



How SECURE Is Your Planning After the SECURE Act

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ACTEC HOAFI Session I

St. Louis 8/27/2021

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Much Remains the Same After the SECURE Act

- Definition of Designated Beneficiary
- Requirements for a “See Through Trust”
- Required Distribution Rules if there is no Designated Beneficiary
- Spousal Rollover Rule
- Creating Inherited IRAs after death of Owner or Participant (“Owner”)

And Some Significant Changes With the SECURE Act

- Contributing to and taking distributions from an IRA while Owner is living
- New distribution rules after death of Owner
- New distribution rules after death of Designated Beneficiary
- Creation of Eligible Designated Beneficiary Category

Overview of Planning for Significant Changes With SECURE Act

- Effective Date is 1/1/2020
 - except for governmental plans and plans subject to collective bargaining agreements, for which new rules are effective 1/1/2022 at the earliest
- Newly created Multiple Distribution Paradigms cause Significant Impact on planning
 - Planning depends on who is beneficiary
 - Planning depends on whether the Owner has reached the Required Beginning Date

Change to Lifetime Distribution Rules

- Age 72 is the New Age 70 ½
- Required Beginning Date (“RBD”) now April 1 of the year after turning age 72
 - Impacts anyone turning age 70 in 2019 or later
 - When turn age 72 in 2021, RBD is 4/1/2022
- Stay Tuned – SECURE 2 is set to increase the RBD to age 75

Change to Lifetime Contribution Rules

- No longer prohibited from contributing to an IRA After Age 70½
- But if make a deductible contribution to a Traditional IRA after Age 70½, post 70½ contribution reduces amount of Qualified Charitable Distribution (“QCD”) excluded from income

Change to Lifetime Contribution Rules

Example – Jerry, age 72

- 2020 contribution of \$7,000 to his traditional IRA
- 2021 QCD of \$5,000 to Jerry's favorite charity
- 2022 \$5,000 QCD to Jerry's favorite charity
- Jerry cannot exclude any of his 2021 QCD, and the entire \$5,000 is included in income - only deductible if he itemizes his deductions.
- In 2022, Jerry may only exclude \$3,000 of his 2022 QCD - \$2,000 included in income and deductible only if itemizes.

New Post-Death Minimum Distribution Rules – Types of Beneficiaries

Three Categories of Beneficiaries:

1. Not a Designated Beneficiary

- Owner's Estate
- A charity
- Trust that is not a See Through Trust

2. Designated Beneficiary (“DB”)

- Individual
- See Through Trust with individual beneficiaries

New Post-Death Minimum Distribution Rules – Types of Beneficiaries

- 3. Eligible Designated Beneficiaries (“EDB”)
 - Spouse Beneficiary
 - Owner’s Child who has not reached “Age of Majority”
 - Disabled Beneficiary
 - Chronically Ill Beneficiary
 - Beneficiary Who is Not More than 10 Years Younger than Decedent

Post-Death Minimum Distribution Rules

Death Before RBD

1. Not a DB

- 5 year rule (no change)

2. DB

- 10 year rule (can no longer use DB's life expectancy)

3. EDB

- Spouse – if no rollover, life expectancy, then 10 year rule
- Owner's minor child – life expectancy until reaches majority, then 10 year rule
- Disabled – life expectancy, then 10 year rule
- Chronically III – life expectancy, then 10 year rule
- No more than 10 years younger – life expectancy, then 10 year rule

Post-Death Minimum Distribution Rules Death On or After RBD

1. Not a DB

- “ghost” life expectancy of decedent

2. DB

- 10 year rule (can no longer use life expectancy)
- May not be able to use decedent’s “ghost” life expectancy

3. EDB

- Spouse – if no rollover, life expectancy, then 10 year rule
- Owner’s minor child – life expectancy until reach majority, then 10 year rule
- Disabled – life expectancy, then 10 year rule
- Chronically III – life expectancy, then 10 year rule
- No more than 10 years younger – life expectancy, then 10 year rule

