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## **SECURE Act and CARES Act – Implications for Estate Planning and Business Planning Clients**

The Setting Every Community Up for Retirement Enhancement Act of 2019 (“**SECURE Act**”) implements several changes to existing laws that could have a significant effect on estate planning for retirement assets.

The Coronavirus Aid, Relief, and Economic Security Act (the “**CARES Act**”) is intended to provide individuals and businesses with much-needed economic relief during the current national emergency and provides several opportunities for flexibility for IRA owners and retirement plan participants.

This Client Alert summarizes several provisions of the **SECURE Act** and **CARES Act** likely to have an impact on our estate planning and closely-held business clients. For our estate planning clients, please reach out to [Maynard Cooper's Estate Planning and Business Succession Planning Practice](#) for more detailed information. For business owners and other employers, please also refer to the [Maynard Cooper Client Alert for Retirement Plan and Health Plan Sponsors](#).

**Highlights of Changes to the Law.** From the estate planning perspective, the most significant change to the law implemented by the **SECURE Act** is the elimination of rules that permitted distributions of certain retirement assets to be stretched over the life expectancy of a designated beneficiary. This change is especially of concern where a trust is designated to receive distributions of retirement assets or where a significant portion of one's assets is held in an individual retirement account (IRA) or qualified plan, such as a 401(k). Also of note are an increase in the age at which required minimum distributions begin and an elimination of the prohibition on contributions to a traditional IRA after that age. Under qualifying circumstances, the **CARES Act** provides opportunities to IRA owners and plan participants with regard to certain charitable donations, required minimum distributions and, for plan participants, loans. These changes may be summarized as follows:

- **The End of “Stretch” Distributions From IRAs and Qualified Plans.** It is common for an IRA owner or qualified plan participant to designate their spouse as a primary beneficiary and to designate their children or grandchildren as contingent beneficiaries. Under prior law, the retirement assets could be distributed over a beneficiary's lifetime. By spreading out the distribution of retirement assets over a designated beneficiary's lifetime, undistributed amounts inside the retirement accounts could continue to grow on a tax-deferred basis until distributed. At the same time, young children or grandchildren had time to mature in judgment before receiving a full distribution of

assets. The **SECURE Act** severely limits the ability to stretch distributions from IRAs and qualified plans. The new legislation generally requires non-spouse beneficiaries to take complete distribution of the benefits by the end of the 10th calendar year following the account owner's death.

- This new 10-year rule does not apply to a designated beneficiary who is (i) the spouse, (ii) a minor child of the IRA owner or plan participant, (iii) a disabled or chronically ill person, or (iv) a person not more than 10 years younger than the account owner (often a sibling). However, in the case of a minor child, the benefits would have to be distributed within 10 years from when the child attains the age of majority.
  - Based on the prior distribution rules, it is not uncommon for a trust to be designated as a beneficiary of retirement assets, especially where the designated beneficiary is a young child or grandchild. In addition, sometimes a marital trust is designated to benefit a surviving spouse. However, trust provisions that were carefully drafted to work well under the old rules may now bring unintended results and possibly expensive income tax consequences.
  - *We recommend that all clients review their beneficiary designations.* Revisions to your estate planning documents or changes to your beneficiary designations may be in order if a trust is designated as a beneficiary of retirement assets or if significant assets are held in an IRA or qualified plan. If a disabled or chronically ill person is designated as a beneficiary, new planning opportunities may be available.
- **Increase in Age for Required Minimum Distributions.** The **SECURE Act** increases the required minimum distribution ("RMD") age from 70½ to 72. This change is effective for required minimum distributions for individuals who attain age 70½ after December 31, 2019.
  - **Temporary Suspension of Required Minimum Distributions under CARES Act.** The **CARES Act** allows defined contribution plans and IRAs to suspend the 2020 RMD altogether, as well as 2019 RMDs for those participants whose required beginning date is April 1, 2020 (*i.e.*, participants who reached age 70 ½ in 2019). Any RMDs that are suspended for 2020 under this provision will not be treated as eligible rollover distributions, which means they will not be subject to required rollover withholding or Section 402(f) notices. The **CARES Act** also provides that 2020 is disregarded for purposes of determining the 5-year period for certain beneficiaries whose RMDs do not begin by the year following the year of the participant's death.
  - **Repeal of Maximum Age for Traditional IRA Contributions.** Under prior law, one could not contribute to a traditional IRA in the year one turned 70½ and thereafter. The **SECURE Act** now permits contributions to a traditional IRA regardless of age. However, other limitations continue to apply to IRA contributions. When considering additional contributions to an IRA after age 70½, it is important to take into account any Qualified Charitable Distributions from the IRA. Many taxpayers find it beneficial to make charitable gifts directly from a traditional IRA account to a qualified charity, because distributions of up to \$100,000 per year to a qualified charity are not included

in the IRA owner's taxable income. But if additional contributions are made to a traditional IRA after age 70½, the amount of Qualified Charitable Distributions that may be excluded from taxable income will be reduced.

