



**2022 TMN Annual Client Conference
Compliance Update**

Disclaimer: The information presented to you today does not, and is not intended to, constitute legal advice; instead, all content and materials provided with today's session are for general informational purposes only.

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Compliance Update

- SECURE Act
 - Two Years Later
- AML Act and Corporate Transparency Act
 - One Year Later
- Other Notable Items
- Things That Go Bump in the Night
- Open Mic
 - Ask me anything

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SECURE Act – 2022 Update

Background: 2020

- SECURE Act took effect January 1, 2020
 - Amended IRC of 1986 to encourage retirement savings
 - Short Title: **Setting Every Community Up for Retirement Enhancement Act of 2019**
- A Key Takeaway for Trustees and Custodians of IRAs
 - RMD withdrawals **required** to start at age 72, not 70½
- CARES Act became law March 27, 2020
 - \$2 trillion coronavirus economic recovery bill
 - Short Title: **Coronavirus Aid, Relief, and Economic Security Act of 2020**
- A Key Takeaway for Trustees and Custodians of IRAs
 - RMD withdrawals **not required** for anyone in 2020

In 2021 – what happened?

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SECURE Act – 2022 Update

Background: 2021

- Under SECURE Act:
 - For individuals who turned 70½ in 2019, the old rules applied
 - Individuals born between July 1, 1948 and June 30, 1949
 - Required to take first RMD no later than April 1, 2020
- ...CARES Act added complexity
 - No RMDs required in 2020
 - No first RMD for individuals who turned 70½ in 2019 and no annual 2020 RMD for others
 - In 2021 RMD required for individuals who turned 70½ in 2019 or earlier
 - April 1 rule applied for first RMD from IRA
 - Individuals required to take first RMD no later than April 1, 2021
 - 2nd RMD by Dec 31, 2021 and every year thereafter
- Also under SECURE Act:
 - For individuals who did not turn 70½ in 2019, RMD not required until age 72
 - Individuals born between July 1, 1949 and December 31, 1949 turned 72 in 2021

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SECURE Act – 2022 Update

In 2022

- Should have distributed FIRST RMD to individuals who did not turn 70 ½ until 2020:
 - Those individuals would have turned 71 in 2020 and then turned 72 in 2021
 - These individuals required 1st RMD by April 1, 2022
 - And require 2nd RMD in calendar year 2022

- Provided there are no further changes to the law, beginning in 2023 RMD rules are straightforward
 - Individuals who turned 70½ in 2019 or earlier AND individuals who turned 72 in 2021 already in RMD status
 - Individuals who turn 72 in 2022 and later not required to take initial RMD until April 1 of next calendar year, though may take earlier
 - And required to take by Dec 31 each year after they turn 72

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SECURE Act – 2022 Update

Inherited IRAs

- Prior to SECURE Act, when Individual passed, the following could occur:
 - Spouse named as beneficiary
 - IRA could be rolled over into surviving spouse's IRA
 - Non-spouse named as beneficiary
 - Payments from inherited IRA could be **stretched** over life, or lives, of non-spouse beneficiaries

- After SECURE Act, when Individual passes
 - Spouse named as beneficiary can still roll over IRA into their own IRA
 - Non-spouse named as beneficiary CANNOT stretch payout beyond 10 years
- A qualified trust named as beneficiary of an IRA is considered a non-spouse beneficiary
 - No exemptions permit stretching of payments beyond 10 years
- What does this mean for your organization?

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SECURE Act – 2022 Update

Inherited IRAs

- Remember, when IRA names qualified trust as beneficiary, trust then owns that Inherited IRA
 - It becomes an ASSET of the trust
 - But does not mean that IRA assets should be transferred directly to the trust account
- As trustee, can take certain approaches, including:
 - Distribute holdings of Inherited IRA immediately to trust
 - Triggers payment of resulting income tax in one lump sum at trust tax rate
 - Operationally straight forward because account that held underlying assets of Inherited IRA does not need to be maintained on trust accounting system; it can be closed
 - Schedule payout of Inherited IRA to the trust in compliance with 10-Year Rule*
 - Smooths out payment of resulting income tax over the course of ten years
 - Operationally requires maintenance of Inherited IRA on trust accounting system for 10 years
 - And linking to the trust account so trust accounting statement reflects value of Inherited IRA
 - Comply with 5-Year Rule*
 - Distribute nothing until tenth year
- How to choose?