Chart of Post-Death Required Minimum Distribution Rules

Death Before RBD

- EDB – EDB Life expectancy (but may elect 10-year rule)
- EDB Spouse – Rollover
- EDB Spouse's with Inherited IRA - life expectancy but no distribution required until Decedent would have reached the RBD
- DB – 10-year rule
- Not DB – 5-year rule

Death On or After RBD

- EDB – Longer of EDB's life expectancy & Decedent's "ghost" life expectancy
- EDB Spouse – Rollover
- EDB Spouse with Inherited IRA - Spouse's life expectancy, but if don't take timely distribution by end of year following Decedent's death, is treated as Spouse's own
- DB – 10-year rule
- Not DB – Decedent's "ghost" life expectancy

New Post-Death Rules After Death of Pre-2020 Designated Beneficiary

- Prior to 2020, on death of Designated Beneficiary, continue using life expectancy used by the DB
- DB of Decedent who died prior to 2020, on death of DB after 1-1-2020, RMD now switches to 10-year rule
 - Unclear if this also applies if the Designated Beneficiary was using the Decedent's life expectancy

New Post-Death Rules After Death of Pre-2020 Designated Beneficiary

- This new rule applying to a pre-2020 DB likely does not apply on death of beneficiary who succeeded to the interest of the DB prior to 2020.
- If the Decedent dies on or after 1-1-2020, the DB must use the 10-year rule; but if DB dies in those 10 years, the 10-year rule does not restart and continues to apply to the same extent as applicable to the now-deceased DB.
- Query: What about a pre-2020 conduit trust or accumulation trust?

Much We Don't Know

- ACTEC provided comments and suggestions about what guidance is needed in July of 2020
- Informal information is that draft of guidance prepared and in final review
 - Guidance is over 250 pages
 - Will contain a lot more about treatment of trusts
 - Stay tuned

Some of What We Don't Know For Certain Until There is IRS Guidance

1. How Does the 10 Year Rule Work?

- Are any distributions needed during the 10 years or only distributed by end of the 10 years?
 - Most probably NONE are required – Example on page 12 of new Publication 590-B revised
- Is the 10 year period measured to the end of the year containing the 10th anniversary, or simply to the 10th anniversary?
 - Mixed statements in Publication 590-B, but likely end of year containing 10th anniversary of death

Some of What We Don't Know For Certain Until There is IRS Guidance

1. How Does the 10 Year Rule Work?

- Does the 10 year rule work the same for each instance in which the distribution period switches from life expectancy to the 10 year rule?
 - Death of Owner
 - Death of DB after effective date
 - Death of Spouse, Disabled, Chronically Ill, or the No More than 10 years younger
 - Reaching the “Age of Majority”
- Uncertain – Publication 590-B states rule differently for some of these – but likely would be the same

Some of What We Don't Know For Certain Until There is IRS Guidance

1. How Does the 10 Year Rule Work?

- How are the RMD's handled in the year of the triggering event for use of the 10 year rule?
 - Is the life expectancy method used for part of the year and the balance of the year the 10 year rule applies?
 - Or in the year of the trigger event, no life expectancy RMD need be taken and the 10 year rule applies right away
 - Good News is we have 10 years to figure out

Some of What We Don't Know For Certain Until There is IRS Guidance

1. How Does the 10 Year Rule Work?

- If the beneficiaries of a See Through Trust were the DBs prior to 2020, what event triggers change to 10 year rule?
 - If a conduit trust – death of sole DB triggers change to 10 year rule likely trigger
 - If an accumulation trust – trigger could be
 - Death of measuring life
 - Death of life income beneficiary
 - Death of all countable beneficiaries

Some of What We Don't Know For Certain Until There is IRS Guidance

2. Spouse as the EDB

- Does the Spouse have to be the outright beneficiary to use Spouse's life expectancy?
- Can the Spouse's life expectancy be used if a See Through Trust for the Spouse is the beneficiary?
- If so, does it have to be a Conduit Trust or can an Accumulation Trust be used?

