

# Planning With IRAs After the SECURE and CARES Acts

Presentation to  
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# Background

- The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) was signed into law at the end of 2019.
- Effective January 1, 2020.
- The SECURE Act enacts major changes to rules related to individual and employer sponsored retirement accounts and may also materially alter estate plans incorporating retirement accounts.
- This presentation focuses primarily on planning with individual retirement accounts (IRAs) post-SECURE Act.

# Tax Benefits of IRAs—Traditional and Roth

- An IRA is a trust or custodial account established for the exclusive benefit of its owner and named beneficiaries.
- There are two types of IRAs: Traditional and Roth.
  - Traditional IRA
    - Owner contributes pre-tax funds and defers tax on both the contributed funds and growth within the IRA until the funds are withdrawn.
    - Owner required to withdraw funds (required minimum distributions or RMDs) beginning at their Required Beginning Date (RBD).
  - Roth IRA
    - Owner contributes after-tax funds.
    - Investment growth and distributions of funds potentially tax-free.
    - Original owner not required to withdraw funds during their lifetime (no RMDs).

# Repeal of Maximum Age Limitation for Traditional IRA Contributions

- Historically, a taxpayer could contribute to a Traditional IRA only if he or she had earned income or alimony and was under age 70½.
- Roth IRA contributions are not subject to the maximum age limitation, but are subject to the earned income requirement and annual income limitations.
  - In 2020, combined contributions to both types of IRAs are limited to the lesser of \$6,000 (or \$7,000 if the taxpayer is age 50 or older) or the taxpayer's earned income.
- Contributions after December 31, 2019
  - SECURE Act repeals the maximum age limitation on traditional IRA contributions.
    - Significant benefit to taxpayers who continue to work beyond age 70½.
  - Roth-conversion – new opportunities for higher-earning taxpayers over age 70½ to fund Roth IRAs through conversion of nondeductible traditional IRA contributions.

# Required Beginning Date of Required Minimum Distributions

- Pre-SECURE Act – Traditional IRA owner required to withdraw a minimum distribution (RMD) by April 1 of the year following the year in which he or she attained age 70½ regardless of employment status.
- SECURE Act – increased the RBD to April 1 of the year following the year in which the owner attained age 72.
  - Applies to distributions required to be made with respect to individuals who attain age 70½ after made after December 31, 2019.

# Elimination of the Stretch for Most Designated Beneficiaries

- Overview of RMD Rules pertaining to Inherited IRAs
  - If the IRA owner died before the RBD and the beneficiary of the Inherited IRA was not a designated beneficiary, the entire IRA was required to be distributed by the end of the fifth calendar year after the owner's death.
  - The better tax result was the “stretch”. The designated beneficiary of an Inherited IRA was historically able to take RMDs out of the IRA based on the beneficiary's own longer life expectancy.
  - RMDs are taxable income to the recipient, so the ability to “stretch” RMDs over a recipient's life expectancy resulted in significant income tax savings.

# Designated Beneficiaries

- Who are Designated Beneficiaries?
  - As a general rule, a designated beneficiary must be an “individual” or natural person.
    - The beneficiary must be “identifiable” or have a life expectancy so that the RMDs over the beneficiary’s life expectancy (rather than the original owners’ life expectancy) can be calculated.
  - Charities and other non-individuals, such as estates or business entities, are not designated beneficiaries and are subject to the five-year rule.

# Designated Beneficiaries (cont.)

- Certain trusts can qualify as Designated Beneficiaries by acquiring “see-through status”.
  - For these trusts, a beneficiary of the trust (rather than the trust itself) is treated as the designated beneficiary.
  - Trusts may qualify only if all of the beneficiaries of the trust are “identifiable,” which generally means all trust beneficiaries must be individuals.
  - All potential beneficiaries of the trust are considered, including presumptive remainder beneficiaries and contingent or successor remainder beneficiaries.



# Trusts as Designated Beneficiaries

## ▪ Conduit Trusts

- Conduit trusts **require** that RMDs are paid from the IRA to the trust be distributed to one or more current individual beneficiaries in the tax year the IRA makes a distribution to the trust.
- Under prior law, the life expectancy of the eldest current beneficiary to whom the RMDs must be paid was used, without regard to the life expectancy of any other beneficiary.
- RMDs could be stretched over the life expectancy of that single beneficiary.

