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Lukinovich, APLC has law offices in Metairie and Baton Rouge, Louisiana. Our areas of practice include estate planning, wills and trusts, business planning, wealth preservation, probate administration and charitable gift planning.

Our mission is to devote our best skills, efforts and resources to advise our clients enthusiastically and creatively to accomplish their business, tax, family and estate planning goals and objectives, and we offer superior personalized attention with the utmost regard for privacy and confidentiality.

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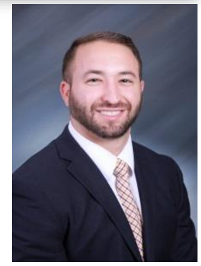
**Suggested Reading**:

***"Fearless"***

By Eric Blehm

This book has the perfect name. The author explores the self-sacrificing life of Adam Brown from Seal Team Six. Adam raises the bar for all of us.

## What you need to know about the SECURE Act



Patrick Gabb

As many people in the financial industry are aware, on December 20, 2019, President Trump signed into law the Setting Every Community Up for Retirement Act (the "Secure Act"). In many ways, the Secure Act has impacted the way financial advisors and estate planners will make planning recommendations for clients who own retirement plans. The following is an overview of what has changed under the Secure Act and who is affected by it.

**Who is affected by the Secure Act?** For the most part, the amendments made by the Secure Act apply only to deaths of retirement plan participants on or after January 1, 2020. However, the new regime under the Secure Act possibly could apply to pre-2020 deaths as well. In preface to the subsequent example, the IRS has not confirmed the following interpretation of the new rules under the Secure Act, but all advisors should be aware of this possible situation. Suppose John died in 2015 and his daughter, Jane, was withdrawing from her inherited IRA over her life expectancy. Jane then dies in 2030, causing the IRA to pass to her designated successor beneficiary, her son, Bill. Under the new rules of the Secure Act, Bill will be subject to a 10-year payout period, rather than stepping into the shoes of his mother, Jane. ***Once again, this interpretation of the new rules under the Secure Act has not been confirmed***, but advisors and estate planners should be mindful of it until more clarification is provided by IRS regulations or other guidance.

**<u>What are the positives from the Secure Act for taxpayers?</u>** First, prior to the enactment of the Secure Act, participants could not continue to make contributions to their traditional IRAs upon reaching age 70 ½. The Secure Act repealed the age restriction and therefore participants now can make contributions after reaching age 70 ½. There has never been an age restriction on Roth IRA contributions, and the new law did not change that rule.

Second, under the old law, the required start date for **required minimum distributions ("RMDs")** from qualified retirement plans and traditional IRAs was age 70 ½. Now, the Secure Act raises the required start date for RMDs from age 70 ½ to 72; this change applies to participants who turn 70 ½ after December 31, 2019. As under prior law, if the participant does not own more than five (5%) percent of the employing company or business, and the participant is working still, the participant can delay taking RMDs from his or her employer's retirement plan until after he or she has retired.

Third, the Secure Act permits each parent to withdraw up to $5,000 without penalty for qualified birth or adoption expenses; if each parent has a retirement account, the parents may take out up to $10,000 penalty-free. Under the old law, early withdrawals typically triggered a ten (10%) penalty.

**<u>What are the negatives from the Secure Act for taxpayers?</u>** The most notable, and important, change caused by the Secure Act is the replacement of the "**Stretch IRA**". The Secure Act imposes stricter rules for post-death RMDs that significantly curtail the tax favorable Stretch IRA. Under the old laws, estate planners favored the Stretch IRA because upon the participant's death, the balance of his or her retirement account could be distributed in annual installments over the life expectancy of his or her designated beneficiary; essentially, designated beneficiaries reaped income tax benefits from Stretch IRAs because they permitted designated beneficiaries to keep an inherited retirement account in tax-deferred status for many years after the participant's death. The Secure Act requires most **<u>non-spouse IRAs</u>** and retirement plan beneficiaries to withdraw all of the money inside the account within ten years from the participant's death. The new "**10-year payout rule**" requires all amounts to be distributed by December 31st of the year that contains the 10th anniversary of the date of death of the participant. During the interim ten years, there are no RMDs. Therefore, a beneficiary may withdraw as much or as little as he or she wants during the ten-year period as long the account is drained completely by the end of the period. Generally, the 10-year payout rule applies regardless of whether the retirement account owner dies before or after his or her RMD start date—remember, the Secure Act changed the RMD age to 72.

