

1-28-2021

Kissing the Security Blanket Goodbye: How the SECURE Act Will Affect IRA Beneficiaries' Long-Term Financial Security

Cassidy J. Seamon

Boston College Law School, cassidy.seamon@bc.edu

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Recommended Citation

Cassidy J. Seamon, *Kissing the Security Blanket Goodbye: How the SECURE Act Will Affect IRA Beneficiaries' Long-Term Financial Security*, 62 B.C. L. Rev. 357 (2021), <https://lawdigitalcommons.bc.edu/bclr/vol62/iss1/9>

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KISSING THE SECURITY BLANKET GOODBYE: HOW THE SECURE ACT WILL AFFECT IRA BENEFICIARIES' LONG-TERM FINANCIAL SECURITY

Abstract: The Setting Every Community Up for Retirement Enhancement Act (the SECURE Act) offers many forms of new support for retirement savings to help more Americans better prepare for their retirement. It also includes a provision that eliminates the stretch payout option for the beneficiaries of inherited individual retirement arrangements (IRAs). Prior to the SECURE Act, beneficiaries of inherited IRAs were able to capitalize on the tax-deferred savings vehicles for the remainder of their lifetimes. After the SECURE Act, the period of tax-deferred investment for beneficiaries was limited to ten years. In eliminating the stretch payout option, Congress opted for a relatively small amount of short-term revenue rather than the long-term financial security of both the IRA owner and the beneficiaries of the IRA based upon closing a perceived loophole. This decision ultimately will generate a small amount of revenue, while simultaneously having a largely detrimental impact on the beneficiaries of inherited IRAs. This Note argues that Congress should reinstate the stretch payout option for the beneficiaries of inherited IRAs to encourage saving and, in turn, protect retirees and their beneficiaries.

INTRODUCTION

On December 20, 2019, President Donald J. Trump signed into law the Setting Every Community Up for Retirement Enhancement Act (the SECURE Act).¹ Congress intended the SECURE Act to invigorate America's retirement saving practices, in part by eliminating a popular loophole known as the "stretch payout."² This loophole allowed beneficiaries of an inherited individ-

¹ Setting Every Community Up for Retirement Enforcement Act (SECURE Act), *incorporated into* Further Consolidated Appropriations Act, Pub. L. No. 116-94, 133 Stat. 2534 (2020); J. Mark Iwry et al., *The SECURE Act: A Good Start but Far More Is Needed*, BROOKINGS (Jan. 8, 2020), <https://www.brookings.edu/blog/up-front/2020/01/08/the-secure-act-a-good-start-but-far-more-is-needed/> [<https://perma.cc/7G87-APFL>].

² See Iwry et al., *supra* note 1 (explaining that the Setting Every Community Up for Retirement Enhancement Act (the SECURE Act) offers tax-favored savings options to encourage retirement saving); Laura Saunders, *Inheriting IRAs Just Got Complicated, Thanks to New Retirement Overhaul*, WALL ST. J. (Dec. 20, 2019), <https://www.wsj.com/articles/inheriting-iras-just-got-complicated-thanks-to-new-retirement-overhaul-11576904481> [<https://perma.cc/JV4X-HFKR>] (stating that the Act's supporters argue that an individual retirement arrangement (IRA) should predominately benefit the account owners, not the beneficiaries); Chris Sonzogni, *Setting Every Community Up for Retirement Enhancement (SECURE) Act*, INVESTOPEDIA (Aug. 23, 2020), <https://www.investopedia.com/secure->

ual retirement arrangement (IRA) to stretch the distributions over their remaining life expectancy.³ The SECURE Act, however, shrunk that payout period to ten years for most beneficiaries.⁴ The change will greatly impact the tax treatment of beneficiaries of inherited IRAs and also will affect their long-term financial security.⁵

Congress wanted to better equip Americans to save for retirement because many individuals are not prepared to support themselves financially during that phase of their lives.⁶ In fact, almost fifty percent of Americans over the age of fifty-five have no retirement plan.⁷ Legislators intended for the SECURE Act to help correct this issue by incorporating provisions that support retirement saving, including better access to 401(k)s for small businesses, increasing the age at which distribution of retirement benefits are required, and expanding tax-free withdrawal opportunities.⁸

Many of the SECURE Act's provisions apply to IRAs.⁹ IRAs are a highly important form of retirement saving; in fact, IRAs in the United States hold ap-

act-4688468 [https://perma.cc/WR3Q-LLDF] (expressing the Act's purpose of facilitating Americans' retirement saving efforts). *But see* Jamie Hopkins, *Congress Set to Pass SECURE Act at Last Minute, Impacting Retirement Planning and Increasing Taxes*, FORBES (Dec. 16, 2019), https://www.forbes.com/sites/jamiehopkins/2019/12/16/congress-passes-secure-act-at-last-minute-impacting-retirement-planning-and-increasing-taxes/#2edbb4f13a4f [https://perma.cc/GT5N-57DW] (contending that although the Act opens some doors to retirement planning, the overall effect will not benefit retirement saving in a measurable way).

³ Richard L. Kaplan, *Retirement Funding and the Curious Evolution of Individual Retirement Accounts*, 7 ELDER L.J. 283, 285 (1999); *see* Iwry et al., *supra* note 1 (describing how the elimination of the stretch payout benefit will offset the increase in tax-favored saving); Saunders, *supra* note 2 (noting Texas Republican Representative Kevin Brady's statement that the purpose of IRAs is not to transfer wealth to heirs).

⁴ SECURE Act § 401; Hopkins, *supra* note 2.

⁵ *See* REPORT OF THE COMMITTEE ON WAYS AND MEANS HOUSE OF REPRESENTATIVES ON H.R. 1994, H.R. REP. NO. 116-65, at 108 (2019) [hereinafter REPORT ON THE SECURE ACT] (setting forth the Committee's opinion that legislation should phase down the tax benefit for beneficiaries of IRAs).

⁶ *Id.*; *see* Frank Newport, *Update: Americans' Concerns About Retirement Persist*, GALLUP (May 9, 2018), https://news.gallup.com/poll/233861/update-americans-concerns-retirement-persist.aspx [https://perma.cc/V9BK-V5W5] (explaining that forty-six percent of people do not think they will be financially secure in retirement). Despite the lack of preparedness, many people look forward to retiring as a time to devote fully to their family, friends, and hobbies. *See The Retirement Problem: What Will You Do with All That Time?*, KNOWLEDGE@WHARTON (Jan. 14, 2016), https://knowledge.wharton.upenn.edu/article/the-retirement-problem-what-will-you-do-with-all-that-time/ [https://perma.cc/DS3G-NWYT] (discussing the big plans that people approaching retirement frequently have for this phase of their life).

⁷ *See* Robert Portman, *The Secure Act Makes Critical Reforms to Our Retirement System—Let's Pass It This Year*, THE HILL (Nov. 25, 2019), https://thehill.com/blogs/congress-blog/politics/471863-the-secure-act-makes-critical-reforms-to-our-retirement-system [https://perma.cc/E448-WSCJ] (allocating this deficiency to self-employed individuals and small businesses that do not offer 401(k)s).

⁸ Iwry et al., *supra* note 1.

⁹ *See id.* (listing examples of SECURE Act provisions, such as Repeal of Maximum Age for Traditional IRA Contributions, Increase in Age for Required Beginning Date for Mandatory Distributions, Penalty-Free Withdrawals from Retirement Plans for Individuals in Case of Birth of Child or

proximately \$5.4 trillion in assets.¹⁰ IRAs are tools that allow individuals to take a more secure and durable approach towards retirement saving.¹¹ Prior to IRAs, the limited opportunities for retirement saving included pensions through employers or Social Security—both of which had their own shortcomings.¹² IRAs, however, allow an owner to invest money in a tax-favored way.¹³ These accounts are tax-favored because: (1) the money is not taxed until it is distributed; and (2) the distribution usually occurs when the owner is in a lower tax bracket than that of his working years.¹⁴

The stretch payout option for inherited IRAs used to enhance the tax benefits of IRAs even further.¹⁵ Although the beneficiaries were not able to con-

Adoption, and Modifications of Required Minimum Distribution Rules for Designated Beneficiaries); see also *infra* notes 154–160 and accompanying text (explaining the tax-favored provisions of the SECURE Act).

¹⁰ *Understanding the Taxes on an Inherited IRA and the Inherited IRA Rules*, M1 FIN., <https://www.m1finance.com/articles-1/taxes-on-an-inherited-ira/> [<https://perma.cc/QH2G-TKXM>]. Individuals that are part of the Baby Boomer generation hold thirty-nine percent of the \$5.4 trillion held in IRAs. *Id.*

¹¹ See WORKPLACE FLEXIBILITY 2010, GEORGETOWN UNIV. L. CTR., A TIMELINE OF THE EVOLUTION OF RETIREMENT IN THE UNITED STATES 2 (2010) [hereinafter A TIMELINE OF THE EVOLUTION OF RETIREMENT] (stating that Social Security only accounted for benefits for a minimal number of the retiree's years); Stewart E. Sterk & Melanie B. Leslie, *Accidental Inheritance: Retirement Accounts and the Hidden Law of Succession*, 89 N.Y.U. L. REV. 165, 171 (2014) (explaining that original pensions only paid benefits over a minimal amount of years and employees would lose their pension income if they changed jobs or if their employers became insolvent); Stephen J. Entin, *Comparing the Returns from Tax-Favored Retirement Plans to Social Security Yields*, TAX FOUND. (June 8, 2016), <https://taxfoundation.org/comparing-returns-tax-favored-retirement-plans-social-security-yields/> [<https://perma.cc/6UEU-GEQ5>] (expressing that individual retirement planning, such as IRAs and 401(k)s, allow for more sufficient retirement saving).

¹² A TIMELINE OF THE EVOLUTION OF RETIREMENT, *supra* note 11, at 2; Sterk & Leslie, *supra* note 11, at 171.

¹³ *What Is an IRA?*, FIDELITY, <https://www.fidelity.com/building-savings/learn-about-iras/what-is-an-ira> [<https://perma.cc/N2SS-KLSF>]. IRAs are investment accounts Congress created specifically for retirement, and they allow individuals to contribute money while still working to support themselves in retirement. Karen C. Burke & Grayson M.P. McCouch, *Lipstick, Light Beer, and Back-Loaded Savings Accounts*, 25 VA. TAX REV. 1101, 1105–06 (2006). Traditional IRAs are funded with money that the owner has deducted or removed from taxable income at the time of contribution to the IRA. *Id.* Therefore, upon withdrawal, taxes must be paid on the money. *Id.*

¹⁴ Burke & McCouch, *supra* note 13, at 1105–06 (noting that Congress originally had banned recipients of qualified employer plans from purchasing IRAs, but later removed this restriction in 1981). IRAs enable individuals to deduct or subtract the amount of their contributions from their gross income calculation, which in turn allow these contributions to grow untaxed until distributions begin. I.R.C. § 401(a)(9) (West 2019); I.R.S. Form 1040, Schedule 1, at line 19 (2019); see also I.R.S. Pub. No. 590-A, Contributions to Individual Retirement Arrangements (IRAs): For Use in Preparing 2019 Returns, 10 (2019) [hereinafter 2019 I.R.S. Pub. No. 590-A], <https://www.irs.gov/pub/irs-pdf/p590a.pdf> [<https://perma.cc/D5XT-XCVK>] (providing the deduction rules for IRA contributions); Burke & McCouch, *supra* note 13, at 1105 (explaining that the invested funds grow with no tax until distribution); *What Is an IRA?*, *supra* note 13 (noting that the tax deferral often postpones tax until the owner is in a lower tax bracket).

¹⁵ I.R.S. Pub. No. 590-B, Distributions from Individual Retirement Arrangements (IRAs): For Use in Preparing 2019 Returns, 45 tbl.I (2019) [hereinafter 2019 I.R.S. Pub. No. 590-B], <https://www.irs.gov/pub/irs-pdf/p590b.pdf>.

tinue contributing to the inherited IRAs, the beneficiaries did not have to pay taxes on the total amount of these accounts.¹⁶ Instead, the beneficiaries were only required to pay on the amount of the distributions taken each year of the beneficiaries' lives.¹⁷ The stretch payout option provided financial security across generations when IRAs owners did not use all of their savings during retirement.¹⁸ Thus, legislators saw the stretch payout as a loophole, given that the purpose of IRAs is to provide for retirement, not inheritance.¹⁹

Closing this loophole will partially fund the other provisions of the SECURE Act.²⁰ Congress passed the Act with vast bipartisan support, and many people believe that the SECURE Act is at least a promising start in the effort to better support people in retirement.²¹ Part I of this Note explains the history of IRAs, including their treatment prior to and following the SECURE Act.²² Part II discusses the reasons for eliminating the stretch payout option for IRAs, as well as the short-term benefits and long-term repercussions of its elimination.²³ Part III analyzes the changes in the treatment of inherited IRAs as a revenue-generating feature, and argues that these changes are detrimental to long-term revenue and security.²⁴

irs.gov/pub/irs-pdf/p590b.pdf [https://perma.cc/BMJ4-NR87]; see Henna Shah & Yvonne Eckert Olivere, WealthCounsel, PowerPoint, New Year, New Paradigm: What You Need to Know About the SECURE Act 7 (Dec. 30, 2019), https://member.wealthcounsel.com/login?post=%2Fsearch#?q=secure&user=true [https://perma.cc/63GG-XB4Y] (on file with *Boston College Law Review*).

¹⁶ 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 5.

¹⁷ *Id.*

¹⁸ Simon Moore, *How the SECURE Act Just Severely Limited Stretch IRAs*, FORBES (Dec. 22, 2019), https://www.forbes.com/sites/simonmoore/2019/12/22/how-the-secure-act-just-severely-limited-stretch-iras/#1f52dfc37a86 [https://perma.cc/24NT-W7QN].

¹⁹ Michelle Singletary, *The Secure Act Is Exposing the Ugly Truth About People's Hatred of Paying Taxes*, WASH. POST (Jan. 13, 2020), https://www.washingtonpost.com/business/2020/01/13/secure-act-is-exposing-ugly-truth-about-peoples-hatred-paying-taxes/ [https://perma.cc/S3D9-XCKW]; Ginger Szala, *What the 'Father of 401(k)s' Thinks of the Secure Act*, THINKADVISER (Dec. 23, 2019), https://www.thinkadvisor.com/2019/12/23/what-the-father-of-401ks-thinks-of-the-secure-act/ [https://perma.cc/W87W-QKC6].

