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# Inherited Retirement Accounts – Required Distributions Under the SECURE Acts

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Funds in traditional IRAs<sup>1</sup> and qualified retirement plans may not be kept inside these tax-deferred accounts indefinitely. Under federal law, the money must eventually be distributed, and then subjected to tax, through yearly “Required Minimum Distributions,” or RMDs.<sup>2</sup>

The death of an account owner does not eliminate this requirement. However, the manner in which the assets in these accounts must be distributed post-death has changed over time, most recently with the SECURE Act of 2019 and the SECURE 2.0 Act of 2022.

## Required Minimum Distributions Before the SECURE Act of 2019

Under prior law, the post-death distribution requirements applied to inherited retirement accounts depended primarily on two factors:

- **Death on or after the required beginning date (RBD):** During life, an account owner was generally required to begin distributions no later than April 1 of the year following the year he or she reached age 72. The SECURE 2.0 Act of 2022 changed the required beginning date to (1) age 73 for those who turn 72 after 2022 and age 73 before 2033; and (2) to age 75 for those who turn 74 after 2032.
- **Who inherited the assets:** The law mandated certain minimum distribution periods, depending on who inherited the assets.

If an account owner passed away *before* reaching his or her RBD, the maximum allowable distribution periods were:

- **Surviving spouse:** A surviving spouse had two choices: (1) take ownership of the account, or (2) be treated as the beneficiary of the account. If the surviving spouse took *ownership*, distributions had to begin when the survivor reached age his or her RBD. As the *beneficiary* of the account, distributions had to begin by the later of (a) 12/31 of the year the owner would have reached his or her RBD (had he or she lived),

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<sup>1</sup> Here, the term “traditional IRA” also includes SIMPLE IRAs and SEP IRAs. Roth IRAs are subject to different distribution rules.

<sup>2</sup> This discussion concerns federal income tax law; state or local law may vary.

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or (b) 12/31 of the year after the year the owner died. In either case, distributions could be made over the surviving spouse's lifetime.

- **Designated beneficiary:** If the account owner had designated another individual as a beneficiary, distributions had to begin by 12/31/ of the year after the year of death, with distributions made over the designated beneficiary's lifetime.
- **No designated beneficiary:**<sup>1</sup> The entire account balance was required to be distributed by the end of the fifth year after the year of the owner's death.

If an account owner passed away *on or after* reaching his or her RBD, the maximum allowable distribution periods were slightly different:

- **Surviving spouse:** An RMD had to be made for the deceased owner for the year of death. If the surviving spouse took *ownership* of the account, distributions were required to begin when the survivor reached his or her RBD, and be made over the surviving spouse's lifetime. As *beneficiary* of the account, distributions were required to begin by 12/31 of the year after the year of death, with distributions being made over the longer of the deceased owner's life expectancy in the year of death, or that of the surviving spouse.
- **Designated beneficiary:** An RMD had to be made for the deceased owner for the year of death. RMDs had to begin by 12/31/ of the year after the year of death, with distributions made over the longer of the deceased owner's life expectancy in the year of death, or the beneficiary's life expectancy.
- **No designated beneficiary:** An RMD had to be made for the deceased owner for the year of death, with the remaining assets distributed over the deceased owner's life expectancy in the year of death.

The law prior to the SECURE Act provided a significant advantage in that beneficiaries could “stretch” out distribution of the inherited assets over many years, continuing the tax-deferred growth inside a retirement account for as long as legally possible.

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<sup>1</sup>For example, an account left to a charity, to the account owner's estate, or to a trust that didn't meet certain requirements.

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## Required Minimum Distributions After the SECURE Act

The SECURE Act of 2019, generally applicable to account owners dying after December 31, 2019, made major changes to the distribution requirements for inherited IRAs and defined contribution retirement accounts:

- **Shortened distribution period:** For many beneficiaries, the Act limited distribution of inherited retirement account assets to no more than 10 years. This 10-year distribution requirement applies regardless if the account owner died before, or on/after the required beginning date (RBD).
- **Eligible designated beneficiaries:** The Act created a new category of beneficiaries, known as “eligible designated beneficiaries.” These are individuals for whom the 10-year maximum distribution rule does not apply. These include:
  - A surviving spouse
  - A disabled individual
  - An individual who is chronically ill
  - An individual who is no more than 10 years younger than the deceased account owner
  - A minor child of the deceased account owner

With the exception of a minor child, all of these individuals are permitted to take distributions over their remaining lifetimes. Under IRS proposed regulations, a minor child reaches his or her “majority” at age 21, at which point the child becomes subject to the mandatory 10-year distribution rule.

