in the trust is “neither contingent upon, nor delayed until, the death of another trust beneficiary” who did not die before the IRA owner, and is not treated as dying before the IRA owner<sup>409</sup> (such as by disclaiming the IRA or pursuant to a simultaneous death provision of state law or the trust document).<sup>410</sup>

**2. Residual Beneficiary:** A residual beneficiary is a beneficiary of the trust who has a possibility of receiving amounts from the IRA that could be retained in the trust and not distributed to one or more primary beneficiaries, whether or not such

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<sup>406</sup> Treas. Reg. § 1.401(a)(9)-4(f)(1)(ii)(B).

<sup>407</sup> Treas. Reg. Preamble § I.D.2.a, 89 Fed. Reg. 58886, 58894 (July 19, 2024).

<sup>408</sup> Id.

<sup>409</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(i)(A).

<sup>410</sup> Treas. Reg. § 1.401(a)(9)-4(c)(2)(ii).

amounts are actually accumulated or distributed.<sup>411</sup> This typically arises in a trust that permits the trustee to retain IRA distributions for future use rather than requiring immediate distribution to the primary beneficiary (i.e., an accumulation trust). This beneficiary can be more formally referred to as a “residual beneficiary who is not disregarded.”

**3. Disregarded Residual Beneficiary:** A disregarded residual beneficiary is a residual beneficiary who is not also a primary beneficiary, and who could receive amounts from the IRA solely because of the death of another residual beneficiary; provided that the deceased other residual beneficiary was not also a primary beneficiary, did not die before the IRA owner, and is not being treated as having died before the IRA owner.<sup>412</sup> Or in other words, the disregarded residual beneficiary is a beneficiary who would otherwise be a residual beneficiary, but is ignored (disregarded) because they only receive IRA amounts if another residual beneficiary dies first, and that deceased residual beneficiary is not also a primary beneficiary.

#### **H. The Type of See-Through Trust Determines Which Beneficiaries Are Countable:**

Which trust beneficiaries of a see-through trust must be taken into account (countable) or can be ignored (disregarded) varies depending on which type of trust is holding the inherited IRA. As described above, there are two types of see-through trusts for purposes of IRA analysis: “conduit trust” and “accumulation trust.”<sup>413</sup>

##### **1. Conduit Trust:**

**a. Description:** A conduit trust is a trust that requires that “all distributions” received by a trustee from an inherited IRA held by the trust (including, but not limited to, annual RMDs) must be paid out “upon receipt by the trustee . . . directly to, or for the benefit of, specified trust beneficiaries.”<sup>414</sup>

**b. Distributing Only Trust Income Is Not Sufficient:** It is not unusual for a trust to allow a beneficiary to withdraw, or to require the trustee to distribute to the beneficiary, all the “income” of the trust each year.

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<sup>411</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(i)(B).

<sup>412</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(ii)(A).

<sup>413</sup> Treas. Reg. § 1.401(a)(9)-4(f)(1)(ii).

<sup>414</sup> Treas. Reg. § 1.401(a)(9)-4(f)(1)(ii)(A).

However, this is not enough to make a trust a conduit trust. This is because “income” in a trust instrument means trust accounting income (see I.R.C. § 643(b)), which generally does not include the principal portion of an IRA distribution, even though the entire distribution is taxable income.<sup>415</sup> There is a difference between “taxable income” or “federal gross income” and “trust accounting income.”<sup>416</sup> Therefore, even if all of the trust’s income is distributed, this would not include any of the IRA principal distributed to the trust, such as happens with a Required Minimum Distribution. Instead, in order to qualify as a conduit trust, it is necessary for the trust to require that all distributions from an inherited IRA, whether or not they are classified as income for trust accounting purposes, must be distributed to the primary beneficiary upon receipt by the trustee.<sup>417</sup>

**c. Which Trust Beneficiaries are Countable:** Because any distributions made from an inherited IRA to the trustee of a see-through trust that is a conduit trust must be distributed to a primary beneficiary “upon receipt by the trustee,” it is not possible for any of the IRA that was distributed to end up with a residual beneficiary of the trust. As a result, only the primary beneficiaries are taken into account (countable) when determining exactly who are the beneficiaries of the inherited IRA for purposes of calculating the RMDs and End Date for the IRA.

**d. Which Trust Beneficiaries are Not Countable:** All beneficiaries of the trust other than the primary beneficiaries can be ignored (disregarded) when the trust holding the inherited IRA is a conduit trust.

**e. Multiple Beneficiaries - Conduit Trust General Rules:** There are three general rules that apply if there is more than one primary beneficiary of a conduit trust:

**1)** All primary beneficiaries must qualify as a Designated Beneficiary (DB). If they do not, then the trust is treated as though it does not

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<sup>415</sup> See Rev. Rul. 2006-26, 2006-1 C.B. 939 for one example of this.

<sup>416</sup> The details of this are beyond the scope of this paper.

<sup>417</sup> See Treas. Reg. § 1.401(a)(9)-4(f)(6)(ii)(C).

have a DB (or in other words, only has beneficiaries who are not Designated Beneficiaries (NDB)),<sup>418</sup>

**2)** If all primary beneficiaries are DBs, but one or more of them is not an Eligible Designated Beneficiary (EDB), then the trust is treated as though it does not have an EDB;<sup>419</sup> and

**3)** The life expectancy of the oldest primary beneficiary must be used to determine how the IRA must be distributed.<sup>420</sup>

**f. Exceptions to Conduit Trust General Rules:** There are three exceptions to these general rules for conduit trusts, which are:

**1) Minor Child of IRA Owner:** If a minor child (under age 21<sup>421</sup>) of the IRA owner is one of the primary beneficiaries of a conduit trust, then the IRA is treated as having Eligible Designated Beneficiaries (EDBs) even though not all primary beneficiaries are EDBs.<sup>422</sup> This means the Life Expectancy Rule can be applied to the trust beneficiaries.

There is not a special rule for whose life expectancy to use to determine the Applicable Denominator to calculate the Required Minimum Distributions (RMDs) when a minor child of the IRA owner is a primary beneficiary of a conduit trust. Therefore, the general rule described above applies, and the life expectancy of the oldest DB or EDB who is a primary beneficiary of the conduit trust is used to determine the Applicable Denominator and calculate the annual RMDs.

The End Date for distribution of the remainder of the inherited IRA to the beneficiaries is the earlier of: (i) December 31 of the 10th calendar year following the calendar year when the youngest minor child who

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<sup>418</sup> Treas. Reg. § 1.401(a)(9)-4(b).

<sup>419</sup> Treas. Reg. § 1.401(a)(9)-4(e)(2)(i).

<sup>420</sup> Treas. Reg. §§ 1.401(a)(9)-5(f)(1)(i) and 5(f)(2).

<sup>421</sup> Treas. Reg. § 1.401(a)(9)-4(e)(3).

<sup>422</sup> Treas. Reg. § 1.401(a)(9)-4(e)(2)(ii).

was a primary beneficiary of the IRA turns age 21 (the age of majority) or, in other words, when that child turns age 31, or (ii) December 31 of the 10th calendar year following the calendar year in which the last child who qualified as a minor child dies.<sup>423</sup> The other beneficiaries do not affect the End Date, but they remain countable in determining the Applicable Denominator, as described in the preceding paragraph. These are major changes from the 2022 proposed regulations, which measured the 10-year period from the oldest minor child rather than the youngest, and which ended the deferral on the death of the oldest minor child rather than on the death of all of them.<sup>424</sup>

**2) AMBT:** If the trust is an Applicable Multi-Beneficiary Trust (AMBT), then the trust is treated as having Eligible Designated Beneficiaries even if there are other beneficiaries who are not Eligible Designated Beneficiaries.<sup>425</sup>

Despite this exception, as a practical matter an AMBT for a beneficiary who is receiving means-tested public assistance will probably never be designed as a conduit trust. This is because a conduit trust requires that all IRA “distributions will, upon receipt by the trustee, be paid directly to, or for the benefit of,”<sup>426</sup> the primary beneficiary of the trust. If that beneficiary is receiving means-tested public assistance, such as SSI or Medicaid, the IRA distribution may be deemed to be “income” to the beneficiary and negatively impact the beneficiary’s eligibility for the public assistance. Instead, an AMBT for a beneficiary receiving means-tested public assistance should be designed to be an accumulation trust.

**3) Separate Accounts:** This exception applies if the IRA is split into separate accounts<sup>427</sup> for each beneficiary by December 31 of the year following the year the IRA owner died. In order to accomplish this, the trust receiving the IRA must direct that the IRA be “divided

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<sup>423</sup> Treas. Reg. § 1.401(a)(9)-5(f)(2)(ii).

<sup>424</sup> Prop. Treas. Reg. § 1.401(a)(9)-5(f)(2)(ii)(A), 87 Fed. Reg. 10504, 10536 (Feb. 24, 2022).

<sup>425</sup> Treas. Reg. § 1.401(a)(9)-4(e)(2)(iii).

<sup>426</sup> Treas. Reg. § 1.401(a)(9)-4(f)(1)(ii)(A).

<sup>427</sup> Treas. Reg. § 1.401(a)(9)-4(b); Treas. Reg. § 1.401(a)(9)-4(e)(2), and Treas. Reg. § 1.401(a)(9)-8(a).

immediately" into separate see-through trusts upon the death of the IRA owner (which means the trust receiving the IRA terminates and directs the allocation of the IRA to different trusts, whether subtrusts or irrevocable standalone trusts), then each beneficiary of each separate trust receives separate account treatment (which means the RMDs and End Date for each separate trust are determined by that trust's own countable beneficiaries). This is more fully explained earlier in this paper.<sup>428</sup> If this does not happen, then the general rules described above apply and the RMDs and End Date of all the separate IRAs will be based on the countable beneficiary whose classification and life expectancy results in the earliest End Date or least favorable distribution method.<sup>429</sup>

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#### Example

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**g. Conduit Trust Example:** Assume a 75-year-old IRA owner dies in 2026 after her Required Beginning Date and leaves an IRA to a trust for the benefit of the IRA owner's adult Child for life. Upon Child's death, the remainder is to be distributed to IRA owner's Sister, or to Charity if the Sister does not survive Child. Both Child and Sister survive the IRA owner, and both are adults who are not Disabled, Chronically Ill, or less than 10 years younger than the IRA owner (or in other words, they are each a Designated Beneficiary but not an Eligible Designated Beneficiary (i.e., an ODB)).

Child's trust requires all current income be distributed to Child annually. In addition, everything received from an inherited IRA must be distributed to Child upon the trustee receiving the IRA distribution. [This last provision makes Child's trust a conduit trust.] When the IRA owner dies, Child is age 48 and Sister is age 60.

Using the terminology described earlier in this paper, Child is the only primary beneficiary. Sister is the residual beneficiary who will receive the IRA upon Child's death, but because this trust is a conduit trust, it is not possible for any of the IRA proceeds distributed while Child is living to be distributed to Sister. In addition, Charity is not entitled to

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<sup>428</sup> See supra Section X, D.

<sup>429</sup> Id.

any of the IRA proceeds until both Child and Sister are no longer living. As a result, both Sister and Charity are disregarded.

Because Child's trust is a conduit trust, the only beneficiary who must be identifiable is the primary beneficiary (Child). Since Child is a human being, she is a Designated Beneficiary. Since Child is not an Eligible Designated Beneficiary, she is only a Designated Beneficiary (ODB) and the IRA must be fully distributed no later than December 31, 2036, which is the year containing the 10th anniversary of the IRA owner's death (the End Date).<sup>430</sup>

In addition, since the IRA owner died after her Required Beginning Date, Required Minimum Distributions (RMDs) must be made from the IRA to the trust starting in 2027 (the year following the year when the IRA owner died).<sup>431</sup> The Applicable Denominator is Child's life expectancy using the Single Life Table since Child has a life expectancy that exceeds the deceased IRA owner's remaining "ghost" life expectancy.<sup>432</sup>

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#### End of Example

**h. Explanation of Why Only Primary Beneficiary is Counted:** The reason the beneficiaries of a conduit trust who receive the inherited IRA after the death of the primary beneficiary are ignored for purposes of determining whether all beneficiaries of a see-through conduit trust are (i) Eligible Designated Beneficiaries (EDB) or (ii) Designated Beneficiaries who are not Eligible Designated Beneficiaries (ODB), and whose life expectancy is used to determine the Applicable Denominator to calculate the amount of the RMD, is because it is not possible for the beneficiaries who receive distributions from the trust upon the death of the primary beneficiary to receive any distributions from an inherited IRA that were distributed to the trust during the lifetime of the primary beneficiary. This is because a conduit trust requires that all such distributions be fully distributed to the primary beneficiary.

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<sup>430</sup> Treas. Reg. § 1.401(a)(9)-5(e)(2).

<sup>431</sup> See supra Section II, D (contains explanation).

<sup>432</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii).

Since the next ("residual") beneficiaries of the conduit trust will only receive the inherited IRA distributions that are made to the trust after the death of the primary beneficiary, the residual beneficiaries are not treated as a beneficiary of a conduit trust for purposes of determining whether they are identifiable, and it does not matter what their age is or whether they are an NDB, ODB, or EDB.<sup>433</sup> As a result, they are not taken into account (they are "disregarded") when determining whether all the trust beneficiaries are (i) not Designated Beneficiaries (NDB), (ii) Eligible Designated Beneficiaries (EDB) or (iii) Designated Beneficiaries who are not Eligible Designated Beneficiaries (i.e., ODBs), and whose life expectancy must be used when calculating the Required Minimum Distributions that must be made from an inherited IRA to a conduit trust.

## **2. Accumulation Trust:**

**a. Description:** An accumulation trust is a trust that is not a conduit trust (or in other words, does not mandate that all distributions received by the trustee from an inherited IRA held by the trust must be distributed upon receipt by the trustee to, or for the benefit of, a primary beneficiary).<sup>434</sup> It does not matter whether the trustee is directed to accumulate the IRA distributions or given discretion to accumulate or distribute; it is an accumulation trust if the trustee is not required to distribute all IRA distributions to the primary beneficiary "upon receipt" of each such distribution.

**b. Accumulation Trust General Rules:** There are three general rules that apply to accumulation trusts.

### **1) Some Residual Beneficiaries Must Be Taken Into Account:**

With an accumulation trust, it is possible that some of the inherited IRA that is distributed to the trust during the lifetime of the primary beneficiary (plus the earnings from investing the IRA distribution outside of the IRA but still held inside the trust, referred to as the "proceeds" of the IRA) is accumulated in the trust and not totally distributed to the primary beneficiary of the trust during that beneficiary's lifetime. Therefore, there might be some of what came

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<sup>433</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(i).

<sup>434</sup> Treas. Reg. § 1.401(a)(9)-4(f)(1)(ii)(B).

from the IRA or its proceeds still in the trust upon the death of the primary beneficiary and, as a result, these accumulated IRA distributions and proceeds could be distributed to a residual beneficiary. Since a residual beneficiary might receive some of the inherited IRA that was distributed to the trust during the primary beneficiary's lifetime, or the proceeds from investing those distributions, the residual beneficiary must also be included when the original determination is made concerning whether all the trust beneficiaries are identifiable and qualify as not a Designated Beneficiary (NDB), Eligible Designated Beneficiary (EDB), or Designated Beneficiary who is not an Eligible Designated Beneficiary (ODB), and, if so, whose life expectancy is used when determining what the annual RMDs and the End Date distributions must be.

In other words, the general rule is if the trust is an accumulation trust, both the primary beneficiaries and the residual beneficiaries who are not disregarded are taken into account (countable) when determining which beneficiaries qualify as (i) not a Designated Beneficiary (NDB), (ii) a Designated Beneficiary who is not an Eligible Designated Beneficiary (i.e., an ODB) or (iii) an Eligible Designated Beneficiary (EDB). The residual beneficiaries who are countable are those who might receive a distribution from the trust upon the death of a primary beneficiary. The remaining residual beneficiaries who are only entitled to receive a distribution from the trust if another residual beneficiary dies are ignored ("disregarded") because they can only receive a portion of the IRA if another residual beneficiary is not living.<sup>435</sup> This does not apply, however, if the residual beneficiary whose death would trigger the later beneficiary's entitlement (i) predeceased (or is treated as having predeceased) the IRA owner, or (ii) is also a primary beneficiary.<sup>436</sup>

**2) All Beneficiaries Must Be DBs or EDBs:** The general rules described earlier in this paper<sup>437</sup> concerning what happens if any one of the beneficiaries of an IRA is not a Designated Beneficiary (the IRA

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<sup>435</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(ii)(A).

<sup>436</sup> Id.

