ESTATE PLANNING, GUARDIANSHIP AND ELDER LAW CONFERENCE

SECURE Act Final Regulations:

Planning for Distribution of Retirement Assets

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PREVIEW

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The SECURE Act

(generally effective 1-1-2020)

- 2 Categories of DBs: EDBs and "Plain Old" DBs (PODBs)
- No change in the rules applicable to Non DBs
- Only EDBs are entitled to a life expectancy distribution of P's retirement plan after P's death
  - Different distribution rules for each type of EDB
- New 10 year rule for PODBs (eliminated "stretch IRA" for PODBs)
- Age component of RBD ("Applicable Age") changed from 70½ to 72 (changed again by SECURE 2.0)

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The SECURE Act

EDBs:

- P's surviving spouse ("SS")
- P's child who has not reached the "age of majority" (later defined as age 21)
- Disabled beneficiary
- Chronically ill beneficiary
- Individual not more than 10 years younger than P

IMPORTANT: Beneficiary's status as an EDB is determined as of P's date of death

PREVIEW

The SECURE Act

AMBT (Applicable Multi-Beneficiary Trust) *fbo*

Disabled and Chronically Ill Beneficiaries

- Special type of "accumulation trust"
- Disabled and/or chronically ill beneficiary/beneficiaries must be sole beneficiary/beneficiaries of AMBT for life
- All other "countable" beneficiaries must be DBs—**CHANGED BY SECURE 2.0, which allows a "public charity" to be remainder beneficiary of an AMBT**
- Usual "separate account rule" not applicable
- Usual "oldest countable DB is measuring life rule" for RMDs not applicable
- Measuring life for determining RMDs is oldest Disabled/Chronically Ill EDB
- Trust terminates on death of last living disabled/chronically ill beneficiary

The SECURE Act

- Several Effective Date Rules
- SECURE Act applies to Roth IRAs even though qualified distributions from Roth IRAs are not subject to income tax
- 10 Year Rule applies to Roth IRAs inherited by PODBs
- **Roth IRA Owner's Death Always Treated As Death Before RBD**
- Confusion regarding how new "10 Year Rule" works – 3 Notices waiving penalties on beneficiaries of P who failed to take RMDs in case of P dying after his RBD and after effective date of the SECURE Act

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PREVIEW

The 2022 Proposed Regulations

(published February 2022)

- "Clarification": 2 different 10 Year Rules for PODBs, based on whether P dies before or after RBD
- Favorable Rules:
  - For P's child as EDB: age of majority is 21
  - Waiver of late distribution penalty for failing to take P's final RMD by 12/31 of year of P's death if taken by beneficiary's tax return filing date
  - Specific rules for "Successor Beneficiaries" on death of P's beneficiary: Applicable rule depends on whether P's beneficiary is a PODB, EDB or Non DB

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