²⁰ Hopkins, *supra* note 2; Saunders, *supra* note 2; Sonzogni, *supra* note 2.

²¹ See Iwry et al., *supra* note 1 (opining that the Act, which was intended to encourage retirement saving was "a step in the right direction"); Sonzogni, *supra* note 2 (stating that the Act was approved in the House by a vote of 417–3).

²² See *infra* notes 25–174 and accompanying text.

²³ See *infra* notes 175–234 and accompanying text.

²⁴ See *infra* notes 235–265 and accompanying text.

I. COUNTING PENNIES: RETIREMENT PLANNING IN THE UNITED STATES AND THE STRETCH PAYOUT OPTION FOR INHERITED IRAS

The creation of tax policy requires Congress to determine what constitutionally taxable money or property the government will in fact tax.²⁵ Many of these determinations involve the tension between what appears to be an accession to—or increase in—wealth and the lack of a clear event in which that accession was realized.²⁶ Inheritance is an example of a situation in which Congress often waits to impose a tax until there has been a clear realization event.²⁷ When someone inherits an IRA that the owner funded on a tax-deferred basis, the clear realization event that triggers taxation occurs when the beneficiary withdraws the money.²⁸

When a beneficiary inherits an IRA, its tax treatment depends on the relationship between the beneficiary and the deceased; the major determinative factor for which treatment is proper is based on whether the inherited IRA has a designated beneficiary or a non-designated beneficiary.²⁹ Designated beneficiar-

²⁵ I.R.C. § 61 (West 2019). The definition of gross income includes all income, no matter the source. *Id.* For income tax purposes, however, there are times in which the government does not recognize and thus does not tax income, even though it was realized. *Id.*; *id.* § 1001.

²⁶ *Id.* §§ 102, 1001, 1014. Compare *Comm'r v. Glenshaw Glass Co.*, 348 U.S. 426, 431 (1955) (describing the situation as one in which the taxpayer had a clear accession to wealth and thus had complete control over the funds), with *Eisner v. Macomber*, 252 U.S. 189, 212 (1920) (explaining that although the taxpayer was in a sense richer due to an increase in capital, the taxpayer had not received anything that he could easily and freely spend). A clear accession to wealth occurs when the taxpayer has more than that which he or she had at the start, such as when stock appreciates. *Glenshaw Glass Co.*, 348 U.S. at 431. Given that the taxpayer's stock is worth more than its original value, the taxpayer is considered to be "richer." *Id.*; *Eisner*, 252 U.S. at 212. At the same time, however, this form of wealth is not liquid, meaning that if the taxpayer wants to use that wealth, he or she must sell the stock. *Eisner*, 252 U.S. at 212. If the taxpayer's gain remains in the form of stock, its value may increase or decrease further. *Id.* The Court made clear in *Eisner v. Macomber* that it had no intention of forcing individuals to sell their stock to trigger a realization of gain. *Id.* Rather, the Court held that an accession to wealth should be considered "realized" after a clear realization event has taken place, such as when a taxpayer sells the stock and has its value in hand. *Id.* In certain situations, in spite of there having been a clear accession to wealth, Congress may choose for policy reasons not to recognize it at that time. *Id.*

²⁷ See I.R.C. § 102 (stating that property is not treated as gross income when inherited).

²⁸ *Understanding the Taxes on an Inherited IRA and the Inherited IRA Rules*, *supra* note 10. There also are different tax treatments depending on which type of IRA the beneficiary inherits. *Id.* For example, a beneficiary can inherit a Roth IRA without incurring further taxes because the owner funds Roth IRAs after paying taxes on the money. *What Is an IRA?*, *supra* note 13. In contrast, owners fund traditional IRAs with money that they have deducted or removed from their taxable income. *Id.* As a result, the beneficiary typically pays taxes on the inheritance when the beneficiary withdraws the money. *Id.*

²⁹ 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 6, 22; *Understanding the Taxes on an Inherited IRA and the Inherited IRA Rules*, *supra* note 10; see *infra* note 104 and accompanying text (explaining the different pathways and treatments of inherited IRAs, which depend on the type of beneficiary and that beneficiary's relationship to the deceased).

ies are spouses, individuals, or qualifying trusts.³⁰ Non-designated beneficiaries are the deceased's estate, charities, or other entities.³¹ The treatment of non-designated beneficiaries remains simple: the beneficiary must distribute the IRA completely within five years.³² Within the category of designated beneficiaries, however, treatment varies.³³ The treatment of an IRA with a spousal beneficiary is different upon inheritance compared to that of an IRA with a non-spousal beneficiary or a qualifying trust.³⁴ The main difference, prior to the SECURE Act, was that a spousal beneficiary was able to continue contributing to the IRA rather than only being allowed to withdraw from the account.³⁵

The difference in treatment among designated beneficiaries changed further when Congress enacted the SECURE Act.³⁶ Now, rather than benefitting from the inherited IRA throughout their lifetimes, beneficiaries must fully withdraw from the IRA within ten years.³⁷ This Note examines the implications of the SECURE Act reforms and assesses the benefits and drawbacks of these reforms on taxpayers.³⁸ Section A of this Part discusses the characteristics and benefits of IRAs.³⁹ Section B explores how an IRA becomes an inherited IRA and how to determine the beneficiary.⁴⁰ Section C explains the traditional taxation of inherited IRAs.⁴¹ Section D introduces the SECURE Act's changes to this treatment.⁴²

³⁰ NATALIE B. CHOATE, *LIFE AND DEATH PLANNING FOR RETIREMENT BENEFITS* 26 (8th ed. 2019).

³¹ *Id.*

³² See *infra* note 125 and accompanying text (explaining the distribution rules for non-designated beneficiaries).

³³ See *infra* notes 126–151 and accompanying text (explaining the distribution rules for designated beneficiaries).

³⁴ *Understanding the Taxes on an Inherited IRA and the Inherited IRA Rules*, *supra* note 10; see *infra* notes 126–151 (discussing the different distribution rules for spousal beneficiaries, non-spousal beneficiaries, and qualifying trusts as beneficiaries).

³⁵ See *infra* notes 126–130 and accompanying text (explaining the distribution rules for spousal beneficiaries).

³⁶ Setting Every Community Up for Retirement Enforcement Act (SECURE Act), *incorporated into* Further Consolidated Appropriations Act, Pub. L. No. 116-94, § 401, 133 Stat. 2534 (2020); Rocky Mengle, *10 Ways the SECURE Act Will Impact Your Retirement Savings*, KIPLINGER (Feb. 28, 2020), <https://www.kiplinger.com/slideshow/retirement/T047-S001-how-the-secure-act-will-impact-retirement-savings/index.html> [<https://perma.cc/QGT9-BWVW>]; Moore, *supra* note 18.

³⁷ REPORT ON THE SECURE ACT, *supra* note 5, at 108.

³⁸ See *infra* notes 43–265 and accompanying text.

³⁹ See *infra* notes 43–90 and accompanying text.

⁴⁰ See *infra* notes 91–119 and accompanying text.

⁴¹ See *infra* notes 120–153 and accompanying text.

⁴² See *infra* notes 154–174 and accompanying text.

A. The Benefits of IRAs

Before the advent of IRAs, the United States went through a century of evolution in retirement planning.⁴³ The changes were necessary, in part, due to steadily increasing life expectancy.⁴⁴ Private businesses had been using the first precursor to IRAs—pension plans—since the last quarter of the nineteenth century as a means for providing fixed benefits to employees at retirement.⁴⁵ An employer offered the first pension plans outside of the military in 1875, and by the turn of the century there were thirteen similar plans.⁴⁶ These pension plans boasted the perk of tax deferral, meaning that the benefits were not taxed when earned during employment, but instead were taxed after being distributed during retirement.⁴⁷ Traditional pension plans were risky because payouts could be guaranteed only if the employee remained at the job and as long as the employer remained financially sound.⁴⁸ As employees began to realize the danger that predication of pension payouts on employer solvency posed, pensions became less popular.⁴⁹ During this period, the government enacted the first income tax in 1913, and, in 1914, the Internal Revenue Service (IRS) determined that employ-

⁴³ See Sterk & Leslie, *supra* note 11, at 170–71 (outlining the evolution of retirement benefits from employer pensions in 1875 to the invention of IRAs in the Employee Retirement Income Security Act of 1974 (ERISA)).

⁴⁴ *Mortality in the United States: Past, Present, and Future*, PENN WHARTON BUDGET MODEL (June 27, 2016), <https://budgetmodel.wharton.upenn.edu/issues/2016/1/25/mortality-in-the-united-states-past-present-and-future> [<https://perma.cc/VP9B-K8NB>] (noting that, from 1900 to 2013, life expectancy increased by more than thirty years due in large part to improvements in public health preventing death by infectious disease).

⁴⁵ Sterk & Leslie, *supra* note 11, at 170–71.

⁴⁶ A TIMELINE OF THE EVOLUTION OF RETIREMENT, *supra* note 11, at 1. At this point, employees remained in the workforce until they could not work anymore. *Id.* By 1919, the number of private pension plans had increased to at least three hundred plans. *Id.*

⁴⁷ Sterk & Leslie, *supra* note 11, at 171. A further advantage of tax deferral is that, in retirement, individuals generally are in lower tax brackets, so the deferral can lead to tax savings as well. *Id.* The pension plans were meant to encourage employees to remain with the company to accrue these benefits. *Id.* Furthermore, deferral is beneficial, in that taxpayers can subtract the amount that is deferred from their gross income in the year earned, thereby reducing the amount of taxable income that year. Evan Tarver, *Benefits of Deferred Contribution Plans*, INVESTOPEDIA (Oct. 31, 2020), <https://www.investopedia.com/articles/personal-finance/102215/benefits-deferred-compensation-plans.asp> [<https://perma.cc/V7L6-BHU3>]. If the taxable income is smaller, then the resulting tax will be smaller. *Id.* Furthermore, taxes will not be paid on that money until after the taxpayer actually receives the money. Sterk & Leslie, *supra* note 11, at 171; Tarver, *supra*. Often, particularly in the case of IRAs or other deferred retirement options, taxpayers will not receive this money until they are no longer working, bringing in less income, and occupying a lower tax bracket. Sterk & Leslie, *supra* note 11, at 171; Tarver, *supra*. Due to the lower tax bracket, taxpayers ultimately will owe a smaller amount of tax on the same amount of money. Sterk & Leslie, *supra* note 11, at 171; Tarver, *supra*.

⁴⁸ See Sterk & Leslie, *supra* note 11, at 171 (stating that employees lost their retirement incomes as employers became insolvent). Traditional pension plans are private defined benefit plans that are sponsored by an employer, who promises stipulated monthly payments upon retirement. *Types of Retirement Plans*, U.S. DEP'T OF LAB., <https://www.dol.gov/general/topic/retirement/typesofplans> [<https://perma.cc/JN4Z-Z8FP>].

⁴⁹ Sterk & Leslie, *supra* note 11, at 171.

ers could deduct the payment of pension plans from their tax bills.⁵⁰ The government then enacted the Social Security Act in 1935 to supply benefits to workers when they reached the age of sixty-five, which at the time was the statutorily set age of retirement.⁵¹

Throughout the twentieth century, however, life expectancy continued to increase, which in turn increased the need for benefits throughout retirement.⁵² The diminution of social security funds has exacerbated the issue of increased necessary benefits because many working Americans believe that social security funds will be available to them when they retire.⁵³ It is estimated by the Social Security Administration that only three-fourths of expected benefits will be paid out by the year 2035 due to insufficient funds.⁵⁴ The insufficiency of social security funds has two main causes: (1) the Baby Boomer generation is aging; and (2) the younger generations are having fewer children, thereby reducing the number of workers paying into the system.⁵⁵ Furthermore, social security payments are not sufficient for a person to live on alone.⁵⁶

⁵⁰ A TIMELINE OF THE EVOLUTION OF RETIREMENT, *supra* note 11, at 1.

⁵¹ *Id.* at 2. On August 14, 1935, President Franklin D. Roosevelt signed the Social Security Act. *Historical Background and Development of Social Security*, SOC. SEC. ADMIN., <https://www.ssa.gov/history/briefhistory3.html> [<https://perma.cc/S6FA-CVTA>]. At that time, the life expectancy for a sixty-five-year-old was only twelve years. A TIMELINE OF THE EVOLUTION OF RETIREMENT, *supra* note 11, at 2. Thus, the administration did not expect these benefits to be necessary for many years. *Id.*

⁵² See *Mortality in the United States*, *supra* note 44.

⁵³ Stephen C. Goss, *The Future Financial Status of the Social Security Program*, 70 SOC. SEC. BULL. 111, 112 (2010). The Social Security program provides retired, disabled, and deceased workers and their families a monthly income through payroll taxes from the wages of current workers. *Id.* Currently, the program is supplying income to upwards of fifty million people. *Id.* Payroll taxes are taxes that are paid directly out of an employee's salary and go towards funding federal programs, such as Social Security and Medicare. John Olson, *What Are Payroll Taxes and Who Pays Them?*, TAX FOUND. (July 25, 2016), <https://taxfoundation.org/what-are-payroll-taxes-and-who-pays-them/> [<https://perma.cc/4JV2-R54P>]. The payroll tax that funds Social Security is just over 12% and the tax that funds Medicare is almost 3%. *Id.* A portion of the employee's pay and another portion directly from the employer make up a combined tax of approximately 15%. *Id.* Self-employed individuals must pay the entire amount, but they receive a deduction. *Self-Employment Tax (Social Security and Medicare Taxes)*, IRS, <https://www.irs.gov/businesses/small-businesses-self-employed/self-employment-tax-social-security-and-medicare-taxes> [<https://perma.cc/GH6G-YD6V>].

⁵⁴ Goss, *supra* note 53, at 111. Since the explosion of family size after World War II, trends show that family size has been decreasing. *Parenting in America*, PEW RSCH. CTR. (Dec. 17, 2015), <https://www.pewsocialtrends.org/2015/12/17/1-the-american-family-today/> [<https://perma.cc/6CBV-XRW9>]. In the 1970s, 40% of women had at least four children; however, today, over 40% of women have only two children at the end of their fertility. *Id.*

⁵⁵ Goss, *supra* note 53, at 122–23; see *Parenting in America*, *supra* note 54 (examining the trend of women having a decreasing number of children). In fact, ten thousand Baby Boomers retire each day, but not nearly that many individuals begin working. Goss, *supra* note 53, at 123–24.

