WEALTH MANAGEMENT
ADVANCED PLANNING

Planning Implications of the SECURE Act

Presented by Erik Dullenkopf, CFP®

Screaming Eagle® Wealth Management

Agenda

- What’s in the SECURE Act
- Who is **not** affected by the SECURE Act
- Pre-SECURE Act vs. post-SECURE Act rules
- Financial planning ideas for the loss of the beneficiary “stretch” IRA
- What to Do to Secure the Future

What is the SECURE Act?

- Setting Every Community Up for Retirement Enhancement
- December 20, 2019 was signed into law and effective January 1st, 2020 after being attached to the Further Consolidated Appropriations Act
- Considered the most significant retirement reform since the Pension Protection Act in 2006
- Guidance still needed in some areas
- Different than the CARES Act
- We need your help!

KEY 2019 SECURE ACT AND TAX EXTENDERS

NEW IRA RULES

- Elimination of the lifetime "stretch" provision for non-spouse beneficiaries of inherited IRA and other retirement accounts, replaced by a 10-year distribution cap
- RMDs for IRAs required to start beginning at age 72 (instead of 70 ½)
- Removal of 70 ½ contribution age limit
- $5,000 Qualified Birth or Adoption Distribution
- Taxable non-tuition fellowship and stipend payments treated as compensation for IRA purposes
- Non-deductible IRA contributions can be made with certain foster care payments

401(K) PROVISIONS

- Provision of ERISA fiduciary Safe Harbor for selecting an annuity provider for retirement plans.
- Creation of a "distributable event" for annuities no longer allowed as plan invstment options
- Tax credit for small businesses that establish a 401(k) (or a 403(b), SEP IRA, or SIMPLE IRA)
- Tax credit for adoption of auto-enrollment of participants in 401(k) plans
- Maximum contribution for 401(k) automatic enrollment increased to 15%
- Long-term. part-time employees who work at least 500 hours in at least three consecutive years will be eligible to participate in their employer's 401K plan
- Provides for MEPs to maintain qualified status overall, if only one employer's portion is disqualified
- Elimination of 401(k) loans made via credit cards or similar arrangements

OTHER PROVISIONS

- Employers may adopt employer-funded retirement plans up to the due date of the employer's tax return
- Increased penalties for employers failing to file taxpayer and employee benefit plan returns
- Qualified education expenses for 529 plan funds expanded for student loans and apprenticeships
- Kidde tax reverts applicable children's income to be subject to child's parents' marginal tax rate
- Allowance of qualified Disaster Distributions up to $100,000 per disaster, from retirement accounts

TAX EXTENDERS

- Discharge of certain qualified principal residence indebtedness is excluded from gross income
- Allowance of mortgage insurance premium deduction
- Deduction for qualified tuition and related expenses
- AGI 'hurdle rate' for deducting qualified medical expenses to remain at 7.5%
- Miscellaneous incentives for economic growth, energy production, and green initiatives

Key Provisions of the SECURE Act

- Repeals the prohibition of retirement contributions after the account owner reaches age 70½
- Delays the age for starting Required Minimum Distributions (RMDs) from 70½ to 72
- Eliminates the lifetime “stretch” IRA option, requiring non-spouse beneficiaries of IRAs to deplete the inherited balance within 10 years of the decedent’s death (with exceptions)
- Permits penalty-free withdrawals of up to $5,000 from retirement accounts to help pay for childbirth or adoption expenses

Key Provisions of the SECURE Act

- Expands permitted expenses for 529 college savings plans to include apprenticeships, as well as up to $10,000 of qualified student loan repayments for the beneficiary and $10,000 for each of the beneficiary's siblings (an aggregate lifetime limit, not an annual limit)
- Reinstates the "kiddie tax" to pre-Tax Cuts and Jobs Act rates (Excess income will be taxed at the parents' rate rather than the trust and estate rates.)
- Allows graduate students to count stipends and nontuition fellowship payments as compensation for IRA contribution purposes

Key Provisions of the SECURE Act

- 403(b), 457 and TSP government plan rules don’t go into effect until Jan 1, 2022
- Establishment of Multiple Employer Plans (MEP’s)
- New safe harbor requirements allowing more employer retirement plans to use annuities
- Increased small business retirement plan credits
- Increased 401k participate auto enrollment option to 15% in year two
- Lower working hour requirements for long-term part-time workers to be eligible for employer retirement plans