<sup>437</sup> See supra Section X.

is treated as though it does not have any Designated Beneficiaries)<sup>438</sup> or an Eligible Designated Beneficiary (the IRA is treated as though it does not have any Eligible Designated Beneficiaries)<sup>439</sup> also apply to beneficiaries of see-through trusts, whether conduit or accumulation. However, there are exceptions to this general rule that are described later in this paper.<sup>440</sup>

**3) Oldest Countable Beneficiary's Life Expectancy Used:** As with a conduit trust, the general rule for an accumulation trust is that the life expectancy of the oldest countable beneficiary is used to determine the Applicable Denominator that is used to calculate the Required Minimum Distributions (RMDs) that establish how much of the IRA must be distributed annually. However, unlike a conduit trust, with an accumulation trust the general rule is that all primary beneficiaries and countable residual beneficiaries (i.e., the residual beneficiaries who are not disregarded) are taken into account in determining the oldest beneficiary.<sup>441</sup> There are exceptions to this general rule discussed later in this paper.<sup>442</sup>

For example, this general rule means if the primary beneficiary of an accumulation trust is a 30-year-old ODB, and the countable residual beneficiary is an ODB who is 65 years old, then the 65-year-old's life expectancy must be used to determine the Applicable Denominator to calculate the Required Minimum Distributions (RMDs) to be distributed from the IRA to the trustee during the younger primary beneficiary's lifetime.

In a similar vein, this general rule means if the residual beneficiary is a charity that is not disregarded (i.e., the charity is a countable beneficiary), the trust does not have a Designated Beneficiary (unless

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<sup>438</sup> Treas. Reg. § 1.401(a)(9)-4(b).

<sup>439</sup> Treas. Reg. § 1.401(a)(9)-4(e)(2)(i).

<sup>440</sup> See *infra* Section XIV, H, 2, c; Section XV, C.

<sup>441</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(i)(B). See also Treas. Reg. § 1.401(a)(9)-4(f)(6)(ii) (contains example of IRS analysis of an accumulation trust).

<sup>442</sup> See *infra* Section XIV, H, 2, c; Section XV, F.

the charity is a qualifying charity<sup>443</sup> and the trust is an AMBT<sup>444</sup>). As a result, because the trust does not have a Designated Beneficiary, the IRA must distribute to the trustee based on the rules that apply if there is no Designated Beneficiary (NDB). This means the IRA must distribute as follows:

- (i) If the IRA owner died before the owner's Required Beginning Date, the 5-Year Rule must be utilized,<sup>445</sup> and
- (ii) If the IRA owner died on or after the owner's Required Beginning Date, the remaining ("ghost") life expectancy of the IRA owner using the Single Life Table must be utilized.<sup>446</sup>

However, similar to when an IRA pays directly to a beneficiary who is not a Designated Beneficiary (NDB), the more favorable Designated Beneficiary distribution rules can be used if the charity disclaims its interest in the trust, or receives its full distribution from the trust, by September 30 of the calendar year following the calendar year of the IRA owner's death (the date the final beneficiaries of the IRA are determined, i.e., the Beneficiary Finalization Date). If this happens, then the charity is no longer a residual beneficiary and any other residual beneficiary who was a disregarded beneficiary because they did not receive anything from the trust while the charity was a beneficiary becomes the new countable residual beneficiary. If this beneficiary is a Designated Beneficiary, then the Designated Beneficiary distribution rules can be used. This is discussed earlier in this paper.<sup>447</sup>

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<sup>443</sup> A qualifying charity is an organization described in I.R.C. § 170(b)(1)(A), other than a supporting organization described in § 509(a)(3) or a donor advised fund described in § 4966(d)(2). Treas. Reg. § 1.401(a)(9)-4(g)(3); I.R.C. § 408(d)(8)(B)(i). See *infra* Section XV, C, 2. See also Appendix F.

<sup>444</sup> Treas. Reg. § 1.401(a)(9)-4(g)(3).

<sup>445</sup> Treas. Reg. § 1.401(a)(9)-3(c)(5)(i)(A).

<sup>446</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(iii).

<sup>447</sup> See *supra* Section V, B, 8.

**Accumulation Trust Example:** Assume the same facts as were used in the previous conduit trust example - that a 75-year-old IRA owner dies in 2026 after the owner's Required Beginning Date and leaves an IRA to a trust for the benefit of the IRA owner's adult Child for life. Upon Child's death, the remainder is to be distributed to IRA owner's Sister, or to Charity if the Sister does not survive Child. When the IRA owner dies, Child is age 48 and Sister is age 60, and both are adults who are not Disabled, Chronically Ill, or less than 10 years younger than the IRA owner (or in other words, they are each a Designated Beneficiary but not an Eligible Designated Beneficiary (i.e., an ODB)).

If instead of a conduit trust (as was illustrated in the prior example), the IRA was left to an accumulation trust (a trust that did not require the trustee to distribute to the primary beneficiary any distributions from the inherited IRA upon receipt), then the following would apply.

Since both the IRA owner's adult Child and Sister are people, they are Designated Beneficiaries. Since this is an accumulation trust, both adult Child (a primary beneficiary) and Sister (a countable residual beneficiary) are considered beneficiaries of the trust for IRA purposes.<sup>448</sup>

Because Charity (the residual beneficiary that receives the IRA only if Sister is not living) does not receive any of the trust assets unless Sister dies, Charity is ignored for analysis of the countable beneficiaries of the IRA (i.e., Charity is a disregarded residual beneficiary).<sup>449</sup>

Since neither the adult Child nor Sister is an Eligible Designated Beneficiary, all beneficiaries of the IRA that must be taken into account are only Designated Beneficiaries (ODBs).

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<sup>448</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(i)(A) and (B).

<sup>449</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(ii).

Because the IRA owner died after the owner's RBD and all countable beneficiaries of the trust are ODBs, the IRA must be fully distributed no later than December 31, 2036 (the End Date - the last day of the calendar year that contains the 10th anniversary of the IRA owner's death in 2026).<sup>450</sup>

In addition, Required Minimum Distributions (RMDs) must be made from the IRA to the trust starting in 2027 (the year following the year when the IRA owner died).<sup>451</sup>

The age for the Applicable Denominator used to determine the life expectancy for calculation of the RMD is Sister's age, since -

(i) Sister is older than Child,<sup>452</sup> and

(ii) Sister has a life expectancy that exceeds the deceased IRA owner's remaining "ghost" life expectancy.<sup>453</sup>

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End of Example

**c. Exceptions to Accumulation Trust General Rules:** There are exceptions to the accumulation trust general rules described above. These are:

**1) Minor Child of IRA Owner:** If a minor child (under age 21<sup>454</sup>) of the IRA owner is one of the primary beneficiaries of the accumulation trust, then the IRA is treated as having Eligible Designated Beneficiaries (EDBs) even though not all primary

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<sup>450</sup> Treas. Reg. § 1.401(a)(9)-5(e)(1) and (2).

<sup>451</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(i).

<sup>452</sup> Treas. Reg. § 1.401(a)(9)-5(f)(1)(i).

<sup>453</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii).

<sup>454</sup> Treas. Reg. § 1.401(a)(9)-4(e)(3).

beneficiaries or residual beneficiaries are EDBs.<sup>455</sup> This means the Life Expectancy Rule can be applied to the trust.

There is not a special rule for whose life expectancy to use to determine the Applicable Denominator when calculating the Required Minimum Distributions (RMDs) when a minor child of the IRA owner is the EDB who is a primary beneficiary of an accumulation trust. Therefore, the general rule described above applies, and the life expectancy of the oldest ODB or EDB of the accumulation trust, whether a primary beneficiary or a residual beneficiary who is not disregarded, is used to determine the Applicable Denominator and calculate the annual RMDs. However, this does not apply if the accumulation trust is designed as described in Section XIV, H, 2, c, 2) of this paper, which follows the next paragraph.

The End Date for distribution of the remainder of the inherited IRA is the earlier of: (i) December 31 of the 10th calendar year following the calendar year in which the youngest minor child who was a primary beneficiary of the IRA turns age 21 (the age of majority)<sup>456</sup> or, in other words, when that child turns age 31, or (ii) December 31 of the 10th calendar year following the calendar year when all minor children who were primary beneficiaries of the IRA are not living.<sup>457</sup> The other beneficiaries do not affect the End Date, but they remain countable in determining the Applicable Denominator, including any residual beneficiary who is not disregarded, as described in the preceding paragraph.

**2) Trust Requires IRA be Fully Distributed by Age 31:** If a trust requires the full inherited IRA, plus any proceeds received from investing RMDs received from the IRA, to be distributed to the primary beneficiary by (i) the end of the 10th year following the calendar year when that beneficiary attains age 21 (or, in other words, the end of the calendar year when the beneficiary attains age 31), or (ii) the end of the calendar year following the calendar year of the IRA owner's death, if later, then all other beneficiaries of the trust who could

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<sup>455</sup> Treas. Reg. § 1.401(a)(9)-4(e)(2)(ii).

<sup>456</sup> Treas. Reg. § 1.401(a)(9)-5(f)(2)(ii)(C).

<sup>457</sup> Treas. Reg. § 1.401(a)(9)-5(f)(2)(ii)(B).

receive a portion of the IRA upon the death of the beneficiary (i.e., the residual beneficiaries) are not taken into account (i.e., they are “disregarded”) when determining who are the Designated Beneficiaries or Eligible Designated Beneficiaries of the trust.<sup>458</sup>

This means when determining the amount of the annual RMDs, it is the life expectancy of the oldest primary beneficiary that is used to determine the Applicable Denominator.

This applies to any Designated Beneficiary, not just a child of the IRA owner. Where, as in the example below, every countable beneficiary is an ODB, disregarding the residual beneficiaries affects only the calculation of the annual RMDs and does not change the End Date. But where a disregarded residual beneficiary would have been a charity or other NDB, or would have been an ODB when the primary beneficiary is an EDB, disregarding that beneficiary changes the classification of the IRA’s beneficiaries and therefore can change the End Date as well.

**To illustrate this, consider the prior example with Two Changes:** If everything in the previous accumulation trust example was the same except (i) Child, the primary beneficiary, is younger than age 31 and (ii) the trust for Child directed the trustee to distribute all of the inherited IRA and accumulated proceeds from investing the RMDs received from the IRA outright to Child prior to the end of the calendar year when Child attains age 31, then Sister is ignored for RMD calculation purposes because the entire IRA and any accumulated proceeds derived from the IRA are fully distributed to Child prior to the end of the calendar year when Child attains age 31.

**3) AMBT:** If the trust is an Applicable Multi-Beneficiary Trust (AMBT), then the trust is treated as having Eligible Designated Beneficiaries even if there are other beneficiaries who are not Eligible

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<sup>458</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(ii)(B).

Designated Beneficiaries.<sup>459</sup> This means the Life Expectancy Rule applies. AMBTs are discussed later in this paper.<sup>460</sup>

**4) Separate Accounts:** This exception applies if the IRA is split into separate accounts<sup>461</sup> for each beneficiary by December 31 of the year following the year the IRA owner died. In order to accomplish this, the trust receiving the IRA must direct that the IRA be “divided immediately” into separate see-through trusts upon the death of the IRA owner (which means the trust receiving the IRA terminates and directs the allocation of the IRA to different trusts, whether standalone or subtrusts), then each beneficiary of each separate trust receives separate account treatment (which means the RMDs and End Date for each separate trust are determined by that trust’s own countable beneficiaries). This is more fully explained earlier in this paper.<sup>462</sup> If this does not happen, then the general rule applies and the Applicable Denominator used to determine the RMDs for all beneficiaries in their respective trust is based on the oldest countable beneficiary in the receiving trust.<sup>463</sup>

**I. Distinguish Between Beneficiaries Receiving IRA Distributions and Other Beneficiaries:** Keep in mind that it is possible to have two different types of beneficiaries of a see-through trust: (i) those who are entitled to receive distributions from an inherited IRA and its proceeds,<sup>464</sup> and (ii) other beneficiaries who are not entitled to receive any inherited IRA-related distributions but are eligible to receive distributions from other, non-inherited IRA-related assets held in the trust.

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<sup>459</sup> Treas. Reg. § 1.401(a)(9)-4(e)(2)(iii).

<sup>460</sup> See *infra* Section XV.

<sup>461</sup> Treas. Reg. § 1.401(a)(9)-4(b); Treas. Reg. § 1.401(a)(9)-4(e)(2), and Treas. Reg. § 1.401(a)(9)-8(a).

<sup>462</sup> See *supra* Section X, D.

<sup>463</sup> *Id.*

<sup>464</sup> Treas. Reg. § 1.401(a)(9)-4(f)(2)(iii) (“beneficiaries of the trust who are beneficiaries with respect to the trust’s interest in the employee’s interest in the plan”); Treas. Reg. § 1.401(a)(9)-4(f)(3)(i)(A) (“beneficiary that could receive amounts in the trust representing the employee’s interest in the plan”) and (B) (“beneficiary of an accumulation trust that could receive amounts in the trust representing the employee’s interest in the plan”).

The rules described in this paper only apply to the beneficiaries of a see-through trust who are entitled to receive distributions from an inherited IRA or the proceeds from investing the IRA distributions. They do not apply to other beneficiaries who are entitled to receive distributions from other assets held in the trust, but not from an inherited IRA or its proceeds.

To illustrate this, consider the following example.

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#### Example

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Jane dies and leaves her assets to a trust that benefits both her adult children, Jack, who is severely disabled and receiving SSI and Medicaid benefits, and Jill, who is not disabled or chronically ill. There are two assets in this trust, Jane's IRA and Jane's investment account that only holds non-qualified assets (i.e., only assets that are not tax qualified retirement assets, such as an inherited IRA).

If the inherited IRA is held in a subtrust of the trust, or if the distributions from the inherited IRA are held in a separate investment account in the trust so it is possible to trace all distributions from the IRA and the income earned from investing those distributions (the IRA "proceeds"), then it is possible for the trustee to be directed to distribute as follows:

1. Both children can receive distributions from the trust that came from the non-qualified investment account.
2. As long as Jack is living, only he can receive distributions from the trust that came from the inherited IRA (including the proceeds of the IRA). None of these can be distributed to or for the benefit of Jill as long as Jack is living.
3. However, after Jack is no longer living, Jill can then receive distributions that came from the inherited IRA and its proceeds.

In this example, for all distributions and proceeds from the inherited IRA, Jack is the primary beneficiary and Jill is the residual beneficiary. However, for all distributions from the investment account and its proceeds, both Jack and Jill are primary beneficiaries of the trust. Both can receive distributions from the trust while both are living, but Jill cannot receive anything from the inherited IRA or its proceeds while Jack is living.

The point of this is to illustrate that the phrases "primary beneficiary" and "residual beneficiary" only apply to a beneficiary of the trust who is eligible to receive a portion of the inherited IRA or its proceeds being held in the trust. There can be other beneficiaries of the trust who are entitled to receive non-IRA assets at the same time. These other

beneficiaries are not countable when determining who the beneficiaries are for inherited IRA distribution purposes.

However, in this situation the trust document must be carefully drafted to clearly distinguish who is and is not entitled to proceeds from the inherited IRA, and the trustee must be careful to not intermingle the IRA proceeds with the non-IRA assets held in the trust.

Note also that this arrangement, in which only Jack can benefit from the inherited IRA during his lifetime and Jill can receive it only after his death, has the structure of an Applicable Multi-Beneficiary Trust (AMBT). If the trust qualifies as an AMBT, Jack's life expectancy governs the inherited IRA even though Jill is not an Eligible Designated Beneficiary. AMBTs are discussed in Section XV, which returns to this example.

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End of Example

## **XV. Applicable Multi-Beneficiary Trusts (AMBT)**

The SECURE Act established a unique trust for Eligible Designated Beneficiaries (EDBs) who are Disabled or Chronically Ill. This trust is referred to as an "applicable multi-beneficiary trust."<sup>465</sup> Throughout this paper this is referred to as an "AMBT."

It is important to keep in mind that the laws and rules that apply to trusts holding inherited IRAs are greatly relaxed and altered in a manner favorable to the beneficiary if the trust is an AMBT. The reader is cautioned to not confuse the AMBT rules with the normal rules when drafting to hold an inherited IRA in any type of trust that is not an AMBT.

The following subsection A defines the AMBT and then explains who qualifies as Disabled or Chronically Ill. Those definitions also determine whether an individual named directly as an IRA beneficiary is an Eligible Designated Beneficiary (see Section V, B, 5, above). The rules that apply specifically to AMBTs are in Subsections B through H, below.

