Retirement Planning In The Aftermath Of The SECURE Act of 2019

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SECURE Act of 2019

- Setting Every Community Up for Retirement Enhancement (SECURE) Act
  - Introduced in the House in March of 2019
    - Passed 417-3 on May 23
  - Companion bill "Retirement Enhancement and Savings Act" (RESA) in Senate
  - Remained in 'limbo' all summer and fall
  - Attached to end-of-year spending legislation in December
    - Signed into law by the President on December 20th, 2019

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SECURE Act of 2019

- Setting Every Community Up for Retirement Enhancement (SECURE) Act
  - "Expand Access To 401(k) Plans"
    - Development of Multiple Employer Plans (MEPs)
    - Tax credits for offering a new plan
    - Better protect employers who offer in-plan annuities
  - Individual Retirement Enhancements
    - Delay in RMD age
    - Expanded contributions (after age 70 ½)
  - 'Other' Provisions
    - Expanded 529 plans
    - Kiddie Tax 'unwind'
  - "Revenue Raisers"
    - New limitations to Stretch IRAs (and other retirement accounts)

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Welcome To Truly "Open" MEPs

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Open MEPs

- MEPs = Multiple Employer Plans
  - Single retirement plan maintained for the benefit of two or more unrelated employers
  - NOT Multi-Employer Plan (multiple same-industry employers & shared union)
- Primary potential benefits of MEPs
  - Economies of scale
  - Streamlined operations

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Open MEPs

- Pre-SECURE Act barriers to MEPs
  - ERISA's "nexus" requirement
    - No common employer or common interest = Form 5500s for each 'plan'
    - Already relaxed in Summer 2019 via Department of Labor Regulations
  - IRS "One Bad Apple" Rule
    - One mistake by any employer could disqualify the plan for all!
- SECURE Act's removal of barriers
  - Remove "nexus" requirement altogether
  - Allow the IRS to disqualify only the 'bad' employer's MEP assets and provide a procedure for the rest of the plan to remain qualified

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Open MEPs

- May revolutionize the way plans are provided, implemented, & maintained
- Industry hopes it will 'ease' distribution of small business 401(k)s?
- Advisors can establish their own MEP (e.g., "ABC Financial MEP")
  - 'Trick out' the MEP with the best provisions
  - Have the 'best' investment line-up
  - Only need to monitor one plan line-up
  - Use scale to negotiate w/ vendors on behalf of plan sponsors

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Annuity-Related Changes

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Annuity-Related Changes

1. Fiduciary safe harbor for the selection of a lifetime income provider
2. Portability of lifetime annuity income options
3. (New) disclosures regarding lifetime income

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Annuity-Related Changes

1. Fiduciary safe harbor for the selection of a lifetime income provider

- Historically, ERISA fiduciaries have been extremely cautious about adding annuities as investment options within qualified plans
  - What if the insurer went 'belly up' in the distant future?
    - ERISA liability despite 'who could have known'?
  - Estimated that <10% of such plans currently offer an annuity option
- SECURE Act's new Safe Harbor largely alleviates this concern

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Annuity-Related Changes

- New 401(k) safe harbor for annuity lifetime income option has two key requirements:
  1. Review of "the financial capability of [an] insurer to satisfy its obligations"
     - Able to be satisfied by obtaining **insurer representations(!)** of:
       - Properly licensed;
       - Meets certain State insurance requirements for the year in question, along with the previous 7 years;
       - Undergoes appropriate financial examination no less than once every five years; and
       - Will notify the fiduciary of any changes to the above.
     - Effectively shifts due diligence to State Insurance Departments?
  2. Determine the fees are "reasonable" (ERISA prudence standard)

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Annuity-Related Changes

2. Portability of lifetime annuity income options

- What happens if a plan wants to get rid of an annuity as an option?
  - Problematic in the past
  - Annuity couldn't necessarily be rolled out in-kind at the time?
- SECURE Act creates 'distributable event' *just for that annuity* beginning 90 days prior to elimination of annuity as a plan investment option
- Effective for plan years beginning on or after January 1, 2020

