# Estate planning for retirement benefits

By: Michael D. Lum Director





The information provided here is of a general nature and is not intended to address the specific circumstances of any individual or entity. In specific circumstances, the services of a professional should be sought. Tax information, if any, contained in this communication was not intended or written to be used by any person for the purpose of avoiding penalties, nor should such professional should be construed as an opinion upon which any person may rely. The intended recipients of this communication and any attachments are not subject to any limitation on the disclosure of the tax treatment or tax structure of any transaction or matter that is the subject of this communication and any attachments. Baker Tilly US, LLP, trading as Baker Tilly, is a member of the global network of Baker Tilly International Ltd., the members of which are separate and independent legal entities. © 2022 Baker Tilly US, LLP



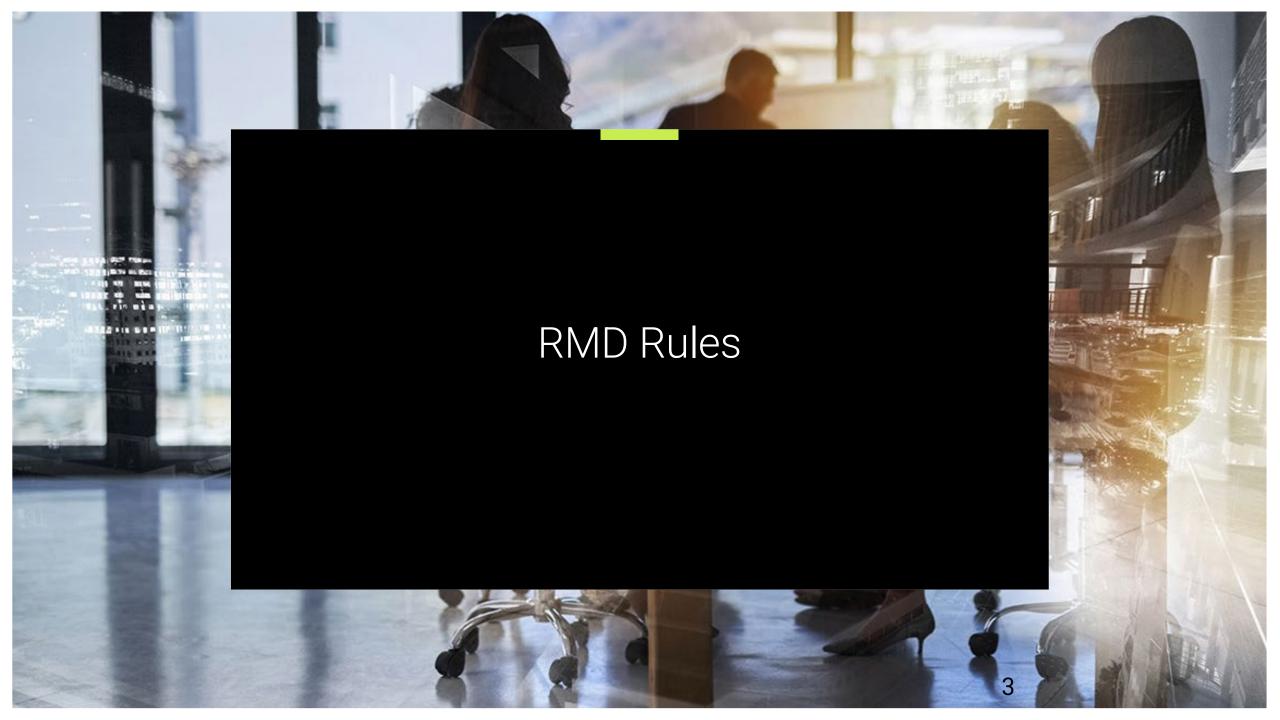
## The relevant rules

- SECURE signed into law on December 20, 2019 and effective January 1, 2020
- Treasury issued proposed regulations on February 24, 2022 incorporating SECURE's changes
- SECURE 2.0 signed into law on December 29, 2022



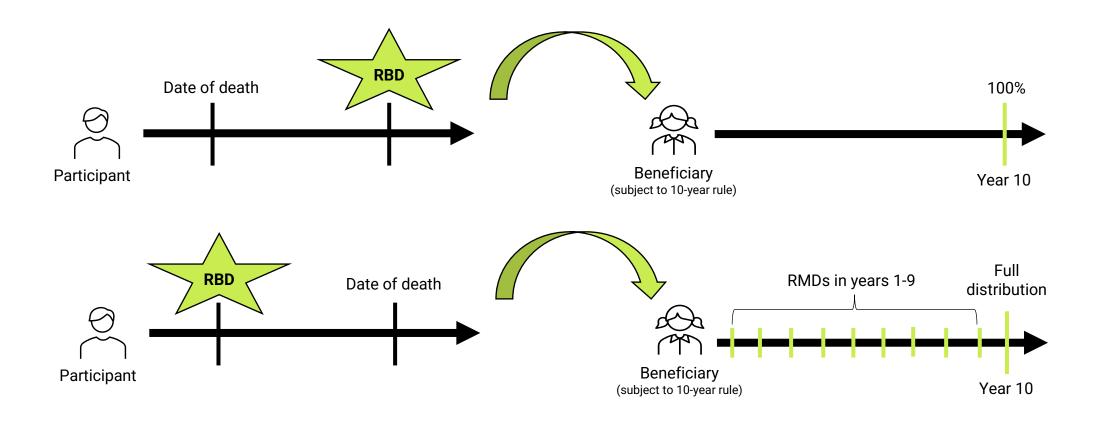
# Major changes from SECURE and SECURE 2.0

- <u>First year RMD</u>: SECURE increased the required beginning date (RBD) from 70 ½ to 72 and SECURE 2.0 increased it again to 73 and then to 75 after 2033
- New beneficiary categories: SECURE divided designated beneficiaries (DB) into "eligible designated beneficiaries" (EDB) and other designated beneficiaries (ODB)
- 10 year rule: 10-year rule applies to ODBs and successors to EDBs
  - EDBs may elect the 10-year rule
- <u>Limited life expectancy payout</u>: Life expectancy payout only available for EDBs
- New trust: SECURE created a new trust called the "applicable multi-beneficiary trust" (AMBT) for disabled or chronically ill EDBs





# Death before or after the RBD matters!





### Basics

## Required beginning date (RBD)

- **Traditional IRAs** April 1 of the year after the participant turns 73 (70 ½ if participant born before 7/1/49, or 72 if born between 7/1/49 and 12/31/50)
- Qualified plans (e.g. 401(k)) April 1 following the *later of* (1) the year the employee retires or (2) the year the employee turns 73 (unless the participant owns more than 5% of the employer)
- Roth IRAs No RMDs so death is always before the RBD



# Basics

### Four different IRA RMD start times ...

Participant's DOB	First Distribution Year	<b>RBD</b> (4/1 after first distribution year)
Before 7/1/1949	70 ½	71 ½
Between 7/1/1949 and 12/31/1950	72	73
After 1950 but before 1959	73	74
After 1958	75	76



### Basics

### Notice 2024-35

- RMD penalty waived for certain missed RMDs from inherited accounts.
  - Waived for:
    - ODB who inherited from participant who died after RBD in 2020-2023.
    - Successor beneficiary of EDB where EDB inherited from a participant who died in 2020, 2021 or 2022 and the EDB subsequently died in 2021, 2022 or 2023.
    - Successor beneficiary of a pre-2020 decedent where such "grandfathered" DB died in 2020-2023.



