



SECURE 2.0 – The latest updates

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BACKGROUND

Things Have Been Busy



- ▶ **December 2019** – The SECURE Act passed into law
- ▶ **March 2020** – COVID-19 impacts the world (including the IRS)
 - ▶ Efficiency disruptions, changes to staffing and work processes
- ▶ **March 2020** – CARES Act passed into law
 - ▶ Requires quick guidance from IRS
- ▶ **January 2021** – Biden Administration takes over; political leadership at Treasury and DOL changes
 - ▶ Slow moving Senate confirmation process
- ▶ **December 2022** – The SECURE 2.0 Act is passed into law

Guidance is Needed

- ▶ Lots of new rules:
 - ▶ SECURE Act had 30 provisions
 - ▶ SECURE 2.0 Act had 92 provisions
- ▶ Many provisions are very broadly written: lots of possible interpretations... increases need for regulatory guidance
- ▶ COVID and CARES took a lot of the IRS's energy since 2020



Guidance to Date



- ▶ Notice 2020-68: Initial SECURE Act grab bag guidance
- ▶ Notice 2022-33: SECURE Act amendment deadline extended to 12/31/2025
- ▶ Notice 2022-53: RMD relief for 2021 and 2022
- ▶ Notice 2023-23: RMD Reporting Relief
- ▶ Notice 2023-43: SECURE 2.0 EPCRS interim guidance
- ▶ Notice 2023-54: Extended RMD relief
- ▶ Notice 2023-62: Postpone mandatory Roth catch-ups

Good News/Bad News



▶ Good news!

- ▶ Amendments aren't needed until the last day of the 2025 plan year
 - ▶ Except for terminating plans
- ▶ No requirement for updated SPDs until new guidance issued

▶ Bad news!

- ▶ We need to comply operationally now (or in 2024) on many issues

Roth Catch-Up Contributions - New IRC §414(v)(7)



- ▶ §414(v)(7)(A): Requires catch-up contributions for participants with prior year FICA wages from the employer of more than \$145,000 to be made as Roth contributions "pursuant to an employee election."
- ▶ §414(v)(7)(B): If plan permits >\$145K to do Roth catch-ups, must permit everyone to do so

Roth Catch-Up Contributions (New IRC §414(v)(7))



- ▶ Effective 1/1/2024
- ▶ Required for 401(k), 403(b), and 457(b) plans
 - ▶ Does not apply to IRAs, SIMPLE IRAs, SEP IRAs, or "special catch-up" contributions in 403(b)/457(b) plans

Congressional Catch-up Whoops!



- ▶ SECURE 2.0 contains a Congressional drafting error that eliminates Code §402(g)(1)(C) – i.e., the provision that permits catch-up contributions
 - ▶ Does that mean that, without correction by Congress, no one can make a catch-up contribution in 2023?
 - ▶ Can the IRS do anything to prevent this?



Notice 2023-62 Issued 8-25-2023



▶ Created “Administrative Transition Period”

▶ §414(v)(7) won't apply until 2026

- ▶ Catch-ups in 2024 and 2025 are deemed to satisfy §414(v)(7), even if pretax
- ▶ Plan that doesn't provide Roth to anyone is deemed to satisfy §414(v)(7)(B)
- ▶ SECURE 2.0 addition of §414(v)(7) has no effect on those with FICA wages under \$145,000

More Guidance Coming



- ▶ IRS indicates that it will likely provide:
 - ▶ \$145,000 limit applies only to FICA wages, i.e., Box 3 of Form W-2
 - ▶ If participant has no FICA wages, Roth catch-up requirement does not apply
 - ▶ Includes sole proprietors, partners, certain government employees
 - ▶ Plan may treat pretax election by participant over \$145,000 as Roth election in relation to catch-up contributions
 - ▶ In MEP or Multiple employer plan, compensation paid by each participating employer is to be treated separately for applying \$145,000 limit to a participant

Upshot



- ▶ No action needs to be taken for 2024 or 2025
 - ▶ If you already amended to drop catch-ups, undo it
 - ▶ If you already amended to add Roth and you don't want Roth, undo it
 - ▶ No need for amendment for terminating plan
- ▶ Procrastinators win!





3 RMD TRANSITION RULES

Notice 2023-54

Proposed regs



- ▶ Issued in 2022
 - ▶ Rewrote prior RMD rules
 - ▶ Updated for SECURE 1
 - ▶ Contained new rules for dealing with trusts as beneficiaries
 - ▶ Also addressed eligible rollover distributions
- ▶ Were scheduled to be effective 1/1/2022
 - ▶ Good faith compliance ok before then
- ▶ Final regs still not issued

Final regs



- ▶ Still not issued
- ▶ Notice 2022-53: Effective date of final regs won't be prior to 1/1/23
- ▶ Notice 2023-54: Effective date of final regs won't be prior to 1/1/24
 - ▶ Can follow proposed regs before then
 - ▶ Considered good faith compliance

