The SECURE Act

What You Need to Know

South Bay Estate Planning Council
February 13, 2025

SECURE Act

The SECURE Act (**S**etting **E**very **C**ommunity **U**p for **R**etirement **E**nhancement Act) is a significant piece of retirement legislation enacted in December 2019 to encourage savings, expand access to retirement plans, and ease administrative burdens.

Subsequent updates, include the SECURE Act 2.0, enacted in December 2022, build on the original Act to further improve retirement outcomes.

Agenda

- Highlights of SECURE Act, SECURE Act 2.0, and Final Treasury Regs (July 2024)
  - Around 100 new retirement rules for individuals and businesses
  - Focus will be on rules affecting individuals
- Required Minimum Distributions (RMDs)
- Compliance Issues – Trust as Beneficiary of a Retirement Plan
- Q&A

Impact of the SECURE Act

- Provides:
  - More time to save for retirement
  - More ways to save for retirement
  - New ways to use their money
- Extensive changes being implemented over multiple years (2023 – 2028)
- Goal: Creating better savers and encouraging businesses to make it easier to do so

Highlights of the SECURE Act

No More Age Limits for Contributing to an IRA

- Investors may continue contributing to a traditional IRA past age 70½ as long as they have earned income.

(Section 108)

Enhanced Catch-up Contributions for Qualified Plans

Age	Base Contribution Limit (2025)	Catch-up Contribution Allowed (2025)
49 or younger	$23,500	None
50-59 or 64+	$23,500	$7,500
60-63	$23,500	$11,250

401(k), 403(b), 457(b), Roth 401(k)

- SIMPLE Plans (Base limit: $16,500; age 50+: $3,500; ages 60-63: $5,250 (2025))

(Section 109)

Enhanced Catch-up Contributions for Qualified Plans

- All catch-ups for employees making over $145k will be deposited into a Roth account
- Catch-up contributions (including IRAs) will automatically adjust for inflation

(Section 109)

SEP and SIMPLE Plans

- Roth options now available
- Domestic employers can set up and fund SEP-IRAs for their household employees, such as nannies and housekeepers

(Section 601)

529 Plans

- Unused 529 plan funds can be rolled over into a Roth IRA for the beneficiary (subject to annual IRA contribution limits)
  - 529 account open for at least 15 years
  - Lifetime rollover limit is $35,000 per beneficiary
  - Contributions made in the last 5 years not eligible
- Allows up to $10,000 withdrawal from 529 plan to pay for student loans (lifetime maximum per beneficiary)

(Sections 110, 126)

Student Loan Repayment / Employer Match

- Employers may make matching contributions for "Qualified Student Loan Payments" (QSLP)
- QSLP limited by salary deferral limit less elective deferral (if any)

Section 110

Student Loan Repayment / Employer Match

Example: Mary, age 32, participates in a 401(k) plan that matches QSLPs, as well as salary deferrals. The 2025 salary deferral limit for employees under age 50 is $23,500; Mary defers $18,000. If Mary makes $8,000 of QSLPs in 2025, only $5,500 ($23,000-$18,000) of those repayments can be matched.

Section 110

QCD (Qualified Charitable Distribution)

- QCD annual contribution limit indexed for inflation ($108k – 2025)
- Allows one-time election to fund a split-interest entity such as Charitable Remainder Trust (CRT) or Charitable Gift Annuity (CGA) up to $50,000
- Must be age 70 ½
- Take QCD before RMD
- QCD must come from custodian, not owner

(Section 307)

QCD (Qualified Charitable Distribution)

Example:

John's 2025 RMD is $40,000. He makes a QCD in the amount of $35,000 to his favorite charity. He then takes his remaining RMD of $5,000, which he will pay taxes on.