## Basics

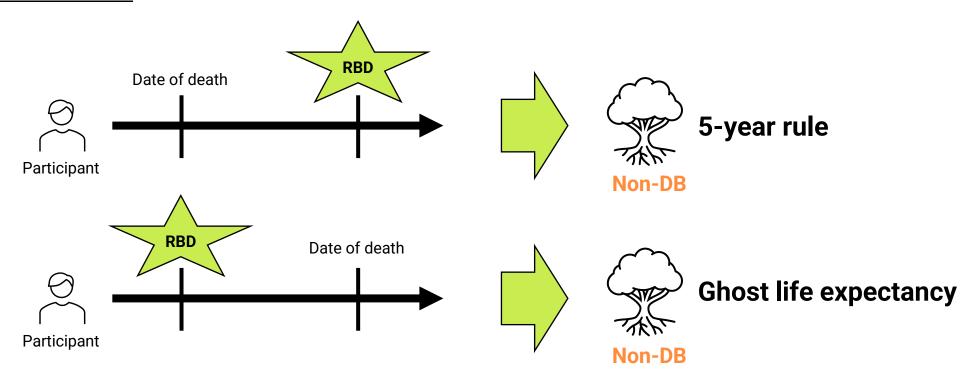
# Designated beneficiary (DB)

- "Any individual designated as a beneficiary by the employee" [§401(a)(9)(E)(I)]
- "See-through" trust can be a DB



# Basics

# Non-DB RMDs





### Basics

#### **GHOST LIFE EXPECTANCY**

Charlie dies July, 2023, after his RBD, leaving his IRA to his estate. Charlie was born August, 1950. Charlie would have turned 73 if he lived to August, 2023.

First distribution year is the year when Charlie reaches 72 because his DOB falls between 7/1/1949 and 12/31/50.

Look to Single Life Table and see life expectancy factor for age 73 is 16.4 years.

Estate's divisor for 2024 is 15.4 (16.4 minus 1).

2024 RMD is determined by dividing 12/31/23 account balance by 15.4.

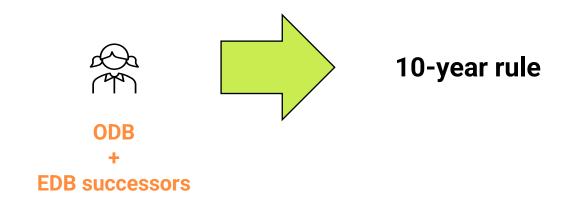
RMD must be taken by 12/31/24 [*Prop. Reg.* §1.401(a)(9)-5(a)(3)].

71	18.0	106	2.1
72	· 17.2	107	2.1
73	16.4	108	2.0
74	15.6	109	2.0
75	1 / 0	110	2.0



# Basics

# Other designated beneficiary (ODB)





### Basics

## How the 10-year rule works

- **Death before RBD**  $\rightarrow$  100% distribution by the end of the calendar year containing the 10<sup>th</sup> anniversary of the participant's death [*Prop. Reg. §54.4974-1(c)*]
- Death after RBD → Annual distribution in years 1-9 & full distribution of the remainder by the end of the calendar year containing the 10<sup>th</sup> anniversary of the participant's death [Prop. Reg. §1.401(a)(9)-5(d)]
  - Annual distributions based on DB's life expectancy [Prop. Reg. §1.401(a)(9)-5(d)(1)(ii)]
- Miss the 10-year deadline? 50% excise tax annually



### Basics

#### 10-YEAR RULE / DEATH AFTER RBD

Charlie dies July, 2023, after his RBD, leaving his IRA to his daughter, Shontalle, who is age 40 and *not* D/CI.

	39	46.7
	40	45.7
Γ	41	44.8
	42	43.8

Look to Single Life Table and see life expectancy factor for age 41 (age in year following Charlie's death) is 44.8 years.

2024 RMD is determined by dividing 12/31/23 account balance by 44.8.

RMD must be taken by 12/31/24 [*Prop. Reg.* §1.401(a)(9)-5(a)(3)].

Subsequent year RMDs determined by reducing divisor by one.

However, full account must be distributed by 12/31/2033.



### Basics

## Eligible designated beneficiary (EDB)



- If participant dies before RBD →
  - EDB can elect for the 10-year rule to apply (if allowed under the plan) [Prop. Reg. §1.401(a)(9)-3(c)(5)(iii)]
  - RMDs based on EBD's life expectancy [Prop. Reg. §1.401(a)(9)-5(d)(2)]
- If participant dies on or after RBD →
  - 10-year election not available [Prop. Reg. §1.401(a)(9)-3(c)(5)(iii)]
  - RMDs based on longer of EDB's life expectancy and participant's life expectancy except payout ends in final year of EDB's life expectancy [Prop. Reg. §1.401(a)(9)-5(d)(1)(ii), (e)(5)]



## Basics

## **EDB** categories

- 1) Participant's surviving spouse
- 2) Participant's minor child
- 3) Disabled beneficiary
- 4) Chronically ill beneficiary
- 5) Beneficiary not more than 10 years younger than the participant (and not in a category above)



### Basics

### 3 full distribution limits for EDBs

#### 1) 10 years after the EDB's death

 Successor beneficiaries continue taking RMDs over the deceased EDB's remaining life expectancy, but 100% of the account must be distributed by the end of the year containing the 10<sup>th</sup> anniversary of the deceased EBD's death. *Prop. Reg. §1.401(a)(9)-5(e)(3)*

#### 2) EDB's life expectancy

- EDB's life expectancy is the limit even if the EDB lives beyond his or her life expectancy. *Prop. Reg.* §1.401(a)(9)-5(e)(5)
- 3) 10 years after a minor attains 21 [Prop. Reg. §1.401(a)(9)-5(e)(4)]



# Basics

# EDB: surviving spouse

- Inheritance options
  - 1) Roll over to own account
  - 2) Elect to be account owner
  - 3) Treated as a beneficiary



## Basics

## **EDB: Surviving Spouse**

#### Rollover

- Spouse becomes the participant and rules that apply to participant apply to spouse
- No timeframe for rollover except must be made within 60 days of distribution that is being rolled over



### Basics

### **EDB: Surviving Spouse**

- Elect to be account owner
  - RMDs: Based on Uniform Life Table [Section 327 of SECURE 2.0]
  - Date RMDs commence:
    - If participant died before RBD → RMDs commence the later of (1) the end of the year following the year of the participant's death, or (2) the end of the year in which the participant would have turned 73. Prop. Regs. §1.401(a)(9)-5(a)(2)(iii)
      - Surviving spouse must be the <u>sole beneficiary</u> to delay distributions under option 2. Prop. Regs. §1.401(a)(9)-3(d)
    - If participant died after RBD → RMDs commence by December 31 of the year following the participant's death. Prop. Regs. §1.401(a)(9)-5(a)(2)(iii)
  - Recalculation of life expectancy Surviving spouse's life expectancy is recalculated annually.
  - <u>Election</u> must be made by the later of (1) the calendar year in which the surviving spouse attains 73 or (2) the calendar year following the calendar year of the participant's death. *Prop. Regs.* §1.408-8(c)(1)(ii)
  - Advantages: If surviving spouse dies before RBD, new 10-year rule and new life expectancy stretch for EDBs.



