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PUBLISHED: JANUARY 2, 2020

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# The SECURE Act: Implications for Individuals and Small Business Owners

**Executive summary**

On December 20, 2019, President Trump signed sweeping legislation that materially impacts retirement savings accounts. Some of the highlights of these changes that become effective on January 1, 2020, are as follows:

*Individuals*

Inherited IRAs—the new legislation eliminates "stretch" distributions from IRAs and qualified plans and mandates a **10-year** withdrawal window for most non-spouse beneficiaries of retirement accounts. If you have named a trust as beneficiary of your retirement plan, you should meet with your estate planning attorney to assess whether changes are needed.

RMDs—the beginning age for required minimum distributions ("RMDs") is raised from 70 ½ to 72.

Birth & Adoption—penalty-free withdrawals from retirement plans are available for adoption and/or birth of a child.

529 Plan Expansion—529 plans can now be used to repay up to $10,000 in student loan debt.

*Small Business Owners*

Multiple Employer Retirement Plans—unrelated small businesses may band together to establish "open" 401(k) multiple-employer plans.

Increase in Tax Credit for Starting a Retirement Plan—the credit available for small businesses establishing new retirement plans is increased from $500 to $5,000.
New Tax Credit for Small Businesses Adopting Auto-Enrollment—this is a new benefit provided by the legislation.

**Discussion**

On December 20, 2019, President Trump signed significant legislation intended to increase Americans' readiness for retirement. The Setting Every Community Up for Retirement Enhancement Act (the "SECURE Act" or "the Act"), which becomes effective on January 1, 2020, includes 29 provisions aimed at increasing access to tax-advantaged retirement accounts and preventing older Americans from outliving their assets. Some of the most important changes created under the SECURE Act are highlighted below.

**Individuals**

**10-year distribution rule for inherited IRAs.** The SECURE Act eliminates the so-called "stretch" IRA for non-spouse beneficiaries, and requires that all IRA and qualified plan assets be distributed within ten years of the account holder's death. Previously, beneficiaries could stretch distributions from an inherited IRA over their entire life expectancy. As such, inherited IRAs could continue to take advantage of the tax favored status of IRAs. Under the SECURE Act, the 10-year rule will require beneficiaries of traditional IRA assets (those which were contributed to the IRA before income taxes were paid on the contributed amount) to pay the income tax on the entire balance of an inherited IRA within ten years of the account holder's death.

The SECURE Act's ten-year rule does not apply to an account holder's surviving spouse, a chronically ill or disabled non-spouse beneficiary, or a beneficiary fewer than 10 years younger than the account holder. A beneficiary who is the minor child of an account holder is not subject to the ten-year rule until he or she attains the age of majority.

Many account holders have named a trust as the beneficiary of their IRA so that the assets receive creditor, divorce and estate tax protection. The tax and planning implications of the SECURE Act may be particularly pronounced for those who have named trusts as beneficiaries of their retirement accounts. Such individuals should carefully review their retirement assets, beneficiary designations, and estate planning documents with their estate planning attorney to assess whether changes are needed.

**Increase in the required minimum distribution age.** Account holders are required to withdraw a portion of the account assets each year after attaining a given age. Failure to withdraw the minimum amount, called the Required Minimum Distribution ("RMD"), triggers a penalty of 50% of the RMD amount. The SECURE Act raises the starting age for RMDs from 70 ½ to 72. The earliest age (59 ½) at which account holders may withdraw IRA funds penalty free is unchanged.

**Eliminates the maximum contribution age.** Under the previous law, account owners could not contribute to an IRA after attaining the age of 70 ½. The SECURE Act removes the cap entirely, allowing older Americans who are still working to continue to receive beneficial tax treatment as they save.

**Improved access for part-time workers.** Many older Americans are transitioning to part-time employment rather than full retirement. The SECURE Act allows such workers to access certain employer-sponsored retirement plans by requiring plans to include long-term part-time workers as participants.

**Penalty-free withdrawals for birth or adoption.** The SECURE Act allows Americans who recently had a baby or adopted a child to withdraw up to $5,000 from their retirement accounts without incurring the 10% early-withdrawal penalty. Such withdrawals are still subject to ordinary income tax.

**529 plan expansion.** The SECURE Act permits 529 plans to be used for a larger number of education-related expenses. Up to $10,000 (lifetime limit) worth of 529 plan assets may be used for the repayment of student loans. The same 529 account may also be used to pay up to $10,000 per person in student debt for any siblings of the account beneficiary. There are some limitations, however, and account owners should be careful to structure their repayment of student debt to maximize available tax benefits.

**Small business owners**

Several provisions in the SECURE Act aim to decrease barriers and increase incentives for small business owners that establish retirement plans for their employees.

**Multiple employer retirement plans**. The SECURE Act allows unrelated small businesses to band together to establish "open" 401(k) multiple-employer plans, reducing the costs and administrative duties of each employer. Previous law only permitted "closed" multiple-employer plans, which require certain shared characteristics among participating employers. The Act also insulates companies from penalties if other participating employers violate fiduciary rules. However, business owners should be aware of restrictions regarding investment options and fiduciary oversight.

**Tax credits for starting a retirement plan.** The SECURE Act increases the credit available for small businesses establishing new retirement plans for their employees. It increases the maximum credit amount of $500 to $5,000 and adds an additional new tax credit of up to $500 if the new plan includes automatic enrollment. These credits are available for the first three years that a plan is in existence.

## Contact us

If you have questions about this update or how it might affect you or your business contact your Husch Blackwell Private Wealth attorney.