

Estate Planning with Retirement Account Benefits in Light of the SECURE Act

January 2020

On December 20th, President Trump signed into law the Setting Every Community Up for Retirement Enhancement Act (SECURE Act) as part of the omnibus spending package that had been passed by Congress earlier in the week. The Act was generally designed to make saving for retirement easier. To that end, it makes it easier for small businesses to offer 401(k) plans to their employees and makes it possible to offer retirement plans to long-term, part-time employees. It also provides perks to individuals, such as removing the age cap on contributions to IRAs and pushing back the date by which people must start taking distributions from their IRAs from age 70½ to age 72. However, it isn't all roses.



On the revenue-raising side, it eliminates the so-called “stretch-IRA” that allowed beneficiaries to take retirement account distributions over their lifetime. Under the new rules, beneficiaries must take the entire IRA balance within 10 years of the original account owner’s death. In the most common scenarios, this will have the effect of forcing beneficiaries to take the entire retirement account balance in relatively large annual distributions during their highest-earning years, significantly increasing the tax cost of inherited retirement accounts. There are some exceptions:

- Surviving spouses;
- A minor child of the plan participant (until they reach the age of majority when the 10-year rule kicks in);
- Disabled and chronically ill beneficiaries; and
- A beneficiary who is less than 10 years younger than the plan participant (such as a sibling or unmarried partner).

With the loss of the stretch-IRA, the estate planning world’s collective creativity is again being demonstrated. Some of the strategies being discussed in the industry:

- This change makes Roth conversions even more compelling. Under the SECURE Act, Roth IRAs also have to be distributed over 10 years after the death of the account owner, but unlike traditional retirement accounts, distributions from Roths are not subject to income taxes.
- For married couples that have sufficient outside assets, it is no longer a foregone conclusion that naming the surviving spouse as the primary beneficiary is the best strategy. It might make sense to structure beneficiary designations to maximize the chances that the children get something on the first spouse to die so that they have more years over which to withdraw the entire retirement account balances.
- It will likely make sense to spread retirement account balances over as many beneficiaries as possible, so those people that want to give small pecuniary bequests (such as \$50,000 to each of their nephews and nieces) may want to consider using retirement accounts to fund those bequests.
- Some pundits are suggesting using minimum distributions from retirement accounts to fund life insurance to use as a replacement inheritance for the retirement account. Life insurance death benefits are not subject to income taxes.
- For those that are charitably inclined:
 - With this change, retirement accounts become an even less desirable asset to beneficiaries, particularly where the plan assets will be subject to an estate tax in the estate of the deceased plan participant. In that scenario, leaving retirement accounts to charity at death becomes even more appealing.

- It might make sense to name Charitable Remainder Trusts (“CRTs”) instead of individuals as retirement account beneficiaries. CRTs provide an income stream for a period of years or for the lifetime of the beneficiary, with the remainder going to charity, so the non-charitable beneficiary does not get the entire retirement account balance. However, the key structural benefit of CRTs is that income is not taxed until distributed to the lifetime beneficiary, so the distributions that they do receive can be stretched over a longer period of time.

These are some of the strategies currently being discussed to address the loss of the stretch-IRA. We would be glad to discuss the ramifications of the SECURE Act on your estate plan and whether it makes sense to make a change. As ever, we will continue to stay on top of developments as they occur so that we can continue to provide you with optimal planning strategies to help you meet your goals.

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