Impact of The SECURE Act on Estate and Retirement Planning

A Review for Professional Advisors
With BOK Financial's RIA Trust Education Series

Presented by

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Agenda

The SECURE Act – Overview & Key Changes

How SECURE Act Changes Fit With Rules

Planning for Different Beneficiaries

- » Most Designated Beneficiaries
- » Surviving Spouse
- » Minor Child
- » Disabled and Chronically Ill Beneficiary
- » Beneficiary less than 10 years younger

Impact of the SECURE Act on Pre-2020 Deaths

Pending Items with the IRS

SECURE Act – Overview & Key Changes

SECURE - Setting Every Community Up for Retirement Enhancement

Signed 12/20/19 … Effective 1-1-2020

Significant impact on Estate and Retirement planning and completely changes many rules

Overlays on top of existing rules

SECURE - Key Changes to Lifetime Rules

Starting Age for RMDs – 70 ½ → 72
(Effective Date of 1-1-2020)

Removed Age Cap on Traditional IRAs (was 70 ½)

Qualified Charitable Contribution rule changes

Allows 401-K plans to be set up after 12-31

Note – We will not focus on these items today

SECURE - Key Changes to Post-Death Rules

Replaces use of life-expectancy deferral planning, or “Stretch IRA,” with a 10-year payout rule for most beneficiaries

Creates five eligible designated beneficiaries (EDBs) who can still us life-expectancy payout methods

May force key decisions on asset protection vs. tax planning for retirement distributions

Raises new questions, strategies, complexities and opportunities for planning

SECURE Act – Overlays on Existing Rules

Some Old Rules Still Exist:

- » Non-Designated Beneficiary – Unchanged
  - Estate
  - Non-Qualifying Trust
  - Charity
  - Generally a 5-Year Distribution Required, unless the plan participant had reached RMD age
- » Designated Beneficiary – Unchanged
  - Individuals
  - See-Through Trust (Qualifying Trust)
  - Most are now 10-Year Distribution unless EDB

Need to Know Old Rules:

- Conduit Trust vs. Accumulation Trusts
- Required Minimum Distributions (RMDs)

Overlays the Eligible Designated Beneficiary (EDB)

<u>Old Rules - Designated Beneficiary</u>

The SECURE Act doesn't change what is a designated beneficiary and what is a non-designated beneficiary

Designated Beneficiary is an IRS term

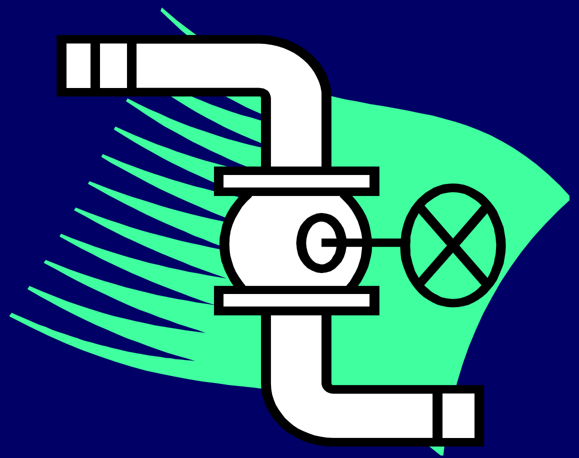
- The beneficiary must have a Life Expectancy and pass the "<u>Heartbeat Test</u>"
- If an individual person, then Life Expectancy is their age
- If multiple people, then use the Life Expectancy of the oldest (Shortest Life Expectancy with trusts)
- Trusts can be a designated beneficiary when they meet certain conditions

Old Rules - How Can a Trust Qualify As a Designated Beneficiary (See-Through)?