## ▪ Accumulation Trusts

- Accumulation trust terms **do not require** RMDs be paid from the trust to one or more beneficiaries.
- Instead, the trustee **can** accumulate the RMDs within the trust.
- Treasury Regulations historically required the life expectancy of the oldest potential trust beneficiary is used for purposes of determining the RMD.

# Stretch IRA Rules Post-SECURE Act

- The “Near Death of the Stretch”
  - SECURE Act eliminates the ability to stretch RMDs over the lifetime of most designated beneficiaries (whether trusts or individuals).
- Post-SECURE Act Analysis
  - Does the inherited IRA have a **designated beneficiary**?
  - Is the designated beneficiary an **eligible designated beneficiary** (EDB)?
  - If the beneficiary is an EDB, RMDs from an inherited IRA can be withdrawn using the EDB’s life expectancy, but only during the period that the EDB remains an EDB.

# Stretch IRA Rules Post-SECURE Act (cont.)

- Who is an Eligible Designated Beneficiary?
  - The surviving spouse of the IRA owner;
  - A minor child of the IRA owner;
  - Disabled;
  - Chronically ill; or
  - An individual who is not more than ten years younger than the IRA owner.

# Planning for Surviving Spouse

- Surviving Spouse
  - Prior to the SECURE Act, there were four options for leaving an IRA to a surviving spouse that would allow the spouse stretch over his or her remaining life expectancy. Three of the four remain viable after the SECURE Act.
  - Three common planning options for surviving spouses **are unaffected** by the SECURE Act because a surviving spouse is an EDB.
    - Surviving spouse as the outright beneficiary of an IRA allowed to stretch RMDs over remaining life expectancy;
    - Spousal rollover of inherited IRA to personal IRA; and
    - Conduit trust for the benefit of the surviving spouse still allowed to stretch RMDs over remaining life expectancy.
  - An accumulation trust for the benefit of a surviving spouse **will never** be an EDB
    - All IRA assets must be withdrawn by the surviving spouse within ten years.

# Planning for Adult Beneficiary

- The SECURE Act eliminates the stretch for inherited IRAs left to all adult descendants (and almost all other adult beneficiaries), unless the beneficiary is disabled or chronically ill.
- Adult descendants who are not disabled or chronically ill and inherit IRAs (outright or in trust for their benefit) will be subject to the ten-year rule.
  - Conduit trusts for an adult descendant that is not disabled or chronically ill will not receive a stretch over the life expectancy of the adult descendant.
  - Accumulation trusts will no longer receive a stretch where an adult descendant is
    - a lifetime beneficiary not disabled or chronically ill;
    - a remainder beneficiary; or
    - a remote taker.

# Planning for Minor Beneficiary

- Minor children are EDBs under the SECURE Act; other minor beneficiaries (including minor grandchildren and minor nieces and nephews) are not EDBs.
- The minor child will be an EDB only until he or she reaches the age of majority.
  - Age of majority generally be decided by state law (typically 18 or 21).
  - Important possible exception - a child is not treated as having reached an age of majority “if the child has not completed a specified course of education and is under the age of 26.”
- Unless the child otherwise qualifies as an EDB after attaining the age of majority, the ten-year rule will apply once the child is no longer a minor.

# Planning for Minor Beneficiary

- Inherited IRA outright or Conduit trust
  - Allowed to stretch RMDs until child reaches the age of majority.
  - Child, while a minor, will actually receive RMDs (but RMD will be small, based on a long life expectancy).
- Accumulation Trusts
  - Will not receive a stretch and ten-year rule applies.
  - The minor child would not have access to funds unless the trustee decides to distribute RMDs (or other trust assets) from the trust.
  - Entire inherited IRA must be withdrawn by the trust within ten years (accelerated tax bill and, worse, incurring taxes at the compressed trust tax brackets).

