

## LEGAL UPDATE

## IRS Issues Transitional Guidance for Required Minimum Distributions

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In response to changes made by the SECURE 2.0 Act of 2022 (SECURE 2.0) to the required minimum distribution (RMD) rules of the Internal Revenue Code (the Code), the Internal Revenue Service (IRS) recently issued Notice 2023-54, which provides two forms of transitional relief for 2023 RMDs. The IRS will be issuing final regulations under Code Section 401(a)(9) and related provisions that will apply to RMDs no earlier than 2024.

**Rollover relief.** SECURE 2.0 changed the required beginning date for RMDs from tax-qualified plans and other eligible retirement plans from April 1 of the calendar year following the calendar year in which an individual attains age 72 to April 1 of the calendar year following the calendar year in which the individual attains age 73 or 75, depending on the individual's date of birth. As a result, a participant in a tax-qualified defined contribution plan (or an IRA) who was born in 1951 (thus, turning age 72 in 2023) will have a required beginning date of April 1, 2025, rather than April 1,

distributions by failing to treat the distribution as an eligible rollover distribution.

- For distributions described above, Treasury and IRS have extended the normal 60-day rollover period until September 30, 2023.
- For distributions made from an IRA between January 1, 2023, and July 31, 2023, to an IRA owner born in 1951 (or to the individual's surviving spouse) that would have been an RMD but for the change in the required beginning date made by SECURE 2.0, Treasury and IRS are extending the date for rolling over the portion of the distribution mischaracterized as an RMD until September 30, 2023. This rollover option is available even if the taxpayer had made another rollover within the preceding 12-month period, but the IRA owner will not be able to make another IRA rollover for a 12-month period.

**Ten-year distribution relief.** Under a change made by the original SECURE Act, if a participant or IRA owner died after reaching his or her required beginning date and was not an eligible designated beneficiary, the participant's or IRA owner's account balance had to be entirely distributed by the end of a 10-year period. It was generally believed that so long as all of the account balance was distributed by the end of the 10-year period, the Code requirements would be satisfied. But the IRS took the unanticipated position in its proposed regulations that annual required minimum distributions had to be made in each year during the 10-year period. The regulations took a similar position for distributions after the death of an eligible designated beneficiary or after a minor child reaches the age of majority. In light of the IRS's unexpected interpretation of the 10-year rule and in response to comments on the proposed regulations, the IRS issued Notice 2022-53, which provided that a defined contribution plan would not fail to be tax-qualified in 2021 or 2022 for failure to make a required distribution in

2024, and the first distribution made to that plan participant (or IRA owner) that will be treated as an RMD will be a distribution made for 2024, rather than for 2023.

While the law was clear on this issue, the IRS was told by plan administrators and payors that it would take some time to update their systems. As a result, plan participants (or IRA owners) who reached age 72 in 2023 could have automatically received distributions this year as would have been required under pre-SECURE 2.0 law. To address that circumstance, Notice 2023-54 provides three forms of transitional relief:

- For a distribution made between January 1, 2023, and July 31, 2023, to a participant born in 1951 (or to the participant's surviving spouse) that would have been an RMD under pre-SECURE 2.0 law, a payor or plan administrator will not be considered to have violated any of the Code provisions relating to eligible rollover

accordance with the IRS interpretation of the 10-year rule in the proposed regulations, and a taxpayer who failed to receive such a distribution from a plan or IRA would not be subject to an excise tax under Code Section 4974 for failing to receive the distribution.

Notice 2023-54 has now provided relief for 2023 distributions that is similar to that in its 2022 Notice for 2021 and 2022 distributions. The relief applies to any distribution that under the proposed Code Section 401(a)(9) regulations would be required to be made in 2023 under a defined contribution plan or IRA subject to the 10-year rule for the year in which the employee (or designated beneficiary) died, if that payment is required to be made either (i) to a designated beneficiary of an employee (or an IRA owner) if the employee (or IRA owner) died on or after his required beginning date in 2020, 2021 or 2022, and the designated beneficiary is not using the lifetime or life expectancy exception to the 10-year distribution rule, or (ii) to the beneficiary of an eligible designated beneficiary, including a person who is treated as an eligible designated beneficiary with respect to a participant (or IRA owner) who died before December 31, 2019, if the eligible designated beneficiary died in 2020, 2021 or 2022, and was using the lifetime or life expectancy exception to the 10-year rule.

The IRS's Notice provides much-needed relief since the IRS has been slow to issue regulations regarding many SECURE Act provisions that were then further changed by SECURE 2.0. The IRS intends to finalize its proposed RMD regulations under the SECURE Act, with further revisions to reflect SECURE 2.0, that will apply to calendar years beginning no earlier than 2024.

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