

# SECURE Act:

## What Individuals and Businesses Need to Know

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# About Jordan . . .

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Jordon N. Rosen, CPA, MST, AEP® is a Director and shareholder at Belfint, Lyons & Shuman, where he heads the firm's estate and trust practice. Jordon also provides tax consulting and compliance services to the firm's higher net worth clients and business owners. He is the Past President of the National Association of Estate Planners and Councils (NAEPC) and has served as president of the Delaware Estate Planning Council and the Chester County, PA Estate Planning Council. Jordon is also a member and past chair of the Delaware State Chamber of Commerce tax committee, a past member of the AICPA Trust, Estate and Gift Tax Technical Resource Panel, and a current member of the editorial board of Thomson Reuters Focus publication.

Jordon is a licensed CPA in Delaware and Pennsylvania and is a member of the Pennsylvania Institute of CPAs, Delaware Society of CPAs and the AICPA Tax Section. He also holds the designation of Accredited Estate Planner® and has been recognized as a 5-Star Wealth Manager by Philadelphia Magazine and Delaware Today.

Jordon is a frequently sought out speaker both locally and nationally on tax planning and related issues and has published more than 100 articles. He has been a frequent television and radio guest and a past host of Money Talk on 1450-WILM. He received his undergraduate degree in Accounting from Temple University and his Master's degree in Taxation from Widener University.

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# About Valerie . . .

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Valerie is a tax generalist with a strong knowledge base in providing compliance and advisory services to her clients. Valerie works closely with the many experts within the firm to address her clients' varied circumstances. Her experience includes working with large privately-held companies, nonprofits, small businesses, high net worth families, and international businesses (and individuals), and has extensive knowledge leading an engagement team acting as a back-office tax department for a global manufacturer. Due to this background, she has specific experience working with several businesses that have nexus in every state.

Valerie values the personal approach to accounting, preferring to meet face-to-face as she helps her clients navigate their tax returns, and understand their tax planning, estate planning, and transactions. Her personable nature, in addition to her technical mindset, help her clients align their personal and tax goals.

Within the firm, Valerie's priorities include team building, training, and employee advocacy. She believes individual and firm prosperity begins with teamwork. Along with internal team meeting participation, Valerie is called on to present on various tax topics for organizations such as the State of Delaware IRS and Division of Revenue Annual Fed/State Tax Institute, DSCPA, and the firm's Belfint Briefing Seminar Series.

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# Repeal of Maximum Age for Traditional IRA Contributions

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- **Pre-2020 Old Law:** Traditional IRA contributions could not be made after age 70½
- **New Law:** Starting in 2020 - no age limit for making a traditional IRA contribution (but still based on having earned income during the year)
- Coordination with Qualified Charitable Distribution (QCD) Rules – need to read the fine print – deductible IRA contributions after age 70½ (on a cumulative basis) will cause a portion of otherwise non-taxable QCDs made after age 70½ to become taxable (on a cumulative basis).

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# Repeal of Maximum Age for Traditional IRA Contributions

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## EXAMPLE

- John is 73 and is eligible to make a \$7,000 deductible IRA contribution in 2021. In 2022 he makes a QCD to his favorite charity in the amount of \$10,000. Under the new rules, \$7,000 of the QCD is taxable and included in gross income in 2022.

## TAKE-AWAY

- Planning is needed if you are otherwise using a “bunching” strategy for claiming itemized deductions which include charitable contributions.

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# Required Minimum Distribution Age Raised from 70½ to 72

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- **Pre-2020 Old Law:** Required Minimum Distributions (RMDs) had start no later than April 1 of the year following the year in which the account owner/plan participant turned 70½.
- **New Law:** For IRA owners and plan participants who would turn 70½ AFTER 2019, the required beginning date for taking their RMD is now April 1 of the year following the year they turn 72.
- **NOTE:** Those who turned 70½ in 2019 but deferred taking the first year's (2019) distribution until April 1, 2020, are still (and will continue to be) under the old law.
- **NOTE:** Only the age for taking your RMD has changed – the age for making a QCD as discussed above, remains at 70½.

