



Embry Merritt Shaffar Womack, PLLC.  
Attorneys at Law

## NEW TAX LAW

# SECURE Act Impact on Retirement Plans

The federal appropriations bill enacted into law by Congress and the President in the final weeks of 2019 included changes to the federal tax code that will impact qualified retirement plans, such as 401(k) plans or IRAs (sometimes collectively referred to as "retirement assets" in this bulletin). The new law, often referred to as the "SECURE Act," may affect contributions and distributions made during your lifetime and may also affect the way in which those retirement assets are distributed to your beneficiaries after your death. Significantly, the SECURE Act may impact the timing and amount of tax paid by those beneficiaries on distributions of the retirement assets, as well as your ability to protect the retirement assets from the beneficiaries' creditors, and it may ultimately affect the value of those retirement assets in the hands of the beneficiaries.

This bulletin summarizes some of the key aspects of the SECURE Act that may impact you or your estate plan. We hope you find it helpful in understanding the major changes enacted by this legislation, and how they might affect you.

### **Changes Affecting You During Life**

One component of the SECURE Act that will affect many people during their lives is a change in the age at which a person must begin taking distributions from a qualified plan or IRA. Under the law prior to the SECURE Act, most people (aside from some who were not yet retired) were required to begin taking distributions from their qualified plans or traditional (non-Roth) IRAs by April 1 of the year following the one in which they reached age 70 ½. Under the SECURE Act, the age is increased to 72 for those who had not attained age 70 ½ prior to January 1, 2020. In addition, the SECURE Act removes the age cap for funding traditional (non-Roth) IRAs, meaning that individuals over age 70 ½ are now eligible to make contributions to a traditional IRA.

These changes involve additional detail and nuance beyond the brief summary provided above, and may present an opportunity for some to take further advantage of the tax-deferred savings offered by qualified plans and traditional IRAs. In some instances, they may even present additional opportunities for funding a Roth IRA. Accountants and financial advisors are in the best position to determine whether and how you might benefit from these changes in the law. Of course, EMSW's current and prospective clients and their advisors are welcome to contact us for assistance in understanding how the SECURE Act applies to specific circumstances.

## **After Your Death**

Perhaps the most significant changes brought about by the SECURE Act, at least in terms of estate planning, relate to how qualified plans or IRAs are distributed and taxed after death. Under the law prior to January 1 of this year, it was possible to “stretch” the distribution of an inherited qualified plan or inherited IRA over the life expectancy of a beneficiary, if that beneficiary met the requirements of a “designated beneficiary” under the law. This lifetime stretch-out offered potential advantages in terms of income tax free growth of the retirement assets during the beneficiary's life, the cumulative amount of income tax paid on distributions from the retirement account, and protection of the retirement assets from the beneficiary's creditors, or even from a beneficiary who might not have the ability to handle significant amounts of money at one time. The law also permitted these advantages for retirement assets left in trust, as long as the trust was structured to meet certain requirements.

The SECURE Act has changed these rules so that most designated beneficiaries will be required to receive the full amount of an inherited qualified plan or IRA within 10 years of the death of the person who funded the plan or IRA (the “participant”). Certain designated beneficiaries, including the participant's surviving spouse, the participant's minor children (but not grandchildren), and beneficiaries who are disabled or chronically ill, are still permitted to take distributions over their expected lifetimes (though children who are minors at the time of inheritance must now take the full distribution within 10 years after reaching the legal age of adulthood).

The good news is that the SECURE Act does not change the method of designating a beneficiary or beneficiaries to receive inherited retirement assets. If you have existing beneficiary designations in place, those designations are still valid. What the SECURE Act does, however, is introduce a host of new payout rules that must be considered in structuring your estate plan to maximize the tax-deferral benefits of the retirement assets and best protect your beneficiaries.

Unfortunately, Congress gave us very little warning that these changes were on the horizon. Accordingly, estate plans that, through the end of 2019, offered a sound approach to planning for retirement assets, may no longer provide a good solution. For example, many individuals have current estate plans in place that, at death, leave their retirement assets to a trust known as a “conduit trust.” Any retirement assets paid to a conduit trust will pass immediately from the trustee to the beneficiary. Under the old law, that may have been a good solution in some situations, because the distributions and income taxation could be stretched over the expected lifetime of the trust beneficiary. However, under the SECURE Act, that same conduit trust may now require distribution of the retirement assets to the beneficiary within 10 years of the death of the participant (or within 10 years of a participant's minor child reaching adulthood). Depending on the circumstances, other planning techniques may better serve the goals those plans are meant to achieve, given the new rules.

## **Take Action**

We welcome the chance to discuss these changes with you, answer any questions you may have, and make recommendations that will help you find the best planning solutions to meet your needs and those of your family. EMSW clients with assets in a qualified plan or IRA are encouraged to contact our offices at their earliest convenience and arrange a meeting or phone

conference to review their estate plans and ensure that those assets are disposed of in the best possible manner considering the SECURE Act changes.

**Note: The contents of this letter are for informational purposes only and are not intended to constitute legal advice or form an attorney-client relationship. New clients, please contact our office at (859) 543-0432, ext. 234, to arrange a meeting with an attorney.**

<p><b>Suzanne Lee Shaffar</b>            (859) 543-0453 ext. 230            suzanne@emswlaw.com</p>	<p><b>Martha J. Griffin</b>            (859) 543-0453 ext. 228            martha@emswlaw.com</p>	<p><b>Gentry Collins</b>            (859) 543-0453 ext. 229            gentry@emswlaw.com</p>
<p><b>Jim Fenwick</b>            (859) 543-0453 ext. 231            jim@emswlaw.com</p>	<p><b>Stephanie Tew Campbell</b>            (859) 543-0453 ext. 233            stephanie@emswlaw.com</p>	