



# Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE - H.R. 1994)

Keith A. Herman | [Kherman@HarrisonLLP.com](mailto:Kherman@HarrisonLLP.com) | 636.246.0010

Christine A. Alsop | The Elder & Disability Advocacy Firm | 314.644.3200

## Status of SECURE

---

- SECURE passed the House on May 23, 2019, by a vote of 417-3.
- The 10-year-rule may become law for most non-spouse beneficiaries of retirement accounts.

## Other Changes in SECURE

---

- Required beginning date (RBD) for minimum distributions changes from  $70\frac{1}{2}$  to 72.
- Eliminates age limit for traditional IRA contributions.
- It will be easier for employers to offer annuities and with less liability to employers.
- 529 plan benefits have been expanded (although home-schooling expenses were eliminated).
- Repeals the “Kiddie Tax” changes enacted as part of the 2017 TCJA. The pre-2017 TCJA law will be reinstated.

# Exceptions

---

- Exceptions to 10-year rule for “eligible designated beneficiaries” (EDBs):
  - Surviving spouse
  - Individuals not more than ten years younger than account owner
  - Disabled individuals as defined in IRC 72(m)(7)
  - Chronically ill individuals as defined in IRC 7702B(c)(2)
  - Minor children of account owner

# Effective Dates

---

- Effective for decedents dying after December 31, 2019.
- For account owner's death in 2019, or prior:
  - Current beneficiary: No change to current rules – SECURE will not apply.
  - Successor beneficiaries (after the death of the original beneficiary) will be subject to SECURE (depends on whether is EDB, designated beneficiary (DB), or non-DB)
- Special effective dates apply to collectively bargained plans and governmental plans.
- The effective dates do not apply to certain annuities that in pay status or certain irrevocable elections concerning payment amounts or methods to the account owner or to his or her designated beneficiaries.

## 5-Year and 10-Year Rules under SECURE

---

- Beneficiary must withdraw entire account within 5 years (if no DB) or 10 years (if DB) of the account owner's death
  - By December 31 of the calendar year that contains the 5th/10th anniversary of the account owner's date of death
  - No distributions are required until that date
- What if no DB and account owner dies after RBD?
  - Life expectancy under Single Life Table is more than ten years until age 81 (9.7 year life expectancy at age 81)
  - 70 – 17 yrs; 71 - 16.3; 72 – 15.5; 73 – 14.8; 74 – 14.1; 75 – 13.4 ...
  - Better off with no DB if die between the ages of 70 and 80
  - Anomaly that will be fixed ???

# SECURE Vs. Existing Rules

---

Who is Named	Current Law	SECURE Act Post 2019
Spouse	Spouse may choose rollover or RMDs over spouse's life expectancy	No change – unclear how trusts would work
DB and death on/after RBD	RMDs over DB's life expectancy (or life expectancy of deceased account owner if longer)	10-year, subject to EDB exceptions – unclear how trusts would work
DB and death before RBD	RMDs over DB's life expectancy	10-year, subject to EDB exceptions – unclear how trusts would work
Non-DB and death on/after RBD	RMDs over life expectancy of deceased account owner	No change
Non-DB and death before RBD	5 year rule	No change

# Potential Solutions to 10-Year Rule

---

- Roth IRA Conversions
- Multigeneration Spray Trusts
- Leave Retirement Assets to Charity or Charitable Remainder Trust
- Life Insurance



# Planning For Minors, Disabled and Ill

---

- Surviving spouse: rollover or split among children and spouse
- Existing conduit and accumulation trusts if SECURE passes
- How will we structure new trusts if SECURE passes?
  - Trusts for DBs vs. Trusts for EDBs

## Planning For Minors, Disabled and Ill

---

- Disabled individuals as defined in IRC 72(m)(7)
- Chronically ill individuals as defined in IRC 7702B(c)(2)
- Minors children of account owner

# Minor Children

---

- A minor child from Treasury regulation §1.401(a)(9)-6, A-15:
  - “...(A) child may be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26.”
  - “A specified course of education” is not further defined in the regulation.
- Once the child attains the age of majority, if the child is not also disabled, the 10-year rule applies.

## Minor Children

---

- A minor child from Treasury regulation §1.401(a)(9)-6, A-15:
  - “...(A) child may be treated as having not reached the age of majority if the child has not completed a specified course of education and is under the age of 26.”
  - “A specified course of education” is not further defined in the regulation.
- Once the child attains the age of majority, if the child is not also disabled, the 10-year rule applies.

# Our Team

---



**KEITH A. HERMAN**

636.246.0010 | [kherman@HarrisonLLP.com](mailto:kherman@HarrisonLLP.com)  
2021 South Lindbergh Boulevard, Suite 100  
Saint Louis, MO, 63131

# Offices

---



# Offices

---

## **Chicago**

333 West Wacker Drive | Suite 1700  
Chicago, IL 60606 | 312.332.1111

## **Naples**

Truist Building | 801 Laurel Oak Drive | Suite 403  
Naples, FL 34108 | 239.316.1400

## **Springfield**

2121 W. White Oaks Drive | Suite E  
Springfield, IL 62704 | 217.546.6940

## **Boulder**

1048 Pearl Street | Suite 415  
Boulder, CO 80302 | 303.441.9022

## **Denver**

210 University Boulevard | Suite 340  
Denver, CO 80206 | 303.558.1454

## **Saint Louis**

2021 South Lindbergh Boulevard | Suite 100  
Saint Louis, MO, 63131 | 314.710.6352

## **Atlanta**

1180 W. Peachtree St. NW | Suite 2040  
Atlanta, GA 30309 | 404.566.4307

## **Edwardsville**

Mark Twain Plaza III Building  
105 West Vandalia Street | Suite 475-A  
Edwardsville, IL 62025 | 314.710.4363

---

Questions?

HI