# SECURE 2.0 and Required Minimum Distributions

SECURE 2.0 was passed and signed into law on December 22, 2022. Many of its provisions impact employer-based retirement plans. This For Your Benefit will focus on the changes that law made to Required Minimum Distributions (RMDs).

## *RMD Age Changes*

Prior to 2020, unless actively employed (and not a 5 percent or greater shareholder of the plan sponsor), the age at which Required Minimum Distributions (RMDs) had to be made from qualified retirement plans, IRAs, SEPs, and SIMPLEs was 70 ½.The SECURE Act of 2019 changed that to age 72 for those whose RMDs had not already begun, starting in 2020. SECURE 2.0, signed into law on December 22, 2022 made further changes to these RMD rules.

1. For those retiring and attaining age 72 on or before December 31, 2022, the RMD age to begin distributions is still age 72.
2. For those retiring on or after January 1, 2023, the age to begin RMDs is now 73.
3. In 2033, the RMD age increases from 73 to 75.

This is best summarized in the table below:

| New Age Requirements for RMDs | | |
|---|---|---|
| Age 70 ½ | For Births on June 30, 1949, or Earlier | Anyone born on June 30, 1949, or earlier should have already started lifetime IRA RMDs and is bound by the original age 70 ½ RMD rule.<br>Nothing changes with the original SECURE or SECURE 2.0. Continue to take your annual RMDs as normal. |
| Age 72 | For Births on July 1, 1949, through and including December 31, 1950 | Anyone born on July 1, 1949, through & including December 31, 1950, should have already started lifetime IRA RMDs & is bound by original SECURE RMD age change to 72.<br>Nothing changes with SECURE 2.0. Continue with your existing RMD schedule. |
| Age 73 | For Births on January 1, 1951, through and including December 31, 1959 | Anyone born on January 1, 1951, through & including December 31, 1959, will use age 73 as their IRA RMD age.<br>Note: We need a year to adjust to the new age, and 2023 is that adjustment year. People born in 1951 will all turn 72 this year. No RMD is required for these folks in 2023 because the rule is now age 73, and they won't hit 73 until next year. Accordingly, no one will have their very first IRA RMD in 2023, because this year we are transitioning to the new age. |
| Age 75 | For Births on January 1, 1960, or Later | Doesn't begin for another 10 years (2033). |

## *Roth 401(k) RMD Changes*

Another change in SECURE 2.0 is that employer-based Roth accounts (*e.g.* Roth 401(k)s) are no longer required to take lifetime RMDs from these accounts.

Under prior law, a Roth IRA account owner did not have to take lifetime RMDs, but no such exception existed for Roth accounts under employer-sponsored retirement plans. SECURE 2.0 ends lifetime RMDs for Roth designated accounts in an employer-sponsored plan, effective for taxable years beginning after December 31, 2023. However, for retirees who attain age 73 in 2023, Roth account RMDs must still be made by April 1, 2024.

With the elimination of Roth employer plan (i.e., 401(k), 403(b), governmental 457(b) RMDs), effective 2024, owners of all Roth accounts (employer plans and IRAs), will not have to take lifetime RMDs.

### *Reduced Excise Taxes on Failures*

SECURE 2.0 reduced the excise tax for failure to take a RMD or for taking too little an amount. Previously, the penalty was an excise tax equal to 50 percent of the missed or too little amount. Under SECURE 2.0, starting in 2023 the penalty is reduced to a (still high) 25 percent. However, there is a new "correction window" of two years. If the missed or too little RMD is caught up in that timeframe, the penalty is reduced to 10 percent.

### *Definitions of 5- and 10-Year Rules for Beneficiaries of Eligible Accounts*

For both deaths that occurred prior to 2020 and those in 2020 or later, there are two rules that may come into play for beneficiaries. These 5- and 10-year rules are described in the following sections. For definition, the rules are as follows:

5-Year Rule. If a beneficiary is subject to the 5-year rule:

1. They must empty the account by the end of the $5^{th}$ year following the year of the account holder's death.
2. 2020 does not count when determining the 5 years.
3. No withdrawals are required before the end of that $5^{th}$ year.

