

Suncoast Estate Planning Council

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***Finding Security After the
SECURE Act***

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Plain and Simple Disclaimer

This is for educational purposes only!

- **History**

- **SECURE Act** – House Bill – March 2019
 - Votes - 417-3 (Can we say “Bipartisan”?)
- Part of “Further Consolidated Appropriations Act 2020”
 - Votes – 297-120 and 71-23
 - Pretty much bipartisan
 - Passed December 20, 2019

- **Effective**

- **Today** (actually January 1, 2020 – 11 Whole Days to Plan ... Way to go Congress)!

- **Theory behind SECURE Act**

- Try to keep as much as possible
- Shorten the “Stretch”

- **Basics – Terms Used in Discussion ***
 - Owners
 - Participant - Original Owner or Spouse (if rolled-over)
 - Original Beneficiary Owner (i.e., the Inherited IRA)
 - Successor Beneficiary Owner (i.e., the Inherited, Inherited IRA, and so forth)
 - Designated Beneficiary (basically individuals or certain trusts that are “deemed” to be individuals)
 - **Eligible Designated Beneficiaries** (EDBs) – **Secure Act**
 - Regular Designated Beneficiaries (RDBs)
 - Non-Designated Beneficiaries
 - Estates and Charities are not DBs
 - Certain trusts not treated as DB’s

* Terms are liberally taken from the Code, Regulations and Natalie Choate’s excellent book, *Life and Death Planning for Retirement Benefits*.

- **Basics – Terms Used in Discussion ***
 - **Eligible Designated Beneficiaries (SECURE Act)** –
 - 4 of 5 are normally favored – 5th is favored b/c of existing laws and tables
 - **Who are the EDBs?**
 1. **Spouse**
 2. **Disabled at Participant's DoD**
 - (more to come from IRA about this ... we hope)
 3. **Chronically Ill at Participant's DoD**
 - (more to come from IRS on what that means ... we hope)
 4. **Minors**
 - (maybe up to age 26 if in school – more to come from IRS on this ... we hope)
 5. **10 Year Younger Rule**
 - See Table 3

- **Basics – Terms Used in Discussion**
 - IRA Types – (*nothing new here to see folks*)
 - Traditional IRA
 - Roth IRA
 - Participant’s IRA (both the original owner and spouse who rolled-over)
 - Inherited IRA
 - Beneficiary Inherited
 - Successor Beneficiary Inherited (I won’t call it the “Inherited, Inherited IRA ... too confusing!”)

- **Basics – Terms Used in Discussion**
 - **Important Dates**
 - **Required Beginning Date**
 - For Participants (and SS's who treat the IRA as their own)
 - (April 1 – after ~~70 1/2~~ **72**) – **SECURE Act**
 - **Required Commencement Date (RCD)**
 - for
 - » Inherited IRAs of EDBs; and
 - » Non-DB's if Participant dies on or after RBD
 - Latest is December 31 after year of death of Original Owner).
 - **No RCD** if 5-Year or **10-Year** (**SECURE Act**) Rules apply
 - **Designated Beneficiary Finalization Date** - September 30th after death of Original Owner
 - **Deadline for Establishing Separate Accounts** - December 31st after death of Original Owner
 - Applicable Distribution Period – (i.e., the divisor used for determining the RMD)

- **Basics – Terms Used in Discussion**
 - **Two TERM rules:**
 - **5-Year Rule – Old Law and SECURE Act**
 - **10-Year Rule – SECURE Act**

- **What is the 5-Year Rule? (old law and SECURE Act)**
 - **Who?**
 - Non-DBs before Participant reaches RDB
 - **When?**
 - Distribute by December 31 of 5th year following the year of the Participant's death

- **Basics – Terms Used in Discussion**
 - **What is (are) the 10-Year Rule(s)? (SECURE Act) – There are four (4) 10-Year Rules**
 - **Who?**
 1. For Regular DBs who inherit from the Participant (or spouse who rolled over and treated as Participant)
 2. For EDBs who are no longer EDBs (e.g., minor attaining age of majority, disabled not being disabled, chronically ill no longer chronically ill)
 3. For Successor Beneficiaries of EDBs (other than spouse) – (i.e., folks who inherit from EDBs that use life expectancy – converts to 10-Year Rule)
 4. For Successor Beneficiaries of DBs (old law) (other than spouse) – (i.e., folks who inherited IRA from a DB who was using Life Expectancy under Old Law (i.e., the Participant died on or before 12/31/2019)).
 - **When**
 - Depends upon the circumstance
 - » After death of Participant (for Regular DBs) / Successor Beneficiaries of EDBs (other than spouse) / Successor Beneficiaries of (old law DBs).
 - » After Minority / Disability / No Longer Chronically Ill – for EDBs after some event.