* Refer to IRS Guidance on last slide

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SECURE Act – 2022 Update

EXHIBIT A: REQUIRED MINIMUM DISTRIBUTIONS RULES FOR TRUSTS AS IRA BENEFICIARIES

	See-Through Trusts ³		Other Trusts
	Conduit Trust	Accumulation Trust	
Key Trust Terms	Must distribute all IRA distributions to an individual trust beneficiary when received	Allows for the accumulation of IRA distributions within the trust, rather than immediate payout	Do not meet definition of see-through trust; likely accumulate IRA distributions; identity of beneficiaries does not matter
RMD Distributions to the Trust	<p>For an "eligible designated beneficiary (EDB)"⁴: Payout based on the life expectancy of the beneficiary (stretch IRA rules still apply)</p> <p>For a beneficiary that is not an EDB: 10-year Rule – 100% distribution to the trust within 10 years of the owner's death</p>	10-year Rule - 100% distribution to the trust within 10 years of the owner's death ⁵	<p>If the IRA owner dies before age 72: 5-year Rule – 100% distribution to the trust within 5 years of the owner's death</p> <p>If the IRA owner dies at age 72 or later: Payout to the trust based on the actuarial life expectancy of the IRA owner, or the trust can elect to use the 5-year rule</p>
Distributions to Trust Beneficiaries	Distributed immediately to conduit beneficiary after trust receives IRA distributions Results in a non-EDB receiving 100% of the IRA proceeds by the end of year 10	Trust terms govern the timing of distributions to trust beneficiaries May be different than the timing and amounts of IRA distributions to the trust	

Type of trust and RMD status on death of Individual are important factors when a trust inherits IRA

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Source: <https://www.fiduciary-trust.com/insights/naming-trust-ira-beneficiary/>
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SECURE Act – 2022 Update

Inherited IRAs

- For trust company, key takeaway is to ensure trust accounting is handled correctly
- Remember, trust owns the Inherited IRA as an ASSET of the trust
- Options:
 - Set up as a sub-account?
 - Set up as a separate account?
- ASK – what are the risks?
 - Inconsistent approach based on inadequate P&P
 - Incorrect distributions
 - Double counting on trust accounting statement
 - Or under reporting
 - Double counting AUA/AUM on RC-T or other regulatory reports
 - Or under reporting
 - Incorrect tax payments and returns

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AML Act of 2020 – CTA Reporting Rule

Background: 2021

- Anti-Money Laundering Act of 2020 (AML Act)
 - Became law January 1, 2021
- Corporate Transparency Act (CTA) part of AML Act
 - Amended BSA to require corporations, LLCs, and other entities to report beneficial ownership information to FinCEN
 - FinCEN can share with several categories of recipients, such as federal law enforcement
- September 29, 2022 FinCEN issued *Final Rule for Beneficial Ownership Reporting to Support Law Enforcement Efforts, Counter Illicit Finance, and Increase Transparency* (“Reporting Rule”)
 - Effective January 1, 2024
 - Reporting companies established before January 1, 2024 will have 1 year (until January 1, 2025) to file their initial reports
 - Reporting companies established after January 1, 2024 will have 30 days after creation or registration to file their initial reports
 - Available at: <https://www.govinfo.gov/content/pkg/FR-2022-09-30/pdf/2022-21020.pdf>

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AML Act of 2020 – CTC Reporting Rule

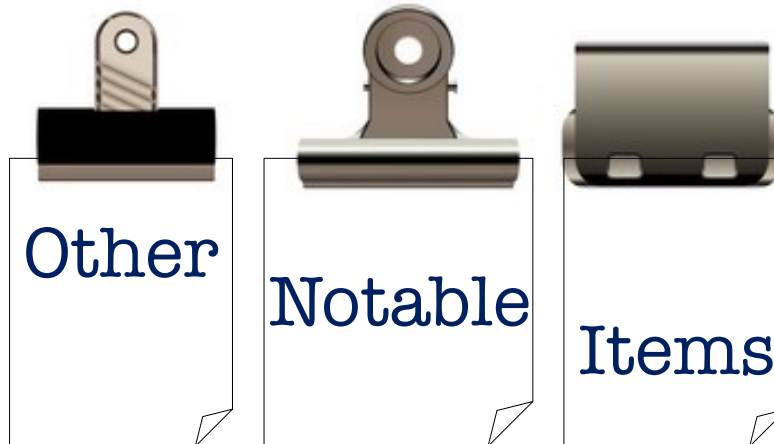
Statement for Banks:

