

September 08, 2020

SPOTLIGHT ON THE SECURE ACT

On December 20, 2019, President Trump signed into law the Setting Every Community Up for Retirement Enhancement Act ("SECURE Act"). The SECURE Act contains significant changes to retirement planning, as highlighted below:

1. **Increase in Required Minimum Distribution Age.** The SECURE Act defers the required beginning date for required minimum distributions ("RMDs") from retirement accounts. Now, individuals attaining age 70½ after December 31, 2019, are not required to start taking RMDs until age 72. Note, individuals who turned age 70½ prior to January 1, 2020, are still required to take RMDs upon attaining age 70½. The increase in the starting age for RMDs reflects the increase in collective life expectancies. The ability to delay the initial payout allows clients to take advantage of additional tax-deferred growth.
2. **Removal of Age Limitation on Traditional IRA Contributions.** The SECURE Act repeals the ban on making contributions to traditional IRAs after age 70½. Now, traditional IRA contributions are allowed for any individual with earned income. This change reflects the fact that many Americans are living longer and continuing to work beyond traditional retirement age. As a result, individuals who continue to work after age 70½ now have the opportunity to continue making tax-deferred contributions to their traditional IRAs. As in the past, there is still no age restriction on Roth IRA contributions.
3. **Qualified Charitable Distributions.** The SECURE Act does not change qualified charitable distributions ("QCDs"), which may be paid from IRAs after an account owner attains age 70 ½. Qualified charitable distributions are otherwise taxable distributions from an IRA that may be paid directly to a qualified charity and count towards satisfying the account owner's RMD.
4. **529 Plans.** The SECURE Act expands the definition of qualified higher education expenses payable from 529 plans to include costs of certain apprenticeship programs and repayment of student loan debt.
5. **Limit Stretch for Inherited Retirement Plans.** One of the most notable changes imposed by the SECURE Act is the change to the RMD rules for inherited qualified retirement accounts. The new rules are applicable to account owners dying after December 31, 2019. Under Section 401 of the SECURE Act, most beneficiaries who inherit a qualified retirement account are no longer able to "stretch" the RMD payments over their life expectancy. Instead, those beneficiaries are subject to a ten-year rule that mandates withdrawal of all assets from an inherited account by December 31 of the year that contains the tenth anniversary of the account owner's death. Under the prior rules, a thirty-year-old granddaughter who inherited her

grandmother's IRA with a value of \$600,000 had the ability to stretch the RMD payments and corresponding taxes over a 53.3-year period. Under the new rules, the same thirty-year-old granddaughter is mandated to withdraw the entire IRA balance within ten years.

There is an exception to the ten-year rule for certain eligible designated beneficiaries ("EDB"). A beneficiary's EDB status is determined as of the date of the account owner's death. The five classes of EDBs are as follows:

Surviving Spouses. An account owner's surviving spouse still has the option either (i) to roll over the retirement account to his or her own IRA or other plan, or (ii) to treat the account as an inherited retirement account and use the surviving spouse's own life expectancy for RMD purposes. Note, if the surviving spouse elects the inherited account option, upon the surviving spouse's death, the surviving spouse's beneficiary will be subject to the ten-year rule regardless of whether such beneficiary satisfies any EDB category.

Disabled Individuals. The second class of EDBs is individuals who meet the definition of disabled under Section 72(m)(7) of the Internal Revenue Code ("IRC"), which is "unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration." Though the definition of disabled for EDB purposes is similar to the definition used for Social Security Disability Insurance ("SSDI") and Supplemental Security Income ("SSI") purposes, it differs by adding a requirement that the disability be indefinite. In order to qualify as an EDB under this category, the beneficiary's disability must be certified as of the date of the account owner's death.

Chronically Ill Individuals. The third class of EDBs is individuals who meet the definition of chronically ill under IRC § 7702B(c)(2). Again, the chronic illness must be certified as of the date of the account owner's death to be indefinite and reasonably expected to be lengthy in nature.

Children Who Have Not Reached Majority. A child of the account owner who has not reached the age of majority may continue to use such child's life expectancy until the child reaches the age of majority, at which point the ten-year rule applies. The age of majority is not defined in the Treasury Regulations. The IRS will likely issue further guidance on whether a standard age of majority is applicable or whether the age of majority under state law governs.

Individuals Not More than Ten Years Younger. An individual who is not more than ten years younger than the account owner may use his or her own life expectancy for RMD purposes. Note, this category also includes any individuals older than the account owner.

Any successor beneficiary who takes upon the death of an EDB will be subject to the ten-year rule regardless of whether such successor beneficiary satisfies any EDB category.

While the SECURE Act does not modify the rules regarding utilizing a see-through trust as a beneficiary of a retirement account, the ten-year rule will effectively limit the ability to stretch distributions over the trust beneficiary's lifetime. Please contact a member of the **Trusts and Estates Group** if you have any questions on how the SECURE Act may impact your retirement or **estate planning**.