JULY 18, 2023

More Relief from RMD Rules in 2023

by R. Sterling Perkinson

The IRS provided more transitional relief in Notice 2023-54 ("2023 Notice") for certain required minimum distributions ("RMDs"). The 2023 Notice extends the transitional relief that the IRS previously issued in Notice 2022-53 ("2022 Notice") and provides certain transition relief for participants who were born in 1951 and may have been impacted by recent legislative changes.

More relief from "At Least as Rapidly" Rule

In 2019, Congress passed the Setting Every Community Up for Retirement Act of 2019 ("SECURE 1.0"), which increased the RMD age to 72 and added a new 10-Year Rule for trusts and certain individuals (which include an individual beneficiary who does not qualify as an Eligible Designated Beneficiary). This 10-Year Rule generally requires trusts and certain beneficiaries to distribute the remainder of their portion of a retirement account within 10 years of the account owner's death.

In February 2022, the IRS released proposed regulations implementing the RMD changes in SECURE 1.0. The IRS said in the proposed regulations that the 10-Year Rule applied *in addition to* the "at least as rapidly" rule. In general, the at least as rapidly rule provides that if the participant dies after the participant's required beginning date for taking RMDs, then the RMDs for years after the participant's death must be based on the longer of the beneficiary's life expectancy or the participant's life expectancy.

As we discussed last year, many plan administrators, payors, and beneficiaries were surprised that the 2022 proposed regulations took the position that the new 10-Year Rule applied in addition to the at least as rapidly rule. To lessen these concerns, the IRS provided broad relief from this interpretation in the 2022 Notice for a "specified RMD" that would have otherwise been required in 2021 and 2022.

The IRS extended this relief in the 2023 Notice by providing that beneficiaries who would otherwise have a "specified RMD" because of the IRS's interpretation in the 2022 proposed regulations (including the requirement that the 10-Year Rule applies in addition to the at least as rapidly rule). The definition of a specified RMD is aligned with the IRS's definition of a specified RMD in the 2022 Notice, except that it is extended to RMDs for 2023 relating to deaths that occurred in 2020, 2021, or 2022.

The IRS also announced any final regulations implementing the RMD changes will apply for calendar years no earlier than 2024.

Relief for Participants born in 1951

In 2022, Congress passed SECURE 2.0 Act of 2022 ("SECURE 2.0"), which further modified the RMD rules, by increasing the RMD age to 73 starting on January 1, 2023, and age 75 starting on January 1, 2033. Given that SECURE 2.0 was passed only a few days before 2023 and many plan administrators and payors have automated payment systems, the IRS received comments asking for transitional relief. The IRS provided the following relief for distributions made to participants born in 1951 (i.e., the group of individuals who would have had an RMD payable in 2023 but for the SECURE 2.0 changes):

- Plan Administrators and payors who treated a distribution between January 1, 2023 and July 31, 2023 as an RMD will not be penalized for failing to permit a direct rollover, provide a 402(f) notice, or withhold at a 20% rate.Additionally, individuals born in 1951 may roll over these mislabeled distributions back into the qualified retirement account until September 30, 2023 (an extension of the normal 60-day limitation for rollovers).
- An IRA owner (or that owner's surviving spouse) born in 1951 who received distributions made between January 1, 2023 to July 31, 2023 may roll back these distributions into the IRA if such IRA distribution was incorrectly characterized as an RMD.IRA owners (or that owner's surviving spouse) can correct this mislabeled distribution any time before September 30, 2023 (an extension of the normal 60-day limitation for rollovers).IRA owners or surviving spouses who take advantage of this relief will not be eligible to make another IRA to IRA rollover in the next 12 months, but could make a plan to IRA rollover or direct trustee-to-trustee transfer.