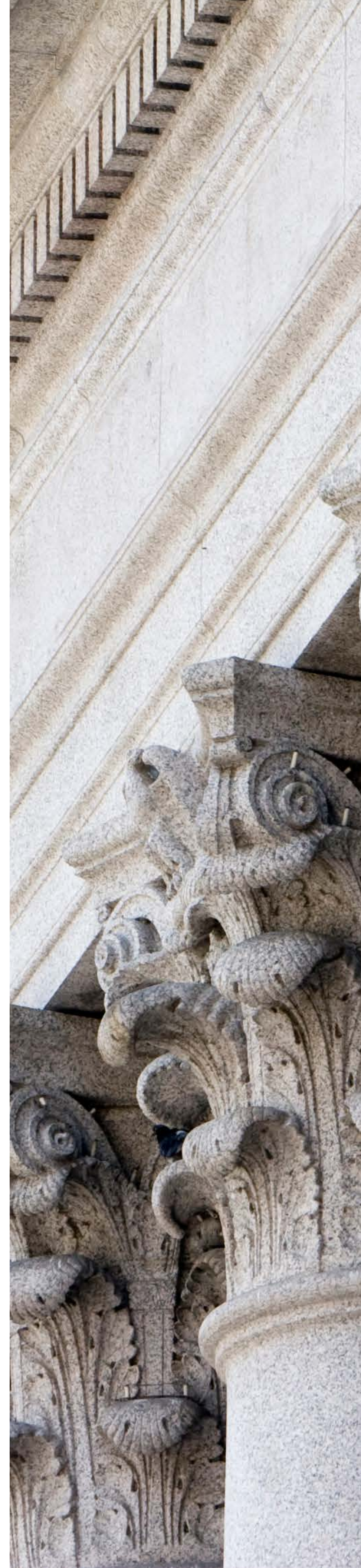

Advanced Markets Blog

The "SECURE" Act passes – here's what you need to know

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As we reported in the **May** and **June** 2019 editions of *John Hancock's Central Intelligence*, House Resolution 1994, known as the "SECURE" Act (the "Act") was introduced in the House of Representatives in March 2019 and was passed by the House in May with overwhelming bipartisan support (417-3). On December 16, 2019, a version of the Act was included in the spending agreement legislation negotiated between the House of Representatives and the Senate. That legislation was passed by the Senate on December 19, 2019, by a vote of 71-23, and was signed into law by President Trump on December 20th, 2019. The new law is effective as of January 1, 2020 (for most provisions).

The provisions of the Act largely follow the version passed by the House. Many of the Act's most significant provisions of interest to our readers are:

- **Required minimum distributions from qualified plans** are to begin no later than April 1 in the year following the year when a taxpayer turns 72 (instead of 70½).
- **Tax deductible contributions** to IRAs after 70½ are now allowed.
- **Taxpayer may withdraw up to $5,000 penalty-free** from qualified plan in the year following the birth or adoption of a child.
- **Employers must include long-term, part-time workers** in employer-provided qualified plans.
- **Employer-provided plans that automatically enroll employees** may allow elective contributions up to as much as 15% of an employee's salary, (instead of 10%) after the first plan year.
- **Defined contribution plan (401(k), profit sharing, etc.) and IRA balances** must be distributed by the end of the 10th year after the employee or IRA owner dies, with some limited exceptions.

This last item that is getting a great deal of attention is the “death of the stretch IRA.” The relevant amendment provides that, upon the death of the plan participant, the designated beneficiary would be required to draw down his or her entire inherited interest within ten years. The ten-year rule would not apply to any portion payable to an “eligible designated beneficiary” such as the surviving spouse, who would be allowed to “stretch” the post-death distributions over life or a period not exceeding life expectancy. Other eligible designated beneficiaries who would get a distribution window longer than 10 years include minor children of the deceased participant, chronically ill or disabled individuals, and certain trusts that benefit these individuals. It is also important to note that if a beneficiary is not named, a 5-year pay-out is required.

Under prior law, any individual who inherited an IRA or qualified plan had the option to stretch distributions over his or her life, so the 10-year limit for beneficiaries who do not fall in the aforementioned group of “eligible designate beneficiaries” is a notable and important change in the law. Consequently, Advisors should use this opportunity to reach out to clients with the following tips and planning strategies to consider:

- **Plan participants should confirm that they have designated a beneficiary for all affected plans.** While the so-called “stretch” will no longer be available to anyone other than “eligible designated beneficiaries,” the ten-year payout is better than the five-year payout.
- **If a trust is named as the current beneficiary, consider how the trust provisions are affected by the change in the stretch rules.** For example, if client has a conduit trust, where all required distributions are distributed to the trust beneficiaries in the same year as received, the new 10-year rule may allow trust beneficiaries to access funds much quicker than the client intended. Accumulation trusts may be more preferable now.
- **Consider the opportunity and benefits of applying unneeded plan assets to fund life insurance.** This choice allows a client to leverage greatly the asset values and receive the death benefit income-tax free and, if the policy is owned outside the taxable estate, estate-tax free also.

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Life insurance death benefit proceeds are generally excludable from the beneficiary’s gross income for income tax purposes. There are few exceptions such as when a life insurance policy has been transferred for valuable consideration. Comments on taxation are based on John Hancock’s understanding of current tax law, which is subject to change. Prospective purchasers should consult their professional tax advisor for details.

Trusts should be drafted by an attorney familiar with such matters in order to take into account income and estate tax laws (including the generation-skipping tax). Failure to do so could result in adverse tax treatment of trust proceeds.

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