

MEMO# 35378

July 19, 2023

IRS Provides Additional Relief for 2023 Distributions Related to RMD Changes Under the SECURE Act and SECURE 2.0 Act

[35378]

July 19, 2023

TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: IRS Provides Additional Relief for 2023 Distributions Related to RMD Changes Under the SECURE Act and SECURE 2.0 Act

On July 14, 2023, the Internal Revenue Service (IRS) issued Notice 2023-54,[\[1\]](#) providing relief (as requested by ICI) with respect to distributions made during 2023 that were characterized as required minimum distributions (RMDs) but are not actually RMDs as a result of changes made by the SECURE 2.0 Act.[\[2\]](#)

The Notice also extends IRS's prior relief for missed RMDs related to IRS's interpretation of changes made by the Setting Every Community Up for Retirement Enhancement Act (the SECURE Act) of 2019 to the RMD rules for post-death distributions from DC plans and IRAs to beneficiaries.[\[3\]](#)

Relief With Respect to SECURE 2.0 Act RMD Changes, For Distributions Taken in 2023

As you know, section 107 of the SECURE 2.0 Act raised the age for beginning RMDs from retirement accounts from age 72 to 73, effective for distributions required to be made after December 31, 2022 with respect to individuals who will attain age 72 after that date. Therefore, an individual turning age 72 in 2023 would not have an RMD due for 2023. As we explained to IRS and Treasury,[\[4\]](#) because the legislation was enacted so close to year-end, it is likely that some individuals have received distributions from a plan or IRA in 2023 intended as RMDs (and processed as RMDs) under the prior rule even though an RMD will not be due for that year. In March, IRS provided relief with respect to incorrect RMD notices provided to IRA owners,[\[5\]](#) and ICI explained that further guidance was necessary.

In recognition of the concerns expressed to IRS, Notice 2023-54 provides the following relief with respect to distributions made from a plan or IRA between January 1, 2023 and July 31, 2023 to a participant or IRA owner born in 1951 (or that individual's surviving spouse) that would have been an RMD but for the change in the required beginning date made by the SECURE 2.0 Act:

- Relief for payors and plan administrators. A payor or plan administrator will not be considered to have failed to satisfy Internal Revenue Code requirements merely because they failed to treat such distributions as eligible rollover distributions.
- Extension of 60-day deadline for rollover of distributions. The Notice extends the 60-day rollover period for such distributions so that the deadline for rolling over such a distribution will be September 30, 2023.[\[6\]](#)
- Application of the one-rollover-per-year rule. In the case of such distribution from IRAs, the notice provides that a rollover is 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. In that case, that individual could still make a direct trustee-to-trustee transfer.

Extension of Relief for Application of 10-Year Rule Under SECURE Act of 2019

As a reminder, the IRS issued proposed regulations in February 2022 amending the regulations governing RMDs from retirement plans and IRAs to reflect changes made by the SECURE Act and other legislation.[\[7\]](#) The proposal indicated that the regulations, when finalized, would apply beginning with the 2022 distribution calendar year. The proposed regulations included an interpretation that would apply the "at least as rapidly rule" simultaneously with the new 10-year rule for designated beneficiaries when the employee/account owner dies on or after the required beginning date.[\[8\]](#) Commenters on the proposed regulations (including ICI)[\[9\]](#) raised concerns about having to comply with the amended regulations in the 2022 distribution year and about application of the "at least as rapidly" rule to beneficiaries subject to the new 10-year payout rule. In addition to disagreeing with the interpretation itself, many commenters noted that beneficiaries subject to the new 10-year payout rule (which was effective with respect to deaths after 2019) may not have taken an annual distribution in 2021 or 2022 under a reasonable belief that the "at least as rapidly" rule would not apply.

In October 2022, IRS issued Notice 2022-53, providing transition relief for 2021 and 2022, under which plans and IRAs will not be treated as violating the RMD rules because of missed annual distributions under certain circumstances.[\[10\]](#) Notice 2023-54 extends that relief for an additional year.

The transition relief, as extended to distributions that would be required in 2023, applies to failures to have made a distribution under the interpretation in the proposed regulations, where the distribution would have been 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 section 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 section 401(a)(9)(B)(iii).

Notably, Notice 2023-54 indicates that the final RMD regulations will apply no earlier than the 2024 distribution calendar year (Notice 2022-53 had indicated that the final regulations would apply no earlier than the 2023 distribution calendar year).

Shannon Salinas
Associate General Counsel - Retirement Policy

Notes

[1] Notice 2023-54 is available at <https://www.irs.gov/pub/irs-drop/n-23-54.pdf>.

[2] For an overview of the SECURE 2.0 Act, see ICI Memorandum No. 34795, dated January 12, 2023, available at <https://www.ici.org/memo34795>.

[3] For an overview of the SECURE Act, see ICI Memorandum No. 32118, dated December 20, 2019, available at <https://www.ici.org/memo32118>.

[4] For an overview of ICI's March 23, 2023 letter to IRS and Treasury, see ICI Memorandum No. 35218, dated March 28, 2023, available at <https://www.ici.org/memo35218>. The letter explained that, similar to the situation in 2019 (when the SECURE Act increased the RMD age to 72), this extremely short window before the effective date of the change makes it very difficult for retirement plan and IRA administrators to make necessary systems changes in time for post-2022 compliance requirements. We urged IRS and Treasury to provide guidance that is modeled on the guidance issued in 2020 relating to distributions originally intended and/or treated as RMDs under the previously-applicable required beginning date.

[5] On March 7, 2023, IRS issued Notice 2023-23, which states that IRS will not consider an RMD statement provided to an IRA owner who will attain age 72 in 2023 to have been provided incorrectly if the IRA owner is notified by the financial institution no later than April 28, 2023, that no RMD is actually required for 2023. See ICI Memorandum No. 35197, dated March 20, 2023, available at <https://www.ici.org/memo35197>.

[6] The notice provides the following example: if a participant who was born in 1951 received a single-sum distribution in January 2023, part of which was treated as ineligible for rollover because it was mischaracterized as an RMD, that participant will have until September 30, 2023, to roll over that mischaracterized part of the distribution.

[7] For background and a description of the proposal, see ICI Memorandum No. 34057, dated March 4, 2022, available at <https://www.ici.org/memo34057-0>.

[8] Under this interpretation in the proposed regulations, in the case of an employee/account owner who dies after his or her required beginning date with a designated beneficiary who is not an "eligible designated beneficiary" (and for whom the life expectancy distribution alternative to the 10-year rule is not applicable), annual RMDs must continue to be taken after the death of the employee/account owner, with a full distribution required by the end of the 10th calendar year following the calendar year of the employee's/account owner's death.

[9] For ICI's comment letter, see ICI Memorandum No. 34160, dated May 25, 2022, available at <https://www.ici.org/memo34160>.

[10] For a summary of Notice 2022-53, see ICI Memorandum No. 34307, dated October 10, 2022, available at <https://www.ici.org/memo34307>.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.