The SECURE Act: What Does It Mean for Your Donors' IRAs?

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Today, the traditional pension funds our parents had have become a thing of the past and most people will rely on Individual Retirement Accounts (IRAs) or 401(k) plans to take them through their "golden years." With a goal of enhancing retirement security for a growing population that's living longer than ever before, last month Congress passed the first major piece of retirement legislation in more than a decade. The *Setting Every Community Up for Retirement Enhancement* (SECURE) Act took about three years to come to fruition and, despite being stalled along the way, has enjoyed consistent bipartisan support.

The SECURE Act, which took effect on January 1, 2020, does several things that will affect donors' ability to save money for retirement and influence how they use the funds over time. Two of these changes may also have a significant impact on their charitable giving:

- The required minimum distribution ("RMD") age for retirement accounts increased from 70 1/2 to 72 years old, but the age an IRA owner can make a qualified charitable distribution (QCD) remains at 70½.

- The SECURE Act modifies the stretch IRA provisions. Until now, a beneficiary could stretch distributions over their lifetime (or the remaining life expectancy of the deceased IRA creator). The new 10-year limit increases the income tax impact to the beneficiaries, which ultimately supports the argument that it is better to name a charity as the beneficiary.

Change in age for mandatory Required Minimum Distributions (RMDs)

The SECURE Act increases the age at which retirees must begin taking RMDs from 70½ to 72, allowing investors to save longer before having to take withdrawals. (This change applies to individuals born after June 30, 1949; individuals born on or before June 30, 1949 are still required to begin taking RMDs at age 70-1/2.) This change now allows retirement funds to grow for an extra year and a half before participants must begin receiving distributions.

No change in age for Qualified Charitable Distributions (QCDs)

Even though the age requirement for taking mandatory RMDs has increased, donors can still make QCDs of up to $100,000 per year directly from their IRA(s) beginning at age 70 ½ without having to include the RMD in your taxable income for the year *as long as they are no longer contributing to their IRAs*. If a donor *is* still contributing to the IRA, it's important to know that the amounts they contribute after reaching age 70½ will reduce, dollar-for-dollar, the amount of a QCD that can be excluded from their taxable income. Although the SECURE ACT does have rules to coordinate the new IRA rules with QCDs, this may cause some confusion among donors; it is anticipated that the IRS will offer guidance soon.

For example: if the donor of a $50,000 QCD has contributed $20,000 to her IRA since turning 70½, only $30,000 of the QCD will be excludable from her taxable income. (The donor will be able to itemize the other $20,000 as a charitable deduction, which may offset the additional taxable income.) If the donor makes no further IRA contributions and makes another $50,000 QCD in a subsequent year, all $50,000 of that distribution will be excludable from her taxable income.

Inherited IRA distributions must now be taken within 10 years

Previously, if an individual inherited an IRA, they could "stretch" their IRA distributions over a long period of time, deferring income tax and permitting the account balance to compound income tax free. More specifically, following the death of the IRA owner, the retirement benefits passing to a designated beneficiary were paid out over the lifetime of the beneficiary, resulting in a significant tax benefit for beneficiaries who were much younger than the IRA owner, such as a grandchild. The RMDs were calculated based on life expectancy of the grandchild (or other young heir) so after the death of the plan owner, the plan assets would be paid out over that beneficiary's life expectancy. That deferral (and the accompanying income tax benefit) made many IRA owners comfortable bequeathing a large IRA balance outright.

The SECURE Act has changed that. Now, for IRAs inherited from original owners who have passed away on or after January 1, 2020, the new law requires many beneficiaries to withdraw all of the assets within 10 years after the death of the account holder. No withdrawals have to be made during the 10-year period, but at the end of 10-years from the date of the plan holder's death, the entire balance in the plan must be withdrawn.

Exceptions to the 10-year rule include: assets left to a surviving spouse, a disabled or chronically ill beneficiary, or beneficiaries who are less than 10 years younger than the original IRA owner. In these cases, the beneficiary is allowed to take distributions under the old rules. Minor children are also considered an exception to the 10-year rule; however, when the minor reaches age 18, the 10-year rule will clock will begin ticking and the plan assets will have to be paid out by year 10, when they reach age 28.

What if an IRA was inherited before 2020? Since, the SECURE Act only applies to retirement plan assets that are inherited after January 1, 2020, the complex distribution rules that existed under prior law will continue to apply to many heirs.

A new opportunity for strategic charitable giving

For charitably minded people who don't necessarily want their non-spousal beneficiaries to receive their entire IRA proceeds within 10 years, a testamentary life income gift, such as a charitable remainder trust (CRT), may offer a creative solution:

- The IRA owner can designate a CRT as the beneficiary of the account and the IRA proceeds will then be used to fund a life income vehicle that will provide income for

loved ones, either for their lifetime(s) or for a set term of years, and typically generally with a minimum 5% payout (each payment would carry out a portion of the income). At the end of the term, the remaining assets will go to one or more charitable organizations chosen by the original IRA accountholder. This strategy combines tax-free growth, maximum income, protection of the trust principal and future support of a favorite charitable cause. For individuals who want to protect and help loved ones, the IRA-to-testamentary-CRT solution offers enormous benefits and might accomplish something similar to the intended deferral before the SECURE Act.

- Under the rules for CRTs, a minimum of 10% of the assets must go to charity at the end of the CRT's term. To further provide for heirs and replace those assets, the IRA owner might also purchase a life insurance policy in an amount equal to what is estimated to go to charity and, to avoid any potential estate taxes, establish an insurance trust to hold the proceeds. This strategy is similar to a planning concept sometimes known as "a wealth replacement trust" but applied here in a post-SECURE Act context.

Next Step:

These changes are just a few of those resulting from enactment of the SECURE Act. Take this opportunity to educate your donors about the benefits of using a testamentary CRT or other life income gift to replicate the stretch IRA for their families. As with any piece of new legislation, it is important to encourage your donors to work with their tax professionals and advisors to define and prioritize their personal objectives an explore the best solutions and strategies for them.