Trusts Must Pass a Five-Part Test to Qualify As a Designated Beneficiary (The "Heartbeat Test" for the Trust)

1. Trust valid under state law
2. **Trust has individual beneficiaries**
3. **Trust has identifiable beneficiaries**
4. Trust is delivered to the Plan Administrator
5. Trust is Irrevocable upon the Death of Trustmaker

Review - Conduit Trust vs. Accumulation Trust



Conduit Trust – Mandates IRA distributions are immediately distributed to the beneficiary. Automatically qualifies as see-through trust.

Accumulation Trust – Automatic distribution of IRA distributions is not required & distributions can be held subject to trustee's discretion. Creates a discretionary trust and provides asset protection for beneficiaries. More complex to qualify as a see-through trust.

Eligible Designated Beneficiaries (EDBs)

SECURE Act allows these designated beneficiaries to use life-expectancy method (ala “the stretch”).

1. Surviving Spouse
2. Minor Child of the Participant (until they reach majority age)
3. Disabled Beneficiary
4. Chronically Ill Beneficiary
5. Beneficiary is less than 10 years younger

Comparison of Before and After SECURE

	Before the SECURE Act	After the SECURE Act
Non-Designated Beneficiary	5-year or Ghost rule	5-year or Ghost rule
Designated Beneficiary	Life-Expectancy (Stretch)	10-Year
Eligible Designated Bene.	N/A	Life-Expectancy (Stretch)

Planning for Typical Beneficiary

Is the beneficiary a designated beneficiary?

No ➔ Probably 5-year distribution, unless participant reached RMD age

Yes ➔ Are they an EDB?

If not an EDB …… then 10-year rule will apply

- 10-year rule means 12/31 of the 10th year after the participant dies
- No RMDs, or required way to distribute other than all distributed within 10 years

Planning for Surviving Spouse

Considered an EDB w SECURE Act

Most planning options are unchanged:

- Roll Over to his/her own IRA
- Conduit trust for spouse works (RMDs at 72)
- QTIP-Conduit trust works (RMDs at 72)
- Accumulation trust is subject to 10-year rule as spouse is not the sole beneficiary of trust

Ten-year rule applies upon death of surviving spouse

Planning for Surviving Spouse

New Planning Challenges ……

What if there are minor children?

Should Surviving Spouse disclaim IRA assets to the minor children to maximize their stretch?

Does the mix of IRA and Non-IRA assets for the client make a difference?

Planning for the Minor Child

Considered an EDB w SECURE Act

ONLY applies to minor child of the participant (i.e. no grandchildren, niece, nephew, etc. applications)

Entitled to life-expectancy planning until minor child reaches the age of majority (typically 18 or 21), then 10-year rule applies.

Conduit trust for a minor child will work

Accumulation trust for a minor subject to 10-year

Planning for the Minor Child

New Planning Challenges ……..

Trade off of keeping control longer using an accumulation trust vs. higher trust income taxes

If a minor child dies, 10-year rule kicks in

What if the beneficiary is a conduit trust for multiple minors? What if the conduit trust has some minors and others not minors?

Do life insurance solutions get created for taxes?

Planning for Disabled/Chronically Ill

Considered an EDB w SECURE Act

Disabled – unable to engage in any substantial gainful activity due to disability …. Section 72(m)(7)

Chronically Ill – specific terms as well.

Accumulation trust work (i.e. special needs trust)

Upon death of disabled/chronically ill … 10-year rule would apply

Planning for Disabled/Chronically Ill

New Planning Challenges ……

Most planning is consistent w/ current plans and usage of special needs trusts.

Disability or Chronically Ill status is based on conditions at the time of death of IRA participant. What if a disability develops later in life?

Income taxation can be harsh

Should a family choose this EDB or minor child EDB at the time?