⁵⁶ See Goss, *supra* note 53, at 111 (explaining that Social Security merely provides a “basic level of monthly income”); Donna Fuscaldo, *Retirement Without Savings?*, INVESTOPEDIA (Nov. 18, 2019), <https://www.investopedia.com/articles/personal-finance/111815/what-retirement-will-look-without-savings.asp> [<https://perma.cc/Q39K-WXEW>] (noting that when all expenses are taken into account, social security is really only enough as extra support rather than a person's only income).

In response to the issues concerning Social Security and pension plans, Congress enacted the Employee Retirement Income Security Act of 1974, which implemented a statutory framework that allowed for the creation of IRAs.⁵⁷ The singular purpose of these accounts was to supplement the two main sources of retirement funding—Social Security and employer pensions.⁵⁸ An IRA is an investment account that individuals can put money into while they are working, which will grow over time and eventually support them when they reach retirement.⁵⁹ A traditional IRA is a tax-deferred investment option that allows individuals to save for retirement.⁶⁰ These accounts are considered to be “tax-deferred” because after holders place money in the account, or contribute to it, they are able to deduct that amount from their taxable income.⁶¹ The money in the account is then generally allowed to grow through securities investments without being taxed until withdrawal.⁶²

Although there are strict limits on deductible contributions, holders are able to make further nondeductible contributions that can grow tax-free until they are withdrawn.⁶³ In this way, IRAs are a form of “tax-sheltered” savings instru-

⁵⁷ Kaplan, *supra* note 3, at 284; see Sterk & Leslie, *supra* note 11, at 171–72 (stating that the government intended ERISA to help secure retirement stability).

⁵⁸ See Burke & McCouch, *supra* note 13, at 1105 (explaining that Congress intended for ERISA to promote tax-deferred saving for those who lacked a retirement plan backed by their employer).

⁵⁹ *What Is an IRA?*, *supra* note 13.

⁶⁰ *Id.*

⁶¹ Burke & McCouch, *supra* note 13, at 1105; *What Is an IRA?*, *supra* note 13.

⁶² I.R.C. §§ 219(a), 408(d), 408(e)(1) (West 2019); Burke & McCouch, *supra* note 13, at 1105; *What Is an IRA?*, *supra* note 13. This function is beneficial because the growth on an IRA will compound untaxed, whereas in other retirement accounts, the growth must be taxed each year. *What Is an IRA?*, *supra* note 13. Furthermore, it is beneficial because often, at retirement, holders are earning less money and occupying lower tax brackets than they were while working. Sterk & Leslie, *supra* note 11, at 176. Due to this lower tax bracket, the taxes on the tax-deferred money withdrawn from the IRA will be lower than if the owner had paid taxes on the money when it initially was earned. See *id.* (describing how IRAs create the potential for great saving through deferral of taxation to a period of life when individuals are in lower tax brackets). The nature of this benefit makes IRAs very valuable to higher-income individuals because it prevents money being taxed at a higher rate. Burke & McCouch, *supra* note 13, at 1106. In contrast, for individuals with lower tax rates, the money may be more valuable now even if it is taxed. *Id.* IRAs also have gained prominence due to the growth of employer-offered retirement plans, such as 401(k)s, which permit employees to contribute a portion of their wages to retirement before paying taxes on them. *Id.* at 1104–05. Employees roll-over this portion of their wages into IRAs, and thus avoid triggering taxation. *Id.*

⁶³ I.R.C. § 408(o). The limits on allowed deductible contributions do not necessarily stop IRAs from growing to astronomical amounts. See Kaplan, *supra* note 3, at 289 (explaining that in spite of the caps on deductible contributions, IRA balances can still reach huge amounts). Rather, IRAs can grow to huge sizes for several reasons. *Id.* First, holders may roll-over large pension plans from an employer into IRAs. *Id.* Second, individuals eventually will consolidate numerous IRAs from the various positions they have held throughout their working careers. *Id.* at 290. Lastly, an increasing number of individuals are foregoing the more attractive capital gains rates for stock investments, and subsequently using these investments to fund their IRAs. *Id.* This allows for far greater IRA values, despite having to pay taxes at the less favorable, ordinary rates and potentially losing the tax-exempt accrual of gain. *Id.* at 290–91.

ments.⁶⁴ Taxpayers may choose to utilize Roth IRAs instead of or in addition to traditional IRAs, keeping in mind the difference with respect to each one's contribution limits.⁶⁵ Roth IRAs allow holders to contribute money, without taking a deduction, and then withdraw the money tax-free.⁶⁶ Therefore, in Roth IRAs, the owners pay taxes on the initial investment upfront rather than when they withdraw the money.⁶⁷

Holders must comply with strict eligibility requirements and contribution limits in order to take advantage of the tax benefits offered by IRAs.⁶⁸ Congress intended these limitations and requirements to ensure that the owners of IRAs are actually using them to save for retirement, rather than to take advantage of a tax-free savings vehicle.⁶⁹ The maximum amount that a holder can contribute to an IRA account in 2020 is \$6,000 if the holder is under the age of fifty, and \$7,000 if the holder is over the age of fifty.⁷⁰ If the account holder's earned income (i.e., income from wages or services provided) does not reach \$6,000,

⁶⁴ Sterk & Leslie, *supra* note 11, at 167.

⁶⁵ Burke & McCouch, *supra* note 13, at 1108. There is also a "Rollover IRA" in which the holder contributes money by "rolling over" from, or combining with, certain other retirement plans into a traditional IRA. *What Is an IRA?*, *supra* note 13.

⁶⁶ Burke & McCouch, *supra* note 13, at 1108.

⁶⁷ *Id.* Roth IRAs are better for those who believe that their taxes will be higher during retirement than while they are working. *Ultimate Guide to Retirement*, CNN MONEY, https://money.cnn.com/retirement/guide/IRA_Roth.moneymag/index7.htm [<https://perma.cc/D9SU-PPXC>]. Taxes may be higher in retirement, even though retirees no longer owe payroll taxes, because additional taxes may apply, such as net investment income tax or taxes on social security benefits. Darla Mercado, *Why Retirees' Tax Rates May Be Higher Than They Expect*, CNBC (Mar. 1, 2019), <https://www.cnbc.com/2018/10/05/why-retirees-tax-rates-may-be-higher-than-they-expect.html> [<https://perma.cc/Y666-LXBU>]. Furthermore, retirees are subject to the capital gains rate if they are using investments as a main source of income. *Id.* Another consideration is how much access owners desire because Roth IRAs do not have a penalty for early withdrawal, thereby making it easier to access funds. *Ultimate Guide to Retirement*, *supra*.

⁶⁸ Kaplan, *supra* note 3, at 289. Originally, Congress limited IRAs to employees whose employers did not provide pensions. *Id.* at 285. Congress wanted to encourage retirement planning even if employers did not provide for assistance themselves. *Id.* at 286. Given that IRA contributions cannot be in the form of property, stock cannot be contributed to an IRA. 2019 I.R.S. Pub. No. 590-A, *supra* note 14, at 10. Once a holder has placed money within an IRA, however, the IRA itself may purchase stock. *Id.*

⁶⁹ See Kaplan, *supra* note 3, at 285 (considering the appropriateness of tax benefits when IRAs are not used for retirement purposes). The use of IRAs as investment vehicles, without a connection to retirement saving, raises the issue of whether the accounts should still receive the benefit of tax deferral. *Id.*

⁷⁰ *Retirement Topics—IRA Contribution Limits*, IRS, <https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-ira-contribution-limits> [<https://perma.cc/VG9Q-4K7U>]. The contribution limit is equivalent to the total limit, regardless of how many traditional IRAs the owner possesses. 2019 I.R.S. Pub. No. 590-A, *supra* note 14, at 8–9. An owner under fifty years old may donate no more than six thousand dollars total to traditional IRAs. *Id.*

however, then the limit should be equal to the holder's taxable compensation.⁷¹ Although the owner generally is able to deduct the contributed amount in full, rules may limit the deductions for the following reasons: (1) if the account holder or their spouse is benefitting from a separate retirement plan offered through employment; or (2) if the account holder's income reaches a specified threshold.⁷²

There are two considerations with respect to withdrawing distributions from an IRA: when the holder is *allowed* to withdraw a distribution and when the holder is *required* to withdraw a distribution.⁷³ An account holder may withdraw money from a traditional IRA at any time, granted, however, that any withdrawals that occur before the holder is fifty-nine and a half years old are "early distributions."⁷⁴ Early distributions are subject to an extra ten percent tax on the amount withdrawn, in addition to the typical income tax.⁷⁵ The early distribution penalty is subject to certain exceptions, such as death or disability.⁷⁶ These exceptions exist for situations that have the same effect as retirement, given that the person taking the distribution is no longer in the workforce.⁷⁷ In addition, for policy reasons, there is no penalty for using an IRA distribution to buy a home, pay for education, or pay for medical expenses, subject to certain caps.⁷⁸ At the age of fifty-nine and a half years old, the account holder may withdraw money from an IRA as desired, and the withdrawals will only be subject to a traditional income tax.⁷⁹ Deferring taxation allows for significant tax savings because it

⁷¹ *Retirement Topics*, *supra* note 70. If an account holder makes contributions beyond these limits, that excess amount will be subject to a six percent tax if it remains in the account through the taxable year. *Id.*

⁷² *Id.*; *IRA Deduction Limits*, IRS, <https://www.irs.gov/retirement-plans/ira-deduction-limits> [<https://perma.cc/VV9J-J8AH>]. The deductions may be subject to "phaseout," meaning they will be limited or lost altogether, depending on the interplay between coverage by a separate retirement plan or income level. 2019 I.R.S. Pub. No. 590-A, *supra* note 14, at 12–13. The phaseout determination also considers the filing status of the owner for tax purposes. *Id.* at 13. For example, if an IRA owner that files jointly is covered by an employment retirement plan with an adjusted gross income of \$103,000 to \$123,000, the owner may take only a partial deduction for IRA contributions. *Id.*

⁷³ See 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 22 (explaining that distributions are allowed freely after the age of fifty-nine and a half years old, until the RBD).

⁷⁴ *Id.* at 6.

⁷⁵ *Id.* at 22.

⁷⁶ Kaplan, *supra* note 3, at 292–93.

⁷⁷ *Id.*

⁷⁸ *Id.* at 293.

⁷⁹ 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 22. For these withdrawals, taxes are paid on the entire amount withdrawn as ordinary income, regardless of whether the investment typically would be a capital gain. Kaplan, *supra* note 3, at 288, 291. There is no deduction for the contribution amount because the account holder did not pay taxes on the contributed money at the time the holder placed it into the account. *Id.* Capital gains are gains earned on capital assets, which generally includes stock. I.R.C. §§ 1221–1222 (West 2019). These gains are subject to more favorable tax rates than ordinary assets, with some restrictions. *Id.* This is not the case for Roth IRAs. Kaplan, *supra* note 3, at 289. Roth IRA withdrawals are split to take into account the portion the holder did not take a deduction for when he or she contributed the money to the Roth IRA. *Id.*

avoids paying taxes on the growth until the account holder is in a lower tax bracket in retirement.⁸⁰

The statutory framework that Congress provided indicates that it did not intend for IRAs to be a vehicle for inheritance; Congress merely intended for them to support an account holder in retirement and prevent reliance on government assistance to meet basic needs.⁸¹ In order to ensure that IRAs are in fact used for retirement rather than as a vehicle for inheritance, the statute includes provisions with regard to required distributions.⁸² The required beginning date (RBD) is the point at which the account holder must begin distributing the money.⁸³ Currently, the RBD occurs when the account holder reaches the age of seventy-two.⁸⁴ The account holder must take the first distribution by the first day of April after turning seventy-two.⁸⁵ The account holder must take any subsequent required distributions by the last day of December each year.⁸⁶

Statutory provisions governing IRAs set not only the account holder's RBD, but also the minimum amount that the account holder must withdraw annually.⁸⁷ The account holder calculates this amount, known as the required minimum distribution (RMD), each year by dividing the account balance on December 31 of the preceding year by the distribution period.⁸⁸ The account holder determines the distribution period using the tables in the Treasury Regulations or

⁸⁰ Burke & McCouch, *supra* note 13, at 1105. For example, many individuals open IRAs during peak working years while they are earning their highest income. Daniel Kurt, *When Not to Open a Roth IRA*, INVESTOPEDIA (Oct. 30, 2020), <https://www.investopedia.com/articles/personal-finance/040315/when-not-open-roth-ira.asp> [<https://perma.cc/U4PA-8FCM>]. As such, the benefit of a deferral, which reduces taxable income, would be highly desirable because it is unlikely that the retirement income of these individuals would be higher than their current income. *Id.* IRAs also boast further benefits, such as insulation from creditors during bankruptcy. Sterk & Leslie, *supra* note 11, at 218.

⁸¹ CHOATE, *supra* note 30, at 26.

⁸² See I.R.C. § 401(a)(9) (requiring that beneficiaries fully distribute IRAs within ten years of the account holder's death); CHOATE, *supra* note 30, at 260–61 (explaining what it means for an IRA to become an inherited IRA).

⁸³ 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 6.

⁸⁴ *Id.*

⁸⁵ *Id.* at 2, 6. The required beginning date (RBD) of seventy-two years of age took effect on January 1, 2020. Setting Every Community Up for Retirement Enforcement Act (SECURE Act), *incorporated into* Further Consolidated Appropriations Act, Pub. L. No. 116-94, § 114, 133 Stat. 2534 (2020). Prior to passage of the SECURE Act, the RBD was seventy and a half years old. *Id.*; 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 6.

⁸⁶ 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 6.