### **A. Definitions:**

**1. Applicable Multi-Beneficiary Trust (AMBT):** The Code defines an AMBT as a trust –

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<sup>465</sup> I.R.C. § 401(a)(9)(H)(iv) and (v); Treas. Reg. § 1.401(a)(9)-4(g).

**"(I)** which has more than one beneficiary,"

**"(II)** all of the beneficiaries of which are treated as designated beneficiaries for purposes of determining the distribution period pursuant to this paragraph, and" [Author's Note: beginning January 1, 2023, for purposes of an AMBT, this includes a qualifying charity in addition to an individual]

**"(III)** at least one of the beneficiaries of which is an eligible designated beneficiary [who is Disabled or Chronically Ill]."<sup>466</sup> (last phrase inserted by the Author rather than leaving in the cross references to the applicable Code sections)

An additional requirement of an AMBT is added by the preceding Code section and is as follows (with bracketed inserts by the Author to insert names used throughout this paper rather than the cross references included in the original text):

**(iv) "(II)** no beneficiary (other than an eligible designated beneficiary [who is Disabled or Chronically Ill]) has any right to the [IRA owner's] interest in the plan until the death of all such eligible designated beneficiaries with respect to the trust."<sup>467</sup>

The final regulations add two further requirements: (i) the trust must be a see-through trust, and (ii) the trust terms must identify one or more individuals who are Disabled or Chronically Ill and who are primary beneficiaries of the trust.<sup>468</sup>

Note that no Eligible Designated Beneficiary is listed other than a Disabled or Chronically Ill individual.

**2. Clarification of "Disabled" for SECURE Act Purposes:** The SECURE Act says in order to qualify as an EDB who is Disabled, a Designated Beneficiary must be "disabled (within the meaning of section 72(m)(7))."<sup>469</sup>

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<sup>466</sup> I.R.C. § 401(a)(9)(H)(v).

<sup>467</sup> I.R.C. § 401(a)(9)(H)(iv)(II).

<sup>468</sup> Treas. Reg. § 1.401(a)(9)-4(g)(1), (g)(1)(ii). See *infra* Section XV, D.

<sup>469</sup> I.R.C. § 401(a)(9)(E)(ii)(III).

**Practice Point:** In most cases the simplest way to establish that a beneficiary is Disabled is a determination by the Social Security Administration that the beneficiary was disabled as of the date of the IRA owner's death. That determination is deemed to satisfy the regulation's definition.<sup>470</sup> Without one, the beneficiary must meet the regulation's own test. For a beneficiary age 18 or older, that means being unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration. For a beneficiary under 18, it means marked and severe functional limitations.<sup>471</sup> For an IRA, the documentation need not be delivered to the custodian, but it should be assembled and kept.<sup>472</sup> The § 72(m)(7) case law discussed below remains useful where the facts are close.

**a. I.R.C. § 72(m)(7)- Definition of Disabled:** I.R.C. § 72(m)(7) says,

Meaning of disabled – For purposes of this section, an individual shall be considered to be disabled if he 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. An individual shall not be considered to be disabled unless he furnishes proof of the existence thereof in such form and manner as the Secretary may require.<sup>473</sup>

**b. Applicable Regulation for I.R.C. § 72(m)(7):** 26 C.F.R. § 1.72-17A(f) contains further explanation of what "disabled" means for purposes of I.R.C. § 72(m)(7). A copy of this regulation is included in Appendix D of this paper.

Paragraph (f)(1) says,

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<sup>470</sup> Treas. Reg. § 1.401(a)(9)-4(e)(4)(iv).

<sup>471</sup> Treas. Reg. § 1.401(a)(9)-4(e)(4)(ii)-(iii).

<sup>472</sup> Treas. Reg. § 1.408-8(b)(4)(i). See *supra* Section III, E.

<sup>473</sup> I.R.C. § 72(m)(7).

In determining whether an individual's impairment makes him unable to engage in any substantial gainful activity, primary consideration shall be given to the nature and severity of his impairment. Consideration shall also be given to other factors such as the individual's education, training, and work experience. The substantial gainful activity to which section 72(m)(7) refers is the activity, or a comparable activity, in which the individual customarily engaged prior to the arising of the disability or prior to retirement if the individual was retired at the time the disability arose.<sup>474</sup>

Note that while similar to the definition used to determine disability for purposes of qualifying for Social Security Disability or SSI, the definition used in I.R.C. § 72(m)(7) is slightly different. For example, it focuses on what a person's employment was prior to the onset of the disability, or a job that is similar. This was expressed by the Tax Court in a 2006 summary opinion as follows,

Therefore, the impairment must be evaluated in terms of whether it does, in fact, prevent the individual from engaging in her customary, or any comparable, substantial gainful activity considering the individual's education, training, and work experience.<sup>475</sup>

Paragraph (f)(2) of this regulation says the determination of a disability is to be "determined with reference to all the facts in the case." It then goes on to list examples of "impairments which would ordinarily be considered as preventing substantial gainful activity."<sup>476</sup>

Paragraph (f)(3) of this regulation says that "an impairment must be expected either to continue for a long and indefinite period or to result in death." The term "indefinite" is clarified to mean "that it cannot reasonably be anticipated that the impairment will, in the foreseeable future, be so diminished as no longer to prevent substantial gainful activity. For example, an individual who suffers a bone fracture which prevents him from working for an extended

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<sup>474</sup> Treas. Reg. § 1.72-17A(f)(1).

<sup>475</sup> Johnson v. Comm'r, No. 5609-05S, 2006 WL 1028379, at \*2 (T.C. Summ. Op. Apr. 19, 2006).

<sup>476</sup> See Appendix D.

period of time will not be considered disabled, if his recovery can be expected in the foreseeable future; if the fracture persistently fails to knit, the individual would ordinarily be considered disabled."

Lastly, Paragraph (f)(4) of this regulation states that an impairment that is "remediable" does not constitute a disability. This means that "if, with reasonable effort and safety to himself, the impairment can be diminished to the extent that the individual will not be prevented by the impairment from engaging in his customary or any comparable substantial gainful activity," then the individual is not disabled within the meaning of this Code section.

**c. Case Law Interpreting I.R.C. § 72(m)(7):** There are some court decisions that shed some light on I.R.C. § 72(m)(7) and the regulation. A 1992 Tax Court case summed this up nicely by saying,

Section 72(m)(7) is explicit as to the applicable meaning of the term "disabled". Under section 72(m)(7) an individual is considered disabled if: (1) He is unable to engage in any substantial gainful activity due to a medically determinable physical or medical impairment; (2) the disability can be expected to result in death or be of a long-continued and indefinite duration; (3) the individual furnishes proof of the disability in the form and manner required by the Secretary. The regulations set forth the general considerations upon which a disability determination is made. See sec. 1.72-17A(f)(2), Income Tax Regs. The regulations provide that the determination is to be made on the basis of all the facts. They state that in determining whether an individual's infirmity makes him unable to engage in any substantial gainful activity, primary consideration is to be given to the nature and severity of the impairment. Sec. 1.72-17A(f)(1), Income Tax Regs. Other factors to be considered include the individual's education, training and work experience. Finally, the regulation emphasizes that any impairment, whether of lesser or greater severity, must be evaluated in terms of whether it does in fact prevent the individual from engaging in his customary or any comparable substantial activity. Sec. 1.72-17A(f)(2), Income Tax Regs.<sup>477</sup>

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<sup>477</sup> Kane v. Comm'r, 63 T.C.M. (CCH) 2753 (T.C. 1992).

Other cases<sup>478</sup> clarify that the burden is on the person alleging to be disabled to prove the disability, documentation must be provided, and the requirements are similar to what is required to prove disability under the Social Security system.<sup>479</sup> This generally means that corroborating medical evidence from physicians is required and uncorroborated testimony is insufficient.

Interestingly, the Tax Court has held in *Kopty v. Commissioner*,<sup>480</sup> and restated the holding later in *Stipe v. Commissioner*,<sup>481</sup> that a person who is disabled for Social Security or employment purposes is not automatically considered to be disabled for purposes of Section 72(m)(7). The *Stipe* court said,

A taxpayer who is disabled for Social Security or employment purposes is not necessarily disabled within the meaning of section 72(m)(7). See *Kopty v. Commissioner*, T.C. Memo.2007-343 (taxpayer who received long-term disability benefits from the U.S. Social Security Administration not disabled within the meaning of section 72(m)(7)), *affd.* 313 Fed. Appx. 333 (D.C.Cir.2009); see also *Hemrick v. Commissioner*, T.C. Memo.2009-272 (taxpayer discharged from military duty upon certification of medical disqualification not disabled for purposes of section 72(m)(7)). In determining whether a taxpayer is disabled within the meaning of section 72(m)(7), primary consideration is given to the nature and severity of the taxpayer's ailment. Sec. 1.72-17A(f)(1), Income Tax Regs. The

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<sup>478</sup> See *Dwyer v. Comm'r*, 106 T.C. 337, 341 (1996); *Kaldi v. Comm'r*, No. 5591-06S, 2007 WL 845920, at \*2 (T.C. Mar. 21, 2007) (summary opinion); *Trainito v. Comm'r*, No. 7223-14S, 2015 WL 3861916, at \*3 (T.C. June 23, 2015) (summary opinion); and *Kowsh v. Comm'r*, 96 T.C.M. (CCH) 123 (T.C. 2008).

<sup>479</sup> This is supported also by legislative history. The Senate Report accompanying the Employee Retirement Income Security Act of 1974 (ERISA) (Pub. L. 93-406, 88 Stat. 829, 29 U.S.C.A. § 1001 (Sept. 2, 1974)) says, "The penalty tax is not to apply in the event of death or disability. However, the committee expects that the Internal Revenue Service will require that the custodian must receive proof of disability before making distributions under the disability provision. Generally it is intended that the proof be the same as where the individual applies for disability payments under social security." (emphasis added) S. Rep. No. 93-383, 93d Cong., 1st Sess. (1973), reprinted in 1974 U.S.C.C.A.N. 4890.

<sup>480</sup> *Kopty v. Comm'r*, T.C. Memo. 2007-343, *aff'd*, 313 Fed. Appx. 333 (D.C. Cir. 2009).

<sup>481</sup> *Stipe v. Comm'r*, 101 T.C.M. (CCH) 1427 (T.C. 2011).

regulation further provides that in order for an individual to meet the requirements of section 72(m)(7), "an impairment must be expected either to continue for a long and indefinite period or to result in death." Sec. 1.72-17A(f)(3), Income Tax Regs. An impairment that is remediable is not a disability within the meaning of section 72(m)(7). Sec. 1.72-17A(f)(4), Income Tax Regs.<sup>482</sup>

**d. SECURE Act Regulations:** Fortunately, the final regulations for the SECURE Act provide some additional guidance when determining if a Designated Beneficiary is sufficiently disabled to qualify for EDB status as a Disabled individual. These regulations draw a distinction between whether a person had been determined disabled by the Social Security Administration, and whether a person is over or under the age of eighteen years.

**1) SSA Disability Determination:** If the Social Security Administration has determined that, as of the date of the IRA owner's death, the beneficiary is disabled within the meaning of 42 U.S.C. § 1382c(a)(3), the final SECURE Act regulations state the person is deemed to be sufficiently disabled to be an EDB who is Disabled.<sup>483</sup> Although the regulation only refers to the definition of disability that is used to determine eligibility for Supplemental Security Income (SSI),<sup>484</sup> since the definition used for Social Security Disability (SSD) eligibility is essentially the same,<sup>485</sup> it is assumed a person determined disabled by the Social Security Administration (including for SSD) will qualify as an Eligible Designated Beneficiary who is Disabled.

This is significant because, as pointed out in the previously cited case, merely being disabled for Social Security purposes does not necessarily mean the individual meets the definition of disability for purposes of I.R.C. § 72(m)(7).

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<sup>482</sup> Id.

<sup>483</sup> Treas. Reg. § 1.401(a)(9)-4(e)(4)(iv).

<sup>484</sup> Id. This regulation only cites 42 U.S.C. § 1382c(a)(3), which is the definition of "disabled" for SSI purposes.

<sup>485</sup> 42 U.S.C. § 423(d)(1)(A); § 223(d)(1)(A) of the Social Security Act.

**2) No SSA Disability Determination:** The final regulations say if the Social Security Administration has not determined that, as of the date of the IRA owner's death, the beneficiary is disabled within the meaning of 42 U.S.C. § 1382c(a)(3), then the following standards must be met in order for the individual to be sufficiently disabled to qualify as an EDB who is Disabled.

**A) If Age 18 or Older:** If a Designated Beneficiary is at least eighteen (18) years of age and has not been determined to be disabled by the Social Security Administration when the IRA owner dies, then in order to qualify as an EDB who is Disabled, the individual must be "unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration."<sup>486</sup> This is the same standard found in I.R.C. § 72(m)(7).

**B) If Under Age 18:** If a Designated Beneficiary is under the age of eighteen (18) years when the IRA owner dies, then in order to qualify as an EDB who is Disabled, the individual must have a "medically determinable physical or mental impairment that results in marked and severe functional limitations and that can be expected to result in death or to be of long-continued and indefinite duration."<sup>487</sup>

It should be noted that commenters asked the IRS to treat two other determinations as proof of disability: a state-court finding of incapacity or appointment of a guardian, and eligibility for an ABLE account under I.R.C. § 529A(e)(1). The IRS declined both, explaining that those standards could be broader than the definition of disability in § 72(m)(7).<sup>488</sup> A guardianship order or ABLE account therefore does not by itself establish that a beneficiary is Disabled.

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<sup>486</sup> Treas. Reg. § 1.401(a)(9)-4(e)(4)(ii) (emphasis added).

<sup>487</sup> Treas. Reg. § 1.401(a)(9)-4(e)(4)(iii) (emphasis added).

<sup>488</sup> Treas. Reg. Preamble, 89 Fed. Reg. 58886, 58892-93 (July 19, 2024).

**3) Documentation Does Not Need to Be Provided to an IRA Trustee, Custodian, or Issuer:** While the regulations for the SECURE Act require that the documentation that the Designated Beneficiary is sufficiently disabled to qualify as an EDB who is Disabled be provided to the plan administrator no later than October 31 of the calendar year following the year of the IRA owner's death,<sup>489</sup> **that requirement does not apply to an IRA.**<sup>490</sup> It continues to apply to other types of retirement plans.

The beneficiary must still actually have been Disabled as of the date of the IRA owner's death. The documentation should therefore still be obtained and kept, because the trustee or the beneficiary will have to prove that fact if the distribution treatment of the inherited IRA is later questioned.

**3. Clarification of "Chronically Ill" for SECURE Act Purposes:** The SECURE Act says in order to qualify as a Chronically Ill EDB, a Designated Beneficiary must be chronically ill "within the meaning of section § 7702B(c)(2), except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature."<sup>491</sup> A copy of I.R.C. § 7702B(a) through (c) is included in Appendix E of this paper.

**a. I.R.C. § 7702B(c)(2) - Definition of Chronically Ill:** I.R.C. § 7702B sets forth the requirements for a "qualified long-term care insurance contract." Among other requirements, a qualified long-term care insurance contract must provide "qualified long-term care services" which are defined as "necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance or personal care services" that are required by a "chronically ill" individual and "provided pursuant to a plan of care prescribed by a licensed health care practitioner."<sup>492</sup>

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<sup>489</sup> Treas. Reg. § 1.401(a)(9)-4(e)(7) and Treas. Reg. § 1.401(a)(9)-4(e)(9) (contains examples illustrating this).

<sup>490</sup> Treas. Reg. § 1.408-8(b)(4)(i). See *supra* Section III, E.

<sup>491</sup> I.R.C. § 401(a)(9)(E)(ii)(IV).

<sup>492</sup> I.R.C. § 7702B(c)(1)(A) and (B).

Paragraph (c)(2) defines a chronically ill individual as,

(A) In general

The term “chronically ill individual” means any individual who has been certified by a licensed health care practitioner as—

- (i) 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,
- (ii) having a level of disability similar (as determined under regulations prescribed by the Secretary in consultation with the Secretary of Health and Human Services) to the level of disability described in clause (i), or
- (iii) requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.

Such term shall not include any individual otherwise meeting the requirements of the preceding sentence unless within the preceding 12-month period a licensed health care practitioner has certified that such individual meets such requirements.<sup>493</sup>

Note that an individual can be certified as “chronically ill” if the individual satisfies any one of these three definitions. Only the first definition has a requirement of “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.”<sup>494</sup>

Paragraph (c)(2) continues on to define “activities of daily living” as,

(B) Activities of daily living

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<sup>493</sup> I.R.C. § 7702B(c)(2)(A).

