

The SECURE Act

Setting Every Community Up for Retirement Enhancement
Act of 2019

Status of SECURE

- House passed this bill in May by a vote of 417-3.
- The Senate was expected to pass before the August recess by unanimous consent, but the debt ceiling agreement puts this bill “on the shelf” for now.
- 3 Senators have concerns - Cruz (R-TX,) Toomey (R-PA,) and Lee (R-UT.)
- Cruz & Lee concern is regarding not allowing 529 plans to be used for home schooling. Toomey would allow credit cards tied to 401(k) plans.
- Likely to be included in budget bills this fall.

Expanding & Preserving Retirement Savings

- Expand retirement savings by increasing auto enrollment safe harbor cap
- Simplifications of safe harbor 401(k) rules
- Increase credit limitation for same employer pension plan start-up costs
- Small employer automatic enrollment credit
- Treat certain taxable non-tuition fellowship and stipend payments as compensation for IRA purposes
- Repeal maximum age for traditional IRA contributions
- Qualified Employer Plans prohibited from making loans through credit cards and other similar arrangements
- Portability of lifetime income options
- Treatment of custodial accounts on termination of Section 403(b) plans

Sections of the Act

- Clarification of retirement income account rules relating to church-controlled organizations
- Allowing long-term part-time workers to participate in 401(k) plans
- Penalty free withdrawals from retirement plans for individuals in case of birth or adoption
- Increase the age for Required Minimum Distributions to 72 years of age
- Community newspapers pension funding relief
- Treating excluded difficulty of care payments as compensation for determining retirement contribution limitations

Administrative Improvements

- Plans adopted by filing due date for year may be treated as in effect as of close of year
- Combined Annual Reports for group of plan
- Disclosure regarding lifetime income
- Fiduciary Safe Harbor for Selection of Lifetime Income Provider
- Modification of nondiscrimination rules to protect older, longer service participation

Other benefits

- Benefits for volunteer firefighters and emergency medical responders
- Expansion of 529 plans

Revenue Provisions

- Modifications to Required Minimum Distribution Rules - distributions upon the death of the account owner will change (other than the surviving spouse, disabled or chronically ill, individuals who are not more than 10 years younger than the IRA owner, or the child of an IRA owner who has not reached the age of majority) are **required to be distributed by the end of the 10th calendar year following the year of the IRA owner's death.**
- New rule: \$1m IRA, 2 beneficiaries over 10 years is \$50k per year

Current law on Traditional IRA, Rollover, SEP, SIMPLE distributions to beneficiaries

- If the IRA owner was 70 1/2 - Option #1

You transfer the assets into an Inherited IRA held in your name.

Money is available

You must begin taking an annual RMD over your life expectancy beginning no later than 12/31 of the year following the original account holder's death.

Note: If the original account holder did not take an RMD in the year of death, an RMD must be taken from the account by 12/31 of the year the original account holder died.

Other considerations

- Your annual distributions are spread over your single life expectancy (determined by your age in the calendar year following the year of death and reevaluated each year) or the deceased account holder's remaining life expectancy, whichever is longer.
- If there are multiple beneficiaries, separate accounts must be established by 12/31 of the year following the year of death; otherwise, distributions will be based on the oldest beneficiary.
- Required Minimum Distributions (RMDs) are mandatory and you are taxed on each distribution.
- You will not incur the 10% early withdrawal penalty.
- Undistributed assets can continue growing tax-deferred.
- You may designate your own IRA beneficiary.

Distributions to beneficiaries(current law)

- Option #2 - Lump sum distribution

Account type

None. All assets in the IRA are distributed to you.

Money is available

All at once.

Other considerations

- You will pay income taxes on the distribution all at once.
- You will not incur the 10% early withdrawal penalty.
- You may move to a higher tax bracket depending on the amount of the distribution and your current income level.

Distributions from Roth IRAs to beneficiaries

- Option #1 - Life expectancy method

Account type

You transfer the assets into an Inherited IRA held in your name.