⁸⁷ *Id.*

⁸⁸ *Id.* at 6–7. Each year, the account holder must withdraw the required minimum distribution (RMD) amount, beginning with the year in which the account holder turns seventy-two. *Id.* at 2. If the account holder withdraws in excess of this minimum amount, the account holder cannot credit the excess to the RMD of the following year. *Id.* at 6. For example: an IRA holds \$100,000 on December 31, 2018 and the distribution period is twenty years. *Id.* The RMD for 2019 would be \$5,000, but suppose the account holder instead withdrew \$10,000. The extra five thousand dollars would not count towards the RMD for 2020. *Id.* Rather, the account balance merely would be less when calculating the RMD for 2020. *Id.*

in Appendix B of the IRS's Publication 590-B.⁸⁹ If the account holder takes less than the RMD for a given year, the amount of the RMD not taken is subject to a fifty percent tax.⁹⁰

B. Inherited IRAs

When an account holder dies, ownership of the IRA passes to the beneficiaries selected by the original holder.⁹¹ It is important that the money that beneficiaries withdraw from an inherited IRA trigger taxation because it is money that no one has paid taxes on yet.⁹² The inherited IRA cannot continue on as an IRA in which the beneficiaries put away more money for retirement.⁹³ A traditional IRA that becomes an inherited IRA can sometimes trigger different rules for determining the RMD for the beneficiary than those for the account holder.⁹⁴ Moreover, these rules differ depending on who the beneficiary is: the spouse, another individual, or an estate or trust.⁹⁵ Until recently, beneficiaries of inherited IRAs were able to extend these distributions over their own life expectancy based upon their age at inheritance.⁹⁶

In order to trigger taxation, the beneficiary must take yearly minimum distributions.⁹⁷ If death occurs prior to the initial account holder's RBD, then

⁸⁹ *Id.* at 45–62; Treas. Reg. § 1.401(a)(9)-9 (2019). Table III addresses IRAs owned by unmarried account holders, married account holders who have spouses that are less than ten years younger than them, and married account holders whose spouses are not the only beneficiary of the IRA. 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 62 tbl.III. In contrast, Table II addresses IRAs owned by married account holders who have spouses that are the sole beneficiaries of the IRA and are more than ten years younger than the holders. *Id.* at 47–61 tbl.II. Lastly, Table I is used for beneficiaries of IRAs. *Id.* at 45–46 tbl.I.

⁹⁰ 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 25.

⁹¹ Sterk & Leslie, *supra* note 11, at 176–77. An inherited IRA is one that has moved from the original owner into the hands of the beneficiary, due to the owner's death. CHOATE, *supra* note 30, at 261. The beneficiary inheriting the IRA must retitle the account to convey that the original account holder has died and this is now an inherited IRA. *Id.* at 260.

⁹² See I.R.C. § 219 (West 2019) (providing for deferral of taxation on gain for the beneficiaries of an inherited IRA until the money is distributed to account for the deduction of the account holder's contributions to the IRA); *id.* § 1001 (stating that a gain or loss must be taken into consideration when there is a "sale or other disposition" of an individual's property).

⁹³ *Understanding the Taxes on an Inherited IRA and the Inherited IRA Rules*, *supra* note 10.

⁹⁴ 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 8.

⁹⁵ *Id.*; CHOATE, *supra* note 30, at 260.

⁹⁶ James Lange, *Guide to Beating the New Death Tax: The End of the Stretch IRA*, FORBES (Dec. 26, 2019), <https://www.forbes.com/sites/jlange/2019/12/26/guide-to-beating-the-new-death-tax-the-end-of-the-stretch-ira/#af1654549e9b> [<https://perma.cc/66K2-JU6S>] (describing the stretch payout option and how it allowed beneficiaries to minimize the taxes on their money); Rachel L. Sheedy, *How Heirs Can Maximize an Inherited IRA*, KIPLINGER (May 2, 2018) <https://www.kiplinger.com/article/retirement/T021-C000-S004-how-heirs-can-maximize-an-inherited-ira.html> [<https://perma.cc/G5SM-RPKZ>] (explaining that the stretch payout option had the potential to provide for beneficiaries' retirement savings in addition to those of the owner).

⁹⁷ I.R.C. § 401(a)(9)(B)(i)–(iii).

no RMD is necessary for that year.⁹⁸ If death occurs after the RBD, then the year in which the death takes place does include an RMD and it is the beneficiaries' duty to take the RMD.⁹⁹ Different rules apply for distributions where the beneficiaries inherit the IRA and will depend on who the beneficiaries are and what their relationship is to the account holder.¹⁰⁰

Prior to the SECURE Act, there were two roads to distribution of the IRA: designated beneficiaries and non-designated beneficiaries.¹⁰¹ Designated beneficiaries are individuals or trusts that meet particular requirements.¹⁰² A designated beneficiary may be the account holder's spouse or some other individual.¹⁰³ To be a designated beneficiary, the account holder must have chosen an individual in a beneficiary designation form either by name or by identifiable class of beneficiaries.¹⁰⁴ If the account holder has not chosen anyone or if the chosen beneficiary is already deceased, then the plan may assign a default beneficiary.¹⁰⁵ As long as the default beneficiary is an individual, or a particular type of trust, it may still be considered a designated beneficiary.¹⁰⁶ Alternatively, a non-designated beneficiary is not an individual, rather, it is the account holder's estate, a charity, or some other entity.¹⁰⁷ Some IRAs provide that the account holder's estate be the default beneficiary.¹⁰⁸ Because an estate is not an individual, it cannot be considered a designated beneficiary, which

⁹⁸ 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 9.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 8–9.

¹⁰¹ Shah & Olivere, *supra* note 15, at 11.

¹⁰² *Id.* at 8 (citing Treas. Reg. § 1.401(a)(9)-4, Q&A (1) (2019)).

¹⁰³ Treas. Reg. § 1.401(a)(9)-4, Q&A (1); Shah & Olivere, *supra* note 15, at 8.

¹⁰⁴ I.R.C. § 401(a)(9)(E); Treas. Reg. § 1.401(a)(9)-4, Q&A (4)(a) (2019); CHOATE, *supra* note 30, at 104. There are multiple reasons, however, as to why a named beneficiary will not remain a beneficiary. 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 8. For example, a beneficiary may die prior to the determination. *Id.* Additionally, a beneficiary may choose to reject his or her inherited IRA interest. *Id.* Lastly, a beneficiary may have already taken the entire benefit prior to the determination. *Id.* If any of these circumstances arise, the determination of the designated beneficiary will not consider that particular beneficiary. *Id.*

¹⁰⁵ CHOATE, *supra* note 30, at 105. Beneficiaries also may disclaim the benefits if they do not want to receive them. *Id.*

¹⁰⁶ Treas. Reg. § 1.401(a)(9)-4; CHOATE, *supra* note 30, at 105; *see infra* notes 141–145 and accompanying text (describing the requirements for a trust to qualify as a designated beneficiary). To be a designated beneficiary, the beneficiary must be an *individual*, not an estate. Treas. Reg. § 1.401(a)(9)-4, Q&A (4)(a). There are, however, certain requirements that a trust must meet to qualify as a designated beneficiary. *Id.* Trusts that meet the requirements are referred to as “see-through” trusts because it is possible to look through the trust to identify the trust's individual beneficiaries. Shah & Olivere, *supra* note 15, at 15. Given that the individuals are clearly ascertainable via the trust, the trust beneficiaries become designated beneficiaries and can use their life expectancies to determine RMDs. *Id.*

¹⁰⁷ Treas. Reg. § 1.401(a)(9)-4, Q&A (3); Shah & Olivere, *supra* note 15, at 9.

¹⁰⁸ CHOATE, *supra* note 30, at 105.

thus leads to unfavorable tax consequences for the heirs of the deceased account holder's estate.¹⁰⁹

Therefore, the simple task of filling out the beneficiary designation form when opening an IRA has significant implications, in that holders may not consider nor understand the tax impact of their decisions when selecting a beneficiary.¹¹⁰ This is often the case because holders either think that they are too far away from death to worry about such implications, or because they assume that parts of their estate plan, such as a trust, will designate to whom the IRA goes.¹¹¹ Both of these assumptions, however, are incorrect.¹¹²

The failure to consider the implications of the identity of an IRA beneficiary can be an issue for several reasons.¹¹³ First, by the time holders approach retirement or begin to consider mortality, they may not remember who they named or how to change the beneficiary.¹¹⁴ The beneficiary designation, therefore, is extremely important, as the IRA's designation of a valid beneficiary

¹⁰⁹ *Id.* As a non-designated beneficiary, if the account holder dies prior to the RBD, then the inherited IRA is subject to the five-year rule and must be completely distributed within five years. Treas. Reg. § 1.401(a)(9)-3, Q&A (4)(a)(2); Shah & Oliver, *supra* note 15, at 9. If, however, the account holder dies after the RBD, then the non-designated beneficiary may continue taking RMDs calculated by the account holder's life expectancy. Treas. Reg. § 1.401(a)(9)-5, Q&A (5)(a)(2); Shah & Oliver, *supra* note 15, at 9. If an IRA is distributed through the estate, beyond unfavorable tax consequences, creditors of the estate also would be able to reach the IRA. Marilyn Lindblad, *Can Creditors Get an IRA When the IRA Owner Dies?*, POCKETSENSE (Apr. 19, 2017), <https://pocket.sense.com/can-creditors-ira-ira-owner-dies-3174.html> [<https://perma.cc/23F9-JE9P>].

¹¹⁰ See Sterk & Leslie, *supra* note 11, at 168–69 (suggesting that many account holders fill out the form when they aren't concerned with who will inherit the IRA from them, or they incorrectly assume that other estate planning documents will override the form).

¹¹¹ *Id.*; see Melanie B. Leslie & Stewart E. Sterk, *Revisiting the Revolution: Reintegrating the Wealth Transmission System*, 56 B.C. L. REV. 61, 77–78 (2015) (discussing the “form problem,” which is elevated in retirement account beneficiary designations, and occurs when individuals fill out forms without estate planning in mind, fail to update forms after major life changes, or fail to keep track of retirement accounts from former jobs). Beyond the initial failure to consider the implications of their beneficiary choice, holders also tend to fail to update their beneficiaries after important changes in their lives such as marriage, divorce, or children. Sterk & Leslie, *supra* note 11, at 169, 177. In order to change a beneficiary, the account holder must complete a change of beneficiary designation form. *Id.* at 177. Attempts to change the beneficiary through other legal documents, even estate planning documents such as wills, are not effective. *Id.* at 177–78.

¹¹² See Sterk & Leslie, *supra* note 11, at 169 (describing unadvised, inadequate beneficiary designations as impending catastrophes).

¹¹³ See *id.* at 168–69 (noting that implications could include having to probate the IRA or the IRA passing to an unintended beneficiary due to lack of update).

¹¹⁴ *Id.* at 168. If an IRA owner wants to change the beneficiary of their IRA, they must contact the investment firm that manages their account and request a beneficiary change form. Kathryn Hatter, *Can You Change the Beneficiaries of an IRA Account?*, ZACKS, <https://finance.zacks.com/can-change-beneficiaries-ira-account-1078.html> [<https://perma.cc/N4DS-N3UA>]. The owner must then fill out the form, including the account number, the primary beneficiaries, their respective percentages, and any contingent beneficiaries. *Id.* Finally, the owner must mail that form back to the investment firm. *Id.*

has the benefit of avoiding probate.¹¹⁵ The beneficiary decision is even more important now with the passage of the SECURE Act.¹¹⁶

Overall, the tax treatment of inherited IRAs varies depending on the identity of the designated beneficiary or beneficiaries.¹¹⁷ For example, distribution requirements differ depending on whether the beneficiary is the account holder's spouse, a non-spousal individual, the estate of the account holder, or a charity—all of which create different tax implications.¹¹⁸ Nevertheless, the SECURE Act primarily affects the treatment of non-spousal individual beneficiaries.¹¹⁹

C. The Traditional Taxation of Inherited IRAs

Although all of the different distribution requirements for inherited IRA beneficiaries are important, the differences in distribution rules between spouse and non-spousal beneficiaries of inherited IRAs are extremely important.¹²⁰ These differences can lead beneficiaries to make mistakes that may subject them to penalties or further taxes, which could significantly impact, for example, a surviving spouse's ability to have a fixed income.¹²¹ It is likely, moreover, that within two decades spouses or other heirs will inherit the majority of IRAs based on the life expectancy rates of the Baby Boomer generation.¹²²

For non-designated beneficiaries, such as charities and estates, if the account holder passes away after his or her RBD, then the RMDs will continue over the remainder of the account holder's life expectancy.¹²³ If the account holder passes away before his or her RBD, then the beneficiary must distribute

¹¹⁵ See Sterk & Leslie, *supra* note 11, at 169, 177 (emphasizing that many account holders do not acknowledge the importance of beneficiary designations). Probate is the legal process that ensures the proper distribution of a person's assets once they die. Adam Christopher Aparicio, *What Is the Purpose of Probate?*, AVVO (Feb. 21, 2011), <https://www.avvo.com/legal-guides/ugc/what-is-the-purpose-of-probate> [<https://perma.cc/4YCC-UD9V>]; Julia Kagan, *Probate Court Definition*, INVESTOPEDIA (Jun. 20, 2020), <https://www.investopedia.com/terms/p/probate-court.asp> [<https://perma.cc/232V-WMNJ>]. The process of probate is lengthy with even uncontested cases taking at least ten months and some as many as eighteen. Aparicio, *supra*.

¹¹⁶ See *supra* notes 110–111 and accompanying text (explaining the importance of giving serious attention to the beneficiary designation form); *supra* notes 113–115 and accompanying text (describing the importance of the beneficiary's identity, as this will determine the tax treatment of the inherited IRA).

¹¹⁷ Sterk & Leslie, *supra* note 11, at 176–77; *Understanding the Taxes on an Inherited IRA and the Inherited IRA Rules*, *supra* note 10.

¹¹⁸ 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 8; CHOATE, *supra* note 30, at 260.

¹¹⁹ Setting Every Community Up for Retirement Enforcement Act (SECURE Act), *incorporated into* Further Consolidated Appropriations Act, Pub. L. No. 116-94, § 401, 133 Stat. 2534 (2020); Shah & Olivere, *supra* note 15, at 7.

¹²⁰ See 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 8 (stating that a spousal beneficiary can act as the IRA owner, rather than the beneficiary, but that other beneficiaries cannot treat the IRA as their own).

¹²¹ *Id.* at 20.

¹²² *Understanding the Taxes on an Inherited IRA and the Inherited IRA Rules*, *supra* note 10.

