

IRS Guidance on 2020 Required Minimum Distribution Waivers and More

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On June 23, the Internal Revenue Service (“IRS”) issued Notice 2020-51, which provides much-needed guidance on how defined contribution plans (including 403(b) and governmental 457(b) plans) and IRAs implement the waiver of 2020 required minimum distributions (RMDs) under the [Coronavirus Aid, Relief, and Economic Security \(CARES\) Act](#).

This guidance is structured in three key parts: (1) transition relief, (2) plan amendments, and (3) Q&A section that addresses other concerns. In short, the Notice:

- Extends the 60-day indirect rollover period through August 31, 2020,
- Explains what 2020 waived RMDs can be rolled over,
- Provides some relief from the one-per-12 month IRA indirect rollover limitation,
- Grants rollover and withholding relief for certain SECURE Act mistakes, and
- Sets forth sample plan amendments for the 2020 waived RMDs.

Additional details on this guidance follow.

Background

In 2019, Congress passed the Setting Every Community Up for Retirement Enhancement (SECURE) Act (Pub. L. 116-94), which extended the required beginning date for RMDs under section 401(a)(9) to April 1 of the calendar year following the year an individual turns 72 (for those born on or after July 1, 1949).

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RMDs were further altered by Section 2203 of the CARES Act, providing a 2020 waiver of RMDs for defined contribution plans and IRAs in light of COVID-19 and the resulting market volatility. IRC § 401(a)(9)(l).

The recently issued Notice provides important transition relief for implementation of the SECURE and CARES Act changes. Notably, the Q&As and the sample plan amendments largely track the guidance that was provided after Congress passed the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) (Pub. L. 110-458) under Notice 2009-82.

Transition Relief - Qualified Plans

A. SECURE Act Transition Guidance for Plan Administrators

The Notice provides that a distribution from a plan made during 2020 that would otherwise been an RMD but for the changes made by Section 114 of the SECURE Act is not required to be treated as an eligible rollover distribution under Code sections 401(a)(31), 402(f), and 3405(c). This should permit plan sponsors and recordkeepers the ability to retain the initial distribution and withholding treatment for RMDs, without concern about plan qualification, 402(f) notice penalties, or under-withholding federal income taxes.

B. Rollover Guidance for Plan Participants

As explained by the IRS in the Notice, the legislative intent of CARES was to provide taxpayers a way to avoid taking RMDs in 2020, if desired. Therefore, in furtherance of this legislative intent, Notice 2020-51 provides that taxpayers receiving the following distributions may roll them into an eligible retirement plan, provided the Code section 402(c) (rollover) rules are satisfied (even if part of a series of substantially equal periodic payments):

- Distributions to a plan participant paid in 2020 (or paid in 2021 for 2020 RMDs for an employee with a required beginning date of April 1, 2021) if the payments (1) equal the amounts that would have been RMDs in or for 2020, but for the CARES Act waiver, or (2) are one or more payments (that include the 2020 RMDs) as part of a series of substantially equal periodic payments made at least annually for the life of the participant (or joint lives of participant and beneficiary) or for a period of at least 10 years; and
- For a plan participant with a required beginning date of April 1, 2021, distributions that are paid in 2021 that would be an RMD for 2021 absent the CARES Act waiver, which is generally described as 2021 payments less the 2021 RMD (as explained in Q&A-5).

C. Extension of 60-Day Deadline

The Notice aims to assist plan participants that have already received distributions in 2020 by extending the 60-day indirect rollover period through August 31, 2020 for amounts described in A and B above.

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Transition relief – IRAs

A. Extension of 60-Day Deadline

The Notice similarly aims to assist IRA owners that have taken RMDs in 2020 that otherwise were not required by the SECURE or CARES Act and, therefore, also extends the indirect rollover period through August 31, 2020.

B. Permits Repayment of RMDs Previously Distributed From an IRA

In the case of an IRA owner or beneficiary who has already received a distribution of an amount that would have been a RMD in 2020 absent the CARES or SECURE Act changes, the recipient may repay the distribution to the distributing IRA by August 31, 2020. Importantly, the repayment will be treated as a rollover contribution, but it will not be subject to (1) the one rollover per 12-month period limitation under Code section 408(d)(3)(B), nor (2) the restrictions on rollovers for nonspousal beneficiaries under Code section 408(d)(3)(C) for inherited IRAs.

