Natalie Choate's Guide to the New IRS Publication 590-B

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The IRS recently published a new edition of IRS Publication 590-B, *Distributions from Individual Retirement Arrangements (IRAs)*, "For use in preparing 2020 Returns." While an IRS Publication is not "law," and cannot be relied on as authority, or even considered official "guidance," it does offer a first look at the probable direction of Treasury regulations interpreting and applying SECURE's changes to the minimum distribution rules of § 401(a)(9). As such it offers much help in understanding how the post-SECURE rules will work and even sheds light on some other IRA issues that have been in doubt. Unfortunately, however, probably due to understandably difficult conditions for the IRS in the last year, the Publication contains errors and misleading statements that will not be helpful for IRA beneficiaries actually trying to figure out their RMDs.

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INTRODUCTION

SECURE created several questions Treasury needs to resolve via regulations. The primary issues of interest to estate planners were catalogued in Steve Leimberg's Employee Benefits and Retirement Planning Email Newsletter "Natalie Choate: IRS Guidance Needed for SECURE's Changes to the Minimum Distribution Rules" (Archive Message #754, February 15, 2021). The new edition of IRS Publication 590-B, for use in preparing 2020 returns (https://www.irs.gov/pub/irs-pdf/p590b.pdf), signals how Treasury is resolving some of these issues. Unfortunately, the Publication also makes some wrong turns. An isolated and clearly erroneous example in the Publication has led to (quite unnecessary) panic among some practitioners.

1. Good news and as expected: Owner's death after RBD: IRS retains the "longer of rule" for EDBs

An eligible designated beneficiary (EDB), unlike mere "designated beneficiaries" (DBs), is still entitled to the life expectancy payout. So if the IRA owner dies leaving her IRA to an EDB, required minimum distributions (RMDs) to the EDB must be paid in annual instalments based on the life expectancy of the EDB (or more rapidly).

But wait! What if the IRA owner dies after his required beginning date (RBD), and the IRA owner was younger than the EDB? The applicable distribution period (ADP) for a beneficiary who is not a designated beneficiary (a "nonDB," i.e., the owner's estate or a trust that does not qualify as a see-through trust) is, what would have been the life expectancy of the deceased IRA owner if he had not died. This has been nicknamed the "ghost life expectancy" rule. But if the IRA owner was younger than the EDB, and the EDB is stuck with his/her own life expectancy as the ADP, then a nonDB would get a longer payout period (the ghost life expectancy) than the EDB would get! It was clearly not Congress's intent to give the exalted "eligible designated beneficiary" a worse deal than the lowly non-designated beneficiary....that would make sense to no one. This potentially incongruous situation also existed in the statute prior to SECURE (where the life expectancy of a DB who was older than the IRA owner would be a shorter payout period than the ghost life expectancy that applied to a nonDB).

And Publication 590-B indicates the IRS is addressing this anomaly in exactly the same way the IRS handled the problem before SECURE: the rule will be that the ADP for the EDB of an IRA owner who dies after his RBD will be the "longer of" the EDB's own life expectancy or the "ghost" life expectancy of the deceased IRA owner. In other words, the "longer of" rule, which applied to designated beneficiaries before SECURE (ADP was the longer of the DB's life expectancy or the deceased participant's life expectancy; Reg. § 1.401(a)(9)-5, A-5(a)(1)) will continue to apply, under SECURE, to the EDB of an IRA owner who dies on or after his RBD.

That one was easy, but note what the IRS does NOT say: Nothing in Publication 590-B indicates that the 10-year rule will figure into the "longer of" calculation. The EDB's ADP will be the longer of the EDB's life expectancy or the ghost life expectancy, even if those periods are shorter 10 years. There is no ability or option for the EDB to elect the 10-year rule instead of the longer-of rule. Pub. 590-B, p. 10.

Is that bad or unfair? Not really. Remember, this issue comes up only if the IRA owner died at approximately age 81 or later leaving the IRA to a same-age or older beneficiary. That's the age when life expectancy on the IRS's new table starts to slip below 10 years. Nothing about the minimum distribution rules suggests that Congress approves a goal of stretching payouts beyond someone's life expectancy. The 10-year rule is a "bad" imposition on beneficiaries who have a life expectancy longer than 10 years; it was not meant to be a minimum payout period, just a poor substitute for the lost life expectancy payout.