¹²³ Shah & Olivere, *supra* note 15, at 9.

the IRA in its entirety within five years of the holder's death.¹²⁴ This is known as the "five-year rule."¹²⁵

For designated beneficiaries, on the other hand, there were different options prior to the passage of the SECURE Act.¹²⁶ Under the old rules, a spousal beneficiary had three options.¹²⁷ Spousal beneficiaries could treat the IRA as their own, they could roll it over into their own existing account, or they could choose to remain a beneficiary.¹²⁸ If the spousal beneficiary remained a beneficiary, the IRA then became an inherited IRA and the beneficiary was entitled to the "stretch payout."¹²⁹ The stretch payout allowed beneficiaries to stretch the distributions over their lifetimes rather than the original account holder's lifetime.¹³⁰

A non-spousal beneficiary who inherited an IRA from someone, such as a parent, had fewer options than a spousal beneficiary.¹³¹ Non-spousal beneficiaries were not able to consider the IRA their own and they were not able to contribute to the IRA.¹³² Further, non-spousal beneficiaries could not roll-over IRA distributions into different IRAs or back into the same IRA.¹³³ Rather, these beneficiaries could only receive IRA distributions throughout their remaining lifetime.¹³⁴ Before passage of the SECURE Act, these distributions were taken in the form of a stretch payout.¹³⁵ In other words, upon inheritance of the IRA, the beneficiary would be required to take distributions each year based on the beneficiary's own single life expectancy.¹³⁶ This allowed for the

¹²⁴ *Id.*

¹²⁵ 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 9; Shah & Olivere, *supra* note 15, at 9. Specifically, the five-year rule requires that by December 31st in the year that marks five years since the account holder's death, the beneficiaries withdraw the entirety of the IRA. I.R.S. Pub. No. 590-B, 9.

¹²⁶ Shah & Olivere, *supra* note 15, at 7.

¹²⁷ 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 5.

¹²⁸ *Id.* If spousal beneficiaries contribute to the IRA and do not take the required minimum distribution each year, they will be viewed as treating the IRA as a new personal IRA. *Id.* This, in turn, will make the spousal beneficiary the new owner of the IRA. *Id.* In contrast, if the spousal beneficiary rolls the IRA into an existing IRA, it simply combines the inherited account and the existing IRA. *Id.*

¹²⁹ *Id.* at 5, 9.

¹³⁰ *Id.* at 5.

¹³¹ *Id.*; Shah & Olivere, *supra* note 15, at 11.

¹³² 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 5.

¹³³ Compare I.R.C. § 402(c)(4)(B) (West 2019) (providing that "any distribution to the extent such distribution is required under section 401(a)(9)" is not an eligible roll-over distribution), and *id.* § 408(d)(3)(C) (stating that roll-over treatment is denied for inherited IRAs if the beneficiary is not the surviving spouse), and CHOATE, *supra* note 30, at 262 (describing the inability of non-spousal beneficiaries to roll-over distributions), with I.R.C. § 402(c)(9) (allowing spouses to roll-over distributions as if they were the account holders). Although there are several exceptions, generally no roll-overs are allowed for non-spousal beneficiaries. CHOATE, *supra* note 30, at 262–63.

¹³⁴ 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 5.

¹³⁵ Shah & Olivere, *supra* note 15, at 7.

¹³⁶ 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 45 tbl.I; Shah & Olivere, *supra* note 15, at 11. If the owner dies prior to the RBD, the beneficiary's life expectancy determines the required distribution amounts. 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 5. If the owner dies on or after the RBD, then

beneficiary to have lifetime benefits from the inherited IRA, while also providing the option to receive funds immediately.¹³⁷ The stretch payout allowed for continued tax deferral because the IRA could continue to grow through investments and the beneficiary only had to pay taxes on the RMDs.¹³⁸ Further, the RMD amounts were less because beneficiaries could use their own life expectancies, which allowed for even more tax deferral and account growth throughout the remainder of their lives.¹³⁹

The last type of beneficiary tax treatment that the SECURE Act has impacted are trusts.¹⁴⁰ In general, a trust cannot be a designated beneficiary unless it meets four conditions.¹⁴¹ First, a trust must either be valid under state law, or become valid upon being funded.¹⁴² Second, it must be irrevocable, meaning that the terms are unmodifiable, or must become irrevocable upon the death of the owner.¹⁴³ Third, the beneficiaries of the trust must be identifiable.¹⁴⁴ Lastly, the trustee must provide all documents required by the custodian of the IRA.¹⁴⁵ If the trust meets these four conditions, then the beneficiaries of

the calculation of the RMD is based on whichever life expectancy is longer between the owner's life expectancy and that of the beneficiary. *Id.* This does not mean, however, that the beneficiary can wait until his or her own RBD; rather, it means that the beneficiary's RMD amount will be less because the distributions will stretch out over the beneficiary's life expectancy. *Lange, supra* note 96.

¹³⁷ Moore, *supra* note 18.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ See 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 12 (outlining the requirements for a trust to be a designated beneficiary and describing how to determine the required distributions when a trust is a beneficiary); Shah & Olivere, *supra* note 15, at 15 (explaining that the SECURE Act requires complete pay out of the plan within ten years, which will be taxed at the trust tax rates).

¹⁴¹ 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 12; Treas. Reg. § 1.401(a)(9)-4, Q&A (5) (2019); Shah & Olivere, *supra* note 15, at 15. Trusts meeting these four conditions are referred to as "see-through" trusts because it is possible to see through them and identify the beneficiaries. Shah & Olivere, *supra* note 15, at 15. Those beneficiaries, moreover, can be designated beneficiaries. *Id.*

¹⁴² 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 12; Treas. Reg. § 1.401(a)(9)-4, Q&A (4); Shah & Olivere, *supra* note 15, at 15.

¹⁴³ I019 I.R.S. Pub. No. 590-B, *supra* note 15, at 12; Treas. Reg. § 1.401(a)(9)-4, Q&A (4); Shah & Olivere, *supra* note 15, at 15.

¹⁴⁴ 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 12; Treas. Reg. § 1.401(a)(9)-4, Q&A (4); Shah & Olivere, *supra* note 15, at 15. A trust's beneficiaries are identifiable if it is possible to look through the trust and identify the ultimate individual beneficiaries of the trust. Shah & Olivere, *supra* note 15, at 15.

¹⁴⁵ 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 12; Treas. Reg. § 1.401(a)(9)-4, Q&A (4); Shah & Olivere, *supra* note 15, at 15. The trustee is the individual who is assigned to handle the assets held in the trust. *Understanding the Duties and Responsibilities of a Trustee*, ESTATEPLANNING.COM, <https://www.estateplanning.com/Duties-and-Responsibilities-of-a-Trustee/> [<https://perma.cc/MQ9M-VSNV>]. The custodian of an IRA is a financial institution, in which the account sits, and is responsible for maintaining the required regulatory adherence. Jim Probasco, *Retirement Tips: How to Choose the Best IRA Custodian*, INVESTOPEDIA (Dec. 11, 2019), <https://www.investopedia.com/articles/personal-finance/091015/retirement-tips-how-choose-best-ira-custodian.asp> [<https://perma.cc/M76T-LHBQ>].

the trust are designated beneficiaries.¹⁴⁶ Next, under the old rules, the beneficiaries would identify which beneficiary has the shortest life expectancy, and then each of the beneficiaries would calculate their RMDs according to that life expectancy.¹⁴⁷ Furthermore, if the beneficiary is a trust, then whomever is named as the primary beneficiary of that trust will typically lock in the RMD based upon the oldest beneficiary's age.¹⁴⁸ As a result, the required distributions each year for all beneficiaries of the trust would be based upon the oldest beneficiary's life expectancy.¹⁴⁹ This rule applies even in the case of an open class of beneficiaries, wherein more beneficiaries may be born and thus may have a longer life expectancy than that of the oldest beneficiary identified at the time of the account holder's death.¹⁵⁰ Moreover, some states specifically have stated that wills and trusts cannot provide for the distribution of retirement accounts.¹⁵¹

Thus, prior to the SECURE Act, when a designated beneficiary inherited an IRA, the beneficiary could stretch the distributions out over the lifetime of the beneficiary.¹⁵² If there were multiple designated beneficiaries, the stretch payout still applied, and if there was no trust, then each beneficiary's own life expectancy factored into calculating the RMDs.¹⁵³

D. The SECURE Act

The SECURE Act went into effect on January 1, 2020.¹⁵⁴ The Act covers various aspects of retirement planning and attempted to adjust rules to account for the longer working lives and life expectancies of Americans.¹⁵⁵ Although the overall goal of the SECURE Act is to better prepare people for retirement,

¹⁴⁶ CHOATE, *supra* note 30, at 415.

¹⁴⁷ See *id.* (explaining that the beneficiary of the trust with the shortest life expectancy must be identifiable in order to determine the required distributions).

¹⁴⁸ Treas. Reg. §§ 1.401(a)(9)-4, A-5(c), 1.401(a)(9)-5, A-7(a)(1); CHOATE, *supra* note 30, at 415.

¹⁴⁹ Treas. Reg. § 1.401(a)(9)-4, A-5(c); CHOATE, *supra* note 30, at 415. Once an IRA becomes an inherited IRA and if the beneficiary is a non-spousal beneficiary, the RMDs will begin immediately. Sheedy, *supra* note 96. The beneficiary does not have the benefit of waiting until reaching his or her own RBD date. *Id.*

¹⁵⁰ See Treas. Reg. § 1.401(a)(9)-5, A-7(a)(1) (providing that when there is more than one beneficiary, the oldest beneficiary's life expectancy is used to determine all of the beneficiaries' required distributions); CHOATE, *supra* note 30, at 415 (same). For example, if the beneficiaries of the trust are "all of my children and grandchildren," it is possible that more grandchildren will be born after the account holder's death. CHOATE, *supra* note 30, at 415. The life expectancy for calculating RMDs, however, would have been the oldest child's life expectancy. *Id.*

¹⁵¹ Sterk & Leslie, *supra* note 11, at 168.

¹⁵² Shah & Olivere, *supra* note 15, at 8, 11.

¹⁵³ CHOATE, *supra* note 30, at 107.

¹⁵⁴ Setting Every Community Up for Retirement Enforcement Act (SECURE Act), *incorporated into* Further Consolidated Appropriations Act, Pub. L. No. 116-94, § 101, 133 Stat. 2534 (2020).

¹⁵⁵ See Hopkins, *supra* note 2 (outlining the SECURE Act's major changes, such as extension of the RBD from seventy and a half years old to seventy-two years old and allowing contributions to continue past the RBD).

certain sections aim to increase tax revenue.¹⁵⁶ The Act affects retirement planning in numerous ways, including increasing the availability of retirement plans for small businesses, increasing the age at which distribution of retirement benefits is required, and expanding tax-free withdrawal opportunities.¹⁵⁷ In recognition of the increased number of years in the workforce as a result of increased life expectancy, the Act allows contributions to IRAs to continue even after the RBD and also extends the RBD from seventy and a half years old to seventy-two years old.¹⁵⁸ The Act offers new penalty exemptions for certain early withdrawals such as birth or adoption of a child.¹⁵⁹ Nevertheless, the SECURE Act also eliminates the stretch payout option, which will impact many individuals as the Baby Boomer generation passes IRAs to their beneficiaries over the next two decades.¹⁶⁰

The changes made by the SECURE Act to inherited IRAs aim to increase tax revenue.¹⁶¹ Elimination of the stretch payout option is one example of this.¹⁶² A beneficiary of an inherited IRA must distribute the account completely within ten years from the account holder's death, rather than stretching the distributions out for the beneficiary's remaining lifetime.¹⁶³ This ten-year requirement could force beneficiaries to distribute a large amount of money

¹⁵⁶ See REPORT ON THE SECURE ACT, *supra* note 5, at 104–08 (listing the removal of the stretch payout under the section for “Revenue Provisions” and explaining that having the tax subsidy for retirement saving end with the account holder provides the reason behind removing the stretch payout option for beneficiaries); Hopkins, *supra* note 2 (describing the stretch payout option removal as a “tax revenue generator” that will trigger a substantial amount of taxes).

¹⁵⁷ Hopkins, *supra* note 2. The SECURE Act increases the availability of retirement plans for small businesses by raising the cap on tax credits from \$500 to \$5,000, thereby decreasing the cost of starting a retirement plan. REPORT ON THE SECURE ACT, *supra* note 5, at 50; Mengle, *supra* note 36. These tax credits are intended to make it more feasible for small businesses to get retirement plans funded so that more individuals will be able to benefit from retirement accounts. Mengle, *supra* note 36.

¹⁵⁸ Hopkins, *supra* note 2. By expanding tax-free withdrawal opportunities, the SECURE Act makes IRA funds more accessible to owners, which in turn allows them to save for retirement without fearing that their money will be inaccessible when they need it. Mengle, *supra* note 36.

¹⁵⁹ Hopkins, *supra* note 2.

¹⁶⁰ See Setting Every Community Up for Retirement Enforcement Act (SECURE Act), *incorporated into* Further Consolidated Appropriations Act, Pub. L. No. 116-94, § 401, 133 Stat. 2534 (2020) (removing the stretch payout option for non-spousal beneficiaries of inherited IRAs); Hopkins, *supra* note 2 (noting that the new distribution rules for inherited IRAs will cause high taxes for many individuals).

¹⁶¹ See Hopkins, *supra* note 2 (describing the elimination of the stretch payout option as a “tax revenue generator”); Saunders, *supra* note 2 (stating that the changes to tax rules for inherited IRAs will raise \$15.7 billion in revenue over the next decade); Sonzogni, *supra* note 2 (explaining that the \$15.7 billion revenue will help pay for the other provisions of the SECURE Act).

¹⁶² See Hopkins, *supra* note 2 (explaining that elimination of the stretch payout will increase tax revenue); Saunders, *supra* note 2 (pointing out that the stretch payout's elimination is expected to raise \$15.7 billion from taxes over the next decade); Sonzogni, *supra* note 2 (same).

¹⁶³ Hopkins, *supra* note 2.

while they are in peak working years and occupying higher tax brackets.¹⁶⁴ This change also restricts the amount of tax-deferred growth that is available once an account holder passes away.¹⁶⁵

The ten-year rule will force IRA holders to consider different factors during estate planning.¹⁶⁶ Particularly, account holders and their advisers will have to weigh estate planning strategies and goals against tax strategies and goals.¹⁶⁷ As a result of the ten-year rule, it is no longer possible to pass on accumulated wealth through an IRA, nor is it possible to spread out the taxation of that wealth.¹⁶⁸ This change means that in certain scenarios, it may better serve an account holder's goals to leave the IRA to a trust, even though it may be taxed at a higher rate.¹⁶⁹ The holder may prefer this option to forcing the IRA's beneficiaries to inherit that money over a shorter time period, which in turn could force them to pay taxes at inopportune times.¹⁷⁰

The government's intent in creating IRAs was to help prepare people for retirement—not help people build up vast inheritances for their beneficiar-

¹⁶⁴ *Id.*

¹⁶⁵ See REPORT ON THE SECURE ACT, *supra* note 5, at 108 (explaining the Committee's opinion that Congress should phase down the tax benefit for beneficiaries of IRAs). This aligns with the purported intent of IRAs to act as retirement savings instruments, rather than inheritance instruments. Singletary, *supra* note 19; Szala, *supra* note 19.