Major Disaster Distributions

- Withdrawals up to $22,000 from plan or IRA without early-withdrawal penalty
- Report the distribution as gross income over three years
- Disaster distributions may be repaid within three years
- Primary residence must be in area designated as federal major disaster area

(Section 331)

Emergency Withdrawals

- Participants may make penalty-free emergency withdrawals of up to $1,000 per calendar year for unforeseen or immediate financial needs
- Only one withdrawal per 3-year repayment period if first withdrawal has not been repaid
- Self-certification

(Section 115)

Pension-Linked Emergency Savings Accounts (PLESAs)

- New way to build up emergency savings
- Allows one penalty-free withdrawal up to $1,000 per calendar year for personal or family emergencies
- Must be linked to defined contribution plan
- Contributions required to be made on a Roth basis ($2,500 maximum)
- Highly-compensated employees not eligible

(Section 127)

Long-Term Care Insurance Premiums

Distributions up to $2,500 annually to cover LTC premiums not subject to 10% early distribution penalty

(Section 334)

Birth or Adoption Expense

- Qualified Birth or Adoption Distribution (QBOAD) – up to $5,000 penalty-free
- May be repaid within three years from date distribution was received

(Section 311)

Required Minimum Distributions (RMDs) and the 10-year Rule

AKA the "Death of the Stretch IRA"

Roth Employer Plans

Beginning in 2024, Roth amounts in the employer plans will NO longer be subject to RMDs. This change brings parity to the treatment of Roth IRAs and Roth employer plans in terms of RMDs.

RMD Ages

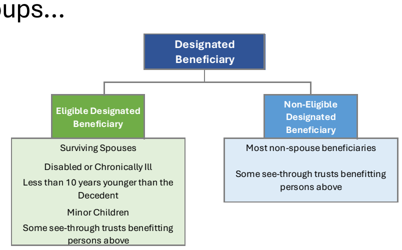
If you were born…	You must take your RMD by April 1 of the year following the year in which you turn…	Calendar years in which this is the RMD age…
In 1950 or earlier	72	2022 and earlier
Between 1951 and 1959	73	2024 - 2032
In 1960 or later	75	2035 and later

UPDATED BASED UPON 12/6/23 IRS CLARIFICATIONS: The proposed legislation would clarify that the age for required minimum distributions from traditional retirement plans and IRAs was raised to 73 starting in 2023 (for individuals born on or before 1959), and age 75 starting in 2033 (for those born in 1960 and later). Again, RMDs need to be distributed for the first year by April 1 of the year following the year in which the taxpayer turns 73 or 75. In the initial legislation, those born in 1959 met both the age 73 and 75 definitions.

Death of the Stretch IRA

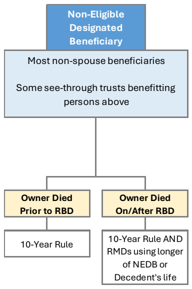
- For IRA owners who passed away before 1/1/2020, non-spousal beneficiaries are allowed to “stretch” the required minimum distributions based on their life expectancy.
  - If they did not choose the “stretch” option, they could also choose to distribute the entire inherited IRA within 5 years of the owner’s death.
- For IRA owners who passed away on or after 1/1/2020, the 10-year rule is introduced, whereby non-eligible designated beneficiaries must distribute the entirety of the account by the end of the 10th year following the original account owner’s death.

SECURE Act Divides Designated Beneficiaries Into Two Groups…



The initial expectation was that all Non-Eligible Designated Beneficiaries would fall under the 10-year rule.

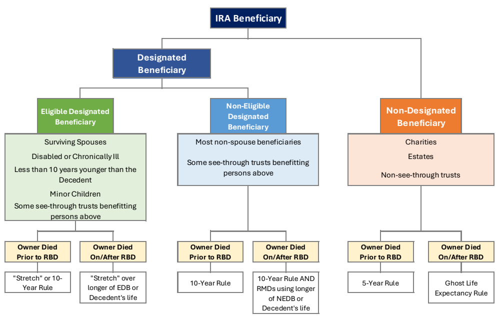
...and the Non-Eligible Designated Beneficiary Group Was Further Divided



However, that may not be the case!