- **Basics – Terms Used in Discussion**
 - Types of Trusts –
 - “See Thru” trusts
 - Conduit Trust
 - » (may have **LESS** utility after the SECURE Act)
 - Accumulation Trust
 - » (may have **MORE** utility after the SECURE Act)
 - Non-See Thru Trusts
 - Those that DON’T qualify for as See-Thru Trusts
 - » (may have **MORE** utility after the SECURE Act)

- **Basics – Terms Used in Discussion**
 - **Tables** – Publication 590B (Appendix B) – new tables soon – more on this later
 - Single Life Expectancy (Table I)
 - EDBs
 - Joint and Last Survivor Table (Table II)
 - Participant with spouse > 10 years YOUNGER
 - Uniform Lifetime Table (Table III)
 - Participant w/ spouse - NOT 10 years YOUNGER
 - **Rules** – When you **DON'T** need to use the Tables
 - 5-Year Rule – Non-DB / Pre RBD
 - 10-Year Rule – Regular DBs and Inherited IRAs – (SECURE Act)

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**Table I
(Single Life Expectancy)
(For Use by Beneficiaries)**

Age	Life Expectancy	Age	Life Expectancy
0	82.4	28	55.3
1	81.6	29	54.3
2	80.6	30	53.3
3	79.7	31	52.4
4	78.7	32	51.4
5	77.7	33	50.4
6	76.7	34	49.4
7	75.8	35	48.5
8	74.8	36	47.5
9	73.8	37	46.5
10	72.8	38	45.6
11	71.8	39	44.6
12	70.8	40	43.6
13	69.9	41	42.7
14	68.9	42	41.7
15	67.9	43	40.7
16	66.9	44	39.8
17	66.0	45	38.8
18	65.0	46	37.9
19	64.0	47	37.0
20	63.0	48	36.0
21	62.1	49	35.1
22	61.1	50	34.2
23	60.1	51	33.3
24	59.1	52	32.3
25	58.2	53	31.4
26	57.2	54	30.5
27	56.2	55	29.6

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Excerpt of Table II

Table II (continued) (Joint Life and Last Survivor Expectancy) (For Use by Owners Whose Spouses Are More Than 10 Years Younger and Are the Sole Beneficiaries of Their IRAs)										
Ages	60	61	62	63	64	65	66	67	68	69
60	30.9	30.4	30.0	29.6	29.2	28.8	28.5	28.2	27.9	27.6
61	30.4	29.9	29.5	29.0	28.6	28.3	27.9	27.6	27.3	27.0
62	30.0	29.5	29.0	28.5	28.1	27.7	27.3	27.0	26.7	26.4
63	29.6	29.0	28.5	28.1	27.6	27.2	26.8	26.4	26.1	25.7
64	29.2	28.6	28.1	27.6	27.1	26.7	26.3	25.9	25.5	25.2
65	28.8	28.3	27.7	27.2	26.7	26.2	25.8	25.4	25.0	24.6
66	28.5	27.9	27.3	26.8	26.3	25.8	25.3	24.9	24.5	24.1
67	28.2	27.6	27.0	26.4	25.9	25.4	24.9	24.4	24.0	23.6
68	27.9	27.3	26.7	26.1	25.5	25.0	24.5	24.0	23.5	23.1
69	27.6	27.0	26.4	25.7	25.2	24.6	24.1	23.6	23.1	22.6
70	27.4	26.7	26.1	25.4	24.8	24.3	23.7	23.2	22.7	22.2
71	27.2	26.5	25.8	25.2	24.5	23.9	23.4	22.8	22.3	21.8
72	27.0	26.3	25.6	24.9	24.3	23.7	23.1	22.5	22.0	21.4
73	26.8	26.1	25.4	24.7	24.0	23.4	22.8	22.2	21.6	21.1
74	26.6	25.9	25.2	24.5	23.8	23.1	22.5	21.9	21.3	20.8
75	26.5	25.7	25.0	24.3	23.6	22.9	22.3	21.6	21.0	20.5

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**Table III
(Uniform Lifetime)**

(For Use by:

- **Unmarried Owners,**
- **Married Owners Whose Spouses aren't More Than 10 Years Younger, and**
- **Married Owners Whose Spouses aren't the Sole Beneficiaries of Their IRAs)**