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# Expansion of 529 Plans – *For Distributions Made After 2018*

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- **New Law:** Tax-free distributions can be used to cover fees, books, supplies, and equipment required for the designated beneficiary's participation in an apprenticeship program that has been certified and registered with the Secretary of labor under the National Apprenticeship Act.
- **New Law:** Tax free distributions can be used to pay qualified education loan principal or interest of a plan beneficiary OR THEIR SIBLING.
  - Any distribution for a sibling of the beneficiary can only be used to pay student loan principal or interest
  - "Sibling" is defined as a brother, sister, stepbrother, or stepsister
  - There is a \$10,000 lifetime limit (separately) for the beneficiary and each sibling under this rule. This applies in the aggregate over all 529 plans for the beneficiary (and siblings) in the case where there are multiple 529 plans.
  - The deduction for interest paid on qualified education loans, which is generally limited to \$2,500 per year, is reduced in that year to the extent that interest was paid using a tax-free distribution.
  - Unlike the interest deduction on qualified education loans, the tax-free distribution provision has no phase-out based on income.

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# Post-Death Distributions from Retirement Plans

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## QUESTION

- How does the SECURE Act change post-death retirement distributions?

## ANSWER

- With a few exceptions, payouts must be made within 10 years of death rather than over the life expectancy of the beneficiary. In essence, the Act does away with the concept of a “stretch-IRA.”



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# Post-Death Distributions from Retirement Plans

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## QUESTION

- What type of retirement accounts are affected?

## ANSWER

- Traditional IRAs, Roth IRAs, and employer defined contribution plans (such as 401Ks).

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# Post-Death Distributions from Retirement Plans

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## QUESTION

- When does this new law take effect?

## ANSWER

- The new law is effective for retirement accounts of decedents dying after 2019. However, the new law may also have an impact on retirement accounts being distributed for those who died prior to 2020.



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# Post-Death Distributions from Retirement Plans

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## EXAMPLE #1

- John dies in 2020 and has named his daughter, Lisa as the beneficiary of his IRA. Had he died prior to 2020, Lisa would be able to take minimum distributions from the IRA over her lifetime. Under SECURE, Lisa must take out the entire balance within 10 years.

## EXAMPLE #2

- Same as above, except John died in 2015 and Lisa has been taking out minimum distributions since that time. Because John died prior to 2020, Lisa is not impacted by the new law and can continue taking the distributions over her life expectancy. However, when Lisa dies, the new beneficiary will only have 10 years to take out the remainder.

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# Post-Death Distributions from Retirement Plans

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## QUESTION

- How do required minimum distributions (RMDs) work under the new 10-year payout rule?

## ANSWER

- There is actually no “required” distribution until year 10. By the end of year 10, however, the account must be fully distributed. This allows for planning each year based on the beneficiary’s tax situation. However, this can also create a tax problem in any particular year if the distribution is significant.

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# Post-Death Distributions from Retirement Plans

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## QUESTION

- When does the 10-year period start?

## ANSWER

- It starts with the year which follows the year of death. Therefore, the payout period can actually be over 11 years. For example, if John dies in 2020, his IRA must be fully distributed by the end of 2030.

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# Post-Death Distributions from Retirement Plans

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## QUESTION

- What happens if the account balance is not fully distributed by the end of the 10<sup>th</sup> year?

## ANSWER

- Any amount left at the end of the 10<sup>th</sup> year will be subject to a 50% penalty for each year beyond the 10<sup>th</sup> year that a balance remains.



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# Post-Death Distributions from Retirement Plans

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## QUESTION

- Are all beneficiaries subject to the new 10-year payout rule?

## ANSWER

- There are four exceptions whereby the beneficiary can continue to use their life expectancy for taking required distributions –
  1. A surviving spouse
  2. A beneficiary who is less than 10 years younger than the account owner (e.g., sibling or friend)
  3. A chronically ill or totally disabled person (as of the date of death of the account owner)
  4. A minor child of the account owner (but not, e.g., a grandchild) – but only up until the age of the majority, then the 10-year period begins.

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# Post-Death Distributions from Retirement Plans

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## QUESTION

- What if I left my IRA to a trust?

## ANSWER

- Certain “see-through” or “accumulation” trusts are sometimes named as an IRA beneficiary. These types of IRA trusts may no longer make sense as the new rules could have unintended distribution and tax consequences. Existing trusts should be reviewed for possible revisions or reformation.

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# Post-Death Distributions from Retirement Plans

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## QUESTION

- What is the tax impact of the new 10-year payout rule?

## ANSWER

- It depends—
  1. For smaller accounts - probably not much since beneficiaries generally empty out these accounts quickly anyway.
  2. For accounts left to a surviving spouse – no real impact until the surviving spouse dies, at which time the new beneficiary will be subject to the 10-year payout rule.
  3. For large retirement accounts left to others – if the beneficiary is not eligible for the life expectancy exception and is in a high tax bracket or taking a larger than expected distribution would cause them to now be in a higher bracket, there could be significant federal and state income tax implications for the beneficiary.