- Publication of Reporting Rule does **not** create an immediate change for financial institutions required to comply with the FinCEN CDD Rule
- Reporting Rule is one of 3 rulemakings planned to implement the CTA
- Additional rulemakings will:
 - (1) establish rules for who may access beneficial ownership information, for what purposes, and what safeguards will be required to ensure that the information is secured and protected; and
 - (2) revise FinCEN's customer due diligence rule
- In addition, FinCEN continues to develop infrastructure to administer these requirements, including the information technology system that will be used to store beneficial ownership information in accordance with the strict security and confidentiality requirements of the CTA

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Final Rule for Sharing Information about Cyber Incidents

- On November 18, 2021 federal bank regulatory agencies issued final rule to improve sharing of information about cyber incidents that may affect U.S. banking system
 - Requires a banking organization to notify its primary federal regulator of any significant computer-security incident as soon as possible and no later than 36 hours after banking organization determines a cyber incident has occurred
 - Notification is required for incidents that have materially affected—or are reasonably likely to materially affect—the viability of a banking organization’s operations, its ability to deliver banking products and services, or the stability of the financial sector
- In addition, rule requires a bank service provider to notify affected banking organization customers as soon as possible when provider determines it has experienced a computer-security incident that has materially affected or is reasonably likely to materially affect banking organization customers for four or more hours
- Compliance with final rule required by May 1, 2022.

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Miscellaneous

- July 19, 2021 Agencies published Proposed Interagency Guidance on *Third-Party Relationships: Risk Management*
 - Sept 9, 2021 Comment period was extended 30 days
 - No issuance of final rule to date
- 314(a) compliance for State chartered trust organizations
 - Check with examiner on access to **314(a) Secure Information Sharing System**
- FFIEC continues to publish updates to BSA/AML Examination Manual
 - December 1, 2021 update included new introductory section for Customers and Revised content in Charities and Nonprofit Organizations, Independent Automated Teller Machine Owners or Operators, and Politically Exposed Persons sections under Risks Associated with Money Laundering and Terrorist Financing
 - Available at: <https://bsaaml.ffiec.gov/manual>

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Things That Go Bump in the Night

 ■ **Frightened by Fraud**





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Things That Go Bump in the Night: **Fraud**

- Use of CRAT to eliminate taxable gain topped IRS Dirty Dozen List
 - Appreciated property is transferred to a CRAT, taxpayer claims the transfer gives a step-up in basis, the property is sold without recognized gain due to the claimed step-up in basis, and proceeds are used to purchase a single premium annuity
 - Beneficiary reports as income only a portion of annuity, treating remaining payment as an excluded portion representing a return of investment for which no tax is due
 - IRS noted this is misapplication of the rules
 - Awareness of such arrangement in an account could warrant a SAR filing

- SEC advises auditors to shift mindset on fraud detection
 - Paul Munter issued a statement on Oct 11 highlighting auditors' responsibilities in fighting fraud, including SEC's recent observations of shortcomings in the area
 - Among noted deficiencies was auditors framing discussions of their responsibilities related to fraud by describing what they are not required to do instead of what they can provide
 - SEC believes this could impact auditor's mindset or their degree of professional skepticism and may thereby reduce the likelihood of fraud detection and potentially result in dereliction of professional responsibilities

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Things That Go Bump in the Night



▪ **Frightened by Fraud**



▪ **Scary Sanctions**



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Things That Go Bump in the Night: Sanctions