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Annuity-Related Changes

3. Disclosure regarding lifetime income

- New required participant disclosure under ERISA
- Essentially answers "How much monthly income could I turn my savings into?"
- Model form will be issued within 1 year of enactment
  - Secretary to provide guidance on assumptions
- Effective to statements provided more than one year after the last of
  - Interim Final Rules
  - Issuance of Model Disclosure Form
  - Issuance of guidance on acceptable assumptions

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New Small Business Retirement Plan Credits

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New Small Business Retirement Plan Credits

1. Credit for small businesses establishing a new retirement plan

- 100 or fewer employees receiving $5,000 or more of compensation
- Maximum credit increased to $5,000 (up from $500) for up to 3 years
- Actual credit equal to the greater of:
  - $500, or
  - Lessor of:
    - $250 x non-highly compensated persons eligible to participate in the plan (up to 20)
    - $5,000

- Effective for tax years beginning January 1, 2020

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New Small Business Retirement Plan Credits

2. Credit for adoption of auto-enrollment by a small business retirement plan

- 100 or fewer employees receiving $5,000 or more of compensation
- Credit of (another) $500 for up to 3 years
- Must adopt "Eligible Automatic Contribution Arrangement" (IRC 414(w)(3))
  - Starts at 3% and gradually increases each year
  - Employer must make certain matching (or non-elective) contributions

- Effective for tax years beginning January 1, 2020

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Other Changes To Qualified Plans

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Other Changes To Qualified Plans

1. Maximum contribution % for 401(k) auto-enrollment increased
   - Increased to 15% in any year after the first *full* year in which the employee's compensation is automatically deferred into the plan

2. Long-term part-time workers provided greater access to 401(k)s
   - Old rule = Must work at least 1,000 hours in a year before it becomes mandatory for an individual to be eligible to participate
   - New rule = Old rule still applies, ***but*** individuals must also be eligible to participate after 3 or more consecutive years of 500+ hours
     - 500-hour years don't have to be counted until plan years beginning in 2021
   - Participants in a plan solely due to new rule may be excluded from plan testing for nondiscrimination and "top-heavy" status

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Other Changes To Qualified Plans

3. No more 401(k) debit/credit cards
   - Certain plans previously issued such cards, which created loans against the participant's plan balance
   - Too many loans going bad ☹

4. More plans can be established after tax-year-end
   - Plan must be employer-funded plan
     - Stock bonus plan
     - Pension plan
     - Profit sharing plan
     - Qualified annuity plan
   - Plans may be established until due date of employer's return (*including* extensions)
   - Effective for 2020

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RMDs To Begin At Age 72

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RMDs To Begin At Age 72

- RMD starting age is pushed back to age 72 for all IRAs and most plans
  - No change to Still-Working Exception
  - Required Beginning Date (RBD) becomes April 1st of year after reaching age 72
- Effective *only* for those who turn 70 ½ *in* 2020 or later
- Twice the benefit for first-half-of-year birthdays
- No impact to age at which QCDs can be made

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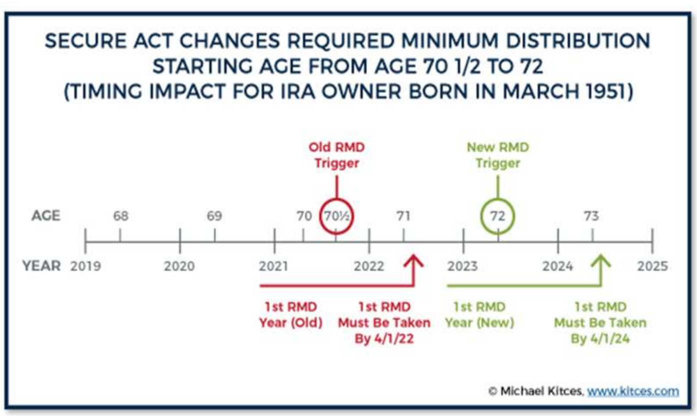
RMDs To Begin At Age 72



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RMDs To Begin At Age 72

Planning Implications…

- No one will start RMDs in 2020!
  - Already delayed from the 'old' rules, not yet impacted under the 'new' rules!
  - Moot point in 2020 as CARES Act eliminated RMDs this year anyway!
- No change to the Life Expectancy Tables (used to determine factors)
  - Simply use the age-72 factor for the first RMD year at age 72
  - Separate Proposed Regulations still 'floating out there'
- Gives those who can afford to 'wait on the income' two extra years for planning purposes
  - Though Social Security still kicks in by age 70!
- Is a meaningless change for the majority of IRA owners who are using their accounts to live on by that time anyway?

