

# Transition Relief and Guidance Relating to Certain Required Minimum Distributions

Notice 2023-54

## I. PURPOSE

This notice provides transition relief for plan administrators, payors, plan participants, IRA owners, and beneficiaries in connection with the change in the required beginning date for required minimum distributions (RMDs) under § 401(a)(9) of the Internal Revenue Code (Code) pursuant to § 107 of the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted on December 29, 2022, as Division T of the Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4459 (2022). This notice also provides guidance related to certain specified RMDs for 2023. In addition, this notice announces that the final regulations that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue related to RMDs will apply for purposes of determining RMDs for calendar years beginning no earlier than 2024.

## II. BACKGROUND

### A. *Section 401(a)(9)*

Section 401(a)(9) of the Code requires a stock bonus, pension, or profit-sharing plan described in § 401(a) (or an annuity contract described in § 403(a)) to make minimum distributions starting by the required beginning date (as well as minimum distributions to beneficiaries if the employee dies before the required beginning date).

Individual retirement accounts and individual retirement annuities (IRAs) described in § 408(a) and (b), annuity contracts, custodial accounts, and retirement income accounts described in § 403(b) (§ 403(b) plans), and eligible deferred compensation plans under § 457(b), are also subject to the rules of § 401(a)(9) pursuant to §§ 408(a)(6) and (b)(3), 403(b)(10), and 457(d)(2), respectively, and the regulations under those sections.

#### *B. Required Beginning Date*

Section 107 of the SECURE 2.0 Act amended § 401(a)(9) of the Code to change the required beginning date applicable to § 401(a) plans and other eligible retirement plans, including IRAs. Rather than defining the required beginning date by reference to April 1 of the calendar year following the calendar year in which an individual attains age 72, the new required beginning date for an employee or IRA owner is defined by reference to April 1 of the calendar year after the calendar year in which the individual attains the applicable age (which is either age 73 or age 75, depending on the individual's date of birth). Thus, for example, an IRA owner who was born in 1951 will have a required beginning date of April 1, 2025, rather than April 1, 2024, (and the first distribution made to that IRA owner that will be treated as an RMD will be a distribution made for 2024, rather than 2023).

#### *C. RMD Distribution Period*

Section 401(a)(9) provides rules for RMDs from a qualified plan during the life of the employee in § 401(a)(9)(A) and after the death of the employee in § 401(a)(9)(B). In addition to setting forth a required beginning date for distributions, these rules identify the period over which the employee's entire interest must be distributed.

Specifically, § 401(a)(9)(A)(ii) provides that the entire interest of an employee in a

qualified plan must be distributed, beginning not later than the employee's required beginning date, in accordance with regulations, over the life of the employee or over the lives of the employee and a designated beneficiary (or over a period not extending beyond the life expectancy of the employee and a designated beneficiary).

Section 401(a)(9)(B)(i) provides that, if the employee dies after distributions have begun, the employee's remaining interest must be distributed at least as rapidly as under the method of distributions being used by the employee under section 401(a)(9)(A)(ii) as of the date of the employee's death. Section 401(a)(9)(B)(ii) and (iii) provides that, if the employee dies before RMDs have begun, the employee's interest must either be: (1) distributed within 5 years after the death of the employee (5-year rule), or (2) distributed (in accordance with regulations) over the life or life expectancy of the designated beneficiary with the distributions beginning no later than 1 year after the date of the employee's death (subject to an exception in § 401(a)(9)(B)(iv) if the designated beneficiary is the employee's surviving spouse).

The rules of § 401(a)(9) are incorporated by reference in § 408(a)(6) and (b)(3) for IRAs, § 403(b)(10) for § 403(b) plans), and § 457(d) for eligible deferred compensation plans.

*D. Section 401(a)(9)(H) as added by the SECURE Act*

*1. Ten-year rule*

Section 401(a)(9) of the Code was amended by § 401(a)(1) of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), enacted on December 20, 2019, as Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, 133 Stat. 2534 (2019), to add § 401(a)(9)(H) to the Code.

Generally, pursuant to § 401(a)(9)(H)(i), if an employee in a defined contribution plan has a designated beneficiary, the 5-year period under the 5-year rule is lengthened to 10 years (10-year rule) and the 10-year rule applies regardless of whether the employee dies before the required beginning date. In addition, pursuant to § 401(a)(9)(H)(ii), the § 401(a)(9)(B)(iii) exception to the 10-year rule (under which the 10-year rule is treated as satisfied if distributions are paid over the designated beneficiary's lifetime or life expectancy) applies only if the designated beneficiary is an eligible designated beneficiary, as that term is defined in § 401(a)(9)(E)(ii).