Planning for Less than 10 Years Younger

Considered an EDB w SECURE Act

Designed for brothers and sisters within 10 years of the plan participant

Allows for life-expectancy planning

At the death of the EDB, ten-year rule applies for any contingent beneficiaries

SECURE Act Beneficiary Summary

Tax Terminology	Designtd. Benef. (Non-Eligible)	Surviving Spouse	Eligible Minor Child	Disabled or Chronically Ill	Person Less Than 10 Years Younger
An Outright (Named) Beneficiary	10-Year Rule	Life Expectancy	Life Expectancy (Until Maj.)	Life Expectancy	Life Expectancy
Conduit Trust	10-Year Rule	Life Expectancy	Life Expectancy (Until Maj.)	Life Expectancy	Life Expectancy
Accumulation Trust	10-Year Rule	10-Year Rule	10-Year Rule	10-Year Rule	Life Expectancy
Non-Design. Beneficiary or Trust	Before RMD – 5-yr After RMD - Ghost	Before RMD – 5-yr After RMD - Ghost	Before RMD – 5-yr After RMD - Ghost	Before RMD – 5-yr After RMD - Ghost	Before RMD – 5-yr After RMD - Ghost

Adapted from Robert S. Keebler Presentation

SECURE Act Planning – Pre-2020 Deaths

Impact on Existing Inherited IRAs

- Under current rules next beneficiary would continue the stretch over the original life expectancy period.

- SECURE Act will create a ten-year payout period on death of the original inheritor. The original stretch dies with the beneficiary.

SECURE Act Planning Issues - Tradeoffs

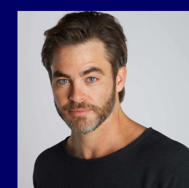
Asset Protection vs Higher Taxes

- Asset Protection generally requires holding in trust with an independent Trustee
- Trust tax rates higher than individual tax rates

IRA

or

Accumulation Trust (Higher Tax Rates)



Conduit Trust or Outright

Based on Individual Tax Rates

SECURE Act Planning Issues – Tax Rates

Trust Tax Rates – 37% after approximately $ 13 K/Yr income

Individual Tax Rates – 37% only after approx. $ 500 K/Yr+ income

IRA

or

Accumulation Trust (Trust Tax Rates)

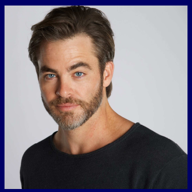
Conduit Trust or Outright

Based on Individual Tax Rates

SECURE Act Planning – Roth Conversion

What is my marginal income tax rate vs. my beneficiary's marginal income tax rate within 10 years after my death?

Limited/No Tax to distribute



IRA

or

Convert to Roth IRA (Pay Tax Now)

No Conversion

Pay Tax in first 10 years

SECURE Act - Charitable Remainder Trusts

Trustmakers (designate CRT as IRA Benef.)

Assets

CRT

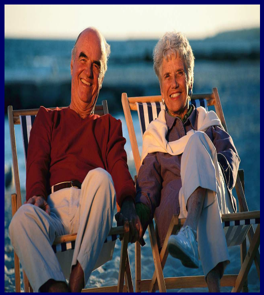
Income

Kids are Income Beneficiaries for Life

Trustee (will sell asset)

Charity (receives asset)

SECURE Act Planning –
CRT Plus – Combine with ILIT



Trustmakers
(designate CRT
as IRA Benef)

Assets

CRT

Part of Income

Rest of Income

Funds an ILIT
(pays out upon death)

Trustee (will sell asset)

Charity (receives asset)

SECURE Act – Pending Items

IRS Regulations – Will this change anything?

How will multiple beneficiary trusts be handled?

- Trusts with some EDB beneficiaries and some not EDB beneficiaries.
- For minor children, when does 10-year begin

How do we handle multiple-EDB situations?

- Disabled surviving spouse … which applies

Confusion on what happens when EDB dies in some situations.

SECURE Act – What Do We Do Now?

Educate, Educate, Educate … then repeat.

Some existing plans will work fine, others ….

Clients need to be motivated to look at their individual plans, and adjust to new environment

For clients with large 401-k/IRA … modify plans?

Trade-off of Asset Protection with Tax Planning on retirement assets must be understood

What if tax rates start rising …… are 401K/IRA as good a plan as before?

Thank You for Attending

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