



## Changes for Retirement Accounts and 529 Plans Under the SECURE Act

\*Since the writing of this alert, there have been changes in the law as a result of the SECURE 2.0 Act of 2022, which was signed into law on December 29, 2022. Please see [“Important Retirement Account Changes Under the SECURE 2.0 Act of 2022”](#) for information about the SECURE 2.0 Act of 2022.

---

The SECURE Act of 2019 (the “Act”) has been signed into law and will go into effect on January 1, 2020. It has several income tax provisions that affect individual taxpayers. Although the Act amends several sections of the tax law, we want to give you information on two important areas that the Act affects, namely retirement accounts and 529 college savings plans.

### Retirement Accounts: Good News for Account Owners

With very limited exceptions, every dollar withdrawn from a traditional retirement account must be reported as ordinary income on your tax return. Thus, for many years achieving the best tax result required foregoing all withdrawals until passing age 70.5, at which point “required minimum distributions” (RMDs) must commence, and following that withdrawing no more than the RMDs. Waiting the longest period of time before making any withdrawals allows more assets to remain in the account, which in turn leads to greater compounding of returns over time.

The Act increases the age at which RMDs must begin to 72, except for people who have already reached age 70.5 by the end of 2019. For those who can do without the funds, an additional 18 months of compounding could produce a significant benefit.

The Secure Act also removes the age limit for contributions to traditional IRAs, which has been age 70.5. This will be helpful for those who continue working past age 70.5.

The Act does not change how an account owner determines the maximum withdrawal period or how RMDs are calculated. Those rules still reference IRS life expectancy tables that contain census data.

### Retirement Accounts: Potentially Bad News For Non-Spouse Heirs

Although the Secure Act makes taxpayer-friendly changes to the rules governing retirement accounts during the account owner’s lifetime, it changes course for non-spouse heirs who inherit retirement accounts.

For many years the most efficient strategy for a retirement account has been to “stretch” withdrawals over as long a period as possible by naming a spouse as the primary



beneficiary. A spouse benefits both from the estate tax marital deduction, which defers estate tax until the surviving spouse's death, and from the "spousal rollover" rule, which allows the spouse to transfer a retirement account's assets into his or her own IRA. Assuming the surviving spouse is the younger of the two spouses, a spousal rollover IRA can defer unnecessary early withdrawals and thus defer income tax.

The "stretch" strategy also involves naming children and other non-spouse heirs directly as the secondary beneficiaries, or, if a trust is desired, using only a specialized form of trust referred to as a "see-through trust." This strategy enables using the life expectancy of the beneficiary to set the length of the withdrawal period. Assuming the beneficiary is a child or someone else significantly younger than the account owner, he or she can stretch withdrawals over many years, even decades.

Under the old rules, a significant risk existed if the account owner died before age 70.5 and failed to name a beneficiary, or named a trust that does not qualify as a see-through trust. In that case, the heirs had only five years to withdraw all account assets (although spouses could still rollover assets into their own IRAs). This risk was mitigated if the account owner died after reaching age 70.5, in which case all beneficiaries stepped into the remaining withdrawal period that applied to the account owner and adopted that as their own (even if the account owner had a faulty, or no, beneficiary designation).

Under the new law, spousal rollover rules are still in place, but there are significant changes for non-spouse heirs who are named as beneficiaries or through a see-through trust. For those heirs, only a chronically ill or disabled beneficiary and a beneficiary whose age is within 10 years of the account owner's age can still stretch withdrawals over their life expectancy. Everyone else has a maximum of 10 years to withdraw all of the account assets. One nuance here is that the 10 year period for a beneficiary who is a minor child of the account owner starts when the child reaches the age of majority. These new rules generally apply regardless of whether the account owner dies before or after age 72.

Thus for non-spouse named beneficiaries, the new rules will tend to concentrate RMDs into fewer years, which means each year's withdrawal will be larger, triggering more income tax for the beneficiary and depleting the account sooner.

### 529 College Savings Plans

The Act also makes changes to tax treatment of 529 Plans. These are a specialized type of investment account originally intended to help families save for college by allowing for tax-free growth of funds within the account and tax-free withdrawals for "qualified higher education" expenses, which includes tuition and fees, required supplies and equipment and in some cases, room and board. Any withdrawal that did not qualify would be subject to income tax as well as a 10% penalty. In response to criticism that permissible uses of 529 Plans were too narrow, Congress expanded those to include up to \$10,000 for tuition and required fees at primary and secondary schools beginning in 2018.



The Secure Act now further expands permitted uses of 529 Plan by allowing withdrawals of up to \$10,000 to repay student loans. The Act also allows an additional \$10,000 to be used to pay off student loans for each of the beneficiary’s siblings. To the extent any loan payment from a 529 Plan is payment of interest, that interest will not be eligible for the student loan interest deduction on the borrower’s income tax return.

Additionally, the Act permits distributions to pay for qualified apprenticeship programs that are registered under the National Apprenticeship Act, which could be helpful for those who do not go to college following high school.

The SECURE Act provides a good incentive to review retirement account and college savings planning in 2020. This includes not only reviewing your naming of beneficiaries and ensuring you take maximum advantage of tax incentives, but also investment strategies and coordinating this planning with other elements of your financial planning and ultimately with your estate plan.

### Additional Resources

- [Important Retirement Account Changes Under the SECURE 2.0 Act of 2022](#)

### Contact Us

For more information, please contact a member of our Private Client Group, or the author of this advisory:

Dennis Delaney  
617.557.9722  
[ddelaney@hembar.com](mailto:ddelaney@hembar.com)

### Private Client Group

Brad Bedingfield  
Joseph L. Bierwirth, Jr.  
Brian C. Broderick  
Paul M. Cathcart  
Dennis R. Delaney  
Nancy E. Dempze  
Mark B. Elefante  
Kevin M. Ellis  
Charles Fayerweather

Joan Garrity Flynn  
Nancy B. Gardiner  
Keirsa K. Johnson  
Stephen W. Kidder  
Harry F. Lee  
Edward Notis-McConarty  
Arthur B. Page  
Charles R. Platt  
Michael E. Porter

Michael J. Puzo  
John J. Siciliano  
Kurt F. Somerville  
Sarah M. Waelchli  
*Of Counsel*  
Timothy F. Fidgeon  
Frederic J. Marx  
R. Robert Woodburn, Jr.

[www.hembar.com](http://www.hembar.com)

Copyright © 2023 Hemenway & Barnes LLP

This advisory is provided solely for information purposes and should not be construed as legal advice with respect to any particular situation. This advisory is not intended to create a lawyer client relationship. You should consult your legal counsel regarding your situation and any specific legal questions you may have.