Who Is *Not* Affected by the SECURE Act

This new legislation will <u>not</u> affect the following individuals:

- Those who turned 70½ prior to December 31, 2019 (Individuals who are 70½ or older as of December 31, 2019, will continue with RMDs under the pre-SECURE Act rules.)
- Surviving spouses of IRA owners
- Beneficiaries of IRA owners who died before December 31, 2019 (one life only)
- Beneficiaries of some owners of existing qualified annuities
- “Non-designated beneficiaries” (Charities, estates, non-see-through trusts)

The Loss of the “Stretch” IRA

Pre-SECURE Act rules

- A “designated beneficiary” could stretch withdrawal of an inherited retirement account over his or her life expectancy.
- See-through trusts that were beneficiaries of an IRA could stretch out withdrawal of the account balance (usually pursuant to the life expectancy of the oldest beneficiary of the trust).

The Loss of the “Stretch” IRA

New SECURE Act rules

- Balance must be withdrawn within 10 years of original account owner’s death…but not “required” until year 10
  - Exceptions (now known as “eligible designated beneficiaries”):
    - Spouse beneficiaries
    - Children of the decedent who have not reached the age of majority (account would need to be distributed within 10 years of reaching the age of majority)
    - Disabled individuals
    - Chronically ill individuals
    - Individuals who are not more than 10 years younger than the decedent

“Old” stretch vs 10 year rule, example:

- Married couple with annual income of $100k
- Inherits $1M IRA
- Assumed investment growth rate of 6% per year

Stretch Distributions

Beneficiary Age	Remaining Life Expectancy	Minimum Distribution	Balance
56	28.6	$34,965	$1,025,035
57	27.6	$37,139	$1,049,398
58	26.6	$39,451	$1,072,911
59	25.6	$41,911	$1,095,375
60	24.6	$44,527	$1,116,570
61	23.6	$47,312	$1,136,252
62	22.6	$50,277	$1,154,150
63	21.6	$53,433	$1,169,967
64	20.6	$56,794	$1,183,370
65	19.6	$60,376	$1,193,996
66	18.6	$64,193	$1,201,443
67	17.6	$68,264	$1,205,265
68	16.6	$72,606	$1,204,975
69	15.6	$77,242	$1,200,032
70	14.6	$82,194	$1,189,840
71	13.6	$87,488	$1,173,742
72	12.6	$93,154	$1,151,012
73	11.6	$99,225	$1,120,848
74	10.6	$105,740	$1,082,358
75	9.6	$112,746	$1,034,554

