# SECURE Act and RESA

## Significant Changes Expected to Retirement Planning

Congress is focused on pushing through retirement plan legislation in 2019 with the introduction of Setting Every Community Up for Retirement Enhancement (SECURE) Act in the House and Retirement Enhancement and Savings Act (RESA) in the Senate. This will be the most significant retirement plan legislation since the 401(k) plan was introduced in 1978. These bills seek to incentivize employers to put in place retirement plans and improve the retirement prospects of American workers. The SECURE Act already passed in the House on May 23 by a vote of 417-3 and is expected to pass in the Senate. Although these proposals have not yet been signed into law, they are expected to bring major changes to retirement planning and by implication, the tax and estate planning strategies affecting retirement assets. Changes to distributions from retirement accounts will be a significant component of any final legislation.

**The House and Senate bills have many similar provisions:**

- Allowing small employers to band together to offer a common defined contribution plan (e.g., 401(k)) to their workers.
- Requiring employers to allow long-term, part-time workers to participate in 401(k) plans.
- Permitting IRA contributions to be made beyond age 70 1/2.
- Approving the use of annuities inside retirement accounts.

**There are also some differences:**

- SECURE Act would let new parents withdraw $5,000 from retirement accounts penalty-free to cover expenses related to their new child and up to $10,000 from §529 plans to repay student loans.
- SECURE Act increases the age at which minimum distributions must be made from 401(k) and IRA accounts during the owner's lifetime from age 70 1/2 to age 72.
- By comparison, RESA proposes to increase the distribution starting age to 72 by 2023 and to age 75 by 2030.

**Congress has been targeting the termination of the stretch inherited IRA for years and both bills are poised to make this a reality.**

**Impact on Inherited IRAs By Non-Spouse Beneficiaries.** Despite the many benefits of the proposed legislation, Congress has been targeting the termination of the stretch inherited IRA for years and both bills are poised to make this a reality. Under the SECURE Act, a non-spouse beneficiary (e.g., child) must withdraw the entire IRA account within 10 years (including the ability to take a lump sum payout in year 10). RESA imposes a 5 year mandatory distribution period, but exempts accounts that do not exceed $400,000 in value as of the date of death. Both bills make exceptions for distributions to a beneficiary not more than 10 years younger than the account owner, a disabled or chronically ill beneficiary or a child under age of majority (at least until such child reaches the age of majority). If enacted as proposed, these bills will also impact tax and estate planning strategies for inherited IRAs.

PORZIO
BROMBERG&NEWMAN P.C.
973-538-4006 | pbnlaw.com

## Possible New Strategies.

- Clients will need to re-examine the use of Roth IRA conversions. The analysis will require a calculation of the tax cost of the conversion over the account owner's lifetime to the tax cost to the account beneficiaries who must withdraw a non-converted account over a short period of time.

- Clients will need to compare Roth IRA conversions to reinvesting funds withdrawn from an IRA into a life insurance policy that provides the beneficiaries with an income tax-free death benefit. The analysis requires a balancing of the tax considerations with the impact of taxable IRA withdrawals on the account owner's adjusted gross income, related Medicare surcharges, taxation of social security, etc.

- Certain estate planning strategies used in connection with inherited IRAs will need to be reviewed. Clients who wish to protect their children's inheritance in trust may no longer benefit from certain structures that require the entire plan balance to be distributed to the child at a certain point. Instead, trusts that protect the assets over a child's lifetime with no mandatory distributions will be preferred.

- For those who consider asset protection paramount to tax planning, the use of lifetime discretionary trusts to protect retirement benefits will become appealing.

- State income tax savings will become possible through the use of trusts established in states without a state income tax (e.g., Nevada, Alaska) which will accumulate the IRA distributions and avoid the New Jersey state income tax.

While both the House and Senate bills have yet to become law, 2019 will likely bring significant retirement plan reform. As the bills work their way through Congress, the changes they bring will require a fresh perspective on tax minimization and asset protection strategies. Once final legislation is passed, Porzio will provide updated tax strategies to navigate the new rules and bring clarity to an already complex area of the law.


PORZIO
BROMBERG&NEWMAN P.C.
973-538-4006 | pbnlaw.com