<sup>494</sup> I.R.C. § 7702B(c)(2)(A)(i).

For purposes of subparagraph (A), each of the following is an activity of daily living:

- (i) Eating.
- (ii) Toileting.
- (iii) Transferring.
- (iv) Bathing.
- (v) Dressing.
- (vi) Continence.<sup>495</sup>

A “licensed health care practitioner” is defined in paragraph (c)(4) as “any physician (as defined in section 1861(r)(1) of the Social Security Act) and any registered professional nurse, licensed social worker, or other individual who meets such requirements as may be prescribed by the Secretary.”<sup>496</sup>

**b. IRS Notice 97-31:** IRS Notice 97-31, which was issued in 1997, contains some “safe-harbor definitions” that long-term care insurance companies could rely on regarding the meanings of “substantial assistance,” “hands-on assistance,” and “standby assistance” for Activities of Daily Living (ADL) trigger purposes and “severe cognitive impairment” and “substantial supervision” for Cognitive Impairment trigger purposes.<sup>497</sup>

**c. Case Law Interpreting I.R.C. § 7702B(c)(2):** There are few court decisions that help clarify I.R.C. § 7702B(c)(2). One case that may not have much precedential value but considered an important question was an Oregon Tax Court Magistrate Division decision that addressed what is required in order for an opinion to be “certified” by a “licensed health care practitioner.” The court said,

The first question is whether Morison was “certified” as chronically ill by a licensed health care practitioner. The term “certified” is not defined in the applicable code section. Webster’s Dictionary defines “certify” as “to attest esp. authoritatively or formally.” Webster’s Third New Int’l Dictionary 367 (unabridged ed 2002.) The evidence presented

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<sup>495</sup> I.R.C. § 7702B(c)(2)(B).

<sup>496</sup> I.R.C. § 7702B(c)(4).

<sup>497</sup> Notice 97-31, 1997-1 C.B. 417.

was comprised of a letter signed by Morison's nurse and several medical records prepared by nurses. The court finds that the nurse's letter and the medical records provided by Plaintiffs are authoritative and each was prepared by a licensed health care practitioner.

The court is persuaded that those documents satisfy the certification requirement under I.R.C. section 7702B(c)(2).<sup>498</sup>

**d. SECURE Act and Final Regulations:** The SECURE Act and the final regulations for the SECURE Act provide guidance when determining what is required for a Designated Beneficiary to qualify as an EDB who is Chronically Ill. The applicable Code and final regulation sections require:

**1) Certification of Chronic Illness:** The Designated Beneficiary must be "chronically ill within the definition of section 7702B(c)(2)..."<sup>499</sup>

I.R.C. § 7702B(c)(2) requires that the individual "has been certified by a licensed health care practitioner" within the preceding 12-month period that the individual satisfies one of the three definitions found in Section 7702B(c)(2)(A).

**2) SECURE Act Changes Length of Time Required for Certification Due to Inability to Perform ADLs:** In addition, if the individual is determined to be chronically ill because of an inability to perform ADLs (which is the first of the three definitions that can be used to be classified as chronically ill), then the SECURE Act changes the time period of functional inability required.

I.R.C. § 7702B(c)(2)(A)(i) requires that the individual be certified as "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,"

The SECURE Act at I.R.C. § 401(a)(9)(E)(ii)(IV) requires that "the requirements of subparagraph (A)(i) thereof shall only be treated as

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<sup>498</sup> Donohoe v. Dep't of Revenue, No. TC-MD 150521N, 2016 WL 4446635, at \*4 (Or. T.C. Aug. 23, 2016).

<sup>499</sup> Treas. Reg. § 1.401(a)(9)-4(e)(5).

met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature”.

As a result, in order to satisfy the SECURE Act requirements, in order to be classified as an Eligible Designated Beneficiary who is Chronically Ill under the first definition of a chronically ill individual, the individual must be certified to be unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for a period of time that is an indefinite one which is reasonably expected to be lengthy in nature.

The other two definitions that can be used to qualify as “chronically ill” (I.R.C. §§ 7702B(c)(2)(A)(ii) and (iii)) are unchanged by the SECURE Act. All three of these require a certification by a licensed health care practitioner (as that term is defined in section 7702B(c)(4)), but an individual attempting to qualify as chronically ill under I.R.C. § 7702B(c)(2)(A)(i) must satisfy this additional requirement.

For a beneficiary with an intellectual or developmental disability, the third definition may be the most practical route. It depends on the beneficiary’s need for substantial supervision to protect the beneficiary from threats to health and safety due to severe cognitive impairment, not on activities of daily living, and it does not require a Social Security disability determination.<sup>500</sup>

**3) Certification Does Not Need to Be Provided to an IRA Trustee, Custodian, or Issuer:** While the regulations require that this certification that the Designated Beneficiary is Chronically Ill be provided to the plan administrator of the inherited IRA no later than October 31 of the calendar year following the year of the IRA owner’s death,<sup>501</sup> **this does not apply to an IRA.**<sup>502</sup> It continues to apply to other types of retirement plans.

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<sup>500</sup> I.R.C. § 7702B(c)(2)(A)(iii).

<sup>501</sup> Treas. Reg. § 1.401(a)(9)-4(e)(7) and Treas. Reg. § 1.401(a)(9)-4(e)(9) (contains examples illustrating this).

<sup>502</sup> Treas. Reg. § 1.408-8(b)(4)(i). See *supra* Section III, E.

However, the certification itself remains part of the definition. As stated in the immediately preceding paragraph, a beneficiary is Chronically Ill only if there is a certification from a licensed health care practitioner.<sup>503</sup> The certification must therefore still be obtained, and it should be kept, because the trustee or the beneficiary will have to prove that the beneficiary was Chronically Ill as of the date of the IRA owner's death if the distribution treatment of the inherited IRA is later questioned.

**e. Must a Chronically Ill Individual Be Recertified Every 12 Months?**

In order to qualify as "chronically ill" for I.R.C. § 7702B(c)(2) purposes, the last sentence of subparagraph (A) says,

Such term [i.e., chronically ill individual] shall not include any individual otherwise meeting the requirements of the preceding sentence unless within the preceding 12-month period a licensed health care practitioner has certified that such individual meets such requirements.<sup>504</sup>

It has been questioned whether this means for SECURE Act purposes that a Designated Beneficiary who has been certified as an EDB who is Chronically Ill as of the date of the IRA owner's death must continue to be recertified every twelve months to be able to retain EDB status. Unfortunately, the regulations did not directly address this.

However, an argument can be made that the SECURE Act does not require annual recertification of chronic illness status for an individual to continue to be treated as an EDB who is Chronically Ill. This is based on the following:

**1)** The SECURE Act and the regulations require that the Designated Beneficiary is eligible to be treated as an Eligible Designated Beneficiary only if the individual meets the requirements to be classified as one of the EDBs on the date the IRA owner died.<sup>505</sup>

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<sup>503</sup> Treas. Reg. § 1.401(a)(9)-4(e)(5).

<sup>504</sup> I.R.C. § 7702B(c)(2)(A).

<sup>505</sup> I.R.C. § 401(a)(9)(E)(ii) ("The determination of whether a designated beneficiary is an eligible designated beneficiary shall be made as of the date of death of the employee."); Treas. Reg. § 1.401(a)(9)-4(e)(1) ("at the time of the employee's death").

2) The regulations clearly state that the Designated Beneficiary qualifies as an EDB who is Chronically Ill “as of the date of certification from a licensed health care practitioner.”<sup>506</sup>

3) The SECURE Act<sup>507</sup> and final regulations<sup>508</sup> eliminate EDB status for a minor child of the IRA owner when the child reaches the age of 21. If Congress wanted EDB status for a Chronically Ill individual to be terminated if the individual did not receive an annual certification of the individual’s chronically ill status, that could have easily been stated in the SECURE Act. Also, if the IRS believed this should happen, it could have stated this in the final regulations.

**B. Final AMBT Regulations Differ From 2022 Proposed Regulations:** The proposed regulations published in 2022 described two types of AMBTs, and referred to them as “type I” and “type II.” A type I AMBT was an AMBT where “the terms of the trust provide that it is to be divided immediately upon the death of the [IRA owner] into separate trusts for each beneficiary.”<sup>509</sup> This allowed separate account treatment for all beneficiaries of the trust, but in order to qualify for this at least one of the beneficiaries had to qualify as “disabled or chronically ill.” Without that, the general rule applied and all beneficiaries of the divided trust would have to use the same Applicable Denominator of the oldest beneficiary of the original trust.

The final regulations published in 2024 no longer use the type I and type II labels. The rules that applied to a type I AMBT now apply to any trust that meets certain conditions, even if there are not any disabled or chronically ill beneficiaries.<sup>510</sup> See Section X, D, 3, above, for an explanation of this.

Generally, what was a type II AMBT in the 2022 proposed regulations is now referred to as an AMBT in the final regulations published in 2024.

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<sup>506</sup> Treas. Reg. § 1.401(a)(9)-4(e)(5).

<sup>507</sup> I.R.C. § 401(a)(9)(E)(iii).

<sup>508</sup> Treas. Reg. § 1.401(a)(9)-4(e)(9) (contains examples).

<sup>509</sup> Prop. Treas. Reg. § 1.401(a)(9)-4(g)(2), 87 Fed. Reg. 10504, 10533 (Feb. 24, 2022); I.R.C. § 401(a)(9)(H)(iv)(I).

<sup>510</sup> Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(B).

## C. Two Exceptions From General Rules for an AMBT:

**1. Trust Treated as Having EDB Even if Not All Beneficiaries Are EDBs:** The general rules for trusts described above require that all beneficiaries of a trust be one type in order for any beneficiary to be treated the same. For example, if two beneficiaries are Designated Beneficiaries (DB) and one is not a DB, then none of the beneficiaries can be treated as a DB.<sup>511</sup> The same is true if all beneficiaries are not Eligible Designated Beneficiaries (EDB). If this happens, then any of the other EDBs are not treated as an EDB.<sup>512</sup> There are some exceptions to this general rule described above,<sup>513</sup> but one additional exception applies only to an AMBT.

Unlike the general rule, if the IRA distributes to an Applicable Multi-Beneficiary Trust (AMBT), then the trust is treated as having Eligible Designated Beneficiaries even if there are other primary or residual beneficiaries who are not Eligible Designated Beneficiaries.<sup>514</sup>

**2. Charitable Organization Can Be a Residual Beneficiary:** Effective January 1, 2023, the SECURE 2.0 Act of 2022 allows a qualifying charitable organization to be treated as a Designated Beneficiary of an AMBT.<sup>515</sup> This change is accomplished by two amendments to Code Section 401(a)(9)(H), which was a new provision that was added to the Code by the SECURE Act.

These amendments, which are located in § 337 of Division T of the Consolidated Appropriations Act, 2023, are:

(a) IN GENERAL.—Section 401(a)(9)(H)(iv)(II) is amended by striking “no individual” and inserting “no beneficiary”.

(b) CONFORMING AMENDMENT.—Section 401(a)(9)(H)(v) is amended by adding at the end the following flush sentence:

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<sup>511</sup> Treas. Reg. § 1.401(a)(9)-4(b).

<sup>512</sup> Treas. Reg. § 1.401(a)(9)-4(e)(2)(i).

<sup>513</sup> See *supra* Sections X and XIV.

<sup>514</sup> Treas. Reg. § 1.401(a)(9)-4(e)(2)(iii).

<sup>515</sup> SECURE 2.0 Act of 2022, Pub. L. No. 117-328, div. T, § 337, 136 Stat. 4459, 5373. Treas. Reg. § 1.401(a)(9)-4(g)(3).

“For purposes of the preceding sentence, in the case of a trust the terms of which are described in clause (iv)(II) [author note: this refers to an AMBT], any beneficiary which is an organization described in section 408(d)(8)(B)(i) shall be treated as a designated beneficiary described in subclause (II).” (Quotation marks in original text).<sup>516</sup>

**a. The Organization Described in I.R.C. § 408(d)(8)(B)(i):** The organization that is described in Code § 408(d)(8)(B)(i) is:

an organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any fund or account described in section 4966(d)(2)),<sup>517</sup>

I.R.C. § 170(b)(1)(A) contains a list of most charitable organizations, I.R.C. § 509(a)(3) describes supporting organizations, and I.R.C. § 4966(d)(2) describes donor advised funds. See Appendix F at the end of this paper for a copy of these Code Sections.

**b. Practical Effects of This Provision:**

**1)** Since only Disabled or Chronically Ill EDBs can receive distributions from an inherited IRA held in an AMBT while any of them are living,<sup>518</sup> a charity can only be a residual beneficiary. Of course, an individual or multiple people can also be residual beneficiaries.

**2)** Any charitable organization described in § 170(b)(1)(A), other than supporting organizations and donor advised funds, can be a qualifying residual Designated Beneficiary of an AMBT.

**D. Who Can Be a Designated Beneficiary of an AMBT:** While it is necessary that an individual who qualifies as an Eligible Designated Beneficiary (EDB) who is Disabled or

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<sup>516</sup> Id.

<sup>517</sup> I.R.C. § 408(d)(8)(B)(i).

<sup>518</sup> Treas. Reg. § 1.401(a)(9)-4(g)(1)(iii).

Chronically Ill be a beneficiary of an AMBT, that does not mean there cannot be other Designated Beneficiaries of the trust who do not qualify for this status.

However, these other Designated Beneficiaries cannot receive any of the distributions from the inherited IRA, or any proceeds from investing those distributions after they are made from the IRA to the trust, while a beneficiary who is an EDB who is Disabled or Chronically Ill is living. Those can only be received by the EDBs who are Disabled or Chronically Ill.

Instead, these other Designated Beneficiaries, including a charitable organization that qualifies as a Designated Beneficiary, can receive income or principal from any assets being held in the trust that are NOT an inherited IRA or the proceeds received from investing IRA distributions retained in the trust. However, if this is attempted, the trustee must be extremely careful to fully document that none of the IRA or its proceeds are distributed to the other Designated Beneficiaries. If any distributions are made from the trust to a beneficiary who is not an EDB who is Disabled or Chronically Ill, there is a risk that if challenged, the burden will be on the trustee to prove the source of these distributions were not from the IRA or proceeds received from investing distributions out of the IRA to the trust. Failure to accomplish this could result in the trust not qualifying as an AMBT.

In addition, these other Designated Beneficiaries can be residual beneficiaries of the inherited IRA and its proceeds.

**E. Early Termination Provisions:** Third-party supplemental needs trusts often contain one or both of two provisions that are typically referred to as “savings clauses.” The first directs the trustee not to make distributions that would reduce or eliminate the beneficiary’s means-tested benefits unless doing so is in the beneficiary’s best interest. That is a limit on distributions, not a termination provision, and it does not affect whether a trust is an AMBT. The second is an early termination provision, which allows the trustee to end the trust, or the beneficiary’s interest in it, before the beneficiary’s death. For example, such a provision might apply if the trust assets would otherwise be counted as a resource of the beneficiary’s, or if the beneficiary no longer needs means-tested benefits.

The final regulations permit an early termination provision in an AMBT, but only if the requirement that no other beneficiary has any right to the inherited IRA until the death of all of the Disabled or Chronically Ill beneficiaries continues to apply.<sup>519</sup> As a result, if the trust is terminated during the lifetime of a Disabled or Chronically Ill beneficiary, the inherited IRA and any proceeds from it may go only to, or be held only for, a Disabled or Chronically Ill beneficiary identified in the trust. **A provision that would distribute the**

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<sup>519</sup> Treas. Reg. § 1.401(a)(9)-4(g)(2).

**inherited IRA or its proceeds to the remainder beneficiaries upon early termination prevents the trust from qualifying as an AMBT.**

An AMBT will almost always be a third-party trust.<sup>520</sup> For SSI purposes, a third-party trust is evaluated under POMS SI 01120.200. Under that section, trust principal is a countable resource of the beneficiary if the beneficiary (or the beneficiary's spouse) has the legal authority to revoke or terminate the trust and use the trust assets to meet the beneficiary's shelter needs, or can direct the use of the trust funds for those needs.<sup>521</sup> The POMS also recognizes that a trustee may hold the power to terminate a trust,<sup>522</sup> and the trustee's actions are not treated as the beneficiary's actions.<sup>523</sup> Thus, for SSI eligibility purposes, in a third-party trust, the question is whether the beneficiary can terminate the trust and obtain the trust assets.<sup>524</sup> A termination power held by the trustee does not by itself make a third-party trust a countable resource. But if the trust assets are actually distributed to the beneficiary, the ordinary SSI income and resource rules apply to them.<sup>525</sup>

A regional counsel opinion illustrates the point. The trust at issue was a third-party supplemental needs trust that allowed the trustee, if the trust rendered the beneficiary ineligible for public benefits, to terminate the trust and distribute the trust property as if the beneficiary had died, which means to the remainder beneficiaries, not to the beneficiary. The opinion concluded that the trust was not a countable resource, noting that although the trustee had discretion to terminate the trust, nothing in the trust instrument gave the beneficiary the power to revoke or terminate it.<sup>526</sup> **That same termination**

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<sup>520</sup> It is possible for an AMBT to be a first-party trust if the IRA owner was the beneficiary's spouse and the trust was established by the deceased spouse but not established under the deceased spouse's will. However, this is uncommon. See 42 U.S.C. § 1396p(d)(2)(A), (h)(1).

