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Employee Benefits Corner

IRS Issues 2023 Required Minimum Distribution (“RMD”) Relief Following SECURE 2.0 Act Changes

By Elizabeth Thomas Dold and David N. Levine

The Internal Revenue Service (“IRS”) issued Notice 2023-54 (“Notice”) that provides relief from Code Sec. 401(a)(9) required minimum distribution (“RMD”) compliance for certain 2023 lifetime and post-death distributions to participants and beneficiaries under individual retirement accounts (“IRAs”) and employer plans. The guidance largely tracks similar guidance that was previously under Notice 2020-51 and Notice 2022-53. In short—

- the pending RMD regulations (for all plan types) will not be effective before the 2024 distribution calendar year;
- relief for errors with respect to the Setting Every Community Up for Retirement Enhancement (“SECURE”) 2.0 “required beginning date” change, including (1) extending the 60-day indirect rollover period through September 30, 2023, (2) relief from the one-per-12-month IRA indirect rollover limitation, and (3) plan sponsor relief for noncompliance with Code Secs. 401(a)(31), 402(f), and 3405(c) withholding; and
- no 2023 RMD payments need to be made for beneficiaries receiving “specified RMD” payments (“at least as rapidly” rule relief).

Background

In December 2019, Congress passed the SECURE Act (Pub. L. 116-94), which extended the required beginning date for RMDs under Code Sec. 401(a)(9) to April 1 of the calendar year following the year an individual turns 72 (for those born on or after July 1, 1949). As the change was made late in the year, the IRS issued Notice 2020-51 that provided IRA owners and plan sponsors transition relief for amounts that were treated as RMD payments (and therefore not eligible for rollover or subject to 20% withholding), but were in fact not RMD payments under the new rules (generally IRA owners and participants who turned age 70½ in 2020).

SECURE 2.0 Act made a similar change in the required beginning date to age 73 for those IRA owners and participants who turned 72 on or after January 1, 2023, resulting in potentially similar RMD errors. For example, if an IRA owner or participant was born in 1951, they will generally have a required beginning date

of April 1, 2025, rather than April 1, 2024 (with the first RMD payment for 2024 rather than the 2023 year). The Notice provides welcome relief for 2023 payments made between January and July 31, 2023, that were mistakenly treated as RMD payments.

The SECURE Act also made material changes to the post-death RMD rules for IRAs and defined contribution plans effective beginning in 2020. Most notably, it added a new 10-year rule that generally requires that, unless you are an “eligible designated beneficiary,” IRA or plan benefits must be paid out by the end of the 10th anniversary following the death of the participant/IRA owner. This change was designed to eliminate the “stretch IRA.”

This is a welcome relief for plan and IRA sponsors and their recordkeepers, who are still struggling with how to program for these SECURE 1.0 and 2.0 Act changes and what to tell participants and beneficiaries.

Many in the industry interpreted (or otherwise hoped) the SECURE Act language to mean that the new 10-year rule would allow for all payments to be deferred until the end of the 10-year period, even if RMDs had begun to be paid before the participant’s (or IRA owner’s) death. But, as a surprise to many, the proposed regulations retained the “at least as rapidly” rule under the existing regulations where a participant or IRA owner died on or after their required beginning date. As a result, the proposed regulations require that RMD payments continue to be paid out in each of the 10 years following the death of the participant/IRA owner. But because the proposed regulations were not issued until February 2022—long after the 2021 RMD payments were due—and because the regulations are still proposed, many were struggling over what to do for those potential missed 2021 RMD payments, and what to do by year end for 2022 RMD payments. Notice 2022-53 provided both plan qualification and excise tax relief for 2021 and 2022 RMD payments for beneficiaries who failed to comply with the “at least as rapidly” rule. And this Notice provides similar relief for 2023 RMD payments, as described below.

The Notice

First, the Notice provides for a delayed effective date of the forthcoming final regulations. Specifically, the Notice states that the final RMD regulations and related provisions will apply no earlier than the 2024 distribution calendar year instead of the previously announced 2023 plan year (*via* Notice 2022-53). The extended effective date is helpful because the proposed regulations were issued before the SECURE 2.0 Act and therefore need to be reviewed/updated for the law changes, and without clear guidance (and model amendments), compliance continues to be an ongoing challenge.

