



MedStar Health **SECURE Act Overview.**

MedStar Health, in collaboration with Thompson & Associates, the values-based estate planning firm, provides the following overview of the SECURE Act signed into law on Dec. 20, 2019. The new law took effect Jan. 1, 2020.

The SECURE Act overview

The “Setting Every Community Up for Retirement Enhancement” (SECURE) Act has several provisions that will impact how taxpayers may save for retirement and what they may do with their retirement funds. Most of these changes are helpful to taxpayers, but not all of them.

The taxpayer favorable changes are:

1. Higher RMD age. Under current law, the account owner must withdraw “required minimum distributions” (RMDs) from traditional IRAs and 401(k) plans the year he or she turns 70½. The SECURE Act raises that age to 72, giving taxpayers another 1½ years to defer withdrawals.

2. No age limit on contributing. Current law prohibits contributions to a traditional IRA by taxpayers who are age 70½ or older. The SECURE Act removes that limit and does not set any maximum age for contributions. Roth IRAs have no maximum age restriction under current law or the SECURE Act.

3. More part-time employees qualify for 401(k) plans. The SECURE Act lowers from 1,000 to 500 the number of hours per year an employee must work to qualify for 401(k) plan participation. The employee must meet the 500-hour threshold for three consecutive years and be at least 21 years old at the end of the three-year period.

4. Enhancement of auto-enrollment 401(k) plans. Current law encourages companies to offer 401(k) plans that automatically enroll employees unless they specifically opt out. The law sets a cap of 10% on what the employer may establish as the “qualified automatic contribution arrangement” (i.e., the percentage of pay that goes to the 401(k) plan). The SECURE Act raises that cap to 15% after the first year of employment.

5. Help for small businesses to offer retirement plans. The SECURE Act contains three provisions to make it easier for small businesses to offer retirement plans to their employees:

1. It raises from \$500 per year to \$5,000 per year the limit on the tax credit small employers may take for retirement plan start-up costs. The credit is 50% of those costs, up to the limit.
2. A new \$500 tax credit (available in addition to the preceding credit) will be available for start-up costs of new 401(k) plans and SIMPLE IRA plans that include automatic enrollment, or for converting an existing plan to an automatic enrollment plan.
3. Starting in 2021, unrelated businesses may collaborate to provide retirement plans for their employees. Using a “pooled plan administrator,” these multi-employer plans will allow small businesses to obtain lower costs of administration.

6. Withdrawals for birth and adoption expenses. New parents with birth or adoption expenses may withdraw up to \$5,000 (or up to \$10,000 for a married couple if both have qualifying plans) for those expenses from their IRA, 401(k), or other retirement account without paying the 10% early withdrawal penalty. Income tax will still be due on amounts withdrawn and not repaid to the account. There are other rules governing these withdrawals, but that is not the focus of this article. Tax advice should be sought before making any withdrawals for this purpose.

7. Annuity information and options. Starting one year after IRS issues interim final rules, 401(k) plan administrators will be required to provide annual "lifetime income disclosure statements" that show how much the recipient could receive each month if the plan balance was used to purchase an annuity. The SECURE Act also makes it easier for 401(k) sponsors to offer annuities and other lifetime income options to plan participants.

8. Graduate students and foster care providers gain more access. Some graduate students receive grants and some foster care providers receive "difficulty of care" payments that are not treated as compensation. Current law limiting contributions to a retirement account to one's compensation often means those taxpayers may not contribute to a retirement plan. The SECURE Act allows these taxpayers to treat such grants and payments as compensation for making IRA and 401(k) plan contributions.

Not every change in the SECURE Act was good for the taxpayer. The following two provisions will not be welcome news to everyone:

1. Credit card access to 401(k) loans prohibited. The law has long allowed 401(k) plan participants to borrow from their retirement funds up to the lower of 50% of the account balance or \$50,000 (or more for the purchase of a home). Some 401(k) plan administrators allowed access to those funds using a special debit or credit card. The SECURE Act prohibits loans through debit cards, credit cards, or similar arrangements. This provision is effective immediately.

2. "Stretch IRAs" eliminated. Current law allows beneficiaries other than a spouse to elect "stretch" treatment of required minimum distributions. This stretch provision allows the beneficiary to determine RMDs based on his or her life expectancy, and thus stretch payments over a long time if the life expectancy is significant. The SECURE Act limits the stretch period to 10 years, except for a surviving spouse of the plan participant. Exceptions to the 10-year rule include beneficiaries who are minors, disabled, chronically ill, or not more than 10 years younger than the retirement plan owner. For minors who meet the exception, the 10-year rule applies when they attain the age of majority.

How is a stretch still possible?

The SECURE Act makes the "Charitable Stretch Remainder Trust" a more powerful planning technique than before and remains the only real stretch option available.

Directing retirement assets to a Charitable Remainder Trust (CRT) at death has long been a favored planning technique for those with large retirement accounts, a charitable intent, and a desire to benefit heirs in a thoughtful manner. Sometimes referred to as a "give it twice trust," a CRT, as part of a good estate plan, is a way to benefit both heirs and charity, ultimately with little or no loss in total dollars to the heirs.

A Charitable Remainder Trust scenario.

This is generally how the trust works. The owner of a tax-qualified retirement plan executes a last will and testament, or a revocable living trust, that includes a CRT that springs into existence after death, or that directs certain assets to an existing CRT created to receive those assets after death. Although assets other than retirement accounts may be used for the CRT, this technique focuses on making effective use of tax-qualified plans.

A CRT is a “split-interest” technique that divides the assets into an income stream for a specified term and a remainder interest that passes after the term expires. The income stream typically goes to one or more non-charitable beneficiaries (e.g., the decedent’s children), and the remainder must pass to one or more qualified charities. Using a CRT for retirement accounts is a way to force spendthrift heirs to stretch payments from those accounts over time rather than liquidating them at once, and potentially triggering higher tax rates.

The length of a CRT may be specified as a term of years (which may be up to 20 years), based upon the life or lives of the beneficiary or beneficiaries, or a combination thereof. With a term of years that may be specified up to 20 years, the CRT immediately offers a way to double the stretch period over what will be available under the SECURE Act. Depending on the age or ages of the income beneficiaries, it may be possible to stretch payments of the retirement account over their life or lives. Many factors go into determining what length of term will be permitted, but we have software that can generate quick illustrations to determine what is possible.

The Charitable Stretch Remainder Trust has other benefits, such as an estate tax deduction for those facing federal or state death taxes, but they are beyond the scope of this article. The point here is that Congress may have severely limited the ability to stretch payments from retirement accounts in the traditional way, but it boosted the power of a Charitable Stretch Remainder Trust to meet the planning goals of many people.

MedStar Health works with Thompson & Associates to offer values-based estate planning through our representative, Jeremy Pharr, J.D. The service is provided at no cost to friends of MedStar Health and information shared with Jeremy Pharr, J.D., will be held in the strictest confidence and will not be disclosed to MedStar Health or any other source. Thompson & Associates does not draft documents, manage money, sell services or products, or ask you to make a gift. For more information, or to schedule a free and confidential conversation with Jeremy Pharr, J.D., please contact us at giftplanning@medstar.net.

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