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# Post-Death Distributions from Retirement Plans

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## QUESTION

- Are there any work-arounds to replicate the stretch-IRA and reduce taxes?

## ANSWER

- Isn't that why we are here?
  1. If the surviving spouse has a long life expectancy - make him/her the beneficiary. You'll get the stretch-IRA affect for their lifetime + 10 years.
  2. Change beneficiaries and possibly spread over multiple beneficiaries – based on those that can use their life expectancy and also those who may be in a lower bracket. For example, leave a portion of your IRA to a sibling that is less than 10 years younger than you.

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# Post-Death Distributions from Retirement Plans

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## ANSWER – Continued

- Isn't that why we are here?
  3. Leave your IRA (or a portion) to charity (it pays no tax) and then leave other assets (e.g. cash, stocks) to individual beneficiaries.
  4. Leave your IRA to a charitable remainder trust – the trust will not pay tax on the distribution and then the trust can make annual payment to the beneficiary of the CRT over their lifetime (or joint lives), thus replicating the stretch=IRA concept. Note that annual payments to the trust beneficiaries may be less than what they would take as an RMD and that whatever is left over at the death of the beneficiaries goes to charity. Also, this technique will not work with younger beneficiaries.

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# Post-Death Distributions from Retirement Plans

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## ANSWER – Continued

- Isn't that why we are here?
  5. Have the account owner take accelerated distributions and then use the after-tax funds to purchase life insurance within a life insurance trust. At the insured's death, the trust will get the insurance proceeds which can be paid out over the beneficiary's life (duplicating the stretch-IRA concept).
  6. If the IRA beneficiaries are in a high tax bracket – purchase life insurance on the IRA account owner in a life insurance trust, which can be paid out to the beneficiaries (tax-free) to reimburse them for taxes paid on the distributions.
  7. Convert to a Roth IRA – especially if the IRA account owner is in a much lower tax bracket than the beneficiaries.

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# Kiddie Tax Changes for Gold Star Children & Others

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## What is Kiddie Tax?

- Kiddie tax in general applies to the following taxpayers:
  - A child under the age of 19 or is a full-time student under the age of 24
  - The child has at least one living parent
  - The child has **unearned income** of more than \$2,200 (2019) and does not file a joint return
- For children over age 17, the kiddie tax only applies if the child's **earned income** does not exceed one-half of their support
- Children for whom kiddie tax applies also have a reduced exemption amount under AMT rules

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# Kiddie Tax Changes for Gold Star Children & Others

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## History of the Kiddie Tax Rules

- Before TCJA, the kiddie tax provisions taxed the unearned income of a child at the parent's tax rates, if those rates were higher than the child's
- TCJA made changes to these provisions
  - For tax years beginning after December 31, 2017
  - Taxed unearned income of a child based on trust and estate tax rates – for 2018 the top tax rate of 37% was reached at taxable income over \$12,500
  - Taxation no longer dependent on the parents' tax situation



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# Kiddie Tax Changes for Gold Star Children & Others

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## Concern Expressed by Congress

- Changes made by TCJA unfairly increase the tax on certain children who receive government payments, which for tax purposes are treated as **“unearned income”**
- Most importantly survivors of deceased military personnel (“Gold Star” children), first responders and emergency medical workers were potentially negatively impacted by the TCJA changes



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# Kiddie Tax Changes for Gold Star Children & Others

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## Secure Act Changes

- Repeals the kiddie tax rule changes that were added by TCJA
- Pre-TCJA rules now apply
- Unearned income of children is taxed at the parent's rates if higher than the child's rates
- Applies to all children, but will particularly benefit "Gold Star" families
- Act also eliminates the reduced AMT exemption





# Kiddie Tax Changes for Gold Star Children & Others

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## Secure Act Changes

- Effective for tax years beginning after December 31, 2019
- AMT exemption change is effective for tax years beginning after December 31, 2017
- Election available to apply these provisions retroactively to tax years in 2018 and 2019
- Amended returns can be filed for 2018 if beneficial

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# Penalty-Free Plan Withdrawals for Birth or Adoption

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## Prior Law

- Generally, distributions from qualified retirement plans are included in income in the year of distribution.
- Further, a distribution before age 59 ½ is generally subject to a 10% early withdrawal penalty
- Some exceptions to the early withdrawal penalty currently exist for certain financial hardships or unforeseen emergencies