## Basics

## **EDB: Surviving Spouse**

### Treat as a beneficiary

- <u>RMDs</u>:
  - Use Single Life Table.
- <u>Date RMDs commence</u>:
  - RMDs must begin by December 31 of the year following the participant's death (like other EDBs). *Prop. Regs.* §1.401(a)(9)-5(a)(2)(iii)
- Surviving spouse's death:
  - Treated like any other EDB death.



### Basics

#### **SURVIVING SPOUSE EXAMPLE**

Ashlee (age 70) dies in 2024, leaving her IRA to Michael (age 65).

Michael fails to make an election to treat the IRA as his own.

Michael can't delay taking RMDs until Ashlee would have attained age 73.

Michael must take an RMD in the year after Ashlee's death.

Michael must use the Single Life Table to determine the RMD.

If Michael dies before the account is fully distributed, RMDs must be taken in years 1-9 and full distribution in the 10<sup>th</sup> year, regardless if he names EDBs.

Michael can mitigate by rolling over to his own IRA.



### Basics

### **EDB: Minor Child**

#### Termination of EDB status:

- EDB status terminates when the minor child reaches majority
  - "Majority" means age 21 [Prop. Reg. §1.401(a)(9)-4(e)(3)]
- 100% of account must be distributed 10 years after attaining majority [i.e., by the end of the year that contains the minor's 31<sup>st</sup> birthday] or earlier dies. *Prop. Reg.* §1.401(a)(9)-5(e)(4)



### Basics

### **EDB: Minor Child**

- Measuring life multiple trust beneficiaries:
  - If any countable beneficiary trust beneficiary is a minor child of the participant, then the trust qualifies as an EDB. *Prop. Regs.* §1-401(a)(9)-4(e)(2)(ii)
  - RMDs based on the oldest trust beneficiary's life even if that beneficiary is not an EDB. *Prop.* Regs.  $\S1-401(a)(9)-5(f)(1)(i)$



### Basics

### **EDB: Minor Child**

- Full distribution year multiple trust beneficiaries:
  - Full distribution year based on oldest minor-child EDB 100% of account distributed 10 years after oldest minor-child EDB turns 21 [Prop. Regs. §1.401(a)(9)-5(f)(2)(ii)]
    - Note: Full distribution year and RMDs are calculated based on different trust beneficiaries
- Administration after full distribution: Trust doesn't have to terminate when IRA is fully distributed trust simply holds distributions subject to the trust terms



## Basics

## EDB: Disabled or Chronically III

### • Qualification:

- First meet the definition of "disabled" or "chronically ill"
- Second meet the documentation requirement



### Basics

## EDB: Disabled or Chronically III

- Definition "disabled":
  - Subject to documentation requirement, an individual is disabled if
    - 18 or older "An individual who, as of the date of the employee's death, is age 18 or older is disabled if, as of that date, the individual is **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 infinite duration." *Prop. Reg.* §1.401(a)(9)-4(e)(4)(ii)
    - Younger than 18 "An individual who, as of the date of the employee's death, is not age 18 or older is disabled if, as of that date, that individual has 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." Prop. Reg. §1.401(a)(9)-4(e)(4)(iii)
    - <u>Social security determination</u> "If the Commissioner of Social Security has determined that, as of the date of the employee's death, an individual is disabled within the meaning of 42 U.S.C. 1382c(a)(3), then that individual will be deemed to be disabled within the meaning of this paragraph (e)(4)." *Prop. Reg. §1.401(a)(9)-4(e)(4)(iv)*
- Disability measured as of participant's date of death



### Basics

## EDB: Disabled or Chronically III

#### Definition – "chronically ill":

"An individual is chronically ill if the individual is chronically ill within the definition of section 7702B(c)(2) and satisfies the documentation requirements ... However, ... an individual will be treated as chronically ill under section 7702B(c)(2)(A)(i) only if there is a certification from a licensed health care practitioner (as that term is defined in section 7702(c)(4)) that, as of the date of the certification, the individual is unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for an indefinite period which is reasonably expected to be lengthy in nature (and not merely for 90 days)." Prop. Reg. §1.401(a)(9)-4(e)(5)



### Basics

## EDB: Disabled or Chronically III

### Documentation requirement:

- Must provide documentation of disability or chronic illness to plan administrator by October 31 of the year following the year of the participant's death
- For chronically ill individuals, documentation must include a certification from a licensed health care practitioner



Basics

EDB: Disabled or Chronically III

**Applicable Multi-Beneficiary Trust (AMBT)** - Congress created the AMBT, under SECURE, to facilitate special need trust planning for disabled and chronically ill beneficiaries and allow life expectancy payout based the disabled or chronically ill EDB



## Basics

## EDB: Disabled or Chronically III

- Definition AMBT
  - AMBT is a trust:
    - which has more than one beneficiary,
    - all of the beneficiaries of which are treated as DBs, and
    - at least one of the beneficiaries of which is a disabled or chronically ill EDB

[IRC §401(a)(9)(H)(v)]



Basics

## EDB: Disabled or Chronically III

#### Two types of AMBTs

- <u>Type I AMBT</u> "... if the terms of the trust provide that it is to be divided immediately upon the death of the employee into separate trusts for each beneficiary." *Prop. Reg.* §1.401(a)(9)-4(g)(2)
- <u>Type II AMBT</u> a trust that has one or more disabled or chronically ill beneficiaries "who are entitled to benefits during their lifetime" and the terms of which provide no other individual "has any right to the employee's interest in the plan" until after the death of the disabled or chronically ill beneficiary(ies). *Prop Reg.* §1.401(a)(9)-4(g)(3)



### Basics

## EDB: Disabled or Chronically III

#### Effect of Type I AMBT

- Allows separate account treatment of subtrusts created under a main funding trust
- Payout period determined separately for each subtrust

### Effect of Type II AMBT

- Allows beneficiaries other than disabled or chronically ill EDB to be disregarded in determining payout period
- Trust can accumulate distributions received during the life of the disabled or chronically ill EDB and still use the life expectancy payout



### Basics

## EDB: Not More Than 10 Years Younger

#### • Qualification:

- Two requirements -
  - 1) Beneficiary must not fit into any other EDB category, and
  - 2) Beneficiary must be older than the participant, the same age, or younger but not more than 10 years younger  $[\S401(a)(9)(E)(ii)(v)]$