Section 401(a)(9)(H)(iii) provides that when an eligible designated beneficiary dies before that individual's portion of the employee's interest in the plan has been entirely distributed, the beneficiary of the eligible designated beneficiary will be subject to a requirement that the remainder of that individual's portion be distributed within 10 years of the eligible designated beneficiary's death. In addition, § 401(a)(9)(E)(iii) provides that when an eligible designated beneficiary who is a minor child of the employee reaches the age of majority, that child will no longer be considered an eligible designated beneficiary and the remainder of that child's portion of the employee's interest in the plan must be distributed within 10 years of that date.

## *2. Section 401(a)(9)(H) effective date*

Section 401(b)(1) of the SECURE Act provides that, generally, the amendments made to § 401(a)(9)(H) of the Code apply to distributions with respect to employees who die after December 31, 2019. Pursuant to § 401(b)(2) and (3) of the SECURE Act, later effective dates apply for certain collectively bargained plans and governmental plans (as defined in § 414(d) of the Code).

Section 401(b)(4) of the SECURE Act provides that § 401(a)(9)(H) of the Code does not apply to payments under certain annuity contracts under which payment commenced (or the manner of payments was fixed) before December 20, 2019.

Section 401(b)(5) of the SECURE Act provides that if an employee who participated in a plan died before § 401(a)(9)(H) of the Code became effective with respect to the plan, and the employee's designated beneficiary died after that effective date, then that designated beneficiary is treated as an eligible designated beneficiary and § 401(a)(9)(H) applies to any beneficiary of that designated beneficiary.

*E. Excise tax under § 4974(a)*

Section 4974(a) provides that if the amount distributed during a year to a payee under any qualified retirement plan (as defined in § 4974(c)) or any eligible deferred compensation plan (as defined in § 457(b)) is less than that year's minimum required distribution (as defined in § 4974(b)), then an excise tax is imposed on the payee. Pursuant to § 302 of the SECURE 2.0 Act, for taxable years beginning after December 29, 2022, this excise tax is equal to 25 percent of the amount by which the minimum required distribution for a year exceeds the amount actually distributed in that year. If a failure to take a minimum required distribution is corrected by the end of the correction window (generally, the end of the second year that begins after the year of the missed minimum required distribution), the excise tax is reduced from 25 percent to 10 percent.

*F. Section 401(a)(9) proposed regulations*

The Treasury Department and the IRS published proposed regulations regarding RMDs under § 401(a)(9) of the Code and related provisions in the Federal Register on February 24, 2022 (87 FR 10504), which provided that the regulations, when finalized,

would apply beginning with the 2022 calendar year. Along with other matters, the proposed regulations address issues relating to the 10-year rule in § 401(a)(9)(H). Specifically, Prop. Reg. § 1.401(a)(9)-5(d)(1)(i) requires that, in the case of an employee who dies on or after the employee's required beginning date, distributions to the employee's beneficiaries for calendar years after the calendar year of the employee's death must satisfy § 401(a)(9)(B)(i). In addition, distributions to the employee's beneficiaries must also satisfy § 401(a)(9)(B)(ii) (or if applicable, § 401(a)(9)(B)(iii)), taking into account § 401(a)(9)(E)(iii), (H)(ii), and (H)(iii).

In order to satisfy § 401(a)(9)(B)(i), the beneficiary of an employee who died after the employee's required beginning date must take an annual RMD beginning in the first calendar year after the calendar year of the employee's death. In order to satisfy § 401(a)(9)(B)(ii) (applied by substituting "10 years" for "5 years"), the remaining account balance must be distributed by the 10<sup>th</sup> calendar year after the calendar year of the employee's death (subject to an exception under § 401(a)(9)(B)(iii), if applicable). In order to satisfy both of those requirements, the proposed regulations generally provide that, in the case of an employee who dies after the employee's required beginning date with a designated beneficiary who is not an eligible designated beneficiary (and for whom the § 401(a)(9)(B)(iii) alternative to the 10-year rule is not applicable), annual RMDs must continue to be taken after the death of the employee, with a full distribution required by the end of the 10<sup>th</sup> calendar year following the calendar year of the employee's death.