Money is available

Required Minimum Distributions (RMDs) are mandatory and distributions must begin no later than 12/31 of the year following the year of death.

Other considerations

- Distributions are spread over the beneficiary's single life expectancy.
- If multiple beneficiaries, separate accounts must be established by 12/31 of the year following the year of death in order to use your own single life expectancy; otherwise, distributions will be based on the life expectancy of the oldest beneficiary.
- Distributions may be taken without being taxed (provided that the five-year holding period has been met), otherwise only earnings are taxable.
- You will not incur the 10% early withdrawal penalty.
- Undistributed assets can continue growing tax-free.
- You may designate your own beneficiary.

Distributions from Roth IRAs (continued)

- Option #2 - 5 year method

Account type

The assets are transferred into an Inherited IRA held in your name.

Money is available

At any time up until 12/31 of the fifth year after the year in which the account holder died, at which point all assets need to be fully distributed.

Other considerations

- Your distributions can be spread over time, but all assets must be withdrawn by 12/31 of the fifth year after the year in which the account holder died.
- Distributions may be taken during that period without being taxed (provided that the five-year holding period has been met), otherwise only earnings are taxable.
- You will not incur the 10% early withdrawal penalty.
- Undistributed assets can continue growing tax-free for up to five years.
- You may designate your own beneficiary.

Distributions from Roth IRAs continued

- Option #3 - Lump sum distributions

Account type

None. All assets in the Roth IRA are distributed to you.

Money is available

All at once.

Other considerations

- If the account is less than five years old at the time of the account holder's death, earnings are taxable.

Annuity Options

- The insurance industry loves the Secure Act's mandate that annuities be offered as a payout option in all retirement plans.
- Insurance companies sold more than \$230b worth of annuities in 2018 and this figure would likely go higher.
- Annuitizing retirement plan assets is generally a bad idea - Barron's article July 20th reminded us that annuities range from "bad to not-so-bad."
- The mandatory offer of an annuity is the first step that could lead to a mandatory annuitization of all retirement accounts and accelerate collection of tax revenue, eliminate the "problem" of inherited IRAs - politicians raise revenue without voting to raise taxes.

Senate versions

In 2017, the Senate Finance Committee recommended the Death of the Stretch IRA by proposing the Retirement Enhancement and Savings Act (RESA).

The Senate is now floating an updated RESA 2019 that seems to say that it will change the original exclusion amount to \$400,000 from \$450,000.

Instead of each IRA owner getting a \$400,000 exclusion, the new version includes language to allow a \$450,000 exclusion *per beneficiary*.

AARP Advocate assigned to Congress

- The AARP did support the SECURE Act in the Spring as they felt there were overwhelming benefits for current workers
- While they share concerns re the annuity options, they feel that they are sufficient restrictions to protect their members. Certainly, not as strong as compared to the Fiduciary Rule that was abandoned.
- An IRA/ 401(k) rollover was never intended to be a vehicle for inheritance, hence, the “pay for” is the accelerated taxation. Retirees are expected to spend the money.
- In lieu of annuities, AARP supports “Managed Payout Plans” offered by Vanguard or Fidelity.
- The bill is currently “shelved” but suspect that it could be added to year end budget bills.

Morningstar's view

- While Morningstar agrees that the law appears to have a significant impact to our heirs, they feel that it is not “that bad” if our heirs take the distribution and invest the funds. Their analysis is based on the fact that most rollover accounts are not even close to the \$1m balance.
- They cite the fact that the distribution may be taken in any year from the date of death as long as the withdrawal is taken by the end of the 10th year. Theoretically, our heirs could plan around a large distribution....? Take a year off work....?
- While many of us are focused on the fact that these distributions will likely occur in the top earning years of our beneficiaries, Morningstar used an effective tax rate of 32% on the distribution of an IRA balance of \$1m and felt that the impact was manageable.

Action items

- AARP Advocate advised me to follow up in October to determine if there is any movement on this bill.
- Reach out to Senator Mark Warner - (202) 224-2023 or <https://www.warner.senate.gov/public/index.cfm/contactpage>