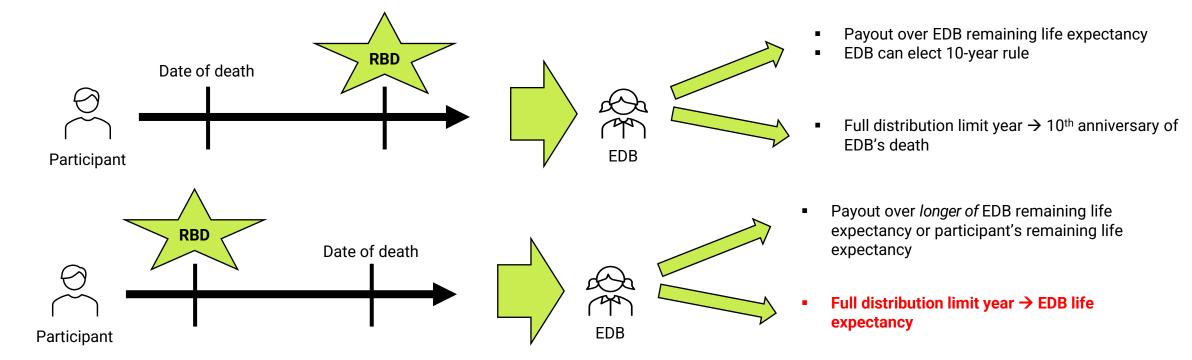
#### Determining age difference:

■ Based on actual number of days (participant birth date: 1/1/2003; beneficiary birth date:  $1/1/2013 \rightarrow$  not more than 10 years younger) [Prop. Regs. §1.401(a)(9)-4(e)(6)]



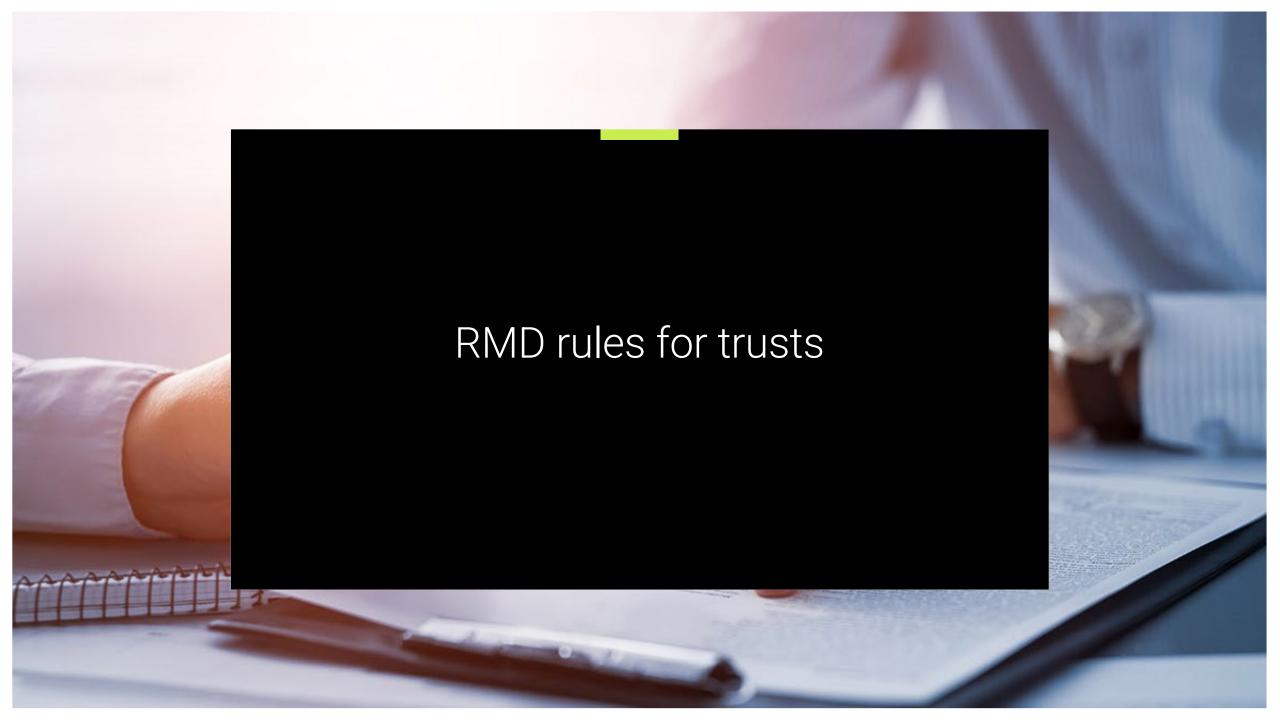
## Basics

## EDB: Not More Than 10 Years Younger





Beneficiary	Before RBD	On or After RBD
Non-DB	No annual distributions. Full distribution by year that contains 5 <sup>th</sup> anniversary of participant's death.	Annual distributions over participant's remaining life expectancy. Full distribution in final year of participant's life expectancy.
ODB	No annual distributions. Full distribution in year that contains 10 <sup>th</sup> anniversary of participant's death.	Annual distributions over ODB's life expectancy. Full distribution in year that contains 10 <sup>th</sup> anniversary of participant's death (or final year of ODB's life expectancy, if earlier).
EDB Surviving Spouse	Annual distributions over spouse's life expectancy. Full distribution in year that contains 10 <sup>th</sup> anniversary of spouse's death (or final year of spouse's life expectancy, if earlier).	Annual distributions over longer of spouse's life expectancy or participant's life expectancy. Full distribution in year that contains 10 <sup>th</sup> anniversary of spouse's death (or final year of spouse's life expectancy, if earlier).
EDB Minor Child	Annual distributions over child's life expectancy. Full distribution in year that contains 10 <sup>th</sup> anniversary of child's death or child's 21 <sup>st</sup> birthday.	Same
EDB Disabled or Chronically III	Annual distributions over EDB's life expectancy. Full distribution in year that contains 10 <sup>th</sup> anniversary of EDB's death (or final year of EDB's life expectancy, if earlier).	Annual distributions over longer of EDB's life expectancy or participant's life expectancy. Full distribution in year that contains 10 <sup>th</sup> anniversary of EDB's death (or final year of participant's life expectancy, if earlier).
EDB Not More Than 10 Years Younger	Annual distributions over EDB's life expectancy. Full distribution in year that contains 10 <sup>th</sup> anniversary of EDB's death (or final year of EDB's life expectancy, if earlier).	Annual distributions over longer of EDB's life expectancy or participant's life expectancy. Full distribution in year that contains 10 <sup>th</sup> anniversary of EDB's death (or final year of participant's life expectancy, if earlier).