¹⁶⁶ Shah & Olivere, *supra* note 15, at 17.

¹⁶⁷ See *id.* (explaining that estate planning goals must sometimes take priority over other strategies). For example, when the beneficiary of an IRA is a trust and the IRA distributes money into that trust, which remains there—rather than being distributed by the trustee to the trust's beneficiaries—for more than one year, then the money must be taxed at the unfavorable trust rates. *Id.* There may be times, however, when it will make more sense to keep the money in the trust so that it is protected, even if this means paying higher tax rates. *Id.*

¹⁶⁸ REPORT ON THE SECURE ACT, *supra* note 5, at 108; Leon LaBrecque, *New Proposed Stretch IRA Rules Will Have a Big Effect on IRAs and It Could Cost Your Kids Thousands*, FORBES (Apr. 23, 2019), <https://www.forbes.com/sites/leonlabrecque/2019/04/23/new-proposed-stretch-ira-rules-will-have-a-big-effect-on-iras-and-it-could-cost-your-kids-thousands/#b7d06952233a> [<https://perma.cc/SBC7-86SD>]; Shah & Olivere, *supra* note 15, at 7; Szala, *supra* note 19.

¹⁶⁹ See Shah & Olivere, *supra* note 15, at 17 (explaining that estate planning considerations might need to win out over tax considerations in some instances). Under the SECURE Act, for trusts to be designated beneficiaries, they still must meet the four criteria. See *supra* notes 141–147 and accompanying text (outlining the requirements for a trust to qualify as a designated beneficiary). Further, a qualifying trust still will be subject to the ten-year rule. REPORT ON THE SECURE ACT, *supra* note 5, at 108. The custodian, therefore, must distribute the IRA in full to the trust within ten years following the death of the account holder. *Id.* If in the same year that the money is distributed to the trust, the trust distributes its funds to the beneficiaries of the trust, then those individuals are responsible for paying taxes on the money at their individual tax rates. Treas. Reg. § 1.401(a)(9)-4 (2019); Shah & Olivere, *supra* note 15, at 17. If the trust, however, holds onto the money for more than one year, the money will be taxed at a higher tax rate than the beneficiaries' individual tax rates. Treas. Reg. § 1.401(a)(9)-4; Shah & Olivere, *supra* note 15, at 17.

¹⁷⁰ See Shah & Olivere, *supra* note 15, at 17 (suggesting that the holder of an IRA might decide that higher taxes is an acceptable option to prevent the beneficiaries from coming into a large amount of money and tax impact unexpectedly).

ies.¹⁷¹ Once an IRA owner dies and the account transfers over to a beneficiary, it is no longer a retirement account; rather, it is a form of inheritance and therefore does not retain the intended function of an IRA.¹⁷² Currently, Baby Boomers in the United States hold a large amount of wealth in IRAs.¹⁷³ Therefore, elimination of the stretch payout option will generate tax revenue over the remainder of the Baby Boomer generation's life expectancy.¹⁷⁴

II. IT'S A MARATHON, NOT A SPRINT: SHORT-TERM REVENUE V. LONG-TERM SECURITY

The Baby Boomer generation is comprised of over seventy million individuals, and retirement is looming in the near future for many of them.¹⁷⁵ Moreover, forty-six percent of Americans are concerned about their financial security in retirement.¹⁷⁶ The fact that social security funds are becoming insufficient to provide support to the vast number of Americans who expect the support as they approach retirement worsens this concern.¹⁷⁷ Thus, it appears that many will require additional government assistance in retirement.¹⁷⁸ This reality creates two issues: (1) how the government will help people better prepare for retirement; and (2) whether short-term revenue generated by the elimination of the stretch payout is better than the long-term security provided by the stretch payout to beneficiaries.¹⁷⁹ Section A of this Part discusses the government's attempt to address these problems through the enactment of the SECURE Act.¹⁸⁰ Section B explores the considerations surrounding short-term revenue provisions, specifically the elimination of the stretch payout.¹⁸¹ Section C examines the contrasting considerations for long-term security.¹⁸²

¹⁷¹ Szala, *supra* note 19.

¹⁷² See Sterk & Leslie, *supra* note 11, at 176–77 (explaining the steps that are required to pass an IRA to a beneficiary after an account holder's death).

¹⁷³ See *Understanding the Taxes on an Inherited IRA and the Inherited IRA Rules*, *supra* note 10 (discussing the vast amount of savings that are currently held in IRAs). The Baby Boomer generation is responsible for 39%, or approximately \$2.1 trillion, of the \$5.4 trillion held in IRAs. *Id.*

¹⁷⁴ See *id.* (explaining that as the Baby Boomer generation ages, much of this money will soon pass to beneficiaries).

¹⁷⁵ *Boomers, Gen X, Gen Y, and Gen Z Explained*, KASASA, <https://www.kasasa.com/articles/generations/gen-x-gen-y-gen-z> [<https://perma.cc/W4MU-DTH9>].

¹⁷⁶ Newport, *supra* note 6.

¹⁷⁷ Goss, *supra* note 53, at 111.

¹⁷⁸ Fuscaldo, *supra* note 56; see Goss, *supra* note 53, at 113 (analyzing the pending deficiency in available social security funds).

¹⁷⁹ Compare Saunders, *supra* note 2 (explaining that the elimination of the stretch payout option is expected to provide \$15.7 billion in revenue over the next decade), with LaBrecque, *supra* note 168 (discussing the serious, negative financial impact of this change on beneficiaries of inherited IRAs).

¹⁸⁰ See *infra* notes 183–202 and accompanying text.

¹⁸¹ See *infra* notes 203–218 and accompanying text.

¹⁸² See *infra* notes 219–234 and accompanying text.

A. Give 'Em a Break: Legislation Provides Tax Breaks to Better Support Retirement Saving

The enactment of the SECURE Act indicates that Congress recognized that the retirement problem in the United States is real and that it should have a role in solving it.¹⁸³ The SECURE Act's strong bipartisan support, moreover, demonstrates that this is a concern for Americans across party lines and affects all classes of people.¹⁸⁴ An important consideration, however, is that when the government enacts policy to help individuals save for retirement through various tax-favored investment options, those tax-favored options must be counterbalanced by provisions that generate revenue.¹⁸⁵

When the government offers tax-favored investments, it is a form of tax expenditure.¹⁸⁶ Tax expenditures arise when Congress decides to allow losses in revenue through tax provisions that give people special savings, such as an exclusion, deduction, or a tax deferral.¹⁸⁷ Deduction and tax deferral are forms of tax expenditures that benefit IRAs.¹⁸⁸ When account holders put money they have earned through work into an IRA, they then deduct that amount from their gross income and either wait or defer tax payment on that money until they withdraw it from the account in the future.¹⁸⁹

¹⁸³ REPORT ON THE SECURE ACT, *supra* note 5, at 30; Iwry et al., *supra* note 1; Portman, *supra* note 7.

¹⁸⁴ See Sarah O'Brien, *Bipartisan Retirement Bill Clears House, Moves Closer to Becoming Law*, CNBC (May 23, 2019), <https://www.cnbc.com/2019/05/23/bipartisan-retirement-bill-clears-house-moves-closer-to-becoming-law.html> [<https://perma.cc/HE73-KLB6>] (describing the SECURE Act as a "bipartisan retirement bill").

¹⁸⁵ See REPORT ON THE SECURE ACT, *supra* note 5, at 104 (listing the new rules for beneficiaries of inherited IRAs as "[r]evenue [p]rovisions"); STAFF OF S. COMM. ON FIN., 116TH CONG., RETIREMENT ENHANCEMENT & SAVINGS ACT OF 2019, at 41 (Comm. Print 2019) [hereinafter RETIREMENT ENHANCEMENT & SAVINGS ACT] (same).

¹⁸⁶ *Tax Expenditures*, U.S. DEP'T OF THE TREASURY, <https://home.treasury.gov/policy-issues/tax-policy/tax-expenditures> [<https://perma.cc/F8ET-DPXN>]; see REPORT ON THE SECURE ACT, *supra* note 5, at 104 (describing the provision eliminating the stretch payout as a revenue provision).

¹⁸⁷ *Tax Expenditures*, *supra* note 186. Tax expenditures are a way for the government to help people without directly spending money. *Id.* As such, they act as government surrogates for directing financial outlays, and are used to support groups or activities that the government considers preferable. *What Are Tax Expenditures and How Are They Structured?*, TAX POL'Y CTR., <https://www.taxpolicycenter.org/briefing-book/what-are-tax-expenditures-and-how-are-they-structured> [<https://perma.cc/9Z3K-T685>].

¹⁸⁸ Burke & McCouch, *supra* note 13, at 1105; Sterk & Leslie, *supra* note 11, at 174–75. Tax expenditures are extremely costly for the federal government. *Policy Basics: Federal Tax Expenditures*, CTR. ON BUDGET & POL'Y PRIORITIES (Nov. 18, 2019), <https://www.cbpp.org/research/federal-tax-policy-basics-federal-tax-expenditures> [<https://perma.cc/7DSS-GPBE>]. Tax expenditures lose close to \$1.4 trillion in tax revenue per year. *Id.* They are utilized, however, to support various policy goals, such as increasing retirement saving. *Id.* Thus, although the federal government is not directly spending money, the distinction is, in fact, fabricated. *Id.*

¹⁸⁹ 2019 I.R.S. Pub. No. 590-A, *supra* note 14, at 10; 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 6. A deduction occurs when an individual removes an amount from his or her taxable income in the

When Congress searches for ways to offset revenue losses caused by tax expenditures, it tends to focus on areas that it can change without receiving too much pushback from opponents or constituents.¹⁹⁰ With respect to retirement savings, Congress chose the stretch payout option because it was already viewed as a loophole.¹⁹¹ Congress attempted to balance the elimination of the stretch payout by allowing account holders to make contributions even after distributions began and by increasing the RBD to seventy-two years old.¹⁹²

In early 2019, Congress began working towards a plan to help Americans save for retirement.¹⁹³ At the same time, the Committee on Finance in the Senate was considering the Retirement Enhancement and Savings Act (RESA) of 2019.¹⁹⁴ RESA included similar, but less expansive provisions to what eventually became the SECURE Act.¹⁹⁵ Like the SECURE Act, the tax expenditures in RESA required funding from some sort of revenue-generating provision.¹⁹⁶ To accomplish this, RESA proposed a mandatory withdrawal period for design-

year it is earned, so that it is not currently taxed. I.R.C. § 219 (West 2019). If the individual pays taxes on that amount later, it is considered to be a deferral. Sterk & Leslie, *supra* note 11, at 171.

¹⁹⁰ Brian Anderson, *Concerns Over SECURE Act Annuity, Stretch IRA Provisions*, 401(K) SPECIALIST (June 3, 2019), <https://401kspecialistmag.com/annuity-stretch-ira-provisions-spark-only-secure-act-fights/> [https://perma.cc/LRT5-DAHf].

¹⁹¹ *Id.* Some legislators saw the stretch payout as a means to pass along wealth rather than merely save for retirement. Singletary, *supra* note 19; Szala, *supra* note 19. Under this view, the stretch payout provided a loophole for passing along wealth in a tax-favorable manner, as opposed to saving for the owner's retirement. Singletary, *supra* note 19; Szala, *supra* note 19.

¹⁹² Setting Every Community Up for Retirement Enforcement Act (SECURE Act), *incorporated into* Further Consolidated Appropriations Act, Pub. L. No. 116-94, 133 Stat. 2534 (2020). By delaying the RBD and allowing for further deductible contributions, Congress sought to tilt the balance of the IRA's accomplishments back toward retirement saving for the owner rather than wealth preservation for their beneficiaries. *Compare* REPORT ON THE SECURE ACT, *supra* note 5, at 53, 74 (explaining the reasons for the change as accommodating for increased life expectancy and creating the ability to produce additional retirement savings), *with id.* at 108 (describing the tax benefit of IRAs, which is intended to help individuals and their families during retirement, and stating that the benefit should be phased down after the deaths of the IRA owners and their surviving spouses).

¹⁹³ H.R. 1007, 116TH CONG. (2019); REPORT ON THE SECURE ACT, *supra* note 5, at 30; *see* O'Brien, *supra* note 184 (describing the bipartisan nature of the SECURE Act and its goal of helping people save for retirement).

¹⁹⁴ H.R. 1007; RETIREMENT ENHANCEMENT & SAVINGS ACT, *supra* note 185.

¹⁹⁵ *See* SECURE Act §§ 101–601 (addressing multiple employer plans, rules relating to the election of the safe harbor 401(k), small employer automatic enrollment credits, and more); RETIREMENT ENHANCEMENT & SAVINGS ACT, *supra* note 185 (same). *But see* SECURE Act §§ 113, 114 (providing also for penalty-free withdrawals for child birth or adoption and increasing the date for the RBD). The Retirement and Enhancement Savings Act (RESA) lacked certain provisions that were included in the SECURE Act, such as the increase in RBD from seventy and a half years old to seventy-two years old. REPORT ON THE SECURE ACT, *supra* note 5, at 71; RETIREMENT ENHANCEMENT & SAVINGS ACT, *supra* note 185; O'Brien, *supra* note 184.