10 year rule distributions

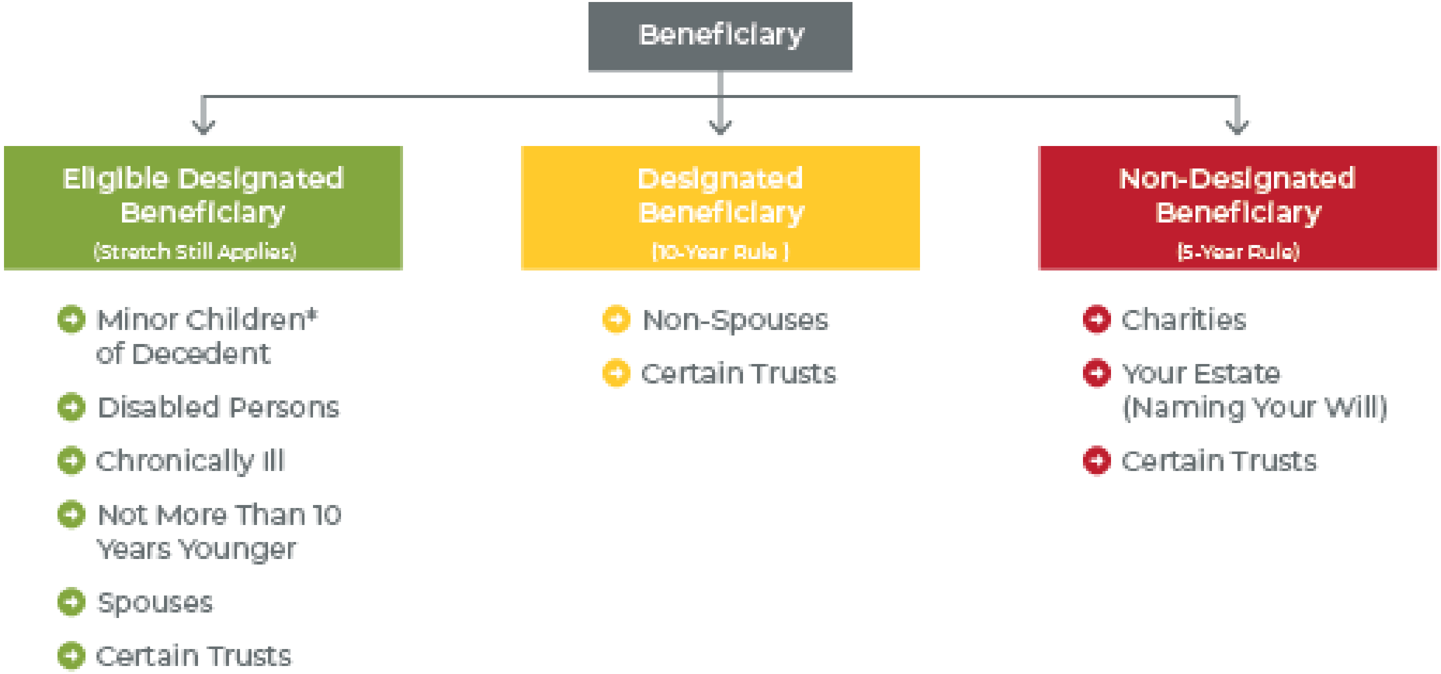
Year	Withdrawals	Interest	Balance
			$1,000,000
1	$125,000.00	$53,968.09	$928,968.09
2	$125,000.00	$49,586.99	$853,555.08
3	$125,000.00	$44,935.68	$773,490.76
4	$125,000.00	$39,997.49	$688,488.25
5	$125,000.00	$34,754.72	$598,242.97
6	$125,000.00	$29,188.59	$502,431.56
7	$125,000.00	$23,279.15	$400,710.71
8	$125,000.00	$17,005.23	$292,715.94
9	$125,000.00	$10,344.35	$178,060.29
10	$125,000.00	$3,272.64	$56,332.93

“Old” stretch vs 10 year rule, example:

- Married couple with annual income of $100k
- Inherits $1M IRA
- Assumed investment growth rate of 6% per year

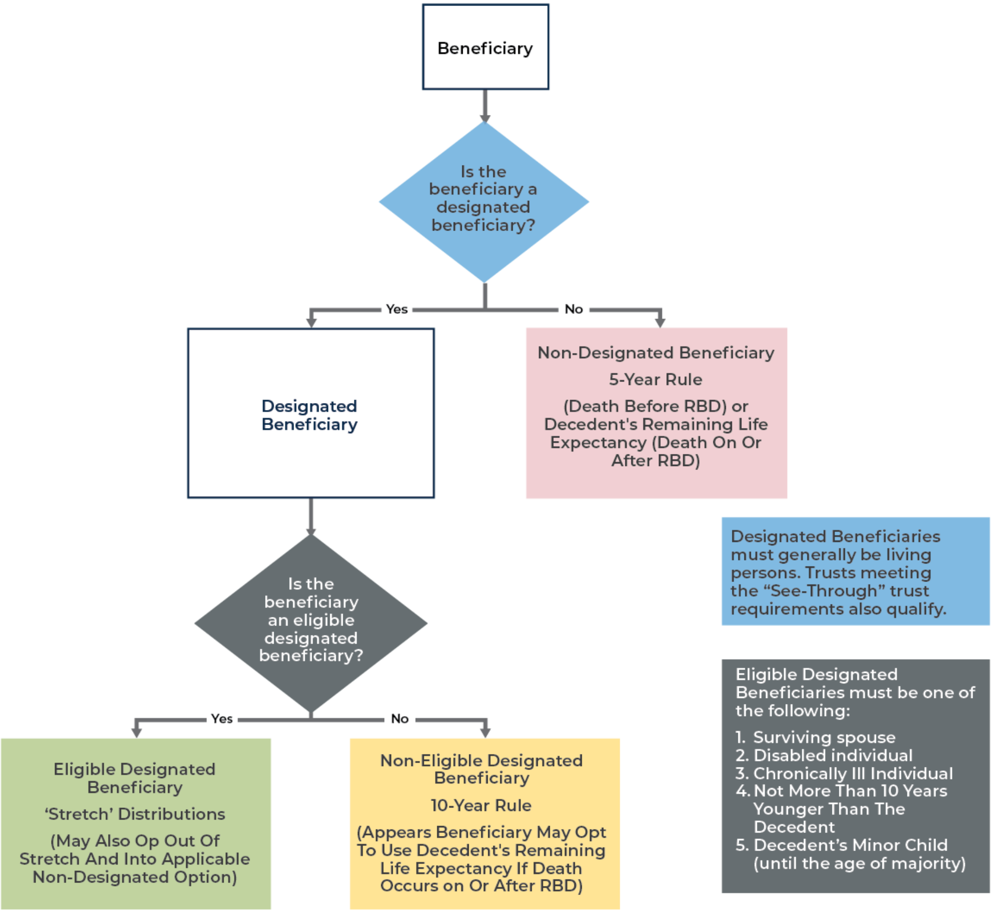
- Beneficiary subject to the 10 year rule pays about $42k/yr in Federal income tax
- Beneficiary using stretch option pays about $21k/yr over same 10 years
- $21k/yr or $210k total more Fed tax paid over 10 year rule