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RMDs To Begin At Age 72

Planning 'Side Effects'…

- Spouses who remain the beneficiary of deceased spouse's account
  - Starting age for RMDs (as a beneficiary) decedent's age 72
  - Surviving spouse beneficiaries treated as inheriting from an owner before decedent's age 72
- 5-Year Rule for Non-Designated Beneficiaries (new stretch rules discussed later)
  - Applies when an owner dies prior to April 1st of the year following the year that they reach age 72 (their new Required Beginning Date)

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Maximum Age For Traditional IRA Contributions Repealed

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Max Age For TIRA Contributions Repealed

- Traditional IRA contributions may now be made at *any* age
  - Must still have "compensation" (generally earned income)
  - Generally aligns to all *other* types of IRA (Roth) & employer retirement plans
- Effective beginning for 2020
  - *Cannot* use new rule to make contributions for 2019 *in* 2020
- Don't forget about spousal Traditional IRA contributions (now also feasible)!
- 'Regular' deductibility rules still apply
  - Generally deductible
  - Deduction may be phased out w/ high income *and* active participation of retirement account owner and/or spouse

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Qualified Charitable Distribution (QCD) Anti-Abuse Rule

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QCD Anti-Abuse Rule

- *The amount of [qualified charitable] distributions not includible in gross income **by reason of the preceding sentence** for a taxable year (determined without regard to this sentence) shall be reduced (but not below zero) by an amount equal to the excess of—*

  *'i) the aggregate amount of **deductions** allowed to the taxpayer **under section 219** for all taxable years ending on or after the date **the taxpayer** attains age **70 ½**, over*

  (ii) the aggregate amount of reductions under this sentence for all taxable years preceding the current taxable year. [Emphasis Added]

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QCD Anti-Abuse Rule

- Otherwise valid QCDs 'rejected' until rejected amount = deductible Traditional IRA contributions made during/after owner's 70 ½ year
  - Rejected amounts treated as 'regular' distribution + 'regular' charitable contribution
  - May or may not offset
    - Regular distributions increase AGI (impacting other deductions & credits)
    - Harder to itemize deductions (fully or at all) now!
    - (By contrast, QCDs 'always' allowed in full, & reduce AGI not just taxable income)
  - Effectively prevents an 'end-run' around the limitations of 'regular' charitable contributions

- May greatly reduce the benefit of the repeal of the maximum age for making Traditional IRA contributions (if future QCDs are desired)

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QCD Anti-Abuse Rule

- Four-Step Process to Calculate Non-'Rejected' QCD Amount
  1. Determine total current year distributions made which follow QCD rules
  2. Calculate total remaining distributions to be denied QCD status
  3. Determine current year distributions made following QCD rules which will be denied QCD status
  4. Determine current year distributions made which will be treated as a QCD

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QCD Anti-Abuse Rule

- Ruby turned 70 ½ on January 15 of 2020
  - Contributes $7,000 in 2020 and 2021 to an IRA
  - Turns 72 in 2021, when her first RMD will be $12,000
  - Decides to contribute the $12,000 RMD as a QCD in 2021

1. Determine total current year distributions made which follow QCD rules	$12,000
2. Calculate total remaining distributions to be denied QCD status	$14,000
3. Determine current year distributions made following QCD rules which will be denied QCD status (lesser of 1 or 2)	$12,000
4. Determine current year distributions made which will be treated as a QCD	$0 ($2,000 QCD disqualification remaining)

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QCD Anti-Abuse Rule

- Strategies to 'beat' the QCD anti-abuse rule
  - Don't panic! Don't panic!
    - Impact is limited for those who *can* itemized
    - *Only* applies for those doing *post 70 ½ IRA contributions*
  - Use *other* assets to give to charity (i.e., appreciated securities)
    - Effectiveness is reduced for those who don't itemize!
  - Remove unwanted contributions voluntarily as "Excess Contributions"
    - "Oops, nevermind…"
  - 'Burn' through prior years' traditional IRA deductions via (not-actually-) QCDs
    - Better to use up the disqualified amounts than have them looming forever!