Planning in the Face of Uncertainty - Spouse

- The Spouse as the Primary Beneficiary is Still the Best
 - Spouse can rollover the benefits to own IRA and use Uniform Table for life expectancy, redetermined each year
- If second marriage, could divide between Spouse and Family
- If second marriage, could use Conduit Trust and probably use life expectancy, redetermined each year using Single Life Table
 - May not preserve much, but assures that whatever is left does not go to surviving spouse's family

Planning in the Face of Uncertainty - Spouse

- If second marriage and want to preserve more for children by prior marriage, use Accumulation Trust
 - Most probably can't use life expectancy and 10-year rule would apply
 - If Spouse is older, may be better to have 10-year rule apply
 - Need guidance for trustee regarding distributions
 - Distribute income portion only - preserve balance for family
 - Add definition of income for inherited IRA
 - Provide that higher income tax rate if retain distributions in trust is or is not primary concern
 - Consider Roth conversions to eliminate tax issue

Some of What We Don't Know For Certain Until There is IRS Guidance – D/CI EDB

3. Who is a Disabled or Chronically III EDB?
 - What is the test of whether a person is Disabled or Chronically III?
 - When does that condition need to be present? Only at time of Decedent's death?
 - What documentation is required?
 - What if status changes after Decedent's death?
 - How does the Applicable Multi-Beneficiary Trust Work?
 - Can the D/CI EDB's interest be eliminated if it interferes with the beneficiary's public assistance?

Planning in the Face of Uncertainty – Disabled or Chronically III

- EDB who is “unable to engage in any substantial gainful employment” would be Disabled
 - Social Security Disability Definition
- EDB who is “unable to perform at least 2 activities of daily living” would be Chronically III
 - Long Term Care Definition
- Need to gather all documentary proof of condition
- Look for guidance soon as to when and to whom the documentation must be given – prior to September 30

Planning in the Face of Uncertainty – Disabled or Chronically Ill

- Applicable Multi-Beneficiary Trust
 - Accumulation Trust with discretionary distribution
 - That divides immediately on death of Decedent
 - Likely can be Revocable Trust where division directed as of death
 - Could be a Separate Trust for D/CI EDB – Special Needs Trust
 - If a Special Needs Trust – Likely won't be able to have alternate payee or terminate benefits to qualify for public assistance
 - Need to review all Special Needs Trusts
 - Need to review beneficiary designations if Owner has disabled or chronically ill family members

Some of What We Don't Know For Certain Until There is IRS Guidance – Minor Child

4. Minor Child EDB issues

- What is the rule for determining when Owner's child “has not yet reached majority” and when a child reaches majority?
 - State law but which state's law?
 - Age 26 or completion of specified course of education? (cross reference in Act to Code § 401(a)(9)(F) used for determining when can be on parent's health care plan)
- What if the child becomes Disabled or Chronically Ill prior to “reaching majority”?
- Can the beneficiary be a trust for the minor child or a UGMA account and use the child's life expectancy?

Planning in the Face of Uncertainty – Employee's Minor Child

- Only Owner's child – not a grandchild or step child
- If make child outright beneficiary – conservatorship
 - Life expectancy distribution NOT WORTH conservatorship even if child is very young
- Use of Uniform Gift to Minor's Account
 - Eliminates conservatorship, but will have full access at age 21 or perhaps earlier

Planning in the Face of Uncertainty – Employee’s Minor Child

- Use of Conduit Trust for Child
 - Most probably will be able to use child’s life expectancy and at least Trustee in charge for time
 - Would optimize distribution period if can use child’s life expectancy - initial distributions very small
 - But will require distribution of all distributions currently to or for benefit of child
 - And entire IRA will be distributed outright to child no later than age 36 and perhaps much sooner
 - Will child be able to handle funds prudently?

