

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.43.3545 pertaining to	)	AMENDMENT
distribution to participant and	)	
2.43.3546 pertaining to distribution	)	NO PUBLIC HEARING
upon death of participant	)	CONTEMPLATED

TO: All Concerned Persons

1. On August 24, 2024, the Public Employees' Retirement Board proposes to amend the above-stated rules.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Public Employee Retirement Administration (MPERA) no later than 5:00 p.m. on July 26, 2024, to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail [kvladic@mt.gov](mailto:kvladic@mt.gov).

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.43.3545 DISTRIBUTION TO PARTICIPANT (1) and (2) remain the same.

(a) Distribution must start no later than April 1 of the calendar year following the later of the calendar year:

(i) ~~the calendar year~~ in which the participant reaches age 70 1/2 if born before July 1, 1949; or

(ii) in which the participant reaches age 72 if born after June 30, 1949, and before January 1, 1951; or

(iii) in which the participant reaches age 73 if born after December 31, 1950;

or  
(ii)(iv) ~~the calendar year~~ in which the participant retires from service in a PERS-covered position.

(b) through (4) remain the same.

AUTH: 19-2-403, 19-3-2104, MCA

IMP: 19-2-303(22), 19-2-1007, 19-3-2123, 19-3-2124, MCA

REASONABLE NECESSITY: On December 29, 2022, the United States President signed into law the Consolidated Appropriations Act, 2023, which also included the Setting Every Community Up for Retirement Enhancement Act 2.0 of 2022 (SECURE 2.0). SECURE 2.0 built upon changes enacted by SECURE 1.0 of 2019

by collecting into a single act over 90 provisions from three different retirement reform-related bills that had been circulating in Congress.

Under the Internal Revenue Code 401(a)(9) prior to the passage of SECURE 2.0, one generally had to take required minimum distributions (RMDs) from a retirement plan beginning at age 72. SECURE 2.0 removes the language "age 72" in 26 U.S.C. 401(a)(9)(C)(i)(I) and replaces it with "the applicable age," and adds a new clause to phase in extended RMD ages, starting with age 73 for individuals turning 73 in or after 2023. For anyone who will be turning 74 after 2032, the RMD adjusted age has been extended to 75 years old.

This rule amendment is necessary to comply both with the federal law changes enacted by SECURE 2.0 and to comply with 19-2-1007, MCA, which states that "benefits payable by a retirement system or plan subject to this chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code[.]"

2.43.3546 DISTRIBUTION UPON DEATH OF PARTICIPANT (1) through (3) remain the same.

(4) If the beneficiary is the participant's spouse, the spouse may, within 60 days of the participant's death, elect to defer distribution until a date no later than the date the participant would have attained:

(i) age 70 1/2 if the participant was born before July 1, 1949;

(ii) age 72 if the participant was born after June 30, 1949, and before January 1, 1951; or

(iii) age 73 if the participant was born after December 31, 1950.

AUTH: 19-2-403, 19-3-2104, MCA

IMP: 19-2-1007, 19-3-2124, 19-3-2125, MCA

REASONABLE NECESSITY: SECURE 2.0 extends to the surviving spouse of a plan participant the irrevocable right to elect to be treated as the deceased participant for the purpose of RMDs. This change incorporates SECURE 2.0's phased-in increases to the age at which retired plan participants must commence receiving payments from retirement plans. Accordingly, this rule amendment is necessary to comply both with spousal distribution changes enacted by SECURE 2.0 and to comply with 19-2-1007, MCA, which states that "benefits payable by a retirement system or plan subject to this chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code[.]"

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail [mpera@mt.gov](mailto:mpera@mt.gov), and must be received no later than 5:00 p.m., August 2, 2024.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they

must make written request for a hearing and submit this request along with any written comments to Kris Vladic at the above address no later than 5:00 p.m., August 2, 2024.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 609 persons based on approximately 6,089 participants in the Defined Contribution Plan as of June 30, 2023.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at [rules.mt.gov](http://rules.mt.gov).

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the Public Employees' Retirement Board has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Nicholas Domitrovich  
Nicholas Domitrovich  
Chief Legal Counsel  
and Rule Reviewer

/s/ Maggie Peterson  
Maggie Peterson  
President  
Public Employees' Retirement Board

Certified to the Secretary of State June 25, 2024.