

# DAVIDSON, DAWSON & CLARK LLP

C O U N S E L L O R S   A T   L A W

## CLIENT MEMORANDUM

### SECURE ACT 2.0 AND PROPOSED REGULATIONS

Rules applicable to retirement accounts were substantially changed by the SECURE Act in 2019, and further legislation (The “SECURE Act 2.0”) and proposed regulations contain important updates beginning in 2023.

- I. **During the Participant’s Lifetime:** The following is a brief sampling of developments which generally enhance opportunities for a qualified retirement plan participant or IRA owner (the “participant”) to defer taxation of income and to meet charitable objectives with the participant’s retirement account.
  - A. **Required Beginning Date.** The age at which the participant must begin taking required minimum distributions (“RMDs”) has been increased again, from 72 to 73, effective January 1, 2023, and to 75 effective January 1, 2033.
  - B. **Reduced Excise Tax on Failure to Satisfy RMD.** The penalty for failure to satisfy an RMD is reduced from 50% to 25% of the shortfall and, further, to 10% if the shortfall is corrected by the end of the second year after the shortfall or the commencement of an IRS audit, whichever is earlier.
  - C. **Qualified Charitable Distributions (“QCDs”).** The existing rules for distributions of up to \$100,000 per year from IRAs directly to charities, qualifying for exclusion from income, are enhanced.
    1. A QCD of up to \$50,000 may be made on a one-time basis to a charitable remainder trust or charitable gift annuity benefiting the participant and/or the participant’s spouse.
    2. Note that participants’ eligibility to make QCDs remains tied to ages 70½ and older even though required beginning dates are now tied to increasing ages of 73 (and 75 in 2033).
  - D. **Catch-Up Contributions:**
    1. To 401(k) accounts and other employer-sponsored plans:
      - a. are capped at a regular limit of \$7,500 per year for participants age 50 and older and, starting in 2025, at

\$10,000 or 150% of the regular limit, whichever is greater, for participants age 60 to 63; and

- b. must be made to a Roth account (after-tax) for “high income participants” with more than \$145,000 of compensation.
2. For traditional and Roth IRAs, are capped at \$1,000 per year for participants age 50 and older.

E. Inflation Adjustments. Certain annual limitations are now indexed for inflation, including:

1. Qualified charitable distributions.
2. The “catch-up” contribution limits referred to above.
3. Annual compensation to define high-income participants (\$145,000).

F. Education-Related Provisions.

1. Limited amounts from Section 529 College Savings Plans can be converted (or “rolled over”) into Roth IRAs.
  - a. The Section 529 Plan must have been open for at least 15 years.
  - b. The roll-over amounts must be attributable only to contributions (and earnings thereon) to the Section 529 Plan more than five years prior to the roll-over.
  - c. The roll-over amounts, taken together with other contributions to the Roth IRA, are subject to the same annual contribution limit as applicable to ordinary Roth contributions.
2. Starting in 2024, employers may offer participants the option of having a participant’s student loan payments matched with retirement plan contributions, potentially easing a participant’s dilemma of choosing between payment towards student debt versus a voluntary retirement account contribution.

G. Employer-Sponsored Roth Plans:

1. Beginning in 2024, RMDs will not be required during participants’ lifetimes from 401(k), 403(b) and 457(b) Roth accounts, similar to RMD rules applicable to Roth IRAs.
2. Employer-Sponsored Roth Plans may permit participants to elect to have employer contributions made to Roth accounts on an after-tax basis rather than to the traditional tax-deferred plan maintained by the employer.

**II. After a Participant's Death.** Proposed Regulations provide guidance about the effect of the 2019 SECURE Act on distributions to beneficiaries, including trusts.

- A. Required Minimum Distributions. A major effect of the 2019 SECURE Act was the elimination of RMDs stretched over life expectancy for designated beneficiaries other than eligible designated beneficiaries.
1. "Eligible designated beneficiaries" include the participant's surviving spouse or minor child, or a beneficiary who is disabled, chronically ill or less than ten years younger than the participant.
  2. Other designated beneficiaries are required to take distribution of the entire account over no more than ten years. Although there was no mention in the 2019 SECURE Act of RMDs over that 10-year period, the Proposed Regulations (assuming they are finalized) now mandate annual RMDs beginning in 2023 for beneficiaries subject to the 10-year rule.
- B. Trusts as Beneficiaries. The 2019 SECURE Act did nothing to curtail the desirable treatment for RMD purposes of a trust's beneficiaries as though they are the beneficiaries of a retirement account, when the "see-through" trust meeting certain requirements is actually designated as beneficiary. The Proposed Regulations provide welcome guidance on the extent to which the trust must be "seen through" to identify which trust beneficiaries are treated as designated beneficiaries of the retirement account. A trust beneficiary's merely minimal or remote interest, for example, contingent upon the death of a higher priority remainder beneficiary will be disregarded. This alleviates concern about how a remote contingent trust beneficiary (such as a charity) could effectively disqualify the trust from more favorable RMD treatment.

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