**Setting Every Community Up for Retirement Enhancement (SECURE) Act**
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Effective January 1, 2020, the SECURE Act legislation will impact nearly everyone and the many aspects of their financial planning and retirement saving. Once treasury regulations are released, nuances in interpreting this new law will become clearer. Until then, individuals are left to interpret the law's effects based on the language of the law itself. This article will address what the SECURE Act entails and who it affects, as well as provide suggestions on how to plan for the changes that have been instituted.

**Key Provisions of the SECURE Act:**
**The Good:**
• Repeal the prohibition of IRA contributions after the account owner reaches age 70½.
• Delay the age for required minimum distributions (RMDs) from 70½ to 72.
• Permit penalty-free withdrawals of up to $5,000 from retirement accounts to help pay for childbirth or adoption expenses.
• Expand 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).
• Allow graduate students to count stipends and nontuition fellowship payments as compensation for IRA contribution purposes.
• Small business retirement plan credits for establishing new plans or adding auto enrollment features.
• 401(k) plans will soon be able to offer lifetime income annuities.
• No more 401k debit/credit cards

**The Bad:**
• Reinstate 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).
• New Qualified Charitable Distribution Anti-Abuse rules will reject QCDs if IRA owners make contributions after age 70 ½. (i.e., you can't do the QCD if you make contributions after 70 ½).

**And, The Ugly:**
• Eliminate 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; see below for more details).

Many of the provisions adopted into the Internal Revenue Code as part of the SECURE Act allow individuals more time for tax-deferred savings and growth before distributions are required. The provisions deemed advantageous to individuals and businesses may result in less tax revenue to the government, however. So, the SECURE Act also includes requirements designed to account for this loss of revenue by accelerating the withdrawal and taxation of inherited retirement accounts.

**Planning for the Loss of the "Stretch" IRA Option**
Although there are many ways in which the SECURE Act will change how individuals save for retirement, the provision with the greatest effect is the elimination of the lifetime "stretch" option for IRAs. Prior to the SECURE Act, individual beneficiaries were entitled to stretch out the withdrawal of their inherited retirement account in accordance with their life expectancy. Now, beneficiaries are required to withdraw their entire inherited retirement account within 10 years of the original owner's death.

There are some exceptions to this rule, however. The individuals who remain entitled to the lifetime "stretch" option include:

• The surviving spouse

• A child of the employee who has not reached the age of majority (account would need to be distributed within 10 years of reaching the age of majority)
• Disabled individuals
• A chronically ill individual
• An individual who is not more than 10 years younger than the employee

In most instances, withdrawal of a beneficiary's retirement account over a 10-year period (rather than over the course of his or her lifetime) will result in substantially less tax-deferred growth, as well as more taxes due on withdrawal from the account.

**Trusts as Beneficiaries?** It is imperative that individuals who named a trust as the beneficiary of an IRA prior to the implementation of the SECURE Act review their current estate plan with an attorney to determine how the SECURE Act may affect the distributions from the IRA to the trust. In some instances, trusts drafted prior to the SECURE Act may be obsolete, resulting in an adverse distribution pattern to beneficiaries.

While the SECURE Act decreases the amount of complexity and risk involved in naming a trust as a beneficiary, the cost-benefit analysis of tax deferral versus control of distributions will shift, as the stretch would be no more than 10 years.

**Sizable retirement accounts will need coordinated Tax, Retirement &Estate planning!**
For many families the balances in their retirement accounts are their largest assets. The tax advantages for building a retirement nest egg with pre-tax contributions are becoming tax disadvantages for retirement and estate plans. This will require a coordinated retirement and estate planning strategy that should consider an "asset-by-asset" approach for those accounts best to draw on for retirement and those best to pass to heirs.

For example, retired or semi-retired IRA account owners might want to consider taking withdrawals from retirement accounts prior to age 72 required distributions if in a lower tax bracket and in their estate plans earmark IRA assets to be distributed to minors or individuals in lower tax brackets and designate a larger proportion of non-retirement assets to those with higher incomes.

**Other Opportunities to Consider:**
To help mitigate the potential negative ramifications of these changes, below are a few strategies to consider when planning for the loss of the beneficiary "stretch" IRA option.

**Roth 401k / 403b Contributions and Roth Conversions.** With tax rates at historic lows and uncertainty surrounding their future, this could be a good year to coordinate with a CPA to potentially make Roth 401k contributions or to begin Roth conversions.

Roth 401k and 403b are common features in workplace retirement plans. They are attractive because there are no income limits as is the case with Roth IRAs. The 401k/403b contribution limits for 2020 is $19,500 if under age 50 and $26,000 if over. There are no income restrictions for Roth conversion IRAs, which allow for even larger Roth amounts for retirement.

The advantage of Roth IRA accounts is having tax-free withdrawals in retirement without forced required distributions at age 72. The "cost" in all Roth strategies is to purposely pay taxes now so that in retirement withdrawals can be tax free.

It's also a good strategy for beneficiaries who may avoid being taxed rapidly on distributions. This could be an especially applicable strategy if the beneficiaries are in a higher tax bracket than the account owner. However, non-spouse Roth beneficiaries have the same required 10-year payout rules as traditional IRAs,

which is a factor to consider when naming grandchildren (for example) who will not receive a long period of tax-free growth from the inherited Roth.

Going forward, account owners should be sure to ask these key questions and to consult with a tax professional before contributing to a Roth 401k or making a Roth conversion:

- Will I need access to this money within five years of conversion?
- Am I likely to be in a higher or lower income tax bracket in the future?
- Will a Roth conversion cause my income to be taxed at a higher bracket or cause my Medicare premiums to increase?
- Are my beneficiaries expected to be in a higher tax bracket?
- If changing 401k contributions from pre-tax to Roth, do I need to change my withholding? If converting to a Roth, do I have the cash available to pay taxes owed because of the conversion?

**Qualified charitable distribution (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 their IRA payable directly to charity. QCDs may become more advantageous after the SECURE Act because IRAs will become a less attractive inherited asset. Therefore, tax-free depletion of the IRA may be more beneficial than withdrawing from other nonqualified appreciated investment accounts, which could pass to beneficiaries at a stepped-up basis.

Account owners should consult with their CPA before contributing to their IRA after age 70½, as such contributions may run afoul of the new QCD Anti Abuse rules.

**Charitable remainder trusts (CRTs).** An account owner could consider naming a CRT as the beneficiary of an IRA. These trusts are structured so that a beneficiary would collect a stream of income from the assets of the CRT for a specified time, longer than 10 years. At the end of that period, the charity would collect whatever is left. The CRT isn't taxed on the distribution from the IRA or the income it earns; however, the beneficiary will be responsible for any taxes owed on distributions from the CRT.

**Life insurance.** Individuals may want to explore whether taking a withdrawal from the retirement account to pay premiums on a life insurance policy is more advantageous than leaving the retirement account to the beneficiaries. Beneficiaries typically receive life insurance money tax free. Depending on the insurability of the individual, the total death benefit payable to the beneficiaries could exceed what they would have received as beneficiary from the IRA. This analysis should be performed by a qualified financial professional.

**Who Is *Not* Affected by the SECURE Act?**
This new legislation will not affect the following individuals:

- Those who turned 70½ prior to December 31, 2019 (Individuals who were 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
- Beneficiaries of some owners of existing qualified annuities

**Secure Your Future**
As more information becomes available regarding the interpretation of the SECURE Act, it's important to continue to review all aspects of your financial plan and beneficiary elections to ensure that you understand how you and your family have been affected. Be sure to reach out to your tax professional or contact our office for help navigating your situation.