The only argument in favor of allowing the 10-year rule as an option in this situation is that such an approach would discourage elderly beneficiaries from trying to disqualify themselves!

Another question that has come up under SECURE: Would a plain-old designated beneficiary (PODB) who is subject to the 10-year rule have the right or the option to use the ghost life expectancy instead of the 10-year rule? That could seem desirable if the ghost life expectancy is longer than 10 years (which would occur if the IRA owner died between the ages of 73 and 80, approximately). As far as Publication 590-B is concerned the PODB does not have that option: "Distributions to a designated beneficiary who is not an eligible designated beneficiary must be completed within 10 years of the death of the owner." Pub. 590-B, p. 10.

Closing DBs out of the ghost rule and EDBs out of the 10-year rule could result in the unseemly spectacle of DBs trying to disqualify themselves into nonDB status. Trust drafters are already incorporating self-destruct clauses into their documents, so the trustee of a "see-through trust" can pull a switch by the applicable deadline (generally September 30 of the year after the year of the participant's death) to disqualify the trust. See the author's *Trust Drafting under SECURE - Toggles to Disqualify a See-Through Trust*, Steve Leimberg's Employee Benefits and Retirement Planning Newsletter #721 (3/20/20).

Theoretically I suppose we could also find EDBs who have a life expectancy of less than 10 years, who are inheriting from a decedent who died after his RBD with life expectancy also less than 10 years, trying to change their status from EDB to PODB in order to use the 10-year rule. This could occur if both the decedent and the beneficiary were over approximately age 82 (so the ADP under the longer of rule would be less than 10 years). Curiously, I had that situation come up recently: A 90-ish-year old widow wanted to elect the 10 year rule! I guess the IRS has voted against her. I think the IRS wised up to the fact that they were too generous in the last round of regulations (e.g. allowing successor beneficiaries to keep using the life expectancy of the original DB) and Congress didn't like it so they are not going to provide unnecessary giveaways this time.

Moral: In case of death after the RBD, the 10 year rule will basically exist only for designated beneficiaries who are more than 10 years younger than the participant.

2. More good news: Owner's death before RBD: EDBs can elect 10-year rule

Prior to SECURE, the payout options if the IRA owner died before his/her RBD were quite simple: If the beneficiary did not qualify as a "designated beneficiary" (DB; i.e., an individual or see-through trust), the payout period was the 5-year rule: All benefits would have to be distributed by the end of the year that contained the fifth anniversary of the owner's death. If the beneficiary did qualify as a DB, the Applicable Distribution Period (ADP) was the "life expectancy payout method,' i.e., annual distributions over the DB's life expectancy.

What if the DB for some reason wanted to use the 5-year rule? No problem. Though there would be few cases where a DB would prefer the 5-year rule over the life expectancy payout, the IRS did not want to put DBs into the awkward situation of trying to shed their "DB" status in order to obtain the deal available for nonDBs, so the regulations allowed a DB to elect to use the 5-year rule instead of the life expectancy payout, if such elections were permitted under the plan in question. Reg. § 1.401(a)(9)-3, A-4(b).

SECURE retained the 5-year rule as the ADP for nonDBs when the IRA owner died before his/her RBD, but, as we all know, took away the life expectancy payout for PODBs, retaining it only for EDBs. This raises a question for EDBs: what if the EDB would prefer to use the 10-year rule rather than the life expectancy payout? No problem: In Publication 590-B, the IRS states that an EDB can elect to use the 10-year rule instead of the life expectancy payout. This is a welcome clarification and welcome flexibility for EDBs.

There is no reason why a PODB would want to use the 5-year rule (applicable to nonDBs) rather than the 10-year rule (applicable to PODBs). So, unlike with deaths after the RBD, there is no reason why any right to elect the 5-year rule would be sought by PODBs and Publication 590-B does not mention such an election.

3. Confusing explanations of the 10-year rule and when it applies

SECURE was pretty clear. For deaths after 2019, a designated beneficiary is subject to the 10-year rule unless he/she is an EDB in which case the life expectancy payout applies. If the beneficiary is not a DB at all, the pre-SECURE rules continue unchanged—the 5-year rule applies if the IRA owner's death was before the RBD, otherwise the ghost life expectancy applies.

SECURE is also quite clear on how the 10-year rule works—it's just like the 5-year rule except it's for 10 years. There are no minimum distributions required until the final year. SECURE leaves no doubt or wiggle room on that score.