- If the owner died *before* the required beginning date for their RMD, then the NEDB is subject to the 10-year rule only.
- If the owner died *after* the required beginning date for their RMD, then the NEDB is subject to the 10-year rule *and* the annual stretch-style distributions.

New RMD Decision Tree for Inherited IRAs



Penalties for Missed RMDs

- The penalty for missed RMDs decreased to 25% of the value of the missed RMD (previously 50%)
- If the account owner corrects the error within two years, the penalty is reduced to 10%.
- *The IRS has waived the penalties for RMDs from inherited IRAs that were due in 2021 – 2024 because the SECURE Act did not provide clear guidance that inherited IRAs actually had RMDs.*
- The 25% penalty will apply to missed RMDs from inherited IRAs beginning in 2025.

(IRS Notices 2022-53, 2023-54 and 2024-35)

Year-of-Death RMDs – *Dying is no excuse!*

- Should an IRA owner pass away before fully satisfying that year's RMD, the remaining portion of the RMD must be satisfied by December 31st of the same year.
  - The Final Regulations do allow for an automatic waiver of penalties for unsatisfied RMDs for certain beneficiaries (e.g., the owner dies at the end of December) and extends the RMD deadline to the beneficiary's filing deadline, including extensions.
- In the case of multiple beneficiaries, the RMD may be satisfied by *any* beneficiary.
- In the case of multiple IRAs with beneficiary designations that are not identical, the remaining year-of-death RMD must be taken proportionally (based on prior year-end values) from each of the owner's IRAs. [This is likely to cause serious privacy issues.]

Financial Planning Strategies for Owners

- Roth Conversions
- Spend down the IRA assets during owner's lifetime (and preserve more tax-efficient assets for legacy)
- Review Beneficiaries – name adult children as contingent beneficiaries rather than trust where appropriate

Implications for Beneficiaries

- Non-Eligible Designated Beneficiaries may now face an adverse tax impact.
- Even if the Inherited IRA falls only under the 10-year rule, it may be best to spread the IRA distributions out over that time frame to avoid a large spike in income (and taxes!) in the future.
- Take bigger distributions in lower-tax years.

TRUST COMPLIANCE

See Natalie Choate's 5-part trust compliance test in her outline available for free download at ataxplan.com

What date matters for purposes of testing a trust for compliance?

1. Date of plan participant's death
2. Sep 30th of year following plan participant's death
3. October 31st of year following plan participant's death
4. Any later date the trust is terminated, modified, or exercise of power of appointment

See-through trust (four-part test): (Step 1)

1. Trust is irrevocable at participant's death
2. Trust is valid under state law
3. Documentation provided to plan administrator by October 31st of the year following the plan participant's death
4. All trust beneficiaries are identifiable

Two Types of See-Through Trust

- Conduit Trust
- Accumulation Trust

*If not a see-through trust, then it is a non-designated beneficiary trust subject to 5-year payout or ghost life expectancy, depending on the decedent's required beginning date

List all Potential Beneficiaries (Step 2)

1. Apply disregarded beneficiary rules
   a. Predeceased beneficiary
   b. Beneficiary does not exist
   c. Permissible appointees under powers of appointment
   d. Effect of disclaimer
   e. Distribution prior to Sept 30th of year following plan participant's death
   f. Trust modified by decanting, reformation or other legal action
2. Apply added beneficiaries

Divide List into Primary and Secondary Beneficiaries (Step 3)

Apply Exceptions (Step 4)

1. Conduit trust rule (conduit trusts only)
2. Age 31 rule
3. Second-choice secondary beneficiary rule (accumulation trusts only)

Determine the Distribution Period (Step 5)

Final Treasury Regs (July 2024)

- Concept of Type I AMBT eliminated and merged into definition of Type II AMBT (formerly Type I and Type II).
- Treats secondary charitable beneficiaries of AMBT as designated beneficiaries.
- If a primary trust (e.g., "Smith Family Trust") is the beneficiary, now can implement separate account rules so long as each beneficiary receives their pro rata share of the retirement plan. This may require the drafter to override the trustee's default power to make non pro rata distributions of trust assets when distributing trust assets.
- A child EDB includes stepchildren and foster children.
- If multiple children and youngest is an EDB, entire balance distributed by the end of the year in which the youngest child turns 31. However, the RMD is calculated based on the life expectancy of the oldest beneficiary
- Plan administrators can require a copy of the trust or list of beneficiaries (or both) by 10-31 of the year following the participant's death.