- **Special Rules on Charitable Giving during 2020.** For taxpayers who itemize deductions, the **CARES Act** removes the 60% of adjusted gross income (AGI) limitation for most cash gifts to public charities during 2020. That means you can offset up to 100% of your income in 2020 with charitable contributions. For taxpayers who plan to take the standard deduction in 2020, the **CARES Act** grants a new "above-the-line" deduction of up to \$300 for individuals making cash donations to charity. Note that this deduction will be limited to \$300 total for joint filers who do not itemize. However, for a married couple filing jointly who itemize deductions, the couple will be entitled to an above-the-line charitable deduction of up to \$600.
- **529 Plans; Penalty-Free Withdrawal Relating to Birth or Adoption of Child.** The **SECURE Act** also includes expanded uses of Section 529 plans and penalty-free withdrawals of up to \$5,000 of retirement assets for expenses related to the birth or adoption of a child.
- **Waiver of Early Withdrawal Penalties for 2020.** The **CARES Act** allows a participant in a qualified plan, a 403(b) plan, a governmental 457(b) plan, or an IRA to take distributions of up to \$100,000 from his or her accounts in 2020 without incurring the 10% penalty for early distributions (*i.e.*, generally those distributions taken before age 59½). These penalty-free "**coronavirus-related distributions**" are available only for "**qualified individuals**," defined as plan participants who have experienced adverse financial consequences resulting from a reduction in work hours, lay off, quarantine, or furlough, or who are unable to work due to lack of childcare on account of the coronavirus, and plan participants, spouses, or dependents who have been diagnosed with the coronavirus.
- **Provisions Relating to Plan Loans.** The **CARES Act** increases the maximum amount a qualified individual (a person meeting the criteria established above for coronavirus-related distributions) is permitted to borrow as a plan loan to the lesser of \$100,000 or 100% of the participant's vested account balance (up from \$50,000 or 50% of the account balance). This temporary increase runs from March 27, 2020 to September 23, 2020 (*i.e.*, 180 days after enactment). However, this may be an optional provision for plan sponsors to consider, rather than a mandate.
  - If a participant has an outstanding plan loan, including a loan that is outstanding as of March 27, 2020, and has loan repayments which are due between now and December 31, 2020, each outstanding repayment during 2020 has a one-year extension before a deemed distribution will occur. The **CARES Act** requires subsequent loan repayments, including interest, to be re-amortized to reflect the one-year repayment extension, and the general five-year limit on plan loan repayments will not take into account this one-year repayment extension.
- **Minimum Required Contributions for Single-Employer Defined Benefit Plans.** For single-employer defined benefit plans, the **CARES Act** provides that any minimum

required contribution that is due in 2020 can be postponed until January 1, 2021. Any postponed minimum required contribution will include interest accrued between the original due date and the postponed payment date. For purposes of determining the minimum funding requirements for plan years that include any portion of 2020, plan sponsors are permitted to use their plan's adjusted funding target attainment percentage ("AFTAP") for the last plan year ending before January 1, 2020.

In light of these changes in the law, please consider whether an update to your estate plan may be needed. As stated above, if a trust is designated as a beneficiary of retirement assets, or if a significant portion of your assets is held in an individual retirement account or qualified plan, such as a 401(k), a review of your current estate plan and beneficiary designations is recommended. Please reach out to a member of [Maynard Cooper's Estate Planning and Business Succession Planning Practice](#) if you have any questions or would like to review or update your estate plan or employee benefits designations in light of the **SECURE Act** or COVID-19 and coronavirus-related legislation.

[Maynard Cooper's COVID-19 Coronavirus Task Force](#) is closely monitoring all updates to pending legislation related to the COVID-19 pandemic. We are dedicated to providing client-focused services, and it is the goal of the Task Force to continue this level of service to each and every client as they face challenges about planning for and responding to the threats posed by the virus. If you have any questions, please reach out to your relationship partner or any of the attorneys serving on the [Task Force](#).

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