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QCD Anti-Abuse Rule

- More strategies to 'beat' the QCD anti-abuse rule
  - Make deductible contributions using employer-sponsored retirement plans (including SEP IRAs and SIMPLE IRAs)
    - Anti-abuse rule applies *only* to post 70 ½ Traditional IRA contributions
  - Make Roth IRA contributions
    - Anti-abuse rule applies *only* to post 70 ½ *Traditional* IRA contributions
  - Skip the deduction for the Traditional IRA contribution
    - It's voluntary…
  - Deductible Traditional IRA contributions for one spouse, QCDs from the other

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10% Early Withdrawal Penalty Exception For Childbirth/Adoption

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10% Penalty Exception For Childbirth/Adoption

- "Qualified Birth or Adoption Distribution"
  - Applies to IRAs *and* to employer-sponsored retirement plans
- Up to $5,000 per parent *and* per qualifying event
  - May be spent as parents see fit (no list of "qualifying expenses")
  - "Oh, you had/adopted a(nother) baby? Go for it (up to $5,000)…"
- Distribution must be taken within one year *after* child's (live) birth or adoption (adopted child must be < 18)
- Distributions *may* be repaid (i.e., 'recontributed') later

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The 'Death' of the Stretch

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‘Death’ of the Stretch

- New rules only apply to Designated Beneficiaries
  - “A designated beneficiary is an individual designated as the beneficiary…”
  - No direct change to rules for Non-Designated Beneficiaries (NDBs)
    - “Paper” beneficiaries like charities, estates, and trusts
- General rule is a new 10-Year Rule
  - Similar to 5-Year Rule for NDBs (when death occurs prior to RBD)
  - No RMDs (can withdraw but not *required*) during years 1-9
  - All funds must be distributed by the end of the 10th year after death

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‘Death’ of the Stretch

- Applies to IRAs & *most plans* for deaths occurring on/after January 1, 2020
  - Including *Roth* retirement accounts!
    - May remain be tax-free, but money must still be distributed…
- 3 exceptions:
  - Delayed until deaths occurring on/after January 1st, 2022 for:
    - Governmental plans
    - Plans maintained per a Collective Bargaining Agreement (unless CBA ends sooner)
  - Annuitized annuities (life/joint life expectancy) and annuities in which a future lifetime income option has already been irrevocably selected

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'Death' of the Stretch

- Eligible Designated Beneficiaries (EDBs) are also exempt from the SECURE Act's changes, and retain life-expectancy stretch option

- The 5 types of EDBs are:
  1. Surviving spouses
  2. Disabled persons
  3. Chronically ill persons
  4. *A beneficiary not more than 10 years younger than the decedent*
  5. The *decedent's* minor child*

*Only applies until age of majority

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Post-death RMD requirements

Retirement Account Beneficiary…

Eligible Designated Beneficiary (Stretch)

- Spouse of the decedent
- Disabled beneficiary
- Chronically Ill beneficiary
- Individuals *not* >10 years younger than decedent
- Minor child *of the decedent*
- **Certain Trusts*

Non-Eligible Designated Beneficiary (10-year rule)

- Non-Spouses >10 years younger than decedent
- *Certain Trusts

Non-Designated Beneficiary (5-year rule or As Rapidly As)

- Charities
- Decedent's Estate
- *Certain Trusts

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'Death' of the Stretch

- Impact to trust beneficiaries
  - General rule is still that trusts are Non-Designated Beneficiaries
    - 5-year rule, or decedent's life expectancy if death was after RBD
  - Trusts can still be treated as Designated Beneficiaries if they meet the "See-Through Trust" rules
    - Certain "See-Through Trusts" may be treated as EDBs?
  - Conduit trusts benefiting single EDB should receive EDB treatment?
  - Discretionary Trusts will generally *not* qualify for EDB treatment?