Questions and Answers

The IRS also addressed a number of other technical points that are important for proper administration of the relief.

- An IRA document does not have to be amended to reflect the 2020 RMD waiver (Q&A-1).
- The 2020 RMD waiver does not impact the individual's required beginning date (Q&A-4).
- If the plan is otherwise subject to spousal consent rules (*e.g.*, money purchase pension plan, but not governmental plans and private plans covered by "profit-sharing" exception), the plan sponsor must follow the procedures set forth in Notice 97-75, Q&A-8. In general, this means that the plan sponsor can elect to apply the "no new annuity starting date" rule so spousal consent should not apply (Q&A-7).
- If the plan permits a beneficiary to elect either the 5-year or life expectancy rule for calculating RMD amounts, and such election was due in 2020 (*e.g.*, the participant died in 2019), then the election deadline may be extended until 2021 (Q&A-2). Similarly, for a non-spouse rollover, if the participant died in 2019 and the plan provides for the 5-year rule, the non-spouse beneficiary has until the end of 2021 to elect to roll over to an inherited IRA and apply the life expectancy rule for RMD payments (Q&A-3). However, no other deadlines are extended (*e.g.*, September 30 deadline for determining RMD beneficiaries, October 31 for obtaining trust beneficiary information, last day of the year deadline for establishing separate accounts). Notably, if a participant or beneficiary dies in 2020, there is no extension of the 5-year period (or new 10-year period) (Q&A-6).
- Distributions from a plan may be rolled back into the same plan, if the plan permits rollovers and the rollover rules are met (taking in account the relief in B and C above) (Q&A-8).

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- The RMD amount is not an eligible rollover distribution for withholding purposes so mandatory 20% withholding does not apply. Rather, the 2020 RMD amount that is paid in 2020 is subject to voluntary withholding, unless directly rolled over (Q&A-9).
- The 2020 RMD waiver does not apply to substantially equal periodic payments under the “RMD method” so any suspension may trigger the 10% tax under section 72(t) (Q&A-10).
- An IRA provider must notify an IRA owner that no RMD is due in 2020, which is satisfied if a copy of the Form 5498 is furnished to the IRA owner (Q&A-11).
- The 2020 RMD waiver does not apply to defined benefit plans (Q&A-12).

Sample Plan Amendment

Per the CARES Act, plan sponsors have until the last day of the 2022 plan year (2024 plan year for governmental plans) to adopt plan amendments (unless these dates are extended).

The Notice provides a sample amendment for defined contribution plan sponsors that implement the 2020 RMD waiver under the CARES Act. The sample amendment provides a choice to participants or beneficiaries of receiving RMD distributions, and offers employers different options regarding direct rollovers and default distribution rules. The sample amendment is drafted for pre-approved plans, but can be modified for individually designed plans, and importantly will not result in loss of reliance on a favorable opinion, advisory, or determination letter.

The Notice recognizes that an employer may adopt other amendments, but cautions that the anti-cutback relief provided under the statute will not be available if such an amendment eliminates an optional form of benefit. For example, if the plan provides for automatic distribution of the 2020 RMD without regard to Code section 401(a)(9)(I), an amendment to eliminate this right is not permitted. Conversely, if the plan terms automatically suspend the 2020 RMD, an amendment to eliminate the right to defer is not permitted.

Next Steps

Plan sponsors and service providers of plans and IRAs should review their existing RMD and rollover policies and procedures carefully and update them accordingly in compliance with this new guidance. Although there is time for plans to be amended, plan sponsors should consider use of the sample plan amendment language and provide participants with elections (whether or not to receive the distribution) and update distribution packages on the basis of the sponsor’s decision as to which (if any) direct rollover options should be provided. If the sample amendment is not used, plan sponsors should carefully consider the existing plan language and determine if any amendments are needed to comply with plan operations (and when amending plans, should be mindful of existing anti-cutback rules). As with most things, the devil is in the details!

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