



IRS Guidance on RMD Waiver

Rollover deadline is extended to August 31, 2020.

July 2020

KEY POINTS

- IRS provides guidance permitting rollovers of waived RMDs and extends the 60-day rollover period to August 31, 2020.
- The guidance also provides transition relief in connection with the change in required beginning date for RMDs to age 72.
- The IRS provided answers to questions about 2020 RMDs payable in 2020 and includes a sample plan amendment.

On June 23, 2020, the Internal Revenue Service (IRS) issued Notice 2020-51, which provides guidance relating to the waiver of required minimum distributions (RMDs) payable in 2020, a key provision of the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The Notice:

- Permits rollovers of waived RMDs and certain related payments, including an extension of the 60-day rollover period for certain distributions to August 31, 2020.
- Answers questions relating to the waiver of RMDs payable in 2020 and provides a sample plan amendment that would provide participants a choice whether to receive waived RMDs and certain related payments.
- Provides transition relief in connection with the change in required beginning date for RMDs to age 72 pursuant to the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act).

This article provides detailed information about the RMD relief provided in IRS Notice 2020-51.

TRANSITION RELIEF

SECURE Act changes to Required Beginning Date ("RBD")

The Notice provides that a distribution from a plan made during 2020 to a participant who will attain age 70½ in 2020 that would have been an RMD but for the SECURE Act's change in the RBD is not required to be treated as an eligible rollover distribution.

For example, if a participant who attains age 70½ in 2020 received a distribution in January 2020, and part of the distribution was not treated as an eligible rollover distribution because it was improperly characterized as an RMD, then the payor and plan administrator will not be considered as having failed to satisfy the requirements to provide a direct rollover option, provide a section 402(f) notice, and withhold federal income tax at the

mandatory rate of 20% applicable to eligible rollover distributions.

Rollover guidance for plan participants

The Notice allows taxpayers who receive the following distributions from a defined contribution plan to roll them into an eligible retirement plan (even if the distribution normally would be treated as part of a series of substantially equal periodic payments):

- Distributions paid to a participant in 2020 (or paid in 2021 for the 2020 calendar year to an employee with a required beginning date of April 1, 2021) if the payments equal the amounts that would have been RMDs had the CARES Act not been enacted, or are one or more payments (that include the 2020 RMDs) in a series of substantially equal periodic payments; and
- For a plan participant with an RBD of April 1, 2021, distributions that are paid in 2021 that would have been an RMD for 2020 had the CARES Act not been enacted (note that the Notice references “2021” instead of “2020” but we believe this is in error).

Extension of 60-day deadline

To assist plan participants who have already received distributions in 2020, the Notice extends the 60-day rollover period for any payments that would otherwise have been RMDs (had neither the CARES Act nor the SECURE Act been enacted) to August 31, 2020.

In addition, the Notice extends the 60-day rollover period for IRA distributions in 2020 that would have been an RMD in 2020 had neither the CARES Act nor the SECURE Act been enacted, so that the deadline is now August 31, 2020. Earlier guidance had extended the 60-day deadline to July 15 for certain distributions.

Limited relief from the “one-rollover-per-year” rule

In the case of an IRA owner or beneficiary who has already received

a distribution of an amount that would have been an RMD (had neither the CARES Act nor the SECURE Act been enacted), the one rollover per 12-month period limitation will not apply if the recipient repays the distribution to the distributing IRA (i.e., the same IRA) no later than August 31, 2020. Also, the rule that otherwise prohibits non-spouse IRA beneficiaries from rolling over distributions indirectly will not apply in these circumstances.

PLAN AMENDMENTS AND PLAN DESIGN OPTIONS

The Notice provides a sample plan amendment that provides participants and beneficiaries the choice between receiving and not receiving distributions that would have been 2020 RMDs. The first option provides that the default is to pay out RMDs payable in 2020 and the second option provides that the default is to suspend distributions that include RMDs payable in 2020.

The sample plan amendment also provides an employer alternatives relating to the availability of direct rollover of distributions in 2020 that include what would have been RMDs payable in 2020:

- First alternative: To offer a direct rollover option only for pre-CARES Act eligible rollover distributions (i.e., a direct rollover option is not offered for amounts that would have been RMDs).
- Second alternative: To provide for a direct rollover of only payments that would otherwise have been RMDs had neither the CARES Act nor the SECURE Act been enacted.
- Third alternative: To provide for a direct rollover of periodic payments and amounts that would have been an RMD in 2020 had neither the CARES Act nor the SECURE Act been enacted.
- Fourth alternative: To provide for the direct rollover of a distribution that consists of both a payment that would have been an RMD in 2020 had neither the CARES Act nor the

SECURE Act been enacted and an additional amount that is an eligible rollover distribution.