## Naming a trust as beneficiary

- Only "designated beneficiaries" are entitled to favorable RMD rules, and a "designated beneficiary" must be an individual
- Trusts are not individuals -- but IRS created "see-through" trust rules that, if satisfied, treats the trust beneficiaries as if they were named directly on the beneficiary designation form
- Which beneficiaries in a trust count?
  - The answer depends on whether the trust is a "conduit trust" or "accumulation trust"



## See-through trust, conduit trust & accumulation trust

- See-through trust means a trust that (1) is "valid under state law or would be but for the fact that there is no corpus," (2) is "irrevocable or will, by its terms, become irrevocable upon the death of the employee," (3) has "identifiable" beneficiaries, and (4) meets certain documentation requirements (provide trust copy to plan by October 31 of the year after the employee's death, trust-copy-to-plan date). Prop. Reg. §1.401(a)(9)-4(f)(2)
- Conduit trust means "a see-through trust, the terms of which provide that, with respect to the deceased employee's interest in the plan, all distributions will, upon receipt by the trustee, be paid directly to, or for the benefit of, specified beneficiaries." Prop. Reg. §1.401(a)(9)-4(f)(1)(ii)(A)
- Accumulation trust means "a see-through trust that is not a conduit trust." *Prop. Reg.* §1.401(a)(9)-4(f)(1)(ii)(B)



### Countable beneficiaries

- **Tier 1** "Any beneficiary who could receive amounts in the trust representing the employee's interest in the plan that are neither contingent upon, nor delayed until, the death of another trust beneficiary who did not predecease ... the employee." *Prop Reg. § 1.401(a)(9)-4(f)(3)(i)(A)*
- **Tier 2** "Any beneficiary ... that could receive amounts in the trust representing the employee's interest in the plan that were not distributed to [tier 1] beneficiaries." *Prop Reg. § 1.401(a)(9)-4(f)(3)(i)(B)*



## Why it matters which beneficiaries are "countable"

- **DB status**: To get DB status, beneficiaries must be individuals
  - A potential nonindividual beneficiary could cause the trust to lose DB status (unless the nonindividual can be disregarded)
    - For example, if one of the countable beneficiaries is a charity, then the trust would lose its DB status

### Payout period:

- Payout period could depend on the ages of countable beneficiaries (i.e., the oldest countable beneficiary)
  - <u>For example</u>, the distribution period for an accumulation trust created for the benefit of 10-year-old child, with full outright distribution to child at age 40 and remainder to 50-year-old aunt, will be based on the aunt's life expectancy
- Payout period could also depend on whether some or all of the beneficiaries are EDBs and the types of EDBs
  - <u>For example</u>, a trust created for the benefit of the participant's surviving spouse and sibling who is 11 years younger than the participant will not qualify for EDB status and, therefore, the surviving spouse will not be entitled to a life expectancy payout.



## Disregarded beneficiaries

- When counting beneficiaries, the following beneficiaries are disregarded:
  - 1) Individuals who predeceased the participant
  - 2) Individuals not yet born
  - 3) Permissible appointees under an unexercised power of appointment (count takers in default instead)
  - 4) Individuals who disclaim their interest in the benefits by qualified disclaimer
  - 5) Beneficiary who received full distribution before the BFD
  - 6) Beneficiary removed before BFD by reformation or decanting
    - But remember to add any beneficiary added by the reformation or decanting



## Testing process

- Does the trust satisfy the see-through trust rules?
- 2) List all potential trust beneficiaries
  - <u>CAUTION</u>: The Preamble to the Proposed Regs provide that if the trust could be liable for estate administration expenses, then the estate is treated as a beneficiary, which would result in non-DB status
- 3) Disregard the disregardable beneficiaries
- 4) Divide the remaining beneficiaries into tier 1 and tier 2 beneficiaries
- 5) Disregard the following beneficiaries:
  - Tier 2 beneficiaries of conduit trusts [Prop. Reg. §1.401(a)(9)-4(f)(6)(i), Example (1)(B)]
  - Tier 2 beneficiary who inherits only if tier 1 beneficiary entitled to full distribution of the benefits from the trust by age 31 dies before reaching that age [Prop. Reg. §1.401(a)(9)-4(f)(3)(ii)(B)]
  - Tier 2 beneficiary who will inherit only if another tier 2 beneficiary fails to survive the tier 1 beneficiary [Prop. Reg. §1.401(a)(9)-4(f)(3)(ii)(A)]
- Determine the "Applicable Denominator"



### Determining the applicable denominator

- Nonindividual countable beneficiary: If any countable beneficiary is not an individual → trust is a non-DB (except AMBT II can have charity as beneficiary without losing DB status)
  - If participant died before RBD → 5-year rule
  - If participant died after RBD → ghost life expectancy
- Conduit trust: Same distribution period as if beneficiary named directly 10 years for ODB and life expectancy for spouse
- Type II AMBT: Generally, the distribution period based on life expectancy of oldest disabled or chronically ill beneficiary
- Minor child beneficiary: If any countable beneficiary is a minor child → life expectancy payout generally based on oldest countable beneficiary's life
- All EDBs (except no minor child): Generally, the distribution period is based on life expectancy of the oldest countable beneficiary
- 10-year rule: If none of the above apply then, the 10-year rule applies



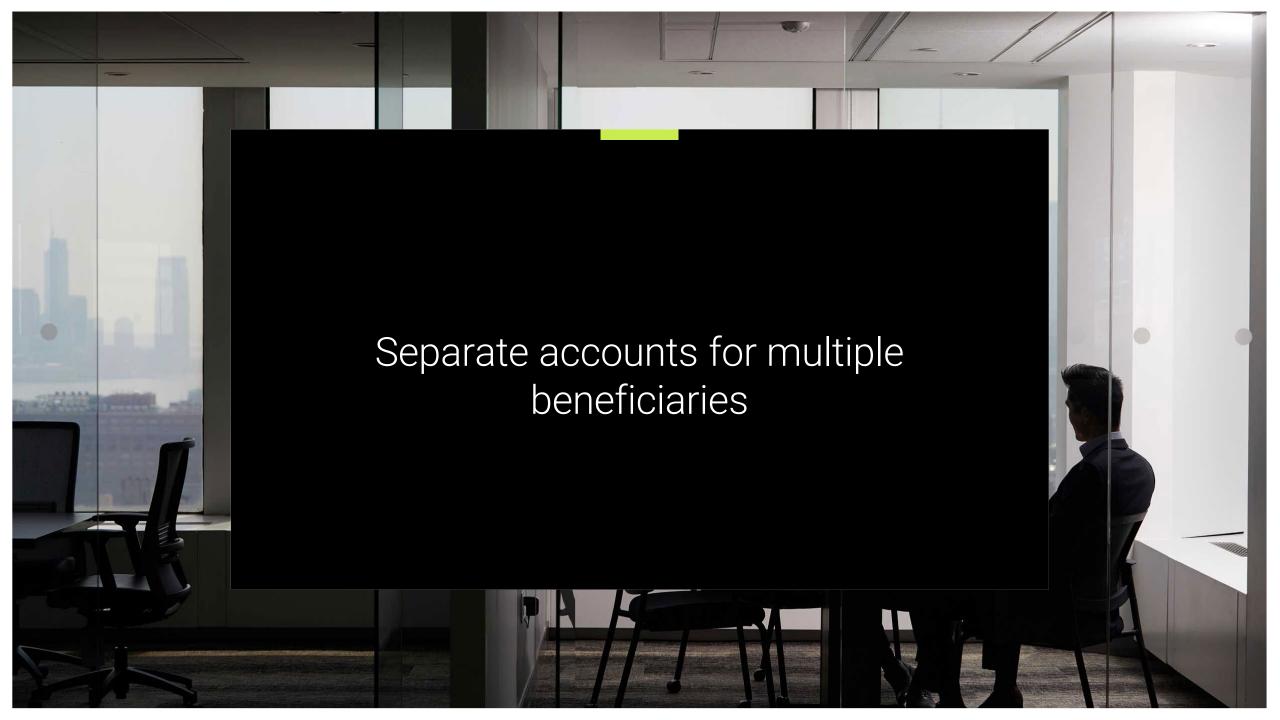
### When to test trust countable beneficiaries