- OCC fined bank directors for failing to follow 2015 and 2020 Orders
 - 7 leaders of Mission National Bank failed to take actions mandated by two orders
 - Board failed to address order requiring it submit, at least annually, an acceptable strategic plan
 - Also failed to address order regarding BSA/AML deficiencies and oversight by the board
- USAA Federal Savings Bank assessed \$140M for BSA violations
 - Deficiencies include inadequate internal controls and risk management, suspicious activity processes, staffing, training, and 3rd party risk management
- CommunityBank of Texas assessed \$9M for BSA violations
 - Bank admitted it willfully failed to implement and maintain an effective AML program and failed to report hundreds of suspicious transactions
 - Even after becoming aware certain customers were subjects of criminal investigations
- Bittrex Money Service Business assessed \$53M for AML violations
 - FinCEN and OFAC jointly penalized Bittrex for inadequately monitoring virtual currency transactions for suspicious and illegal activity
 - In light of government's concerns about illicit use of virtual currency, likely to be similar enforcement actions in the future

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Things That Go Bump in the Night



▪ **Frightened by Fraud**



▪ **Scary Sanctions**



▪ **Tales of the Crypto**

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Things That Go Bump in the Night: **Crypto**

- Estate Planners starting to recommend moving cryptocurrency into a Trust for strongest level of protection
 - Advantages of using a Trust for digital assets include:
 1. Crypto Assets in a Trust Avoid Probate
 2. Crypto Assets in a Trust Remain Private
 3. Crypto Assets in a Trust Make Them Easier to Find for Loved Ones
 4. You Have More Control Over Your Crypto Assets with a Trust

- Has your organization accepted trusts holding cryptocurrency?
 - 2022 has seen numerous failures in custody of cryptocurrencies:
 - US\$97 million stolen from Liquid Exchange in October 2021
 - US\$200 million stolen from Bitmart in December 2021
 - US\$320 million lost via the Wormhole bridge in February 2022
 - US\$624 million taken from the Ronin Network in March 2022
 - SEC regulatory framework still in flux
 - In a recent statement SEC Chair pointed out it is a highly volatile, speculative investment class
 - What about BSA/AML compliance?

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Summary of Key Takeaways

- Diligence required for IRA and other retirement accounts
 - Review rules around IRAs inherited by trusts
- Reporting Rule may impact trusts that own certain special assets
- As always, be alert for new and changing requirements
 - Be a lifetime student. Read. A lot.
 - Be curious. Ask questions, as many as you need to understand a concept.
 - Don't present a problem unless you're also presenting possible solutions.
 - Build relationships. When you have the chance, connect in person or verbally.
 - If you have a seat at the table, use it. Contribute to the conversation. Ask a question.

If you have questions on anything in today's presentation, or another law, regulation or item not covered today, please feel free to contact me:

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IRS Publication 590-B (2021), Distributions from Individual Retirement Arrangements (IRAs)

5-year rule. The 5-year rule requires the IRA beneficiaries who are not taking life expectancy payments to withdraw the entire balance of the IRA by December 31 of the year containing the fifth anniversary of the owner's death. For example, if the owner died in 2021, the beneficiary would have to fully distribute the IRA by December 31, 2026. The beneficiary is allowed, but not required, to take distributions prior to that date. The 5-year rule never applies if the owner died on or after his or her required beginning date.



The 5-year rule generally applies to all beneficiaries if the owner died before 2020. It also applies to beneficiaries who are not individuals (such as a trust) if the owner died after 2019. If the owner died after 2019 and the beneficiary is an individual, see 10-year rule next.

10-year rule. The 10-year rule requires the IRA beneficiaries who are not taking life expectancy payments to withdraw the entire balance of the IRA by December 31 of the year containing the 10th anniversary of the owner's death. For example, if the owner died in 2021, the beneficiary would have to fully distribute the IRA by December 31, 2031. The beneficiary is allowed, but not required, to take distributions prior to that date.

The 10-year rule applies if (1) the beneficiary is an eligible designated beneficiary who elects the 10-year rule, if the owner died before reaching his or her required beginning date; or (2) the beneficiary is a designated beneficiary who is not an eligible designated beneficiary, regardless of whether the owner died before reaching his or her required beginning date.

For a beneficiary receiving life expectancy payments who is either an eligible designated beneficiary or a minor child, the 10-year rule also applies to the remaining amounts in the IRA upon the death of the eligible designated beneficiary or upon the minor child beneficiary reaching the age of majority, but in either of those cases, the 10-year period ends on December 31st of the 10th anniversary of the eligible designated beneficiary's death or the child's attainment of majority.

Available at: https://www.irs.gov/publications/p590b#en_US_2021_publink100090130

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