ED SLOTT'S ELITE IRA ADVISOR GROUP℠

# SECURE ACT
# REGULATIONS ARE HERE

On February 23, 2022, the IRS released proposed SECURE Act regulations. These long-awaited regulations offer guidance on many parts of the SECURE Act and include a few surprises. The new rules are effective immediately. Here are the highlights:

## The 10-Year Rule

Under the SECURE Act, most beneficiaries will be subject to a 10-year rule. The regulations provide some surprising new details on how this works. The key date for determining how the 10-year rule applies is the account owner's required beginning date (RBD). The RBD for IRA owners born on or after July 1, 1949 is April 1 of the year following the year the owner reaches age 72. Plan participants follow the same rule, but may be able to delay this date if they are still working.

- If the account owner dies before her RBD, the 10-year rule only requires that the entire account be emptied by December 31 of the tenth year following the year of death. There are no annual RMDs for the beneficiary. Roth IRA beneficiaries who are subject to the 10-year rule will not have to take RMDs during the 10-year period because Roth IRA owners are always considered to have died before their RBD.
- If the IRA owner dies on or after her RBD, the 10-year rule applies, and the beneficiary must also take annual RMDs in years one through nine. These RMDs are calculated based on the beneficiary's single life expectancy.
- The regulations confirm that a successor beneficiary is subject to the 10-year rule. However, the application of the 10-year rule depends on whether the IRA owner died before or after the RBD and whether the original beneficiary was an eligible designated beneficiary (EDB).

## Eligible Designated Beneficiaries

While the SECURE Act did away with the stretch IRA for most beneficiaries, those who are considered EDBs can still take advantage of it. The regulations give additional guidance on certain EDB qualifications:

- A minor child of an IRA owner is considered an EDB until his 21st birthday.
- Chronically ill and disabled EDBs must submit documentation confirming their status to the IRA custodian or plan administrator by October 31 of the year following the year of the account owner's death.
- All beneficiaries who inherited prior to the SECURE Act effective date are grandfathered as EDBs.

The regulations confirm that an EDB can elect the 10-year rule when an owner dies before his RBD. There is a special new rule for spouse EDBs that is intended to prevent the election of the 10-year rule in order to delay RMDs. The rule requires "hypothetical missed RMDs" to be taken before a spousal rollover is done in the year the spouse beneficiary is age 72 or older.

## Trusts

Trusts are downgraded as a planning strategy after the SECURE Act, and the new SECURE Act regulations do not change that. Most trust beneficiaries will still need to empty an inherited IRA in 10 years. However, the regulations do clear up some of the confusion that the SECURE Act created in the area of trusts.

The regulations maintain many of the rules that existed for trust beneficiaries prior to the SECURE Act, such as the rules for look-through trusts. If a trust satisfies the look-through rules, then the beneficiaries of the trust are considered designated beneficiaries.

Also left intact are the rules allowing remainder beneficiaries of conduit trusts to be disregarded, while requiring remainder beneficiaries of accumulation trusts to be included when determining how distributions from inherited IRAs should be paid to trust beneficiaries. This allows conduit trusts for EDBs to still use the stretch.

The regulations also address some of the many issues with trusts raised in IRS private letter rulings over the years. They provide exceptions where certain remainder beneficiaries of accumulation trusts can be disregarded for purposes of determining how payment should be made from inherited IRAs to trusts. These include when the trust terms require a full distribution to a minor child trust beneficiary of any IRA funds by the end of the year when she reaches age 31 and when a beneficiary has only a remote interest in the IRA funds.

Additionally, the regulations explain how powers of appointment and state laws reforming trusts work with the look-through rules when determining how payments must be made from an inherited IRA to a trust.

The SECURE Act carved out special rules to enable accumulation trusts for disabled or chronically ill EDBs to still use the stretch when taking distributions from inherited IRAs. The regulations fine tune these rules by providing more guidance in situations where remainder beneficiaries can be disregarded to ensure the stretch for these special needs trusts. Also, the new regulations adjust the definition of disability for minors to allow them to qualify more easily as EDBs.

## 50% Penalty Relief

If an IRA owner was required to take an RMD in the year of his death, existing rules require the beneficiary to take that RMD if the IRA owner did not do so prior to death. This rule can be hard for beneficiaries to satisfy when the IRA owner dies late in the year.

The new regulations provide some relief in these situations by providing an automatic waiver of the 50% penalty that usually applies when an RMD is missed. This waiver is available as long as the beneficiary takes the year-of-death RMD by her tax-filing deadline, including extensions.