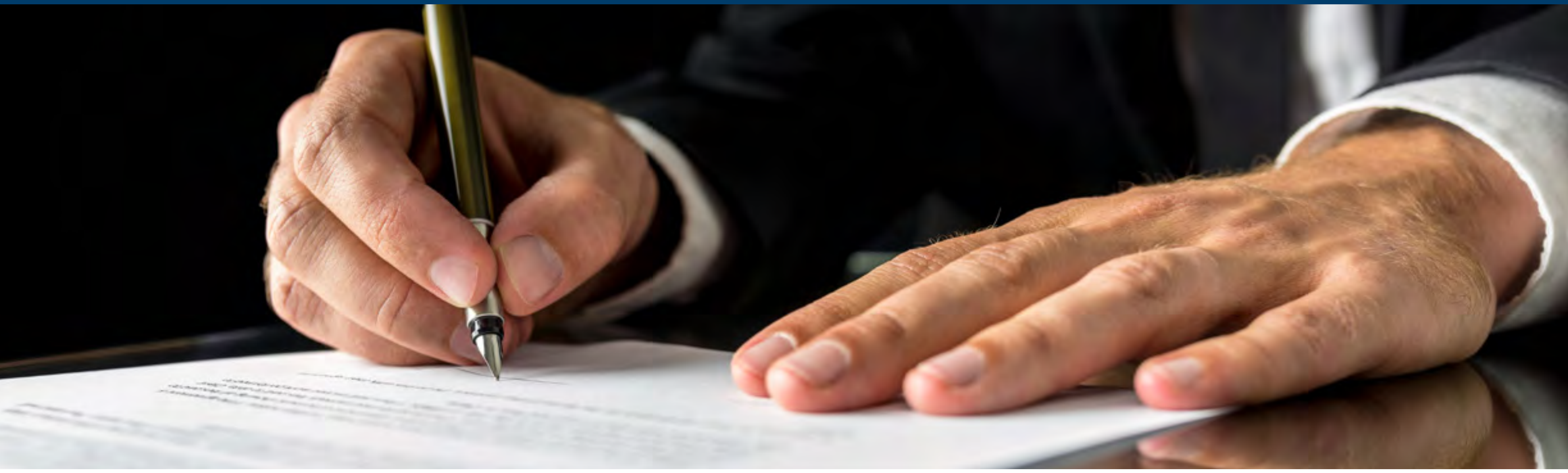
2022 SECURE ACT REGULATIONS



The president signed into law the Setting Every Community Up for Retirement Enhancement (SECURE) Act that became effective after December 31, 2019. In short, the Secure Act reflects the following significant changes, along with other minor provisions:

- Mandates the maximum period over which an inherited IRA can be withdrawn is 10 years, for most non-spouse beneficiaries. This requirement removes the current 'stretch' provision in Qualified Plans and IRAs, which allows beneficiaries to take distributions over their expected lifetimes.
- Extends the minimum age for the Required Minimum Distribution (RMD) to 72 (from 70 ½).
- Allows small employers to join together to provide 401(k) plans for employees.
- Allows part-time workers to enroll in 401(k) plans.
- Provides the ability for 401(k) plans to provide annuities as a payout option for lifetime income.

On February 23, 2022, the Secure Act proposed Regulations were released that provide more definition and guidance to the Act.

Required Minimum Distributions (RMDs)

The IRS regulations state that if the account holder dies before their required beginning date, the ten-year rule only requires that the account be fully distributed by December 31st of the tenth year following the year of death, meaning there are no Required Minimum Distributions required during the ten-year period. However, the new regulations state that if the **IRA owner dies after their required beginning date, then not only does the ten-year rule apply but annual RMDs are required in years one through nine.**

Eligible Designated Beneficiaries

Although the Secure Act did away with stretch IRAs for beneficiaries, there are exceptions under certain circumstances. **The regulations establish age of majority as the child's 21st birthday.** The law had stated "Age of Majority" which may be 18 or 21. Defined benefit plans can still use their prior definition.

Disability is determined based upon the beneficiary's age. If the beneficiary was under age 18 at the time of the account holder's death, the individual must have a medically determinable physical or mental impairment that results in marked and severe functional limitations, and that can be expected to result in death or be of long continued and indefinite duration. Other disabled beneficiaries are defined by reference to 72(m)(7), based on an inability to engage in substantial gainful activity.

Spousal Rollovers

A new rule for spousal rollovers intend to prevent a spouse from using the new ten-year rule to delay required minimum distributions. The rule requires "hypothetical missed RMDs" to be taken when a spousal rollover is done under certain circumstances.

The proposed regulations provide for a single age 72 required beginning date even if the account holder died prior to the enactment of the Secure Act.

Chronically Ill Individuals

The regulations state that an individual is chronically ill within the definition of 7702B©(2) and satisfies the documentation required. However, only if there is a certification from a licensed health care provider defined under 7702(b)(c)(2)A)(i) where the individual is unable to perform at least two activities of daily living for an indefinite period which is reasonably expected to be lengthy in nature. The certification is new to the Secure Act.

Beneficiary Not More Than Ten Years Younger Than Decedent

The proposed regulations use the actual date of birth of the beneficiary, rather than the year of birth to determine whether they qualify for the ten-year younger than the decedent.

Conclusion

Keep in mind that these new regulations are currently proposed and not finalized. There may be material changes prior to these regulations being finalized. They do provide further guidance that should be relied upon as they are to be effective as of January 1, 2022.

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