Second, the Notice provides relief for changes to the required beginning date for participants who are born in 1951 (*i.e.*, turn age 72 in 2023), as follows:

Qualified Plans

The Notice provides that a distribution from a plan made between January 1, 2023, and July 31, 2023, that would otherwise have been an RMD but for the changes made by Section 107 of the SECURE 2.0 Act is not required to be treated as an eligible rollover distribution under Code Secs. 401(a)(31), 402(f), and 3405(c). Therefore, for payments made during this period to participants born in 1951 (or such participant’s surviving spouse), this relief should permit plan sponsors and recordkeepers the ability to retain the initial distribution and withholding treatment for mistaken RMD payments without concern about plan qualification, Code Sec. 402(f) notice penalties, or under-withholding of federal income taxes.

The Notice also aims to assist plan participants (and their surviving spouses) who have already received distributions in 2023 by extending the 60-day indirect rollover period through September 30, 2023, for amounts described above.

IRAs

The Notice also aims to assist IRA owners (and their surviving spouses) who have taken RMDs in this same 2023 period (described above) that otherwise were not required by the SECURE 2.0 Act, similarly, extending the indirect rollover period through September 30, 2023. Notably, this rollover is permitted even if the IRS owner or surviving spouse has rolled over a distribution within the last 12 months. But making this indirect rollover will count towards the next one-per-12-month limit.

Third, the Notice provides the following relief for a “specified RMD” to address compliance with the 10-year rule:

■ **Defined Contribution Plans that Do Not Make Specified RMDs for 2023.** A defined contribution plan that fails to make a “specified RMD” will not be treated as having failed to satisfy Code Sec. 401(a)(9) merely because it does not make that distribution. Therefore, there is no qualification failure, and no need for plan sponsors to make voluntary correction program (“VCP”) filings or self-correct, or otherwise provide participants with an explanation to assist with “reasonable cause” relief from the 25% excise tax penalty *via* Form 5329.

■ **Participant/Beneficiary Relief from 25% Excise Tax for 2023.** The Notice expressly states that to the extent a taxpayer does not take a specified RMD for 2023, the IRS will not assert that an excise tax is due under Code Sec. 4974.

The Notice defines a “specified RMD” as follows: any distribution that, under the proposed regulations, would be required to be made pursuant to Code Sec. 401(a)(9) in 2023 under a defined contribution plan or IRA that is subject to the rules of 401(a)(9)(H) for the year in which the employee/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 (1) the employee (or IRA owner) died in 2020, 2021, or 2022 and on or after the employee’s (or IRA owner’s) required beginning date, and (2) the designated beneficiary is not taking lifetime or life expectancy payments pursuant to Code Sec. 401(a)(9)(B)(iii); or
- a beneficiary of an “eligible designated beneficiary” (including a designated beneficiary who is treated as

an eligible designated beneficiary pursuant to section 401(b)(5) of the SECURE Act) if (1) the eligible designated beneficiary died in 2020, 2021, or 2022, and (2) that eligible designated beneficiary was taking lifetime or life expectancy payments pursuant to Code Sec. 401(a)(9)(B)(iii).

Therefore, the relief covers the main concern raised by the proposed regulations, which was non-eligible designated beneficiaries having to take payments over 10 years, but who do not take any for 2023 even though the participant or IRA owner died on or after reaching their required beginning date. This relief also covers a beneficiary of an eligible designated beneficiary who died in 2020, 2021, or 2022 while taking lifetime payments and who does not take a 2023 RMD payment, thinking that the new 10-year rule following the death of such beneficiary similarly did not require taking annual payments.

Next Steps

This is a welcome relief for plan and IRA sponsors and their recordkeepers, who are still struggling with how to program for these SECURE 1.0 and 2.0 Act changes and what to tell participants and beneficiaries. It is always challenging to expend resources on compliance with proposed regulations, knowing further changes will be required. Further, as plan amendments were already postponed (generally until 2025), these operational issues continued to cause a lot of uncertainty. Plan sponsors and IRA providers should spread the word about this available relief and update their rollover procedures to accommodate these rollovers.

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