Publication 590-B confirms that conclusion in the following four clear statements (emphasis added):

Page 2: "Modification of required distribution rules for designated beneficiaries**.** There are new required minimum distribution rules for certain beneficiaries who are designated beneficiaries when the IRA owner dies in a tax year beginning after December 31, 2019. **All distributions must be made by the end of the 10th year after death**, except for distributions made to certain eligible designated beneficiaries. See *10-year rule*, later, for more information."

Page 11: "If the 10-year rule applies, **the amount remaining in the IRA, if any, after December 31 of the year containing the 10th anniversary of the owner's death is subject to the 50% excise tax** detailed in Excess Accumulations (Insufficient Distributions)..." There is no mention of possible excess accumulations occurring in any year prior to the 10th year.

Page 12: Under "Which Table Do You Use To Determine Your Required Minimum Distribution?": "**Don't use any of the tables if** either the 5-year rule or **the 10-year rule** (discussed earlier) **applies**."

Page 33 (regarding Roth IRAs): "Distributions to beneficiaries**.** Generally, **the entire interest in the Roth IRA must be distributed by the end of the 5th or 10th calendar year, as applicable**, after the year of the owner's death unless the interest is payable to an eligible designated beneficiary over the life or life expectancy of the eligible designated beneficiary. See *When Must You Withdraw Assets? (Required Minimum Distributions)* in chapter 1."

Unfortunately, in translating SECURE into 590-B, the IRS kind of mangled it. In a few places 590-B makes blanket statements that leave out important exceptions, are untethered from the necessary qualifiers stated elsewhere in 590-B, and/or just misstate the rules. For example, under "Which Table do you Use?" (p. 12), the IRS states:

> **"Table I (Single Life Expectancy).** Use Table I for years after the year of the owner's death if either of the following applies.
>
> "1. You are an individual and a designated beneficiary, but not the owner's surviving spouse and sole designated beneficiary...."

This gives the erroneous impression that any individual designated beneficiary can use the life expectancy payout. However, the earlier detailed discussion of "Individual Designated beneficiaries" on page 11, made clear that this is not the case: "If the individual designated beneficiary is not an eligible designated beneficiary, the beneficiary is required to fully distribute the IRA by the 10th anniversary of the owner's death under the 10-year rule." Thus, when reading about the Single Life Expectancy table under "Which Table Do You Use," the IRA beneficiary who is a PODB must remember that, of course, as he read on page 11, he is not an *eligible* designated beneficiary so this blanket statement doesn't actually apply to him.

Similarly omitting to recognize the difference between DBs and EDBs is this statement on page 9:

> "The rules for determining required minimum distributions for beneficiaries depend on the following.
>
> - The beneficiary is the surviving spouse.
> - The beneficiary is an individual (other than the surviving spouse).
> - The beneficiary isn't an individual (for example, the beneficiary is the owner's estate). (But see *Trust as beneficiary*, later, for a discussion about treating trust beneficiaries as designated beneficiaries.)
> - The IRA owner died before the required beginning date, or died on or after the required beginning date."

The above list leaves out the bullet "whether the beneficiary is or is not an eligible designated beneficiary." Do the alarmists conclude this means the IRS is going to ignore the relevance of EDB status? Apparently it does not mean that—it just means the IRS forgot to mention this in the bulleted list. The category of EDB is described later in the same section (p. 10). Though there is no mention

in this section about why anyone would care about EDB status, detailed description of the EDB's life expectancy payout is contained in the succeeding sections.

Also worded in a less than clear manner is this explanation of the distribution rules applicable if the IRA owner dies before his RBD (p. 10) [commentary inserted in brackets]:

> **"Owner Died Before Required Beginning Date**
>
> "If the owner died before his or her required beginning date (defined earlier), and you are an eligible designated beneficiary, you must generally base required minimum distributions for years after the year of the owner's death using your single life expectancy shown in Table I in Appendix B, as determined under *Beneficiary an individual*, later. [ok so far]
>
> "However, there are situations where an individual designated beneficiary may be required to take the entire account by the end of the 10th year following the year of the owner's death. See *10-year rule*, later. [There MAY BE situations? I will go out on a limb and say there definitely WILL BE situations! This vague paragraph should be reworded to say plainly that an individual who is not an EDB must take the entire account by the end of the 10th year...]
>
> "If the owner's beneficiary isn't an individual (for example, if the beneficiary is the owner's estate), the *5-year rule*, discussed later, applies." [Ok I agree with that!]

