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The SECURE Act – Federal Retirement Enhancement Act May Soon Require Complete Restructuring of Inherited IRA Planning

On May 23, 2019, the U.S. House of Representatives passed the “Setting Every Community Up for Retirement Enhancement Act of 2019,” known as the SECURE Act, with a vote of 417 to 3.

The SECURE Act is now under consideration by the Senate along with the Senate’s version of the retirement act, the “Retirement Enhancement Savings Act of 2019”, also known as RESA. Since the Senate has not been able to pass the SECURE Act via unanimous consent due to provisions unrelated to inherited IRAs, experts predict that it will need to be reconciled with the Senate’s version of the act, RESA. Both pieces of legislation share many of the same provisions. Of significance in estate planning, both retirement acts include fine print that will greatly limit traditional tax-planning options for inherited IRAs. Given the overwhelming bipartisan support for the SECURE Act, I will focus primarily on it, and to a lesser extent RESA, in the remainder of this article. Further, both retirement acts propose changes for 401(k) plans that are beyond the scope of this article.

In order to understand the popularity of the SECURE Act, it is important to note that there are certain “enhancements” for qualified retirement plans under the SECURE Act. As examples, the SECURE Act extends the required beginning date for required minimum distributions from certain retirement accounts from age 70 ½ to age 72 and will allow workers to make contributions to traditional IRAs at any age. However, hidden amongst these benefits to retirement plan owners is the provision that will mandate distribution of the balance of an inherited IRA to certain beneficiaries within 10 years after the death of the account owner.

Currently, when an account owner of an IRA names a younger non-spouse individual beneficiary to inherit the account upon his or her death, the beneficiary can stretch out payments of the inherited IRA over a period of time based on his or her life expectancy. With proper planning by the account owner, such designated beneficiary will be able to minimize the size of required distributions and defer income taxes on such distributions over a long period of time. Many estate planners also recommend designating see-through trusts as beneficiaries of inherited IRAs. One such see-through trust, known as a conduit trust, receives the required minimum distributions from an inherited IRA and then immediately pays such distributions to the beneficiary of the trust. The other see-through trust, known as an accumulation trust, gives the trustee discretion on whether to distribute the required minimum distributions from the inherited IRA to the trust beneficiary in a given year, however any funds kept in the trust will be taxed at a high trust tax rate. Such common planning options will be significantly hampered by both the SECURE Act and RESA.

Under the SECURE Act, certain beneficiaries of IRAs inherited from account owners who die after January 1, 2020 will be required to withdraw the entire account within 10 years of the account owner's death. Similarly, under RESA, certain beneficiaries of inherited IRAs will be allowed to stretch up to \$400,000 (with an inflation adjustment) based on their life expectancy, but any remaining funds must be distributed within 5 years after the death of the account owner. Both versions provide exceptions to the ultimate 5-year or 10-year distribution rule for beneficiaries who are the surviving spouse, the account owner's child who has not reached the age of majority, disabled, chronically ill, or less than 10 years younger than the account owner.

Under the SECURE Act, many beneficiaries will be required to withdraw substantial funds from an inherited IRA within 10 years and include the distributions as income, thereby missing out on considerable potential income tax-deferred growth. If similar retirement legislation passes, it will be important for retirement benefits account owners to review their existing estate plans with an estate planning attorney soon after such legislation passes. An account owner may wish to name a spouse or minor children as

beneficiary of the IRA following his or her death or reevaluate beneficiaries under their estate plan based on this new limitation in tax planning. Conduit trusts drafted as beneficiaries of inherited IRAs may need to be restructured. Account owners also may wish to consider designating an accumulation trust as a beneficiary of their inherited IRAs in order to provide additional asset protection, if they are willing to accept the high trust tax rates. Alternatively, an account owner may choose to name a charitable remainder trust as the beneficiary of the inherited IRA, which would result in a named beneficiary receiving a fixed percentage of the value of the trust assets each year until his or her death, with the remainder then being distributed to designated charities.

If Congress ultimately passes legislation that limits traditional stretch out planning, it will be important to discuss available planning options for IRAs with an estate planning attorney. If you have any questions about restructuring your current plan or putting together a new plan for your retirement assets, please contact [Audra E. Loomis](#) or any attorney in [Frost Brown Todd's Estates, Trusts and Wills Practice Group](#).

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