If an account owner dies *before the RBD*, the distribution periods are generally as follows:

- **Surviving spouse:** As under prior law, a surviving spouse has two choices: (1) take ownership of the account in his or her own right, or (2) be treated as the beneficiary of the account:

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- If the surviving spouse becomes the *owner*, distributions are made over the survivor's lifetime, with distributions beginning when the survivor reaches his or her RBD.
- As the *beneficiary* of the account, distributions must begin by the later of 12/31 of the year the owner would have reached his or her RBD (had he or she lived), or 12/31 of the year after the year the owner dies. Distributions are made over the survivor's life expectancy.
- **Eligible designated beneficiaries:** Distributions must begin by 12/31 of the year after the year of death, with distributions made over the beneficiary's lifetime.
- **Designated beneficiary:** Distributions must be completed within 10 years.
- **No designated beneficiary:** The entire account must be distributed by the end of the fifth year after the year of the owner's death.

If the account owner dies *on or after the RBD*, the distribution requirements are somewhat different:

- **Surviving spouse:** An RMD must first be made for the deceased owner for the year of death.
- If the surviving spouse becomes the account *owner*, distributions are made over the survivor's lifetime, with distributions beginning when the survivor reaches his or her RBD.
- As the *beneficiary* of the account, the surviving spouse must begin to receive distributions by 12/31 of the year after the year of the owner's death. Distributions are made over the longer of the life expectancy of the owner in the year of death, or that of the surviving spouse.
- **Eligible designated beneficiary:** An RMD must be made for the account owner for the year of death. Required annual distributions must begin by 12/31 of the year after the year of death, with distributions made over the beneficiary's lifetime.

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- **Designated beneficiary:** An RMD must be made for the account owner for the year of death. Required annual distributions must begin by 12/31/ of the year after the year of death, based on the greater of the life expectancy of the account owner, or that of the beneficiary. Funds in the account must be completely distributed within 10 years.
- **No designated beneficiary:** An RMD must be made for the account owner for the year of death. Required annual distributions must begin by 12/31 of the year after the year of death, with distributions made over the owner's life expectancy in the year of death.

### IRS Notice 2022-53

On October 7, 2022, the IRS issued Notice 2022-53, to address the question of when exactly the new RMD rules under the SECURE Act of 2019 would apply, particularly for inherited accounts where the account owner died *after* beginning to take RMDs. The IRS noted that many observers were unsure of whether they should have taken an RMD for 2021 and were also uncertain as to whether or not they would be required to take an RMD for 2022.

Among other points, the Notice clarified that (1) final regulations<sup>1</sup> regarding RMDs as modified by the SECURE Act would apply *no earlier* than the 2023 calendar year; and that (2) because the situation was unclear, the IRS would not seek to apply any of the normal penalties for RMDs not taken in 2021 or 2022.

### Seek Professional Guidance

The changes in the distribution requirements for inherited retirement accounts contained in the SECURE Act of 2019 will have the effect of significantly speeding up the rate at which these assets are distributed and taxed. Particularly for individuals with larger IRA and retirement plan account balances, a review of the estate planning strategies currently in place is advisable.

In this effort, the advice and guidance of trained, experienced tax and legal professionals is highly recommended.

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<sup>1</sup> The IRS issued *proposed* regulations on February 24, 2022.

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# Disclosure Notice

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The information that follows is intended to serve as a basis for further discussion with your financial, legal, tax and/or accounting advisors. It is not a substitute for competent advice from these advisors. The actual application of some of these concepts may be the practice of law and is the proper responsibility of your attorney. The application of other concepts may require the guidance of a tax or accounting advisor. The company or companies listed below are not authorized to practice law or to provide legal, tax, or accounting advice.

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