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WEALTH MANAGEMENT

SECURE Act Signed Into Law

Congress has passed the SECURE Act. The Setting Every Community up for Retirement Enhancement Act of 2019 (SECURE Act) was voted on in the Senate, with 71-23 in favor, as part of an eight-bill, $1.4 trillion spending package signed into law by President Trump December 20, 2019. It had passed in the House of Representatives in May with a 417-3 vote.

The SECURE ACT, which becomes effective January 1, 2020, addresses provisions to reform workplace retirement plans and expand retirement savings. For small businesses, it offers tax incentives to set up automatic enrollment in retirement plans for workers. It will help employers to establish multiple plans, ease non-discrimination rules for frozen defined benefit plans and also add a safe harbor for selecting lifetime income providers in defined contribution plans.

For individuals, the bill eliminates the maximum age cap for contributions to traditional individual retirement accounts.

The following provides highlights of the most notable changes, as well as what the bill means to current savers and future retirees:

1) Required Minimum Distribution (RMD) and Contribution Age: INCREASE

a. The withdrawal age has been changed from 70 ½ to age 72.

i. Currently, RMDs generally must begin in the year the taxpayer turns 70 ½.

ii. If the beneficiary is the IRA owner's spouse, RMDs are delayed until the end of the year that the deceased IRA owner would have reached age 72 (it used to be age 70 ½ prior to the SECURE Act).

b. IRA contributions have been extended beyond 70 ½ as long as the taxpayer is working.

i. Currently, contributions to IRAs are capped at 70 ½. This is now repealed.

ii. Note that Roth IRAs have no age-based restrictions on contributions.

2) Changes in Stretch IRA distributions to delay taxes as part of your Estate Plan

a. The SECURE Act eliminates the "stretch IRA", an estate planning method that allows IRA beneficiaries to stretch their distributions from their inherited account and the required income tax payments based on their life expectancy.

b. For non-spouse beneficiaries receiving IRA inheritances, the SECURE Act accelerates payouts.

i. Beneficiaries were previously allowed to withdraw RMDs based on their life expectancy, deferring taxation of the withdrawals.

ii. Under the SECURE Act beneficiaries must withdraw all assets of an inherited account within 10 years. There are no minimum distribution amounts, but the entire balance must be distributed after the 10th year.

c. There are some exceptions:

i. If the non-spouse beneficiary is a minor, disabled, chronically ill or not more than 10 years younger than the deceased IRA owner.

ii. For minors, the exception only applies until the child reaches the age of majority, at which point the 10-year rule is enforced.

3) Penalty-free Withdrawals: Added Exceptions

a. The SECURE Act will allow withdrawals from a 401(k), IRA or other retirement account prior to age 59 ½ for child birth and adoption cost without penalty.

i. Withdrawals will be allowed, up to $5,000, without paying the usual 10% early withdrawal penalty.

ii. Distributions will be treated as taxable income.

iii. Each spouse can withdraw $5,000 from his or her own account, penalty-free

iv. Taxpayers have one year from the date the child is born, or adoption is finalized, to withdraw the funds from the retirement account without paying the 10% penalty.

4) Grad Students and Care Providers are allowed to contribute to IRAs

a. Prior to the SECURE Act, contributions to a retirement account couldn't exceed earned income. Graduate and post-doctoral students receiving stipends were not allowed to contribute. Similarly, payments that foster-care providers received for the care of disabled people in their home didn't qualify.

b. Under the SECURE Act, the amount paid to graduate, post-doctoral, research students and care providers will be treated as compensation for purposes of making IRA contributions.

5) Changes in 401(k) plans

a. The SECURE Act will permit employers to offer annuities as investment options within 401(k) plans.

b. Insurance companies issuing annuities will have a fiduciary responsibility to offer suitable annuity options to participants. Employers will be protected from legal action.

c. The SECURE Act requires 401(k) plan administrators to provide "lifetime income disclosure statements" annually to plan participants.

6) Employer-Sponsored Retirement plans:

a. The SECURE Act will be attractive for small business owners to set up retirement plans for employees. The new Act will let more small businesses band together to offer Multiple Employer Plans or MEPs.

b. Employer-sponsored plans will be available to long-term part-time workers. The SECURE Act drops the threshold eligibility down to either one full year with 1,000 hours worked or three consecutive years of at least 500 hours.

c. Employers will get a tax credit to offset the costs of starting a 401(k) plan or SIMPLE IRA plan with "auto-enrollment", on top of the start-up credit they already receive.

7) New Rules for Borrowing from 401(k) accounts

a. The SECURE Act continues to allow loans as much as 50% of your 401(k) balance without exceeding $50,000 with a repayment of five years and longer if used to buy a home.

b. The SECURE Act prohibits 401(k) loans be provided through the use of credit card or debit cards.

8) 529 Plans

a. Currently, 529 education saving plans must be used for qualified education expenses.

b. The SECURE ACT expands the definition to include student loan payments and costs of apprenticeship programs up to $10,000.

The elimination of the Stretch IRA provisions in a traditional IRA and defined contribution plans like 401(k)s will require a change of estate planning strategy for many individuals with non-spouse beneficiaries and large IRAs. Here are a few strategies for your consideration:

> IRA trusts that were only used in estate planning may become more popular.

> In addition, those individuals with charitable giving intent may have an opportunity to use retirement accounts to provide income to non-spouse beneficiaries at death outside of the RMD requirements.

> While the beginning age for RMD's has been increased to 72, taxpayers can still make Qualified Charitable Distributions (QCD's) from their IRA as early as 70 ½. QCD's are not taxable, the limit is $100,000 per year, and the distribution must be made directly to the charity. Utilizing QCD's may help to reduce future RMD's since they will reduce the balance of the IRA.

> Life Insurance Trusts may also need to be created to help non-spouse beneficiaries with the income taxes without further erosion of their inheritance.

Americans are working and living longer. According to its designers and supporters, The SECURE Act will help approximately one-fourth of working Americans with no retirement savings and workers age 60 and older with small retirement balances to save money, take responsibility for their own retirement future, protect those assets and minimize taxation.

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