Despite the unclear wording of the second paragraph in the above explanation, the IRS got it right and stated it clearly and correctly a bit further on (p. 11). After stating the life expectancy rule for EDBs, the IRS states (emphasis added), "In *all other cases*, the 10-year rule applies if the beneficiary is a designated beneficiary who is not an eligible designated beneficiary, regardless of whether the owner died before reaching his or her required beginning date."

And yet despite that moment of clarity on p. 11, there are places in Pub. 590-B where the wording has not been updated to reflect SECURE and the all-important difference between EDBs and PODBs. For another example of that, see discussion of the (rare) situation of a surviving spouse who remarries and leaves to her second spouse the IRA she inherited from her first spouse (section *** of this outline).

Here is another example of (in this case extremely) garbled explanation, from p.11: "The terms of most IRA plans require individual designated beneficiaries, who are eligible designated beneficiaries, to take required minimum distributions using the life expectancy rules (explained later) *unless such beneficiaries elect to take distributions using the 5-year rule or the 10-year rule*, whichever rule applies." Huh? Suddenly an EDB can elect the 5-year rule *or* the 10-year rule if the decedent died before his RBD? Why would anyone elect the 5-year rule instead of the 10-year rule? And most IRA plans do not require beneficiaries to take RMDs; they may recite the minimum distribution rules, but IRA providers do not force out RMDs...the RMD obligation is entirely up to the IRA owner or beneficiary to fulfill. Three final complaints from the English major: the sentence structure literally tells us that most individual designated beneficiaries are eligible designated beneficiaries; and "*individual* designated beneficiaries" is redundant, since designated beneficiaries by definition are individuals; and no IRA agreement in existence contains the term "eligible

designated beneficiaries" since that term did not exist prior to SECURE and IRA documents have not been updated for SECURE because the IRS has not issued guidance on SECURE. In short: That sentence on p. 11 should be taken out back and shot.

4. Confusion about when the 10 years ends

It has been assumed heretofore that the 10 years in the "10-year rule" would be measured just like the 5 years in the 5-year rule have always been (and are still) measured: The deadline for distributions would be December 31 of the year that contains the 10th (or 5th) anniversary of the owner's death, not the 10th anniversary of death itself (the literal wording of the statute).

But Publication 590-B explains the 10-year rule a bit differently on p. 11: "the beneficiary is required to fully distribute the IRA *by the 10th anniversary of the owner's death* under the 10-year rule." There is no mention here of the deadline's actually being the *end of the year* that contains the 10th anniversary of the owner's death. That is apparently just a mistake, since the two other references to the 10-year rule on the same page use the end of the year that contains the 10th anniversary:

... "(or December 31 of the year containing the 5th anniversary (or 10th anniversary for the 10-year rule) of the owner's death, if earlier).

....and "If the 10-year rule applies, the amount remaining in the IRA, if any, after December 31 of the year containing the 10th anniversary of the owner's death is subject to the 50% excise tax..."

5. Muddled statements about what happens on beneficiary's death

The explanations of what occurs on the death of a beneficiary are among the most muddled in Pub. 590-B. For example, from p. 10:

> **"Death of a beneficiary.** In general, the beneficiaries of a deceased beneficiary must continue to take the required minimum distributions after the deceased beneficiary's death. However, the beneficiaries of a deceased beneficiary don't calculate required minimum distributions using their own life expectancies. Instead, the deceased beneficiary's remaining interest must be distributed within 10 years after the beneficiary's death, or in some cases within 10 years after the owner's death. See *10-year rule*, later."

I do not believe any IRA beneficiary could discern the actual distribution requirements from the above statement. The above paragraph needs to be reworded as follows (changed words in italics);

> **Death of a beneficiary.** In general, the beneficiaries of a deceased beneficiary *who was taking annual distributions under the life expectancy payout method* must continue to take the decedent's *annual* required minimum distribution *only for the year of the deceased beneficiary's death, and then must distribute the entire account within 10 years (see "10-*

year rule") after the death of the deceased beneficiary. The preceding sentence would apply if the deceased beneficiary was an eligible designated beneficiary of the deceased IRA owner, or if the deceased IRA owner died before 2020. If the deceased beneficiary was subject to the "10-year rule," the beneficiary(ies) of such deceased beneficiary would have to distribute the entire account within 10 years after the death of the original IRA owner.