Final Treasury Regs (July 2024)

Clarification as to how to document disabled and chronically ill EDBs with the plan administrator

- A letter from a "licensed health care practitioner" will suffice.
- For adults, the letter must state that the disabled EDB is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or to be of long-continued and indefinite duration. Reg. § 1.401(a)(9)-4(e)(4)(ii)
- For minors (under age 18), the letter must state that the disabled EDB has a medically determinable physical or mental impairment that results in marked and severe functional limitations and that can be expected to result in death or to be of long-continued and indefinite duration." Reg. § 1.401(a)(9)-4(e)(4)(iii)
- For those who are chronically ill, letter must state that the EDB is unable to perform (without substantial assistance from another individual) at least 2 activities of daily living for an indefinite period which is reasonably expected to be lengthy in nature (and not merely for 90 days)." Reg. § 1.401(a)(9)-4(e)(5)
- If the Social Security Administration has deemed the person to be disabled, documentation from the SSA can be submitted to the plan administrator in lieu of a letter from a licensed health care practitioner.

Planning Considerations

- Is it a good idea to name the trust as a beneficiary?
- Consider utilizing aggregate community property agreements.
- Utilize the time period between date of death and Sept 30 of year following the participant's death to analyze the options.
- Generally, naming subtrusts rather than the primary trust produces better results (but exceptions apply).
- When drafting accumulation trust provisions, beware of the secondary charitable beneficiary. If it makes sense (should the tax tail wag the dog?), choose individuals as wipe-out secondary beneficiaries who would take outright prior to a non-individual secondary beneficiary (such as a charity), or create a savings clause that specifies as to any retirement plans, charities shall be disregarded as beneficiaries.

Planning Considerations

- Include provisions for a trust protector empowered to remove or add secondary beneficiaries and terminate trusts. Include conduit provisions by default with trust protector or independent trustee powers to void the conduit provisions within 9 months of the plan participant's death at which time accumulation trust provisions apply. A trust protector can also add charitable beneficiaries to a trust after the retirement plan has been fully distributed.
- If ERISA plans limit distribution options, consider converting the plan to an IRA where more planning options are available.
- Include a provision that states that retirement plan benefits cannot be used to pay expenses of administration to avoid the issue of a trust not qualifying as a see-through trust (because the trust estate could be construed as a beneficiary of a retirement plan).

Planning Considerations

- In some instances, a participant's ghost life expectancy might be substantially longer than 10 years. If a plan participant has reached their required beginning date, but has not yet reached 81, they could have a substantially longer ghost life expectancy than 10 years. In that instance, you could purposefully plan for the trust to flunk the see-through trust test.
- Consider a trust that creates a testamentary charitable remainder trust at death of the plan participant having the effect of mitigating the high income tax burden on the beneficiary otherwise required to draw down the plan within 10 years (large IRAs only, and some charitable intent preferred).
- As to accumulation trusts, beware of GST-taxable distribution and termination issues. In the alternative, an exercised general power of appointment creating estate inclusion thereby avoiding GST-tax will cause the trust to fail the see-through trust test resulting in a 5-year or ghost life expectancy distribution.

Case Studies

For case studies, please attend the SBEPC Focus Group on February 27 at Harik Thompson CPAs. We will cover planning for:

1. Surviving spouse (new options available from final Regs)
2. Minor children and common pot trust (new options available)
3. Spendthrift beneficiary
4. Substance abuse beneficiary
5. Responsible beneficiary concerned with asset protection – utilizing BDOT provisions in accumulation trusts
6. Special needs beneficiary
7. Bring your own case studies

Q&A

SOUTH BAY ESTATE PLANNING COUNCIL