IRA Beneficiaries After the SECURE Act



*Only applicable until the minor reaches the age of majority

DETERMINING RETIREMENT ACCOUNT BENEFICIARY TYPE AFTER THE SECURE ACT



Eligible Designated Beneficiaries (EDB's)

- **Spouse** – Domestic partner doesn't count. Same sex marriage with legal ceremony does. Can make spouse's IRA their own
  Disabled individual – Must be "unable to engage in *any* substantially gainful activity"
- **Chronically ill individual** – "an indefinite one which is reasonably expected to be lengthy in nature"
- **No more than 10 years younger than decedent** – Parent, friend, sibling, unmarried partner. Not defined if exactly 10 years or calendar years
- After EDB dies, the next beneficiary is subject to 10 yr. rule

Minor Children of decedent

- Solely minor children of the decedent, and not grandchildren
- Only EDB and able to stretch distributions based on their life expectancy until age of majority then flips to 10 year rule
- Age of majority based on state of residence
- Previous Treasury Regulations have specified that minor child continuing a “specified course of education” could continue to stretch until age 26, regardless of state applicable age. The IRS is yet to provide guidance on definition.

AGE OF MAJORITY BY STATE

State	Age of Majority
Mississippi	21
Alabama & Nebraska	19
All Other States	18*

* In some states, age of majority is graduation from high school (if sooner).

See-through Trusts as Beneficiary

- Goal is to protect assets from beneficiary or third party, while optimizing IRA tax consequences
- Conduit Trust
- Accumulation Trust

Conduit Trust

- Distributes directly to beneficiary as directed by trust or RMDs, whichever is higher.
- No change for trust beneficiary with one EDB – still gets stretch
- If multiple EDB’s, all are subject to 10 yr. rule. Unless a Conduit Trust is created for each EDB, then stretch is allowed using each beneficiary's life expectancy
- If multiple beneficiaries, and not all are EDB’s, then all are subject to the 10 year rule

Conduit Trust

- Best case: Trust includes flexible language allowing trustee to distribute funds in excess of RMD early – in an effort to spread over the 10 years
- Worst case: All of inherited IRA is distributed in year 10 (only year "required" by IRS)
- Either way, protection is for no longer than 10 years. Is it worth it?
- If protection for longer than 10 years is desired, use an Accumulation See-through Trust
- What about those who passed in 2020 with Conduit Trust beneficiary? State allow reformation or decanting of trust? IRS agree? If so, subject to Non-designated beneficiary distributions, but can keep "protected" in trust.

Accumulation Trust

- Trustee has discretion when to distribute assets from IRA and when to subsequently release to beneficiary
- Beneficiary usually a Designated Beneficiary subject to the 10 year rule, but the trustee can chose to hold distributed assets in trust
- How much flexibility does trust document provide for timing of distributions to beneficiary?
- “Applicable Multi-beneficiary Trust” is an exception that allows disabled or chronically ill see-through beneficiaries to stretch their inherited IRA distributions. (Special Needs Trust)
- Tough job for trustee: Distribute assets to beneficiary? Protect assets from third party in trust? Pay higher taxes in trust?