- Test at participant's death
  - However, results can change by events occurring before
    - the BFD (September 30 of the year after the participant's year of death) and
    - the trust-copy-to-plan date (October 31 of the year after the participant's year of death)



# Trusts that get EDB treatment

- 1) Type II AMBT
- 2) Trust that has at least one countable beneficiary who is a minor child
- 3) Any trust where all countable beneficiaries are EDBs





#### SEPARATE ACCOUNTS FOR MULTIPLE BENEFICIARIES

# Multiple beneficiaries inheriting a single account

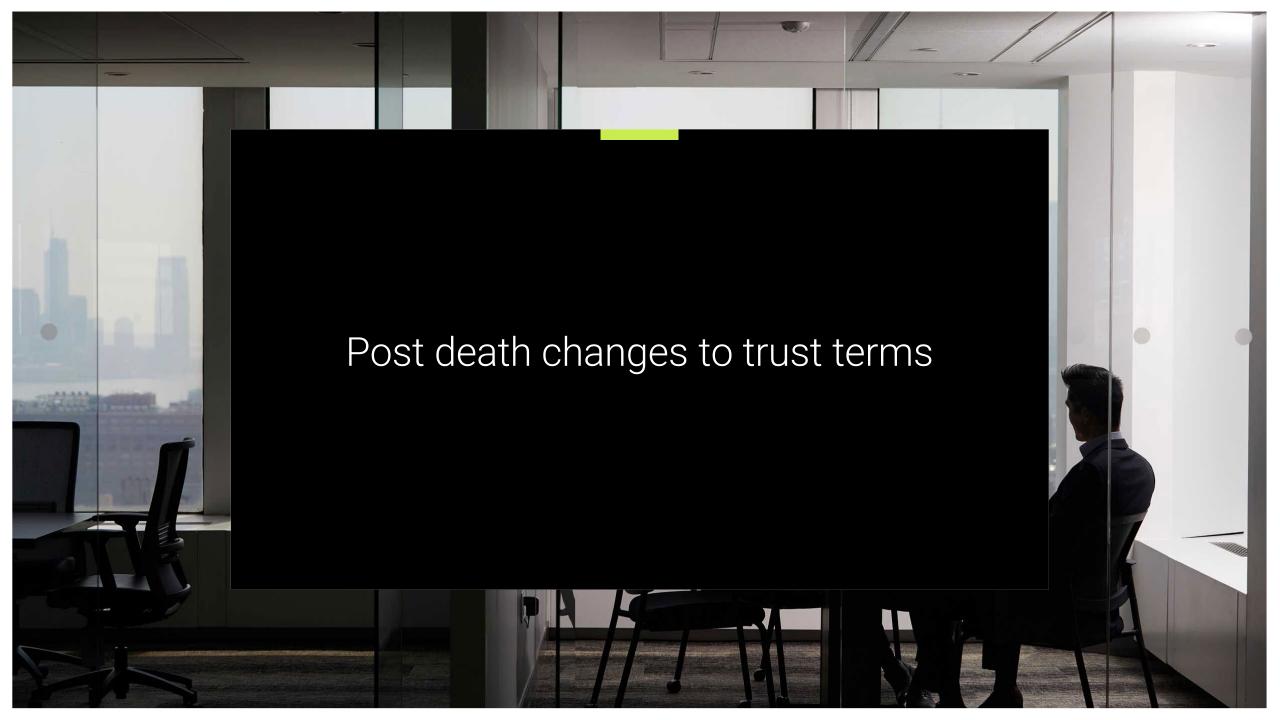
- An inherited IRA can be split among multiple beneficiaries
- RMDs are based on each separate beneficiary's life expectancy if the separate accounts are established by December 31 of the year after the participant's date of death, otherwise RMDs are based on the oldest beneficiary's life



#### SEPARATE ACCOUNTS FOR MULTIPLE BENEFICIARIES

# No separate account treatment for trusts (other than Type I AMBTs)

- **General rule for trusts**: No separate account treatment to multiple subtrusts created under a single funding trust (unless each subtrust is named separately on the beneficiary designation form) [*Prop. Reg. §1.401(a)(9)-8(a)(1)(iii)(A)*]
  - The same rule applies if the funding trust terminates immediately after the participant's death and distributes the trust shares outright to the beneficiaries
- Exception for Type I AMBTs: Separate account treatment allowed if at least one beneficiary is disabled or chronically ill and the trust "is to be divided immediately upon the death of the employee into separate trusts for each beneficiary." Prop. Reg. §1.401(a)(9)-8(a)(1)(iii)(B)
  - Note: Separate account treatment allowed for all beneficiaries under this exception, even beneficiaries who
    do not have a disability or chronic illness





### Trust beneficiaries must be "identifiable"

- One requirement of a see-through trust is that the beneficiaries must be identifiable
- Beneficiaries are identifiable "if it is possible to identify each person eligible to receive a portion of the employee's interest in the plan through the trust." *Prop. Reg.* §1.401(a)(9)-4(f)(5)(i)
  - "A beneficiary need not be specified by name," but instead can be designated by class such as "employee's children". *Prop. Reg.* §1.401(a)(9)-4(a)(3)



# Adding and removing beneficiaries

- Existing regs allow for removal (not addition) of a beneficiary before the BFD by full distribution or disclaimer
- Proposed regs do not restrict the modes of removal to full distribution and disclaimer
- Proposed regs also allow for the ADDITION of beneficiaries before the BFD



## Effect of post-death changes

- Existing regs don't allow for post-death trust amendments
  - Remember: one of the see-through trust requirements is that the trust must be irrevocable
- Proposed regs more flexible
  - Allow post-death changes via decanting, reformation, or exercise of power of appointment without violating the identifiable test
  - Later change results in trust being retested
  - Change before BFD → applied retroactively to the participant's date of death
  - Change after BFD → no retroactive application; trust retested but can't improve RMD results



## Powers of appointment

What is a power of appointment?- Power to redirect (e.g. beneficiary has a power to appoint remainder to trustor's issue or charity)

### Existing Regs:

- Treatment of potential appointees unclear
- Some argue potential appointees are countable, while others argue such appointees don't count until the power of appointment is exercised