<sup>521</sup> Soc. Sec. Admin., Program Operations Manual System (POMS) SI 01120.200D.1.a (rev. May 6, 2024); see 20 C.F.R. § 416.1201(a) (resources are assets that could be converted to cash "to be used for his or her support and maintenance"). The POMS still refers to "food or shelter" needs, but SSA removed food from in-kind support and maintenance effective September 30, 2024. Omitting Food From In-Kind Support and Maintenance Calculations, 89 Fed. Reg. 21199 (Mar. 27, 2024).

<sup>522</sup> POMS SI 01120.200D.1.b.3.

<sup>523</sup> POMS SI 01120.200D.1.b.2.

<sup>524</sup> POMS SI 01120.200B.11.

<sup>525</sup> POMS SI 01120.200E.1.a.

<sup>526</sup> Soc. Sec. Admin., POMS PS 01825.006.EE, PS 19-005, Opinion: Evaluation of a Trust as a Countable Resource – NH Abramson (Sept. 18, 2018).

**provision, however, would prevent a trust holding an inherited IRA from qualifying as an AMBT**, because it would allow the inherited IRA and its proceeds to pass to the remainder beneficiaries during the Disabled or Chronically Ill beneficiary's lifetime.

Medicaid follows the same approach. The federal Medicaid trust statute applies only to a trust established with the beneficiary's own assets, including the assets of the beneficiary's spouse (unless established by the spouse's will). Such trusts include first-party special needs trusts and pooled trusts under 42 U.S.C. § 1396p(d)(4)(A) and (C).<sup>527</sup> The POMS restrictions on early termination provisions likewise apply only to first-party trusts. They permit early termination only if the State is reimbursed first, no one other than the beneficiary benefits, and someone other than the beneficiary holds the power to terminate.<sup>528</sup> Neither the statute nor these POMS restrictions applies to a third-party trust.<sup>529</sup> Instead, in most states, for aged, blind, and disabled individuals, the state Medicaid agency must generally apply the SSI methodologies, meaning a third-party trust is evaluated for Medicaid under the same SSI rules described above.<sup>530</sup> Because some states use more restrictive criteria, the treatment of a third-party trust should be confirmed under the law of the state where the beneficiary receives benefits.<sup>531</sup>

For a third-party supplemental needs trust, the limit on an early termination provision comes from the AMBT rules, not from the SSI or Medicaid rules. A common third-party provision allowing the trustee to terminate the trust and distribute to the remainder beneficiaries does not create an SSI problem, as the regional counsel opinion described above illustrates.<sup>532</sup> Applied to the portion of the trust holding an inherited IRA, however, that provision prevents the trust from qualifying as an AMBT. For that portion, the termination provision should provide that, during the lifetime of the Disabled or Chronically Ill beneficiary, the inherited IRA and its proceeds may be distributed only to, or held only for, that beneficiary. Because a distribution to the beneficiary will generally count for SSI purposes, a termination provision of this kind is most useful where the reason for terminating is that the beneficiary no longer needs means-tested benefits.

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<sup>527</sup> 42 U.S.C. § 1396p(d)(2)(A), (d)(4)(A), (d)(4)(C), (h)(1).

<sup>528</sup> POMS SI 01120.199.F.1.

<sup>529</sup> POMS SI 01120.201A.2 (rev. May 23, 2022); POMS SI 01120.200J.1.b.

<sup>530</sup> 42 C.F.R. § 435.601(a), (b)(2), (d); 42 C.F.R. § 435.121.

<sup>531</sup> POMS SI 01120.200M.1.a.

<sup>532</sup> See POMS PS 01825.006.EE (PS 19-005).

**F. Annual Required Minimum Distributions for an AMBT:** If the trust qualifies as an AMBT, then the Life Expectancy Rule<sup>533</sup> applies.<sup>534</sup> If the trust identifies only one Disabled or Chronically Ill beneficiary, that beneficiary's life expectancy is used to calculate the RMDs.<sup>535</sup> In an AMBT, only an individual who is Disabled or Chronically Ill can receive the benefit of distributions from the inherited IRA, and any proceeds derived from investing those distributions, while there are any beneficiaries of the trust who are EDBs who are Disabled or Chronically Ill.<sup>536</sup>

If the AMBT is an accumulation trust with more than one primary beneficiary who is Disabled or Chronically Ill, the annual RMDs from the inherited IRA to the trustee of the AMBT are based on the life expectancy of the oldest of those beneficiaries.<sup>537</sup> This applies even if there are older ODBs or EDBs who are not Disabled or Chronically Ill who are beneficiaries of the trust's non-IRA assets, or residual beneficiaries of the IRA share. The preamble to the final regulations describes this as follows,

[I]f the employee's beneficiary is an applicable multi-beneficiary trust, then only the disabled and chronically ill beneficiaries of the trust are taken into account in determining the oldest designated beneficiary.<sup>538</sup>

Whether the AMBT has one Disabled or Chronically Ill beneficiary or more than one, if the IRA owner died on or after the owner's Required Beginning Date, the Applicable Denominator is the greater of that beneficiary's (or the oldest such beneficiary's) life expectancy and the IRA owner's remaining "ghost" life expectancy.<sup>539</sup>

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<sup>533</sup> Treas. Reg. § 1.401(a)(9)-3(c)(4).

<sup>534</sup> Treas. Reg. § 1.401(a)(9)-3(c)(5)(i)(C).

<sup>535</sup> Treas. Reg. § 1.401(a)(9)-4(e)(2)(iii).

<sup>536</sup> Treas. Reg. § 1.401(a)(9)-4(g)(1)(iii).

<sup>537</sup> Treas. Reg. § 1.401(a)(9)-5(f)(1)(ii).

<sup>538</sup> Treas. Reg. Preamble § I.E.3.d, 89 Fed. Reg. 58886, 58898 (July 19, 2024).

<sup>539</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii), (f)(1)(ii).

**G. End Date of an AMBT:** The death of the last Disabled or Chronically Ill beneficiary of an AMBT triggers a ten-year payout of the IRA.<sup>540</sup> Annual RMDs continue during that ten-year period, calculated using the deceased beneficiary's remaining life expectancy (the same Applicable Denominator, reduced by one each year).<sup>541</sup>

To illustrate this, return to the Jane, Jack and Jill example in Section XIV, I, above. Assume the trust terms identify Jack as a beneficiary who is Disabled, and that Jack was Disabled as of Jane's death. The trust's interest in the inherited IRA is an AMBT: it has more than one beneficiary, all of its beneficiaries are Designated Beneficiaries, and Jill has no right to the IRA or its proceeds until Jack dies.<sup>542</sup> Jack is treated as an Eligible Designated Beneficiary even though Jill is not,<sup>543</sup> and only Jack's life expectancy is used to calculate the annual RMDs (or, if Jane died on or after her Required Beginning Date, the greater of Jack's life expectancy and Jane's remaining "ghost" life expectancy).<sup>544</sup>

After Jack's death, annual RMDs must continue to be distributed from the inherited IRA to the trust, calculated using the same Applicable Denominator that applied to Jack, reduced by one for each year after his death, and the inherited IRA must be fully distributed by December 31 of the year containing the 10th anniversary of Jack's death.<sup>545</sup> Jill then receives those distributions, and whatever remains, under the terms of the trust.

**H. Chart of AMBT Distribution Rules:** The following chart summarizes the RMD and End Date rules for an AMBT.<sup>546</sup>

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<sup>540</sup> Treas. Reg. § 1.401(a)(9)-5(e)(3), (f)(2)(iii).

<sup>541</sup> Treas. Reg. § 1.401(a)(9)-5(f)(2)(iii), (e)(3); Treas. Reg. § 1.401(a)(9)-4(f)(6)(i) (Example 1).

<sup>542</sup> Treas. Reg. § 1.401(a)(9)-4(g)(1).

<sup>543</sup> Treas. Reg. § 1.401(a)(9)-4(e)(2)(iii).

<sup>544</sup> Treas. Reg. § 1.401(a)(9)-5(f)(1)(ii), (d)(1)(ii).

<sup>545</sup> Treas. Reg. § 1.401(a)(9)-5(f)(2)(iii), (e)(3); Treas. Reg. § 1.401(a)(9)-4(f)(6)(i) (Example 1).

<sup>546</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii), (f)(1)(ii), (f)(2)(iii).

|                    | <b>IRA Owner Died Before RBD</b>                                                                                                             | <b>IRA Owner Died On or After RBD</b>                                                                                                              |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Annual RMDs</b> | Life expectancy of the oldest Disabled or Chronically Ill beneficiary identified in the trust                                                | Greater of: (i) life expectancy of the oldest Disabled or Chronically Ill beneficiary, or (ii) IRA owner's "ghost" life expectancy                 |
| <b>End Date</b>    | Earlier of: (i) end of 10th year after death of the last Disabled or Chronically Ill beneficiary, or (ii) final year of that life expectancy | Earlier of: (i) end of 10th year after death of the last Disabled or Chronically Ill beneficiary, or (ii) final year of the Applicable Denominator |

## **XVI. Example Illustrating Some of These Rules**

To illustrate the effect of some of these trust rules applying to inherited IRAs based on the final 2024 regulations and the proposed 2024 regulations, if applicable, consider the following example.

**1. Facts:** An IRA owner died on May 1, 2026, the year in which he would have attained age 75, after his Required Beginning Date, and named his revocable living trust as the beneficiary of an IRA. That trust instructs the trustee to divide the trust assets, including the IRA, into three equal separate shares: one for the benefit of his stepchild (Child 2) and each of his two children (Child 1 and Child 3). Each child's share is distributed to a trust established for the child's benefit.

If Child 1 or Child 2 does not survive IRA owner, or dies while the IRA is held in trust for their benefit, the deceased child's share is distributed to IRA owner's Sister, if she survives the IRA owner and deceased child; and if she does not, then the deceased child's share is divided equally among the other two children's shares.

If Child 3 does not survive IRA owner or dies while there are assets in trust for Child 3, then Child 3's share divides 50% to IRA owner's Sister, if she survives Child 3, and the remainder, or all if Sister does not survive, to a local § 501(c)(3) public charity serving individuals with Down syndrome.

On the date of the IRA owner's death, Child 1 is 45 years old and not Disabled or Chronically Ill, Child 2 (IRA owner's stepchild) is 15 years old and not Disabled or Chronically Ill, and Child 3 is 48 years old, severely disabled, and receiving assistance from SSI and Medicaid. IRA owner's Sister is age 66 and not Disabled or Chronically

III. The charitable organization named as a beneficiary of Child 3's trust is a charitable organization described in I.R.C. § 408(d)(8)(B)(i).<sup>547</sup>

For inherited IRA purposes, Child 1 is a "Designated Beneficiary who is not an Eligible Designated Beneficiary (an ODB)," Child 2 is an "Eligible Designated Beneficiary who is a minor child of the IRA owner" (despite being a stepchild of the IRA owner<sup>548</sup>), and Child 3 is an "Eligible Designated Beneficiary who is Disabled." Sister is an "Eligible Designated Beneficiary who is not more than 10 years younger" than IRA owner. The charitable organization is deemed to be a Designated Beneficiary of Child 3's trust because it meets the requirements of Treas. Reg. § 1.401(a)(9)-4(g)(3). See the description of Child 3's trust, below, for an explanation.

Although not required for an IRA, the trustee gave the custodian a copy of the living trust. Through the authority granted in the living trust, the trustee establishes the three separate trusts, one for each child. As directed by the terms of the living trust, the trustee instructs the IRA administrator to divide the IRA into three equal inherited IRAs and, via a trustee-to-trustee transfer, these inherited IRAs are transferred into each child's respective trust by December 31, 2027 (the year following the year when the IRA owner died).

**a. Analysis of IRA Owner's Living Trust:**

- 1) The IRA owner died after his Required Beginning Date,<sup>549</sup> so the rules applying to IRAs for owners who die after their Required Beginning Date are applied.
- 2) The IRA owner's trust and each subtrust established for the IRA owner's children qualify as see-through trusts.<sup>550</sup> The beneficiaries of

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<sup>547</sup> See *infra* Section XVI, 2,c for the analysis of Child 3's trust to understand the significance of this.

<sup>548</sup> "Child" includes an individual who is a naturally born child, legally adopted, stepchild, or eligible foster child. Treas. Reg. § 1.401(a)(9)-4(e)(1)(ii) and I.R.C. § 152(f)(1).

<sup>549</sup> Treas. Reg. § 1.401(a)(9)-2(b).

<sup>550</sup> This is because the living trust satisfies the requirements of Treas. Reg. § 1.401(a)(9)-4(f)(2): (1) the trust is valid under state law, (2) the trust is irrevocable because the IRA owner died, and (3) the trust beneficiaries are identifiable. The subtrusts also qualify as see-through trusts and, therefore, the beneficiaries of those trusts can be identified (Treas. Reg. § 1.401(a)(9)-4(f)(4)). Note that the documentation requirement of Treas. Reg. § 1.401(a)(9)-4(f)(2)(iv) and (h) does not apply to an IRA (Treas. Reg. § 1.408-8(b)(4)(ii)).

each subtrust are identified in the further description of each subtrust, below.

3) Because the living trust instructs the trustee to divide the trust assets into separate trusts for each beneficiary, each separate inherited IRA that is established for the benefit of each of the children is treated separately.<sup>551</sup> This means that each child's trust is analyzed using only its own beneficiaries when determining its RMDs and End Date.

4) Because each separate inherited IRA is treated separately, whether each beneficiary is a Designated Beneficiary is determined separately for each child's trust, not for the living trust as a whole.<sup>552</sup>

5) For IRA purposes, the primary beneficiaries of the IRA owner's living trust are the IRA owner's three children (one of whom is a stepchild). The residual beneficiaries are Sister, all three children, and the charitable organization.

## **2. Description and Analysis of Each Child's Trust:**

**a. Child 1's Trust:** Child 1 is 45 years old and not Disabled or Chronically Ill. The Trustee is instructed to hold the trust assets in trust until Child 1 attains age 60, then distribute remaining assets outright to Child 1. If Child 1 dies before age 60, the trust terminates and distributes to IRA owner's Sister, if she survives Child 1. If Sister does not survive Child 1, the remaining trust assets are divided equally and added to the shares established for Child 2 and Child 3. While in trust the income and assets can be used for the health, education, maintenance, and support of Child 1. In

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<sup>551</sup> Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(B). See supra Section X, D, 3 (contains description of requirements for the trusts to qualify for separate account treatment).

<sup>552</sup> Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(B) (the rules of §§ 1.401(a)(9)-4(f) and 1.401(a)(9)-5 "will apply separately to each separate trust"). Some of the facts relied upon for this statement are not revealed until the upcoming analysis of each child's trust. After that analysis, all countable beneficiaries are Designated Beneficiaries. The analysis of each child's trust follows. The IRA owner's three children and Sister are living individuals, thus satisfying Treas. Reg. § 1.401(a)(9)-4(a)(1). The charitable organization is a Designated Beneficiary only of Child 3's trust, which is an AMBT, because Treas. Reg. § 1.401(a)(9)-4(g)(3) applies only for purposes of determining whether a trust is an AMBT. Treas. Reg. § 1.401(a)(9)-4(g)(1)(i).

addition, all distributions received from an inherited IRA must be distributed to Child 1 upon receipt by the Trustee.

**1) Analysis of Child 1's Trust:**

A) All beneficiaries of Child 1's trust other than the charitable organization are Designated Beneficiaries. The charitable organization's status does not matter, because it is a residual beneficiary and is disregarded (see D) below).<sup>553</sup>

B) Child 1 is the only primary beneficiary.

C) Residual beneficiaries are Sister, Child 2, Child 3, and the charitable organization.

