

Take-Away: The SECURE Act came into existence starting in 2020. We are still waiting for Final Regulations that will help to understand and provide guidance to individuals when it comes to taking required minimum distributions (RMDs.)

Background: The 2019 SECURE Act, which passed in December 2019, completely changed the rules for taking required minimum distributions (RMDs) for those who inherit retirement accounts (for simplicity, IRAs.) The biggest change was that prior to the SECURE Act, an individual who inherited an IRA could take annual distributions from the inherited IRA over his/her life expectancy. With the SECURE Act, most inheritors no longer could *stretch* distributions over their life expectancy but were instead subject to a 10-year distribution rule where the inherited IRA had to be emptied by December 31 of the year following the 10th anniversary of the IRA owner's death. The only exception to this 10-year distribution rule, where beneficiaries were entitled to continue to take *stretch* annual RMDs using their own life expectancy to calculate the RMD were for a new category of beneficiaries called *eligible designated beneficiaries* (EDB) who are either the spouse of the IRA owner, minor children of the IRA owner, disabled or chronically ill individuals as defined by the Social Security Act, or an individual who is less than 10 years younger than the IRA owner.

Proposed Regulations: Sadly, the SECURE Act left many lingering

questions regarding RMDs. Proposed Regulations published to interpret the SECURE Act were issued in February, 2022, but the IRS's interpretations only made the new RMD rules even more confusing.

Final Regulations: Recently the IRS 'promised' to issue Final Regulations for the SECURE Act, to be used to determine RMDs for 2025 (and subsequent years) I confess, I'm not holding my breath that these Final Regulations will be released by the IRS before 2025, but that's just the cynic in me. Some of the confusion that will hopefully be resolved with these Final Regulations include the following:

1. **The RBD-RMD At Least as Rapidly Rule:** This was the big surprise coming in the Proposed Regulations. It provided that certain beneficiaries were subject to the 10-year distribution rule also had to take **annual** RMDs from their inherited IRA. Thus, during the 10-year period after the IRA owner died, one who died after his/her required beginning date (RBD), since the owner was then required to take annual distributions, so must the inheritor of that same IRA. For IRA owners, the RBD is generally April 1 following the year the IRA owner attains the age of 73.

Temporary Waivers: Because of this surprise interpretation by the IRS, the IRS has been forced to waive/excuse RMDs for the years 2021-2024 for all retirement account beneficiaries who inherited IRAs (or other qualified plan accounts) after 2019 and who are subject to the 10-year SECURE Act payout rule. The most

recent waiver/excuse is where the IRS promised Final Regulations to be published before 2025. Note that the IRS has **not waived**/excused (i) lifetime RMDs; (ii) RMDs by *eligible designated beneficiaries*; or (iii) RMDs by beneficiaries who inherited IRAs before 2020. In short, the IRS waiver initiative is not a blanket waiver for all RMDs; it is only for that class of beneficiaries who inherited from a deceased IRA owner who was subject to taking RMDs at the time of his/her death.

2. **10-Year Payout Ambiguity:** There is also confusion whether the 10-year payout rule applies to two other albeit narrow situations. The first is when a child of the IRA owner attains the age 21, after having inherited that IRA before that age from a parent who had not yet started taking RMDs. {What comes to mind is an aging movie star who is still fathering children well into his 70's, naming his minor children as the designated beneficiaries of his IRA. Thinking of you Robert DeNiro.}

The second is when a 'successor beneficiary' inherited from an *eligible designated beneficiary* who has previously inherited from an original IRA owner, who died before his/her RBD. So, a chronically ill beneficiary inherits an IRA from the owner who was younger than age 73. The chronically ill beneficiary, who starts taking annual RMDs from the inherited IRA using his/her life expectancy, dies having named a 'successor beneficiary' to that inherited IRA. Does that mean the successor beneficiary starts a new 10-year RMD distribution period, or does some other

distribution period apply, such as the ghost life expectancy of the *eligible designated beneficiary*, if the ‘at least as rapidly rule’ applies to this second situation.

3. **EDB Inherits from Young IRA Owner:** Finally, there is an unusual scenario which no one can really figure out what distribution rules apply. This is when an *eligible designated beneficiary* inherits from a younger IRA owner who has already started taking RMDs. In that case, the *eligible designated beneficiary* can use the IRA owner’s (longer) life expectancy to calculate RMDs, which results in lower RMD amounts that must be taken. Unfortunately, the Proposed Regulations then require the *eligible designated beneficiary* to ‘empty’ the inherited IRA when that beneficiary, not the account owner’s, life expectancy runs out. This ‘rule’ makes it almost impossible for elderly beneficiaries to comply.

Conclusion: The hope is that the IRS will get around to publishing the SECURE Act’s Final Regulations later this year. The hope, too, is that the IRS will clarify whether the *annual* RMD requirement for years 1-9 of the 10-year distribution period applies to each the situations described above, meaning whether it sticks with its ‘at least as rapidly’ interpretation of the SECURE Act. There is no question that guidance is desperately needed to provide guidance to those who inherit IRAs.