SECURE Act

Current Development Update

By Oliver Rolfe & Savina Keaney

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In July 2023, the IRS issued Notice 2023-54, providing further guidance regarding distribution requirements for retirement plans and individual retirement accounts (IRAs) following the passage of the SECURE Act in December 2-19 and the SECURE Act 2.0 in December 2022. Due to the continued confusion surrounding required minimum distributions ("RMDs") for inherited retirement accounts, Notice 2023-54 reduces the penalty for failure to take otherwise required RMDs in 2023.

Given the recent fundamental changes to the rules surrounding retirement plans, we encourage you to contact us for advice regarding compliance with the new RMD requirements during your lifetime and any further planning needed for those inheriting retirement accounts, either through a trust or otherwise.

Those who have begun taking RMDs or have inherited interest in a retirement plan prior to 2020 are "legacied" into the prior rules regarding RMDs but should still schedule a consultation to address any changes needed in their own estate planning.

What has changed?

Lifetime Stretch

In 2019 the SECURE Act contained the most significant changes to retirement legislation since 2006. Perhaps most notably, the new law eliminated the "lifetime stretch" for most individual beneficiaries (and qualifying trusts). Generally, the new rules are as follows:

- Where the account owner died in 2020 or later, lifetime stretch was replaced with a maximum 10-year payout period, save for a few exceptions for "Eligible Designated Beneficiaries," namely:
    - Minor Children of the Account Owner (until age 21
    - Surviving Spouse of the Account Owner
    - Chronically Ill or Disabled Individuals
    - Beneficiaries not more than 10 years younger than the Account Owner
    - Qualifying Trust with Eligible Designated Beneficiary
- Where the Account Owner died before 2020, prior rules apply.
- Maximum payout period for non-individuals (e.g. charities, estates) remains 5 years.

Depending on the beneficiary designation and terms of an estate plan, required payments can either be paid to and kept in the trust or may be required to be paid to a beneficiary directly. Estate plans and beneficiary designations should be reviewed and stress-tested for effects of SECURE to avoid unintended consequences.

Required Beginning Date

- Traditional IRAs and 401(k) plans now require Account Owners to begin taking RMDs out of these accounts starting on April 1 the year following the year they reach a certain age ("Required Beginning Date"), as follows:
  - For those born before July 1, 1949: 70.5
  - For those born between July 1, 1949, and December 31, 1950: 72 (SECURE Act)
  - For those born between January 1, 1951, and December 31, 1957: 73 (SECURE Act 2.0)
  - For those born January 1, 1958 or later: 75 (SECURE Act 2.0)

Clarification Regarding Required Minimum Distributions

Following the original SECURE Act, on February 24, 2022, the IRS issued proposed regulations in Notice 2022-53 intended to clarify RMD requirements for inherited IRAs. Though proposed, the regulations should be treated as final until further notice.

- The IRS clarified that:
  - For inherited accounts where the Owner died after Required Beginning Date, beneficiaries must continue to take out RMDs annually.
    - Generally, RMDs are based on the life expectancy of the account owner or the beneficiary, whichever is greater.
  - For inherited accounts where the Owner died prior to the Required Beginning Date for RMDs, beneficiaries (other than Eligible Designated Beneficiaries) may choose whether to take out RMDs before final payout is required.

In response to the confusion following the SECURE Acts, the IRS has provided some relief for non-compliance with certain minimum distribution requirements (see Notices 2022-53 and 2023-54).

We hope this brief summary has been helpful. Please note that the summary above is general and is not legal advice for any individual situation. The rules surrounding retirement plans are complex and changing rapidly. Please contact us for advice tailored to you.

About the Author – Oliver Rolfe

Oliver Rolfe serves as a Law Clerk at Lowenhaupt & Chasnoff, where he specializes in conducting comprehensive legal research and drafting memoranda for complex client matters. Currently pursuing a law degree at Saint Louis University, Oliver previously earned a Bachelor of Arts degree, cum laude, from High Point University.

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Savina Keaney is an attorney at Lowenhaupt & Chasnoff, a law firm providing counsel to families of substantial wealth. Savina concentrates her practice on estate, trust, tax and legacy planning for individuals and families. She also provides comprehensive advice to private foundations and other nonprofit entities regarding structure, succession strategy and tax implications. Licensed in Missouri, Arizona and Florida, Savina provides sophisticated legal counsel to clients across the country. Originally from Bulgaria, Savina grew up in the Midwest and earned her Juris Doctor from Washinton University School of Law after graduating from Emory University.

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