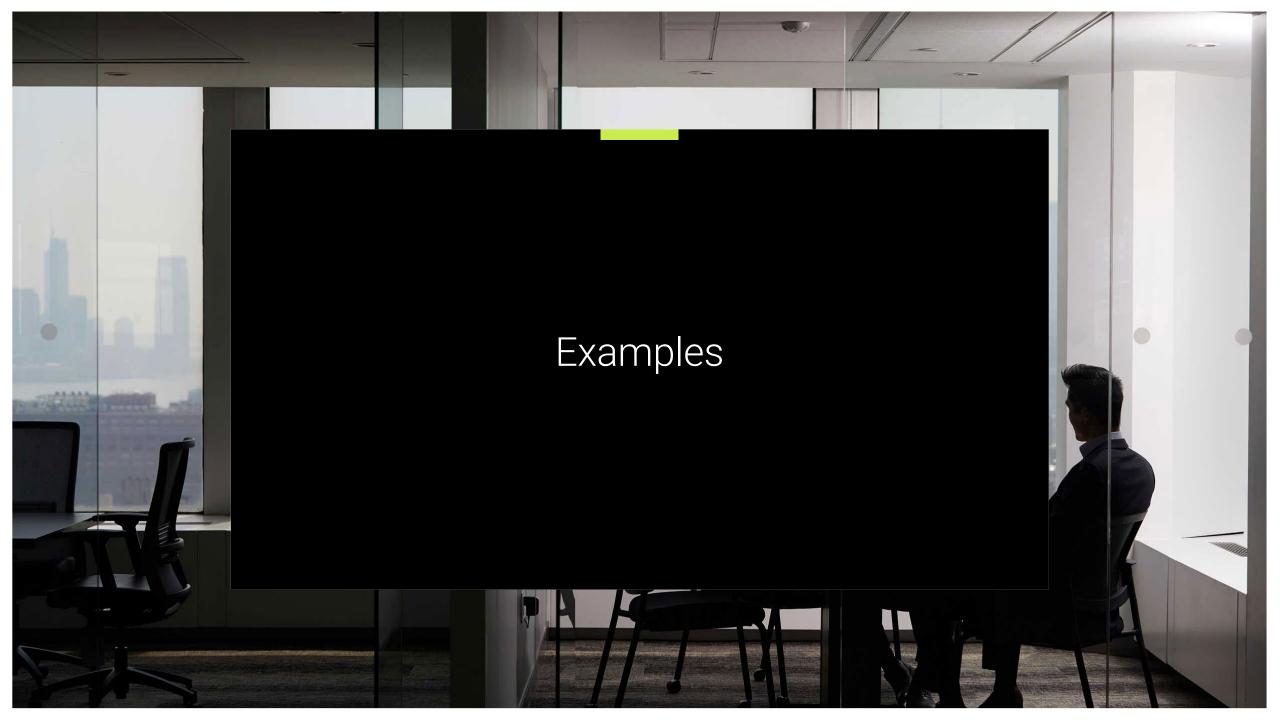
### Proposed Regs:

- Potential appointees don't count until power of appointment exercised count takers in default until power of appointment exercised [*Prop. Reg.* §1.401(a)(9)-4(f)(5)(ii)(A)]
- If power of appointment exercised before RBD  $\rightarrow$  beneficiaries treated as designated under the plan [Prop. Reg. §1.401(a)(9)-4(f)(5)(ii)(A)]
- If power of appointment exercised after RBD → retest the trust at the time of exercise taking into account appointees [Prop. Reg. §1.401(a)(9)-4(f)(5)(iv)]



## Trust modification through reformation or decanting

- Trust will not fail the identifiability requirements merely because state law allows reformation or decanting after the participant's death [Prop. Reg. §1.401(a)(9)-4(f)(5)(iii)(A)]
- If trust beneficiary removed by reformation or decanting by BFD → such beneficiary will be disregarded [Prop. Reg. §1.401(a)(9)-4(f)(5)(iii)(B)]
- If trust beneficiary added by reformation or decanting by BFD  $\rightarrow$  such beneficiary will be treated as designated under the plan [Prop. Reg. §1.401(a)(9)-4(f)(5)(iii)(C)]
- If trust beneficiary added by reformation or decanting after BFD  $\rightarrow$  retest the trust at the time of addition taking into account the new beneficiary [Prop. Reg. §1.401(a)(9)-4(f)(5)(iv)]





### ODB – Accumulation Trust

Ashlee (age 60) is a widow with one adult child (age 35) who is not D/CI.

Ashlee is concerned with her child's ability to manage finances and, therefore, wants to leave her assets (including her IRA) in a lifetime trust, subject to a discretionary distribution standard.

If child dies before full distribution, trust assets will be held fbo child's issue (none now), and if no issue, to charity.

Ashlee looking for an accumulation trust.

Unless paid to child in year received, IRA distributions will be tax at trust income tax rates.

Child is a tier 1 beneficiary.

Since child has no issue, potential issue are not countable.

Charity is a tier 2 beneficiary and not subject to any tier 2 disregard rules.

Child and charity are countable.

Ashlee considered to have no DB and, as a result, the 5year rule applies.

If left directly to child (ODB), the 10-year rule would apply.

Ashlee could (1) name other family members as outright tier 2 beneficiaries and charity as a wipeout beneficiary or (2) create one trust for retirement assets and another for nonretirement assets.



# Surviving Spouse – Conduit Trust

Ashlee is married to Michael.

Ashlee has \$1 million IRA, among other assets, that she would like to leave to Michael in trust.

Ashlee has four children, none of whom are D/CI.

Ashlee would like the children to be residual outright beneficiaries of the trust, with any remainder passing to charity.

If the trust were an <u>accumulation trust</u>, the countable beneficiaries would be Michael (tier 1) and the children (tier 2).

Charity is disregarded because it will only inherit if all of the children predecease Michael.

Since children are not EDBs, the trust will be subject to the 10-year rule, even though Michael is the surviving spouse. For Michael to get EDB treatment, he has to be the sole countable beneficiary (trust would have to be a conduit trust).

If the trust were a <u>conduit trust</u>, the only countable beneficiary would be Michael.

Trust qualifies for surviving spouse EDB treatment



### Minor children

Ashlee dies in 2023 before her RBD leaving her IRA to an accumulation pot trust for the benefit of her four children, ages 17, 16, 11, 8.

Trust terms provide for discretionary distributions to the children until the youngest reaches 25, at which time the trust will terminate and distribute equally to the children.

Aunt Bree, age 39, is a contingent outright beneficiary.

Assuming see-through trust rules are satisfied, because the trust has at least one countable minor child beneficiary, the trust qualifies for life expectancy payout.

Countable beneficiaries are the children (tier 1) and Aunt Bree (tier 2).

Life expectancy payout based on oldest countable beneficiary – in this case Aunt Bree.

Aunt Bree can't be disregarded because by the time the youngest child attains age 25 (the outright distribution age), the oldest child will be 35 - older than the 31 - required for the disregard rule under *Prop. Reg.* §1.401(a)(9)-4(f)(3)(ii)(A).

The full distribution year will be when the oldest minor child attains age 31.

Note: If the oldest child survives Ashlee but dies at 18, for instance, then 100% of the IRA will be required to be distributed to the trust by the 10th anniversary of the oldest minor child's death, at which time the youngest minor child will only be 18.



## Disabled Beneficiary

Ashlee has four children (ages 28, 26, 21 and 18).

The 18-year-old is disabled.

Ashlee would like to leave her IRA to her disabled child and her nonretirement assets to her other children in trust.

Ashlee can leave the IRA to an accumulation trust for the sole lifetime benefit of the disabled child for supplemental needs.

The other children could be tier 2 beneficiaries and would be disregarded.

The trust would be a Type II AMBT.

RMDs would be based on the disabled child's remaining life expectancy.