Similarly misleading is the following from page 12 (under "Other Designated Beneficiary," i.e., a nonspouse designated beneficiary):

> "As discussed in *Death of a beneficiary*, earlier, if the designated beneficiary dies before his or her portion of the account is fully distributed, continue to use the designated beneficiary's remaining life expectancy to determine the amount of distributions. However, if the deceased beneficiary was an eligible designated beneficiary, any remaining balance in the account must be distributed within 10 years of the beneficiary's death."

The above paragraph makes no sense. It seems to suggest that (1) everybody gets a life expectancy payout (2) that continues after the death of the original designated beneficiary, except that (3) successor beneficiaries of an EDB are subject to the 10-year rule. That's almost 100% wrong. First (1) nobody but an EDB gets a life expectancy payout in the first place, so there is no "life expectancy payout" to continue unless you are talking about beneficiaries of EDBs (or of "grandfathered" designated beneficiaries of pre-2020 decedents). Second (2) even if the EDB or "grandfathered" DB was using a life expectancy payout it never "continues after the death of the original beneficiary" because (3) successor beneficiaries of the EDB and grandfathered DB must flip to the 10-year rule on the original beneficiary's death.

6. Old example carried over from prior editions is just plain wrong

In one unfortunate case, Pub. 590-B uses an example carried over word for word (except for changing the years) from prior pre-SECURE editions of 590-B. This is clearly an error, and does not represent a novel interpretation of the 10-year rule. The example on p. 12 strangely enough has nothing to do with the subject of "Death of a beneficiary" which was discussed in the paragraph immediately preceding the example (and which was itself totally muddled as explained in #5 above):

> **"Example.** Your father died in 2020. You are the designated beneficiary of your father's traditional IRA. You are 53 years old in 2021, which is the year following your father's death. You use Table I and see that your life expectancy in 2021 is 31.4. If the IRA was worth $100,000 at the end of 2020, your required minimum distribution for 2021 would be $3,185 ($100,000 ÷ 31.4)."

This example would be correct only if "you" are a disabled or chronically ill individual within the meaning of § 401(a)(9)(E)(ii)(III), (IV), i.e., you are an *eligible* designated beneficiary, not a plain old designated beneficiary. So the example-writer was a bit careless and either left out

that crucial word "eligible" or (more like, I'm guessing) simply didn't update the example at all for SECURE.

Unfortunately, some are reading this clearly erroneous example together with other parts of 590-B to mean that the IRS is interpreting the 10-year rule as follows: A designated beneficiary must take annual distributions over his or her life expectancy, just like an EDB, except that the PODB must take a 100% distribution in the year that contains the 10th anniversary of the date of death.

There is, in my opinion, no justification for this interpretation either in the statute or in Publication 590-B itself.

The statute

There is no justification in the statute for this interpretation. Remember that the statute's basic RMD rules are, 5-year rule in case of death before the RBD and "at least as rapidly" rule for other deaths. The statute creates an exception to this, under § 401(a)(9)(B)(iii), allowing the "life expectancy payout" for a designated beneficiary. However, SECURE said the "(B)(iii) exception" applies only to *eligible* designated beneficiaries...for all other DBs, the 5-year rule shall apply regardless of whether the participant's death was before or after the RBD except that "10 years" shall be substituted for "5 years." § 401(a)(9)(H)(i), (ii).

The statute combines the 10-year rule and the life expectancy payout in only one way—by causing the life expectancy payout to an EDB or to the designated beneficiary of a pre-2020 decedent to "flip" to the 10-year rule on the original beneficiary's death. There is no other way under the statute to combine the life expectancy payout and the 10-year rule. Someone subject to the 10-year rule is not *also* subject to the life expectancy payout—the 10-year rule replaces the life expectancy payout. The life expectancy payout exists only under § 401(a)(9)(B)(iii) and SECURE says (B)(iii) does not apply to DBs who are not EDBs. Therefore there is no possible statutory hybrid of the life expectancy payout and the 10-year rule (except when the life expectancy payout of an EDB or beneficiary of a pre-2020 decedent "flips" to the 10-year rule upon the death of such EDB or beneficiary).