# Big Picture

- Repeal of the maximum age limitation and increase in the RBD are taxpayer friendly changes.
- The elimination of the stretch option for non-EDBs diminishes the tax-deferred benefit IRAs previously offered designated beneficiaries.
- May also materially alter planning strategies developed in current estate plans.
  - Estate plans utilizing trusts as IRA beneficiary fundamentally impacted by ten-year rule.
  - Income tax planning performed at the time the estate plan was adopted.
- Estate plans incorporating trusts as IRA beneficiaries should be analyzed anew, in order to determine the SECURE Act's impact and whether possible alternatives are available.



# Big Picture (cont.)

- Professionals involved in developing estate plans with IRAs (particularly large IRAs) must consider the SECURE Act's impact on strategies previously utilized to maximize the stretch for inherited IRAs.
- Non-Tax Trust Considerations
  - Changes implemented by the SECURE Act do not prohibit an IRA owner from naming an accumulation trust (or conduit trust) as designated beneficiaries of his or her IRA.
  - SECURE Act simply reduces (sometimes drastically) the timeframe for withdrawal of the inherited IRA, resulting in an acceleration of income taxes for the designated beneficiary.
  - There may still be significant non-tax estate planning reasons to name a trust that does not qualify for the stretch as the beneficiary of an IRA.

# CARES Act RMD Waivers

- The CARES Act provides for the waiver of 2020 minimum required distributions (RMDs) payable by IRAs, qualified defined contribution retirement plans, governmental 457(b) plans, and 403(a)/(b) plans.
  - Notice 2020-51 - Rollover Guidance. So that taxpayers may avoid taking RMDs in 2020, the Notice permits rollovers of the following distributions from a covered plan (other than a defined benefit plan):
    - Distributions to a plan participant paid in 2020 (or paid in 2021 for the 2020 calendar year in the case of an employee who has a required beginning date of April 1, 2021) if the payments:
      - equal the amounts that would have been RMDs in 2020 (or for 2020) had the CARES Act waiver not been enacted (**2020 RMDs**), or
      - (ii) are one or more payments (that include the 2020 RMDs) in a series of substantially equal periodic payments made at least annually and expected to last for (x) the life (or life expectancy) of the participant, (y) the joint lives (or joint life expectancies) of the participant and the participant's designated beneficiary, or (z) for a period of at least 10 years.
    - For a plan participant with a required beginning date of April 1, 2021, distributions that are paid in 2021 that would have been RMDs for 2021 had the CARES Act waiver not been enacted.

# CARES Act RMD Waivers

- Correcting Distributed Waivable RMDs:
  - Permitted Rollovers of RMDs Previously Distributed from a Covered Plan - To further assist plan participants who have already received distributions in 2020, the Treasury Department is extending the 60-day rollover period to August 31, 2020.
  - If a participant who attains age 70½ in 2020 received a distribution in 2020 and part of the distribution was improperly characterized as an RMD, then the payor and plan administrator will not be considered as having failed to satisfy the direct and automatic rollover rules, the 20% mandatory withholding rules, and the Code Section 402(f) special tax notice rules with respect to that distribution.

# CARES Act RMD Waivers

- Permitted Repayments of RMDs Previously Distributed from an IRA.
  - In the case of an IRA owner or beneficiary who has already received a distribution of an amount that would have been an RMD in 2020 had the SECURE Act and CARES Act not been enacted, the recipient may repay the distribution to the distributing IRA, even if the repayment is made more than 60 days after the distribution, provided the repayment is made no later than August 31, 2020.
  - The repayment generally will be treated as a rollover, but will not be treated as a rollover for purposes of the rule that limits rollovers to one rollover per 12-month period and the restriction on rollovers for nonspousal beneficiaries.

# CARES Act Distributions – Optional Plan Feature

- **Coronavirus Related Distributions** are distributions by plan to “Qualified Individuals” defined as any individual:
  - who is diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (“COVID-19”) by a test approved by the Centers for Disease Control and Prevention;
  - whose spouse or dependent (as defined in Code §152) is diagnosed with COVID-19 by such a test;
  - who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off or having work hours reduced due to COVID-19, being unable to work due to lack of child care due to COVID-19, the closing or reducing in hours of a business owned or operated by the individual due to COVID-19;
  - who has a reduction in pay (or self-employment income) due to COVID-19 or has a job offer rescinded or start date for a job delayed due to COVID-19;
  - whose spouse or a member of the individual’s household is quarantined, furloughed, laid off, or has his/her work hours reduced due to COVID-19, is unable to work due to lack of childcare due to COVID-19, has a reduction in pay (or self-employment income) due to COVID-19, has a job offer rescinded or start date for a job delayed due to COVID-19, or has to close or reduce the hours of a business owned or operated by the individual’s spouse or member of the individual’s household due to COVID-19; or
  - other factors as determined by the U.S. Treasury Department or the Internal Revenue Service.