Full distribution year would be the final year of the disabled child's life expectancy or 10 years after his death (whichever is earlier).



## Not More Than 10 Years Younger

Catherine (age 75) is not married and has no children.

She would like to leave her IRA in trust to her two siblings (aged 73 and 71), neither of whom are D/CI.

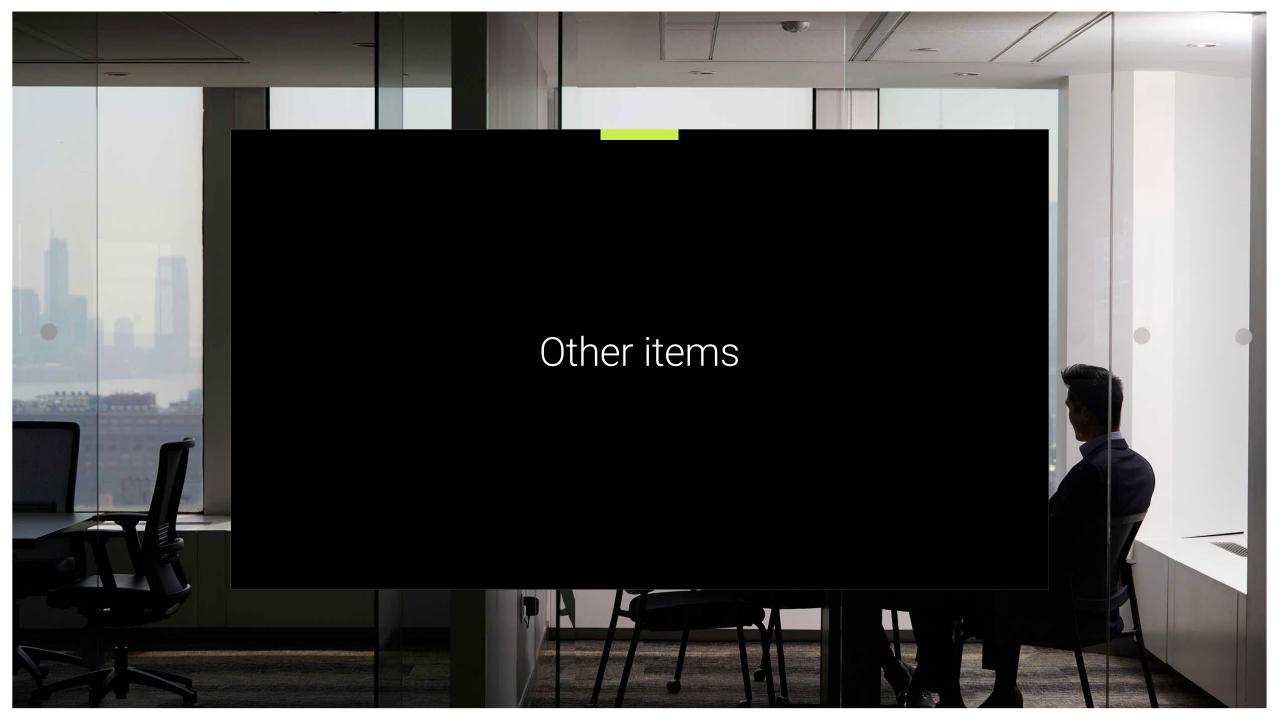
The remaining trust funds (if any) will pass to charity.

### <u>Planning Options</u>:

<u>Single conduit trust</u>. RMDs based on oldest sibling's life expectancy. Full distribution at the end of the oldest sibling's life expectancy or 10 years after the oldest sibling's death (whichever is earlier). Since this is a conduit trust, the charity is disregarded.

<u>Separate conduit trusts</u>. RMDs based on each sibling's own life expectancy. Full distribution year would be the end of each respective sibling's life expectancy or 10 years after such sibling's death (whichever is earlier).

Separate accumulation trusts. Each trust could provide for lifetime income and principal distributions to one sibling with the remainder to the surviving siblings and if none to charity. The countable beneficiaries are the siblings and not the charity. RMDs and the full distribution year would be based on the oldest sibling life expectancy. Caution: If one sibling predeceases Catherine, the charity will need to be removed because the charity would no longer be a contingent beneficiary.





### Effective date rule

- **Rule**: In general SECURE's changes apply only to beneficiaries of post-2019 decedents; however, the following provision in SECURE makes a grab for benefits of pre-2020 decedents:
  - "(A) If an employee dies before the effective date [pre-2020] then, in applying the amendments made by this section to such employee's designated beneficiary who dies after such date
    - (i) such amendments shall apply to any beneficiary of such designated beneficiary; and
    - (ii) the designated beneficiary shall be treated as an eligible designated beneficiary for purposes of applying section 401(a)(9)(H)(ii) of the Internal Revenue Code of 1986 (as in effect after such amendments)."

### Takeaways:

- If a participant dies before 2020 leaving his account to a DB and that DB dies after 2019, then the 10-year rule applies and the account must be distributed to DBs successor beneficiary by the end of the 10<sup>th</sup> anniversary of the DB's death [Prop. Reg. §1.401(a)(9)-1(b)(2)(iii)(A)]
  - Note: RMDs are required in years 1-9
- If the DB died before 2020, then the 10-year rule never kicks in [Prop. Reg. §1.401(a)(9)-1(b)(3)(ii) (Example 2)]
- If a participant dies before 2020 leaving his account to multiple DBs, then application of the 10-year rule will be based on the death of the participant's oldest DB if the oldest DB dies after 2019 then the account must be distributed by the end of the year that contains the 10<sup>th</sup> anniversary of the oldest DB's death [Prop. Reg. §1.401(a)(9)-1(b)(2)(iii)(B)]
- If the oldest DB died before 2020, then the 10-year rule never kicks in [Prop. Reg. §1.401(a)(9)-1(b)(2)(iii)(B)]
- Same rules apply for trusts with multiple beneficiaries [Prop. Reg. §1.401(a)(9)-1(b)(3)(iv), (v) (Examples 4 and 5)]



## Surviving spouse deferred rollover

- Proposed regs allow the participant's surviving spouse to elect the 10-year rule if she is sole beneficiary and participant died before RBD
- Surviving spouse could elect the 10-year rule and then wait until year 9, take full distribution, and roll the amount into her own IRA to start the RMD clock fresh
  - The distribution in year 9 would not be an RMD because it was taken prior the 10<sup>th</sup> year.
- Proposed regulations say no to this ...
  - If a surviving spouse rolls over a distribution from the participant's plan after she turns 73, the amount must be reduced by a deemed RMD in the amount RMDs she would have been required to take if the account belonged to her [Prop. Reg. §1.402(c)-2(j)(3)(iii)]



### Relief: Missed year of death RMD

- Although beneficiaries have been required to take the deceased participant's year of death RMD to the extent not taken by the participant during life, it's not always known whether the participant took his or her RMD or the amount outstanding.
- Proposed regs offer relief automatically waive the 50% excise tax if the beneficiary takes the RMD "no later than the tax filing deadline (including extensions thereof) for the taxable year of that beneficiary that beings with or within that calendar year." [Prop. Reg. §54.4974-1(g)(3)]