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Nothing in Publication 590-B indicates an intention to create a new hybrid form of life expectancy *cum* 10-year rule payout. The "Your father" example does not mention the 10-year rule deadline (suggesting that the example was carried forward from prior editions of 590-B without any effort to update it for SECURE).In fact there is NO statement anywhere in 590-B supporting the theory that the IRS seeks a life expectancy payout for DBs culminating in a 100% distribution in the 10th year. In contrast, there are four clear unadulterated explanations of the 10-year rule in Pub. 590-B stating the 10-year rule in the way consistent with the statute and the prior enforcement of the 5-year rule that were previously quoted in this article.

6. When does the "10 year" period end?

It has been assumed heretofore that the 10-year rule would work just like the 5-year rule has always worked (and still works): No distributions would be required until the year that contains the 10th (or 5th) anniversary of the owner's death, and 100% of the account would become the RMD for that 10th (or 5th) year. Publication 590 injects two doubts into this assumption:

First, in one place the publication explains the 10-year rule a bit differently on p. 11: "the beneficiary is required to fully distribute the IRA *by the 10th anniversary of the owner's death* under the 10-year rule." There is no mention of the deadline's actually being the end of the year that contains the 10th anniversary of the owner's death. That is presumably just a mistake, since the two other references to the 10-year rule on the same page use the end of the year that contains the 10th anniversary:

... "(or December 31 of the year containing the 5th anniversary (or 10th anniversary for the 10-year rule) of the owner's death, if earlier).

....and "If the 10-year rule applies, the amount remaining in the IRA, if any, after December 31 of the year containing the 10th anniversary of the owner's death is subject to the 50% excise tax..."

7. Incomprehensible explanations of when the 5-year rule applies

The next two paragraphs (which are nearly identical; whether this indicates a mistake in editing or an attempt at emphasis is unknown) are inexplicable:

"The 5-year rule generally applies to *all beneficiaries* if the owner died in a year ending before 2020, and to beneficiaries who are not individuals if the owner died in a year ending after 2019. For beneficiaries who are individuals, see 10-year rule, next.

"The 5-year rule generally applies to all beneficiaries if the owner died in a year ending before 2020. It also applies to beneficiaries who are not individuals (such as a trust) if the owner died in a year ending after 2019. If the owner died in a year ending after 2019 and the beneficiary is an individual, see 10-year rule *next*. "

Why the IRS would assert that all beneficiaries of pre-2020 decedents are subject to the 5-year rule is utterly baffling. The 5-year rule most certainly did not and does not apply to "all beneficiaries" if the owner died in a year ending before 2020. It applied only to beneficiaries who did not qualify as "designated beneficiaries" (or to designated beneficiaries who elected to use it even though not required to use it) of IRA owners who died before their RBD. Designated beneficiaries were entitled to use the life expectancy payout method. Reg. § 1.401(a)(9)-3, A-1(a). Designated beneficiaries of a pre-2020 decedent continue, even after SECURE, to be entitled to use the life expectancy payout method, though their successor beneficiaries will be required to switch to the 10-year rule as a result of SECURE. See Section 403(b) of the SECURE Act.

8. Trusts are given short shrift; AMBTs ignored

It is way beyond possibility that the IRS would be able to fully explain its "minimum distribution trust rules" in a publication for the public like Pub. 590-B. Unfortunately, however, in giving abbreviated discussions of trusts or omitting to mention them, the IRS could be creating an overly negative understanding for its readers.

For example, the statement that a trust is not an individual is misleading, since a trust can qualify for treatment as an "individual" (designated beneficiary) under the Treasury's own regulations,

On pages13-14, the IRS summarizes its existing (pre-SECURE) "minimum distribution trust rules" for what we call "see-through trusts." The summary contains the statement "Note. The separate account rules, discussed earlier, can't be used by beneficiaries of a trust." That statement appears twice (pp. 13 and 14). This rule does not apply to AMBTs, but Publication 590-B does not mention that new SECURE-added exception. See § 401(a)(9)(H)(iv)(I), (v).

