

July 2023

## IRS Notice 2023-54 Provides Transitional Relief for Certain Required Minimum Distributions

On July 14, 2023, the Internal Revenue Service (“IRS”) released Notice 2023-54 as transitional relief for required minimum distributions (“RMDs”) impacting participants and traditional IRA owners attaining age 72 in 2023. Notice 2023-54 also extends relief for certain beneficiaries taking RMDs over a 10-year period following the death of a participant/IRA owner who had already commenced RMDs.

According to Notice 2023-54, the Department of the Treasury (“Treasury”) and IRS intend to issue final RMD regulations that will apply no earlier than the 2024 calendar year.

### Background

#### *SECURE 2.0 RMD Age*

SECURE 2.0 increased the age that employees participating in a 401(a), 401(k), 403(b), or 457(b) plan and traditional IRA owners become subject to RMD rules as follows:

Age	Individuals Impacted
73	an individual who attains age 72 after December 31, 2022, and age 73 before January 1, 2033
75	an individual who attains age 75 after December 31, 2032

#### *Modification to RMD Payment Period for Certain Beneficiaries*

The Setting Every Community Up for Retirement Enhancement Act of 2019 (“SECURE”) narrowed the circumstances under which a beneficiary can extend RMDs over the life expectancy of the beneficiary. Under SECURE, that option is limited to a beneficiary who is an Eligible Designated Beneficiary (“EDB”). SECURE defines an EDB as an individual named as a beneficiary by the participant/IRA owner and who is:

- the surviving spouse of the participant/IRA owner;
- a child of the participant/IRA owner who has not reached age 21;
- a disabled individual;
- an individual who is chronically ill; or
- an individual who is not more than 10 years younger than participant/IRA owner.

Any other individual named as beneficiary by the participant/IRA owner is a “designated beneficiary.” As modified by SECURE, a designated beneficiary satisfies RMD requirements by taking a full distribution of the deceased participant/IRA owner’s account by December 31 of the year containing the 10<sup>th</sup> anniversary of the death of the participant/IRA owner.

In February 2022, Treasury and IRS issued proposed RMD regulations that, among other matters, address how a designated beneficiary satisfies the 10-year period if the participant/IRA owner was already subject to RMD requirements at the time of their death:

- A designated beneficiary must take an RMD at least annually over the 10-year period following the death of the participant under the Internal Revenue Code’s “at least as rapidly” rule; and

- Once a child EDB of the deceased participant/IRA owner attains age 21, that child must take an RMD at least annually over the 10-year period starting in the year that that child attains age 21.

The proposed regulations also provide that, following the death of an EDB who is taking RMDs over their life expectancy, the beneficiary of that deceased EDB must continue to take an RMD at least annually over the 10-year period following the death of the EDB.

This IRS position prompted comments from benefits practitioners who had interpreted SECURE as no longer providing that such a beneficiary must take an annual RMD under the pre-SECURE “at least as rapidly” rule, as long as the beneficiary took a full distribution of the account by the year containing the 10<sup>th</sup> anniversary of the death of the participant/IRA owner.

In October 2022, the IRS issued Notice 2022-53 to provide relief for 2021 and 2022 RMDs to designated beneficiaries under a defined contribution plan or IRA operating under the 10-year rule who did not take an annual RMD before the year containing the 10<sup>th</sup> anniversary of the participant/IRA owner’s death. Notice 2022-53 also contained similar relief for a minor child EDB reaching age 21 and for a beneficiary of a deceased EDB. In addition, Notice 2022-53 waived imposition of the IRS 50% excise tax that otherwise would apply to failures to take a timely 2021 or 2022 RMD in such circumstances.

### **Relief Related to Mischaracterized RMDs**

The IRS recognizes that the December 29, 2022 enactment date for SECURE 2.0 provided limited opportunity for participants and IRA owners turning age 72 in 2023 to modify automated RMD payments to reflect the increase in RMD age to 73 under SECURE 2.0. As a result, Notice 2023-54 provides relief for distributions that were mischaracterized as RMDs and thus were not considered eligible for rollover (“Mischaracterized RMDs”) if:

- the distribution was made to a participant/IRA owner who attains age 72 in 2023, or to the surviving spousal beneficiary of that participant/IRA; and
- the distribution was made between January 1, 2023 and July 31, 2023; and
- the distribution was treated as a RMD as a result of the rules in place prior to SECURE 2.0.

IRS Notice 2023-54 extends the 60-day indirect rollover deadline to complete rollovers of Mischaracterized RMDs to September 30, 2023.

An employer plan or plan administrator will not be treated as failing to satisfy the withholding, direct rollover, or notice requirements relating to eligible rollover distributions (“ERDs”) merely because of a failure to treat the distributions described above as ERDs.

With respect to distributions from IRAs, the IRS notes that such a rollover of a Mischaracterized RMD to an IRA is permissible, even if the IRA owner or surviving spouse had rolled over a distribution within the last 12 months. The IRS cautions that a rollover of a Mischaracterized RMD by an IRA owner or surviving spouse will prevent the IRA owner or surviving spouse from making another rollover among IRAs within the next 12 months. The IRS notes that a trustee-to-trustee transfer among IRAs would continue to be available in such circumstances.

### **Relief for Designated Beneficiaries Under the 10-Year Rule**

Notice 2022-53 provided certain relief from the annual RMD requirement under the 10-year rule for calendar years 2021 and 2022 that Notice 2023-54 now extends into 2023. Under the extended relief, individuals described below will not be

deemed to have failed to satisfy the annual RMD requirements applicable to the 10-year rule:

- a designated beneficiary who did not take an annual RMD following the death of the participant/IRA owner in 2021, 2022, or 2023, and
- a child who was a EDB of the deceased participant/IRA owner if the child did not take an annual RMD in 2021, 2022, or 2023 upon attaining age 21; and
- a beneficiary of an EDB if that beneficiary did not take an annual RMD following that EDB's death in 2021, 2022, or 2023.

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