

IRS PROVIDES NEW REQUIRED MINIMUM DISTRIBUTION RELIEF AND GUIDANCE

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In recent years, it has not been particularly easy for qualified retirement plan sponsors and plan administrators, as well as for IRA providers and IRA owners, to navigate the changes made to the required minimum distribution (RMD) rules by the Setting Every Community Up for Retirement Enhancement Act of 2019 (“SECURE Act”), and by the SECURE 2.0 Act of 2022 (“SECURE 2.0”). Additionally, compliance with the new RMD rules has not been made any easier by the fact that long awaited regulations interpreting the SECURE Act and SECURE 2.0 changes to the RMD rules have not been finalized and published. In light of the changes made to the RMD rules and the challenges presented when administering payments of RMDs under the new rules, the IRS recently published Notice 2023-54 which provides some helpful relief and guidance for the current administration of RMD payments.

Delayed Effective Date for Final RMD Regulations. Notice 2023-54 announces the final RMD regulations when published will apply for calendar years beginning no earlier than 2024. In Notice 2022-53, the IRS previously announced the final RMD regulations will apply for calendar years beginning no earlier than 2023. The delayed publication of the final RMD regulations and now the delayed effective date no doubt are the result of further RMD rule changes necessitated by the enactment of SECURE 2.0.

Relief Relating to the SECURE 2.0 Change to the 2023 Required Beginning Date. Given the enactment of SECURE 2.0 in late 2022 and the time needed to implement changes to automated payment systems that began processing distributions in early 2023, it is possible that plan participants and IRA owners who were born in 1951 and would only attain age 72 in 2023 (and therefore would not attain, in 2023, the new required beginning date age of 73 as enacted by SECURE 2.0) were paid distributions that were partially or fully mischaracterized as RMDs – as a result, the recipients of those distributions may have been mistakenly advised their distributions were ineligible to be rolled over. Under Notice 2023-54, the following relief has been granted:

1. A qualified retirement plan payor or administrator will not be considered to have failed to satisfy the direct rollover, 402(f) special tax notice, and mandatory withholding requirements normally applicable to an eligible rollover distribution

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merely because of a failure to treat the distribution as an eligible rollover distribution. This relief applies to a distribution made from a plan, between January 1, 2023, and July 31, 2023, to a participant born in 1951 (or to that participant's surviving spouse) that would have been an RMD had SECURE 2.0 not raised the required beginning date age from age 72 to age 73.

2. For a qualified retirement plan participant who was born in 1951 (or that participant's surviving spouse) and received the distribution described in 1 above, the IRS is extending the 60-day rollover period. The deadline for rolling over the mischaracterized portion of distribution will be September 30, 2023.
3. For an IRA owner who was born in 1951 (or that individual's surviving spouse) and received an IRA distribution between January 1, 2023, and July 31, 2023, that would have been an RMD had SECURE 2.0 not raised the required beginning date age from age 72 to age 73, the IRS also is extending the 60-day rollover period. Again, the deadline for rolling over the mischaracterized portion of the IRA distribution will be September 30, 2023. Such a rollover will be permitted even if the IRA owner or surviving spouse has rolled over a distribution within the last twelve months. However, making such a rollover of the portion of an IRA distribution mischaracterized as an RMD will preclude the IRA owner or surviving spouse from rolling over a distribution in the next twelve months.

Guidance for Specified RMDs for 2023. Before the February 2022 proposed regulations were issued, a beneficiary of a participant (or IRA owner) who died after his or her required beginning date and is subject to the 10-year rule of Code Section 401(a)(9)(H) may have reasonably interpreted the new 10-year rule to allow the beneficiary to wait until the last year of the 10-year period to take the RMDs in a lump sum. However, the proposed regulations provide for another approach – if a participant (or IRA owner) dies on or after his or her required beginning date, and the participant's beneficiary is a designated beneficiary who is not an eligible designated beneficiary, annual required minimum distributions must continue to be taken after the participant's death with a full distribution of the entire account balance being required by the end of the 10th calendar year following the calendar year of the participant's death. As a result of the uncertainty surrounding the 10-year rule, there may be some beneficiaries who should take RMDs in 2023, but reasonably believe they can wait to take the RMDs in a lump sum in the last year of the 10-year period – those beneficiaries would be in violation of the proposed regulations and exposed to an excise tax is due in connection with the missed RMD. Accordingly, Notice 2023-54 includes guidance and relief directed at specified RMDs for 2023.

For purposes of the Notice, a “specified RMD” is any distribution that, under the interpretation included in the proposed regulations, would be required to be made as an RMD in 2023 under a defined contribution plan or IRA that is subject to the rules of Code Section 401(a)(9)(H) for the year in which the participant/IRA owner (or designated beneficiary) died if that payment would be required to be made to:

- A designated beneficiary of an employee under the plan (or IRA owner) if:
 - The employee (or IRA owner) died in 2020, 2021 or 2022;
 - The employee (or IRA owner) died on or after the employee's (or IRA owner's) required beginning date; and
 - The designated beneficiary is not taking lifetime or life expectancy payments pursuant to Code Section 401(a)(9)(B)(iii); or

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- A beneficiary of an eligible designated beneficiary who died in 2020, 2021 or 2022, and was taking lifetime or life expectancy payments pursuant to Code Section 401(a)(9)(B)(iii).

The Notice states that any defined contribution plan that fails to make a specified RMD for 2023 will not be treated as having failed to satisfy Code Section 401(a)(9) merely because it did not make the distribution. And, to the extent a taxpayer does not take a specified RMD for 2023, the Notice states that the IRS will not assert that an excise tax is due in connection with the missed RMD. Similar relief was granted by IRS Notice 2022-53 for specified RMDs in 2021 and 2022.

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