

EQUITY FOR SURVIVING SPOUSES ACT (ESSA)

EXECUTIVE SUMMARY

January 2024

The Equity for Surviving Spouses Act (ESSA) is proposed legislation that would provide surviving spouses of New York public sector employees with retirement benefit protections similar to those provided to surviving spouses of private sector employees, federal government employees, and public sector employees in almost all other states.

ESSA was developed in response to concerns raised by New York legal services attorneys, who advised surviving spouses of state and city employees. These surviving spouses were distressed to learn after the death of their spouse that they were entitled to no retirement plan benefits. As a result, they were left with significantly reduced standards of living, or in complete destitution.

This is a gap in protections for surviving spouses of New York public sector employees. While New York provides surviving spouses with the right to elect to obtain one-third of the value of their deceased loved one's property, this protection is of no utility if there are no survivor benefits for them to elect against. Similarly, the right of election is of no help if they are not notified of their deceased loved one's designated beneficiary for death benefits.

ESSA would remedy this gap by providing surviving spouses with default benefits from public employer retirement plans at least equal to the retirement survivor benefit under a joint and 50% survivor annuity and at least half of the death benefit. These default benefits may be waived by the surviving spouse with a written plan form. This waiver provision underscores the autonomy of surviving spouses in decisions that significantly impact their financial well-being.

ESSA mirrors the Federal Retirement Equity Act of 1984 provisions governing 100 million active members of private employer retirement plans and the similar provisions governing three million active members of federal employer retirement plans.

ESSA thus remedies a gap in New York surviving spouse protections by applying a tried-and-true approach used for forty years by private and federal employer retirement plans.

If enacted, ESSA would also bring New York in line with almost all other states, as only Tennessee, Alabama, and New York deny such protections to surviving spouses of their public sector employees. ESSA would enhance protections for surviving spouses of New York public sector employees, thereby safeguarding families across New York State.