In the case of a designated beneficiary who is an eligible designated beneficiary, the proposed regulations include an alternative to the 10-year rule under which annual

lifetime or life expectancy payments would be made to the beneficiary beginning in the year following the year of the employee's death, in accordance with § 401(a)(9)(B)(iii). Under the proposed regulations, if an eligible designated beneficiary of an employee is using the lifetime or life expectancy payment alternative to the 10-year rule, then the eligible designated beneficiary (and, after the death of the eligible designated beneficiary, the beneficiary of the eligible designated beneficiary) would need to continue to take annual RMDs after the death of the employee (with the employee's entire interest distributed by no later than the 10<sup>th</sup> year after the year of the eligible designated beneficiary's death). The proposed regulations provide for similar treatment (that is, continued annual RMDs with a requirement that the employee's entire interest be distributed no later than the 10<sup>th</sup> year after a specified event) in the case of a designated beneficiary who is a minor child of the employee (with the specified event being the child's reaching the age of majority).

*G. Comments received by the Treasury Department and the IRS*

The Treasury Department and the IRS provided a 90-day comment period for the proposed regulations. Some individuals who are owners of inherited IRAs or are beneficiaries under defined contribution plans submitted comments indicating that they thought the new 10-year rule would apply differently than it would under the proposed regulations. Specifically, these commenters expected that, regardless of when an employee died, the 10-year rule would operate like the 5-year rule, such that there would not be any RMD due for a calendar year until the last year of the 5- or 10-year period following the specified event (the death of the employee, the death of the eligible designated beneficiary, or the attainment of the age of majority for the employee's child

who is an eligible designated beneficiary). Commenters who are heirs or beneficiaries of individuals who died in 2020 explained that they did not take an RMD in 2021 and were unsure of whether they would be required to take an RMD in 2022. Commenters asserted that, if final regulations adopt the interpretation of the 10-year rule set forth in the proposed regulations, the Treasury Department and the IRS should provide transition relief for failure to take distributions that are RMDs due in 2021 or 2022 pursuant to § 401(a)(9)(H) in the case of the death of an employee (or designated beneficiary) in 2020 or 2021.

In response to the comments received on the proposed regulations, the Treasury Department and the IRS issued Notice 2022-53, 2022-45 IRB 437. Notice 2022-53 announced that the final regulations will apply no earlier than the 2023 distribution calendar year and provided guidance regarding certain amounts that were not paid in 2021 or 2022. Specifically, Notice 2022-53 provided that a defined contribution plan will not fail to be qualified for failing to make a specified RMD (as defined in that notice) in 2021 or 2022 and the taxpayer who did not take a specified RMD will not be subject to the excise tax under § 4974 for failing to take the specified RMD.

#### *H. Eligible Rollover Distributions*

Section 402(c) generally provides that the payment of any portion of an employee's interest in a qualified trust to the employee or the employee's surviving spouse in an eligible rollover distribution is not includible in gross income if the distribution is rolled over to an eligible retirement plan described in § 402(c)(8) no later than the 60th day following the day of receipt. An eligible rollover distribution is defined in § 402(c)(4) as a distribution to an employee of all or any portion of the balance to the



credit of the employee in a qualified trust other than a distribution that is: (A) one of a series of substantially equal periodic payments made over a specified period; (B) a distribution required under § 401(a)(9)<sup>1</sup>; or (C) a distribution made on account of the employee's hardship. Section 402(c)(3)(B) provides that the Secretary may waive the 60-day rollover deadline under certain circumstances. Section 402(c)(11) provides for the direct rollover of a deceased employee's interest in a qualified trust to an inherited IRA established for the deceased employee's nonspouse designated beneficiary.

Section 401(a)(31) provides that a trust does not constitute a qualified trust unless the plan of which the trust is a part provides that, if the distributee of any eligible rollover distribution elects to have the distribution paid directly to an eligible retirement plan and specifies the eligible retirement plan to which the distribution is to be paid, the distribution will be made in the form of a direct trustee-to-trustee transfer. Within a reasonable period of time prior to making an eligible rollover distribution, the plan administrator of a plan qualified under § 401(a) is required to provide to the recipient the written explanation described in § 402(f)(1).

Rules similar to those described in the preceding two paragraphs apply to § 403(a) annuity plans, § 403(b) plans, and § 457 eligible governmental plans. See §§ 403(a)(4) and (5), 403(b)(8) and (10), and 457(d)(1)(C) and (e)(16).

If the recipient of an eligible rollover distribution does not elect in accordance with § 401(a)(31) to have the distribution paid directly to an eligible retirement plan described in § 402(c)(8), then under § 3405(c), the payor of the distribution is required to withhold

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<sup>1</sup> Under § 1.402(c)-2, in determining which amounts are treated as eligible rollover distributions, if a minimum distribution is required for a calendar year, the amounts distributed during that calendar year are treated as RMDs to the extent that the total RMD under § 401(a)(9) for the calendar year has not been satisfied.

from the distribution an amount equal to 20 percent of the distribution.