2023 RMD – Not so fast!

- ▶ Jane was born 1/5/1951
 - ▶ Turned 72 this year
 - ▶ Thought 2022 would be first DCY
- ▶ IRA told her she needed to take a \$5K RMD between 1/1/2023 and 4/1/2024
- ▶ 401(k) plan told her she needed to take a \$10K RMD
- ▶ So, she took both in February 2023



SECURE 2.0 change



- ▶ SECURE 2.0 signed December 29, 2022
 - ▶ Not a lot of time to change course for Jane
- ▶ Her RBD is really 4/1/2025
- ▶ No RMD required for 2023
- ▶ Jane has taxable income from distribution she wasn't legally required to take

Plan problem



- ▶ 401(k) plan thought \$10K distribution was RMD
- ▶ Instead, it was eligible rollover distribution
 - ▶ Plan failed to give special tax notice
 - ▶ Plan failed to give her the opportunity for a direct rollover
 - ▶ Plan do not do mandatory 20% withholding
 - ▶ Jane accepted 10% withholding

Notice 2023-54 to the rescue!



- ▶ Solves plan problems
 - ▶ No problems resulting from:
 - ▶ Failure to withhold 20%
 - ▶ Failure to allow direct rollover
 - ▶ Failure to provide special tax notice
 - ▶ No required corrections
- ▶ Limited to distributions before August 1, 2023
- ▶ Could also apply to distributions to surviving spouse

Notice 2023-54 to the rescue!



- ▶ Solves Jane's problems
 - ▶ Jane can roll over \$10K plan distribution and \$5K IRA distribution
 - ▶ Deadline is September 30, 2023
- ▶ Limited to individuals born in 1951 who received before August 1, 2023 amounts that before SECURE 2.0 would have been RMDs
 - ▶ Again, could include surviving spouse

Rollover options



- ▶ Treated as normal 60-day rollover even though 60 days has expired
- ▶ Can't roll after-tax amounts to a plan
 - ▶ Can roll them to an IRA
- ▶ Otherwise, could roll funds back to distributing plan
 - ▶ Or elsewhere
 - ▶ Probably best bet is roll everything to IRA

1099-R processing



- ▶ Plan distributed \$10,000 to Jane
- ▶ Plan issues Jane 1099-R
 - ▶ \$10,000 total distribution
 - ▶ \$10,000 taxable distribution
 - ▶ \$1,000 withholding
- ▶ If Jane rolls it back to the plan, it doesn't change the 1099-R
 - ▶ Jane can claim the withholding on her return

12-month rule on IRA distributions



- ▶ Can't do 60-day rollover from one IRA to another if you have done a 60-day IRA-to-IRA rollover in prior 12 months
 - ▶ Doesn't impact rollovers between plan-IRA
 - ▶ Doesn't impact Roth conversions
 - ▶ Doesn't impact direct trustee-to-trustee rollovers

Relief from 12-month rule



- ▶ Jane can roll over the \$5K IRA money even if she had another 60-day IRA-to-IRA rollover in the prior 12 months
- ▶ However, if she does so, that starts the clock preventing a 60-day IRA-to-IRA rollover for the next 12 months

Relief for failure to distribute certain RMDs



- ▶ Notice 2022-53 gave relief for failure to distribute certain RMDs that under the proposed regs should have been distributed in 2021 and/or 2022
- ▶ Notice 2023-54 extends that relief for 2023
 - ▶ No 50% penalty
 - ▶ No operational failure

The players before SECURE



- ▶ DesBen: Designated Beneficiary
 - ▶ Individual
 - ▶ Group of individuals
 - ▶ Certain trusts treated as individuals
 - ▶ Spouse is a DesBen
- ▶ NotDesBen
 - ▶ Estate of deceased
 - ▶ Charity
 - ▶ Trust that is not treated as DesBen



The players after SECURE



- ▶ NotDesBen: Hasn't changed
- ▶ DesBen: Individuals; hasn't changed
 - ▶ **Eligible Designated Beneficiary (EDB)**
 - ▶ Spouse
 - ▶ Child under age 21 (Age of majority)
 - ▶ Disabled
 - ▶ Chronically ill
 - ▶ Less than 10 years younger than participant
 - ▶ **Other Designated Beneficiary (ODB)**
 - ▶ Every other DesBen

RMD RULES AFTER DEATH DEPEND ON 3 THINGS

- ▶ Did participant die before RBD?
- ▶ Status of Beneficiary
 - ▶ Spouse
 - ▶ EDB
 - ▶ ODB
 - ▶ NotDesBen
- ▶ Plan elections

Compare the rules



Death Before SECURE	Recipient	Participant died before RBD		Participant died on or after RBD
		Default rules	Elections	
	Spouse	Life expectancy	Wait until 70½/72; use 5-year rule	Life expectancy
	DesBen	Life expectancy	5-year rule	Life expectancy
NotDesBen	5-year rule		Life expectancy	

