Secure Act Developments Summary

Planning for Retirement Benefits

June 2022

Legislation introduced in 2020 and then expanded and codified earlier this year has strengthened access to qualified retirement savings plans for businesses and employees. It has also complicated the use of such plans as part of an estate planning strategy.

Below we provide a high-level summary of the relevant legislative actions and regulations, implications for both plan participants and their beneficiaries, and strategies to adjust to these changes in an optimal manner. We discuss each of these topics in more depth in our note, available here.

Legislative Overview

SECURE Act

The Setting Every Community Up for Retirement Enhancement Act (SECURE Act), effective January 1, 2020, was designed to help Americans save for retirement. However, it also significantly changed the rules for Required Minimum Distributions (RMDs) from qualified plans and IRAs. The SECURE Act significantly curtailed the use of "stretch IRA" estate planning strategies, which enabled an IRA to be distributed over a beneficiary's life expectancy. Under the SECURE Act, the payout period following the plan participant's death is limited to 10 years, except for a select subgroup of beneficiaries (including spouses).

Treasury Regulations on RMDs

On February 23, 2022, the Treasury Department released Proposed Regulations on Required Minimum Distributions (RMDs) as outlined in the SECURE Act. The regulations are complex and depend on various personal factors among participants and beneficiaries. Notably, they restate, substantially expand, and clarify the RMD rules as applied to trusts. With the new clarity regarding trust rules, along with the introduction of the 10-year rule, **utilizing trusts as IRA beneficiaries will be more attractive, particularly for those with minor or financially vulnerable IRA beneficiaries.**

SECURE 2.0

On March 29, 2022, the U.S. House of Representatives passed the Securing a Strong Retirement Act (SECURE 2.0). The Senate version was introduced on May 20, 2022. We expect that SECURE 2.0 will become law in 2022. While this newest initiative does little to impact the individual planning considerations (discussed below), it could alter select retirement savings plan accumulation and distribution strategies.

Planning Considerations and Opportunities

While the SECURE Act makes qualified plans and IRAs more attractive for retirement planning purposes, it reduces their appeal as an estate planning tool. The 10-year maximum distribution period for most non-spousal beneficiaries may require adult beneficiaries to take inherited retirement account distributions as income during their peak earnings years when they will be in the highest tax brackets of their lives. Key considerations include:

Managing Taxes

Devising distribution strategies to capture lower bracket years and potential state residency planning can greatly enhance after-tax economics under the new 10-year rule.

Protecting Heirs

Utilizing trusts when beneficiaries are either young or financially imprudent or when intended beneficiaries face divorce or creditor issues may provide some degree of asset protection.

Balancing Risks

Designing flexible trusts allowing for accumulations can provide a sophisticated trustee with greater planning optionality, allowing them to optimize for tax management and asset protection.

Incorporating Charity

For larger retirement accounts, incorporating Charitable Remainder Trusts (“CRTs”) may be attractive for the charitably minded wishing to partially replicate pre-SECURE lifetime payout tax deferral economics.

Action Required

The SECURE Act, Proposed Regulations, and other pending legislation have significantly altered the fundamental assumptions, principles, and economics of estate planning with retirement benefits. Accordingly, we encourage all retirement plan owners to work with their client service team to review their existing plan beneficiary designations and current estate planning provisions considering these changes.

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