9. Incorrect explanation of the 5-year rule for deaths in 2019–2024

As is well known, SECURE preserved the "5-year rule" as applicable to a beneficiary who was not a designated beneficiary and who inherited the IRA from a participant who died before his/her required beginning date (RBD). Publication 590-B explains the 5-year rule in the following paragraph on page 11 (in the section titled "Owner Died Before Required Beginning Date"):

5-year rule. The 5-year rule requires the IRA beneficiaries who are not taking life expectancy payments to withdraw 100% of the IRA by December 31 of the year containing the fifth anniversary of the owner's death. For example, if the owner died in 2019, the beneficiary would have to fully distribute the plan by December 31, 2024. The beneficiary is allowed, but not required, to take distributions prior to that date. The 5-year rule never applies if the owner died on or after his or her required beginning date.

The above explanation of the 5-year rule is generally correct, but the IRS's example contains an error. Since the owner in the example died in 2019, and there were no RMDs in 2020 (thanks to the CARES Act), CARES converted the "5-year rule" to a "6-year rule" for beneficiaries of owners who died in the years 2015–2019. § 401(a)(9)(I)(iii)(II). So the actual deadline for the beneficiary in the example is December 31, 2025, not 2024.

10. Good news for some surviving spouses: RMDs can be delayed to decedent's age 72 even if decedent died before SECURE was enacted

If an IRA owner dies before his RBD, leaving the account to his/her surviving spouse ("spouse"), the spouse as beneficiary does not have to start taking RMDs until what would have been the decedent's first distribution year had he/she not died (or, if later, the year after the year of the decedent's death). § 401(a)(9)(B)(iv)(I); see Reg. § 1.401(a)(9)-3, A-3(b).

The first distribution year is the age 72 year for individuals born after June 30, 1949 (i.e., individuals who turned age 70½ after 2019). It was the age 70½ year for individuals born before July 1, 1949 (i.e., individuals who turned age 70½ before 2020).

There has been a question about how this rule applies to decedents who died before SECURE was enacted. Generally SECURE applies only to beneficiaries of decedents who die after 2019.

IRS Publication 590-B takes a position on this: The delayed commencement date for distributions to the surviving spouse applies to the surviving spouse of a decedent who was born after June 30, 1949, even if the decedent died before 2020. Distributions to such a surviving spouse must commence no later than the year the decedent would have reached age 72, the year the decedent would have had to commence taking RMDs if he/she had not died. (If the surviving spouse rolls over the inherited plan to her own IRA prior to that year, she will never have to take distributions as beneficiary...subsequent distributions to her will be based on her status as "owner" of the rollover IRA.) The following example is on p. 10 of IRS Publication 590-B (2020):

Example 1. Your spouse died in 2017, at age 65. You are the sole designated beneficiary of your spouse's traditional IRA. You don't need to take any required minimum distribution until December 31 of 2024, the year your spouse would have reached age 72. If you die prior to that date, you will be treated as the owner of the IRA for purposes of determining the required distributions to your beneficiaries. For example, if you die in 2020, your beneficiaries won't have any required minimum distribution for 2020 (because you, treated as the owner, died prior to your required beginning date). They must start taking distributions under the general rules for an owner who died prior to the required beginning date.

The above is good news for some surviving spouses. Unfortunately, the rest of this "surviving spouse" section is tainted by apparent error:

As discussed above, when the surviving spouse (Spouse #2) is sole beneficiary of a decedent (Spouse #1) who dies before his RBD, Spouse #2 is not required to start distributions until what would have been Spouse #1's first distribution year. But what if Spouse #2 remarries before that year, then dies before the year she would have had to commence distributions? Does this postponement of required distributions now apply to her surviving spouse (Spouse #3) also?

No says the IRS in Example 2 on page 10. That rule is for one marriage only and it cannot keep getting passed along to new surviving spouses every time a surviving spouse remarries. Ok I get that. Now to the apparent mistake: In explaining that the Spouse #3 does not get this special deal, the IRS describes the deal Spouse #3 DOES get as follows: "*Just like any other individual beneficiary* of an owner who dies before the required beginning date, your surviving spouse must start taking distributions in 2021 based on his or her life expectancy (or elect to fully distribute the account under the 10-year rule by the end of 2030)." Emphasis added.

Say what? Do they mean "just like any other *surviving spouse or other eligible designated beneficiary* of an owner" etc.? Presumably that is what they *meant* to say, since Spouse #3 would be an eligible designated beneficiary. "Any other individual beneficiary" who does not happen to be an EDB is certainly not entitled to choose between the life expectancy payout and the 10-year rule. As noted elsewhere herein, the transition from the pre- to the post-SECURE rules does not seem to have been fully incorporated into Publication 590-B. END.