D) Child 1's trust is a conduit trust because all distributions received from an inherited IRA must be distributed to Child 1 upon receipt by the Trustee.<sup>554</sup> This means only Child 1, the sole primary beneficiary, is taken into account when determining RMDs and the End Date.<sup>555</sup> All residual beneficiaries are disregarded (ignored).

**2) Annual Distributions:** Annual RMDs must be made to Child 1.<sup>556</sup> The RMDs are based on the greater of (i) Child 1's life expectancy<sup>557</sup> or (ii) the deceased IRA owner's remaining ("ghost") life

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<sup>553</sup> All three of IRA owner's children and the owner's Sister are living individuals, thus satisfying Treas. Reg. § 1.401(a)(9)-4(a)(1). The charitable organization is not a Designated Beneficiary of Child 1's trust, because Treas. Reg. § 1.401(a)(9)-4(g)(3) applies only for purposes of determining whether a trust is an AMBT (Treas. Reg. § 1.401(a)(9)-4(g)(1)(i)), and Child 1's trust is not an AMBT. Because Child 1's trust is a conduit trust, however, the residual beneficiaries, including the charitable organization, are disregarded. Treas. Reg. § 1.401(a)(9)-4(f)(6)(i). This is more fully explained in the analysis of Child 3's trust.

<sup>554</sup> Treas. Reg. § 1.401(a)(9)-4(f)(1)(ii)(A).

<sup>555</sup> Treas. Reg. § 1.401(a)(9)-4(f)(6)(i) (contains an example of a conduit trust).

<sup>556</sup> See supra Section II, D (contains explanation why this is required).

<sup>557</sup> Child 1's life expectancy is used rather than the life expectancy of the oldest beneficiary of the IRA owner's living trust because the IRA owner's living trust did not give the trustee discretion regarding how to divide the IRA and the living trust terminated and distributed Child 1's portion of the IRA to Child 1's trust, thus satisfying the requirements of Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(B).

expectancy.<sup>558</sup> Since Child 1 is younger than the IRA owner, Child 1's life expectancy is used to determine the annual RMDs.

**3) End Date:** The End Date of Child 1's inherited IRA is December 31, 2036, which is the end of the year containing the 10th anniversary of the IRA owner's death.<sup>559</sup> Since this is a conduit trust, the total remaining value of the inherited IRA on this date will be distributed to Child 1. Other assets in Child 1's trust will continue to be held in the trust until Child 1 reaches age 60.

**b. Child 2's Trust:** Child 2, the IRA owner's stepchild, is 15 years old and not Disabled or Chronically Ill. The Trustee is instructed to hold all but the inherited IRA in trust until Child 2 attains age 60, then distribute remaining assets outright to Child 2. While in trust the income and assets can be used for the health, education, maintenance, and support of Child 2. Annual RMDs from the inherited IRA can be accumulated in the trust, and the remainder of the IRA, plus IRA distributions that have been accumulated and the investment proceeds derived from them, must be fully distributed to Child 2 by December 31 of the year (i) when Child 2 attains age 31, or (ii) the year following the year when the IRA owner died, if later. If Child 2 dies while assets remain in the trust, all trust assets distribute to IRA owner's Sister, if she survives Child 2. If Sister does not survive Child 2, the remaining trust assets are divided equally and added to the shares established for Child 1 and Child 3.

### **1) Analysis of Child 2's Trust:**

A) All beneficiaries of Child 2's trust other than the charitable organization are Designated Beneficiaries. The charitable organization's status does not matter, because all residual beneficiaries are disregarded (see C) below).<sup>560</sup> Child 2

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<sup>558</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii).

<sup>559</sup> Treas. Reg. § 1.401(a)(9)-5(e)(2).

<sup>560</sup> All three of IRA owner's children and the owner's Sister are living individuals, thus satisfying Treas. Reg. § 1.401(a)(9)-4(a)(1). The charitable organization is not a Designated Beneficiary of Child 2's trust, because Treas. Reg. § 1.401(a)(9)-4(g)(3) applies only for purposes of determining whether a trust is an AMBT (Treas. Reg. § 1.401(a)(9)-4(g)(1)(i)), and Child 2's trust is not an AMBT. It does not matter, however, because the charitable organization, like the other residual beneficiaries, can take only if Child 2 dies before full distribution

is an Eligible Designated Beneficiary because Child 2 is a minor child of IRA owner.<sup>561</sup>

B) Child 2 is the only primary beneficiary.<sup>562</sup> Residual beneficiaries are Sister, Child 1, Child 3, and the charitable organization.<sup>563</sup>

C) This is an accumulation trust.<sup>564</sup> Normally the residual beneficiaries who are not disregarded would have to be taken into account when determining who are the Designated Beneficiaries or Eligible Designated Beneficiaries of the trust. However, because the trust directs the trustee to distribute the full remaining and accumulated IRA and the investment proceeds derived from them, to Child 2 by the later of (i) the end of the calendar year following the calendar year of the IRA owner's death, and (ii) the end of the 10th year following the calendar year when Child 2 attains age 21, all residual beneficiaries are disregarded (ignored) for purposes of determining who is a beneficiary of the trust.<sup>565</sup>

**2) Annual Distributions:** Annual RMDs must be distributed from the inherited IRA to Child 2's trust because the IRA owner died after his Required Beginning Date.<sup>566</sup> Because Child 2 is an Eligible Designated Beneficiary,<sup>567</sup> the End Date is determined as described in paragraph 3) below rather than being ten years after the IRA owner's

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and is therefore disregarded. Treas. Reg. § 1.401(a)(9)-4(f)(3)(ii)(B). This is more fully explained in the analysis of Child 3's trust.

<sup>561</sup> I.R.C. § 152(f)(1)(A)(i) and Treas. Reg. § 1.401(a)(9)-4(e)(1)(ii).

<sup>562</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(i)(A).

<sup>563</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(i)(B).

<sup>564</sup> Treas. Reg. § 1.401(a)(9)-4(f)(1)(ii)(B).

<sup>565</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(ii)(B).

<sup>566</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(i). See supra Section II, D (contains an explanation why this is required).

<sup>567</sup> Treas. Reg. § 1.401(a)(9)-4(e)(1)(ii); Treas. Reg. § 1.401(a)(9)-5(d)(1)(i) (last two sentences), (e)(3), (e)(4).

death. The RMDs are based on Child 2's life expectancy. There are two reasons for this:

A) Child 2's trust requires the trustee to distribute the inherited IRA to Child 2 by the later of (i) the end of the calendar year following the calendar year of the IRA owner's death, and (ii) the end of the 10th year following the calendar year when Child 2 attains age 21. Therefore, the residual beneficiaries are disregarded (ignored),<sup>568</sup> and

B) The IRA was first paid to the IRA owner's living trust and that trust (i) did not give the trustee discretion regarding how to divide the IRA, (ii) terminated, and (iii) distributed Child 2's portion of the IRA to Child 2's separate trust by December 31, 2027. As a result, Child 2's trust receives separate account treatment,<sup>569</sup> meaning Child 2's life expectancy is used to determine the Applicable Denominator to calculate the annual RMDs for Child 2's trust. Because the IRA owner died after his Required Beginning Date, the Applicable Denominator is the greater of Child 2's remaining life expectancy and the IRA owner's remaining ("ghost") life expectancy.<sup>570</sup> Since Child 2 is younger than the IRA owner, Child 2's life expectancy is used.

**3) End Date:** The End Date of Child 2's inherited IRA is the earlier of the end of the calendar year that contains the 10th anniversary of the date Child 2 (i) attains the age of 21, or (ii) dies.<sup>571</sup> By this date the inherited IRA in Child 2's trust must be distributed to or for the benefit of Child 2 (if living; or the residual beneficiary if Child 2 is not living).<sup>572</sup> The remaining assets in Child 2's trust will remain in trust for Child 2 until Child 2 turns 60 years of age.

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<sup>568</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(ii)(B).

<sup>569</sup> Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(B).

<sup>570</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii).

<sup>571</sup> Treas. Reg. § 1.401(a)(9)-5(e)(1), (3), (4).

<sup>572</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(ii)(B).

**c. Child 3's Trust:** Child 3 is 48 years old, severely disabled, and receiving assistance from SSI and Medicaid. The Trustee is directed to accumulate income and distribute income and principal as needed for Child 3's special needs. Upon Child 3's death, any remaining trust assets are to be divided into two equal shares. One share is to be distributed to the IRA owner's Sister, who was age 66 when the IRA owner died. The second share, or both shares if the IRA owner's Sister does not survive Child 3, is to be distributed to a local § 501(c)(3) public charity serving individuals with Down syndrome.

**1) Analysis of Child 3's Trust:** This is a discretionary third-party supplemental needs trust. As such, the assets in this trust will not count as available resources for Child 3's eligibility for SSI and Medicaid benefits. The trust is an accumulation trust rather than a conduit trust for the same reason. A conduit trust would have to pass every RMD through to Child 3, which could reduce or eliminate Child 3's SSI and Medicaid benefits.<sup>573</sup>

A) Child 3 qualifies as an Eligible Designated Beneficiary who is Disabled.<sup>574</sup> This is because the Social Security Administration has determined that Child 3 is disabled (Child 3 receives SSI), and that determination was in effect on the date of the IRA owner's death.<sup>575</sup> Although evidence of this need not be given to the IRA custodian, it should be kept in the trust's file.<sup>576</sup>

B) Child 3's trust is an Applicable Multi-Beneficiary Trust (AMBT) because:

- 1) There is more than one beneficiary (Child 3, Sister, and the charitable organization);
- 2) All beneficiaries are Designated Beneficiaries:

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<sup>573</sup> See supra Section VII, D, 3.

<sup>574</sup> Treas. Reg. § 1.401(a)(9)-4(e)(1)(iii).

<sup>575</sup> Treas. Reg. § 1.401(a)(9)-4(e)(4)(iv).

<sup>576</sup> See supra Section XV, A, 2, d, 3.

i) Child 3 and the IRA owner's Sister are individuals who are living on the day the IRA owner died,<sup>577</sup> and

ii) The local § 501(c)(3) public charity serving individuals with Down syndrome is a charitable organization described in I.R.C. § 408(d)(8)(B)(i).<sup>578</sup>

While the general rule is that a charitable organization does not qualify as a Designated Beneficiary because it is not human and does not have a life expectancy,<sup>579</sup> the rules are different for an AMBT. This is because of Section 337 of the SECURE 2.0 Act of 2022.<sup>580</sup> This Section modifies the general rule for an AMBT by declaring that as of January 1, 2023, a qualifying charitable organization "shall be treated as a designated beneficiary" of an AMBT.

3) The trust provisions identify one or more primary beneficiaries of the trust who qualify as Disabled or Chronically Ill (i.e., Child 3), and

4) No beneficiary other than an Eligible Designated Beneficiary (EDB) who is Disabled or Chronically Ill (i.e., Child 3) will be able to receive any of the inherited IRA until all EDBs who are Disabled or Chronically Ill (i.e., Child 3) are no longer living.<sup>581</sup>

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<sup>577</sup> Treas. Reg. § 1.401(a)(9)-4(a)(1).

<sup>578</sup> Treas. Reg. § 1.401(a)(9)-4(g)(3).

<sup>579</sup> I.R.C. § 401(a)(9)(E)(i); Treas. Reg. § 1.401(a)(9)-4(b).

<sup>580</sup> SECURE 2.0 Act of 2022, Pub. L. No. 117-328, div. T, § 337, 136 Stat. 4459, 5373. The SECURE 2.0 Act of 2022 was signed into law on December 29, 2022, as Division T of the Consolidated Appropriations Act, 2023.

<sup>581</sup> I.R.C. § 401(a)(9)(H)(iv)(II); Treas. Reg. § 1.401(a)(9)-4(g)(1)(ii) and (iii).

C) Child 3 is the only primary beneficiary.<sup>582</sup> Residual beneficiaries are Sister and the local § 501(c)(3) public charity serving individuals with Down syndrome.<sup>583</sup>

D) This is an accumulation trust.<sup>584</sup> The residual beneficiaries (Sister and the charitable organization) therefore are taken into account in determining whether the trust qualifies as an AMBT, and each of them must be a Designated Beneficiary, as described in B) above.<sup>585</sup> However, because Child 3's trust is an AMBT, and Child 3 is the only beneficiary of this trust who qualifies as an EDB who is Disabled, only Child 3 is taken into account when determining the Applicable Denominator and the End Date. Sister and the charitable organization are not.<sup>586</sup>

**2) Annual Distributions:** Annual RMDs are required because the IRA owner died after his Required Beginning Date.<sup>587</sup> Because Child 3 is an Eligible Designated Beneficiary (EDB),<sup>588</sup> those RMDs are not limited to the ten years following the IRA owner's death, as they are for Child 1's trust; instead, the End Date is determined as described in paragraph 3) below. The RMDs are calculated using the Applicable Denominator based on Child 3's life expectancy. This is because:

A) The IRA was first paid to the IRA owner's living trust and that trust (i) did not give the trustee discretion regarding how

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<sup>582</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(i)(A).

<sup>583</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(i)(B).

<sup>584</sup> Treas. Reg. § 1.401(a)(9)-4(f)(1)(ii)(B).

<sup>585</sup> Treas. Reg. § 1.401(a)(9)-4(f)(3)(i)(B); Treas. Reg. § 1.401(a)(9)-4(g)(1)(i).

<sup>586</sup> Treas. Reg. § 1.401(a)(9)-4(g)(1)(ii); Treas. Reg. § 1.401(a)(9)-5(f)(1)(ii) (Applicable Denominator), (f)(2)(iii) (End Date).

<sup>587</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(i). See supra Section II, D (contains an explanation why this is required).

<sup>588</sup> Treas. Reg. § 1.401(a)(9)-4(e)(1)(iii), (e)(2)(iii); Treas. Reg. § 1.401(a)(9)-5(d)(1)(i) (last two sentences), (e)(3), (f)(2)(iii).

to divide the IRA, (ii) terminated, and (iii) distributed Child 3's portion of the IRA to Child 3's separate trust by December 31, 2027. As a result, Child 3's trust receives separate account treatment,<sup>589</sup> and the life expectancy of the beneficiaries of this trust (as opposed to the beneficiaries of the IRA owner's living trust) is used to determine the Applicable Denominator.

B) Even though not all beneficiaries are EDBs (only Child 3 and Sister are EDBs, the charitable organization is only treated as a DB) and the general rule says the trust should be treated as though there were no EDBs,<sup>590</sup> because this is an AMBT the beneficiary who is an EDB who is Disabled (i.e., Child 3) is treated as an EDB,<sup>591</sup> and therefore the Life Expectancy Rule is used.

C) Because Child 3's trust is an AMBT, only the primary beneficiaries identified in the trust as Disabled or Chronically Ill (here, only Child 3) are taken into account in determining the oldest beneficiary for purposes of the Applicable Denominator. Sister and the charitable organization are not.<sup>592</sup> Because the IRA owner died after his Required Beginning Date, the Applicable Denominator is the greater of Child 3's remaining life expectancy and the IRA owner's remaining ("ghost") life expectancy.<sup>593</sup> Since Child 3 is younger than the IRA owner, Child 3's life expectancy is used.

For example, assuming both the IRA owner's and Child 3's birthdays fall on or before May 1, Child 3 will be age 49 in 2027, the year following the IRA owner's death. The Single Life Table factor for age 49 is 37.1, which is greater than the IRA owner's remaining "ghost" life expectancy of 13.8 (14.8 in the

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<sup>589</sup> Treas. Reg. § 1.401(a)(9)-8(a)(1)(iii)(B).

<sup>590</sup> Treas. Reg. § 1.401(a)(9)-4(e)(2)(i).

<sup>591</sup> Treas. Reg. § 1.401(a)(9)-4(e)(2)(iii).

<sup>592</sup> Treas. Reg. § 1.401(a)(9)-5(f)(1)(ii); Treas. Reg. § 1.401(a)(9)-4(g)(1)(ii).

<sup>593</sup> Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii).

year of death, reduced by one). If Child 3's inherited IRA is worth \$400,000 on December 31, 2026, the 2027 RMD is \$10,781.67 ( $\$400,000 \div 37.1$ ).

