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IRS Notice 2023-54 Provides Relief for 2023 RMDs and Rollovers

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Beginning in 2020, the Setting Every Community Up for Retirement Enhancement Act (the "SECURE Act") introduced numerous changes to the rules surrounding retirement plans. Recognizing that a significant number of Americans have insufficient retirement savings, a problem made worse by increasing life expectancies, the SECURE Act aimed to encourage greater participation and investment in retirement accounts. The rollout of the new legislation and associated regulations has created confusion for plan administrators, participants, and beneficiaries, necessitating transitional relief from the IRS.

Relief for Participants

The SECURE Act increased the age when distributions from retirement plans to participants must begin from 70 ½ to 72.[1] The SECURE Act also permits contributions to traditional IRAs beyond age 70 ½. The Securing a Strong Retirement Act of 2022, nicknamed "SECURE 2.0", was enacted in December 2022. In addition to other provisions focused on incentivizing participation in retirement plans, SECURE 2.0 further raised the age when distributions from retirement plans must begin to 73 for participants who reach age 72 after 2022 and increased the age to 75 for participants who reach age 74 after 2032.[2]

IRS Notice 2023-54 granted relief to IRA participants who began receiving distributions in 2023 that were not required because SECURE 2.0 delayed their first required minimum distribution ("**RMD**") from 2023 to 2024. Citing to an administrative lag time in implementing the new required beginning date ("RBD") rules, the 2023 Notice extended the 60-day rollover period for any distribution taken between January 1, 2023 through July 31, 2023 by an IRA owner born in 1951 that would have been required before SECURE 2.0 was passed. The deadline for the rollover has been extended to **September 30, 2023**. The rollover allows the IRA owner to place the distribution, mischaracterized as an RMD, back into an IRA. An eligible rollover of funds from one IRA to another is a non-taxable transaction. Customarily, an IRA owner is only permitted one rollover in the last twelve months; however, the rollover of any mischaracterized RMD taken between January 1, 2023 through July 31, 2023 by an IRA owner born in 1951 will be permitted even if a prior rollover was taken within the last twelve months. Electing to rollover a mischaracterized RMD, however, will bar any IRA rollovers in the subsequent twelve months.

Relief for Certain Non-Spousal Beneficiaries

While many of the changes implemented by the SECURE Act are focused on helping retirees and their surviving spouses, the SECURE Act also implemented numerous changes resulting in less advantageous tax treatment for non-spousal beneficiaries after the death of the participant. Most significantly, the SECURE Act provides that if the participant died in 2020 or later and after their RBD, the maximum deferral for distributions out of the plan is ten years for a non-spousal beneficiary.[3] There are limited exceptions for minor children of the participant and disabled individuals that permit additional deferral under some circumstances.

When first introduced, practitioners understood this 10-year limitation to operate similarly to the then existing "5-year rule" for retirement plans.[4] When applicable, the 5-year rule requires full distribution of a participant's retirement plan by the end of the fifth year following the participant's death.[5] There are no annual RMDs under the 5-year rule, just a single required distribution of any remaining balance by the end of the fifth year after the participant's death. The 5-year rule allows the beneficiary to consider the income tax consequences and take distribution(s) at any time within the 5 year period, or defer withdrawal until the end of the fifth year.

The language in the original SECURE Act provided that the rules regarding distributions from a retirement plan for a participant who dies before distribution of the entire plan "shall be applied by substituting "10 years" for "5 years", leading to the interpretation that the two rules would operate similarly.[6] However, the proposed regulations introduced by the Treasury Department in February 2022 added a new component to distributions under the 10-year rule that require annual RMDs in years one through nine. In addition to the requirement that the plan be withdrawn in full by the end of the tenth year following the participant's death (sometimes referred to as the "outer limit" for retirement plan distributions), the proposed regulations mandate annual RMDs to the non-spousal beneficiary from the plan.[7] The details for calculating the amount of the annual RMDs were not fully articulated in the proposed Treasury regulations.

For all its negative income tax consequences, the original interpretation of the 10-year rule included in the SECURE Act was simple – one required distribution of the plan's remaining balance to the non-spousal beneficiary by the end of the tenth year following the participant's death. The introduction of an annual RMD component in the proposed regulations added complexity to the already dense set of rules governing retirement plan withdrawals. Additionally, the timing of the introduction of the proposed regulations raised concerns for beneficiaries of participants who died on or after January 1, 2020 who, understanding the 10-year rule to operate similarly to the 5-year rule, did not take RMDs for 2021 or 2022. Recognizing the different interpretation of the 10-year rule taken by Treasury in the proposed regulations, the IRS issued transitional relief regarding RMDs in 2021 and 2022, eliminating the excise tax under §4974 for failure to take the RMDs that would be required under the proposed regulations.[8] The relief also confirmed that defined contribution plans would not fail to be "qualified" for failing to make these RMDs in 2021 or 2022.[9] In IRS Notice 2023-54, issued July 14, 2023, the IRS extended that relief to annual RMDs required by the proposed regulations but not taken in 2023. The 2023 Notice also provides that any final regulations regarding the new RMD rules will not apply for years earlier than 2024.

Importantly, the annual RMD component is only a concern for participants who died on or after January 1, 2020 while in pay status. If the participant died on or after January 1, 2020 and *before* the participant's RBD, the non-spousal beneficiary is not required to take annual RMDs in years one through nine but will need to take full distribution of the plan by the end of the tenth year following the participant's death.[10]

With 2024 rapidly approaching, Treasury will need to act swiftly to finalize the proposed regulations and clarify the new RMD rules.

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1 IRC §401(a)(9)(C)(i) [prior to subsequent amendment].

2 IRC §401(a)(9)(C)(v).

3 IRC §401(a)(9)(H).

4 IRC §401(a)(9)(B)(ii).

5 Treasury Reg. §1.401(a)(9)-3, A-2.

6 IRC §401(a)(9)(H)(i).

7 Proposed Reg. §1.401(a)(9)-5(e); Proposed Reg. §1.401(a)(9)-5(d).

8 IRS Notice 2022-53.

9 *Id*.

10 Proposed Reg. §1.401(a)(9)-3(c)(3).