Death After SECURE	Recipient	Participant died before RBD		Participant died on or after RBD
		Default rules	Elections	
	Spouse	Life expectancy	Wait until 72; use 10-year rule	Life expectancy
	EDB	Life expectancy	10-year rule	Life expectancy
ODB	10-year rule		Life expectancy; cut off at 10 years	
NotDesBen	5-year rule		Life expectancy	

5-year rule



- ▶ Applies to
 - ▶ NotDesBen if participant died before RBD
 - ▶ DesBen of participant who died before SECURE if plan provided
- ▶ Pay out 100% of amount by 12/31 of year with 5th anniversary of death
 - ▶ No payments required before then
- ▶ Example:
 - ▶ Oscar leaves account to his estate
 - ▶ Oscar dies 2/1/2022
 - ▶ Estate must receive 100% of account by 12/31/2027

10-year rule



- ▶ Limited to participants who die before RBD
- ▶ Limited to participants who die after SECURE effective date (generally after 2019)
- ▶ Applies to
 - ▶ ODB
 - ▶ EDB if plan provides
- ▶ Pay out 100% of amount by 12/31 of year with 10th anniversary of death
 - ▶ No payments required before then
- ▶ Example:
 - ▶ Oscar leaves account to his grandson
 - ▶ Oscar dies 2/1/2022
 - ▶ Grandson must receive 100% of account by 12/31/2032

Life expectancy rule



- ▶ Similar to RMDs during participant's life
- ▶ First post-death DCY is year following year of death
 - ▶ Distribution deadline is 12/31
- ▶ RMD due every year thereafter until account paid
- ▶ For each DCY, RMD is account balance 12/31 of prior year divided by “applicable denominator” (life expectancy factor)
- ▶ Uses Single Life Table
 - ▶ New table issued for 2022

Cut off of RMDs



- ▶ Cut-off applies to participants who die after SECURE effective date (with one exception)
- ▶ Must distribute entire account by 12/31 of earliest of the following years:
 - ▶ 10th year after participant's death year if beneficiary is ODB
 - ▶ 10th year after death of EDB
 - ▶ 10th year after minor child EDB reaches age of majority
 - ▶ Unless child is disabled or chronically ill
 - ▶ Year beneficiary's life expectancy does not exceed one (if based on employee life expectancy)

Example: Death before RBD



▶ Assumptions:

- ▶ Participant dies in 2022
 - ▶ Recipient: Participant's adult daughter, born in 1980; ODB
- ## ▶ If participant dies before RBD; 10-year rule
- ▶ Must pay 100% of account by 12/31/2032
 - ▶ No required payments before then
 - ▶ Daughter can roll to IRA prior to 1/1/2032

Example: death on or after RBD



- ▶ Assumptions:

- ▶ Participant dies in 2022
- ▶ Recipient: Participant's adult daughter, born in 1980; ODB

- ▶ If participant dies on or after RBD:

- ▶ First post-death RMD due 12/31/2023
- ▶ 2023 denominator based on SLT, age 43: 42.9

Year	Age	Denominator
2023	43	42.9
2024	44	41.9
2025	45	40.9
2026	46	39.9
2027	47	38.9
2028	48	37.9
2029	49	36.9
2030	50	35.9
2031	51	34.9
2032	52	1.0

\$ule for participant who dies before SECURE effective date



▶ If oldest DesBen dies after SECURE effective date, then entire account must be paid by 12/31 of 10th year after DesBen

▶ Example

- ▶ Jack died 5/1/2018
- ▶ Left account to sister, Jill
- ▶ Jill taking life expectancy RMDs
- ▶ Jill dies in 2023, leaving account to Kid
- ▶ Kid continues to take RMDs using Jill's life expectancy
- ▶ Complete payout 12/31/2033

Misunderstanding; relief



- ▶ Many thought that 10-year rule applied to participants who died after RBD
 - ▶ No need for life expectancy distributions
 - ▶ Just pay entire balance in year 10
- ▶ Notice 2022-53 and Notice 2023-54 provides temporary relief for specified RMDs
 - ▶ Two sets of specified RMDs
 - ▶ No operational failure for 2021, 2022, 2023
 - ▶ No penalty tax for 2021, 2022, 2023

Specified RMDs: Set 1



- The RMD is a life expectancy payment due from a defined contribution plan or an IRA.
- The RMD is due to a designated beneficiary following the death of a participant.
- The participant died:
 - In 2020, 2021, or 2022
 - After the SECURE Effective Date, and
 - After the participant's RBD.
- The designated beneficiary is not taking life expectancy distributions (but should be).

Specified RMDs: Set 2



- The RMD is a life expectancy payment due from a defined contribution plan or an IRA.
- The RMD is due to a successor beneficiary of an eligible designated beneficiary. For this purpose, an eligible designated beneficiary includes a designated beneficiary of a participant who died before the SECURE Effective Date.
- The eligible designated beneficiary died in 2020, 2021, or 2022 and after the SECURE Effective Date.
- The eligible designated beneficiary was taking life expectancy rule distributions.

Thank you!



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