**3) End Date:** The End Date of Child 3's inherited IRA is the earlier of (i) December 31 of the final year of Child 3's life expectancy, or (ii) December 31 of the year that contains the 10th anniversary of the death of Child 3.<sup>594</sup>

This applies even if the IRA owner's Sister survived Child 3. Sister is an EDB because she was not more than 10 years younger than the IRA owner. Normally, this would mean Sister can draw the IRA out over her Life Expectancy. However, that only applies if Sister had been a primary beneficiary of the inherited IRA. Because Sister is a residual beneficiary of this IRA, the general rule does not apply. Instead, Treas. Reg. § 1.401(a)(9)-5(f)(2)(iii) requires the remaining IRA to be fully distributed by December 31 of the year containing the 10th anniversary of Child 3's death, with annual RMDs continuing in the meantime. There is no exception if the residual beneficiary happens to be an EDB.<sup>595</sup>

## **XVII. Random Final Thoughts**

**A.** After an estate plan is designed, then consider how to treat any IRAs. Is there a beneficiary who would be a better recipient of the IRA than other beneficiaries? Or a beneficiary who should not receive any of the IRA (because, perhaps, the beneficiary is much older than other beneficiaries)?

**B.** If the estate plan includes distributing an IRA to a trust with multiple beneficiaries, and if it would be better to allow each beneficiary to be able to use their own life expectancy to calculate any RMDs that the IRA may have to distribute (i.e., if separate account treatment is desired), then the trust must direct how the IRA is to be divided among the beneficiaries. If the trustee has discretion to allocate some or all of the IRA to one or more beneficiaries, or trusts for beneficiaries, the life expectancy of the oldest Designated Beneficiary of the trust receiving the IRA will be used to determine RMDs for all beneficiaries, even after the IRA is divided and distributed to the beneficiaries.

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<sup>594</sup> Treas. Reg. § 1.401(a)(9)-5(f)(2)(iii).

<sup>595</sup> I.R.C. § 401(a)(9)(H)(iii).

**C.** If an IRA is distributing to a trust for the benefit of an individual, then consider putting language in the trust document that requires the establishment of (or allows the trustee discretion to establish) a subtrust in the beneficiary's trust to hold the IRA. Doing this allows control of how the IRA will be treated no matter what the distribution provisions are in the trust. It also isolates all IRA distributions, plus the proceeds received when accumulated IRA distributions are invested, so they can be traced and documented that they were distributed appropriately.

**D.** If an IRA distributes to an accumulation trust, the residual beneficiaries will be taken into account when determining how the IRA must be distributed unless (i) the trust requires the IRA to be fully distributed to a young primary beneficiary by the later of the end of the year following the year of the IRA owner's death or the end of the year containing the 10th anniversary of the date that beneficiary turns age 21, or (ii) the trust is an AMBT, in which case the residual beneficiaries still must be Designated Beneficiaries but are disregarded when determining the Applicable Denominator and End Date. Carefully think through who those residual beneficiaries should be and design the estate plan accordingly. (See Section XIV, H, 2, c).

**E.** On the other hand, if an IRA distributes to a conduit trust, then only the primary beneficiaries are considered when determining how the IRA must be distributed.

**F.** Keep in mind that upon the death of the last Disabled or Chronically Ill beneficiary of an AMBT, any remaining IRA must be distributed by the end of the 10th year following the beneficiary's death and RMDs must be paid using the life expectancy of the deceased Disabled or Chronically Ill beneficiary. This applies even if the residual beneficiary is also an EDB, even one who is Disabled or Chronically Ill.

**G.** If there are multiple Disabled or Chronically Ill beneficiaries, it is possible to establish one AMBT for all of them. This will allow each of them to continue to receive annual RMDs until the last one dies. The life expectancy of the oldest Disabled or Chronically Ill beneficiary will be used to calculate the annual RMDs.

**H.** If there are multiple Disabled or Chronically Ill beneficiaries and separate AMBTs are established for each of them, upon the death of a Disabled or Chronically Ill beneficiary (the "deceased beneficiary") any remaining inherited IRA payable to the AMBT of another Disabled or Chronically Ill beneficiary must be fully distributed by December 31 of the year that contains the 10th anniversary of the deceased beneficiary's death and RMDs during the 10-year period will be based on the life expectancy of the deceased beneficiary.

**I.** If a minor child of the IRA owner also qualifies as a Disabled EDB, then be sure to gather verification of the disability in case there is ever a need to prove the child was sufficiently disabled when the IRA owner died to qualify for EDB status and be able to stretch RMDs and End Date for the child's life expectancy. If ever questioned and this information cannot be produced it may result in the inherited IRA being required to be fully distributed no later than December 31 of the year when the child reaches age 31. On the other hand, if verification of the disability is provided when required, then the inherited IRA can be distributed over the entire life expectancy of the child.

**J.** Keep in mind that the IRA owner's surviving spouse must be the sole beneficiary of the IRA or of a separate account in order for the surviving spouse to be able to qualify for certain exceptions that only apply to the surviving spouse, or in order for the IRA owner to be able to use the Joint and Last Survivor Table to calculate annual RMDs during the IRA owner's life if the owner's spouse is more than 10 years younger than the IRA owner.

**K.** If the IRA owner has died and an IRA is payable to a trust established by the owner, be sure to review the trust provisions to determine the impact of the IRA. Keep in mind that it is possible to alter the beneficiaries of the trust until September 30 of the year following the year when the IRA owner died (the Beneficiary Finalization Date). If necessary, consider distributing an amount equal to the entire benefit early to beneficiaries who are older or do not qualify as a Designated Beneficiary (or if applicable, an Eligible Designated Beneficiary), or having that beneficiary execute a qualified disclaimer. In addition, there may be a power of appointment power in the trust that can be exercised, or it may be appropriate to decant or modify the trust.

**L.** If the IRA owner has died and an IRA is payable directly to multiple beneficiaries, a beneficiary can be removed by executing a qualified disclaimer or by receiving a full distribution of that beneficiary's share no later than the Beneficiary Finalization Date (September 30 of the year after the IRA owner died). Alternatively, the IRA can be divided into separate accounts (separate IRAs), one for each beneficiary, so that each beneficiary's share is treated separately, but this must be done no later than December 31 of the year after the IRA owner died. (See Section X, D and E).

**M.** If a trust is intended to be an AMBT, the trust terms must identify the Disabled or Chronically Ill beneficiary as a primary beneficiary of the trust. (See Section XVI, 2, c, 1).

**N.** While any Disabled or Chronically Ill beneficiary of an AMBT is living, no other beneficiary may have any right to the inherited IRA. A charitable organization may be a residual beneficiary, but only if it is described in I.R.C. § 170(b)(1)(A) and is not a supporting organization or a donor advised fund. A charity that does not meet this definition will prevent the trust from qualifying as an AMBT. (See Sections XV, A, 1 and XV, C, 2).

**O.** A provision allowing the trustee to terminate the Disabled or Chronically Ill beneficiary's interest in order to protect eligibility for public benefits does not disqualify the AMBT, but only if no one else can receive any of the inherited IRA until that beneficiary dies. (See Treas. Reg. § 1.401(a)(9)-4(g)(2) and Section XV, E).

**P.** Although documentation of a beneficiary's disability or chronic illness no longer needs to be provided to the IRA custodian, keep the Social Security Administration's determination or the health care practitioner's certification in the file. If the beneficiary's status is ever questioned, the trustee must be able to prove it. (See Sections III, E, 4; XV, A, 2, d, 3); and XV, A, 3, d, 3)).

**Q.** If the Disabled or Chronically Ill beneficiary receives SSI or Medicaid, use an accumulation trust, not a conduit trust. A conduit trust must pass every IRA distribution through to the beneficiary, which can reduce or eliminate those benefits. (See Sections VII, D, 3 and XIV, H, 1, f, 2)).

## Appendix A – Chart of IRA Distribution Rules for Individual Beneficiaries

| Beneficiary                                                                                        | IRA Owner Death Before RBD                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                          | IRA Owner Death On or After RBD                                                                                       |                                                                                                                                                                                                             |
|----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                    | Annual Distributions                                                                                                                                                             | End Date                                                                                                                                                                                                                                                                                                                 | Annual Distributions                                                                                                  | End Date                                                                                                                                                                                                    |
| <b>Not DB</b>                                                                                      | None                                                                                                                                                                             | End of 5th year after IRA owner's death                                                                                                                                                                                                                                                                                  | RMDs based on deceased IRA owner's "ghost" life expectancy                                                            | End of last year of deceased IRA owner's "ghost" life expectancy                                                                                                                                            |
| <b>DB but not EDB</b>                                                                              | None                                                                                                                                                                             | End of 10th year after IRA owner's death                                                                                                                                                                                                                                                                                 | RMDs based on greater of: (i) DB's life expectancy, or (ii) IRA owner's "ghost" life expectancy                       | Earlier of: (i) end of 10th year after IRA owner's death, or (ii) final year of DB's life expectancy                                                                                                        |
| <b>EDB - Not &gt; 10 years younger than IRA owner, Disabled or Chronically Ill</b>                 | Life Expectancy of EDB                                                                                                                                                           | Earlier of: (i) end of 10th year after EDB's death, or (ii) final year of EDB's life expectancy                                                                                                                                                                                                                          | Life Expectancy Rule. RMDs based on greater of (i) EDB's life expectancy, or (ii) IRA owner's "ghost" life expectancy | Earlier of: (i) end of 10th year after EDB's death, or (ii) final year of greater of EDB's life expectancy or IRA owner's "ghost" life expectancy                                                           |
| <b>EDB - Minor Child of IRA owner</b>                                                              | Life Expectancy of child until age 21; then 10-Year Rule with annual RMDs                                                                                                        | Earlier of end of year containing 10th anniversary of: Death of child, or child turning age 21                                                                                                                                                                                                                           | Life Expectancy of child until age 21; then 10-Year Rule with annual RMDs                                             | Earlier of end of year containing 10th anniversary of: (i) Death of child, or (ii) child turning age 21                                                                                                     |
| <b>EDB - Surviving Spouse as sole beneficiary<br/><br/>(if does not roll over to spouse's IRA)</b> | Life expectancy of spouse, recalculated annually, RMDs beginning on later of: (i) year following IRA owner's death, or (ii) year IRA owner would have reached the Applicable Age | <u>If spouse dies before RMDs begin:</u> spouse is substituted for IRA owner and spouse's date of death used.<br><u>If spouse dies on or after RMDs start:</u> Earlier of: (i) 10th anniversary of spouse's death, or (ii) final year of spouse's life expectancy (as of calendar year of death, reduced by 1 each year) | Greater of (i) spouse's life expectancy, recalculated annually, or (ii) IRA owner's "ghost" life expectancy           | Earlier of: (i) 10th anniversary of spouse's death, or (ii) final year of greater of spouse's life expectancy (as of calendar year of death, reduced by 1 each year) or IRA owner's "ghost" life expectancy |

These rules may be different if the IRA is payable to a trust.

See Sections XIV and XV; the rules for an AMBT are summarized in the chart in Section XV, H.

(Updated October 7, 2026)

## Appendix A Continued – Authorities for Chart

| Beneficiary                                                                               | IRA Owner Death Before RBD                                                                                                                                  |                                                                                                                                                                                              | IRA Owner Death On or After RBD                               |                                                                                                   |
|-------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
|                                                                                           | Annual Distributions                                                                                                                                        | End Date                                                                                                                                                                                     | Annual Distributions                                          | End Date                                                                                          |
| <b>Not DB</b>                                                                             | Treas. Reg. § 1.401(a)(9)-3(c)(5)(i)(A), (c)(2)                                                                                                             | Treas. Reg. § 1.401(a)(9)-3(c)(2)                                                                                                                                                            | Treas. Reg. § 1.401(a)(9)-5(d)(1)(iii), (d)(3)(ii)            | Treas. Reg. § 1.401(a)(9)-5(a)(1), (d)(3)(ii)                                                     |
| <b>DB but not EDB</b>                                                                     | Treas. Reg. § 1.401(a)(9)-3(c)(5)(i)(B), (c)(3)                                                                                                             | Treas. Reg. § 1.401(a)(9)-3(c)(3); -5(e)(2)                                                                                                                                                  | Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii), (d)(3)(ii)-(iii)       | (i) Treas. Reg. § 1.401(a)(9)-5(e)(2);<br>(ii) -5(a)(1),<br>(d)(3)(iii)                           |
| <b>EDB - Not &gt; 10 years younger than IRA owner, Disabled or Chronically Ill</b>        | Treas. Reg. §§ 1.401(a)(9)-3(c)(4), (c)(5)(i)(C); 1.401(a)(9)-5(d)(2), (d)(3)(iii)                                                                          | (i) Treas. Reg. § 1.401(a)(9)-5(e)(3);<br>(ii) -5(a)(1), (d)(3)(iii)                                                                                                                         | Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii), (d)(3)(ii)-(iii)       | (i) Treas. Reg. § 1.401(a)(9)-5(e)(3);<br>(ii) -5(a)(1),<br>(d)(1)(ii), (d)(3)                    |
| <b>EDB - Minor Child of IRA owner</b>                                                     | Treas. Reg. §§ 1.401(a)(9)-3(c)(4); 1.401(a)(9)-5(d)(2), (d)(3)(iii)                                                                                        | Treas. Reg. § 1.401(a)(9)-5(e)(3), (e)(4); -4(e)(3) (age of majority is 21)                                                                                                                  | Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii), (d)(3)(iii)            | Treas. Reg. § 1.401(a)(9)-5(e)(3), (e)(4); -4(e)(3)                                               |
| <b>EDB - Surviving Spouse as sole beneficiary (if does not roll over to spouse's IRA)</b> | Treas. Reg. §§ 1.401(a)(9)-3(c)(4); 1.401(a)(9)-5(d)(2), (d)(3)(iv). <u>Delayed start</u> : I.R.C. § 401(a)(9)(B)(iv)(I);<br>Treas. Reg. § 1.401(a)(9)-3(d) | <u>Spouse dies before RMDs begin</u> : I.R.C. § 401(a)(9)(B)(iv)(II);<br>Treas. Reg. § 1.401(a)(9)-3(e)(1).<br><u>Spouse dies after RMDs begin</u> : (i) -5(e)(3); (ii) -5(a)(1), (d)(3)(iv) | Treas. Reg. § 1.401(a)(9)-5(d)(1)(ii), (d)(3)(ii), (d)(3)(iv) | (i) Treas. Reg. § 1.401(a)(9)-5(e)(3);<br>(ii) -5(a)(1),<br>(d)(1)(ii), (d)(3)(ii),<br>(d)(3)(iv) |

(Updated October 7, 2026)

## Appendix B – Single Life Table

| Age | AD   | Age | AD   | Age | AD   | Age | AD   | Age  | AD  |
|-----|------|-----|------|-----|------|-----|------|------|-----|
| 0   | 84.6 | 25  | 60.2 | 50  | 36.2 | 75  | 14.8 | 100  | 2.8 |
| 1   | 83.7 | 26  | 59.2 | 51  | 35.3 | 76  | 14.1 | 101  | 2.6 |
| 2   | 82.8 | 27  | 58.2 | 52  | 34.3 | 77  | 13.3 | 102  | 2.5 |
| 3   | 81.8 | 28  | 57.3 | 53  | 33.4 | 78  | 12.6 | 103  | 2.3 |
| 4   | 80.8 | 29  | 56.3 | 54  | 32.5 | 79  | 11.9 | 104  | 2.2 |
| 5   | 79.8 | 30  | 55.3 | 55  | 31.6 | 80  | 11.2 | 105  | 2.1 |
| 6   | 78.8 | 31  | 54.4 | 56  | 30.6 | 81  | 10.5 | 106  | 2.1 |
| 7   | 77.9 | 32  | 53.4 | 57  | 29.8 | 82  | 9.9  | 107  | 2.1 |
| 8   | 76.9 | 33  | 52.5 | 58  | 28.9 | 83  | 9.3  | 108  | 2.0 |
| 9   | 75.9 | 34  | 51.5 | 59  | 28.0 | 84  | 8.7  | 109  | 2.0 |
| 10  | 74.9 | 35  | 50.5 | 60  | 27.1 | 85  | 8.1  | 110  | 2.0 |
| 11  | 73.9 | 36  | 49.6 | 61  | 26.2 | 86  | 7.6  | 111  | 2.0 |
| 12  | 72.9 | 37  | 48.6 | 62  | 25.4 | 87  | 7.1  | 112  | 2.0 |
| 13  | 71.9 | 38  | 47.7 | 63  | 24.5 | 88  | 6.6  | 113  | 1.9 |
| 14  | 70.9 | 39  | 46.7 | 64  | 23.7 | 89  | 6.1  | 114  | 1.9 |
| 15  | 69.9 | 40  | 45.7 | 65  | 22.9 | 90  | 5.7  | 115  | 1.8 |
| 16  | 69.0 | 41  | 44.8 | 66  | 22.0 | 91  | 5.3  | 116  | 1.8 |
| 17  | 68.0 | 42  | 43.8 | 67  | 21.2 | 92  | 4.9  | 117  | 1.6 |
| 18  | 67.0 | 43  | 42.9 | 68  | 20.4 | 93  | 4.6  | 118  | 1.4 |
| 19  | 66.0 | 44  | 41.9 | 69  | 19.6 | 94  | 4.3  | 119  | 1.1 |
| 20  | 65.0 | 45  | 41.0 | 70  | 18.8 | 95  | 4.0  | 120+ | 1.0 |
| 21  | 64.1 | 46  | 40.0 | 71  | 18.0 | 96  | 3.7  |      |     |
| 22  | 63.1 | 47  | 39.0 | 72  | 17.2 | 97  | 3.4  |      |     |
| 23  | 62.1 | 48  | 38.1 | 73  | 16.4 | 98  | 3.2  |      |     |
| 24  | 61.1 | 49  | 37.1 | 74  | 15.6 | 99  | 3.0  |      |     |

**AD** = Applicable Denominator (Life Expectancy at that age)

Treas. Reg. § 1.401(a)(9)-9(b).