¹⁹⁶ H.R. 1007; O'Brien, *supra* note 184.

nated beneficiaries of five years.¹⁹⁷ The Finance Committee was still considering this plan when the SECURE Act moved from the House to the Senate.¹⁹⁸

The SECURE Act and RESA indicate that Congress was looking to support and encourage retirement saving.¹⁹⁹ Nevertheless, the government deprives itself of revenue when it implements initiatives that involve tax expenditures.²⁰⁰ To make up for this loss in revenue, the SECURE Act eliminated the stretch payout option for designated beneficiaries.²⁰¹ The elimination of the stretch payout is estimated to raise \$15.7 billion, which will help pay for the tax expenditures provided in the rest of the Act.²⁰²

B. Immediate Gratification: Short-Term Revenue Is Best

Because both RESA and the SECURE Act included the elimination of the stretch payout option for inherited IRAs, it is evident that Congress deemed the stretch payout to be the best area for generating revenue to offset tax expenditures.²⁰³ Specifically, the elimination of the stretch payout is a revenue generating provision that was intended to make up for the revenue that may be lost as a result of more Americans paying into tax-deferred retirement accounts, such as IRAs.²⁰⁴ The size and age of the Baby Boomer generation is the reason for

¹⁹⁷ H.R. 1007; O'Brien, *supra* note 184. A five-year withdrawal period would have been a complete abandonment of any sort of "stretch" because non-designated beneficiaries must distribute the inherited IRA within five years from the death of the original account holder. 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 9; Shah & Olivere, *supra* note 15, at 11.

¹⁹⁸ O'Brien, *supra* note 184.

¹⁹⁹ See H.R. 1007 (stating that the committee's intention was to amend the tax code "to encourage retirement savings"); REPORT ON THE SECURE ACT, *supra* note 5, at 1 (same).

²⁰⁰ Sonzogni, *supra* note 2; *Policy Basics*, *supra* note 188.

²⁰¹ REPORT ON THE SECURE ACT, *supra* note 5, at 104–09; Sonzogni, *supra* note 2; Szala, *supra* note 19.

²⁰² Sonzogni, *supra* note 2. Although this will help pay for the tax expenditures to an extent, \$15.7 billion does not come close to the \$1.4 trillion that is foregone annually to tax expenditures. *Policy Basics*, *supra* note 188.

²⁰³ See Setting Every Community Up for Retirement Enforcement Act (SECURE Act), *incorporated into* Further Consolidated Appropriations Act, Pub. L. No. 116-94, § 401, 133 Stat. 2534 (2020) (requiring inherited IRAs to be fully paid out within ten years); RETIREMENT ENHANCEMENT & SAVINGS ACT, *supra* note 185, § 501 (requiring IRAs to be fully paid out within five years). Both the proposed RESA and the successful SECURE Act eliminated the stretch payout option. H.R. 1007; REPORT ON THE SECURE ACT, *supra* note 5, at 104–08. RESA would have required payout within five years, which would have essentially downgraded non-spousal beneficiaries to the same treatment as non-designated beneficiaries. H.R. 1007. The SECURE Act's strategy was different. See SECURE Act § 401 (providing that certain beneficiaries, such as spousal beneficiaries, are "eligible designated beneficiaries" that are excused from the ten-year payout rule). It maintained the difference between designated and non-designated beneficiaries and carved out certain designated beneficiaries—eligible designated beneficiaries—as exceptions to the new ten-year rule. REPORT ON THE SECURE ACT, *supra* note 5, at 108–09.

²⁰⁴ Sonzogni, *supra* note 2.

why the estimated revenue increase is so dramatic.²⁰⁵ The current life expectancy for the remaining Baby Boomers is approximately two decades.²⁰⁶ This means that, in the next twenty to forty years, the \$2.1 trillion in IRAs held by the Baby Boomer generation will be inherited.²⁰⁷ Given that the SECURE Act is now effective, beneficiaries of this money will no longer be able to defer tax liability by utilizing the stretch payout option.²⁰⁸

The tax revenue that will be generated from the taxation of inherited IRAs will benefit many people, especially those in retirement.²⁰⁹ Tax money helps to fund government health programs, such as Medicare, Medicaid, and Social Security.²¹⁰ As commentators project that social security funds will become inadequate in the next fifteen years, the revenue generated from inherited IRAs will help to supplement these depleted funds.²¹¹ Proponents of this change point out that ten years of deferral for the beneficiaries of inherited IRAs still constitutes a very generous tax break.²¹²

²⁰⁵ See Goss, *supra* note 53, at 123 (explaining that the vast number of individuals in the Baby Boomer generation will be moving into retirement by 2030); *Boomers*, *supra* note 175 (listing the current number of Baby Boomers as seventy-six million). Due to the vast number of Baby Boomers that have entered retirement, or will be entering retirement soon, the \$2.1 trillion that Baby Boomers hold in IRAs will require distribution soon. *Understanding the Taxes on an Inherited IRA and the Inherited IRA Rules*, *supra* note 10. Although some of this money undoubtedly will be used by the account holders themselves, it is likely that a large portion will go to beneficiaries through inherited IRAs. *Id.* Due to the SECURE Act's elimination of the stretch payout, all of this money will be subject to taxes in the near future. REPORT ON THE SECURE ACT, *supra* note 5, at 104–08; *Understanding the Taxes on an Inherited IRA and the Inherited IRA Rules*, *supra* note 10.

²⁰⁶ 2019 I.R.S. Pub. No. 590-B, *supra* note 15, at 45–46 tbl.I (2019). For the youngest of the Baby Boomers, born in 1994, the current life expectancy is 28.7 years. *Id.* For the oldest Baby Boomers, born in 1964, the current life expectancy is 12.7 years. *Id.*

²⁰⁷ *Understanding the Taxes on an Inherited IRA and the Inherited IRA Rules*, *supra* note 10.

²⁰⁸ REPORT ON THE SECURE ACT, *supra* note 5, at 104; Saunders, *supra* note 2.

²⁰⁹ See Singletary, *supra* note 19 (explaining that although many individuals despise paying taxes, tax money does go towards programs that benefit their lives).

²¹⁰ *Id.* Medicare is a form of health insurance that is available for those over the age sixty-five, those under the age of sixty-five who have certain disabilities, and those with permanent kidney failure. DEP'T OF HEALTH & HUM. SERVS., *What's Medicare? What's Medicaid?*, MEDICARE.GOV (Apr. 2020), <https://www.medicare.gov/Pubs/pdf/11306-Medicare-Medicaid.pdf> [<https://perma.cc/DAR2-Q2PJ>]. In contrast, Medicaid helps individuals that are unable to fund their medical expenses sufficiently. *Id.*

²¹¹ See Goss, *supra* note 53, at 124 (analyzing the various possibilities to ensure solvency of social security funds); *Historical Background and Development of Social Security*, *supra* note 51 (noting that President Franklin D. Roosevelt once stated that “we have tried to frame a law which will give some measure of protection to the average citizen” (quoting President Franklin D. Roosevelt, Presidential Statement Signing the Social Security Act (Aug. 14, 1935))). Although the revenue will help supplement Social Security, the problem is not altogether fixed because neither the expected revenue, nor the expected social security payouts are enough to support individuals throughout retirement. Goss, *supra* note 53, at 111, 124 (explaining that Social Security already provides only a basic level of income and, if the funds become exhausted, it will take reducing those benefits by 25% or increasing payroll taxes by 33% to carry on Social Security).

²¹² Singletary, *supra* note 19.

In addition, the changes instituted by the SECURE Act adhere to the original purpose of IRAs, which was to help people save for retirement rather than to act as a tool of inheritance.²¹³ IRA saving vehicles were only meant to defer taxation until the account holder was in a lower tax bracket and the money was actually being used for retirement.²¹⁴

Proponents of the elimination of the stretch payout option view it as a loophole that unnecessarily allowed deferral to last longer than deserved.²¹⁵ They argue that the stretch payout was used to accumulate vast inheritances for heirs, rather than for retirement savings, and that it allowed account holders and beneficiaries to minimize taxes on the money due to the extended withdrawal period over multiple lifetimes.²¹⁶ The purpose of IRAs was to promote retirement savings, which is in alignment with the majority of the SECURE Act.²¹⁷ Under this view, the sooner that money held in IRAs can be taxed, the more people will benefit from tax revenue generated to support government programs, including Social Security.²¹⁸

C. Burying the Hoard: Long-Term Benefits Could Outweigh Short-Term Revenue

The stretch payout option encouraged people to save for retirement, and, if they saved more than needed or died earlier than expected, that money could be preserved for their beneficiaries.²¹⁹ Allowing the stretch option enabled account holders to preserve the tax benefit until the beneficiaries took their distributions.²²⁰ The stretch payout also allowed for the money to be subject to lower taxes because, when beneficiaries stretched out the payouts over a longer life expectancy, then each distribution was smaller and thus had a lower tax liability.²²¹

²¹³ *Id.*; Szala, *supra* note 19.

²¹⁴ Singletary, *supra* note 19.

²¹⁵ *Id.*; Szala, *supra* note 19.

²¹⁶ Singletary, *supra* note 19.; Szala, *supra* note 19.

²¹⁷ See Burke & McCouch, *supra* note 13, at 1105–06 (noting that ERISA's goal in the creation of IRAs was to supplement other forms of retirement saving).

²¹⁸ See Saunders, *supra* note 2 (explaining that the \$15.7 billion expected to be generated from the elimination of the stretch payout will assist in funding the tax expenditures needed to help individuals save for retirement); Sonzogni, *supra* note 2 (same).

²¹⁹ See LaBrecque, *supra* note 168 (describing the potential for beneficiaries' tax brackets to be affected as a result of the elimination of the stretch payout option); Lange, *supra* note 96 (characterizing the new rule as providing a windfall for the government, while greatly disadvantaging beneficiaries); Sheedy, *supra* note 96 (explaining the possibility of gigantic payouts to beneficiaries, which may provide for their own retirements).

²²⁰ Sheedy, *supra* note 96; see WISERADVISER INSIGHTS, *A New Look at Stretch IRAs*, WISERADVISER (Dec. 10, 2019), <https://www.wiseradvisor.com/blog/retirement-planning/a-new-look-at-stretch-iras/> [<https://perma.cc/DFG3-C8YP>] (explaining that the stretch payout allowed beneficiaries to assume savings).

²²¹ Lange, *supra* note 96; WISERADVISER INSIGHTS, *supra* note 220.

Non-spousal beneficiaries who stretch out an inherited IRA could potentially acquire enough money to cover their own retirement.²²² If the IRA does grow enough to be sufficient to support the beneficiary's retirement, that is money that the beneficiary will not have to rely on the government for through other welfare programs.²²³ Social security payments are insufficient to support retirees, even if expected payments were guaranteed.²²⁴ Thus, the stretch payout allowed some beneficiaries of inherited IRAs to be less concerned about their financial security when their own retirement approached.²²⁵

Moreover, the stretch payout option was not solely beneficial to the extremely wealthy.²²⁶ In fact, some commentators note that IRAs are not that beneficial to the highest classes.²²⁷ The limits on deductible contributions, for one, are relatively low for high-income individuals.²²⁸ Furthermore, individuals with high incomes are able to take advantage of other savings plans that offer even more tax benefits than IRAs do.²²⁹ Based on data from 2011, the

²²² Sheedy, *supra* note 96. For example, suppose a forty-year-old non-spousal beneficiary inherits an IRA worth \$500,000. *Id.* By the age of sixty-five, if the rate of growth is six percent per year and the beneficiary has taken the required yearly distributions, the beneficiary's inherited IRA still would have grown to almost one million dollars. *Id.*

²²³ *See id.* (stating that IRAs potentially could grow enough to support numerous retirements through their continued growth).

²²⁴ *See* Fuscaldo, *supra* note 56 (describing Social Security as providing merely a basic level of monthly income). In June 2020, the average retired worker's monthly social security payment was \$1,514. *Fact Sheet: Social Security*, SSA.GOV, <https://www.ssa.gov/news/press/factsheets/basicfact-alt.pdf> [<https://perma.cc/R3UL-M2JF>]. According to a Consumer Expenditure Survey by the Bureau of Labor Statistics in 2019, however, the average person over the age of sixty-five expended \$50,220 per year, which is approximately \$4,185 per month. *Age of Reference Person: Annual Expenditure Means, Shares, Standard Errors, and Coefficients of Variation, Consumer Expenditure Survey, 2019*, U.S. BUREAU OF LAB. STAT. tbl.1300, <https://www.bls.gov/cex/2019/combined/age.pdf> [<https://perma.cc/7KK7-T9RP>]. The Social Security program requires a quarter of the federal government's annual budget and is estimated to cost \$1 trillion per year. Romina Boccia, *Social Security in Jeopardy*, HERITAGE FOUND. (Oct. 20, 2016), <https://www.heritage.org/social-security/commentary/social-security-jeopardy> [<https://perma.cc/M6JM-S6LM>]. This problem has been intensified because, over the past seventy years, the ratio of individuals in the workforce paying into Social Security for recipients of social security distributions has decreased from 16:1 to 3:1. *Id.*

²²⁵ *See* Goss, *supra* note 53, at 113 (stating that due to the aging population, combined with decreased birth rates, the program will only be able to pay out seventy-five percent of benefits by 2035); Boccia, *supra* note 224 (explaining that the Social Security program is in dire straits and will be depleted in less than two decades).

²²⁶ *See* Singletary, *supra* note 19 (addressing the myth that inherited IRAs are only for the wealthiest individuals). *But see* Michael C. Taylor, *Rich People Don't Bother with IRAs*, BUS. INSIDER (Apr. 1, 2013), <https://www.businessinsider.com/rich-people-dont-bother-with-iras-2013-4> [<https://perma.cc/M56U-GKJC>] (expounding that extremely wealthy individuals do not utilize IRAs because they have more beneficial options available to them).

²²⁷ *See* Taylor, *supra* note 226 (noting that the deduction limits and access to other even more tax favorable savings options, such as 401(k)s, makes IRAs inefficient for individuals with high incomes).

²²⁸ *Id.*

²²⁹ *Id.*

percentage of IRA contributors that were middle class, single-earner breadwinners was equal to that of the high-income “super-savers.”²³⁰

For many middle-class IRA holders, their IRAs could be their largest asset.²³¹ The elimination of the stretch benefit will affect how those account holders' IRAs will be inherited and may be contrary to their intended goals.²³² Furthermore, beneficiaries may still be in their prime working years and thus could face an even greater impact by increased tax liability.²³³ The elimination of the stretch payout option will increase the amount that beneficiaries receive in distributions and may also subject them to higher tax rates.²³⁴

III. STRETCHING IS KEY: THE STRETCH PAYOUT'S LONG-TERM BENEFITS OUTWEIGH THE SHORT-TERM REVENUE

Congress's efforts to give many more Americans the ability to save for retirement through the SECURE Act offers many beneficial tax expenditures.²³⁵ The elimination of the stretch payout, however, will affect many Americans as they inherit IRAs from the Baby Boomer generation over the next twenty to forty years.²³⁶ In enacting this provision, Congress has opted for short-term revenue over potential long-term stability.²³⁷ It is true that the provision is in line with the initial purpose of IRAs, which was to help individuals save mon-

²³⁰ Anqi Chen & Alicia H. Munnell, *Who Contributes to Individual Retirement Accounts?*, 17 *CTR. FOR RET. RSCH. BOS. COLL.* 1, 5 (2017); see Singletary, *supra* note 19 (addressing that IRAs are not only for the wealthy, and discussing how elimination of the stretch payout will affect lower-income account owners).