# CARES Act - Rules in Administering CRDs

- The Plan Administrator may rely on an individual's certification that the individual satisfies a condition to be a Qualified Individual unless the Plan Administrator has actual knowledge to the contrary.
- CRDs can come from IRAs, qualified retirement plans, governmental 457(b) plans, and 403(a)/(b) plans.
- CRDs must be received before December 31, 2020
  - \$100,000 Cap on a controlled group basis
  - Special Tax Treatment
    - No 10% Additional Tax for Early Withdrawal
    - Tax-Deferred Rollover Treatment if Distribution Is Repaid over three year period
    - Income Inclusion Over Three-Year Period
    - Deemed Satisfaction of Distribution Restrictions

# CARES Act – Plan Loan Relief

- **Increased Plan Loan Limits [Optional]**

- Until September 23, 2020, plans may grant loans up to the lesser of \$100,000 (normally \$50,000) or 100% (normally 50%) of the participant's vested account balance

- **Delayed Loan Repayment [Optional]**

- For qualified individuals' loan repayments having a due date that occurs on or before December 31, 2020, the due date will be delayed for one year
- The loan repayments must resume after the end of the suspension period, and the term of the loan may be extended by up to 1 year from the date the loan was originally due to be repaid.
- Interest accruing during the suspension period must be added to the remaining principal of the loan. A plan satisfies this rule if the loan is reamortized and repaid in substantially level installments over the remaining period of the loan, plus up to 1 year from the date the loan was originally due to be repaid.

# SECURE Act - Penalty-Free Distributions on Account of a Qualified Birth or Adoption

- Effective for distributions after December 31, 2019, plan participants may take withdrawals up to \$5,000 within a year of the birth or adoption of a child without incurring the 10% penalty for a distribution prior to age 59 1/2.
- The maximum limit is applied on an individual basis, so that it is possible for each parent to receive a \$5,000 distribution on account of a qualified birth or adoption.
- Participants who elect to take a distribution related to a qualified birth or adoption may retribute the amount distributed to a qualified plan that permits eligible rollover distributions.



# SECURE Act – Other Provisions

- **Plan Loans Not Permitted Through Credit Cards**
  - Effective for plan loans made after December 20, 2019, plan loans may not be distributed through credit cards or similar arrangements.
- **Treatment of Custodial Accounts upon Termination of 403(b) Plan**
  - IRS is instructed to issue guidance that will permit distribution of individual custodial accounts in kind to participants upon termination of the plan.
- **Portability Options for Annuity Investments**
  - Effective for plan years beginning after December 31, 2019, the SECURE Act increases the portability of annuity investments by allowing qualified distributions (i.e. rollovers) to an IRA or qualified retirement plan within 90 days after the investment ceases to be available under the plan, thereby avoiding surrender fees.
- **Simplification of Safe Harbor Requirements for 401(k) Plans Providing Non-elective Employer Contributions**
  - Effective for plan years beginning after December 31, 2019, the safe harbor notice requirement is eliminated with respect to safe harbor 401(k) plans using non-elective employer contributions to satisfy the safe harbor rules.

# Administrative Provisions

- **Increased Penalties for Delinquent Form 5500 Returns** – Effective for Form 5500 returns required to be filed after December 31, 2019, the IRC penalty for failure to timely file is increased ten-fold to \$250 per day, not to exceed a maximum of \$150,000.
- **Increased Penalties for Delinquent IRS Form 8955-SSA** – Effective for annual registration statements required to be filed after December 31, 2019, the penalty is increased ten-fold to \$10 per participant for whom the plan administrator failed to file an annual registration statement identifying participants who have separated from service with a vested benefit under the plan, up to a maximum penalty of \$50,000.

# Thank You for Attending Today's Presentation

If you have further questions or if you need additional assistance,  
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