10-Year Rule. If a beneficiary is subject to the 10-year rule:

1. They must empty the account by the end of the $10^{th}$ year following the account owner's (or "eligible designated beneficiary's) death. The IRS has taken the position in proposed regulations (and thus not yet final regulations) that distributions must occur evenly throughout the first nine years with the balance remaining distributed in the $10^{th}$ year.
2. The IRS has issued relief (Notice 2022-53) for beneficiaries subject to the 10-year rule that the IRS will not treat a beneficiary of an inherited account in a plan or IRA who was subject to the 10-year rule and who failed to take an RMD for 2021 or 2022 as having failed to take the correct RMD.

### *RMDs After Death of the Account Holder*

When a retirement plan account owner or IRA owner dies before January 1, 2020, before their RMDs are required to begin, the entire amount of the owner's benefit generally must be distributed to the beneficiary who is an individual:

- within 5 years of the end of the year following the year of the owner's death; or
- over the life of the beneficiary starting by the end of the year following the year of the owner's death.

For defined contribution plan participants or IRA owners who die after December 31, 2019, (with a delayed effective date for certain collectively bargained plans), the entire balance of the deceased participant's account must be distributed within ten years. There's an exception for:

- A surviving spouse;
- A child who has not reached age 18;
- A disabled or chronically ill person; or
- A person not more than ten years younger than the employee or IRA account owner.

The new 10-year rule applies regardless of whether the participant dies before, on, or after the required beginning date. The required beginning date is the date an account owner must take their first RMD, typically by April 1st of the year following retirement and reaching the requisite age.

In all cases, the spouse of the deceased account owner has more options than a non-spousal beneficiary.

### *Beneficiary Options for RMDs (Death of Account Holder Occurs Prior to 2020)*

If the beneficiary is a spouse of the account holder, and the death occurred prior to the required beginning date, the spousal beneficiary's options are:

1. Keep as an inherited account
   a. Take distributions based on their own life expectancy; or
   b. Follow the 5-year rule.
2. Rollover the account into their own IRA.

If the death of the account holder occurred after the required beginning date, the spousal beneficiary's options are:

1. Take distributions based on their own life expectancy.
   a. No 5-year rule available.



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If the beneficiary is not a spouse of the account holder, and the account holder's death occurred prior to the required beginning date (or if the account is a Roth IRA), the non-spouse beneficiary's options are:

1. Take distributions based on their own life expectancy, beginning the end of the year following the year of death; or
2. Follow the 5-year rule.

If the account holder's death occurred after the required beginning date, the non-spouse beneficiary may:

1. Take distributions based on the longer of their own life expectancy or the account owner's remaining life expectancy.

### *Beneficiary Options for RMDs (Death of Account Holder Occurs in 2020 or Later)*

If the beneficiary is a spouse of the account holder, and the death occurred prior to the required beginning date, the spousal beneficiary's options are:

1. Keep as an inherited account
    a. Delay beginning distributions until the employee would have turned 72;
    b. Take distributions based on the spouse's own life expectancy; or
    c. Follow the 10-year rule.
2. Rollover the account into their own IRA.

If the account holder's death occurred after the required beginning date, the spouse beneficiary may:

1. Keep as an inherited account
    a. Take distributions based on the spouse's own life expectancy.
2. Rollover the account into their own IRA.

In 2020 and later, options for a beneficiary who is not the spouse of the deceased account holder depend on whether they are an "eligible designated beneficiary." An eligible designated beneficiary is:

1. A spouse or minor child of the deceased account holder
2. Disabled or chronically ill individual
3. Individual who is not more than 10 years younger than the account holder.

An eligible designated beneficiary's options are:

1. Take distributions over the longer of their own life expectancy and the


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account holder's remaining life expectancy; or

2. Follow the 10-year rule (if the account holder died before that owner's required beginning date).

If the designated beneficiary is not an "eligible designated beneficiary," the only option is to follow the 10-year rule.

Lastly, if the beneficiary is not an individual, the rules described above as if the account holder died before 2020 are followed since the SECURE Act changes only applied to beneficiaries who are individuals.

### *Conclusion*

Both the SECURE Act of 2019 and SECURE 2.0 in 2022 significantly changed the rules around Required Minimum Distributions for employer defined contribution plan and IRA account holders. Those in these plans should consult with their individual attorneys and financial advisers to establish what may be best for them in their situations.

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