²³¹ Anderson, *supra* note 190.

²³² See *id.* (explaining that tax acceleration on inherited IRAs destroys the tax-efficient vehicle for inheritance, which many conscientious account holders have counted on for years as they contribute to their IRAs).

²³³ Lange, *supra* note 96.

²³⁴ *Id.*

²³⁵ See REPORT ON THE SECURE ACT, *supra* note 5, at 30, 104 (including provisions such as the Small Employer Automatic Enrollment Credit and the Repeal of the Maximum Age for Traditional IRA Contributions which extends deductible contributions); Anderson, *supra* note 190 (explaining that the elimination of the stretch payout was a “pay-for” provision to make up for the other tax expenditures of the plan); Iwry et al., *supra* note 1 (describing the various pro-saving provisions included in the SECURE Act).

²³⁶ Saunders, *supra* note 2; see Goss, *supra* note 53, at 112–15 (discussing the financial danger that the Social Security program currently is in); Boccia, *supra* note 224 (same).

²³⁷ REPORT ON THE SECURE ACT, *supra* note 5, at 104–08; Sonzogni, *supra* note 2. The time limitation of ten years to distribute the IRA fully is very short considering that, with the stretch payout, beneficiaries could have stretched the distributions across their entire lifetime. See LaBrecque, *supra* note 168 (demonstrating that not only will the required payout lead to sooner taxes on larger amounts thereby producing higher tax brackets, but it also will result in significantly higher total taxes on the inherited amount, compared to what would have occurred under the stretch payout option); Lange, *supra* note 96 (describing the brutal quickening of income tax, as well as the increased rates, that will result from elimination of the stretch payout).

ey for their own retirement.²³⁸ Nevertheless, long-term stability should outweigh short-term revenue in this area of the law, and the original purpose of a government initiative, though important, must be adjusted according to society's changing needs.²³⁹

Americans often feel a sense of security when they have more tools available to prepare for retirement.²⁴⁰ The additional saving ability created by IRAs is valuable because preparing for retirement will become even more important over the next two decades as Social Security becomes insufficient to supply the funds necessary to cover everyone who will be looking to draw from it.²⁴¹ If people are better equipped, through IRAs or other savings vehicles, then the risk that Social Security will no longer be available is less debilitating.²⁴² In addition, the generation of more tax revenue not only helps to supplement the very expenditures that the SECURE Act offers, but tax revenue also is a major source of funding for public programs that many rely upon in retirement, such as Social Security, Medicare, and Medicaid.²⁴³ The \$15.7 billion generated over the next decade through the discontinuance of the stretch payout will help to fund these government expenditures, even though that amount is only 1.12% of the \$1.4 trillion lost annually to tax expenditures.²⁴⁴ Once that is understood, the benefit offered by the elimination of the stretch payout is much less clear.²⁴⁵

Moreover, the elimination of the stretch payout option will have large consequences for the individuals affected by the provision.²⁴⁶ Elimination of the stretch payout is justified because the original intent of IRAs was to prepare an individual for his or her own retirement, not to create a means of

²³⁸ Burke & McCouch, *supra* note 13, at 1105; Kaplan, *supra* note 3, at 284. Arguably, passing extra savings down through inherited IRAs does not violate this purpose, rather the stretch payout option for inherited IRAs could have been viewed as supporting the retirement savings of multiple generations. See Sheedy, *supra* note 96 (suggesting that depending on the IRA amount when it is inherited, the IRA could grow enough to support the beneficiary's retirement as well).

²³⁹ See *supra* notes 219–234 and accompanying text (discussing the benefits of long-term security that the stretch payout option was able to promote).

²⁴⁰ See Newport, *supra* note 6 (stating that many Americans are concerned about their financial stability when they reach retirement).

²⁴¹ See Goss, *supra* note 53, at 112–15 (explaining the approaching inadequacy of social security funds); Boccia, *supra* note 224 (revealing that social security funds are already beginning to fall short of the required funding).

²⁴² See REPORT ON THE SECURE ACT, *supra* note 5, at 30 (articulating Congress's intention to equip Americans with better tools to save for retirement).

²⁴³ Goss, *supra* note 53, at 116; Olson, *supra* note 53; Sonzogni, *supra* note 2.

²⁴⁴ Saunders, *supra* note 2; Sonzogni, *supra* note 2; *Policy Basics*, *supra* note 188.

²⁴⁵ *Policy Basics*, *supra* note 188; see LaBrecque, *supra* note 237 (elaborating on the significant tax implications on beneficiaries of inherited IRAs due to the elimination of the stretch payout); Lange, *supra* note 96 (same).

²⁴⁶ See LaBrecque, *supra* note 168 (pointing out that the change will likely cause beneficiaries' tax burden to increase and alter their tax brackets); Lange, *supra* note 96 (explaining that the change will alter the beneficiary's income tax burden drastically).

wealth transfer between generations.²⁴⁷ At the time of IRAs' creation, however, the main concerns regarding retirement savings were that individuals either were not saving at all, or that they were relying on pension plans through their employers that hinged on the continued success of the employer or the employee's continued employment there.²⁴⁸ When Congress created IRAs, therefore, the goal was simply to get people to start saving money in a more secure way.²⁴⁹

The stretch payout option has been a way to encourage workers both to save for themselves and to support their beneficiaries.²⁵⁰ The new ten-year payout requirement could undermine these goals in potentially harmful ways, in that it might promote poor saving and spending habits by beneficiaries after they inherit large IRAs and are forced to take all distributions within ten years.²⁵¹ This would be detrimental to the system in the long run because although the money could have been enough to support the account holder's retirement, in addition to supplementing or supporting that of the beneficiary, it is now less likely that holder's will optimize and extend it.²⁵²

²⁴⁷ Burke & McCouch, *supra* note 13, at 1105; Kaplan, *supra* note 3, at 284. This is assuming that the only individuals that IRAs are meant to support are the original account holders. Szala, *supra* note 19. If the beneficiaries could stretch the inherited IRAs to benefit the themselves as well, it would in fact serve the original purpose of better preparing Americans for retirement. See Kaplan, *supra* note 3, at 284 (acknowledging that Congress intended Americans to use IRAs in addition to Social Security and pensions); Lange, *supra* note 96 (explaining that there is less incentive now to save large amounts in IRAs because of the new rules for beneficiaries).

²⁴⁸ Sterk & Leslie, *supra* note 11, at 171.

²⁴⁹ See *id.* (explaining that the previously used defined-benefit plans were not secure because they required employees to remain with their employers and also were tied to the employers remaining financially sound).

²⁵⁰ Lange, *supra* note 96; see also WISERADVISER INSIGHTS, *supra* note 220 (describing the stretch payout option as an opportunity to make beneficiaries financially secure, and pointing out that the stretch payout had a legacy-preserving effect that helped protect beneficiaries from making poor decisions that may stem from distributing the whole IRA in a short amount of time).

²⁵¹ Lange, *supra* note 96. The concern of how beneficiaries will handle this quasi-windfall is supported by statistics revealing that many lottery winners end up in serious financial distress with thirty-three percent filing for bankruptcy. Abigail Hess, *Here's Why Lottery Winners Go Broke*, CNBC (Aug. 25, 2017), <https://www.cnbc.com/2017/08/25/heres-why-lottery-winners-go-broke.html> [<https://perma.cc/VK7R-Q7RE>]; *Lottery Winners Who Blew the Lot*, LOVE MONEY (Apr. 2, 2020), <https://www.lovemoney.com/gallerylist/64958/lottery-winners-who-blew-the-lot> [<https://perma.cc/B493-SNUL>]; *Research Statistic on Financial Windfalls and Bankruptcy*, NEFE (Jan. 12, 2018), <https://www.nefe.org/news/the-latest/2018/research-statistic-on-financial-windfalls-and-bankruptcy.aspx#:~:text=DENVER%20%E2%80%94%20Over%20the%20past%20couple,receiver%20a%20large%20financial%20windfall> [<https://perma.cc/QX82-NEZL>]. Similarly, a shocking seventy-eight percent of NFL players end up running into major financial issues, including bankruptcy. Rodney Brooks, *Why Do So Many Pros Go Broke?*, THE UNDEFEATED (Mar. 24, 2017), <https://theundefeated.com/features/why-do-so-many-pros-go-broke/> [<https://perma.cc/577S-239P>].

²⁵² See LaBrecque, *supra* note 168 (describing the vast differences in tax treatment that beneficiaries will be subject to now that the stretch payout is gone); Lange, *supra* note 96 (recommending that IRA owners spend more money and make more gifts while they are living because beneficiaries of the IRA will not be able to receive the same benefits they did under the stretch payout); Sheedy, *supra* note 96 (positing that the stretch payout could have fully equipped beneficiaries of IRAs for

Instead of receiving multi-generational financial support, beneficiaries will be forced to distribute and pay taxes on the entire inherited IRA.²⁵³ The impact of this distribution could increase a beneficiary's tax bracket and force him or her to incur higher taxes during peak working years.²⁵⁴ Furthermore, these beneficiaries could be inheriting a significant amount of money in the form of an IRA.²⁵⁵ In many instances in which individuals come into a large amount of money unexpectedly, they struggle to protect that money properly and often end up in financial difficulty or even bankruptcy.²⁵⁶ If, instead, they were still able to stretch the payout of an inherited IRA for their remaining life expectancy, the extra tax-deferred growth would have the potential to support them throughout their retirement as well.²⁵⁷ This supplemental support would decrease the chance that beneficiaries will need to rely upon the government for financial support in the future.²⁵⁸

It is estimated that in retirement, one needs about seventy percent of their pre-retirement income in order to live comfortably.²⁵⁹ Currently, twenty-two percent of adults have less than five thousand dollars saved for retirement.²⁶⁰ Therefore, money that could be passed on in the form of an inherited IRA to help the next generation would be immensely beneficial.²⁶¹ Social Security is not meant to be a sole source of income, but rather a supplement to other forms of retirement saving.²⁶² By eliminating the stretch payout, Congress has opted for an insufficient amount of short-term revenue in exchange for assisting multi-generational financial security that the stretch payout could have potential

their own retirement); WISERADVISER INSIGHTS, *supra* note 220 (explaining that the stretch IRA helped prevent beneficiaries from overspending).

²⁵³ REPORT ON THE SECURE ACT, *supra* note 5, at 108; Lange, *supra* note 96; Szala, *supra* note 19.

²⁵⁴ See LaBrecque, *supra* note 168 (explaining that the elimination of the stretch payout will cause many beneficiaries to experience a "bracket creep" and incur a "substantial amount more in taxes").

²⁵⁵ *Id.*; Lange, *supra* note 96.

²⁵⁶ Brooks, *supra* note 251.

²⁵⁷ See LaBrecque, *supra* note 168 (providing numerical examples of how stretched IRAs were able to continue to grow and provide for the beneficiaries throughout their remaining lifetimes); Lange, *supra* note 96 (explaining that the stretch payout allowed beneficiaries to keep most of the money in the tax-deferred IRA to benefit the beneficiaries over their lifetimes).

²⁵⁸ See LaBrecque, *supra* note 168 (noting that stretching inherited IRAs limited the value of the taxable distributions and preserved tax-deferred growth); Lange, *supra* note 96 (same); Sheedy, *supra* note 96 (illustrating the potential for a beneficiary to inherit enough money through an inherited IRA to furnish their own retirement savings).

²⁵⁹ Fuscaldo, *supra* note 56.

²⁶⁰ *Id.*

²⁶¹ See *id.* (suggesting that, without saving money for retirement, many people must postpone retirement altogether if they cannot adjust their lifestyle to get by solely on Social Security).

²⁶² *Id.*

provided.²⁶³ The stretch payout's benefits would have been enhanced even further if it were able to continue in conjunction with the provisions of the SECURE Act aimed at enhancing retirement saving.²⁶⁴ For these reasons, Congress should reinstate the stretch payout option.²⁶⁵

CONCLUSION

The SECURE Act took great strides to help Americans better prepare for retirement through various tax expenditures that provide tax benefits for different forms of retirement saving. As with all tax expenditures, Congress had to find a way to counterbalance the lost revenue from these expenditures. Here, the counterbalance was the elimination of what some commentators saw as a loophole in the system: the stretch payout option for beneficiaries of inherited IRAs. Nevertheless, the stretch payout option was an important tool for Americans in all income ranges because it helped them support themselves in retirement, and also allowed them to leave their heirs with a safety blanket to stretch throughout their lifetimes. By ripping away the safety blanket, Congress has forced beneficiaries of inherited IRAs to pay a large amount in taxes, over a short period of time, on money that holders intended to be in a tax-favored savings instrument. If Congress had not eliminated the stretch payout option, inherited IRA beneficiaries could have had greater financial security and, in turn, been less likely to require government assistance in the future.

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²⁶³ See REPORT ON THE SECURE ACT, *supra* note 5, at 104–08 (removing the stretch payout option by requiring designated beneficiaries that are not “eligible designated beneficiaries” to fully disclose the inherited IRA within ten years); Saunders, *supra* note 2 (stating that the elimination of the stretch payout is expected to generate \$15.7 billion in the next decade); Sonzogni, *supra* note 2 (same); *Policy Basics*, *supra* note 188 (explaining that tax expenditures currently cost the government \$1.4 trillion in revenue per year).

²⁶⁴ See LaBrecque, *supra* note 168 (explaining that the stretch payout option had the potential to provide retirement savings for both account holders and beneficiaries of inherited IRAs); Lange, *supra* note 96 (stating that the elimination of the stretch benefit robs beneficiaries of inherited IRAs from an enormous amount of tax savings).

²⁶⁵ See generally LaBrecque, *supra* note 168 (describing how the stretch payout allowed IRAs to serve as multi-generational retirement support); Lange, *supra* note 96 (same); Sheedy, *supra* note 96 (same).