## Appendix C – Uniform Lifetime Table

(Ages 10-71 are proposed;  
ages 72 and older are the final table in Treas. Reg. § 1.401(a)(9)-9(c).)

| Age | AD   | Age | AD   | Age | AD   | Age | AD   | Age  | AD  |
|-----|------|-----|------|-----|------|-----|------|------|-----|
| 10  | 88.2 | 33  | 65.3 | 56  | 42.6 | 79  | 21.1 | 102  | 5.6 |
| 11  | 87.2 | 34  | 64.3 | 57  | 41.6 | 80  | 20.2 | 103  | 5.2 |
| 12  | 86.2 | 35  | 63.3 | 58  | 40.7 | 81  | 19.4 | 104  | 4.9 |
| 13  | 85.2 | 36  | 62.3 | 59  | 39.7 | 82  | 18.5 | 105  | 4.6 |
| 14  | 84.2 | 37  | 61.3 | 60  | 38.7 | 83  | 17.7 | 106  | 4.3 |
| 15  | 83.2 | 38  | 60.3 | 61  | 37.7 | 84  | 16.8 | 107  | 4.1 |
| 16  | 82.2 | 39  | 59.4 | 62  | 36.8 | 85  | 16.0 | 108  | 3.9 |
| 17  | 81.2 | 40  | 58.4 | 63  | 35.8 | 86  | 15.2 | 109  | 3.7 |
| 18  | 80.2 | 41  | 57.4 | 64  | 34.9 | 87  | 14.4 | 110  | 3.5 |
| 19  | 79.2 | 42  | 56.4 | 65  | 33.9 | 88  | 13.7 | 111  | 3.4 |
| 20  | 78.2 | 43  | 55.4 | 66  | 33.0 | 89  | 12.9 | 112  | 3.3 |
| 21  | 77.2 | 44  | 54.4 | 67  | 32.0 | 90  | 12.2 | 113  | 3.1 |
| 22  | 76.2 | 45  | 53.4 | 68  | 31.1 | 91  | 11.5 | 114  | 3.0 |
| 23  | 75.2 | 46  | 52.4 | 69  | 30.1 | 92  | 10.8 | 115  | 2.9 |
| 24  | 74.2 | 47  | 51.5 | 70  | 29.2 | 93  | 10.1 | 116  | 2.8 |
| 25  | 73.3 | 48  | 50.5 | 71  | 28.3 | 94  | 9.5  | 117  | 2.7 |
| 26  | 72.3 | 49  | 49.5 | 72  | 27.4 | 95  | 8.9  | 118  | 2.5 |
| 27  | 71.3 | 50  | 48.5 | 73  | 26.5 | 96  | 8.4  | 119  | 2.3 |
| 28  | 70.3 | 51  | 47.5 | 74  | 25.5 | 97  | 7.8  | 120+ | 2.0 |
| 29  | 69.3 | 52  | 46.5 | 75  | 24.6 | 98  | 7.3  |      |     |
| 30  | 68.3 | 53  | 45.6 | 76  | 23.7 | 99  | 6.8  |      |     |
| 31  | 67.3 | 54  | 44.6 | 77  | 22.9 | 100 | 6.4  |      |     |
| 32  | 66.3 | 55  | 43.6 | 78  | 22.0 | 101 | 6.0  |      |     |

Sources: Treas. Reg. § 1.401(a)(9)-9(c) (ages 72 and older); Prop. Treas. Reg. § 1.401(a)(9)-9(c), 89 Fed. Reg. 58644, 58651-52 (July 19, 2024) (ages 10-71; not yet final, see Section II, F). The table for all ages was first published in I.R.S. Notice 2022-6, 2022-5 I.R.B. 460 (Jan. 31, 2022), for use in calculating substantially equal periodic payments.

**AD** = Applicable Denominator (the distribution period for an individual of that age)

## **Appendix D – 26 C.F.R. § 1.72-17A(f) – Meaning of Disabled**

**(1)** Section 72(m)(7) provides that an individual shall be considered to be disabled if he 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. In determining whether an individual's impairment makes him unable to engage in any substantial gainful activity, primary consideration shall be given to the nature and severity of his impairment. Consideration shall also be given to other factors such as the individual's education, training, and work experience. The substantial gainful activity to which section 72(m)(7) refers is the activity, or a comparable activity, in which the individual customarily engaged prior to the arising of the disability or prior to retirement if the individual was retired at the time the disability arose.

**(2)** Whether or not the impairment in a particular case constitutes a disability is to be determined with reference to all the facts in the case. The following are examples of impairments which would ordinarily be considered as preventing substantial gainful activity:

(i) Loss of use of two limbs;

(ii) Certain progressive diseases which have resulted in the physical loss or atrophy of a limb, such as diabetes, multiple sclerosis, or Buerger's disease;

(iii) Diseases of the heart, lungs, or blood vessels which have resulted in major loss of heart or lung reserve as evidenced by X-ray, electrocardiogram, or other objective findings, so that despite medical treatment breathlessness, pain, or fatigue is produced on slight exertion, such as walking several blocks, using public transportation, or doing small chores;

(iv) Cancer which is inoperable and progressive;

(v) Damage to the brain or brain abnormality which has resulted in severe loss of judgment, intellect, orientation, or memory;

(vi) Mental diseases (e.g. psychosis or severe psychoneurosis) requiring continued institutionalization or constant supervision of the individual;

(vii) Loss or diminution of vision to the extent that the affected individual has a central visual acuity of no better than 20/200 in the better eye after best correction, or has a limitation in the fields of vision such that the widest diameter of the visual fields subtends an angle no greater than 20 degrees;

(viii) Permanent and total loss of speech;

(ix) Total deafness uncorrectable by a hearing aid.

The existence of one or more of the impairments described in this subparagraph (or of an impairment of greater severity) will not, however, in and of itself always permit a finding that an individual is disabled as defined in section 72(m)(7). Any impairment, whether of lesser or greater severity, must be evaluated in terms of whether it does in fact prevent the individual from engaging in his customary or any comparable substantial gainful activity.

**(3)** In order to meet the requirements of section 72(m)(7), an impairment must be expected either to continue for a long and indefinite period or to result in death. Ordinarily, a terminal illness because of disease or injury would result in disability. The term "indefinite" is used in the sense that it cannot reasonably be anticipated that the impairment will, in the foreseeable future, be so diminished as no longer to prevent substantial gainful activity. For example, an individual who suffers a bone fracture which prevents him from working for an extended period of time will not be considered disabled, if his recovery can be expected in the foreseeable future; if the fracture persistently fails to knit, the individual would ordinarily be considered disabled.

**(4)** An impairment which is remediable does not constitute a disability within the meaning of section 72(m)(7). An individual will not be deemed disabled if, with reasonable effort and safety to himself, the impairment can be diminished to the extent that the individual will not be prevented by the impairment from engaging in his customary or any comparable substantial gainful activity.

[T.D. 7636, 44 FR 47049, Aug. 10, 1979, as amended by T.D. 8894, 65 FR 46591, July 31, 2000; T.D. 9849, 84 FR 9233, Mar. 14, 2019]

## **Appendix E – I.R.C. § 7702B(a) through (c)**

### **(a) In general**

For purposes of this title–

- (1) a qualified long-term care insurance contract shall be treated as an accident and health insurance contract,
- (2) amounts (other than policyholder dividends, as defined in section 808, or premium refunds) received under a qualified long-term care insurance contract shall be treated as amounts received for personal injuries and sickness and shall be treated as reimbursement for expenses actually incurred for medical care (as defined in section 213(d)),
- (3) any plan of an employer providing coverage under a qualified long-term care insurance contract shall be treated as an accident and health plan with respect to such coverage,
- (4) except as provided in subsection (e)(3), amounts paid for a qualified long-term care insurance contract providing the benefits described in subsection (b)(2)(A) shall be treated as payments made for insurance for purposes of section 213(d)(1)(D), and
- (5) a qualified long-term care insurance contract shall be treated as a guaranteed renewable contract subject to the rules of section 816(e).

### **(b) Qualified long-term care insurance contract**

For purposes of this title–

#### **(1) In general**

The term “qualified long-term care insurance contract” means any insurance contract if–

- (A) the only insurance protection provided under such contract is coverage of qualified long-term care services,
  - (B) such contract does not pay or reimburse expenses incurred for services or items to the extent that such expenses are reimbursable under title XVIII of the Social Security Act or would be so reimbursable but for the application of a deductible or coinsurance amount,
  - (C) such contract is guaranteed renewable,
  - (D) such contract does not provide for a cash surrender value or other money that can be–
    - (i) paid, assigned, or pledged as collateral for a loan, or
    - (ii) borrowed,
- other than as provided in subparagraph (E) or paragraph (2)(C),

(E) all refunds of premiums, and all policyholder dividends or similar amounts, under such contract are to be applied as a reduction in future premiums or to increase future benefits, and

(F) such contract meets the requirements of subsection (g).

(2) Special rules

(A) Per diem, etc. payments permitted

A contract shall not fail to be described in subparagraph (A) or (B) of paragraph (1) by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate.

(B) Special rules relating to medicare

(i) Paragraph (1)(B) shall not apply to expenses which are reimbursable under title XVIII of the Social Security Act only as a secondary payor.

(ii) No provision of law shall be construed or applied so as to prohibit the offering of a qualified long-term care insurance contract on the basis that the contract coordinates its benefits with those provided under such title.

(C) Refunds of premiums

Paragraph (1)(E) shall not apply to any refund on the death of the insured, or on a complete surrender or cancellation of the contract, which cannot exceed the aggregate premiums paid under the contract. Any refund on a complete surrender or cancellation of the contract shall be includible in gross income to the extent that any deduction or exclusion was allowable with respect to the premiums.

(c) Qualified long-term care services

For purposes of this section—

(1) In general

The term “qualified long-term care services” means necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, and rehabilitative services, and maintenance or personal care services, which—

(A) are required by a chronically ill individual, and

(B) are provided pursuant to a plan of care prescribed by a licensed health care practitioner.

**(2) Chronically ill individual**

(A) In general

The term “chronically ill individual” means any individual who has been certified by a licensed health care practitioner as—

- (i) 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,
- (ii) having a level of disability similar (as determined under regulations prescribed by the Secretary in consultation with the Secretary of Health and Human Services) to the level of disability described in clause (i), or
- (iii) requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.

Such term shall not include any individual otherwise meeting the requirements of the preceding sentence unless within the preceding 12-month period a licensed health care practitioner has certified that such individual meets such requirements.

(B) Activities of daily living

For purposes of subparagraph (A), each of the following is an activity of daily living:

- (i) Eating.
- (ii) Toileting.
- (iii) Transferring.
- (iv) Bathing.
- (v) Dressing.
- (vi) Continence.

A contract shall not be treated as a qualified long-term care insurance contract unless the determination of whether an individual is a chronically ill individual described in subparagraph (A)(i) takes into account at least 5 of such activities.

(3) Maintenance or personal care services

The term “maintenance or personal care services” means any care the primary purpose of which is the provision of needed assistance with any of the disabilities as a result of which the individual is a chronically ill individual (including the protection from threats to health and safety due to severe cognitive impairment).

(4) Licensed health care practitioner

The term “licensed health care practitioner” means any physician (as defined in section 1861(r)(1) of the Social Security Act) and any registered professional nurse, licensed social worker, or other individual who meets such requirements as may be prescribed by the Secretary.

## **Appendix F – Code Sections Related to Charitable Organizations Deemed to be a Designated Beneficiary of an AMBT**

### **I.R.C. § 170(b)(1)(A)**

#### **(b) Percentage limitations**

##### **(1) Individuals**

In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

##### **(A) General rule**

Any charitable contribution to—

(i) a church or a convention or association of churches,

(ii) an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on,

(iii) an organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

(iv) an organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a)) from the United States or any State or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a State or political subdivision thereof, or which is owned or operated by a State or political subdivision thereof or by an agency or instrumentality of one or more States or political subdivisions,

(v) a governmental unit referred to in subsection (c)(1),

(vi) an organization referred to in subsection (c)(2) which normally receives a substantial part of its support (exclusive of income received in the exercise or

performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501(a) from a governmental unit referred to in subsection (c)(1) or from direct or indirect contributions from the general public,

(vii) a private foundation described in subparagraph (F),

(viii) an organization described in section 509(a)(2) or (3), or

(ix) an agricultural research organization directly engaged in the continuous active conduct of agricultural research (as defined in section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977) in conjunction with a land-grant college or university (as defined in such section) or a non-land grant college of agriculture (as defined in such section), and during the calendar year in which the contribution is made such organization is committed to spend such contribution for such research before January 1 of the fifth calendar year which begins after the date such contribution is made,

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

### **I.R.C. 509(a)(3) – Supporting Organization**

an organization which—

(A) is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in paragraph (1) or (2),

(B) is—

(i) operated, supervised, or controlled by one or more organizations described in paragraph (1) or (2),

(ii) supervised or controlled in connection with one or more such organizations, or

(iii) operated in connection with one or more such organizations, and

(C) is not controlled directly or indirectly by one or more disqualified persons (as defined in section 4946) other than foundation managers and other than one or more organizations described in paragraph (1) or (2)

### **A supporting organization is defined on the IRS website as follows:**

A supporting organization is a charity that carries out its exempt purposes by supporting other exempt organizations, usually other public charities. This classification is important because it is one means by which a charity can avoid classification as a private foundation, a status that is subject to a more restrictive regulatory regime.

Of course, supporting another public charity is not enough by itself to warrant status as a public charity – many private foundations support public charities as well. A supporting organization generally warrants public charity status because it has a relationship with its supported organization sufficient to ensure that the supported organization is effectively supervising or paying particular attention to the operations of the supporting organization.

A supporting organization is a Type I, Type II or Type III supporting organization depending on the relationship it has with its supported organization(s). A Type III supporting organization is either functionally integrated (FASO) or non-functionally integrated (non-FASO). This distinction is important because of additional restrictions that apply to contributions and certain grants made to non-FISOs.

<https://www.irs.gov/charities-non-profits/section-509a3-supporting-organizations>

## **I.R.C. § 4966(d)(2) – Donor advised fund**

### **(A) In general**

Except as provided in subparagraph (B) or (C), the term “donor advised fund” means a fund or account—

- (i) which is separately identified by reference to contributions of a donor or donors,
- (ii) which is owned and controlled by a sponsoring organization, and
- (iii) with respect to which a donor (or any person appointed or designated by such donor) has, or reasonably expects to have, advisory privileges with respect to the distribution or investment of amounts held in such fund or account by reason of the donor’s status as a donor.

### **(B) Exceptions**

The term “donor advised fund” shall not include any fund or account—

- (i) which makes distributions only to a single identified organization or governmental entity, or
- (ii) with respect to which a person described in subparagraph (A)(iii) advises as to which individuals receive grants for travel, study, or other similar purposes, if—
  - (I) such person’s advisory privileges are performed exclusively by such person in the person’s capacity as a member of a committee all of the members of which are appointed by the sponsoring organization,
  - (II) no combination of persons described in subparagraph (A)(iii) (or persons related to such persons) control, directly or indirectly, such committee, and
  - (III) all grants from such fund or account are awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance by the board of directors of the sponsoring organization, and such procedure is

designed to ensure that all such grants meet the requirements of paragraph (1), (2), or (3) of section 4945(g).

(C) Secretarial authority

The Secretary may exempt a fund or account not described in subparagraph (B) from treatment as a donor advised fund—

- (i) if such fund or account is advised by a committee not directly or indirectly controlled by the donor or any person appointed or designated by the donor for the purpose of advising with respect to distributions from such fund (and any related parties), or
- (ii) if such fund benefits a single identified charitable purpose.