The exception to the 10-year payout rule is the "**eligible designated beneficiary**". An eligible designated beneficiary is one of the following individuals: (1) surviving spouse, (2) minor child of the participant (until such minor child attains the age of majority), (3) disabled beneficiary[1], (4) chronically ill individual[2] and (5) beneficiary less than 10 years younger than the decedent. If a surviving spouse is named outright as beneficiary, he or she has the option to elect to treat the inherited IRA as his or her own or roll over the benefits into the surviving spouse's own IRA. If a minor child of the participant is the designated beneficiary, once the minor child attains the age of majority applicable in his or her state (usually 18 or 21), the 10-year payout rule kicks in. However, a child may not be treated as having attained the age of majority if the child has not completed a "specified course of education" and is under the age of 26.[3] In other words, the 10-year payout rule does not apply to a child in college until he or she either graduates or attains age 26.

**What if a taxpayer named a trust as a beneficiary?** Prior to the enactment of the Secure Act, two types of trusts, "**conduit trusts**" and "**accumulation trusts**," were often used in conjunction with the Stretch IRA. A conduit trust is one in which all distributions made from a retirement plan to a trust must be distributed at least annually to the beneficiary of the trust and such distributions are taxed at the individual beneficiary's income tax rate. In an accumulation (or discretionary) trust, the trustee has discretion on whether to pay out the RMDs to the trust beneficiaries or retain those funds in the trust to protect and preserve the funds. Nevertheless, if the funds were retained in the trust, they would be taxable to the trust at the high trust tax rates—except for a Roth IRA, where there is no tax on distributions from the inherited Roth IRA to the trust. Under the pre-Secure Act law, an accumulation trust qualified as a see-through trust, only if the "countable" beneficiaries were identifiable individuals.[4] Thus, estate planners used these trusts to stretch out RMDs from a retirement plan over the life expectancy of a beneficiary.

Post adoption of the Secure Act, if the primary beneficiary of a conduit trust is an eligible designated beneficiary, then the 10-year payout rule will not apply. If the primary beneficiary of a conduit trust is **not** an eligible designated beneficiary, then the beneficiary must receive the retirement plan benefits within 10 years after the participant's death. With the exception of accumulation trusts created for the benefit of disabled beneficiaries or chronically ill beneficiaries, retirement accounts would be required to distribute to accumulation trusts in full under the new 10-year payout rule which could result in accelerated income tax payments at higher tax rates charged to the trusts—though actual distributions to a beneficiary would still

[1] A designated beneficiary who is disabled as defined in IRC § 72(m)(7).
[2] A designated beneficiary who is chronically ill as defined in IRC § 7702B(c)(2).
[3] Treas. Reg. § 1.401(a)(9)-6, A-15.
[4] *See* Treas. Reg. § 1.401(a)(9).

carry out income. Thus, under the Secure Act, estate planners need to be careful when drafting trusts that will be beneficiaries of IRAs and other retirement plans.

**How does the Secure Act affect Roth IRAs?** Unfortunately, Roth IRAs also are subject to the 10-year payout rule under the Secure Act. However, because there is no income tax on distributions from Roth IRAs, the acceleration of income caused by the 10-year payout rule is not a concern for taxpayers. IRA owners should meet with their financial advisors and estate planning attorneys to assess if it would be beneficial to convert their traditional IRAs to Roth IRAs. For example, an IRA owner who is in lower income tax bracket than his or her intended beneficiary should consider making a Roth conversion during life because the IRA owner would pay tax at his or her income tax rate and allow the distributions to pass income tax free. Thus, even though Roth IRAs are subject to the 10-year payout period, converting a traditional IRA to a Roth IRA could create significant benefits in the future for a participant's beneficiaries.

## CONCLUSION

If you believe that one or more of these issues apply to you, we recommend that you reach out to an estate planning attorney as soon as possible. If you have any questions for our firm regarding this matter, please contact Lukinovich, APLC at 504-818-0401.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