Age	Distribution Period	Age	Distribution Period
70	27.4	93	9.6
71	26.5	94	9.1
72	25.6	95	8.6
73	24.7	96	8.1
74	23.8	97	7.6
75	22.9	98	7.1
76	22.0	99	6.7
77	21.2	100	6.3
78	20.3	101	5.9
79	19.5	102	5.5
80	18.7	103	5.2
81	17.9	104	4.9
82	17.1	105	4.5
83	16.3	106	4.2
84	15.5	107	3.9
85	14.8	108	3.7
86	14.1	109	3.4
87	13.4	110	3.1
88	12.7	111	2.9
89	12.0	112	2.6
90	11.4	113	2.4
91	10.8	114	2.1
92	10.2	115 and over	1.9

- **Lifetime Distributions - RMDs**

- **One Significant Change**

- Traditional IRA – ~~70 1/2~~ **72** - (**SECURE Act**)

- Roth IRA – No RMDs

- treat Roth IRAs same BEFORE and AFTER the **SECURE Act**

- Make RMD by RBD (**same theory – different date**)

- April 1 (**not April 15**) following the year Participant turns ~~70 1/2~~ **72** (**SECURE Act**)

- First Distribution Year – Optional to take RMD

- Second Distribution Year - Double up if none made in First Distribution Year

- **Two other minor rule Changes SECURE Act**

- **CONTRIBUTIONS - NO age limitation** (old law – limited to 70 1/2 and special > 5% owner rule)

- **Qualified Charitable Deduction – Dollar for Dollar offset for Contributions post 70 1/2.**

- Remember QCDs for folks that have attained 70 1/2 – no change to other rules for QCDs

- **Distributions at Death**
 - **Participants Undistributed RMDs**
 - Applies to Participants who reached RBD (i.e., **SECURE Act - 72**)
 - With Traditional IRAs (no RMDs for Roth IRAs)
 - **Undistributed RMDs go to named beneficiary (not the estate)**
 - Same rules under old law and **SECURE Act**

- **Distributions at Death**

- **Death of Original Owner – (Applies equally to TRADITIONAL and ROTH IRAs) – (does not apply to the undistributed RMD)**

- OLD LAW - there were EIGHT (8) rules: Four (4) if Original Owner (“OO”) died ***before*** RBD; and Four (4) if OO died ***after*** RBD

- **SECURE ACT – Five 5 Rules**

1. Non DB – 5-Year Rule – (same as old law – nothing changed)
2. Non-DB – Participant Continuing Life Expectancy (Table 1) – (same as old law during beneficiary’s life and after beneficiary dies – no 10-Year Rule)
3. **Regular DB – 10-Year Rule**
4. **Eligible DB (EDB) – Life Expectancy based on Beneficiary Life (Table 1) using Minus 1 for Divisor/ Possible Conversion to 10-Year Rule**
5. Spousal Rules – (more or less same as old law)
 1. Spousal Rollover
 2. Spousal Election
 3. Treated as Non-Spouse Beneficiary

- **Distributions at Death**

- **Non DB Rules**

- 1. Death of Participant Pre-RBD

- 1. 5-Year Rule – (same as old law – nothing changed)

- 2. Death of Participant Post-RBD

- a) Participant Continuing Life Expectancy (Table 1) – (same as old law during beneficiary's life and after beneficiary dies – no 10-Year Rule)

- b) Anomaly

- 1. New IRS Proposed Tables ...

- <https://www.federalregister.gov/documents/2019/11/08/2019-24065/updated-life-expectancy-and-distribution-period-tables-used-for-purposes-of-determining-minimum>

- 2. Table 1 – see next page

- a) The Anomaly

- a) If Participant dies b/n 73 and 81, then being a Non-DB stretches > 10 years

- b) If Participant dies after 81, then being a Non-DB is LESS than 10 years and

- c) May be better to be a NON-DB then to be a Regular DB if Participant will dies b/f age 81 (b/c stretch beyond 10 Years)