Under the CARES Act, plan amendments must be adopted no later than the last day of the first plan year beginning on or after January 1, 2022 (January 1, 2024, for governmental plans). The Notice warns that certain amendments may violate the prohibition against eliminating an optional form of benefit. For example, if the plan document provides for distributions equal to 2020 RMDs without regard to the required minimum distribution rules, then an amendment to eliminate the right to take that distribution is prohibited.

OTHER ISSUES RELATING TO THE WAIVER OF 2020 RMDs

The Notice addresses a host of other issues in question and answer format. Below is a summary of the guidance provided in a series of twelve questions and answers.

- A plan may extend the deadline for an employee or beneficiary to elect whether the five-year rule or the life expectancy rule applies in determining RMDs. The deadline for making that election typically would be the end of calendar year following the calendar year of the employee's death. Plans that provide for these elections may be amended to extend elections deadlines falling at the end of 2020 to the end of 2021.
- The CARES Act extends the time for a nonspouse designated beneficiary to make a direct rollover of the entire benefit to an IRA if the participant died in 2019. Typically, a nonspouse designated beneficiary has until the end of the calendar year following the year of the participant's death to roll over the entire amount to an inherited IRA and elect to take distributions from the IRA under the life expectancy rule. If the participant's death occurred in 2019, the nonspouse designated beneficiary has until the end of 2021

to make the direct rollover and use the life expectancy rule.

- The waiver of 2020 RMDs does not change an individual's required beginning date (which may be used to determine future RMDs).
- The CARES Act waives RMDs for 2020 regardless of whether the employee's required beginning date is April 1, 2021. In such a case, an employee is not required to receive an RMD for 2020 before April 1, 2021 but must receive the RMD for the 2021 calendar year by December 31, 2021. The Notice provides a special ordering rule that treats distributions in 2021 first as RMDs for 2021 that are not rollover-eligible and then as RMDs for 2020 that can be rolled over.
- The Notice confirms that no other deadline extensions are applicable. For example, there is no extension of the deadline of September 30 following the year of death relating to the determination of designated beneficiaries; or the October 31 deadline relating to the date by which the trustee of a trust that is a plan's designated beneficiary must provide the plan administrator certain information. Similarly, "if a participant or beneficiary dies in 2020," there is no extension of the 5-year period or the 10-year period, as applicable, for beneficiary distributions. The Notice suggests that 2020 would be disregarded in applying the 5-year period to beneficiary distributions for deaths occurring prior to 2020.
- If a plan is subject to the spousal consent rules (e.g., money purchase plans), it can choose whether or not to have a new annuity starting date when distributions restart in 2021. If the plan does not provide for a new annuity starting date, spousal consent is generally not required. If the plan provides that there is a new annuity starting date, spousal consent may be required for the suspension of

distributions that include 2020 RMDs and the restart of distributions in 2021.

- Distributions from a plan may be rolled over back into the same plan, provided the plan permits rollovers and the rollovers are otherwise eligible to be rolled over (i.e., taking into account the relief provided in the Notice).
- A payor does not have the option of treating a 2020 RMD paid from a plan in 2020 as subject to the mandatory 20-percent withholding rate for eligible rollover distributions.
- The RMD waiver for 2020 would not permit the cessation of distributions being made under the "RMD method" for satisfying the "substantially equal periodic payments" exception to the 10% penalty tax applicable to early distributions. If these payments are stopped in 2020 (for reasons other than death or disability) prior to age 59½ or within five years from the date of the first payment, the cessation of the payments would trigger a recapture of the penalty tax.
- The waiver of 2020 RMDs does not apply to a defined benefit plan, even in the case of a single sum distribution that includes an RMD.
- An IRA trustee, issuer, or custodian must notify an IRA owner that no RMD is due for 2020. This requirement can be satisfied by providing the IRA owner with a copy of the Form 5498 that is filed with the IRS.
- An IRA does not have to be amended to reflect the waiver of 2020 RMDs.

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