



THE AMERICAN COLLEGE OF
TRUST AND ESTATE COUNSEL

McPherson Building
901 15th Street, NW, Suite 525
Washington, DC 20005
(202) 684-8460 • Fax (202) 684-8459
actec.org

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Please Address Reply to:

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Via Electronic Mail

Carol Weiser
Benefits Tax Counsel
Department of the Treasury, Carol.Weiser@treasury.gov

Stephen B. Tackney
Deputy Associate Chief Counsel
Office of Chief Counsel
Internal Revenue Service, stephen.b.tackney@irs.counsel.treas.gov

RE: Request for Guidance Regarding Section 401 of the SECURE Act to Issue Soon

Dear Ms. Weiser and Mr. Tackney:

The American College of Trust and Estate Counsel (“ACTEC”) is a professional organization of approximately 2,500 lawyers from throughout the United States. Fellows of ACTEC are elected to membership by their peers on the basis of professional reputation and ability in the fields of trusts and estates and on the basis of having made substantial contributions to those fields through lecturing, writing, teaching, and bar activities. Fellows of ACTEC have extensive experience in providing advice to taxpayers on matters of personal income tax, transfer tax, and retirement plan rules, and providing advice to IRA and retirement plan administrators on plan administration. ACTEC offers technical comments about the law and its effective administration but does not take positions on matters of policy or political objectives.

ACTEC was pleased to submit a two-part request for guidance from Treasury in July 2020 to assist taxpayers with issues raised by the changes to required minimum distributions (“RMDs”) after the death of an Employee. These changes are found in Section 401 of the Setting Every Community Up for Retirement Enhancement Act of 2019, Pub. L. 116–94, signed into law by President Donald Trump on December 20, 2019 as part of the Further Consolidated Appropriations Act, 2020 (2020 United States federal budget) (the “SECURE Act”).

Under the current regulations, there are several deadlines that will soon be upon us, such as the September 30 deadline for determining designated beneficiaries. Many beneficiaries of retirement account holders who died in 2020 must be clearly identified by that September 30 deadline, and then must create inherited IRA accounts and take their first distribution by December 31, 2021.

However, there is much uncertainty among estate planners and beneficiaries about establishing inherited IRA accounts and taking RMDs under the new requirements set out in the SECURE Act. For example, there is uncertainty for those beneficiaries whose account holders died on or after their required

Executive Director
DEBORAH O. MCKINNON

beginning date as to whether the “at least as rapidly” rule of Internal Revenue Code Sections 401(a)(9)(B)(i) still applies or whether only the 10-year rule applies to them. In addition, those beneficiaries who are disabled or chronically ill, as defined in IRC Sections 401(a)(9)(E)(II)(iii) and (iv), are unclear about what information must be provided, and when, to confirm that the beneficiary is disabled or chronically ill so that the beneficiary may use the life expectancy method to determine required minimum distributions. If the disabled or chronically ill beneficiary is the beneficiary of an “applicable multi-beneficiary trust” or “AMBT,” as provided in IRC Sections 401(a)(9)(H)(iv) and (v), there are many unanswered questions and the dates for compliance are unsettled. There are many more questions that require clarification as set out in ACTEC’s prior submissions last July, in order for inherited IRA accounts to be established and 2021 RMDs to be taken on a timely basis.

In addition, AMBTs are often drafted as special needs trusts so as to enable the beneficiary to receive government benefits. Many special needs trusts for disabled or chronically ill persons were drafted before the SECURE Act was enacted and may need court modifications in order to comply with the AMBT requirements and retain eligibility for the beneficiary to receive government benefits. As yet, it is uncertain what, if any, modifications may be needed to comply with the SECURE Act requirements. A modification may require court action, which may be difficult to obtain within the remaining time.

In view of these uncertainties, ACTEC requests that Treasury issue the proposed regulations as soon as possible in order to clarify the requirements of the SECURE Act requirements so that beneficiaries of 2020 decedents are able to comply with those requirements prior to the impending deadlines. If Treasury is unable to issue proposed regulations in sufficient time for beneficiaries of 2020 decedents to comply with the SECURE Act requirements, ACTEC further recommends that some grace period be given to such beneficiaries to permit them to satisfy all requirements on a timely basis.

If you or your staff would like to discuss the contents of this letter with the ACTEC Fellows who created it, please contact Nancy H. Welber (248) 932-1230, nhwelber@gmail.com; Kathleen R. Sherby (314) 259-2224, krsherby@bclplaw.com; or Steven E. Trytten (626) 365-6000, ext. 200, strytten@hcesq.com; who worked on this comment, or Deborah McKinnon, ACTEC Executive Director, at (202) 684-8460 or domckinnon@actec.org.

Respectfully submitted,



Ann B. Burns, President