

IRS issues guidance and relief for 2020 RMD waiver and required beginning date changes

The IRS has issued guidance and transition relief relating to the waiver in 2020 of required minimum distributions (RMDs) from certain retirement plans and individual retirement accounts (IRAs) due to the amendment of Code Sec. 401(a)(9) by section 2203 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136). In particular, the IRS provides rollover relief with respect to waived RMDs and certain related payments, permits certain repayments to inherited IRAs, sets out Q&A's to answer anticipated questions regarding the waiver of 2020 RMDs, and provides a sample plan amendment that, if adopted, would provide participants a choice whether to receive waived RMDs and certain related payments. Distributions that would have been RMDs under old law are treated as eligible rollover distributions. The 60-day rollover period deadline for any 2020 RMDs already taken has been extended to August 31, 2020.

2020 RMD changes under CARES and SECURE Acts

The new guidance addresses issues for RMDs arising from unexpected changes in the rules. The first change was Act Sec. 114 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) (P.L. 116-94), passed at the end of 2019. The SECURE Act changed the required beginning date for RMDs applicable to Code Sec. 401(a) plans and other eligible retirement plans, including IRAs. The new required beginning date for an employee or IRA owner is generally April 1 of the calendar year following the calendar year in which the individual attains age 72 (rather than April 1 of the calendar year following the calendar year in which the individual attains age 70½) and the new required beginning date applies to distributions required to be made after December 31, 2019, with respect to individuals who attain age 70½ after that date.

The second change was the 2020 RMD waiver under Act Sec. 2203 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) in March 2020. Among other things, the CARES Act provides for a waiver of RMDs for defined contribution plans and IRAs for 2020 and provides that this waiver also applies to the 2019 RMD for an individual who has a required beginning date of April 1, 2020, that was not paid in 2019 (and therefore would have been due to be paid between January 1, 2020 and April 1, 2020).

60-day period deadline extended

Under the new relief, any distribution already taken in 2020 that would have been an RMD under the old rules has a 60-day rollover deadline of no earlier than August 31, 2020. For example, if someone took a distribution in January 2020 that would have been an RMD under the old rules, they have until August 31 to rollover the distribution.

In the case of an IRA owner or beneficiary who has already received a distribution of an amount that would have been an RMD in 2020 but for the 2020 RMD waiver under the CARES Act or change in the required beginning date under the SECURE Act, the recipient may repay the

distribution to the distributing IRA, even if the repayment is made more than 60 days after the distribution, provided the repayment is made no later than August 31, 2020. The repayment will be treated as a rollover, but will be subject to the one rollover per 12-month period limitation or the restriction on rollovers for nonspousal beneficiaries.

SECURE Act relief

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 change in the required beginning date under section 114 of the SECURE Act is not required to be treated as an eligible rollover distribution for purposes of Code Secs. 401(a)(31), 402(f), and 3405(c). Thus, 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 of Code Secs. 401(a)(31), 402(f) and 3405(c) merely because of that treatment.

2020 waiver guidance

The IRS is clarifying the CARES Act waiver relief. The IRS relief allows taxpayers who receive certain distributions 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). Specifically, the following distributions from a plan (other than a defined benefit plan) may be rolled over, provided the other rules of Code Sec. 402(c) are satisfied (and regardless of whether the distributions would otherwise be made as part of a series of substantially equal periodic payments). These include distributions to a plan participant paid in 2020 (or paid in 2021 for the 2020 calendar year in the case of an employee who has a required beginning date of April 1, 2021) if the payments equal the amounts that would have been RMDs in 2020 (or for 2020), had it not been for 2020 RMD waiver. They also include distributions that are one or more payments (that include the 2020 RMDs) in a series of substantially equal periodic payments made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancies) of the participant and the participant's designated beneficiary, or for a period of at least ten years.

For a plan participant with a required beginning date of April 1, 2021, distributions that are paid in 2021 that would have been an RMD for 2021 had it not been for the CARES Act are treated as eligible rollover distributions. Note, however, that a plan participant with a required beginning date of April 1, 2021, must still receive RMD for the 2021 calendar year by December 31, 2021. If the employee receives a distribution during 2021, that distribution is an RMD for the 2021 calendar year to the extent the total RMD for 2021 has not been satisfied even if the distribution is made on or before April 1, 2021, and accordingly, is not an eligible rollover distribution. However, to the extent the RMD for 2021 has been satisfied, subsequent amounts distributed in 2021 that would otherwise not be eligible rollover distributions may be rolled over.

Extended deadlines due to 2020 waiver

Electing 5-year rule or the life expectancy rule. If a plan permits an employee or beneficiary to elect whether the 5-year rule or the life expectancy rule applies in determining RMDs, then the deadline for making that election typically would be the end of calendar year following the calendar year of the employee's death. For example, if a 50-year-old employee in a plan providing the election died in 2019 with his sister as his designated beneficiary, the plan provision would require the election by the end of 2020. However, that type of plan may be amended to permit the extension of the election deadline to the end of 2021.

Direct rollover for a nonspouse designated beneficiary. The RMD waiver extends the time for making a direct rollover for a nonspouse designated beneficiary if the participant died in 2019. A special rule provides that if the 5-year rule applies to a benefit under a plan, the nonspouse designated beneficiary may determine the amount that is not eligible for rollover because it is an RMD using the life expectancy rule in the case of a distribution made prior to the end of the year following the year of death. This special rule is modified so that if the employee'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.

Plan amendments

The guidance provides a sample plan amendment for defined contribution plans that plan sponsors may adopt to implement waiver rules. The format of the sample plan amendment generally follows the design of preapproved plans that employ a "basic plan document" and an "adoption agreement." Thus, the sample plan amendment includes language designed for inclusion in a basic plan document and language designed for inclusion in an adoption agreement to allow the employer to select among options related to the application of the basic plan document provision. Sponsors of plans that do not use an adoption agreement (including employers using individually designed plans) should modify the format of the amendment to incorporate the desired options in the terms of the amendment.

Any plan amendment 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), and must reflect the operation of the plan beginning with the effective date of the plan amendment. The timely adoption of the amendment must be evidenced by a written document that is signed and dated by the employer (including an adopting employer of a pre-approved plan). IRAs do not need to be amended.

The adoption of the sample plan amendment (as modified, if necessary, to conform to the plan's terms and administrative procedures) will not result in the loss of reliance on a favorable opinion, advisory, or determination letter. Also, an employer's adoption of one of the options under the sample plan amendment (as modified, if necessary, to conform to the plan's terms and administrative procedures) will not cause the plan to fail to be a pre-approved plan.

IRS Notice 2020-51, I.R.B. 2020-29, July 13, 2020.