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'Death' of the Stretch

- Death of an EDB?
  - Distributions no continue over life expectancy
  - 10-Year Rule applies to successor beneficiary
  - Applies to *all* beneficiaries treated as successor beneficiaries
    - Successor beneficiaries *cannot* be EDBs!
- Death of a pre-SECURE Act beneficiary
  - Decedent died on or before effective date
  - *10-Year Rule applies to successor beneficiary*
    - Again, successor beneficiaries can't be EDBs! (No grandfathering) ☹

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'Death' of the Stretch

Planning Implications…

- Review *all* beneficiary designations
  - Seriously. Review. Them. All.
- Discuss implications of SECURE Act w/ clients so they understand implications
  - Do they want to name different beneficiaries?
  - Do they want to alter planning during life (e.g., increase Roth conversions)?
  - Prioritize beneficiaries that are most likely to be 'problematic'
    - Trusts
    - Children
- Don't over-dramatize the impact, though…
  - 'Stretching' over 10/11 years still mitigates a lot of tax bracket compression…

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Expansion Of Qualified 529 Plan Distribution Options

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Expansion Of 529 Plans

New distribution types eligible for (tax-free) qualified distribution treatment from 529 plans:

1. Fees, books, supplies, and required equipment for Apprentice Programs
   – Apprentice Program must be certified w/ the Department of Labor

2. New "Qualified Education Loan Repayment" distributions
   – Lifetime limit of up to $10,000
   – May be used for principal and/or interest
   – Interest paid w/ such distributions ***not*** eligible for above-the-line student loan interest deduction
   – Up to $10,000 can be distributed to satisfy student debt of 529 beneficiary's siblings (each)
   – Retroactive to January 1, 2019

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Kiddie-Tax Reverts To Pre-Tax Cuts And Jobs Act (TCJA) Rules

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Kiddie-Tax Reverts To Pre-Tax Cuts And Jobs Act (TCJA) Rules

- 'Kiddie Tax' applies when:
  - A child is:
    - Younger than 18
    - 18 years old and provides less than ½ their support w/ earned income
    - A full-time student, age 19 – 23, who provide less than ½ their support w/ earned income
  - Unearned income is more than $2,200
    - First $1,100 child's Standard Deduction
    - Second $1,100 at the child's rates
  - Required to file a return
  - At least one parent is alive
  - Don't file married-joint

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Kiddie-Tax Reverts To Pre-Tax Cuts And Jobs Act (TCJA) Rules

- Kiddie Tax historically caused child's "applicable unearned income" (excess above $2,200) income to be taxed at their parents' top marginal tax rate
- Tax Cuts and Jobs Act of 2017 changed Kiddie Tax to be subject to *trust* tax brackets instead
- SECURE Act reverts Kiddie Tax to parents' top rate again
  - Can't file kids' tax returns before you finalize the parents' return ☹
- Reversion to tax at parents' rate is a 'win' for most children
  - Except for 'modest' income (<$9,450 at 24%) w/ very-high-income parents?

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Kiddie-Tax Reverts To Pre-Tax Cuts And Jobs Act (TCJA) Rules

- Change is mandatory for 2020
  - Parents' tax rates *will* apply; trust tax rates not available
- Change is *optional* for 2018 and 2019
  - Flexibility when filing child's 2019 tax return to pick which gives you a lower tax!
  - Likely need to amend 2018 returns to take advantage of using the parents' rate
    - Generally have up to 3 years to file an amended return

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Be A Hero For Your Clients!

Key Takeaways…

- Review *all* beneficiary designations for retirement accounts
  - Schedule meetings to update estate plans as appropriate
  - Stay tuned for updated guidance on trusts?
- Review *all* clients who were exposed to Kiddie Tax in 2018 and/or 2019
- Stay tuned for new MEP structures (if that's your thing?)
- Update timing for future RMDs
  - And remember no *new* RMDs onset in 2020!
- Explore post 70 ½ contributions for still-working clients
  - But bear in mind the future QCD impact if contributions are deducted?

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