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# Penalty-Free Plan Withdrawals for Birth or Adoption

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## Secure Act Changes

- For distributions after December 31, 2019, the Act provides penalty-free withdrawals from “applicable eligible retirement plans” for a “qualified birth or adoption distribution”
- “Applicable Eligible Retirement Plan” – IRAs, qualified plans such as 401k and 403b type, government eligible deferred compensation plan – does not include a defined benefit type plan
- “Qualified Birth or Adoption Distribution” – a distribution made to an individual during the one-year period beginning on the date on which a child is born or on which a legal adoption is finalized
- “Eligible Adoptee” – any individual (other than a child of the taxpayer’s spouse) who has not attained age 18 or is physically or mentally incapable of self-support

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# Penalty-Free Plan Withdrawals for Birth or Adoption

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## Secure Act Changes

- Maximum amount is \$5,000, per taxpayer, per birth or adoption
- For married couples, each spouse separately may receive a maximum amount of \$5,000
- May execute a rollover contribution if desired, to recontribute the funds, generally within 60 days of the distribution
- Must include the name, age and taxpayer identification number of the child or eligible adoptee on the taxpayer's return

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# Taxable Non-Tuition Fellowship and Stipend Payments Now Compensation for IRA Purposes

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## IRA Contributions & Deductions in General

- Individual taxpayers are potentially allowed a deduction for qualified retirement contributions to a traditional IRA
- The deduction for any tax year can not exceed the lesser of:
  - The deductible amount **or**
  - **Compensation** includable in gross income
- Generally an individual who has no “**compensation**” is not eligible to make an IRA contribution, even if they have other sources of taxable income

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# Taxable Non-Tuition Fellowship and Stipend Payments Now Compensation for IRA Purposes

## Secure Act Changes

- Pre-Secure Act law did not include taxable amounts received by graduate or postdoctoral students, such as stipends and fellowship payments to be treated as “**compensation**” for IRA contribution purposes
- The Secure Act provides that “**compensation**” does include taxable amounts paid to an individual to aid the individual in the pursuit of graduate or postdoctoral study
- This includes fellowships, stipends or similar amounts



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# Taxable Non-Tuition Fellowship and Stipend Payments Now Compensation for IRA Purposes

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## Secure Act Changes

- This expanded “**compensation**” definition will allow students to begin saving for retirement sooner
- Effective for tax years beginning after December 31, 2019

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# Difficulty-of-Care Payments

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## Nature and taxation of difficulty-of-care payments

- Under the current tax regime, gross income does not include amounts received by a foster care provider as qualified foster care payments
- One type of foster care payment is the “difficulty-of-care” payment
- “Difficulty-of-care” payments are provided when a qualified foster individual has a physical, mental or emotional disability, the care is provided in the home of the foster care provider and the State determines that additional compensation is warranted

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# Difficulty-of-Care Payments

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## Secure Act Changes

- Congress believed that home healthcare workers should be able to participate in qualified retirement plans and IRA's based on amounts received for difficulty-of-care payments
- The Act provides that individuals receiving difficulty-of-care payments (and excluding them from income) can increase the limit for nondeductible IRA contributions by an amount equal to the lesser of:
  - The excluded amount or
  - The excess of the deductible IRA limit for the year over the amount of compensation included by the individual in the tax year

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# Difficulty-of-Care Payments

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## Secure Act Changes

- The Act also provides similar treatment for defined contribution plans and can increase the amount treated as compensation or earned income
- These provisions are effective in 2019

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# SALT Benefits & Payments for Volunteer Emergency Responders Exclusions Reinstated and Increased

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## History of Exclusions

- Under pre-Secure Act law for years 2008 – 2010 if states provided for a reduction or rebate of taxes to members of a volunteer firefighting or volunteer emergency medical services organizations, those amounts were excluded from gross income
- Also excluded were expense reimbursement payments by the State, limited to \$30 per month for each month the member performed services
- The exclusions further required the organization be organized and operated to provide firefighting or emergency medical services to the State and that those services be required, by written agreement, to be provided to the State
- No deduction was allowed for state and local taxes or for charitable contributions for these excluded amounts

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# SALT Benefits & Payments for Volunteer Emergency Responders Exclusions Reinstated and Increased

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## Secure Act Changes

- The Act reinstates the volunteer emergency responder's income exclusions, but only for tax years beginning in calendar year 2020
- Also, the monthly limit on the exclusion for qualified payments is increased to \$50 per month



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# Questions?



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