- Distributions at Death – Table 1 (new table)**

Age	Life expectancy	Age	Life expectancy	Age	Life expectancy	Age	Life expectancy
0	84.5	31	54.3	61	26.2	91	5.3
1	83.7	32	53.4	62	25.3	92	4.9
2	82.7	33	52.4	63	24.5	93	4.6
3	81.7	34	51.4	64	23.6	94	4.2
4	80.8	35	50.5	65	22.8	95	3.9
5	79.8	36	49.5	66	22	96	3.7
6	78.8	37	48.6	67	21.2	97	3.4
7	77.8	38	47.6	68	20.4	98	3.2
8	76.8	39	46.6	69	19.5	99	3
9	75.8	40	45.7	70	18.7	100	2.8
10	74.8	41	44.7	71	17.9	101	2.6
11	73.8	42	43.8	72	17.1	102	2.5
12	72.8	43	42.8	73	16.3	103	2.3
13	71.9	44	41.8	74	15.6	104	2.2
14	70.9	45	40.9	75	14.8	105	2.1
15	69.9	46	39.9	76	14	106	2.1
16	68.9	47	39	77	13.3	107	2.1
17	67.9	48	38	78	12.6	108	2
18	66.9	49	37.1	79	11.9	109	2
19	66	50	36.1	80	11.2	110	2
20	65	51	35.2	81	10.5	111	2
21	64	52	34.3	82	9.9	112	2
22	63	53	33.3	83	9.2	113	1.9
23	62	54	32.4	84	8.6	114	1.9
24	61.1	55	31.5	85	8.1	115	1.8
25	60.1	56	30.6	86	7.5	116	1.8
26	59.1	57	29.7	87	7	117	1.6
27	58.2	58	28.8	88	6.6	118	1.4
28	57.2	59	27.9	89	6.1	119	1.1
29	56.2	60	27.1	90	5.7	120 +	1

- **Distributions at Death**

- **Designated Beneficiaries**

- Old Rule – Didn't differentiate DB's
 - DB's are still
 - Individuals
 - Trusts where they qualify as See Thru Trusts
 1. Conduit Trusts
 2. Accumulation Trusts
 - **SECURE Act - NOW there are two (2) types of DB's**
 - Regular DBs (RBDs) – a DB who is **not** an EDB
 - Eligible DBs (EDBs) – DISCUSSED LATER IN DETAIL
 1. Spouse (of the Participant)
 2. Minor Child (of the Participant)
 3. Disabled person (on date of death of Participant)
 4. Chronically Ill person (on date of death of Participant)
 5. Person who is less than 10 years younger than the Participant (need not be related)

- **Trusts that qualify as DB's**
 - **5 Big Rules**
 - Rule #1 - Valid under state law
 - Rule #2 - Irrevocable by death of Participant
 - Rule #3 - Identifiable Beneficiaries (different for Conduit and Accumulation Trusts) – concern with decanting, POA's, and ultimate survivor provisions
 - Rule #4 - Documentation to Plan Administrator
 - Rule #5 - ALL trust beneficiaries MUST be individuals
 - Note: Rules ##3 and 5 are the bug-a-boo ... most difficult one to satisfy!
 - “Mere potential successor” rule – § 1.401(a)(9)-4, Q&A 5.
 - Different for “conduit” and “accumulation” trusts.

- **Distributions at Death**
 - Few Words on Conduit Trust and Accumulation Trusts

Word

Word

Word

Word

Word

Word

Word

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Word

- **Distributions at Death**

- **Few Words on Conduit Trust and Accumulation Trusts**

1. Rules for what is a Conduit / Accumulation Trust has **NOT changed**
2. B/c Conduit / Accumulation Trusts are “See Thru” trusts, you look through the trust to determine who is the “deemed beneficiary” – The distribution rules for the beneficiaries have changed; therefore the rules for distribution have changed.
3. Conduits
 - a) may have some utility – but anticipated less so
 - b) may have to change how we use them
4. Accumulation –
 - a) may have more utility – but maybe not as much as you think
 - b) May have to change how we use them
5. Both Conduit and Accumulation trusts that are specially designed for individuals (who are DBs) and treat the trust as a DB; maybe ignore the rules and create a trust that is a Non-DB and use (a) 5 year rule (death pre-RBD) or Participant’s LE rule (death post-RBD).