Married Individuals Filing Joint Returns and Surviving Spouses

If Taxable Income Is Between:	The Tax Due Is:
0 - $19,750	10% of taxable income
$19,751 - $80,250	$1,975 + 12% of the amount over $19,750
$80,251 - $171,050	$9,235 + 22% of the amount over $80,250
$171,051 - $326,600	$29,211 + 24% of the amount over $171,050
$326,601 - $414,700	$66,543 + 32% of the amount over $326,600
$414,701 - $622,050	$94,735 + 35% of the amount over $414,700
$622,051	$167,307.50 + 37% of the amount over $622,050

Trusts & Estates

If Taxable Income Is Between:	The Tax Due Is:
$0 - $2,600	10% of taxable income
$2,601 - $9,450	$260 + 24% of the amount over $2,600
$9,451 - $12,950	$1,904 + 35% of the amount over $9,450
$12,951	$3,129 + 37% of the amount over $12,950

Planning Ideas for the Loss of the “Stretch” IRA

- Roth conversions
- Charitable remainder trusts
- Life insurance
- Qualified charitable distributions
- Disclaimers

Roth Conversions

Convert all or some of your traditional IRA into a Roth IRA

- Pay taxes on the converted amount.
- Thereafter, assets grow tax free and are not subject to RMDs like traditional IRAs (for the account owner only, not beneficiaries).
- Growth continues tax free even after death
- No matter the distribution requirements, all would be tax free.

Roth Conversions

Questions to ask when deciding whether to do a Roth conversion:

- Will the individual need the money within 5 years of conversion?
- Will the individual be in a higher or lower tax bracket in the future? Are the beneficiaries expected to be in a higher tax bracket?
- Where will the individual get the money to pay the taxes owed because of the conversion?

Charitable Remainder Trusts

The advantages of CRTs after the SECURE Act

- Simulate the tax benefits of a lifetime stretch withdrawal
- Control distributions to the beneficiary in a tax-efficient method

Caveat

- If the account owner is not charitably inclined, there are only a small set of circumstances in which a beneficiary would actually receive more from a CRT versus receiving the IRA over a 10-year period.

Qualified Charitable Distributions (QCD)

What is a QCD?

- If an individual is older than 70½, he or she is entitled to make tax-free gifts of up to $100,000 per year from an IRA payable directly to charity.
- This age **did not** change to 72 as a result of the SECURE Act’s passage.
- Distribution needs to be directly to the charity and cannot go to a donor-advised fund (DAF).

Qualified Charitable Distributions (QCD)

Why QCDs may become even more popular?

- Retirement accounts are no longer an attractive asset to bequeath
- Current tax benefit and RMD satisfaction
- Most non-retirement assets get a stepped up basis at death

Please note: Consult with a tax professional if doing a QCD after post-70½ contributions were made to an IRA.

Life Insurance

- Withdrawals from IRA to pay premiums on a life insurance policy may result in much greater total benefit to a beneficiary (premium dollar goes further)
- In most cases, an inheritance from a life insurance policy is tax free
- Invested proceeds of death benefit do not grow tax free, as do in Roth IRA
- Benefits would be subject to insurability of the individual and the cost of premiums based on age and health

Disclaimers

A beneficiary can "disclaim" (refuse) an inherited asset without tax implications

- The beneficiary must have not already received or exercised control over the property
- The disclaimed property must pass to someone other than the disclaimant
- To represent a "qualified disclaimer," the disclaimer must:
  - Be in writing
  - Be within 9 months of the death of the owner

Disclaimers

Use of disclaimers after the SECURE Act

- If death occurs in 2020 and later, the spouse may still want to consider at least a partial disclaimer so the ultimate beneficiaries can spread out the tax burden over a period longer than 10 years

Other Ideas

- Asset-by-asset" approach to estate planning rather than one pot of all asset split into percentages
- Spend it! Withdraw tax-deferred assets for retirement expenses at a faster rate than pre-SECURE Act

What to Do to Secure the Future

- Create a list of beneficiaries, names, ages, identify if EDB, Designated Beneficiary or Non-designated beneficiary
- Specifically if a trust beneficiary, is it a Conduit Trust or a Discretionary Trust
- Are there Applicable Multi-beneficiary Trusts (special needs)
- Prioritize contact in order of urgency
- Review current estate plan and evaluate if changes or other strategies need to be implemented

THANK YOU

Screaming Eagle®
Wealth Management

Erik Dullenkopf, CFP® | erik@screamingeaglewm.com | 805.643.7700

www.screamingeaglewm.com