Section 408(d)(3) generally provides that an amount distributed from an IRA to the IRA owner, or to the surviving spouse of the IRA owner, is not included in gross income if the distribution is rolled over to an eligible retirement plan no later than the 60th day following the day of receipt. A distribution of an after-tax amount may only be rolled over to another IRA. Section 408(d)(3)(B) provides that an IRA owner may roll over only one IRA distribution in a 12-month period, and § 408(d)(3)(E) provides that an RMD may not be rolled over. Section 408(d)(3)(I) provides that the Secretary may waive the 60-day rollover deadline under certain circumstances.

### III. APPLICABILITY DATE OF FINAL REGULATIONS

Final regulations regarding RMDs under § 401(a)(9) and related provisions will apply for calendar years beginning no earlier than 2024.

### IV. RELIEF RELATING TO CHANGE IN REQUIRED BEGINNING DATE UNDER SECURE 2.0 ACT

Following enactment of the SECURE 2.0 Act, plan administrators and other payors indicated that automated payment systems would need to be updated to reflect the change in the required beginning date under § 401(a)(9)(C) pursuant to § 107 of the SECURE 2.0 Act. They expressed concern that these revisions could take some time to implement and, as a result, plan participants and IRA owners who would have been required to begin receiving RMDs for calendar year 2023 but for § 107 of the SECURE 2.0 Act (i.e., those who will attain age 72 in 2023) and who receive distributions in 2023 could have had those distributions mischaracterized as RMDs (and therefore ineligible for rollover). This Section IV grants certain relief relating to certain distributions made

during 2023 to individuals that were characterized as RMDs but are not actually RMDs as a result of the enactment of § 107 of the SECURE 2.0 Act.

*A. Payor and plan administrator guidance related to SECURE 2.0 Act change to required beginning date.* A payor or plan administrator will not be considered to have failed to satisfy the requirements of §§ 401(a)(31), 402(f), and 3405(c) merely because of a failure to treat certain distributions as eligible rollover distributions. This relief applies with respect to any distribution made from a plan between January 1, 2023, and July 31, 2023, to a participant born in 1951 (or that participant's surviving spouse) that would have been an RMD but for the change in the required beginning date under § 107 of the SECURE 2.0 Act.

*B. Extension of 60-day deadline for rollover of certain distributions.* Pursuant to § 402(c)(3)(B), the Treasury Department and the IRS are extending the 60-day rollover period for any distribution described in section IV.A of this notice so that the deadline for rolling over such a distribution will be September 30, 2023. For 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.

*C. Relief relating to RMDs previously distributed from an IRA.* Pursuant to § 408(d)(3)(I), the Treasury Department and the IRS are extending the 60-day rollover period for certain IRA distributions made to an IRA owner (or the IRA owner's surviving spouse), so that the deadline for rolling over that portion of the distribution will be September 30, 2023. The distributions that are subject to this extension are distributions

made from an IRA between January 1, 2023, and July 31, 2023, to an IRA owner born in 1951 (or that individual's surviving spouse) that would have been RMDs but for the change in the required beginning date under § 107 of the SECURE 2.0 Act. This 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 as described in Rev. Rul. 78-406, 1978-2 CB 157.

#### V. GUIDANCE FOR SPECIFIED RMDs FOR 2023

*A. Guidance for defined contribution plans that did not make a specified RMD.*

A defined contribution plan that failed to make a specified RMD (as defined in section V.C of this notice) will not be treated as having failed to satisfy § 401(a)(9) merely because it did not make that distribution.

*B. Guidance for certain taxpayers who did not take a specified RMD.* To the extent a taxpayer did not take a specified RMD (as defined in section V.C of this notice), the IRS will not assert that an excise tax is due under § 4974.

*C. Definition of specified RMD.* For purposes of this notice, a specified RMD is any distribution that, under the interpretation included in the proposed regulations, would be required to be made pursuant to § 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 (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 using the lifetime or life expectancy payments exception under § 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 § 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 using the lifetime or life expectancy payments exception under § 401(a)(9)(B)(iii) of the Code.

## VI. DRAFTING INFORMATION

The principal author of this notice is Jessica Weinberger of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, contact Jessica Weinberger at (202) 317-6349 (not a toll-free call).