• Distributions at Death

• Few Words on Conduit Trust and Accumulation Trusts

1. Conduit Trusts

- a) Any IRA distribution (RMD and anything else distributed) must go out to the “income” beneficiary (maybe for multiple, but don’t suggest that)
- b) Ignore the Remainder persons (the don’t count)
- c) When income beneficiary dies
 - a) Spouse
 1. Old Law –
 - a) continue using Life Expectancy of Beneficiary (Minus 1 method / Spouse Recalculate, but convert to Minus 1)
 - b) Or in special case (where SS dies before Participant would have reached 70 1/2, then would have used Successor Beneficiary’s LE (not continue with Spouse’s LE) ... GETTING complicated yet????
 2. SECURE Act – if not distributed, then distribute by the end of 10-Year period measured by the Participant’s date of death ... simple (we think)
 - b) Non-Spouse
 1. Old Law –
 1. Continue using LE of Original Beneficiary (continue Minus 1 method)
 2. SECURE Act – if not distributed, then distribute by the end of 10-Year period measured by the Participant’s date of death ... simple (for sure)

• Distributions at Death

• Few Words on Conduit Trust and Accumulation Trusts

1. Accumulation Trusts

- a) RMD must go out to individuals
 - a) It is hard to determine who are the beneficiaries
 - b) Regulation is not clear, one PLR 20038044. Should have the assets go outright after the income beneficiary dies.
 - c) Have issues if one is given a power of appointment (may fail to qualify) – need to make sure that the appointees are younger than the oldest beneficiary.
- b) When income beneficiary dies
 - a) Spouse
 - 1. Old Law –
 - a) continue using Life Expectancy of Beneficiary (Minus 1 method / Spouse treated as beneficiary using Recalculate, must convert to Minus 1)
 - b) Or in special case (where SS dies before Participant would have reached 70 1/2, then would have used Successor Beneficiary's LE (not continue with Spouse's LE) ... GETTING complicated yet????
 - 2. SECURE Act – if not distributed, then distribute by the end of 10-Year period measured by the Participant's date of death ... simple (we think)
 - b) Non-Spouse
 - 1. Old Law –
 - 1. Continue using LE of Original Beneficiary (continue Minus 1 method)
 - 2. SECURE Act – if not distributed, then distribute by the end of 10-Year period measured by the Participant's date of death ... simple (for sure)

- **Distributions at Death**

- Eligible Designated Beneficiaries

- SECURE Act - NOW there are two (2) types of DB's

- Regular DBs (RBDs) – a DB who is not an EDB

- Five (5) Eligible DBs (EDBs) – Discussed Now!

- 1. Spouse (of the Participant)

- 2. Minor Child (of the Participant)

- 3. Disabled person (on date of death of Participant)

- 4. Chronically Ill person (on date of death of Participant)

- 5. Person who is less than 10 years younger than the Participant (need not be related)

- **Distributions at Death**

- **Three (3) General Spousal Rules – (more or less same as old law)**

- NOTE undistributed RMD's are not subject to ANY of the post death distribution rules – always goes to beneficiary first

- 1. Spousal Roll Over

- 1. Move assets from Participant's Account to Spouse's existing account
 - 2. This is NOT an Inherited IRA (this is the Spouse's own IRA)
 - 3. RMDs for SS based SS's own IRA
 - 4. Can rollover anytime (but during time that it is not rolled over, then spouse is treated as a beneficiary)

- 2. Election

- 1. This is the Decedent's Account – just changed the name
 - 2. Once Election is made, the IRA is treated as if the SS is the Participant

- Note: Rollover and Elections are about the same (except some small differences with 403(b) and other ERISA plans)

- 3. Treated as a Non-Spouse Beneficiary

- 1. Beneficiary Life Expectancy ("LE") Rule –

- 1. Spouse's LE.
 - 1. Minus 1 Rule – if an accumulation type trust
 - 2. Recalculation instead of minus 1 rule if Conduit Trust
 - 2. Participant's LE
 - 1. If SS is OLDER than Participant (i.e., Participant was Younger than SS)
 - 3. 5-Year Rule – if Participant died Pre-RBD and elected 5-Year and plan allowed

- **Difference b/c Old Law and SECURE Act happens when Spouse Dies ...**

- Miscellaneous – Same TODAY
- What if there are some DB's and some Non-DB's
 - Separate Share Rule
 - December 31 following year of death (treated retroactive to beginning of year following year of death).
 - Remove –
 - Distribute
 - Disclaim
 - Cure Period – September 30 following the year of the Original Owner's death

- What Do We Do Today Under SECURE Act?
- Open Discussion
 - Use of Conduit Trusts and Accumulation Trusts
 - Use of Other Trusts
 - The CRUT Solution (may not be a solution –its an option)
 - Be Creative with 10-Year Younger Rule
 - Roth IRAs?
 - Life Insurance to Replace Lost Value
 - Protected IRAs (beneficiary state specific) – leave as is

Disclaimer Reminder

Just in case you forgot ...

This is **FOR EDUCATIONAL
PURPOSES ONLY!**

IRAs ...

¿Questions?