Planning in the Face of Uncertainty – Employee's Minor Child

- Use of Accumulation Trust for Child – likely best option
 - Even though life expectancy distributions most probably not available
 - Accelerates application of 10-year rule
 - But protects benefits for child over longer period
 - Creditor protection
 - Need to provide direction to Trustee as to handling RMDs and whether to retain in trust
 - Need to dispense with Trustee liability for decisions on when to take distributions under 10-year rule

Some of What We Don't Know For Certain Until There is IRS Guidance

- 5. Not More Than 10 Years Younger EDB
 - How is the age difference determined?
 - Actual age at death of decedent?
 - Age on birthday in year of decedent's death?
 - Comparing actual birth dates?

Planning in the Face of Uncertainty – Not More Than 10 Years Younger

- Does Owner have family member who is no more than 10 years younger?
- If so, does Owner really want to give benefits to that person?
- If Outright beneficiary – would be able to use life expectancy distribution
- Conduit Trust – life expectancy distribution but would not preserve much for other family members
 - Single Life Table subtracting 1 each year
 - Distributions begin year after death rather than at end of 10 years
 - Life expectancy distribution may not last that long

Planning Options for DB Who Is Not an EDB

- Accelerate distributions during life and pay tax
- Use accelerated distributions to make gifts
- Optimize Roth Conversions to soak up lower tax rates during life

Planning Options for DB Who Is Not an EDB

- Make outright distributions to Designated Beneficiaries
 - No creditor protection
 - No longer needed to achieve optimum distribution period (same 10-year rule will apply)
- Use a Conduit Trust
 - Provides some creditor protection for at least the 10 year period
 - Use only if needed in order to have a see-through trust
- BDIT and Trusteed IRA – result same as Conduit Trust
 - Beneficiary receives entire IRA by end of 10 year period
- Use Accumulation Trust – eliminate use of Conduit Trust
 - Provides the maximum creditor protection
 - Need to provide direction to Trustee – keep in trust or distribute, discretion on timing of distributions, income tax important or not

Planning Options for DB Who Is Not an EDB

- Recommendation for Trust to define “income” portion of IRA distributions along lines of Rev. Rul. 2006-26
- Use Charitable Remainder Trust – if have any charitable intent
- Purchase Life Insurance payable to beneficiary to replace accelerated income tax on distributions remaining in Trust

Post Death Planning

- Will need to recompute Distribution Period next year on all inherited IRAs using new tables
- If Trust beneficiary and would otherwise qualify as See Through Trust, give direction to Trustee on providing Trust paperwork to plan sponsor
 - Give Trustee discretion to determine if want to qualify as See Through Trust if Owner dies after RBD and is not yet age 80
 - If want to qualify as See Through Trust – remind Trustee to provide copies of entire Trust and all Amendments by 10/31
 - If don't want to qualify as See Through Trust, give Trustee discretion not to provide copy of Trust by 10/31
- Could get same result with small outright gift to charity and direction to satisfy or not prior to 9/30

Top 10 Rules of Thumb to Remember in Planning After the SECURE Act

1. Even though no longer have life expectancy distributions for DBs, much remains the same
2. Must still comply with See Through Trust rules even to get 10 year distribution, and especially to rollover from Qualified Plan to inherited IRA
3. If Owner past RBD, may not want See Through Trust and may want to use “ghost” life expectancy
3. Spouse is still best outright beneficiary
4. But if second marriage, consider Conduit Trust or Accumulation Trust
5. No longer need to consider who is the oldest beneficiary – if no EDB – will use 10-year rule

Top 10 Rules of Thumb to Remember in Planning After the SECURE Act

6. If Spouse is in 80s, Accumulation Trust using 10 year rule may actually be better even for first marriage
7. Difference between life expectancy and 10 year distribution period is not great at older ages and after age 80 is worse
8. Use trust for minor child – an Accumulation Trust unless want child to end up with all funds at early age; If minor child is over age 13, life expectancy is not significant enough to give up control with a Conduit Trust
9. Always use an Applicable Multi-Beneficiary Trust if beneficiary is likely to be disabled or chronically ill
10. If beneficiaries of trust are not EDBs, best to use Accumulation Trust and not Conduit Trust

Planning After the SECURE Act

*Good Luck and
Thank You!*